

HOUSE BILL No. 1300

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5.

Synopsis: Communications service customer information. Requires a communications service provider (provider) to provide notice to its Indiana customers of its privacy policies. Requires that the provider's notice include specified information about the provider's use and disclosure of customer proprietary information. Sets forth a customer's opt-out and opt-in approval rights for giving consent for a provider to use, disclose, or permit access to the customer's proprietary information. Requires a provider to make available a mechanism for customers to grant, deny, or withdraw opt-out or opt-in approval at any time. Specifies that a provider doing business in Indiana is subject to the: (1) the requirements concerning: (A) the safeguarding of the personal information of Indiana residents; and (B) the disclosure of security breaches that compromise the security of personal information maintained by the provider; that are set forth in the Indiana Code provisions governing security breaches by nongovernmental entities; and (2) the penalties set forth in those provisions for violations. Prohibits a provider of broadband Internet access service (BIAS) from doing the following: (1) Conditioning the provision of BIAS on a customer's agreement to waive any privacy rights guaranteed by law. (2) Terminating service or otherwise refusing to provide BIAS because of a customer's refusal to waive any privacy rights guaranteed by law. Provides that a BIAS provider that offers a financial incentive (such as lower monthly rates) in exchange for a customer's approval to use, disclose, or permit access to the customer's proprietary information must do the following: (1) Provide notice explaining the terms of the financial incentive program. (2) Obtain a customer's opt-in approval for
(Continued next page)

Effective: July 1, 2018.

Pierce

January 11, 2018, read first time and referred to Committee on Utilities, Energy and Telecommunications.



Digest Continued

participation in the program. (3) For customers that provide opt-in approval to participate in the program, make available a mechanism for those customers to withdraw the approval at any time. With respect to the provision of communications service other than BIAS to an enterprise customer, permits a communications service provider to bind itself contractually to privacy and data security practices other than those set forth in these new provisions, if certain conditions are met. Provides that a provider that violates these new provisions commits a deceptive act that is subject to the provisions of the Indiana Code concerning deceptive consumer sales.



Introduced

Second Regular Session of the 120th General Assembly (2018)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1300

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-5-0.5-3, AS AMENDED BY P.L.170-2017,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 3. (a) A supplier may not commit an unfair,
4 abusive, or deceptive act, omission, or practice in connection with a
5 consumer transaction. Such an act, omission, or practice by a supplier
6 is a violation of this chapter whether it occurs before, during, or after
7 the transaction. An act, omission, or practice prohibited by this section
8 includes both implicit and explicit misrepresentations.
9 (b) Without limiting the scope of subsection (a), the following acts,
10 and the following representations as to the subject matter of a
11 consumer transaction, made orally, in writing, or by electronic
12 communication, by a supplier, are deceptive acts:
13 (1) That such subject of a consumer transaction has sponsorship,
14 approval, performance, characteristics, accessories, uses, or
15 benefits it does not have which the supplier knows or should



- 1 reasonably know it does not have.
- 2 (2) That such subject of a consumer transaction is of a particular
3 standard, quality, grade, style, or model, if it is not and if the
4 supplier knows or should reasonably know that it is not.
- 5 (3) That such subject of a consumer transaction is new or unused,
6 if it is not and if the supplier knows or should reasonably know
7 that it is not.
- 8 (4) That such subject of a consumer transaction will be supplied
9 to the public in greater quantity than the supplier intends or
10 reasonably expects.
- 11 (5) That replacement or repair constituting the subject of a
12 consumer transaction is needed, if it is not and if the supplier
13 knows or should reasonably know that it is not.
- 14 (6) That a specific price advantage exists as to such subject of a
15 consumer transaction, if it does not and if the supplier knows or
16 should reasonably know that it does not.
- 17 (7) That the supplier has a sponsorship, approval, or affiliation in
18 such consumer transaction the supplier does not have, and which
19 the supplier knows or should reasonably know that the supplier
20 does not have.
- 21 (8) That such consumer transaction involves or does not involve
22 a warranty, a disclaimer of warranties, or other rights, remedies,
23 or obligations, if the representation is false and if the supplier
24 knows or should reasonably know that the representation is false.
- 25 (9) That the consumer will receive a rebate, discount, or other
26 benefit as an inducement for entering into a sale or lease in return
27 for giving the supplier the names of prospective consumers or
28 otherwise helping the supplier to enter into other consumer
29 transactions, if earning the benefit, rebate, or discount is
30 contingent upon the occurrence of an event subsequent to the time
31 the consumer agrees to the purchase or lease.
- 32 (10) That the supplier is able to deliver or complete the subject of
33 the consumer transaction within a stated period of time, when the
34 supplier knows or should reasonably know the supplier could not.
35 If no time period has been stated by the supplier, there is a
36 presumption that the supplier has represented that the supplier
37 will deliver or complete the subject of the consumer transaction
38 within a reasonable time, according to the course of dealing or the
39 usage of the trade.
- 40 (11) That the consumer will be able to purchase the subject of the
41 consumer transaction as advertised by the supplier, if the supplier
42 does not intend to sell it.



- 1 (12) That the replacement or repair constituting the subject of a
2 consumer transaction can be made by the supplier for the estimate
3 the supplier gives a customer for the replacement or repair, if the
4 specified work is completed and:
5 (A) the cost exceeds the estimate by an amount equal to or
6 greater than ten percent (10%) of the estimate;
7 (B) the supplier did not obtain written permission from the
8 customer to authorize the supplier to complete the work even
9 if the cost would exceed the amounts specified in clause (A);
10 (C) the total cost for services and parts for a single transaction
11 is more than seven hundred fifty dollars (\$750); and
12 (D) the supplier knew or reasonably should have known that
13 the cost would exceed the estimate in the amounts specified in
14 clause (A).
15 (13) That the replacement or repair constituting the subject of a
16 consumer transaction is needed, and that the supplier disposes of
17 the part repaired or replaced earlier than seventy-two (72) hours
18 after both:
19 (A) the customer has been notified that the work has been
20 completed; and
21 (B) the part repaired or replaced has been made available for
22 examination upon the request of the customer.
23 (14) Engaging in the replacement or repair of the subject of a
24 consumer transaction if the consumer has not authorized the
25 replacement or repair, and if the supplier knows or should
26 reasonably know that it is not authorized.
27 (15) The act of misrepresenting the geographic location of the
28 supplier by listing an alternate business name or an assumed
29 business name (as described in IC 23-0.5-3-4) in a local telephone
30 directory if:
31 (A) the name misrepresents the supplier's geographic location;
32 (B) the listing fails to identify the locality and state of the
33 supplier's business;
34 (C) calls to the local telephone number are routinely forwarded
35 or otherwise transferred to a supplier's business location that
36 is outside the calling area covered by the local telephone
37 directory; and
38 (D) the supplier's business location is located in a county that
39 is not contiguous to a county in the calling area covered by the
40 local telephone directory.
41 (16) The act of listing an alternate business name or assumed
42 business name (as described in IC 23-0.5-3-4) in a directory



- 1 assistance data base if:
- 2 (A) the name misrepresents the supplier's geographic location;
- 3 (B) calls to the local telephone number are routinely forwarded
- 4 or otherwise transferred to a supplier's business location that
- 5 is outside the local calling area; and
- 6 (C) the supplier's business location is located in a county that
- 7 is not contiguous to a county in the local calling area.
- 8 (17) The violation by a supplier of IC 24-3-4 concerning
- 9 cigarettes for import or export.
- 10 (18) The act of a supplier in knowingly selling or reselling a
- 11 product to a consumer if the product has been recalled, whether
- 12 by the order of a court or a regulatory body, or voluntarily by the
- 13 manufacturer, distributor, or retailer, unless the product has been
- 14 repaired or modified to correct the defect that was the subject of
- 15 the recall.
- 16 (19) The violation by a supplier of 47 U.S.C. 227, including any
- 17 rules or regulations issued under 47 U.S.C. 227.
- 18 (20) The violation by a supplier of the federal Fair Debt
- 19 Collection Practices Act (15 U.S.C. 1692 et seq.), including any
- 20 rules or regulations issued under the federal Fair Debt Collection
- 21 Practices Act (15 U.S.C. 1692 et seq.).
- 22 (21) A violation of IC 24-5-7 (concerning health spa services), as
- 23 set forth in IC 24-5-7-17.
- 24 (22) A violation of IC 24-5-8 (concerning business opportunity
- 25 transactions), as set forth in IC 24-5-8-20.
- 26 (23) A violation of IC 24-5-10 (concerning home consumer
- 27 transactions), as set forth in IC 24-5-10-18.
- 28 (24) A violation of IC 24-5-11 (concerning real property
- 29 improvement contracts), as set forth in IC 24-5-11-14.
- 30 (25) A violation of IC 24-5-12 (concerning telephone
- 31 solicitations), as set forth in IC 24-5-12-23.
- 32 (26) A violation of IC 24-5-13.5 (concerning buyback motor
- 33 vehicles), as set forth in IC 24-5-13.5-14.
- 34 (27) A violation of IC 24-5-14 (concerning automatic
- 35 dialing-announcing devices), as set forth in IC 24-5-14-13.
- 36 (28) A violation of IC 24-5-15 (concerning credit services
- 37 organizations), as set forth in IC 24-5-15-11.
- 38 (29) A violation of IC 24-5-16 (concerning unlawful motor
- 39 vehicle subleasing), as set forth in IC 24-5-16-18.
- 40 (30) A violation of IC 24-5-17 (concerning environmental
- 41 marketing claims), as set forth in IC 24-5-17-14.
- 42 (31) A violation of IC 24-5-19 (concerning deceptive commercial



- 1 solicitation), as set forth in IC 24-5-19-11.
- 2 (32) A violation of IC 24-5-21 (concerning prescription drug
3 discount cards), as set forth in IC 24-5-21-7.
- 4 (33) A violation of IC 24-5-23.5-7 (concerning real estate
5 appraisals), as set forth in IC 24-5-23.5-9.
- 6 (34) A violation of IC 24-5-26 (concerning identity theft), as set
7 forth in IC 24-5-26-3.
- 8 (35) A violation of IC 24-5.5 (concerning mortgage rescue fraud),
9 as set forth in IC 24-5.5-6-1.
- 10 (36) A violation of IC 24-8 (concerning promotional gifts and
11 contests), as set forth in IC 24-8-6-3.
- 12 (37) A violation of IC 21-18.5-6 (concerning representations
13 made by a postsecondary credit bearing proprietary educational
14 institution), as set forth in IC 21-18.5-6-22.5.
- 15 **(38) A violation of IC 24-5-27 (concerning the protection of**
16 **communications service customer information), as set forth in**
17 **IC 24-5-27-19.**
- 18 (c) Any representations on or within a product or its packaging or
19 in advertising or promotional materials which would constitute a
20 deceptive act shall be the deceptive act both of the supplier who places
21 such representation thereon or therein, or who authored such materials,
22 and such other suppliers who shall state orally or in writing that such
23 representation is true if such other supplier shall know or have reason
24 to know that such representation was false.
- 25 (d) If a supplier shows by a preponderance of the evidence that an
26 act resulted from a bona fide error notwithstanding the maintenance of
27 procedures reasonably adopted to avoid the error, such act shall not be
28 deceptive within the meaning of this chapter.
- 29 (e) It shall be a defense to any action brought under this chapter that
30 the representation constituting an alleged deceptive act was one made
31 in good faith by the supplier without knowledge of its falsity and in
32 reliance upon the oral or written representations of the manufacturer,
33 the person from whom the supplier acquired the product, any testing
34 organization, or any other person provided that the source thereof is
35 disclosed to the consumer.
- 36 (f) For purposes of subsection (b)(12), a supplier that provides
37 estimates before performing repair or replacement work for a customer
38 shall give the customer a written estimate itemizing as closely as
39 possible the price for labor and parts necessary for the specific job
40 before commencing the work.
- 41 (g) For purposes of subsection (b)(15) and (b)(16), a telephone
42 company or other provider of a telephone directory or directory



1 assistance service or its officer or agent is immune from liability for
 2 publishing the listing of an alternate business name or assumed
 3 business name of a supplier in its directory or directory assistance data
 4 base unless the telephone company or other provider of a telephone
 5 directory or directory assistance service is the same person as the
 6 supplier who has committed the deceptive act.

7 (h) For purposes of subsection (b)(18), it is an affirmative defense
 8 to any action brought under this chapter that the product has been
 9 altered by a person other than the defendant to render the product
 10 completely incapable of serving its original purpose.

11 SECTION 2. IC 24-5-27 IS ADDED TO THE INDIANA CODE AS
 12 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 13 1, 2018]:

14 **Chapter 27. Protection of Communications Service Customer**
 15 **Information**

16 **Sec. 1. As used in this chapter, "broadband Internet access**
 17 **service", or "BIAS", has the meaning set forth in 47 CFR 8.2(a).**

18 **Sec. 2. As used in this chapter, "broadband Internet access**
 19 **service provider", or "BIAS provider", means a person or an**
 20 **entity, or an affiliate (as defined in IC 23-1-43-1) of a person or an**
 21 **entity, that offers BIAS to customers in Indiana, without regard to**
 22 **the technology or medium used by the person or entity to provide**
 23 **the BIAS.**

24 **Sec. 3. As used in this chapter, "call detail information" means**
 25 **any information that pertains to the transmission of specific**
 26 **telephone calls, including:**

27 **(1) for outbound calls:**

28 **(A) the number called; and**

29 **(B) the time, location, or duration of any call; and**

30 **(2) for inbound calls:**

31 **(A) the number from which the call was placed; and**

32 **(B) the time, location, or duration of any call.**

33 **Sec. 4. As used in this chapter, "communications service" has**
 34 **the meaning set forth in IC 8-1-32.5-3.**

35 **Sec. 5. As used in this chapter, "communications service**
 36 **provider" has the meaning set forth in IC 8-1-32.5-4.**

37 **Sec. 6. As used in this chapter, "customer" means:**

38 **(1) a current or former subscriber to a communications**
 39 **service; or**

40 **(2) an applicant for a communications service;**

41 **whose place of primary use (as defined in IC 36-8-16.7-16) for the**
 42 **communications service is in Indiana.**



1 **Sec. 7. As used in this chapter, "customer proprietary**
2 **information" means any of the following a communications service**
3 **provider acquires in connection with the provision of**
4 **communications service:**

5 **(1) Individually identifiable customer proprietary network**
6 **information.**

7 **(2) Personally identifiable information.**

8 **(3) The content of communications.**

9 **Sec. 8. (a) As used in this chapter, "customer proprietary**
10 **network information" means:**

11 **(1) information that:**

12 **(A) relates to the quantity, technical configuration, type,**
13 **destination, location, or amount of use of a**
14 **communications service subscribed to by a customer of a**
15 **communications service provider; and**

16 **(B) is made available to the communications service**
17 **provider by the customer solely by virtue of the**
18 **relationship between the customer and the**
19 **communications service provider; and**

20 **(2) information contained in the bills pertaining to the**
21 **communications service received by the customer.**

22 **(b) The term does not include subscriber list information (as**
23 **defined in 47 U.S.C. 222).**

24 **Sec. 9. The term "material change" means any change that a**
25 **customer, acting reasonably under the circumstances, would**
26 **consider important to the customer's decisions regarding the**
27 **customer's privacy, including any change to information described**
28 **in a communications service provider's privacy notice required**
29 **under section 14 of this chapter.**

30 **Sec. 10. As used in this chapter, "opt-in approval" means a**
31 **method that:**

32 **(1) is used by a communications service provider to obtain a**
33 **customer's consent for the communications service provider**
34 **to use, disclose, or permit access to the customer's proprietary**
35 **information; and**

36 **(2) requires the communications service provider to obtain**
37 **from the customer, after the customer is provided appropriate**
38 **notification of the communications service provider's request,**
39 **the customer's affirmative, express consent allowing the**
40 **requested use, disclosure, or access.**

41 **Sec. 11. As used in this chapter, "opt-out approval" means a**
42 **method:**



1 (1) that is used by a communications service provider to
 2 obtain a customer's consent for the communications service
 3 provider to use, disclose, or permit access to the customer's
 4 proprietary information; and

5 (2) under which a customer is considered to have consented to
 6 the use, disclosure, or access if the customer fails to object to
 7 the use, disclosure, or access after the customer is provided
 8 appropriate notification of the communications service
 9 provider's request for consent.

10 Sec. 12. As used in this chapter, "personally identifiable
 11 information" means any information that is linked or is reasonably
 12 linkable to an individual or a device.

13 Sec. 13. As used in this chapter, "sensitive customer proprietary
 14 information", with respect to a customer of a communications
 15 service provider, includes:

- 16 (1) financial information;
 17 (2) health information;
 18 (3) information pertaining to children;
 19 (4) Social Security numbers;
 20 (5) precise geolocation information;
 21 (6) content of communications;
 22 (7) call detail information;
 23 (8) Internet web site browsing history or its functional
 24 equivalent; and
 25 (9) application usage history or its functional equivalent.

26 Sec. 14. (a) A communications service provider shall provide
 27 notice to its customers of its privacy policies. The notice required
 28 by this subsection must meet the requirements of subsection (b)
 29 and must be:

- 30 (1) clear and conspicuous;
 31 (2) in language that is comprehensible and not misleading;
 32 and
 33 (3) completely translated into a language other than English
 34 if the communications service provider transacts business
 35 with a particular customer in that language.

36 (b) The notice required by subsection (a) must do the following:

- 37 (1) Specify and describe:
 38 (A) the types of customer proprietary information that the
 39 communications service provider collects by virtue of its
 40 provision of communications service; and
 41 (B) how it uses the information described in clause (A).
 42 (2) Specify and describe under what circumstances the



1 **communications service provider discloses or permits access**
2 **to each type of customer proprietary information that it**
3 **collects.**

4 **(3) Specify and describe:**

5 **(A) the categories of entities to which the communications**
6 **service provider discloses or permits access to customer**
7 **proprietary information; and**

8 **(B) the purposes for which the customer proprietary**
9 **information will be used by each category of entity**
10 **described in clause (A).**

11 **(4) Specify and describe a customer's opt-out approval or**
12 **opt-in approval rights with respect to customer proprietary**
13 **information, which rights must provide:**

14 **(A) that a customer's denial or withdrawal of approval to**
15 **use, disclose, or permit access to customer proprietary**
16 **information will not affect the provision of any**
17 **communications service to which the customer subscribes;**

18 **(B) that any grant, denial, or withdrawal of approval for**
19 **the use or disclosure of, or for permission to access,**
20 **customer proprietary information is valid until the**
21 **customer affirmatively revokes the grant, denial, or**
22 **withdrawal; and**

23 **(C) that a customer has a right to deny or withdraw access**
24 **to the customer's proprietary information at any time.**

25 **(5) Provide access to a mechanism for customers to grant,**
26 **deny, or withdraw approval for the communications service**
27 **provider to use, disclose, or permit access to customer**
28 **proprietary information as required by section 15(g) of this**
29 **chapter.**

30 **(c) The notice required by subsection (a) must:**

31 **(1) be made available to a prospective customer at the point**
32 **of sale, before purchase of the communications service being**
33 **offered to the customer, regardless of whether the point of**
34 **sale is in person, online, over the telephone, or by another**
35 **means; and**

36 **(2) be made persistently available through the following:**

37 **(A) A clear and conspicuous link on the homepage of the**
38 **communications service provider's Internet web site. If the**
39 **communications service provider does not maintain an**
40 **Internet web site, the communications service provider**
41 **must provide the notice required by subsection (a) in paper**
42 **form or in another format agreed upon by the customer.**



- 1 **(B) Any mobile application provided by the**
 2 **communications service provider for account management**
 3 **purposes.**
 4 **(C) Any functional equivalent of a:**
 5 **(i) homepage described in clause (A); or**
 6 **(ii) mobile application described in clause (B).**
 7 **(d) A communications service provider must provide existing**
 8 **customers with advance notice of one (1) or more material changes**
 9 **to the communications service provider's privacy policies. The**
 10 **notice required by this subsection:**
 11 **(1) must be:**
 12 **(A) clear and conspicuous;**
 13 **(B) in language that is comprehensible and not misleading;**
 14 **(C) completely translated into a language other than**
 15 **English if the communications service provider transacts**
 16 **business with a particular customer in that language; and**
 17 **(D) provided through electronic mail or through another**
 18 **means of active communication agreed to by the customer;**
 19 **and**
 20 **(2) must do the following:**
 21 **(A) Specify and describe the changes made to the**
 22 **communications service provider's privacy policies,**
 23 **including any changes to:**
 24 **(i) the customer proprietary information the**
 25 **communications service provider collects;**
 26 **(ii) how the communications service provider uses,**
 27 **discloses, or permits access to customer proprietary**
 28 **information; or**
 29 **(iii) the categories of entities to which the**
 30 **communications service provider discloses or permits**
 31 **access to customer proprietary information.**
 32 **In specifying and describing the changes made to the**
 33 **communications service provider's privacy policies under**
 34 **this clause, the communications service provider shall**
 35 **indicate which of the changes, if any, are retroactive.**
 36 **(B) Specify and describe a customer's opt-out approval or**
 37 **opt-in approval rights with respect to customer**
 38 **proprietary information, including the rights set forth in**
 39 **subsection (b)(4).**
 40 **(C) Provide access to a mechanism for customers to grant,**
 41 **deny, or withdraw approval for the communications**
 42 **service provider to use, disclose, or permit access to**



1 customer proprietary information as required by section
2 15(g) of this chapter.

3 Sec. 15. (a) Except as provided in subsection (b), a
4 communications service provider may not use, disclose, or permit
5 access to customer proprietary information except upon the
6 opt-out approval or opt-in approval of the customer, as set forth in
7 this section.

8 (b) A communications service provider may use, disclose, or
9 permit access to customer proprietary information without
10 customer approval for the following purposes and as otherwise
11 required or authorized by law:

12 (1) To provide the communications service in connection with
13 which the customer proprietary information is derived, or to
14 provide services necessary to, or used in, the provision of that
15 communications service.

16 (2) To:

17 (A) initiate;

18 (B) render; and

19 (C) bill and collect for;

20 communications service.

21 (3) To protect the rights or property of the communications
22 service provider, or to protect users of communications
23 service or other communications service providers from
24 fraudulent, abusive, or unlawful use of the communications
25 service provided.

26 (4) To provide any inbound marketing, referral, or
27 administrative services to the customer for the duration of a
28 real-time interaction, if the interaction was initiated by the
29 customer.

30 (5) To provide location information or customer proprietary
31 information (other than sensitive customer proprietary
32 information) to:

33 (A) any:

34 (i) PSAP (as defined in IC 36-8-16.7-20);

35 (ii) emergency medical service provider or emergency
36 dispatch provider;

37 (iii) public safety, fire service, or law enforcement
38 official; or

39 (iv) hospital emergency or trauma care facility;

40 in order to respond to the user's request for emergency
41 service;

42 (B) the user's legal guardian or members of the user's



1 **immediate family, in order to inform the user's legal**
 2 **guardian or family of the user's location in an emergency**
 3 **situation that involves the risk of death or serious physical**
 4 **harm; or**

5 **(C) providers of information or data base management**
 6 **services solely for purposes of assisting in the delivery of**
 7 **emergency services in response to an emergency.**

8 **(c) A communications service provider must obtain opt-out**
 9 **approval from a customer in order to use, disclose, or permit**
 10 **access to any of the customer's proprietary information that is not**
 11 **sensitive customer proprietary information. However, a**
 12 **communications service provider may, at the option of the**
 13 **communications service provider, obtain opt-in approval from a**
 14 **customer in order to use, disclose, or permit access to any of the**
 15 **customer's proprietary information that is not sensitive customer**
 16 **proprietary information.**

17 **(d) A communications service provider must obtain opt-in**
 18 **approval from a customer in order to:**

19 **(1) use, disclose, or permit access to any of the customer's**
 20 **sensitive customer proprietary information; or**

21 **(2) make any retroactive material change that would result in**
 22 **a use or disclosure of, or permission to access, any of the**
 23 **customer's proprietary information previously collected by**
 24 **the communications service provider and for which use,**
 25 **disclosure, or access the customer did not previously grant**
 26 **either opt-out approval or opt-in approval.**

27 **(e) A communications service provider must solicit a customer's**
 28 **opt-out approval under subsection (c) or opt-in approval under**
 29 **subsection (d), as applicable:**

30 **(1) at the point of sale, before the purchase of any**
 31 **communications service being offered to the customer,**
 32 **regardless of whether the point of sale is in person, online,**
 33 **over the telephone, or by another means; and**

34 **(2) whenever the communications service provider makes one**
 35 **(1) or more material changes to the communications service**
 36 **provider's privacy policies.**

37 **The solicitation of the customer's opt-out approval or opt-in**
 38 **approval under this subsection may be part of, or the same**
 39 **communication as, the notice required by section 14 of this**
 40 **chapter.**

41 **(f) A communications service provider's solicitation of a**
 42 **customer's opt-out approval or opt-in approval under subsection**



- 1 (e):
 2 (1) must be:
 3 (A) clear and conspicuous;
 4 (B) in language that is comprehensible and not misleading;
 5 and
 6 (C) completely translated into a language other than
 7 English if the communications service provider transacts
 8 business with a particular customer in that language; and
 9 (2) must:
 10 (A) disclose:
 11 (i) the types of customer proprietary information for
 12 which the communications service provider is seeking
 13 the customer's opt-out approval or opt-in approval to
 14 use, disclose, or provide access to;
 15 (ii) the purposes for which such customer proprietary
 16 information will be used; and
 17 (iii) the categories of entities to which the
 18 communications service provider intends to disclose or
 19 permit access to the customer's proprietary information;
 20 and
 21 (B) include a means for the customer to easily access:
 22 (i) the notice required by section 14 of this chapter; and
 23 (ii) the mechanism required by subsection (g).
 24 (g) A communications service provider shall make available a
 25 simple, easy-to-use mechanism for customers to grant, deny, or
 26 withdraw opt-out approval or opt-in approval at any time. The
 27 mechanism required by this subsection must be:
 28 (1) clear and conspicuous;
 29 (2) in language that is comprehensible and not misleading;
 30 and
 31 (3) made persistently available, at no cost to the customer, on
 32 or through the following:
 33 (A) The communications service provider's Internet web
 34 site. If the communications service provider does not
 35 maintain an Internet web site, the communications service
 36 provider must provide a persistently available mechanism
 37 by another means, such as a toll free telephone number.
 38 (B) Any mobile application provided by the
 39 communications service provider for account management
 40 purposes.
 41 (C) Any functional equivalent of:
 42 (i) an Internet web site described in clause (A); or



- 1 (ii) a mobile application described in clause (B).
- 2 (h) A customer's grant, denial, or withdrawal of opt-out
- 3 approval or opt-in approval under this section must:
- 4 (1) be given effect promptly; and
- 5 (2) remain in effect until the customer revokes or limits the
- 6 customer's grant, denial, or withdrawal of the approval.
- 7 Sec. 16. (a) As used in this section, "doing business in Indiana"
- 8 has the meaning set forth in IC 24-4.9-2-4.
- 9 (b) A communications service provider doing business in
- 10 Indiana is subject to:
- 11 (1) the requirements concerning:
- 12 (A) the safeguarding of the personal information of
- 13 Indiana residents; and
- 14 (B) the disclosure of security breaches that compromise the
- 15 security, confidentiality, or integrity of personal
- 16 information maintained by the communications service
- 17 provider;
- 18 set forth in IC 24-4.9-3; and
- 19 (2) the penalties set forth in IC 24-4.9-4 for violations of the
- 20 requirements described in subdivision (1).
- 21 Sec. 17. (a) A BIAS provider shall not do the following:
- 22 (1) Condition, or effectively condition, the provision of BIAS
- 23 on a customer's agreement to waive any privacy rights
- 24 guaranteed by law or regulation, including the privacy rights
- 25 set forth this chapter.
- 26 (2) Terminate service or otherwise refuse to provide BIAS as
- 27 a direct or indirect consequence of a customer's refusal to
- 28 waive any privacy rights guaranteed by law or regulation,
- 29 including the privacy rights set forth this chapter.
- 30 (b) A BIAS provider that offers a financial incentive, such as
- 31 lower monthly rates, in exchange for a customer's approval to use,
- 32 disclose, or permit access to the customer's proprietary
- 33 information must do all of the following:
- 34 (1) Provide notice explaining the terms of any financial
- 35 incentive program described in this subsection. The notice
- 36 required by this subdivision:
- 37 (A) must be:
- 38 (i) provided both at the time the program is offered and
- 39 at the time a customer elects to participate in the
- 40 program;
- 41 (ii) clear and conspicuous;
- 42 (iii) in language that is comprehensible and not



- 1 misleading;
- 2 (iv) easily accessible and separate from any other
- 3 privacy notifications, including the privacy notifications
- 4 required under this chapter; and
- 5 (v) completely translated into a language other than
- 6 English if the BIAS provider transacts business with a
- 7 particular customer in that language; and
- 8 **(B) must do the following:**
- 9 (i) Explain that the program requires the customer's
- 10 opt-in approval to use, disclose, or permit access to the
- 11 customer's proprietary information.
- 12 (ii) Include information about the customer proprietary
- 13 information the BIAS provider will collect, how the
- 14 customer proprietary information will be used, and with
- 15 which categories of entities the customer proprietary
- 16 information will be shared and for what purposes.
- 17 (iii) Provide, in at least as prominent a manner,
- 18 information about the equivalent service plan offered by
- 19 the BIAS provider that does not necessitate the use,
- 20 disclosure, or access to customer proprietary
- 21 information beyond that required or permitted by law or
- 22 regulation, including that required or permitted under
- 23 this chapter.
- 24 **(2) Obtain a customer's opt-in approval in accordance with**
- 25 **section 15(d) of this chapter for participation in the financial**
- 26 **incentive program.**
- 27 **(3) For customers that provide opt-in approval to participate**
- 28 **in the program, make available a simple, easy-to-use**
- 29 **mechanism for those customers to withdraw the approval at**
- 30 **any time. The mechanism required by this subdivision must**
- 31 **be:**
- 32 **(A) clear and conspicuous;**
- 33 **(B) in language that is comprehensible and not misleading;**
- 34 **and**
- 35 **(C) made persistently available on or through the**
- 36 **following:**
- 37 (i) The BIAS provider's Internet web site. If the BIAS
- 38 provider does not maintain an Internet web site, the
- 39 BIAS provider must provide a persistently available
- 40 mechanism by another means, such as a toll free
- 41 telephone number.
- 42 (ii) Any mobile application provided by the BIAS



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provider for account management purposes.
(iii) Any functional equivalent of an Internet web site described in item (i) or of a mobile application described in item (ii).

Sec. 18. With respect to the provision of communications service other than BIAS to an enterprise customer, a communications service provider may bind itself contractually to privacy and data security practices other than those described in this chapter, if the communications service provider's contract with the enterprise customer:

- (1) specifically addresses the issues of transparency, choice, data security, and data breach; and**
- (2) provides a mechanism for the enterprise customer to communicate with the communications service provider about privacy and data security concerns.**

Sec. 19. A communications service provider that violates this chapter commits a deceptive act that is:

- (1) actionable under IC 24-4.5-0.5; and**
- (2) subject to the remedies and penalties set forth in IC 24-4.5-0.5.**

