



January 31, 2018

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## SENATE BILL No. 222

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DIGEST OF SB 222 (Updated January 29, 2018 4:57 pm - DI 128)

**Citations Affected:** IC 24-5.

**Synopsis:** Misleading or inaccurate caller identification. Provides that the attorney general can collect attorney fees and costs in a civil action for a violation of the law prohibiting misleading or inaccurate caller identification. Makes technical changes to the deceptive consumer sales act (act) to: (1) include in the list of acts constituting deceptive acts for purposes of the act, a reference to a violation of the statute concerning misleading or inaccurate caller identification information; and (2) include a reference to the Indiana Code provision that specifies the civil penalty that the attorney general may recover for a knowing or intentional violation of the statute concerning misleading or inaccurate caller identification.

**Effective:** July 1, 2018.

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## Head, Young M

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January 3, 2018, read first time and referred to Committee on Corrections and Criminal Law.

January 18, 2018, reassigned to Committee on Civil Law pursuant to Senate Rule 68(b).  
January 30, 2018, amended, reported favorably — Do Pass.

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SB 222—LS 6390/DI 101





January 31, 2018

Second Regular Session 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.

## SENATE BILL No. 222

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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  
16 reasonably know it does not have.  
17 (2) That such subject of a consumer transaction is of a particular

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



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



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



- 1 discount cards), as set forth in IC 24-5-21-7.
- 2 (33) A violation of IC 24-5-23.5-7 (concerning real estate
- 3 appraisals), as set forth in IC 24-5-23.5-9.
- 4 (34) A violation of IC 24-5-26 (concerning identity theft), as set
- 5 forth in IC 24-5-26-3.
- 6 (35) A violation of IC 24-5.5 (concerning mortgage rescue fraud),
- 7 as set forth in IC 24-5.5-6-1.
- 8 (36) A violation of IC 24-8 (concerning promotional gifts and
- 9 contests), as set forth in IC 24-8-6-3.
- 10 (37) A violation of IC 21-18.5-6 (concerning representations
- 11 made by a postsecondary credit bearing proprietary educational
- 12 institution), as set forth in IC 21-18.5-6-22.5.
- 13 **(38) A violation of IC 24-5-14.5 (concerning misleading or**
- 14 **inaccurate caller identification information), as set forth in**
- 15 **IC 24-5-14.5-12.**
- 16 (c) Any representations on or within a product or its packaging or
- 17 in advertising or promotional materials which would constitute a
- 18 deceptive act shall be the deceptive act both of the supplier who places
- 19 such representation thereon or therein, or who authored such materials,
- 20 and such other suppliers who shall state orally or in writing that such
- 21 representation is true if such other supplier shall know or have reason
- 22 to know that such representation was false.
- 23 (d) If a supplier shows by a preponderance of the evidence that an
- 24 act resulted from a bona fide error notwithstanding the maintenance of
- 25 procedures reasonably adopted to avoid the error, such act shall not be
- 26 deceptive within the meaning of this chapter.
- 27 (e) It shall be a defense to any action brought under this chapter that
- 28 the representation constituting an alleged deceptive act was one made
- 29 in good faith by the supplier without knowledge of its falsity and in
- 30 reliance upon the oral or written representations of the manufacturer,
- 31 the person from whom the supplier acquired the product, any testing
- 32 organization, or any other person provided that the source thereof is
- 33 disclosed to the consumer.
- 34 (f) For purposes of subsection (b)(12), a supplier that provides
- 35 estimates before performing repair or replacement work for a customer
- 36 shall give the customer a written estimate itemizing as closely as
- 37 possible the price for labor and parts necessary for the specific job
- 38 before commencing the work.
- 39 (g) For purposes of subsection (b)(15) and (b)(16), a telephone
- 40 company or other provider of a telephone directory or directory
- 41 assistance service or its officer or agent is immune from liability for
- 42 publishing the listing of an alternate business name or assumed



1 business name of a supplier in its directory or directory assistance data  
 2 base unless the telephone company or other provider of a telephone  
 3 directory or directory assistance service is the same person as the  
 4 supplier who has committed the deceptive act.

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

9 SECTION 2. IC 24-5-0.5-4, AS AMENDED BY P.L.65-2014,  
 10 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 11 JULY 1, 2018]: Sec. 4. (a) A person relying upon an uncured or  
 12 incurable deceptive act may bring an action for the damages actually  
 13 suffered as a consumer as a result of the deceptive act or five hundred  
 14 dollars (\$500), whichever is greater. The court may increase damages  
 15 for a willful deceptive act in an amount that does not exceed the greater  
 16 of:

17 (1) three (3) times the actual damages of the consumer suffering  
 18 the loss; or

19 (2) one thousand dollars (\$1,000).

20 Except as provided in subsection (j), the court may award reasonable  
 21 attorney fees to the party that prevails in an action under this  
 22 subsection. This subsection does not apply to a consumer transaction  
 23 in real property, including a claim or action involving a construction  
 24 defect (as defined in IC 32-27-3-1(5)) brought against a construction  
 25 professional (as defined in IC 32-27-3-1(4)), except for purchases of  
 26 time shares and camping club memberships. This subsection does not  
 27 apply with respect to a deceptive act described in section 3(b)(20) of  
 28 this chapter. This subsection also does not apply to a violation of  
 29 IC 24-4.7, IC 24-5-12, IC 24-5-14, or IC 24-5-14.5. Actual damages  
 30 awarded to a person under this section have priority over any civil  
 31 penalty imposed under this chapter.

32 (b) Any person who is entitled to bring an action under subsection  
 33 (a) on the person's own behalf against a supplier for damages for a  
 34 deceptive act may bring a class action against such supplier on behalf  
 35 of any class of persons of which that person is a member and which has  
 36 been damaged by such deceptive act, subject to and under the Indiana  
 37 Rules of Trial Procedure governing class actions, except as herein  
 38 expressly provided. Except as provided in subsection (j), the court may  
 39 award reasonable attorney fees to the party that prevails in a class  
 40 action under this subsection, provided that such fee shall be determined  
 41 by the amount of time reasonably expended by the attorney and not by  
 42 the amount of the judgment, although the contingency of the fee may





1 be considered. Except in the case of an extension of time granted by the  
2 attorney general under IC 24-10-2-2(b) in an action subject to IC 24-10,  
3 any money or other property recovered in a class action under this  
4 subsection which cannot, with due diligence, be restored to consumers  
5 within one (1) year after the judgment becomes final shall be returned  
6 to the party depositing the same. This subsection does not apply to a  
7 consumer transaction in real property, except for purchases of time  
8 shares and camping club memberships. This subsection does not apply  
9 with respect to a deceptive act described in section 3(b)(20) of this  
10 chapter. Actual damages awarded to a class have priority over any civil  
11 penalty imposed under this chapter.

12 (c) The attorney general may bring an action to enjoin a deceptive  
13 act, including a deceptive act described in section 3(b)(20) of this  
14 chapter, notwithstanding subsections (a) and (b). However, the attorney  
15 general may seek to enjoin patterns of incurable deceptive acts with  
16 respect to consumer transactions in real property. In addition, the court  
17 may:

- 18 (1) issue an injunction;
- 19 (2) order the supplier to make payment of the money unlawfully  
20 received from the aggrieved consumers to be held in escrow for  
21 distribution to aggrieved consumers;
- 22 (3) for a knowing violation against a senior consumer, increase  
23 the amount of restitution ordered under subdivision (2) in any  
24 amount up to three (3) times the amount of damages incurred or  
25 value of property or assets lost;
- 26 (4) order the supplier to pay to the state the reasonable costs of  
27 the attorney general's investigation and prosecution related to the  
28 action;
- 29 (5) provide for the appointment of a receiver; and
- 30 (6) order the department of state revenue to suspend the supplier's  
31 registered retail merchant certificate, subject to the requirements  
32 and prohibitions contained in IC 6-2.5-8-7(i), if the court finds  
33 that a violation of this chapter involved the sale or solicited sale  
34 of a synthetic drug (as defined in IC 35-31.5-2-321) or a synthetic  
35 drug lookalike substance (as defined in IC 35-31.5-2-321.5).

36 (d) In an action under subsection (a), (b), or (c), the court may void  
37 or limit the application of contracts or clauses resulting from deceptive  
38 acts and order restitution to be paid to aggrieved consumers.

39 (e) In any action under subsection (a) or (b), upon the filing of the  
40 complaint or on the appearance of any defendant, claimant, or any  
41 other party, or at any later time, the trial court, the supreme court, or the  
42 court of appeals may require the plaintiff, defendant, claimant, or any



1 other party or parties to give security, or additional security, in such  
 2 sum as the court shall direct to pay all costs, expenses, and  
 3 disbursements that shall be awarded against that party or which that  
 4 party may be directed to pay by any interlocutory order by the final  
 5 judgment or on appeal.

6 (f) Any person who violates the terms of an injunction issued under  
 7 subsection (c) shall forfeit and pay to the state a civil penalty of not  
 8 more than fifteen thousand dollars (\$15,000) per violation. For the  
 9 purposes of this section, the court issuing an injunction shall retain  
 10 jurisdiction, the cause shall be continued, and the attorney general  
 11 acting in the name of the state may petition for recovery of civil  
 12 penalties. Whenever the court determines that an injunction issued  
 13 under subsection (c) has been violated, the court shall award  
 14 reasonable costs to the state.

15 (g) If a court finds any person has knowingly violated section 3 or  
 16 10 of this chapter, other than section 3(b)(19), ~~or 3(b)(20)~~, **or 3(b)(38)**  
 17 of this chapter, the attorney general, in an action pursuant to subsection  
 18 (c), may recover from the person on behalf of the state a civil penalty  
 19 of a fine not exceeding five thousand dollars (\$5,000) per violation.

20 (h) If a court finds that a person has violated section 3(b)(19) of this  
 21 chapter, the attorney general, in an action under subsection (c), may  
 22 recover from the person on behalf of the state a civil penalty as follows:

- 23 (1) For a knowing or intentional violation, one thousand five  
 24 hundred dollars (\$1,500).  
 25 (2) For a violation other than a knowing or intentional violation,  
 26 five hundred dollars (\$500).

27 A civil penalty recovered under this subsection shall be deposited in  
 28 the consumer protection division telephone solicitation fund  
 29 established by IC 24-4.7-3-6 to be used for the administration and  
 30 enforcement of section 3(b)(19) of this chapter.

31 (i) A senior consumer relying upon an uncured or incurable  
 32 deceptive act, including an act related to hypnotism, may bring an  
 33 action to recover treble damages, if appropriate.

34 (j) An offer to cure is:

- 35 (1) not admissible as evidence in a proceeding initiated under this  
 36 section unless the offer to cure is delivered by a supplier to the  
 37 consumer or a representative of the consumer before the supplier  
 38 files the supplier's initial response to a complaint; and  
 39 (2) only admissible as evidence in a proceeding initiated under  
 40 this section to prove that a supplier is not liable for attorney's fees  
 41 under subsection (k).

42 If the offer to cure is timely delivered by the supplier, the supplier may



1 submit the offer to cure as evidence to prove in the proceeding in  
 2 accordance with the Indiana Rules of Trial Procedure that the supplier  
 3 made an offer to cure.

4 (k) A supplier may not be held liable for the attorney's fees and  
 5 court costs of the consumer that are incurred following the timely  
 6 delivery of an offer to cure as described in subsection (j) unless the  
 7 actual damages awarded, not including attorney's fees and costs, exceed  
 8 the value of the offer to cure.

9 (l) If a court finds that a person has knowingly violated section  
 10 3(b)(20) of this chapter, the attorney general, in an action under  
 11 subsection (c), may recover from the person on behalf of the state a  
 12 civil penalty not exceeding one thousand dollars (\$1,000) per  
 13 consumer. In determining the amount of the civil penalty in any action  
 14 by the attorney general under this subsection, the court shall consider,  
 15 among other relevant factors, the frequency and persistence of  
 16 noncompliance by the debt collector, the nature of the noncompliance,  
 17 and the extent to which the noncompliance was intentional. A person  
 18 may not be held liable in any action by the attorney general for a  
 19 violation of section 3(b)(20) of this chapter if the person shows by a  
 20 preponderance of evidence that the violation was not intentional and  
 21 resulted from a bona fide error, notwithstanding the maintenance of  
 22 procedures reasonably adapted to avoid the error. A person may not be  
 23 held liable in any action for a violation of this chapter for contacting a  
 24 person other than the debtor, if the contact is made in compliance with  
 25 the Fair Debt Collection Practices Act.

26 **(m) If a court finds that a person has knowingly or intentionally**  
 27 **violated section 3(b)(38) of this chapter, the attorney general, in an**  
 28 **action under subsection (c), may recover from the person on behalf**  
 29 **of the state a civil penalty in accordance with IC 24-5-14.5-12(b).**  
 30 **As specified in IC 24-5-14.5-12(b), a civil penalty recovered under**  
 31 **IC 24-5-14.5-12(b) shall be deposited in the consumer protection**  
 32 **division telephone solicitation fund established by IC 24-4.7-3-6 to**  
 33 **be used for the administration and enforcement of IC 24-5-14.5. In**  
 34 **addition to the recovery of a civil penalty in accordance with**  
 35 **IC 24-5-14.5-12(b), the attorney general may also recover**  
 36 **reasonable attorney fees and court costs from the person on behalf**  
 37 **of the state. Those funds shall also be deposited in the consumer**  
 38 **protection division telephone solicitation fund established by**  
 39 **IC 24-4.7-3-6.**

40 SECTION 3. IC 24-5-14.5-12, AS ADDED BY P.L.151-2013,  
 41 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 42 JULY 1, 2018]: Sec. 12. (a) Except as provided in subsection (b) **or in**



1 **IC 24-5-0.5**, a person who violates this chapter commits a deceptive  
2 act that is:  
3 (1) actionable by the attorney general under IC 24-5-0.5-4(c); and  
4 (2) subject to the remedies and penalties set forth in IC 24-5-0.5.  
5 An action by the attorney general for a violation of this chapter may be  
6 brought in the circuit or superior court of Marion County.  
7 (b) If the attorney general brings an action under this section and  
8 proves by a preponderance of the evidence that a person has knowingly  
9 or intentionally violated section 9 of this chapter, the attorney general  
10 may recover from the person on behalf of the state a civil penalty of not  
11 more than ten thousand dollars (\$10,000) per violation. A civil penalty  
12 recovered under this subsection shall be deposited in the consumer  
13 protection division telephone solicitation fund established by  
14 IC 24-4.7-3-6 to be used for the administration and enforcement of this  
15 chapter.



REPORT OF THE PRESIDENT  
PRO TEMPORE

Madam President: Pursuant to Senate Rule 68(b), I hereby report that Senate Bill 222, currently assigned to the Committee on Corrections and Criminal Law, be reassigned to the Committee on Civil Law.

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COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred Senate Bill No. 222, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 9, line 33, after "IC 24-4-14.5." insert "**In addition to the recovery of a civil penalty in accordance with IC 24-5-14.5-12(b), the attorney general may also recover reasonable attorney fees and court costs from the person on behalf of the state. Those funds shall also be deposited in the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6.**"

Page 9, delete lines 34 through 39.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 222 as introduced.)

HEAD, Chairperson

Committee Vote: Yeas 8, Nays 0.

