

IC 24-4.7 **ARTICLE 4.7. TELEPHONE SOLICITATION OF CONSUMERS**

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IC 24-4.7-1 **Chapter 1. General Provisions**

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IC 24-4.7-1-1 **Application**

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.

As added by P.L.189-2001, SEC.1. Amended by P.L.97-2004, SEC.90.

IC 24-4.7-1-2 **Compliance with other law**

Sec. 2. This article does not relieve a person from complying with any other applicable law.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-2 Chapter 2. Definitions

24-4.7-2-1	Applicability of definitions
24-4.7-2-1.7	"Caller"
24-4.7-2-2	"Consumer"
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24-4.7-2-9	"Telephone sales call"
24-4.7-2-10	"Telephone solicitor"

IC 24-4.7-2-1 Applicability of definitions

Sec. 1. The definitions in this chapter apply throughout this article.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-2-1.7 "Caller"

Sec. 1.7. "Caller" has the meaning set forth in IC 24-5-14-2.

As added by P.L.61-2014, SEC.1.

IC 24-4.7-2-2 "Consumer"

Sec. 2. (a) "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 a user of a prepaid wireless calling service (as defined in IC 6-2.5-1-22.4) who:

(1) is issued an Indiana telephone number or an Indiana identification number for the service; or

(2) purchases prepaid wireless calling service in a retail transaction that is sourced to Indiana (as determined under IC 6-2.5-12-16).

As added by P.L.189-2001, SEC.1. Amended by P.L.226-2011, SEC.6.

IC 24-4.7-2-3 "Consumer goods or services"

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

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

(4) Credit cards or the extension of credit.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-2-4 "Division"

Sec. 4. "Division" refers to the consumer protection division of the office of the attorney general.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-2-5 "Doing business in Indiana"

Sec. 5. (a) "Doing business in Indiana" means:

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

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

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

As added by P.L.189-2001, SEC.1. Amended by P.L.226-2011, SEC.7; P.L.153-2017, SEC.1.

IC 24-4.7-2-6 "Fund"

Sec. 6. "Fund" refers to the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-2-7 "Listing"

Sec. 7. "Listing" refers to the no telephone sales solicitation listing published by the division under IC 24-4.7-3 that lists the telephone numbers of consumers who do not wish to receive telephone sales calls.

As added by P.L.189-2001, SEC.1. Amended by P.L.226-2011, SEC.8.

IC 24-4.7-2-7.3 "Person"

Sec. 7.3. "Person" means:

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

As added by P.L.153-2017, SEC.2.

IC 24-4.7-2-7.5 "Place of primary use"

Sec. 7.5. "Place of primary use", with respect to a telephone subscriber, means the street address representative of where the subscriber's use of the telephone service primarily occurs, which must be:

- (1) the residential street address of the subscriber or, in the case of a subscriber of interconnected VOIP service, the subscriber's registered location (as defined in 47 CFR 9.3); and
- (2) in the case of mobile telecommunications services (as defined in IC 6-8.1-15-7), within the licensed service area of the home service provider, as set forth in IC 6-8.1-15-8.

As added by P.L.226-2011, SEC.9.

IC 24-4.7-2-7.7 "Supplier"

Sec. 7.7. "Supplier" has the meaning set forth in IC 24-5-0.5-2(a)(3).

As added by P.L.61-2014, SEC.2.

IC 24-4.7-2-8 "Telephone number"

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; or
- (2) otherwise represents an Indiana telephone number or is associated with an Indiana identification number.

As added by P.L.189-2001, SEC.1. Amended by P.L.226-2011, SEC.10.

IC 24-4.7-2-9 "Telephone sales call"

Sec. 9. (a) "Telephone sales call" means a telephone call made to a consumer for any of the following purposes:

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

(b) The term includes any of the following:

- (1) A call made by use of an automated dialing device.
- (2) A call made by use of a recorded message device.
- (3) Transmission of:
 - (A) a text message; or
 - (B) a graphic message;using short message service (SMS).

- (4) Transmission of:
 - (A) an image;
 - (B) a photograph; or
 - (C) a multimedia message;using multimedia messaging service (MMS).

As added by P.L.189-2001, SEC.1. Amended by P.L.226-2011, SEC.11.

IC 24-4.7-2-10 "Telephone solicitor"

Sec. 10. "Telephone solicitor" means a person doing business in Indiana. The term includes a person that controls, directly or indirectly, one (1) or more other persons.

As added by P.L.189-2001, SEC.1. Amended by P.L.153-2017, SEC.3.

IC 24-4.7-3 Chapter 3. Duties of the Division

24-4.7-3-1	Quarterly listing
24-4.7-3-2	Agents
24-4.7-3-3	Investigation
24-4.7-3-4	Division to notify Indiana residents of rights and duties
24-4.7-3-5	Reports
24-4.7-3-6	Consumer protection division telephone solicitation fund
24-4.7-3-7	Adoption of rules

IC 24-4.7-3-1 Quarterly listing

Sec. 1. (a) A quarterly listing of telephone numbers of Indiana consumers who request not to be solicited by telephone shall be established, maintained, and published as provided in this section.

(b) The telephone number of a consumer shall be placed on the listing if the consumer requests to be added to the listing according to a procedure approved by the division.

(c) The listing shall be updated upon receipt of a request from a consumer.

(d) A telephone solicitor may obtain a copy of the listing upon request of the telephone solicitor as provided in this section.

(e) The division shall establish a fee to be paid by a telephone solicitor for obtaining a copy of the listing. The fee established under this subsection may not exceed the amount necessary to cover the cost of providing the listing to telephone solicitors.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-3-2 Agents

Sec. 2. (a) The division may contract with an agent to perform the division's duties under section 1 of this chapter if both of the following conditions are satisfied:

(1) The agent has demonstrated experience in maintaining a national no sales solicitation calls listing.

(2) The contract requires the vendor to provide the listing in:

(A) a printed hard copy format; and

(B) any other format offered;

at a cost that does not exceed the production cost of the format offered.

(b) If the division enters into a contract under this section, the division must retain the ultimate authority for the following:

(1) Approval of the procedures for establishment, maintenance, and publication of the listing.

(2) Establishing fees required by section 1(e) of this chapter.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-3-3 Investigation

Sec. 3. The division shall investigate complaints received concerning violations of this article.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-3-4 Division to notify Indiana residents of rights and duties

Sec. 4. The division shall notify Indiana residents of 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) 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).

As added by P.L.189-2001, SEC.1. Amended by P.L.226-2011, SEC.12.

IC 24-4.7-3-5 Reports

Sec. 5. (a) The division shall, after June 30 and before October 1 of each year, report to the interim study committee on energy, utilities, and telecommunications established by IC 2-5-1.3-4 in an electronic format under IC 5-14-6 on the following:

- (1) The total amount of fees deposited in the fund during the most recent state fiscal year.
- (2) The expenses incurred by the division in maintaining and promoting the listing during the most recent state fiscal year.
- (3) The projected budget required by the division to comply with this article during the current state fiscal year.
- (4) Any other expenses incurred by the division in complying with this article during the most recent state fiscal year.
- (5) The total number of subscribers on the listing at the end of the most recent state fiscal year.
- (6) The number of new subscribers added to the listing during the most recent state fiscal year.
- (7) The number of subscribers removed from the listing for any reason during the most recent state fiscal year.

(b) The interim study committee on energy, utilities, and telecommunications established by IC 2-5-1.3-4 shall, before November 1 of each year, issue in an electronic format under IC 5-14-6 a report and recommendations to the legislative council concerning the information received under subsection (a).

As added by P.L.189-2001, SEC.1. Amended by P.L.28-2004, SEC.163; P.L.53-2014, SEC.139.

IC 24-4.7-3-6 Consumer protection division telephone solicitation fund

Sec. 6. (a) The consumer protection division telephone solicitation fund is established for the purpose of the administration of:

- (1) this article;
- (2) IC 24-5-0.5-3(b)(19); and
- (3) IC 24-5-14.5.

The fund shall be used exclusively for this purpose.

- (b) The division shall administer the fund.
- (c) The division shall deposit all revenue received:

- (1) under this article;
- (2) from civil penalties deposited under IC 24-5-0.5-4(h); and
- (3) from civil penalties deposited 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.

(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.

As added by P.L.189-2001, SEC.1. Amended by P.L.85-2006, SEC.1; P.L.151-2013, SEC.5; P.L.65-2014, SEC.5.

IC 24-4.7-3-7 Adoption of rules

Sec. 7. The division may adopt rules under IC 4-22-2 to implement this article.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-4 Chapter 4. Telephone Solicitations

24-4.7-4-1	Prohibitions
24-4.7-4-2	Violations; disclosure
24-4.7-4-3	Consumer information containing telephone numbers; exclusion of numbers on listing required; exception
24-4.7-4-4	Contracts and sales
24-4.7-4-5	Transactions
24-4.7-4-6	Compliance with other applicable laws
24-4.7-4-7	Prohibitions; providing telephone numbers for solicitation purposes; transferring live calls; providing assistance or support to violators; inapplicability to communications service providers

IC 24-4.7-4-1 Prohibitions

Sec. 1. A telephone solicitor may not make or cause to be made a telephone sales call to a telephone number if that telephone number appears in the most current quarterly listing published by the division.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-4-2 Violations; disclosure

Sec. 2. A telephone solicitor who makes a telephone sales call to a telephone number shall immediately disclose the following information upon making contact with the consumer:

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

As added by P.L.189-2001, SEC.1. Amended by P.L.153-2017, SEC.4.

IC 24-4.7-4-3 Consumer information containing telephone numbers; exclusion of numbers on listing required; exception

Sec. 3. (a) This section does not apply to a person obtaining consumer information for inclusion in directory assistance and telephone directories sold by telephone companies.

(b) A telephone solicitor, a supplier, a caller, or any other person who obtains consumer information that includes telephone numbers shall exclude the telephone numbers that appear on the division's most current listing.

As added by P.L.189-2001, SEC.1. Amended by P.L.61-2014, SEC.3.

IC 24-4.7-4-4 Contracts and sales

Sec. 4. (a) This section does not apply to any of the following:

- (1) A sale in which:
 - (A) no prior payment is made to a merchant;
 - (B) an invoice accompanies the goods or services; and
 - (C) a consumer is allowed seven (7) days to cancel the services or return the goods without obligation for payment.
- (2) A contractual agreement that:
 - (A) requires payment; and
 - (B) allows the consumer at least ten (10) days to cancel the contract and receive a full refund of the payment.
- (3) A sale regulated by 170 IAC 7-1.1-19.
- (4) A newspaper subscription executed through a telephone call.

(b) A contract made under a telephone sales call is not valid and enforceable against a consumer unless the contract complies with this section.

(c) A contract made under a telephone sales call must satisfy all of the following:

- (1) The contract must be reduced to writing and signed by the consumer.

(2) The contract must contain the name, address, and business telephone number of the seller, the total price of the contract, and a detailed description of the goods or services being sold.

(3) The description of goods or services as stated in the contract must be the same as the description principally used in the telephone solicitation.

(4) The contract must contain, in bold, conspicuous type immediately preceding the signature the words "you are not obligated to pay any money unless you sign this contract and return it to the seller".

(5) The contract may not exclude from its terms any oral or written representations made by the telephone solicitor to the consumer in connection with the transaction.

As added by P.L.189-2001, SEC.1. Amended by P.L.22-2002, SEC.1.

IC 24-4.7-4-5 Transactions

Sec. 5. (a) This section does not apply to any of the following:

(1) A transaction made in accordance with prior negotiations in the course of a visit by a consumer to a merchant that operates a retail business establishment that has a fixed, permanent location where consumer goods are displayed or offered for sale on a continuing basis.

(2) A transaction in which:

(A) a consumer may obtain a full refund for the return of undamaged and unused goods; or

(B) a consumer may, within seven (7) days after receipt of merchandise by a consumer, give a cancellation of services notice to a seller and return the merchandise, and the seller must process the refund within thirty (30) days after receipt of the returned merchandise.

(3) A transaction in which a consumer purchases goods or services under a television, radio, or print advertisement or a sample, brochure, or catalog of a merchant that contains:

(A) the name, address, and business telephone number of the merchant;

(B) a description of the goods or services being sold; and

(C) limitations or restrictions that apply to the offer.

(4) A transaction in which a merchant is a bona fide charitable organization.

(b) A contract made under a telephone sales call in violation of this section is not valid and enforceable against a consumer.

(c) A merchant who engages a telephone solicitor to make or cause to be made a telephone sales call may not:

(1) make or submit a charge to a consumer's credit card account; or

(2) make or cause to be made any electronic transfer of funds;

until the merchant receives from the consumer a copy of the contract, signed by the consumer, that complies with this chapter.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-4-6 Compliance with other applicable laws

Sec. 6. A telephone solicitor, a supplier, or a caller must also comply with all other applicable laws, including the following, if applicable:

(1) IC 24-5-12.

(2) IC 24-5-14.

(3) IC 24-5-14.5.

As added by P.L.189-2001, SEC.1. Amended by P.L.22-2002, SEC.2; P.L.61-2014, SEC.4.

IC 24-4.7-4-7 Prohibitions; providing telephone numbers for solicitation purposes; transferring live calls; providing assistance or support to violators; inapplicability to communications service

providers

Sec. 7. (a) This section does not apply to the sale, transfer, or provision of a consumer's telephone number to a person that is exempt from this article under IC 24-4.7-1-1.

(b) A telephone solicitor, a supplier, or a caller may not sell, transfer, or make available to another person for solicitation purposes a consumer's telephone number if the telephone solicitor, supplier, or caller knows that the telephone number appears in the most current quarterly listing published by the division.

(c) A telephone solicitor, a supplier, or a caller may not transfer a live call to one (1) or more other persons if the call has been placed to a consumer in violation of this article or IC 24-5-14.

(d) A telephone solicitor, a supplier, or a caller may not provide substantial assistance or support to another person if the telephone solicitor, supplier, or caller knows or consciously avoids knowing that the person has engaged in any act or practice that violates this article or IC 24-5-14.

(e) A person may not provide substantial assistance or support to a telephone solicitor, a supplier, or a caller if the person knows or consciously avoids knowing that the telephone solicitor, supplier, or caller has engaged in any act or practice that violates this article or IC 24-5-14. A communications service provider (as defined in IC 8-1-32.5-4) does not violate this subsection, and this subsection does not:

- (1) provide a right of action against a communications service provider; or
- (2) subject a communications service provider to any criminal penalties or civil remedies set forth in this article or in IC 24-5-14;

if the communications service provider's equipment or services are used only to transport, handle, or retransmit a communication that violates this article or IC 24-5-14.

As added by P.L.61-2014, SEC.5. Amended by P.L.227-2015, SEC.1.

IC 24-4.7-5 Chapter 5. Civil Remedies

24-4.7-5-0.1	Application of certain amendments to chapter
24-4.7-5-1	Deceptive acts; state contractors
24-4.7-5-2	Remedies
24-4.7-5-3	Voidable contracts
24-4.7-5-4	Statute of limitations
24-4.7-5-5	Jurisdiction
24-4.7-5-6	Representation of state

IC 24-4.7-5-0.1 Application of certain amendments to chapter

Sec. 0.1. The amendments made to section 1 of this chapter by P.L.222-2005 apply only to a contract entered into or renewed after July 1, 2005.

As added by P.L.220-2011, SEC.393.

IC 24-4.7-5-1 Deceptive acts; state contractors

Sec. 1. A telephone solicitor, a supplier, or a caller who fails to comply with any provision of IC 24-4.7-4 commits a deceptive act that is actionable by the attorney general under this chapter. A person who directly or indirectly controls a person that fails to comply with any provision of IC 24-4.7-4 commits a separate deceptive act that is actionable by the attorney general under this chapter. In addition, a contractor who contracts or seeks to contract with the state:

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

if the contractor, an affiliate or principal of the contractor, a person that directly or indirectly controls the contractor, 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.

As added by P.L.189-2001, SEC.1. Amended by P.L.165-2005, SEC.5 and P.L.222-2005, SEC.32; P.L.61-2014, SEC.6; P.L.153-2017, SEC.5.

IC 24-4.7-5-2 Remedies

Sec. 2. (a) In an action under this chapter, the attorney general may obtain any or all of the following:

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

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

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

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

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

that the person:

(1) did not know; and

(2) in the exercise of reasonable care could not have known;

of the violation.

As added by P.L.189-2001, SEC.1. Amended by P.L.153-2017, SEC.6.

IC 24-4.7-5-3 Voidable contracts

Sec. 3. In an action under this chapter, the court may void or limit the application of contracts or clauses resulting from deceptive acts and order restitution to be paid to an aggrieved consumer.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-5-4 Statute of limitations

Sec. 4. An action brought under this chapter may not be brought more than two (2) years after the occurrence of the deceptive act.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-5-5 Jurisdiction

Sec. 5. An action under this chapter may be brought in the circuit or superior court of Marion County.

As added by P.L.189-2001, SEC.1.

IC 24-4.7-5-6 Representation of state

Sec. 6. The attorney general may employ counsel to represent the state in an action under this chapter.

As added by P.L.189-2001, SEC.1.