

SENATE BILL No. 307

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.6-6; IC 24-4.7-4-7; IC 24-5; IC 25-1-7.

Synopsis: Consumer protection. Amends the senior consumer protection act (act) as follows: (1) Expands the class of consumers covered by the act to include: (A) veterans; and (B) individuals with physical disabilities, developmental disabilities, or mental impairments; in addition to senior consumers. (2) Changes the term "senior consumer" to "protected consumer" to encompass the additional consumers covered. Amends the statute concerning telephone solicitations of consumers (Indiana's "do not call" law) to provide that 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 violated the "do not call" law or the statute concerning the regulation of automatic dialing machines. Amends the statute concerning home improvement contracts to specify that: (1) an exterior home improvement includes lawn care, landscaping, snow removal, driveway sealing, tree trimming, and pest control services; and (2) a home improvement includes interior pest control services. Amends the statute concerning the regulation of automatic dialing machines to provide that the attorney general is not required to prove that a violation of the statute was knowing or intentional for a court to impose a civil penalty for the violation. Amends the statute concerning the investigation and prosecution of complaints concerning regulated occupations to add to the permissible reasons for disclosure of information concerning a complaint a disclosure that is made to a law enforcement agency that has or is reasonably believed to have jurisdiction over a person or matter involved in the complaint.

Effective: July 1, 2015.

Bray

January 8, 2015, read first time and referred to Committee on Commerce & Technology.



First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 307



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 24-4.6-6-1, AS ADDED BY P.L.250-2013,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 1. (a) This chapter shall be known and may be
4 cited as the senior, **veteran, or disabled** consumer protection act.
5 (b) This chapter does not apply to deception, intimidation, or other
6 exploitation of a **senior protected** consumer in relation to insurance
7 coverage or an insurance product that is regulated by the Indiana
8 department of insurance. A **senior protected** consumer who is a victim
9 of an act that is:
10 (1) described in section 4(a) or 4(b) of this chapter; and
11 (2) related to insurance coverage or an insurance product;
12 may report the act to the Indiana department of insurance for action by
13 the insurance commissioner under IC 27. If the insurance
14 commissioner determines that the person who committed the act is not
15 subject to regulation by the Indiana department of insurance, the
16 insurance commissioner shall immediately refer the **senior protected**



1 consumer to the attorney general and the **senior protected** consumer
 2 may pursue remedies available under this chapter.

3 (c) This chapter does not apply to the exploitation of a **senior**
 4 **protected** consumer in relation to securities fraud that is regulated by
 5 the secretary of state's office. A **senior protected** consumer who is a
 6 victim of an act that is:

7 (1) described in section 4(a) or 4(b) of this chapter; and

8 (2) related to the Indiana uniform securities act under IC 23-19;
 9 shall report the act to the secretary of state under IC 23-19. If the
 10 secretary of state's office determines the person who committed the act
 11 is not subject to the regulation of the secretary of state's office, the
 12 secretary of state's office shall immediately refer the **senior protected**
 13 consumer to the attorney general and the **senior protected** consumer
 14 may pursue remedies available under this chapter.

15 SECTION 2. IC 24-4.6-6-2, AS ADDED BY P.L.250-2013,
 16 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2015]: Sec. 2. (a) This chapter shall be liberally construed and
 18 applied to protect **senior protected** consumers.

19 (b) The purposes and policies of this chapter are to:

20 (1) simplify, clarify, and modernize the law concerning the
 21 ownership, control, and use of property or assets of **senior**
 22 **protected** consumers; and

23 (2) protect **senior protected** consumers from financial
 24 exploitation from persons, who by deception or intimidation,
 25 obtain control over the property or assets of a **senior protected**
 26 consumer.

27 SECTION 3. IC 24-4.6-6-3, AS ADDED BY P.L.250-2013,
 28 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2015]: Sec. 3. The following definitions apply throughout this
 30 chapter:

31 (1) "Deception" means:

32 (A) misrepresentation or omission of any material fact relating
 33 to the terms of a contract or agreement entered into with a
 34 **senior protected** consumer or to the existing or pre-existing
 35 condition of any of the property involved in such a contract or
 36 agreement; or

37 (B) the use or employment of any misrepresentation, false
 38 pretense, or false promise in order to induce, encourage, or
 39 solicit a **senior protected** consumer to enter into a contract or
 40 agreement.

41 (2) "Intimidation" means the conduct or communication by a
 42 person directed toward a **senior protected** consumer informing or



1 implying to the **senior protected** consumer that the **senior**
 2 **protected** consumer will be deprived of food and nutrition,
 3 shelter, prescribed medication, or medical care and treatment if
 4 the **senior protected** consumer does not comply with the person's
 5 demands.

6 (3) "Person" means an individual, a corporation, the state of
 7 Indiana or its subdivisions or agencies, a business trust, an estate,
 8 a trust, a partnership, an association, a nonprofit corporation or
 9 organization, a cooperative, or any other legal entity.

10 (4) "Person in a position of trust and confidence" means a person,
 11 in relation to a **senior protected** consumer, who:

12 (A) is a parent, spouse, adult child, or other relative by blood
 13 or marriage of the **senior protected** consumer;

14 (B) is a joint tenant or tenant in common with the **senior**
 15 **protected** consumer;

16 (C) has a legal or fiduciary relationship with the **senior**
 17 **protected** consumer;

18 (D) is a financial planning or investment professional; or

19 (E) is a paid or unpaid caregiver for the **senior protected**
 20 consumer.

21 (5) "**Senior Protected** consumer" means **an individual who**
 22 **qualifies as any one (1) or more of the following:**

23 (A) An individual who is at least sixty (60) years of age.

24 (B) A veteran (as defined in IC 22-9-10-8).

25 (C) An individual with:

26 (i) a physical disability;

27 (ii) a developmental disability (as defined in
 28 IC 12-7-2-61); or

29 (iii) a mental impairment.

30 SECTION 4. IC 24-4.6-6-4, AS ADDED BY P.L.250-2013,
 31 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2015]: Sec. 4. (a) A person commits financial exploitation of
 33 a **senior protected** consumer when the person knowingly and by
 34 deception or intimidation obtains control over the property of a **senior**
 35 **protected** consumer or illegally uses the assets or resources of a **senior**
 36 **protected** consumer.

37 (b) The illegal use of the assets or resources of a **senior protected**
 38 consumer includes, but is not limited to, the misappropriation of those
 39 assets or resources by undue influence, breach of a fiduciary
 40 relationship, fraud, deception, extortion, intimidation, or use of the
 41 assets or resources contrary to law.

42 (c) Nothing in this section shall be construed to impose civil liability



1 on a person who has made a good faith effort to assist a **senior**
 2 **protected** consumer in the management of the **senior protected**
 3 consumer's property, but through no fault of the person has been unable
 4 to provide such assistance.

5 (d) It is not a defense in an action under this chapter that a person
 6 reasonably believed that the victim was not a **senior protected**
 7 consumer.

8 SECTION 5. IC 24-4.6-6-5, AS ADDED BY P.L.250-2013,
 9 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2015]: Sec. 5. (a) A **senior protected** consumer who is a
 11 victim of an act described in section 4(a) or 4(b) of this chapter may
 12 bring an action against the person who commits the act.

13 (b) In an action brought against a person under this section, the
 14 court may order the person to:

15 (1) return property or assets improperly obtained, controlled, or
 16 used; and

17 (2) reimburse the **senior protected** consumer for any damages
 18 incurred or for the value of the property or assets lost as a result
 19 of the violation or violations of this chapter.

20 (c) In addition to the remedy provided in subsection (b), a court may
 21 order the following:

22 (1) For knowing violations committed by a person who is not in
 23 a position of trust and confidence:

24 (A) payment of two (2) times the amount of damages incurred
 25 or value of property or assets lost; and

26 (B) payment of a civil penalty not exceeding five thousand
 27 dollars (\$5,000).

28 (2) For knowing violations committed by a person in a position of
 29 trust and confidence:

30 (A) payment of treble damages; and

31 (B) payment of a civil penalty not exceeding ten thousand
 32 dollars (\$10,000).

33 (d) The court may award reasonable attorney's fees to a **senior**
 34 **protected** consumer that prevails in an action under this section.
 35 Actual damages awarded to a person under this section have priority
 36 over any civil penalty imposed under this chapter.

37 (e) The burden of proof in proving that a person committed financial
 38 exploitation of a **senior protected** consumer under section 4 of this
 39 chapter is by a preponderance of the evidence.

40 (f) The attorney general may bring an action to enjoin an alleged
 41 commission of financial exploitation of a **senior consumer one (1) or**
 42 **more protected consumers** and may petition the court to freeze the



1 assets of the person allegedly committing financial exploitation of a
 2 ~~senior consumer~~ **one (1) or more protected consumers** in an amount
 3 equal to but not greater than the alleged value of lost property or assets
 4 for purposes of restoring to the ~~victim~~ **affected protected consumers**
 5 the value of the lost property or assets. The burden of proof required to
 6 freeze the assets of a person allegedly committing financial exploitation
 7 of a **senior protected** consumer is by a preponderance of the evidence.
 8 In addition, the court may:

9 (1) issue an injunction;

10 (2) order the person to make payment of the money unlawfully
 11 received from the ~~senior consumer or senior protected~~
 12 consumers, to be held in escrow for distribution to the aggrieved
 13 ~~senior consumer or senior protected~~ consumers;

14 (3) for knowing violations, increase the amount of restitution
 15 ordered under subdivision (2) in any amount up to three (3) times
 16 the amount of damages incurred or value of property or assets
 17 lost;

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

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

22 (6) for knowing violations by a person who is not in a position of
 23 trust and confidence, order the person to pay a civil penalty of up
 24 to five thousand dollars (\$5,000) per violation; and

25 (7) for knowing violations by a person in a position of trust and
 26 confidence, order the person to pay a civil penalty of up to ten
 27 thousand dollars (\$10,000) per violation.

28 (g) In an action under subsection (a) or (f), the court may void or
 29 limit the application of contracts or clauses resulting from the financial
 30 exploitation.

31 (h) In an action under subsection (a), upon the filing of the
 32 complaint or on the appearance of any defendant, claimant, or other
 33 party, or at any later time, the trial court, the supreme court, or the court
 34 of appeals may require ~~the any~~ plaintiff, defendant, claimant, or other
 35 party or parties to give security, or additional security, in a sum the
 36 court directs, to pay all costs, expenses, and disbursements that are
 37 awarded against that party or that the party may be directed to pay by
 38 any interlocutory order, by the final judgment, or on appeal.

39 (i) Any person who violates the terms of an injunction issued under
 40 subsection (f) shall forfeit and pay to the state a civil penalty of not
 41 more than fifteen thousand dollars (\$15,000) per violation. For the
 42 purposes of this section, the court issuing the injunction shall retain



1 jurisdiction, the cause shall be continued, and the attorney general
 2 acting in the name of the state may petition for recovery of civil
 3 penalties. Whenever the court determines that an injunction issued
 4 under subsection (f) has been violated, the court shall award reasonable
 5 costs to the state.

6 SECTION 6. IC 24-4.6-6-6, AS ADDED BY P.L.250-2013,
 7 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2015]: Sec. 6. This chapter does not limit the rights or
 9 remedies that are otherwise available to a **senior protected** consumer
 10 under any other applicable provision of law.

11 SECTION 7. IC 24-4.7-4-7, AS ADDED BY P.L.61-2014,
 12 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2015]: Sec. 7. (a) This section does not apply to the sale,
 14 transfer, or provision of a consumer's telephone number to a person that
 15 is exempt from this article under IC 24-4.7-1-1.

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

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

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

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

34 SECTION 8. IC 24-5-11-2.5, AS ADDED BY P.L.82-2012,
 35 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2015]: Sec. 2.5. (a) As used in this chapter, "exterior home
 37 improvement" means any alteration, repair, replacement,
 38 reconstruction, or other modification made to the exterior of residential
 39 property, including **any alteration, repair, replacement,**
 40 **reconstruction, or other modification made to:**

41 (1) the exterior of any structure on or fixture or improvement to
 42 the property; or



- 1 **(2) the property's curtilage or grounds.**
 2 **(b) The term ~~also~~ includes:**
 3 **(1) the alteration, repair, replacement, reconstruction, or other**
 4 **modification of a residential roof system; and**
 5 **(2) any of the following services performed with respect to the**
 6 **property:**
 7 **(A) Lawn care.**
 8 **(B) Landscaping.**
 9 **(C) Snow removal.**
 10 **(D) Driveway sealing.**
 11 **(E) Tree trimming, other than tree trimming performed by**
 12 **an electric utility in accordance with 170 IAC 4-9.**
 13 **(F) Pest control.**
 14 SECTION 9. IC 24-5-11-3, AS AMENDED BY P.L.82-2012,
 15 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2015]: Sec. 3. (a) As used in this chapter, "home
 17 improvement" means any alteration, repair, replacement,
 18 reconstruction, or other modification of residential property.
 19 (b) The term includes:
 20 **(1) an exterior home improvement; and**
 21 **(2) pest control services performed on the interior of any**
 22 **structure on or fixture or improvement to the property.**
 23 SECTION 10. IC 24-5-11-7.5, AS ADDED BY P.L.82-2012,
 24 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2015]: Sec. 7.5. (a) As used in this chapter, "residential
 26 property" means real property that:
 27 (1) contains one (1) to four (4) units; and
 28 (2) is used in whole or in part as a dwelling of a consumer.
 29 (b) The term includes:
 30 **(1) all fixtures to, structures on, and improvements to the real**
 31 **property; and**
 32 **(2) the property's curtilage or grounds.**
 33 SECTION 11. IC 24-5-14-13 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 13. **(a)** A caller who
 35 violates this chapter commits a deceptive act that is actionable by the
 36 attorney general under IC 24-5-0.5-4 and that is subject to the remedies
 37 and penalties under IC 24-5-0.5-4(c), IC 24-5-0.5-4(d),
 38 IC 24-5-0.5-4(f), IC 24-5-0.5-4(g), and IC 24-5-0.5-8.
 39 **(b) In an action filed under IC 24-5-0.5-4(c) for one (1) or more**
 40 **alleged violations of this chapter, if the court determines that a**
 41 **defendant has committed one (1) or more violations of this chapter,**
 42 **the court may order the defendant to pay a civil penalty under:**



1 (1) IC 24-5-0.5-8; or
 2 (2) IC 24-5-0.5-4(g);
 3 **for one (1) or more of the violations, as the court determines**
 4 **appropriate. Notwithstanding IC 24-5-0.5-4(g), the attorney**
 5 **general is not required to prove that a violation of this chapter was**
 6 **committed knowingly or intentionally for the court to order the**
 7 **payment of a civil penalty described in subdivision (1) or (2).**

8 SECTION 12. IC 25-1-7-1, AS AMENDED BY P.L.3-2014,
 9 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2015]: Sec. 1. The following terms are defined for this
 11 chapter:

12 (1) "Board" means the appropriate entity described in IC 25-0.5-8.

13 (2) "Director" refers to the director of the division of consumer
 14 protection.

15 (3) "Division" refers to the division of consumer protection, office
 16 of the attorney general.

17 **(4) "Law enforcement agency" has the meaning set forth in**
 18 **IC 35-47-15-2.**

19 ~~(5)~~ (5) "Licensee" means a person who is:

20 (A) licensed, certified, or registered by an entity described in
 21 IC 25-0.5-8; and

22 (B) the subject of a complaint filed with the division.

23 ~~(6)~~ (6) "Person" means an individual, a partnership, a limited
 24 liability company, or a corporation.

25 ~~(7)~~ (7) "Regulated occupation" means an occupation in which a
 26 person is licensed, certified, or registered by one (1) of the entities
 27 described in IC 25-0.5-8.

28 SECTION 13. IC 25-1-7-5, AS AMENDED BY P.L.3-2014,
 29 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2015]: Sec. 5. (a) Subsection (b)(1) does not apply to:

31 (1) a complaint filed by:

32 (A) a member of any of the entities described in IC 25-0.5-8;
 33 or

34 (B) the Indiana professional licensing agency; or

35 (2) a complaint filed under IC 25-1-5-4.

36 (b) Except as provided in section 3(b) **or** 3(c) of this chapter, the
 37 director has the following duties and powers:

38 (1) The director shall make an initial determination as to the merit
 39 of each complaint. A copy of a complaint having merit shall be
 40 submitted to the board having jurisdiction over the licensee's
 41 regulated occupation, that board thereby acquiring jurisdiction
 42 over the matter except as otherwise provided in this chapter.



- 1 (2) The director shall through any reasonable means notify the
 2 licensee of the nature and ramifications of the complaint and of
 3 the duty of the board to attempt to resolve the complaint through
 4 negotiation.
- 5 (3) The director shall report any pertinent information regarding
 6 the status of the complaint to the complainant.
- 7 (4) The director may investigate any written complaint against a
 8 licensee. The investigation shall be limited to those areas in which
 9 there appears to be a violation of statutes governing the regulated
 10 occupation.
- 11 (5) The director has the power to subpoena witnesses and to send
 12 for and compel the production of books, records, papers, and
 13 documents for the furtherance of any investigation under this
 14 chapter. The circuit or superior court located in the county where
 15 the subpoena is to be issued shall enforce any such subpoena by
 16 the director.
- 17 SECTION 14. IC 25-1-7-10, AS AMENDED BY P.L.226-2011,
 18 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2015]: Sec. 10. (a) Except as provided in section 3(b) **or 3(c)**
 20 of this chapter, all complaints and information pertaining to the
 21 complaints shall be held in strict confidence until the attorney general
 22 files notice with the board of the attorney general's intent to prosecute
 23 the licensee.
- 24 (b) A person in the employ of the office of attorney general or any
 25 of the boards, or any person not a party to the complaint, may not
 26 disclose or further a disclosure of information concerning the
 27 complaint unless the disclosure is: ~~required:~~
- 28 (1) **required** under law; ~~or~~
 29 (2) **required** for the advancement of an investigation; ~~or~~
 30 (3) **made to a law enforcement agency that has jurisdiction or**
 31 **is reasonably believed to have jurisdiction over a person or**
 32 **matter involved in the complaint.**

