



Reprinted  
April 6, 2017

---

---

# ENGROSSED

## HOUSE BILL No. 1444

---

DIGEST OF HB 1444 (Updated April 5, 2017 5:16 pm - DI 106)

**Citations Affected:** IC 24-4.7; IC 24-5; IC 34-24; IC 35-37; IC 35-43.

**Synopsis:** Telecommunications. Specifies that a person that controls, directly or indirectly, a person that violates certain requirements concerning unlawful telephone solicitation (the "do not call" statute) is equally liable for the violation. Defines "caller" for purposes of the "do not call" statute. Defines "pecuniary loss" for purposes of an offense against computer users, and increases the penalty for an offense against computer users (including "ransomware" attacks) based on the pecuniary loss. Specifies that certain offenses against computer users are deceptive acts actionable by the attorney general.

**Effective:** July 1, 2017.

---

---

## Judy, Dvorak, Morris, Speedy, Schaibley

(SENATE SPONSORS — ZAY, DORIOT, HEAD, HERSHMAN, TAYLOR G,  
RANDOLPH LONNIE M)

---

---

January 17, 2017, read first time and referred to Committee on Courts and Criminal Code.  
February 16, 2017, amended, reported — Do Pass.  
February 21, 2017, read second time, amended, ordered engrossed.  
February 22, 2017, engrossed. Read third time, passed. Yeas 94, nays 0.

SENATE ACTION

February 27, 2017, read first time and referred to Committee on Corrections and Criminal Law.  
March 30, 2017, amended, reported favorably — Do Pass.  
April 5, 2017, read second time, amended, ordered engrossed.

---

---

EH 1444—LS 7112/DI 106





Reprinted  
April 6, 2017

First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1444

---

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

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

1 SECTION 1. IC 24-4.7-2-5, AS AMENDED BY P.L.226-2011,  
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2017]: Sec. 5. **(a)** "Doing business in Indiana" means:  
4 (1) making; or  
5 (2) causing others to make;  
6 telephone sales calls to consumers located in Indiana whether the  
7 telephone sales calls are made from a location in Indiana or outside  
8 Indiana.  
9 **(b) A person that controls, directly or indirectly, one (1) or more**  
10 **persons that make or cause another person to make a telephone**  
11 **call to a consumer located in Indiana is "doing business in**  
12 **Indiana", no matter where the person is located or domiciled.**  
13 SECTION 2. IC 24-4.7-2-7.3 IS ADDED TO THE INDIANA  
14 CODE AS A NEW SECTION TO READ AS FOLLOWS  
15 [EFFECTIVE JULY 1, 2017]: Sec. 7.3. **"Person" means:**  
16 **(1) an individual, a firm, an organization, a partnership, a**  
17 **association, or a corporation, including affiliates and**

EH 1444—LS 7112/DI 106



1           **subsidiaries; or**

2           **(2) any other legal entity.**

3           SECTION 3. IC 24-4.7-2-10 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 10. "Telephone  
5 solicitor" means ~~an individual; a firm; an organization; a partnership;~~  
6 ~~an association; or a corporation; including affiliates and subsidiaries;~~  
7 **a person** doing business in Indiana. **The term includes a person that**  
8 **controls, directly or indirectly, one (1) or more other persons.**

9           SECTION 4. IC 24-4.7-4-2 IS AMENDED TO READ AS  
10 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2. A telephone solicitor  
11 who makes a telephone sales call to a telephone number shall  
12 immediately disclose the following information upon making contact  
13 with the consumer:

14           (1) The solicitor's true first and last name.

15           (2) The name of the business **or person** on whose behalf the  
16 telephone solicitor is soliciting.

17           **(3) The person with which the solicitor is employed or has**  
18 **contracted.**

19           SECTION 5. IC 24-4.7-5-1, AS AMENDED BY P.L.61-2014,  
20 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
21 JULY 1, 2017]: Sec. 1. A telephone solicitor, a supplier, or a caller who  
22 fails to comply with any provision of IC 24-4.7-4 commits a deceptive  
23 act that is actionable by the attorney general under this chapter. **A**  
24 **person who directly or indirectly controls a person that fails to**  
25 **comply with any provision of IC 24-4.7-4 commits a separate**  
26 **deceptive act that is actionable by the attorney general under this**  
27 **chapter.** In addition, a contractor who contracts or seeks to contract  
28 with the state:

29           (1) may be prohibited from contracting with the state; or

30           (2) may have an existing contract with the state voided;

31 if the contractor, an affiliate or principal of the contractor, **a person**  
32 **that directly or indirectly controls the contractor, or** any agent  
33 acting on behalf of the contractor or an affiliate or principal of the  
34 contractor, **or a person that directly or indirectly controls the agent**  
35 does not **comply** or has not complied with the terms of this article,  
36 even if this article is preempted by federal law.

37           SECTION 6. IC 24-4.7-5-2 IS AMENDED TO READ AS  
38 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2. **(a)** In an action  
39 under this chapter, the attorney general may obtain any or all of the  
40 following:

41           (1) An injunction to enjoin future violations of IC 24-4.7-4.

42           (2) A civil penalty of not more than the following:



- 1 (A) Ten thousand dollars (\$10,000) for the first violation of  
 2 IC 24-4.7-4.  
 3 (B) Twenty-five thousand (\$25,000) dollars for each violation  
 4 after the first violation.  
 5 For purposes of this subdivision, each telephone call in violation  
 6 of IC 24-4.7-4-1 is considered a separate violation.  
 7 (3) All money the defendant obtained through violation of  
 8 IC 24-4.7-4.  
 9 (4) The attorney general's reasonable costs in:  
 10 (A) the investigation of the deceptive act; and  
 11 (B) maintaining the action.  
 12 (5) Reasonable attorney's fees.  
 13 (6) Costs of the action.  
 14 **(b) Except as provided in subsection (c), the attorney general**  
 15 **may obtain the remedies described in subsection (a) separately**  
 16 **against or from each person that violates IC 24-4.7-4-1, including**  
 17 **a person that directly or indirectly controls a person that violates**  
 18 **IC 24-4.7-4-1.**  
 19 **(c) This subsection applies only to a person that directly or**  
 20 **indirectly controls a person that violates IC 24-4.7-4-1. A person to**  
 21 **which this subsection applies is not liable for a civil penalty under**  
 22 **subsection (a)(2) if the person establishes by a preponderance of**  
 23 **the evidence that the person:**  
 24 **(1) did not know; and**  
 25 **(2) in the exercise of reasonable care could not have known;**  
 26 **of the violation.**  
 27 SECTION 7. IC 24-5-14-2 IS AMENDED TO READ AS  
 28 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2. As used in this  
 29 chapter, "caller" means an individual, corporation, limited liability  
 30 company, partnership, unincorporated association, or the entity that  
 31 attempts to contact, or contacts, a subscriber in Indiana by using a  
 32 telephone or telephone line. **The term includes an individual who is**  
 33 **an officer of a corporation or a member of a limited liability**  
 34 **company that attempts to contact, or contacts, a subscriber in**  
 35 **Indiana by using a telephone or telephone line, if the individual:**  
 36 **(1) has a high degree of involvement in, or actual notice of, the**  
 37 **contact or attempt to contact that does not comply with**  
 38 **section 5 of this chapter; and**  
 39 **(2) fails to take reasonable steps to prevent the unlawful**  
 40 **contact or attempted contact.**  
 41 SECTION 8. IC 34-24-3-0.5 IS ADDED TO THE INDIANA CODE  
 42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY



1, 2017]: **Sec. 0.5. As used in this chapter, "loss" includes expenses incurred in securing a computer system or computer network against unauthorized intrusion.**

SECTION 9. IC 35-37-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 7. **(a) Except as provided in subsection (b)**, whenever an element of an offense involves a pecuniary loss or a pecuniary gain, then the element shall be established by proof of the fair market value of the property at the time of the offense.

**(b) For purposes of IC 35-43-1-8, "pecuniary loss" includes:**

**(1) damage to the victim's property caused, directly or indirectly, by commission of the offense, based on the actual cost of securing, repairing, or replacing a computer, a computer system, computer software, a network, and data; and**

**(2) revenue, salary, or wages lost by the victim as a result of the crime.**

SECTION 10. IC 35-43-1-8, AS ADDED BY P.L.158-2013, SECTION 459, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 8. (a) A person who knowingly or intentionally and who without authorization:

(1) disrupts, denies, or causes the disruption or denial of computer system services to an authorized user of the computer system services that are:

(A) owned by;

(B) under contract to; or

(C) operated for, on behalf of, or in conjunction with; another person in whole or part;

(2) destroys, takes, or damages equipment or supplies used or intended to be used in a computer, computer system, or computer network;

(3) destroys or damages a computer, computer system, or computer network; or

(4) introduces a computer contaminant into a computer, computer system, or computer network;

commits an offense against computer users, a Level 6 felony.

(b) However, the offense is:

(1) a Level 5 felony if:

(A) the pecuniary loss caused by the offense is at least ~~five thousand dollars (\$5,000)~~ **seven hundred fifty dollars (\$750) but less than fifty thousand dollars (\$50,000)**;

(B) the offense was committed for the purpose of devising or



1           executing any scheme or artifice to defraud or obtain property;  
2           or  
3           (C) the offense interrupts or impairs:  
4               (i) a governmental operation; or  
5               (ii) the public communication, transportation, or supply of  
6               water, gas, or another public service; and  
7           (2) a Level 4 felony if:  
8               (A) **the pecuniary loss caused by the offense is at least fifty**  
9               **thousand dollars (\$50,000); or**  
10              (B) the offense endangers human life.  
11           **(c) In addition to any criminal penalties imposed for a violation**  
12           **of this section, a person who commits an offense described in**  
13           **subsection (b) commits a deceptive act that is actionable by the**  
14           **attorney general under IC 24-5-0.5 and is subject to the remedies**  
15           **and penalties under IC 24-5-0.5.**



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1444, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 34-24-3-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 0.5. As used in this chapter, "loss" includes expenses incurred in securing a computer system or computer network against unauthorized intrusion.**"

Page 2, delete lines 1 through 3.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1444 as introduced.)

WASHBURNE

Committee Vote: yeas 11, nays 0.

---

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1444 be amended to read as follows:

Page 2, line 35, after "a" insert ":

**(1)**".

Page 2, line 39, delete "." and insert "; and

**(2) Level 5 felony if the loss (as defined in IC 34-24-3-0.5) to the owner of the computer system is at least fifty thousand dollars (\$50,000).**".

(Reference is to HB 1444 as printed February 17, 2017.)

DVORAK

---

 COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred House Bill No. 1444, has had the same under consideration and begs leave to report the same back to the

**EH 1444—LS 7112/DI 106**





Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

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

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 24-4.7-2-5, AS AMENDED BY P.L.226-2011, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 5. (a) "Doing business in Indiana" means:

- (1) making; or
- (2) causing others to make;

telephone sales calls to consumers located in Indiana whether the telephone sales calls are made from a location in Indiana or outside Indiana.

**(b) A person that controls, directly or indirectly, one (1) or more persons that make or cause another person to make a telephone call to a consumer located in Indiana is "doing business in Indiana", no matter where the person is located or domiciled.**

SECTION 2. IC 24-4.7-2-7.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 7.3. "Person" means:

- (1) an individual, a firm, an organization, a partnership, an association, or a corporation, including affiliates and subsidiaries; or**
- (2) any other legal entity.**

SECTION 3. IC 24-4.7-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 10. "Telephone solicitor" means ~~an individual; a firm; an organization; a partnership; an association; or a corporation, including affiliates and subsidiaries;~~ **a person doing business in Indiana. The term includes a person that controls, directly or indirectly, one (1) or more other persons.**

SECTION 4. IC 24-4.7-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2. A telephone solicitor who makes a telephone sales call to a telephone number shall immediately disclose the following information upon making contact with the consumer:

- (1) The solicitor's true first and last name.
- (2) The name of the business **or person** on whose behalf the telephone solicitor is soliciting.
- (3) The person with which the solicitor is employed or has contracted.**



SECTION 5. IC 24-4.7-5-1, AS AMENDED BY P.L.61-2014, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 1. A telephone solicitor, a supplier, or a caller who fails to comply with any provision of IC 24-4.7-4 commits a deceptive act that is actionable by the attorney general under this chapter. **A person who directly or indirectly controls a person that fails to comply with any provision of IC 24-4.7-4 commits a separate deceptive act that is actionable by the attorney general under this chapter.** In addition, a contractor who contracts or seeks to contract with the state:

- (1) may be prohibited from contracting with the state; or
- (2) may have an existing contract with the state voided;

if the contractor, an affiliate or principal of the contractor, **a person that directly or indirectly controls the contractor, or** any agent acting on behalf of the contractor or an affiliate or principal of the contractor, **or a person that directly or indirectly controls the agent** does not **comply** or has not complied with the terms of this article, even if this article is preempted by federal law.

SECTION 6. IC 24-4.7-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2. **(a)** In an action under this chapter, the attorney general may obtain any or all of the following:

- (1) An injunction to enjoin future violations of IC 24-4.7-4.
- (2) A civil penalty of not more than the following:
  - (A) Ten thousand dollars (\$10,000) for the first violation of IC 24-4.7-4.
  - (B) Twenty-five thousand (\$25,000) dollars for each violation after the first violation.

For purposes of this subdivision, each telephone call in violation of IC 24-4.7-4-1 is considered a separate violation.

- (3) All money the defendant obtained through violation of IC 24-4.7-4.
- (4) The attorney general's reasonable costs in:
  - (A) the investigation of the deceptive act; and
  - (B) maintaining the action.
- (5) Reasonable attorney's fees.
- (6) Costs of the action.

**(b) Except as provided in subsection (c), the attorney general may obtain the remedies described in subsection (a) separately against or from each person that violates IC 24-4.7-4-1, including a person that directly or indirectly controls a person that violates IC 24-4.7-4-1.**



**(c) This subsection applies only to a person that directly or indirectly controls a person that violates IC 24-4.7-4-1. A person to which this subsection applies is not liable for a civil penalty under subsection (a)(2) if the person establishes by a preponderance of the evidence that the person:**

**(1) did not know; and**

**(2) in the exercise of reasonable care could not have known; of the violation."**

Page 1, delete lines 6 through 17, begin a new paragraph, and insert: "SECTION 2. IC 35-37-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 7. **(a) Except as provided in subsection (b)**, whenever an element of an offense involves a pecuniary loss or a pecuniary gain, then the element shall be established by proof of the fair market value of the property at the time of the offense.

**(b) For purposes of IC 35-43-1-8, "pecuniary loss" includes:**

**(1) damage to the victim's property caused, directly or indirectly, by commission of the offense, based on the actual cost of securing, repairing, or replacing a computer, a computer system, computer software, a network, and data; and**

**(2) revenue, salary, or wages lost by the victim as a result of the crime.**

SECTION 3. IC 35-43-1-8, AS ADDED BY P.L.158-2013, SECTION 459, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 8. (a) A person who knowingly or intentionally and who without authorization:

(1) disrupts, denies, or causes the disruption or denial of computer system services to an authorized user of the computer system services that are:

(A) owned by;

(B) under contract to; or

(C) operated for, on behalf of, or in conjunction with;

another person in whole or part;

(2) destroys, takes, or damages equipment or supplies used or intended to be used in a computer, computer system, or computer network;

(3) destroys or damages a computer, computer system, or computer network; or

(4) introduces a computer contaminant into a computer, computer system, or computer network;

commits an offense against computer users, a Level 6 felony.

**EH 1444—LS 7112/DI 106**



(b) However, the offense is:

(1) a Level 5 felony if:

(A) the pecuniary loss caused by the offense is at least ~~five thousand dollars (\$5,000)~~ **seven hundred fifty dollars (\$750) but less than fifty thousand dollars (\$50,000)**;

(B) the offense was committed for the purpose of devising or executing any scheme or artifice to defraud or obtain property;

or

(C) the offense interrupts or impairs:

(i) a governmental operation; or

(ii) the public communication, transportation, or supply of water, gas, or another public service; and

(2) a Level 4 felony if:

**(A) the pecuniary loss caused by the offense is at least fifty thousand dollars (\$50,000); or**

**(B) the offense endangers human life.**

**(c) In addition to any criminal penalties imposed for a violation of this section, a person who commits an offense described in subsection (b) commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5 and is subject to the remedies and penalties under IC 24-5-0.5."**

Delete pages 2 through 3.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1444 as reprinted February 22, 2017.)

YOUNG M, Chairperson

Committee Vote: Yeas 7, Nays 0.

---

#### SENATE MOTION

Madam President: I move that Engrossed House Bill 1444 be amended to read as follows:

Page 3, between lines 26 and 27, begin a new paragraph and insert:

"SECTION 7. IC 24-5-14-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2. As used in this chapter, "caller" means an individual, corporation, limited liability company, partnership, unincorporated association, or the entity that attempts to contact, or contacts, a subscriber in Indiana by using a telephone or telephone line. **The term includes an individual who is**

EH 1444—LS 7112/DI 106



**an officer of a corporation or a member of a limited liability company that attempts to contact, or contacts, a subscriber in Indiana by using a telephone or telephone line, if the individual:**

- (1) has a high degree of involvement in, or actual notice of, the contact or attempt to contact that does not comply with section 5 of this chapter; and**
- (2) fails to take reasonable steps to prevent the unlawful contact or attempted contact."**

Renumber all SECTIONS consecutively.

(Reference is to EHB 1444 as printed March 31, 2017.)

HERSHMAN

