



March 21, 2007

**ENGROSSED
SENATE BILL No. 267**

DIGEST OF SB 267 (Updated March 20, 2007 10:38 am - DI 107)

Citations Affected: IC 4-6.

Synopsis: Attorney general's office issues. Provides that if: (1) the attorney general issues an investigative demand in a civil action concerning a statute enforced by the attorney general; (2) a person objects to or otherwise fails to obey the written demand; and (3) the person does not reside or maintain a principal place of business in Indiana; the attorney general may file an application for an order to enforce the demand in the Marion County circuit or superior court. Provides that certain consumer information is confidential for the purposes of registering for or maintaining the no telephone sales solicitation listing.

Effective: July 1, 2007.

Bray, Broden

(HOUSE SPONSORS — VAN HAAFTEN, KOCH)

January 8, 2007, read first time and referred to Committee on Judiciary.
January 25, 2007, reported favorably — Do Pass.
January 29, 2007, read second time, ordered engrossed. Engrossed.
January 30, 2007, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 26, 2007, read first time and referred to Committee on Judiciary.
March 20, 2007, amended, reported — Do Pass.

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March 21, 2007

First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 267

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-6-3-6 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2007]: Sec. 6. If a person objects or otherwise
3 fails to obey a written demand issued under section 3 of this chapter,
4 the attorney general may file in the circuit or superior court of the
5 county in which that person resides or maintains a principal place of
6 business within the state an application for an order to enforce the
7 demand. **If the person does not reside or maintain a principal place**
8 **of business in Indiana, the application for the order to enforce the**
9 **demand may be filed in the Marion County circuit or superior**
10 **court.** Notice of hearing and a copy of the application shall be served
11 upon that person, who may appear in opposition to the application. The
12 attorney general must demonstrate to the court that the demand is
13 proper. If the court finds that the demand is proper, it shall order that
14 person to comply with the demand, subject to such modification as the
15 court may prescribe. Upon motion by that person and for good cause
16 shown, the court may make any further order in the proceedings which
17 justice requires to protect ~~him~~ **the person** from unreasonable

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annoyance, embarrassment, oppression, burden, expense, or to protect privileged information, trade secrets or information which is confidential under any other provision of law. If the court finds that either party has acted in bad faith in seeking or resisting the demand, it may order that person to pay the other parties reasonable expenses including attorneys' fees.

SECTION 2. IC 4-6-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) The division has the following powers and duties:

(1) The power to investigate any written consumer complaint made by a nonmerchant arising from a transaction between a merchant as defined in the Uniform Commercial Code and a nonmerchant concerning sales, leases, assignments, awards by chance, or other dispositions of goods, services, or repairs, and intangibles to a person for purposes that are primarily personal, familial, household, charitable, or agricultural, or a solicitation to supply any of the above things. When a consumer trades in or sells a motor vehicle to another consumer or nonconsumer, he shall be deemed to be a nonconsumer and shall be subject to the provisions of this chapter. The division shall have no jurisdiction over matters concerning utilities subject to regulation by the utility regulatory commission or by an agency of the United States except that the provisions of subdivision (5) shall apply and except as provided in IC 8-1-29.

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

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

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

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

(6) Whenever a violation of a state or federal law or administrative rule is indicated, the duty to forward to the appropriate state or federal agency a copy of the correspondence

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1 and request that the agency further investigate the complaint and
 2 report to the division upon the disposition of the complaint.
 3 (7) The power to initiate and prosecute civil actions on behalf of
 4 the state whenever an agency to which a complaint has been
 5 forwarded fails to act upon the complaint within ten (10) working
 6 days after its referral, or whenever no state agency has jurisdiction
 7 over the subject matter of the complaint.
 8 (b) All complaints and correspondence in the possession of the
 9 division under this chapter are confidential unless disclosure of a
 10 complaint or correspondence is:
 11 (1) requested by the person who filed the complaint;
 12 (2) consented to, in whole or in part, after August 31, 1984, by the
 13 person who filed the complaint;
 14 (3) in furtherance of an investigation by a law enforcement
 15 agency; or
 16 (4) necessary for the filing of an action by the attorney general
 17 under IC 24-5-0.5.
 18 (c) Notwithstanding subsection (b), the division may publicly
 19 disclose information relating to the status of complaints under
 20 subsection (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7).
 21 **(d) Except for a residential telephone number published in the**
 22 **most recent quarterly telephone sales solicitation listing by the**
 23 **division under IC 24-4.7-3 and except as provided in subsection (e),**
 24 **all consumer information provided for the purposes of registering**
 25 **for or maintaining the no telephone sales solicitation listing is**
 26 **confidential.**
 27 **(e) The name, address, and telephone number of a registrant of**
 28 **the most recent quarterly no telephone sales solicitation listing may**
 29 **be released for journalistic purposes if the registrant consents to**
 30 **the release of information after June 30, 2007.**

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SENATE MOTION

Madam President: I move that Senator Broden be added as coauthor of Senate Bill 267.

BRAY

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 267, 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 made to Senate Bill 267 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 7, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 267, 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 2, after line 6, begin a new paragraph and insert:

"SECTION 2. IC 4-6-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) The division has the following powers and duties:

- (1) The power to investigate any written consumer complaint made by a nonmerchant arising from a transaction between a merchant as defined in the Uniform Commercial Code and a nonmerchant concerning sales, leases, assignments, awards by chance, or other dispositions of goods, services, or repairs, and intangibles to a person for purposes that are primarily personal, familial, household, charitable, or agricultural, or a solicitation to supply any of the above things. When a consumer trades in or sells a motor vehicle to another consumer or nonconsumer, he shall be deemed to be a nonconsumer and shall be subject to the provisions of this chapter. The division shall have no jurisdiction over matters concerning utilities subject to regulation by the

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utility regulatory commission or by an agency of the United States except that the provisions of subdivision (5) shall apply and except as provided in IC 8-1-29.

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

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

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

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

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

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

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

- (1) requested by the person who filed the complaint;
- (2) consented to, in whole or in part, after August 31, 1984, by the person who filed the complaint;
- (3) in furtherance of an investigation by a law enforcement agency; or
- (4) necessary for the filing of an action by the attorney general under IC 24-5-0.5.

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

(d) Except for a residential telephone number published in the

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most recent quarterly telephone sales solicitation listing by the division under IC 24-4.7-3 and except as provided in subsection (e), all consumer information provided for the purposes of registering for or maintaining the no telephone sales solicitation listing is confidential.

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

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 267 as printed January 26, 2007.)

LAWSON L, Chair

Committee Vote: yeas 8, nays 0.

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