

HOUSE BILL No. 1111

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-6-9-4; IC 24-4.7.

Synopsis: Unsolicited home purchase inquiries. Provides that Indiana law regulating telephone sales calls applies to a telephone solicitation that: (1) is made by a telephone solicitor that is not a licensed real estate broker; and (2) communicates to a consumer: (A) an offer to purchase; (B) an offer to broker, or otherwise assist or act as an intermediary in, the sale of; or (C) an inquiry regarding the consumer's interest in selling; residential real property that was not publicly offered for sale, or advertised as being for sale, at any time during the 30 days preceding the date on which the telephone solicitation is made (unsolicited home purchase inquiries). Provides that a telephone solicitor that is not a licensed real estate broker may not make more than one unsolicited home purchase inquiry to the same Indiana resident in a single calendar year. Makes a technical correction.

Effective: July 1, 2024.

Pryor

January 8, 2024, read first time and referred to Committee on Commerce, Small Business and Economic Development.



Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

HOUSE BILL No. 1111



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 4-6-9-4, AS AMENDED BY P.L.149-2023,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2024]: Sec. 4. (a) The division has the following powers and
4 duties:
5 (1) The power to investigate any written consumer complaint
6 made by a nonmerchant arising from a transaction between a
7 merchant as defined in the Uniform Commercial Code and a
8 nonmerchant concerning sales, leases, assignments, awards by
9 chance, or other dispositions of goods, services, or repairs, and
10 intangibles to a person for purposes that are primarily personal,
11 familial, household, charitable, or agricultural, or a solicitation to
12 supply any of the above things. When a consumer trades in or
13 sells a motor vehicle to another consumer or nonconsumer, the
14 consumer shall be considered to be a nonconsumer and shall be
15 subject to the provisions of this chapter. The division shall have
16 no jurisdiction over matters concerning utilities subject to
17 regulation by the utility regulatory commission or by an agency of



1 the United States except that the provisions of subdivision (5)
2 shall apply and except as provided in IC 8-1-29.

3 (2) For complaints filed after August 31, 1984, the duty to
4 ascertain from the consumer whether the consumer consents to
5 public disclosure by the division of the filing of the complaint,
6 including the consumer's identity and telephone number, if any.

7 (3) The duty to notify the merchant of the nature of the complaint
8 by written communication and request a written reply.

9 (4) Upon receipt of reply, the duty to act as mediator between the
10 parties and attempt to resolve all complaints in a conciliatory
11 manner. The director of the division and the attorney general have
12 discretion whether to mediate complaints involving a de minimis
13 amount of money.

14 (5) If no reply is received or if the parties are unable to resolve
15 their differences, and no violation of federal or state statute or rule
16 is indicated, the duty to provide the complainant with a copy of all
17 correspondence relating to the matter.

18 (6) Whenever a violation of a state or federal law or
19 administrative rule is indicated, the duty to forward to the
20 appropriate state or federal agency a copy of the correspondence
21 and request that the agency further investigate the complaint and
22 report to the division upon the disposition of the complaint.

23 (7) The power to initiate and prosecute civil actions on behalf of
24 the state whenever an agency to which a complaint has been
25 forwarded fails to act upon the complaint within ten (10) working
26 days after its referral, or whenever no state agency has jurisdiction
27 over the subject matter of the complaint.

28 (8) The power to investigate a complaint against a temporary
29 health care services agency licensed under IC 16-52.

30 (b) All complaints and correspondence in the possession of the
31 division under this chapter are confidential unless disclosure of a
32 complaint or correspondence is:

33 (1) requested by the person who filed the complaint;

34 (2) consented to, in whole or in part, after August 31, 1984, by the
35 person who filed the complaint;

36 (3) in furtherance of an investigation by a law enforcement
37 agency; or

38 (4) necessary for the filing of an action by the attorney general
39 under IC 24-5-0.5.

40 (c) Notwithstanding subsection (b), the division may publicly
41 disclose information relating to the status of complaints under
42 subsection (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7).



1 (d) Except for a residential telephone number published in the most
 2 recent quarterly telephone ~~sales~~ solicitation listing by the division
 3 under IC 24-4.7-3 and except as provided in subsection (e), all
 4 consumer information provided for the purposes of registering for or
 5 maintaining the no telephone ~~sales~~ solicitation listing is confidential.

6 (e) The name, address, and telephone number of a registrant of the
 7 most recent quarterly no telephone ~~sales~~ solicitation listing may be
 8 released for journalistic purposes if the registrant consents to the
 9 release of information after June 30, 2007.

10 SECTION 2. IC 24-4.7-2-5, AS AMENDED BY P.L.153-2017,
 11 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2024]: Sec. 5. (a) "Doing business in Indiana" means:

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

15 telephone ~~sales calls~~ **solicitations** to consumers located in Indiana,
 16 **regardless of** whether the telephone ~~sales calls~~ **solicitations** are made
 17 from a location in Indiana or outside Indiana.

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

22 SECTION 3. IC 24-4.7-2-7, AS AMENDED BY P.L.226-2011,
 23 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2024]: Sec. 7. "Listing" refers to the no telephone ~~sales~~
 25 solicitation listing published by the division under IC 24-4.7-3 that lists
 26 the telephone numbers of consumers who do not wish to receive
 27 telephone ~~sales calls~~: **solicitations**.

28 SECTION 4. IC 24-4.7-2-9, AS AMENDED BY P.L.226-2011,
 29 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2024]: Sec. 9. (a) "Telephone ~~sales call~~" **solicitation**" means
 31 a telephone call made to a consumer for any of the following purposes:

- 32 (1) Solicitation of a sale of consumer goods or services.
 33 (2) Solicitation of a charitable contribution.
 34 (3) Obtaining information that will or may be used for the direct
 35 solicitation of a sale of consumer goods or services or an
 36 extension of credit for such purposes.

37 **(4) An unsolicited home purchase inquiry.**

38 (b) The term includes any of the following:

- 39 (1) A call made by use of an automated dialing device.
 40 (2) A call made by use of a recorded message device.
 41 (3) Transmission of:

42 (A) a text message; or



- 1 (B) a graphic message;
 2 using short message service (SMS).
 3 (4) Transmission of:
 4 (A) an image;
 5 (B) a photograph; or
 6 (C) a multimedia message;
 7 using multimedia messaging service (MMS).
 8 SECTION 5. IC 24-4.7-2-11 IS ADDED TO THE INDIANA CODE
 9 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 10 1, 2024]: **Sec. 11. "Unsolicited home purchase inquiry" means a**
 11 **telephone solicitation that:**
 12 **(1) is made, or is caused to be made, to a consumer by a**
 13 **telephone solicitor that is not a real estate broker licensed**
 14 **under IC 25-34.1-3; and**
 15 **(2) communicates:**
 16 **(A) an offer to purchase;**
 17 **(B) an offer to broker, or otherwise assist or act as an**
 18 **intermediary in, the sale of; or**
 19 **(C) an inquiry regarding the consumer's interest in selling;**
 20 **residential real property that was not publicly offered for sale,**
 21 **or advertised as being for sale, at any time during the thirty**
 22 **(30) days preceding the date on which the telephone**
 23 **solicitation is made.**
 24 SECTION 6. IC 24-4.7-4-1 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 1. A telephone solicitor
 26 may not make or cause to be made a telephone ~~sales call~~ **solicitation**
 27 to a telephone number if that telephone number appears in the most
 28 current quarterly listing published by the division.
 29 SECTION 7. IC 24-4.7-4-2, AS AMENDED BY P.L.153-2017,
 30 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2024]: Sec. 2. A telephone solicitor who makes a telephone
 32 ~~sales call~~ **solicitation** to a telephone number shall immediately disclose
 33 the following information upon making contact with the consumer:
 34 (1) The solicitor's true first and last name.
 35 (2) The name of the business or person on whose behalf the
 36 telephone solicitor is soliciting.
 37 (3) The person with which the solicitor is employed or has
 38 contracted.
 39 SECTION 8. IC 24-4.7-4-4 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 4. (a) This section does
 41 not apply to any of the following:
 42 (1) A sale in which:



- 1 (A) no prior payment is made to a merchant;
 2 (B) an invoice accompanies the goods or services; and
 3 (C) a consumer is allowed seven (7) days to cancel the
 4 services or return the goods without obligation for payment.
 5 (2) A contractual agreement that:
 6 (A) requires payment; and
 7 (B) allows the consumer at least ten (10) days to cancel the
 8 contract and receive a full refund of the payment.
 9 (3) A sale regulated by 170 IAC 7-1.1-19.
 10 (4) A newspaper subscription executed through a telephone call.
 11 (b) A contract **for a sale of consumer goods or services** made
 12 under a telephone ~~sales call~~ **solicitation** is not valid and enforceable
 13 against a consumer unless the contract complies with this section.
 14 (c) A contract **for a sale of consumer goods or services** made
 15 under a telephone ~~sales call~~ **solicitation** must satisfy all of the
 16 following:
 17 (1) The contract must be reduced to writing and signed by the
 18 consumer.
 19 (2) The contract must contain the name, address, and business
 20 telephone number of the seller, the total price of the contract, and
 21 a detailed description of the goods or services being sold.
 22 (3) The description of goods or services as stated in the contract
 23 must be the same as the description principally used in the
 24 telephone solicitation.
 25 (4) The contract must contain, in bold, conspicuous type
 26 immediately preceding the signature the words "you are not
 27 obligated to pay any money unless you sign this contract and
 28 return it to the seller".
 29 (5) The contract may not exclude from its terms any oral or
 30 written representations made by the telephone solicitor to the
 31 consumer in connection with the transaction.
 32 SECTION 9. IC 24-4.7-4-5 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 5. (a) This section does
 34 not apply to any of the following:
 35 (1) A transaction made in accordance with prior negotiations in
 36 the course of a visit by a consumer to a merchant that operates a
 37 retail business establishment that has a fixed, permanent location
 38 where consumer goods are displayed or offered for sale on a
 39 continuing basis.
 40 (2) A transaction in which:
 41 (A) a consumer may obtain a full refund for the return of
 42 undamaged and unused goods; or



- 1 (B) a consumer may, within seven (7) days after receipt of
 2 merchandise by a consumer, give a cancellation of services
 3 notice to a seller and return the merchandise, and the seller
 4 must process the refund within thirty (30) days after receipt of
 5 the returned merchandise.
- 6 (3) A transaction in which a consumer purchases goods or
 7 services under a television, radio, or print advertisement or a
 8 sample, brochure, or catalog of a merchant that contains:
 9 (A) the name, address, and business telephone number of the
 10 merchant;
 11 (B) a description of the goods or services being sold; and
 12 (C) limitations or restrictions that apply to the offer.
- 13 (4) A transaction in which a merchant is a bona fide charitable
 14 organization.
- 15 (b) A contract **for a sale of consumer goods or services** made
 16 under a telephone ~~sales call solicitation~~ in violation of this section is
 17 not valid and enforceable against a consumer.
- 18 (c) A merchant who engages a telephone solicitor to make or cause
 19 to be made a telephone ~~sales call solicitation for a sale of consumer~~
 20 **goods or services** may not:
 21 (1) make or submit a charge to a consumer's credit card account;
 22 or
 23 (2) make or cause to be made any electronic transfer of funds;
 24 until the merchant receives from the consumer a copy of the contract,
 25 signed by the consumer, that complies with this chapter.
- 26 SECTION 10. IC 24-4.7-4-8 IS ADDED TO THE INDIANA CODE
 27 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
 28 1, 2024]: **Sec. 8. (a) This section does not apply to a telephone**
 29 **solicitor that is a real estate broker licensed under IC 25-34.1-3.**
 30 (b) **A telephone solicitor may not make more than one (1)**
 31 **unsolicited home purchase inquiry to the same consumer in a single**
 32 **calendar year.**

