

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.

## HOUSE ENROLLED ACT No. 1444

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AN ACT to amend the Indiana Code concerning telecommunications.

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

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

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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.**

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 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.**

SECTION 8. 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.**

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 executing any scheme or artifice to defraud or obtain property; or

(C) the offense interrupts or impairs:

- (i) a governmental operation; or

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(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.**



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Speaker of the House of Representatives

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President of the Senate

\_\_\_\_\_  
President Pro Tempore

\_\_\_\_\_  
Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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