



March 22, 2019

ENGROSSED

HOUSE BILL No. 1123

DIGEST OF HB 1123 (Updated March 21, 2019 12:08 pm - DI 133)

Citations Affected: IC 24-4.7; IC 24-5; noncode.

Synopsis: Telephone solicitation. Adds the following to the list of telephone calls that are exempt from the state's "do not call" statute (statute): (1) Any telephone call made to a consumer by a communications service provider that has an established business relationship with the consumer. (2) Any telephone call made to a consumer by: (A) a financial institution; or (B) a person licensed by the department of financial institutions to engage in first lien mortgage transactions or consumer credit transactions; that has an established business relationship with the consumer. In addition to requiring the consumer protection division of the attorney general's office (division) to notify Indiana residents of the right of any eligible consumer to place a telephone number on the state's "do not call" listing, requires the division to notify residents of the following: (1) The prohibition under federal law against a person making any call using an: (A) automatic telephone dialing system; or (B) artificial or prerecorded voice; to any
(Continued next page)

Effective: Upon passage; July 1, 2019.

Ellington, DeVon, Lauer, Macer

(SENATE SPONSORS — HEAD, KOCH, RANDOLPH LONNIE M)

January 7, 2019, read first time and referred to Committee on Utilities, Energy and Telecommunications.

January 24, 2019, amended, reported — Do Pass.

January 31, 2019, read second time, amended, ordered engrossed.

February 4, 2019, engrossed. Read third time, passed. Yeas 84, nays 0.

SENATE ACTION

February 27, 2019, read first time and referred to Committee on Utilities.

March 21, 2019, reported favorably — Do Pass.

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telephone number assigned to a mobile telecommunications service. (2) The prohibition under federal law against a person initiating any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior consent of the called party. (3) Information concerning the placement of a telephone number on the National Do Not Call Registry operated by the Federal Trade Commission. Allows the division to use the consumer protection division telephone solicitation fund (fund) to: (1) administer the statutes concerning: (A) the registration of telephone solicitors; and (B) the regulation of automatic dialing machines; and (2) reimburse county prosecutors for expenses incurred in extraditing violators of these and other state and federal statutes concerning telephone solicitations. (Current law provides that the fund may only be used to administer: (1) the state's "do not call" statute; (2) the federal statute concerning restrictions on the use of telephone equipment; and (3) the state statute concerning misleading or inaccurate caller identification.) Defines "executive" for purposes of the statute. Provides that an executive of a person that violates the statute commits a separate deceptive act actionable by the division. Amends the definition of "seller" for purposes of the statute requiring telephone solicitors to register with the division, so that the definition includes any person making a telephone solicitation. (Current law includes only persons that making specified false representations in a telephone solicitation.) Provides that all sellers that make telephone solicitations must register with the division. (Under current law, registration is required only if the solicitation involves consideration of more than \$100 and less than \$50,000.) Provides that certain civil penalties recovered by the attorney general for violations of the statutes concerning: (1) the registration of telephone solicitors; and (2) the regulation of automatic dialing machines; shall be deposited in the consumer protection division telephone solicitation fund. Provides that the attorney general can collect attorney fees and costs in a civil action for a violation of the statute prohibiting misleading or inaccurate caller identification (caller ID statute). Makes technical changes to the deceptive consumer sales act concerning violations of the caller ID statute. Urges the legislative council to assign to the interim study committee on corrections and criminal code the task of studying the following: (1) Whether existing criminal penalties for violations of specified telephone solicitation statutes should be increased. (2) The potential effects of increasing criminal penalties for violations of the statutes on: (A) the ability of the office of the attorney general to enforce compliance with the statutes; and (B) the state's criminal justice system.



March 22, 2019

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1123

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 24-4.7-1-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. This article does not
3 apply to any of the following:

4 (1) A telephone call made in response to an express request of the
5 person called.

6 (2) A telephone call made primarily in connection with an
7 existing debt or contract for which payment or performance has
8 not been completed at the time of the call.

9 (3) A telephone call made on behalf of a charitable organization
10 that is exempt from federal income taxation under Section 501 of
11 the Internal Revenue Code, but only if all of the following apply:

12 (A) The telephone call is made by a volunteer or an employee
13 of the charitable organization.

14 (B) The telephone solicitor who makes the telephone call
15 immediately discloses all of the following information upon
16 making contact with the consumer:

17 (i) The solicitor's true first and last name.

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- 1 (ii) The name, address, and telephone number of the
- 2 charitable organization.
- 3 (4) A telephone call made by an individual licensed under
- 4 IC 25-34.1 if:
- 5 (A) the sale of goods or services is not completed; and
- 6 (B) the payment or authorization of payment is not required;
- 7 until after a face to face sales presentation by the seller.
- 8 (5) A telephone call made by an individual licensed under
- 9 IC 27-1-15.6 or IC 27-1-15.8 when the individual is soliciting an
- 10 application for insurance or negotiating a policy of insurance on
- 11 behalf of an insurer (as defined in IC 27-1-2-3).
- 12 (6) A telephone call soliciting the sale of a newspaper of general
- 13 circulation, but only if the telephone call is made by a volunteer
- 14 or an employee of the newspaper.
- 15 **(7) Any telephone call made to a consumer by a**
- 16 **communications service provider (as defined in IC 8-1-32.5-4)**
- 17 **that has an established business relationship (as defined in 47**
- 18 **CFR 64.1200) with the consumer.**
- 19 **(8) Any telephone call made to a consumer by:**
- 20 **(A) a financial institution organized or reorganized under**
- 21 **the laws of any state or the United States; or**
- 22 **(B) a person licensed by the department of financial**
- 23 **institutions under IC 24-4.4, IC 24-4.5, or 750 IAC 9;**
- 24 **that has an established business relationship (as defined in 47**
- 25 **CFR 64.1200) with the consumer.**
- 26 SECTION 2. IC 24-4.7-2-5.5 IS ADDED TO THE INDIANA
- 27 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 28 [EFFECTIVE JULY 1, 2019]: **Sec. 5.5. "Executive" means any of the**
- 29 **following, as applicable:**
- 30 **(1) With respect to a corporation, a person who is or performs**
- 31 **the duties of the:**
- 32 **(A) president;**
- 33 **(B) chief executive officer;**
- 34 **(C) treasurer; or**
- 35 **(D) chief financial officer;**
- 36 **of the corporation.**
- 37 **(2) With respect to a partnership, a partner authorized to act**
- 38 **on behalf of the partnership.**
- 39 **(3) With respect to a limited liability company, a member of**
- 40 **the limited liability company who has not had the member's**
- 41 **authority to act on behalf of the limited liability company**
- 42 **revoked.**



SECTION 3. IC 24-4.7-3-4, AS AMENDED BY P.L.226-2011, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. The division shall notify Indiana residents of the following:

(1) The rights and duties created by this article, including the right of any of the following consumers to place a telephone number on the listing established and maintained under section 1 of this chapter:

(+) (A) Subscribers of interconnected VOIP service.

(-) (B) Subscribers of mobile telecommunications service (as defined in IC 6-8.1-15-7).

(-) (C) Users of a prepaid wireless calling service, as described in IC 24-4.7-2-2(b).

(2) The prohibition under 47 U.S.C. 227(b) against a person making any call using an:

(A) automatic telephone dialing system; or

(B) artificial or prerecorded voice;

to any telephone number assigned to a mobile telecommunications service (as defined in IC 6-8.1-15-7), or to another radio common carrier service.

(3) The prohibition under 47 U.S.C. 227(b) against a person initiating any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior consent of the called party, subject to the exceptions set forth in 47 U.S.C. 227(b).

(4) Information concerning the placement of a telephone number on the National Do Not Call Registry operated by the Federal Trade Commission.

SECTION 4. IC 24-4.7-3-6, AS AMENDED BY P.L.65-2014, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) The consumer protection division telephone solicitation fund is established for the purpose of following purposes:

(1) The administration of:

(+) (A) this article;

(-) (B) IC 24-5-0.5-3(b)(19); and

(C) IC 24-5-12;

(D) IC 24-5-14; and

(-) (E) IC 24-5-14.5.

(2) The reimbursement of county prosecutors for expenses incurred in extraditing violators of any statute set forth in subdivision (1).

The fund shall be used exclusively for this purpose: these purposes.



(b) The division shall administer the fund.

(c) ~~The division shall deposit~~ **fund consists of** all revenue received:

(1) under this article;

(2) from civil penalties ~~deposited~~ **recovered** under IC 24-5-0.5-4(h); and

(3) from civil penalties recovered after June 30, 2019, under IC 24-5-12-23(b);

(4) from civil penalties recovered after June 30, 2019, under IC 24-5-14-13(b); and

~~(5) from civil penalties deposited~~ **recovered** under IC 24-5-14.5-12.

~~in the fund:~~

(d) Money in the fund is continuously appropriated to the division for the ~~administration of:~~

~~(1) this article;~~

~~(2) IC 24-5-0.5-3(b)(19); and~~

~~(3) IC 24-5-14.5:~~ **purposes set forth in subsection (a).**

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund. However, if the amount of money in the fund at the end of a particular state fiscal year exceeds two hundred thousand dollars (\$200,000), the treasurer of state shall transfer the excess from the fund to the state general fund.

SECTION 5. IC 24-4.7-5-1, AS AMENDED BY P.L.153-2017, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. **(a)** 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.

(b) 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.

(c) If:

(1) the person described in subsection (b) is an executive with respect to a telephone solicitor, a supplier, or a caller; and

(2) the telephone solicitor, supplier, or caller fails to comply with any provision of IC 24-4.7-4;

the person described in subsection (b) commits a separate deceptive act that is actionable by the attorney general under this chapter.

~~(d) In addition,~~ A contractor who contracts or seeks to contract with the state:



1 (1) may be prohibited from contracting with the state; or
 2 (2) may have an existing contract with the state voided;
 3 if the contractor, an affiliate or principal of the contractor, a person that
 4 directly or indirectly controls the contractor, any agent acting on behalf
 5 of the contractor or an affiliate or principal of the contractor, or a
 6 person that directly or indirectly controls the agent does not comply or
 7 has not complied with the terms of this article, even if this article is
 8 preempted by federal law.

9 SECTION 6. IC 24-5-0.5-3, AS AMENDED BY P.L.170-2017,
 10 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2019]: Sec. 3. (a) A supplier may not commit an unfair,
 12 abusive, or deceptive act, omission, or practice in connection with a
 13 consumer transaction. Such an act, omission, or practice by a supplier
 14 is a violation of this chapter whether it occurs before, during, or after
 15 the transaction. An act, omission, or practice prohibited by this section
 16 includes both implicit and explicit misrepresentations.

17 (b) Without limiting the scope of subsection (a), the following acts,
 18 and the following representations as to the subject matter of a
 19 consumer transaction, made orally, in writing, or by electronic
 20 communication, by a supplier, are deceptive acts:

21 (1) That such subject of a consumer transaction has sponsorship,
 22 approval, performance, characteristics, accessories, uses, or
 23 benefits it does not have which the supplier knows or should
 24 reasonably know it does not have.

25 (2) That such subject of a consumer transaction is of a particular
 26 standard, quality, grade, style, or model, if it is not and if the
 27 supplier knows or should reasonably know that it is not.

28 (3) That such subject of a consumer transaction is new or unused,
 29 if it is not and if the supplier knows or should reasonably know
 30 that it is not.

31 (4) That such subject of a consumer transaction will be supplied
 32 to the public in greater quantity than the supplier intends or
 33 reasonably expects.

34 (5) That replacement or repair constituting the subject of a
 35 consumer transaction is needed, if it is not and if the supplier
 36 knows or should reasonably know that it is not.

37 (6) That a specific price advantage exists as to such subject of a
 38 consumer transaction, if it does not and if the supplier knows or
 39 should reasonably know that it does not.

40 (7) That the supplier has a sponsorship, approval, or affiliation in
 41 such consumer transaction the supplier does not have, and which
 42 the supplier knows or should reasonably know that the supplier



1 does not have.

2 (8) That such consumer transaction involves or does not involve
3 a warranty, a disclaimer of warranties, or other rights, remedies,
4 or obligations, if the representation is false and if the supplier
5 knows or should reasonably know that the representation is false.

6 (9) That the consumer will receive a rebate, discount, or other
7 benefit as an inducement for entering into a sale or lease in return
8 for giving the supplier the names of prospective consumers or
9 otherwise helping the supplier to enter into other consumer
10 transactions, if earning the benefit, rebate, or discount is
11 contingent upon the occurrence of an event subsequent to the time
12 the consumer agrees to the purchase or lease.

13 (10) That the supplier is able to deliver or complete the subject of
14 the consumer transaction within a stated period of time, when the
15 supplier knows or should reasonably know the supplier could not.
16 If no time period has been stated by the supplier, there is a
17 presumption that the supplier has represented that the supplier
18 will deliver or complete the subject of the consumer transaction
19 within a reasonable time, according to the course of dealing or the
20 usage of the trade.

21 (11) That the consumer will be able to purchase the subject of the
22 consumer transaction as advertised by the supplier, if the supplier
23 does not intend to sell it.

24 (12) That the replacement or repair constituting the subject of a
25 consumer transaction can be made by the supplier for the estimate
26 the supplier gives a customer for the replacement or repair, if the
27 specified work is completed and:

28 (A) the cost exceeds the estimate by an amount equal to or
29 greater than ten percent (10%) of the estimate;

30 (B) the supplier did not obtain written permission from the
31 customer to authorize the supplier to complete the work even
32 if the cost would exceed the amounts specified in clause (A);

33 (C) the total cost for services and parts for a single transaction
34 is more than seven hundred fifty dollars (\$750); and

35 (D) the supplier knew or reasonably should have known that
36 the cost would exceed the estimate in the amounts specified in
37 clause (A).

38 (13) That the replacement or repair constituting the subject of a
39 consumer transaction is needed, and that the supplier disposes of
40 the part repaired or replaced earlier than seventy-two (72) hours
41 after both:

42 (A) the customer has been notified that the work has been



- 1 completed; and
- 2 (B) the part repaired or replaced has been made available for
- 3 examination upon the request of the customer.
- 4 (14) Engaging in the replacement or repair of the subject of a
- 5 consumer transaction if the consumer has not authorized the
- 6 replacement or repair, and if the supplier knows or should
- 7 reasonably know that it is not authorized.
- 8 (15) The act of misrepresenting the geographic location of the
- 9 supplier by listing an alternate business name or an assumed
- 10 business name (as described in IC 23-0.5-3-4) in a local telephone
- 11 directory if:
 - 12 (A) the name misrepresents the supplier's geographic location;
 - 13 (B) the listing fails to identify the locality and state of the
 - 14 supplier's business;
 - 15 (C) calls to the local telephone number are routinely forwarded
 - 16 or otherwise transferred to a supplier's business location that
 - 17 is outside the calling area covered by the local telephone
 - 18 directory; and
 - 19 (D) the supplier's business location is located in a county that
 - 20 is not contiguous to a county in the calling area covered by the
 - 21 local telephone directory.
- 22 (16) The act of listing an alternate business name or assumed
- 23 business name (as described in IC 23-0.5-3-4) in a directory
- 24 assistance data base if:
 - 25 (A) the name misrepresents the supplier's geographic location;
 - 26 (B) calls to the local telephone number are routinely forwarded
 - 27 or otherwise transferred to a supplier's business location that
 - 28 is outside the local calling area; and
 - 29 (C) the supplier's business location is located in a county that
 - 30 is not contiguous to a county in the local calling area.
- 31 (17) The violation by a supplier of IC 24-3-4 concerning
- 32 cigarettes for import or export.
- 33 (18) The act of a supplier in knowingly selling or reselling a
- 34 product to a consumer if the product has been recalled, whether
- 35 by the order of a court or a regulatory body, or voluntarily by the
- 36 manufacturer, distributor, or retailer, unless the product has been
- 37 repaired or modified to correct the defect that was the subject of
- 38 the recall.
- 39 (19) The violation by a supplier of 47 U.S.C. 227, including any
- 40 rules or regulations issued under 47 U.S.C. 227.
- 41 (20) The violation by a supplier of the federal Fair Debt
- 42 Collection Practices Act (15 U.S.C. 1692 et seq.), including any



rules or regulations issued under the federal Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.).

(21) A violation of IC 24-5-7 (concerning health spa services), as set forth in IC 24-5-7-17.

(22) A violation of IC 24-5-8 (concerning business opportunity transactions), as set forth in IC 24-5-8-20.

(23) A violation of IC 24-5-10 (concerning home consumer transactions), as set forth in IC 24-5-10-18.

(24) A violation of IC 24-5-11 (concerning real property improvement contracts), as set forth in IC 24-5-11-14.

(25) A violation of IC 24-5-12 (concerning telephone solicitations), as set forth in IC 24-5-12-23.

(26) A violation of IC 24-5-13.5 (concerning buyback motor vehicles), as set forth in IC 24-5-13.5-14.

(27) A violation of IC 24-5-14 (concerning automatic dialing-announcing devices), as set forth in IC 24-5-14-13.

(28) A violation of IC 24-5-15 (concerning credit services organizations), as set forth in IC 24-5-15-11.

(29) A violation of IC 24-5-16 (concerning unlawful motor vehicle subleasing), as set forth in IC 24-5-16-18.

(30) A violation of IC 24-5-17 (concerning environmental marketing claims), as set forth in IC 24-5-17-14.

(31) A violation of IC 24-5-19 (concerning deceptive commercial solicitation), as set forth in IC 24-5-19-11.

(32) A violation of IC 24-5-21 (concerning prescription drug discount cards), as set forth in IC 24-5-21-7.

(33) A violation of IC 24-5-23.5-7 (concerning real estate appraisals), as set forth in IC 24-5-23.5-9.

(34) A violation of IC 24-5-26 (concerning identity theft), as set forth in IC 24-5-26-3.

(35) A violation of IC 24-5-5 (concerning mortgage rescue fraud), as set forth in IC 24-5-5-1.

(36) A violation of IC 24-8 (concerning promotional gifts and contests), as set forth in IC 24-8-6-3.

(37) A violation of IC 21-18.5-6 (concerning representations made by a postsecondary credit bearing proprietary educational institution), as set forth in IC 21-18.5-6-22.5.

(38) A violation of IC 24-5-14.5 (concerning misleading or inaccurate caller identification information), as set forth in IC 24-5-14.5-12.

(c) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a



1 deceptive act shall be the deceptive act both of the supplier who places
2 such representation thereon or therein, or who authored such materials,
3 and such other suppliers who shall state orally or in writing that such
4 representation is true if such other supplier shall know or have reason
5 to know that such representation was false.

6 (d) If a supplier shows by a preponderance of the evidence that an
7 act resulted from a bona fide error notwithstanding the maintenance of
8 procedures reasonably adopted to avoid the error, such act shall not be
9 deceptive within the meaning of this chapter.

10 (e) It shall be a defense to any action brought under this chapter that
11 the representation constituting an alleged deceptive act was one made
12 in good faith by the supplier without knowledge of its falsity and in
13 reliance upon the oral or written representations of the manufacturer,
14 the person from whom the supplier acquired the product, any testing
15 organization, or any other person provided that the source thereof is
16 disclosed to the consumer.

17 (f) For purposes of subsection (b)(12), a supplier that provides
18 estimates before performing repair or replacement work for a customer
19 shall give the customer a written estimate itemizing as closely as
20 possible the price for labor and parts necessary for the specific job
21 before commencing the work.

22 (g) For purposes of subsection (b)(15) and (b)(16), a telephone
23 company or other provider of a telephone directory or directory
24 assistance service or its officer or agent is immune from liability for
25 publishing the listing of an alternate business name or assumed
26 business name of a supplier in its directory or directory assistance data
27 base unless the telephone company or other provider of a telephone
28 directory or directory assistance service is the same person as the
29 supplier who has committed the deceptive act.

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

34 SECTION 7. IC 24-5-0.5-4, AS AMENDED BY P.L.65-2014,
35 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2019]: Sec. 4. (a) A person relying upon an uncured or
37 incurable deceptive act may bring an action for the damages actually
38 suffered as a consumer as a result of the deceptive act or five hundred
39 dollars (\$500), whichever is greater. The court may increase damages
40 for a willful deceptive act in an amount that does not exceed the greater
41 of:

42 (1) three (3) times the actual damages of the consumer suffering



1 the loss; or

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

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

15 (b) Any person who is entitled to bring an action under subsection
16 (a) on the person's own behalf against a supplier for damages for a
17 deceptive act may bring a class action against such supplier on behalf
18 of any class of persons of which that person is a member and which has
19 been damaged by such deceptive act, subject to and under the Indiana
20 Rules of Trial Procedure governing class actions, except as herein
21 expressly provided. Except as provided in subsection (j), the court may
22 award reasonable attorney fees to the party that prevails in a class
23 action under this subsection, provided that such fee shall be determined
24 by the amount of time reasonably expended by the attorney and not by
25 the amount of the judgment, although the contingency of the fee may
26 be considered. Except in the case of an extension of time granted by the
27 attorney general under IC 24-10-2-2(b) in an action subject to IC 24-10,
28 any money or other property recovered in a class action under this
29 subsection which cannot, with due diligence, be restored to consumers
30 within one (1) year after the judgment becomes final shall be returned
31 to the party depositing the same. This subsection does not apply to a
32 consumer transaction in real property, except for purchases of time
33 shares and camping club memberships. This subsection does not apply
34 with respect to a deceptive act described in section 3(b)(20) of this
35 chapter. Actual damages awarded to a class have priority over any civil
36 penalty imposed under this chapter.

37 (c) The attorney general may bring an action to enjoin a deceptive
38 act, including a deceptive act described in section 3(b)(20) of this
39 chapter, notwithstanding subsections (a) and (b). However, the attorney
40 general may seek to enjoin patterns of incurable deceptive acts with
41 respect to consumer transactions in real property. In addition, the court
42 may:



(1) issue an injunction;

(2) order the supplier to make payment of the money unlawfully received from the aggrieved consumers to be held in escrow for distribution to aggrieved consumers;

(3) for a knowing violation against a senior consumer, increase the amount of restitution ordered under subdivision (2) in any amount up to three (3) times the amount of damages incurred or value of property or assets lost;

(4) order the supplier to pay to the state the reasonable costs of the attorney general's investigation and prosecution related to the action;

(5) provide for the appointment of a receiver; and

(6) order the department of state revenue to suspend the supplier's registered retail merchant certificate, subject to the requirements and prohibitions contained in IC 6-2.5-8-7(i), if the court finds that a violation of this chapter involved the sale or solicited sale of a synthetic drug (as defined in IC 35-31.5-2-321) or a synthetic drug lookalike substance (as defined in IC 35-31.5-2-321.5).

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

(e) In any action under subsection (a) or (b), upon the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, the trial court, the supreme court, or the court of appeals may require the plaintiff, defendant, claimant, or any other party or parties to give security, or additional security, in such sum as the court shall direct to pay all costs, expenses, and disbursements that shall be awarded against that party or which that party may be directed to pay by any interlocutory order by the final judgment or on appeal.

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

(g) If a court finds any person has knowingly violated section 3 or 10 of this chapter, other than section 3(b)(19), ~~or 3(b)(20)~~, **or 3(b)(38)** of this chapter, the attorney general, in an action pursuant to subsection



(c), may recover from the person on behalf of the state a civil penalty of a fine not exceeding five thousand dollars (\$5,000) per violation.

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

(1) For a knowing or intentional violation, one thousand five hundred dollars (\$1,500).

(2) For a violation other than a knowing or intentional violation, five hundred dollars (\$500).

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

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

(j) An offer to cure is:

(1) not admissible as evidence in a proceeding initiated under this section unless the offer to cure is delivered by a supplier to the consumer or a representative of the consumer before the supplier files the supplier's initial response to a complaint; and

(2) only admissible as evidence in a proceeding initiated under this section to prove that a supplier is not liable for attorney's fees under subsection (k).

If the offer to cure is timely delivered by the supplier, the supplier may submit the offer to cure as evidence to prove in the proceeding in accordance with the Indiana Rules of Trial Procedure that the supplier made an offer to cure.

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

(l) If a court finds that a person has knowingly violated section 3(b)(20) of this chapter, the attorney general, in an action under subsection (c), may recover from the person on behalf of the state a civil penalty not exceeding one thousand dollars (\$1,000) per consumer. In determining the amount of the civil penalty in any action by the attorney general under this subsection, the court shall consider, among other relevant factors, the frequency and persistence of noncompliance by the debt collector, the nature of the noncompliance, and the extent to which the noncompliance was intentional. A person



may not be held liable in any action by the attorney general for a violation of section 3(b)(20) of this chapter if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid the error. A person may not be held liable in any action for a violation of this chapter for contacting a person other than the debtor, if the contact is made in compliance with the Fair Debt Collection Practices Act.

(m) If a court finds that a person has knowingly or intentionally violated section 3(b)(38) of this chapter, the attorney general, in an action under subsection (c), may recover from the person on behalf of the state a civil penalty in accordance with IC 24-5-14.5-12(b). As specified in IC 24-5-14.5-12(b), a civil penalty recovered under IC 24-5-14.5-12(b) shall be deposited in the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6 to be used for the administration and enforcement of IC 24-5-14.5. 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.

SECTION 8. IC 24-5-12-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 8. As used in this chapter, "seller" means a person who, personally, through salespersons, or through the use of an automated dialing and answering device, makes a solicitation. if in the solicitation any one (1) of the following occurs:

(1) There is a false representation or implication that a prospect will receive a gift, prize, or the value of a gift or prize.

(2) There is an offer of a vacation at a reduced price if the vacation involves the prospect attending a presentation in which the prospect is solicited to purchase a time share or camping club membership and if the seller does not own the time share or camping club; does not represent the owner of the time share or camping club; or misrepresents the value of the vacation. Terms in this subdivision have the meaning set forth in IC 32-32.

(3) There is a representation or implication that a prospect who buys office equipment or supplies will, because of some unusual event or imminent price increase, be able to buy these items at prices that are below those that are usually charged or will be charged for the items if the price advantage for the prospect does



not exist.

(4) There is a false representation or implication as to the identity of the person making the solicitation.

(5) There is a representation or implication that the items for sale are manufactured or supplied by a person other than the actual manufacturer or supplier.

(6) There is an offer to sell the prospect precious metals, precious stones, coal, or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, if the seller does not own the items, does not represent the owner, or misrepresents the value of the items.

SECTION 9. IC 24-5-12-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 10. (a) Before doing business in Indiana, a seller must register with the division. ~~if the seller attempts a solicitation under which the seller offers an item or items where the total consideration has a value of more than one hundred dollars (\$100) and less than fifty thousand dollars (\$50,000):~~

(b) A person does business in Indiana if the person solicits:

(1) from a location in Indiana; or

(2) a prospect who is located in Indiana.

SECTION 10. IC 24-5-12-23, AS AMENDED BY P.L.222-2005, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 23. (a) A seller who fails to comply with any provision of:

(1) this chapter; or

(2) IC 24-4.7;

commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4(c) and is subject to the penalties set forth in IC 24-5-0.5. An action for a violation of IC 24-4.7 may be brought under IC 24-5-0.5-4(c) or IC 24-4.7-5. An action by the attorney general for a violation of this chapter or IC 24-4.7 may be brought in the circuit or superior court of Marion County.

(b) A civil penalty recovered by the attorney general under:

(1) IC 24-5-0.5-4(g); or

(2) IC 24-5-0.5-8;

for a violation of this chapter shall be deposited in the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6 to be used for the administration and enforcement of this chapter.

SECTION 11. IC 24-5-14-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 13. (a) A caller who violates this chapter commits a deceptive act that is actionable by the



attorney general under IC 24-5-0.5-4 and that is subject to:

(1) the remedies and penalties under IC 24-5-0.5-4(c),
IC 24-5-0.5-4(d), and IC 24-5-0.5-4(f); ~~IC 24-5-0.5-4(g); and~~
~~IC 24-5-0.5-8; and~~

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

(A) Ten thousand dollars (\$10,000) for the first violation.

(B) Twenty-five thousand dollars (\$25,000) for each
violation after the first violation.

(b) A civil penalty recovered by the attorney general under
subsection (a)(2) for a violation of this chapter shall be deposited
in the consumer protection division telephone solicitation fund
established by IC 24-4.7-3-6 to be used for the administration and
enforcement of this chapter.

SECTION 12. [EFFECTIVE UPON PASSAGE] (a) The legislative
council is urged to assign to the interim study committee on
corrections and criminal code the task of studying the following:

(1) Whether existing criminal penalties for violations of the
statutes concerning:

(A) telephone solicitations (IC 24-5-12);

(B) the regulation of automatic dialing-announcing devices
(IC 24-5-14); and

(C) misleading or inaccurate caller identification
(IC 24-5-14.5);

should be increased.

(2) The potential effects of increasing criminal penalties for
violations of the statutes set forth in subdivision (1) on:

(A) the ability of the office of the attorney general to
enforce compliance with the statutes; and

(B) the state's criminal justice system.

(b) This SECTION expires January 1, 2020.

SECTION 13. An emergency is declared for this act.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities, Energy and Telecommunications, to which was referred House Bill 1123, 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 24-4.7-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. This article does not apply to any of the following:

- (1) A telephone call made in response to an express request of the person called.
- (2) A telephone call made primarily in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call.
- (3) A telephone call made on behalf of a charitable organization that is exempt from federal income taxation under Section 501 of the Internal Revenue Code, but only if all of the following apply:
 - (A) The telephone call is made by a volunteer or an employee of the charitable organization.
 - (B) The telephone solicitor who makes the telephone call immediately discloses all of the following information upon making contact with the consumer:
 - (i) The solicitor's true first and last name.
 - (ii) The name, address, and telephone number of the charitable organization.
- (4) A telephone call made by an individual licensed under IC 25-34.1 if:
 - (A) the sale of goods or services is not completed; and
 - (B) the payment or authorization of payment is not required; until after a face to face sales presentation by the seller.
- (5) A telephone call made by an individual licensed under IC 27-1-15.6 or IC 27-1-15.8 when the individual is soliciting an application for insurance or negotiating a policy of insurance on behalf of an insurer (as defined in IC 27-1-2-3).
- (6) A telephone call soliciting the sale of a newspaper of general circulation, but only if the telephone call is made by a volunteer or an employee of the newspaper.
- (7) Any telephone call made to a consumer by a communications service provider (as defined in IC 8-1-32.5-4) that has an established business relationship (as defined in 47 CFR 64.1200) with the consumer.**

EH 1123—LS 7163/DI 119



- (8) Any telephone call made to a consumer by:**
(A) a financial institution organized or reorganized under the laws of any state or the United States; or
(B) a person licensed by the department of financial institutions under IC 24-4.4, IC 24-4.5, or 750 IAC 9;
that has an established business relationship (as defined in 47 CFR 64.1200) with the consumer.

SECTION 2. IC 24-4.7-2-2, AS AMENDED BY P.L.226-2011, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) ~~"Consumer"~~ **Except as provided in subsection (b), "consumer"** means a residential telephone subscriber who:

- (1) for the telephone service received:
 - (A) has a place of primary use in Indiana; or
 - (B) is issued an Indiana telephone number or an Indiana identification number; and
 - (2) is an actual or a prospective:
 - (A) purchaser, lessee, or recipient of consumer goods or services; or
 - (B) donor to a charitable organization.
- (b) The term includes **the following:**
- (1) A user of a prepaid wireless calling service (as defined in IC 6-2.5-1-22.4) who:**
 - (1) (A)** is issued an Indiana telephone number or an Indiana identification number for the service; or
 - (2) (B)** purchases prepaid wireless calling service in a retail transaction that is sourced to Indiana (as determined under IC 6-2.5-12-16);

regardless of whether the prepaid wireless calling service is used for personal or business purposes.

- (2) A mobile telecommunications service (as defined in IC 6-8.1-15-7) subscriber who is issued an Indiana telephone number or an Indiana identification number for the service, regardless of whether the service is used for personal or business purposes.**

SECTION 3. IC 24-4.7-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019] : Sec. 3. "Consumer goods or services" means any of the following:

- (1) Tangible or intangible personal property or real property that is normally used for personal, family, or household purposes.
- (2) Other tangible or intangible personal property or real property, with respect to a consumer described in section 2(b)**



of this chapter who:

- (A) uses a prepaid wireless calling service; or
- (B) subscribes to a mobile telecommunications service (as defined in IC 6-8.1-15-7);

for business purposes.

(2) (3) Property intended to be attached to or installed on real property without regard to whether it is attached or installed.

(3) (4) Services related to property described in subdivision (1), or (2), or (3).

(4) (5) Credit cards or the extension of credit.

SECTION 4. IC 24-4.7-2-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 5.5. "Executive" means any of the following, as applicable:**

(1) With respect to a corporation, a person who is or performs the duties of the:

- (A) president;
- (B) chief executive officer;
- (C) treasurer; or
- (D) chief financial officer;

of the corporation.

(2) With respect to a partnership, a partner authorized to act on behalf of the partnership.

(3) With respect to a limited liability company, a member of the limited liability company who has not had the member's authority to act on behalf of the limited liability company revoked.

SECTION 5. IC 24-4.7-2-8, AS AMENDED BY P.L.226-2011, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 8. "Telephone number" means a residential telephone number that:**

- (1) is assigned to a subscriber who has a place of primary use in Indiana, **in the case of a residential subscriber;** or
- (2) otherwise represents an Indiana telephone number or is associated with an Indiana identification number.

SECTION 6. IC 24-4.7-3-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 1.5. (a) The division shall allow any consumer, including a consumer described in IC 24-4.7-2-2(b) who:**

- (1) uses a prepaid wireless calling service; or
- (2) subscribes to a mobile telecommunications service (as



defined in IC 6-8.1-15-7);
for business purposes, to be included in the quarterly listing of telephone numbers of persons that request not to be solicited by telephone.

(b) Before January 1, 2020, the division shall adopt any rules that the division determines to be necessary to implement this section. The division shall adopt any rules that the division determines to be necessary to implement this section in the manner provided under IC 4-22-2-37.1 for the adoption of emergency rules. Notwithstanding IC 4-22-2-37.1(g), an emergency rule adopted by the division under this subsection and in the manner provided by IC 4-22-2-37.1 expires on the date on which a rule that supersedes the emergency rule is adopted by the division under IC 4-22-2-24 through IC 4-22-2-36.

SECTION 7. IC 24-4.7-3-4, AS AMENDED BY P.L.226-2011, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. The division shall notify Indiana residents of the following:

(1) The rights and duties created by this article, including the right of any of the ~~following~~ consumers **described in IC 24-4.7-2-2** to place a telephone number on the listing established and maintained under section 1 of this chapter.

~~(1) Subscribers of interconnected VOIP service.~~

~~(2) Subscribers of mobile telecommunications service (as defined in IC 6-8.1-15-7).~~

~~(3) Users of a prepaid wireless calling service, as described in IC 24-4.7-2-2(b).~~

(2) The prohibition under 47 U.S.C. 227(b) against a person making any call using an:

(A) automatic telephone dialing system; or

(B) artificial or prerecorded voice;

to any telephone number assigned to a mobile telecommunications service (as defined in IC 6-8.1-15-7), or to another radio common carrier service.

(3) The prohibition under 47 U.S.C. 227(b) against a person initiating any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior consent of the called party, subject to the exceptions set forth in 47 U.S.C. 227(b).

(4) The right of any of the consumers described in IC 24-4.7-2-2 to place a telephone number on the National Do Not Call Registry operated by the Federal Trade Commission.



SECTION 8. IC 24-4.7-3-6, AS AMENDED BY P.L.65-2014, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) The consumer protection division telephone solicitation fund is established for the ~~purpose of following purposes:~~

(1) The administration of:

- ~~(1) (A) this article;~~
- ~~(2) (B) IC 24-5-0.5-3(b)(19); and~~
- ~~(C) IC 24-5-12;~~
- ~~(D) IC 24-5-14; and~~
- ~~(3) (E) IC 24-5-14.5.~~

(2) The reimbursement of county prosecutors for expenses incurred in extraditing violators of any statute set forth in subdivision (1).

The fund shall be used exclusively for ~~this purpose:~~ **these purposes.**

(b) The division shall administer the fund.

(c) ~~The division shall deposit~~ **fund consists of** all revenue received:

- (1) under this article;
- (2) from civil penalties ~~deposited~~ **recovered** under IC 24-5-0.5-4(h); ~~and~~
- (3) from civil penalties recovered after June 30, 2019, under IC 24-5-12-23(b);**
- (4) from civil penalties recovered after June 30, 2019, under IC 24-5-14-13(b); and**
- ~~(3) (5) from civil penalties deposited~~ **recovered** under IC 24-5-14.5-12.

~~in the fund:~~

(d) Money in the fund is continuously appropriated to the division for the ~~administration of:~~

- ~~(1) this article;~~
- ~~(2) IC 24-5-0.5-3(b)(19); and~~
- ~~(3) IC 24-5-14.5;~~ **purposes set forth in subsection (a).**

(e) Money in the fund at the end of a state fiscal year does not revert to the state general fund. However, if the amount of money in the fund at the end of a particular state fiscal year exceeds two hundred thousand dollars (\$200,000), the treasurer of state shall transfer the excess from the fund to the state general fund.

SECTION 9. IC 24-4.7-5-1, AS AMENDED BY P.L.153-2017, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. **(a)** 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.



(b) 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.

(c) If:

- (1) the person described in subsection (b) is an executive with respect to a telephone solicitor, a supplier, or a caller; and
- (2) the telephone solicitor, supplier, or caller fails to comply with any provision of IC 24-4.7-4;

the person described in subsection (b) commits a separate deceptive act that is actionable by the attorney general under this chapter.

(d) ~~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, 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."

Delete pages 2 through 3.

Page 4, delete lines 1 through 6, begin a new paragraph and insert:

"SECTION 10. IC 24-5-0.5-3, AS AMENDED BY P.L.170-2017, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) A supplier may not commit an unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction. Such an act, omission, or practice by a supplier is a violation of this chapter whether it occurs before, during, or after the transaction. An act, omission, or practice prohibited by this section includes both implicit and explicit misrepresentations.

(b) Without limiting the scope of subsection (a), the following acts, and the following representations as to the subject matter of a consumer transaction, made orally, in writing, or by electronic communication, by a supplier, are deceptive acts:

- (1) That such subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have.
- (2) That such subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the



supplier knows or should reasonably know that it is not.

(3) That such subject of a consumer transaction is new or unused, if it is not and if the supplier knows or should reasonably know that it is not.

(4) That such subject of a consumer transaction will be supplied to the public in greater quantity than the supplier intends or reasonably expects.

(5) That replacement or repair constituting the subject of a consumer transaction is needed, if it is not and if the supplier knows or should reasonably know that it is not.

(6) That a specific price advantage exists as to such subject of a consumer transaction, if it does not and if the supplier knows or should reasonably know that it does not.

(7) That the supplier has a sponsorship, approval, or affiliation in such consumer transaction the supplier does not have, and which the supplier knows or should reasonably know that the supplier does not have.

(8) That such consumer transaction involves or does not involve a warranty, a disclaimer of warranties, or other rights, remedies, or obligations, if the representation is false and if the supplier knows or should reasonably know that the representation is false.

(9) That the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a sale or lease in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit, rebate, or discount is contingent upon the occurrence of an event subsequent to the time the consumer agrees to the purchase or lease.

(10) That the supplier is able to deliver or complete the subject of the consumer transaction within a stated period of time, when the supplier knows or should reasonably know the supplier could not. If no time period has been stated by the supplier, there is a presumption that the supplier has represented that the supplier will deliver or complete the subject of the consumer transaction within a reasonable time, according to the course of dealing or the usage of the trade.

(11) That the consumer will be able to purchase the subject of the consumer transaction as advertised by the supplier, if the supplier does not intend to sell it.

(12) That the replacement or repair constituting the subject of a consumer transaction can be made by the supplier for the estimate the supplier gives a customer for the replacement or repair, if the



specified work is completed and:

- (A) the cost exceeds the estimate by an amount equal to or greater than ten percent (10%) of the estimate;
- (B) the supplier did not obtain written permission from the customer to authorize the supplier to complete the work even if the cost would exceed the amounts specified in clause (A);
- (C) the total cost for services and parts for a single transaction is more than seven hundred fifty dollars (\$750); and
- (D) the supplier knew or reasonably should have known that the cost would exceed the estimate in the amounts specified in clause (A).

(13) That the replacement or repair constituting the subject of a consumer transaction is needed, and that the supplier disposes of the part repaired or replaced earlier than seventy-two (72) hours after both:

- (A) the customer has been notified that the work has been completed; and
- (B) the part repaired or replaced has been made available for examination upon the request of the customer.

(14) Engaging in the replacement or repair of the subject of a consumer transaction if the consumer has not authorized the replacement or repair, and if the supplier knows or should reasonably know that it is not authorized.

(15) The act of misrepresenting the geographic location of the supplier by listing an alternate business name or an assumed business name (as described in IC 23-0.5-3-4) in a local telephone directory if:

- (A) the name misrepresents the supplier's geographic location;
- (B) the listing fails to identify the locality and state of the supplier's business;
- (C) calls to the local telephone number are routinely forwarded or otherwise transferred to a supplier's business location that is outside the calling area covered by the local telephone directory; and
- (D) the supplier's business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory.

(16) The act of listing an alternate business name or assumed business name (as described in IC 23-0.5-3-4) in a directory assistance data base if:

- (A) the name misrepresents the supplier's geographic location;
- (B) calls to the local telephone number are routinely forwarded



or otherwise transferred to a supplier's business location that is outside the local calling area; and

(C) the supplier's business location is located in a county that is not contiguous to a county in the local calling area.

(17) The violation by a supplier of IC 24-3-4 concerning cigarettes for import or export.

(18) The act of a supplier in knowingly selling or reselling a product to a consumer if the product has been recalled, whether by the order of a court or a regulatory body, or voluntarily by the manufacturer, distributor, or retailer, unless the product has been repaired or modified to correct the defect that was the subject of the recall.

(19) The violation by a supplier of 47 U.S.C. 227, including any rules or regulations issued under 47 U.S.C. 227.

(20) The violation by a supplier of the federal Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.), including any rules or regulations issued under the federal Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.).

(21) A violation of IC 24-5-7 (concerning health spa services), as set forth in IC 24-5-7-17.

(22) A violation of IC 24-5-8 (concerning business opportunity transactions), as set forth in IC 24-5-8-20.

(23) A violation of IC 24-5-10 (concerning home consumer transactions), as set forth in IC 24-5-10-18.

(24) A violation of IC 24-5-11 (concerning real property improvement contracts), as set forth in IC 24-5-11-14.

(25) A violation of IC 24-5-12 (concerning telephone solicitations), as set forth in IC 24-5-12-23.

(26) A violation of IC 24-5-13.5 (concerning buyback motor vehicles), as set forth in IC 24-5-13.5-14.

(27) A violation of IC 24-5-14 (concerning automatic dialing-announcing devices), as set forth in IC 24-5-14-13.

(28) A violation of IC 24-5-15 (concerning credit services organizations), as set forth in IC 24-5-15-11.

(29) A violation of IC 24-5-16 (concerning unlawful motor vehicle subleasing), as set forth in IC 24-5-16-18.

(30) A violation of IC 24-5-17 (concerning environmental marketing claims), as set forth in IC 24-5-17-14.

(31) A violation of IC 24-5-19 (concerning deceptive commercial solicitation), as set forth in IC 24-5-19-11.

(32) A violation of IC 24-5-21 (concerning prescription drug discount cards), as set forth in IC 24-5-21-7.



(33) A violation of IC 24-5-23.5-7 (concerning real estate appraisals), as set forth in IC 24-5-23.5-9.

(34) A violation of IC 24-5-26 (concerning identity theft), as set forth in IC 24-5-26-3.

(35) A violation of IC 24-5.5 (concerning mortgage rescue fraud), as set forth in IC 24-5.5-6-1.

(36) A violation of IC 24-8 (concerning promotional gifts and contests), as set forth in IC 24-8-6-3.

(37) A violation of IC 21-18.5-6 (concerning representations made by a postsecondary credit bearing proprietary educational institution), as set forth in IC 21-18.5-6-22.5.

(38) A violation of IC 24-5-14.5 (concerning misleading or inaccurate caller identification information), as set forth in IC 24-5-14.5-12.

(c) Any representations on or within a product or its packaging or in advertising or promotional materials which would constitute a deceptive act shall be the deceptive act both of the supplier who places such representation thereon or therein, or who authored such materials, and such other suppliers who shall state orally or in writing that such representation is true if such other supplier shall know or have reason to know that such representation was false.

(d) If a supplier shows by a preponderance of the evidence that an act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, such act shall not be deceptive within the meaning of this chapter.

(e) It shall be a defense to any action brought under this chapter that the representation constituting an alleged deceptive act was one made in good faith by the supplier without knowledge of its falsity and in reliance upon the oral or written representations of the manufacturer, the person from whom the supplier acquired the product, any testing organization, or any other person provided that the source thereof is disclosed to the consumer.

(f) For purposes of subsection (b)(12), a supplier that provides estimates before performing repair or replacement work for a customer shall give the customer a written estimate itemizing as closely as possible the price for labor and parts necessary for the specific job before commencing the work.

(g) For purposes of subsection (b)(15) and (b)(16), a telephone company or other provider of a telephone directory or directory assistance service or its officer or agent is immune from liability for publishing the listing of an alternate business name or assumed business name of a supplier in its directory or directory assistance data



base unless the telephone company or other provider of a telephone directory or directory assistance service is the same person as the supplier who has committed the deceptive act.

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

SECTION 11. IC 24-5-0.5-4, AS AMENDED BY P.L.65-2014, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. (a) A person relying upon an uncured or incurable deceptive act may bring an action for the damages actually suffered as a consumer as a result of the deceptive act or five hundred dollars (\$500), whichever is greater. The court may increase damages for a willful deceptive act in an amount that does not exceed the greater of:

- (1) three (3) times the actual damages of the consumer suffering the loss; or
- (2) one thousand dollars (\$1,000).

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

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



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

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

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

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

(e) In any action under subsection (a) or (b), upon the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, the trial court, the supreme court, or the court of appeals may require the plaintiff, defendant, claimant, or any other party or parties to give security, or additional security, in such



sum as the court shall direct to pay all costs, expenses, and disbursements that shall be awarded against that party or which that party may be directed to pay by any interlocutory order by the final judgment or on appeal.

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

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

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

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

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

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

(j) An offer to cure is:

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

If the offer to cure is timely delivered by the supplier, the supplier may submit the offer to cure as evidence to prove in the proceeding in



accordance with the Indiana Rules of Trial Procedure that the supplier made an offer to cure.

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

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

(m) If a court finds that a person has knowingly or intentionally violated section 3(b)(38) of this chapter, the attorney general, in an action under subsection (c), may recover from the person on behalf of the state a civil penalty in accordance with IC 24-5-14.5-12(b). As specified in IC 24-5-14.5-12(b), a civil penalty recovered under IC 24-5-14.5-12(b) shall be deposited in the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6 to be used for the administration and enforcement of IC 24-5-14.5. 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 4, delete lines 16 through 40, begin a new paragraph and insert:

"SECTION 13. IC 24-5-12-23, AS AMENDED BY P.L.222-2005, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JULY 1, 2019]: Sec. 23. **(a)** A seller who fails to comply with any provision of:

- (1) this chapter; or
- (2) IC 24-4.7;

commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4(c) and is subject to the penalties set forth in IC 24-5-0.5. An action for a violation of IC 24-4.7 may be brought under IC 24-5-0.5-4(c) or IC 24-4.7-5. An action by the attorney general for a violation of this chapter or IC 24-4.7 may be brought in the circuit or superior court of Marion County.

(b) A civil penalty recovered by the attorney general under:

- (1) IC 24-5-0.5-4(g); or**
- (2) IC 24-5-0.5-8;**

for a violation of this chapter shall be deposited in the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6 to be used for the administration and enforcement of this chapter.

SECTION 14. IC 24-5-14-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 13. **(a)** A caller who violates this chapter commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4 and that is subject to:

- (1) the remedies and penalties under IC 24-5-0.5-4(c), IC 24-5-0.5-4(d), and IC 24-5-0.5-4(f); ~~IC 24-5-0.5-4(g), and IC 24-5-0.5-8; and~~**

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

- (A) Ten thousand dollars (\$10,000) for the first violation.**
- (B) Twenty-five thousand dollars (\$25,000) for each violation after the first violation.**

(b) A civil penalty recovered by the attorney general under subsection (a)(2) for a violation of this chapter shall be deposited in the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6 to be used for the administration and enforcement of this chapter.

SECTION 15. IC 24-5-14.5-1, AS ADDED BY P.L.151-2013, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. **(a)** This chapter applies to the transmission of information through a caller identification service with respect to calls made after June 30, 2013, to a subscriber.

(b) After June 30, 2019, this chapter applies to the transmission of information through a caller identification service only with respect to commercial telephone solicitations made to a subscriber.

SECTION 16. IC 24-5-14.5-3.1 IS ADDED TO THE INDIANA



CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 3.1. (a) As used in this chapter, "commercial telephone solicitation" means any unsolicited call that is made to a subscriber and with respect to which:**

(1) neither:

(A) the person initiating the call; nor

(B) the employer or person for whom the person initiating the call is acting as an employee, an agent, or a contractor; has had a prior business or personal relationship with the subscriber; and

(2) the purpose of the call is to solicit the purchase or the consideration of the purchase of goods or services by the subscriber.

(b) The term does not include calls:

(1) made in response to a call initiated by a subscriber; or

(2) initiated by:

(A) the state or a political subdivision (as defined by IC 36-1-2-13) for exclusively public purposes; or

(B) the United States or any of its subdivisions for exclusively public purposes (involving real property in Indiana).

SECTION 17. IC 24-5-14.5-9, AS ADDED BY P.L.151-2013, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. Except as provided in section 10 of this chapter, a person shall not, in connection with any telecommunications service or interconnected VOIP service **used in a commercial telephone solicitation**, knowingly and with the intent to defraud or cause harm to another person or to wrongfully obtain anything of value, cause any caller identification service to transmit misleading or inaccurate caller identification information to a subscriber.

SECTION 18. IC 24-5-14.5-12, AS ADDED BY P.L.151-2013, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 12. (a) Except as provided in subsection (b) **or in IC 24-5-0.5**, a person who violates this chapter commits a deceptive act that is:

(1) actionable by the attorney general under IC 24-5-0.5-4(c); and

(2) subject to the remedies and penalties set forth in IC 24-5-0.5.

An action by the attorney general for a violation of this chapter may be brought in the circuit or superior court of Marion County.

(b) If the attorney general brings an action under this section and proves by a preponderance of the evidence that a person has knowingly or intentionally violated section 9 of this chapter, the attorney general



may recover from the person on behalf of the state a civil penalty of not more than ten thousand dollars (\$10,000) per violation. A civil penalty recovered under this subsection shall be deposited in the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6 to be used for the administration and enforcement of this chapter.

SECTION 19. [EFFECTIVE UPON PASSAGE] (a) The legislative council is urged to assign to the interim study committee on corrections and criminal code the task of studying the following:

(1) Whether existing criminal penalties for violations of the statutes concerning:

(A) telephone solicitations (IC 24-5-12);

(B) the regulation of automatic dialing-announcing devices (IC 24-5-14); and

(C) misleading or inaccurate caller identification (IC 24-5-14.5);

should be increased.

(2) The potential effects of increasing criminal penalties for violations of the statutes set forth in subdivision (1) on:

(A) the ability of the office of the attorney general to enforce compliance with the statutes; and

(B) the state's criminal justice system.

(b) This SECTION expires January 1, 2020.

SECTION 20. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1123 as introduced.)

SOLIDAY

Committee Vote: yeas 10, nays 1.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1123 be amended to read as follows:

Page 2, delete lines 26 through 42.

Page 3, delete lines 1 through 28.

Page 4, delete lines 4 through 42, begin a new paragraph and insert:

EH 1123—LS 7163/DI 119



"SECTION 3. IC 24-4.7-3-4, AS AMENDED BY P.L.226-2011, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. The division shall notify Indiana residents of **the following:**

(1) The rights and duties created by this article, including the right of any of the following consumers to place a telephone number on the listing established and maintained under section 1 of this chapter:

(1) (A) Subscribers of interconnected VOIP service.

(2) (B) Subscribers of mobile telecommunications service (as defined in IC 6-8.1-15-7).

(3) (C) Users of a prepaid wireless calling service, as described in IC 24-4.7-2-2(b).

(2) **The prohibition under 47 U.S.C. 227(b) against a person making any call using an:**

(A) **automatic telephone dialing system; or**

(B) **artificial or prerecorded voice;**

to any telephone number assigned to a mobile telecommunications service (as defined in IC 6-8.1-15-7), or to another radio common carrier service.

(3) **The prohibition under 47 U.S.C. 227(b) against a person initiating any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior consent of the called party, subject to the exceptions set forth in 47 U.S.C. 227(b).**

(4) **Information concerning the placement of a telephone number on the National Do Not Call Registry operated by the Federal Trade Commission."**

Page 5, delete lines 1 through 18.

Page 15, between lines 12 and 13, begin a new paragraph AND insert:

"SECTION 8. IC 24-5-12-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 8. As used in this chapter, "seller" means a person who, personally, through salespersons, or through the use of an automated dialing and answering device, makes a solicitation. ~~if in the solicitation any one (1) of the following occurs:~~

(1) ~~There is a false representation or implication that a prospect will receive a gift, prize, or the value of a gift or prize.~~

(2) ~~There is an offer of a vacation at a reduced price if the vacation involves the prospect attending a presentation in which the prospect is solicited to purchase a time share or camping club~~



membership and if the seller does not own the time share or camping club; does not represent the owner of the time share or camping club; or misrepresents the value of the vacation. Terms in this subdivision have the meaning set forth in IC 32-32.

(3) There is a representation or implication that a prospect who buys office equipment or supplies will, because of some unusual event or imminent price increase, be able to buy these items at prices that are below those that are usually charged or will be charged for the items if the price advantage for the prospect does not exist.

(4) There is a false representation or implication as to the identity of the person making the solicitation.

(5) There is a representation or implication that the items for sale are manufactured or supplied by a person other than the actual manufacturer or supplier.

(6) There is an offer to sell the prospect precious metals, precious stones, coal, or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, if the seller does not own the items, does not represent the owner, or misrepresents the value of the items."

Page 16, delete lines 15 through 42.

Page 17, delete lines 1 through 29.

Renumber all SECTIONS consecutively.

(Reference is to HB 1123 as printed January 25, 2019.)

ELLINGTON

COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred House Bill No. 1123, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to HB 1123 as reprinted February 1, 2019.)

MERRITT, Chairperson

Committee Vote: Yeas 10, Nays 0

EH 1123—LS 7163/DI 119

