

IC 24-5-12

Chapter 12. Telephone Solicitations

IC 24-5-12-0.1

Application of certain amendments to chapter

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to section 2 of this chapter by P.L.24-1989 are clarifications only and should not be construed as modifications of existing law.

(2) The amendments made to section 23 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.396.

IC 24-5-12-1

"Division" defined

Sec. 1. As used in this chapter, "division" means the consumer protection division of the office of the attorney general.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-2

"Item" defined

Sec. 2. As used in this chapter, "item" means tangible or intangible property or services. The term includes but is not limited to coupon books for use with a business other than the seller's business and certificates of a type that the purchaser must redeem to obtain the item described in the certificate.

As added by P.L.253-1987, SEC.1. Amended by P.L.24-1989, SEC.23.

IC 24-5-12-3

"Owner" defined

Sec. 3. As used in this chapter, "owner" means a person who owns or controls ten percent (10%) or more of the equity of a seller, or otherwise has a claim to ten percent (10%) or more of the net income of a seller.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-4

"Person" defined

Sec. 4. As used in this chapter, "person" means an individual, an incorporated or unincorporated organization or association, or any other legal entity.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-5

"Principal" defined

Sec. 5. As used in this chapter, "principal" means an owner, an officer, a general partner, a trustee, or other individual with

supervisory functions usually exercised by those persons.
As added by P.L.253-1987, SEC.1.

IC 24-5-12-6

"Prospect" defined

Sec. 6. As used in this chapter, "prospect" means a person solicited by a seller.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-7

"Salesperson" defined

Sec. 7. As used in this chapter, "salesperson" means a person employed, authorized, or appointed by a seller, including an independent contractor, who solicits a sale on behalf of the seller.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-8

"Seller" defined

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.

As added by P.L.253-1987, SEC.1. Amended by P.L.2-2002, SEC.77.

IC 24-5-12-9**"Solicitation" defined**

Sec. 9. As used in this chapter, "solicitation" means a telephone conversation or attempted telephone conversation in which the seller offers, or attempts to offer, an item to another person in exchange for money or other consideration.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-10**Registration of seller; requirement**

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.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-11**Registration statement; filing; fee**

Sec. 11. To register under this chapter a person must file with the division a registration statement disclosing the information required by this chapter and pay a fifty dollar (\$50) registration fee.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-12**Registration statement; required information**

Sec. 12. The registration statement must contain the following information:

- (1) The name of the seller.
- (2) Whether the seller is doing business as a corporation, a partnership, an individual, or other legal entity.
- (3) The names under which the seller has done, is doing, or intends to do business.
- (4) The name of any parent or affiliated business that will engage in business transactions with the prospect or will take responsibility for statements made by the seller or a salesperson of the seller.
- (5) The names, dates of birth, business addresses, business telephone numbers, and titles of all the seller's officers, directors, trustees, general partners, general managers, principals, executives, and any other person charged with responsibility for the seller's business activities relating to telephone sales.
- (6) The length of time the seller has:
 - (A) solicited telephone sales; and
 - (B) solicited telephone sales for the items to be offered to the prospect.

- (7) A statement of the amount to be paid by the prospect, or when not known, the approximate amount or range of amount to be paid.
- (8) A complete and detailed description of any service that the seller proposes to undertake to perform for a prospect who purchases the item offered.
- (9) An unexecuted copy of all contracts that may be offered in the transaction being solicited.
- (10) The complete street address or addresses of all locations, designating the principal location from which the seller will be conducting business, and, if the principal location is outside Indiana, a designation of its principal location within Indiana.
- (11) A listing of all telephone numbers to be used by the seller and the address of each location using these numbers.
- (12) A copy of all sales scripts the seller requires salespersons to use when soliciting a prospect or, if no sales script is required to be used, a statement to that effect.
- (13) The name and address of the seller's agent in Indiana, authorized to receive service of process in Indiana.
- (14) A statement as to whether the seller or any of its officers, directors, trustees, general partners, managers, principals, executives, or representatives has been:
 - (A) held liable in a civil action for an unfair, false, misleading, or deceptive practice;
 - (B) convicted of a crime involving fraud, embezzlement, conversion, or theft during the most recent seven (7) year period; or
 - (C) declared bankrupt in any judicial proceeding during the most recent seven (7) year period.
- (15) A statement containing the names of the parties, the name of the court, the cause or docket number of the lawsuit, the date the suit was filed, and the date the judgment was entered, if applicable, for each action under subdivision (14).

As added by P.L.253-1987, SEC.1.

IC 24-5-12-13

Registration statement; gifts, prizes, or other items represented or implied; additional information required

Sec. 13. If the seller represents or implies, or directs a salesperson to represent or imply, to a prospect that a purchaser will receive one (1) or more items (whether the items are designated as gifts, premiums, bonuses, prizes, or otherwise), the registration statement must also contain the following information:

- (1) A list of items offered.
- (2) The value of each item described to a prospect and the basis for the valuation.
- (3) The price paid by the seller to its supplier for each of these items, and the names, business addresses, and business telephone numbers of the supplier of each item.
- (4) The manner in which the seller decides which items a

prospect is to receive, if a purchaser is to receive fewer than all of the items described by the seller.

(5) The odds a prospect or purchaser has of receiving each described item, if a purchaser is to receive fewer than all of the items described by the seller.

(6) All terms and conditions that a prospect must meet in order to receive the item, if a purchaser is to receive fewer than all of the items described by the seller.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-14

Annual update of registration; additional fee

Sec. 14. On August 1 of each year, every person registered under this chapter shall file an update to the registration. The registrant shall pay an additional fifty dollars (\$50) for filing the annual update.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-15

Disclosures required; update of changes; filing

Sec. 15. In addition to the annual update described in section 14 of this chapter, an update shall be filed whenever changes occur that make the disclosures required under this chapter inaccurate, false, or misleading.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-16

Record of filings; assigned registration number

Sec. 16. The director of the division shall maintain a record of all filings made under this chapter and shall assign a registration number to each of them. The director shall advise the seller, in writing, of the assigned number. All advertisements, pamphlets, brochures, or any other materials used in the solicitation or completion of telephonic sales must include the assigned registration number in the following manner: "C.P.D. Reg. No. T.S. _____."

As added by P.L.253-1987, SEC.1.

IC 24-5-12-17

Reference to compliance with chapter restricted

Sec. 17. A seller may not make any reference to its compliance with this chapter other than by setting forth the registration number as provided in section 16 of this chapter.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-18

Failure to comply with sections 10 through 16; cancellation of contract

Sec. 18. If a seller fails to comply with sections 10 through 16 of this chapter, a purchaser may cancel any contract with the seller by notifying the seller in any manner.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-19**Deceptive statements; failure to deliver item ordered; voiding of contract; requisites**

Sec. 19. If a seller:

(1) uses any untrue, misleading, or deceptive statement in a solicitation or sale; or

(2) fails to deliver an item ordered within four (4) weeks;

the purchaser may void the contract within ninety (90) days from the date of the contract by giving written notice to the seller and is entitled to a return from the seller of all consideration paid to the seller. Upon receipt by the purchaser of the consideration paid to the seller, the purchaser shall make available to the seller, at a reasonable time and place, the items received by the purchaser.

As added by P.L.253-1987, SEC.1. Amended by P.L.5-1988, SEC.131.

IC 24-5-12-20**Damages; costs and attorney's fees**

Sec. 20. In addition to any other remedies or penalties under this chapter, a person who is damaged by a seller's failure to comply with this chapter or by a seller's breach of contract may bring an action for recovery of the person's actual damages, including court costs and attorney's fees.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-21**Violations; injunction**

Sec. 21. Upon petition by any person that a seller has failed to comply with this chapter, the circuit or superior court of the county of residence of the petitioner may enjoin the seller from further violations.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-22 Version a**Failure to comply with sections 10 through 16; Class D felony**

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

Sec. 22. A seller who fails to comply with sections 10 through 16 of this chapter commits a Class D felony.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-22 Version b**Failure to comply; penalty**

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

Sec. 22. A seller who fails to comply with sections 10 through 16 of this chapter commits a Level 6 felony.

As added by P.L.253-1987, SEC.1. Amended by P.L.158-2013, SEC.275.

IC 24-5-12-23

Deceptive acts; injunction; venue

Sec. 23. 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.

As added by P.L.253-1987, SEC.1. Amended by P.L.24-1989, SEC.24; P.L.165-2005, SEC.8 and P.L.222-2005, SEC.34.

IC 24-5-12-24

Construction of chapter

Sec. 24. This chapter may not be construed to relieve a person from complying with any other statute or ordinance.

As added by P.L.253-1987, SEC.1.

IC 24-5-12-25

Blocking telephone number or identity of solicitor; violations

Sec. 25. (a) If a person makes a solicitation to a prospect that is outside of the course of dealing (as described in IC 26-1-1-205), whether personally, through salespersons, or through the use of an automated dialing and answering device, the person may not knowingly or intentionally block or attempt to block the display of the person's:

- (1) telephone number; or
- (2) identity;

by a caller identification service (as defined in IC 24-5-14.5-3) when attempting to initiate a telephone conversation for the purpose of making a solicitation to a prospect.

(b) A person who knowingly or intentionally violates this section commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a previous unrelated conviction under this subsection.

As added by P.L.48-1998, SEC.7. Amended by P.L.151-2013, SEC.7.