



STATE OF INDIANA

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CURTIS T. HILL, JR.
ATTORNEY GENERAL

September 24, 2019

The Honorable Matt Lehman
House of Representatives
200 W. Washington St., Room 3-6
Indianapolis, IN 46204

RE: Telephone Business Solicitation
OUR FILE: 19-AOR-16

Dear Representative Lehman:

This Memorandum of Legal Guidance ("MLG") addresses questions posed by you related to the recent amendment to Indiana's telephone solicitation statute, Ind. Code § 24-5-12 ("the Act"). Generally, you are seeking clarification whether certain Indiana entities exempt under Ind. Code § 24-4.7-1-1 are subject to the registration requirements provided under Ind. Code § 24-5-12-10. The applicable statutory analysis is detailed below in answering your question.

SHORT ANSWER

In reading Article 5, Chapter 12 Telephone Solicitations and Article 4.7 Telephone Solicitations of Consumers as a whole, it is clear that certain statutory exemptions apply to licensed individuals from the solicitation registration requirement.

Ind. Code § 24-5-12 (as amended) and § 24-4.7-1-1 are not mutually exclusive. They were collectively enacted by the Indiana legislature to protect Indiana citizens while defining the scope of registration requirements. One Article cannot be read as having an exclusionary effect, rendering the other ineffective, when each was drafted to protect consumers from unwanted, unsolicited, and harassing telephone calls. Therefore, individuals and calls that are exempted under Ind. Code § 24-4.7-1-1 are not subject to registration requirements under Ind. Code § 25-5-2-10.

BACKGROUND

The telephone solicitation registration requirement is provided on the Office of the Attorney General's ("OAG") website along with links to a registration form and to the Act itself. <https://www.in.gov/attorneygeneral/2588.htm>. Generally, outside the requirements of the Act, the public and "sellers" as defined by Ind. Code § 24-5-12-8 may be subject to registration requirements when making a solicitation.

The threshold question addressed by this memo is whether certain entities are subject to the registration requirement provided in the Act. Before doing business in Indiana, a “seller,” as defined and contemplated under the Act, must register annually with the OAG by submitting a fifty dollar (\$50.00) payment along with a Telephone Solicitor Registration Form found on the OAG website. *See* also Ind. Code § 24-5-12-10.¹ This form urges sellers to consult with counsel regarding registration requirements, the application of the law, or if additional information is sought.

ANALYSIS

Ind. Code Chapter 24-5-12 - Telephone Solicitor Act (the “Act”)

On July 1, 2019, Ind. Code Chapter 24-5-12 was amended in part to require any “seller” making a “solicitation” in Indiana to first register with the OAG and pay the applicable registration fee.

A “seller” is defined as “a person who, personally, through salespersons, or through the use of an automated dialing and answering device, makes a solicitation.” Ind. Code § 24-5-12-8.

“Solicitation” is defined as “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 consideration.” Ind. Code § 24-5-12-9.

Ind. Code Chapter 24-4.7-1-1 *et seq.* - Telephone Solicitation of Consumers

Article 4.7 of the Telephone Solicitation of Consumers statute provides certain exemptions for telephone calls made to solicit a financial transaction from consumers. Some examples of these exemptions include telephone calls by an individual licensed under Ind. Code Chapter 27-1-15.6 (Insurance Producers) or Ind. Code Chapter 27-1-15.8 (Surplus Line Producers) when the individual is soliciting an application for insurance or negotiating a policy of insurance on behalf of an insurer (as defined in Ind. Code § 27-1-2-3).

Other exemptions include telephone calls made in connection to an existing debt or contract for which payment is owed, telephone calls on behalf of charitable organizations, and calls made by certain licensed individuals. *See* generally Ind. Code § 24-4.7-1-1.

Legislative Intent and Statutory Analysis

Reading the Act in conjunction with the Telephone Solicitation of Consumers statute avoids excessive reliance on a strict, literal meaning or the selective reading of individual words. The presumption is that the legislature intended for the statutory language to be applied in a

¹ Prospective telephone solicitors including financial institutions who are unclear whether they are subject to the Act or the Telephone Solicitation of Consumers Statute may consult the OAG website which has already provided answers on commonly asked questions regarding application of these laws. The website also provides references to certain exempt entities if they have an existing business relationship with consumers. <https://www.in.gov/attorneygeneral/2444.htm>

logical manner consistent with the statute's underlying policy and goals. *See B.K.C. v. State*, 781 N.E.2d 1157 (Ind.Ct.App.2003) (*cited* by Oddi-Smith). Courts seek to apply a practical application of the statute by construing it in a way that favors public convenience and avoids an absurdity, hardship, or injustice. *See Merritt v. State*, 829 N.E.2d 472, 475 (Ind.2005) (*cited* by *Suggs v. State*, 51 N.E.3d 1190, 1193–94 (Ind. 2016)). When construing a statute the primary goal is to ascertain the legislature's intent. *Adams v. State*, 960 N.E.2d 793, 798 (Ind. 2012). If a statute is susceptible to more than one interpretation “we thus resort to rules of statutory interpretation so as to give effect to the legislature's intent.” *Id. Adams*, 960 N.E.2d at 798.

Statutory Inconsistencies

The apparent statutory inconsistencies between Article 5 and the existing statutory exemptions provided under Article 4 arises when the statutes are read separately and without consideration of each other. Historically, and prior to amendment of Ind. Code § 24-5-12-0.1 *et seq.*, certain entities such as financial institutions, insurance agents, realtors, and some other licensed entities were exempt from certain provisions of the Act. As it applies, it is easy to see how inconsistencies may arise from the Act's July 1, 2019 amendment – making all sellers, as defined by Ind. Code § 24-5-12-8, subject to registration requirements based on the newly amended broad statutory definition. Indeed, further legislative action may be needed to the same entities exempt under Ind. Code § 24-4.7-1-1.

Notwithstanding the foregoing, because Article 5, Chapter 12 of the Act applies to consumer sales (and is appropriately titled “Telephone Solicitations”) and Article 4 applies directly to telephone solicitation of consumers, each must be read as a collective whole in determining which registration requirements apply, if any, and which entities are statutorily exempt.

The Articles were enacted by the Indiana legislature to protect Indiana citizens; one Article cannot be read as having an exclusionary effect (thereby rendering the exemptions provided by Article 4 to no effect) when each was drafted to protect consumers from unwanted, unsolicited, and harassing telephone calls, while specifically exempting certain entities from registration. The exemptions in Article 4.7, read in conjunction with the Act, demonstrate a legislative intent to exempt certain entities under Ind. Code § 24-4.7-1-1 from the registration requirement. The July 1, 2019 amendment of the Article 5 Act was silent as to the application of the exemptions provided by Article 4.7. In order for the legislature's intent in exempting entities to be effective, the same definitions and exemptions must apply to both the Telephone Solicitations and the Telephone Solicitation of Consumers statutes.

11 Ind. Admin. Code § 1-1-1 provides “The definitions set forth at IC 24-4.7-2, as supplemented in this rule, apply throughout this article and 11 IAC 2.” Accordingly, the definitions² of Article 4.7 (the Telephone Solicitation of Consumers statute), which provide

² Ind. Code § 24-4.7-2-1 provides: “The definitions in this chapter apply throughout the article.” The definitions are enumerated in § 1.7 through 10 of the chapter.

specific exemptions from registration for certain entities, are to be used in the Act as well as the Telephone Solicitation of Consumer statutes.

Lastly, it is worth noting that the statutory exemptions in Article 4.7 listed for certain licensed entities from both the Telephone Solicitations statute and the Telephone Solicitation of Consumers statute, as well as express exemptions from other statutes such as the Deceptive Consumer Sales statute (*see* Ind. Code § 24-5-0.5-3), are appropriate because such licensed entities are already highly regulated by the State of Indiana, and are already subject to administrative rules and oversight by various Indiana Departments and licensing authorities.³

CONCLUSION

While further legislative action may be necessary in defining the mutual relationship between the Telephone Solicitor Act and the Telephone Solicitation of Consumers statute, entities exempt under Ind. Code § 24-4.7-1-1 are not subject to the registration requirements provided under Ind. Code § 24-5-12-10. The exemptions carved out by Article 4.7, read in conjunction with the Act, demonstrate a legislative intent to exempt certain entities from the registration requirement.

Sincerely,



Curtis T. Hill, Jr.
Attorney General

David P. Johnson, Chief Counsel
Philip A. Gordon, Deputy Attorney General

³ For example, insurance companies are already required to provide many of the protections included in the Telephone Solicitations statute to their existing and potential customers. Similar to the protection in the Telephone Solicitations statute that gives a purchaser the right to void a sale within 90 days of the date of the contract if a seller fails to deliver an item ordered within four weeks (*see* Ind. Code § 24-5-12-19), the Insurance Code provides that life insurers must give customers a “free look” period during which a customer can void the policy and receive a full refund of all money paid by the policyholder (*see* Ind. Code § 27-1-12-43).