

FEB 1 2001

COMMERCE AND REGULATION

HOUSE FILE 162

BY RAECKER, KETTERING, and
HEATON

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to telephone solicitations, including
2 establishing certain restrictions on solicitors and the use of
3 automatic dialing-announcing device equipment, requiring
4 written contracts associated with telephone solicitations
5 prior to the fund transfers or charges, establishing
6 registration for persons choosing not to receive telephone
7 solicitations, establishing a private cause of action and
8 providing for recovery of attorney fees, requiring consumer
9 notification of rights, establishing fees and making an
10 appropriation, and providing civil and criminal penalties.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 162

1 Section 1. Section 476.57, subsections 1 and 2, Code 2001,
2 are amended to read as follows:

3 1. DEFINITION DEFINITIONS. As used in this section,
4 unless the context otherwise requires:

5 a. "ADAD equipment" means automatic dialing-announcing
6 device equipment which is a device or system of devices used,
7 either alone or in conjunction with other equipment, for the
8 purpose of automatically selecting or dialing telephone
9 numbers without the use of a live operator to disseminate
10 prerecorded messages to the numbers selected or dialed.

11 b. "Caller identification" means the display on the
12 recipient's telephone or related equipment of the caller's
13 telephone number or identity to the recipient of the call.

14 2. PROHIBITION.

15 a. Except as provided in paragraph "b", a person shall not
16 use, employ, or direct another person to use, or contract for
17 the use of ADAD equipment.

18 b. Except for ADAD equipment which randomly or
19 sequentially selects the telephone numbers for calling, the
20 prohibition in paragraph "a" does not apply to any of the
21 following:

22 (1) Calls made with ADAD equipment by a nonprofit
23 organization or by an individual using the calls other than
24 for commercial profit-making purposes or fund-raising, if the
25 calls do not involve the advertisement or offering for sale,
26 lease, or rental of goods, services, or property.

27 (2) Calls made with ADAD equipment relating to payment
28 for, service of, or warranty coverage of previously ordered or
29 purchased goods or services or to persons or organizations
30 with a prior business relationship with the persons or
31 organizations using the calls.

32 (3) Calls made with ADAD equipment relating to the
33 collection of lawful debts.

34 (4) Calls made with ADAD equipment to members or employees
35 of the organization making the calls.

1 (5) Calls made with ADAD equipment ~~which~~ that use an
2 initial prerecorded message of a duration no greater than
3 seven seconds prior to a live operator intercept, or calls
4 which involve an initial message from a live operator.

5 c. Notwithstanding paragraph "b", a caller shall not do
6 any of the following:

7 (1) Operate ADAD equipment in a manner that impedes or
8 prevents the function of a recipient's caller identification
9 if the caller's existing equipment is capable of allowing the
10 display of the caller's telephone number or identity.

11 (2) Operate any ADAD equipment acquired on or after July
12 1, 2001, that is incapable of allowing the display of the
13 caller's telephone number or identity.

14 Sec. 2. NEW SECTION. 476B.1 DEFINITIONS.

15 As used in this chapter, unless the context otherwise
16 requires:

17 1. "Board" means the utilities board created in section
18 474.1.

19 2. "Consumer" means an actual or prospective purchaser,
20 lessee, or recipient of a consumer good or service.

21 3. "Consumer good or service" means any real property or
22 any tangible or intangible personal property which is normally
23 used for personal, family, or household purposes, including,
24 without limitation, any such property intended to be attached
25 to or installed in any real property without regard to whether
26 it is so attached or installed, as well as cemetery lots and
27 timeshare estates, and any service related to such property.

28 4. "Department" means the department of commerce.

29 5. "Doing business in this state" means a business which
30 conducts telephone solicitations from a location in this state
31 or from other states or nations to consumers located in this
32 state.

33 6. "Merchant" means a person who, directly or indirectly,
34 offers or makes available to a consumer any consumer good or
35 service.

1 7. "Telephone solicitation" means any voice communication
2 over a telephone for the purpose of encouraging the purchase
3 or rental of, or investment in, property, goods, services,
4 wherever originated, and includes any of the following
5 purposes:

6 a. To solicit a sale of a consumer good or service.

7 b. To offer an extension of credit for a consumer good or
8 service.

9 c. To obtain information that will or may be used for the
10 direct solicitation of a sale of a consumer good or service or
11 an offer of extension of credit for such purpose.

12 8. "Telephone solicitor" means a person doing business in
13 this state, who makes or causes to be made a telephone
14 solicitation, including, but not limited to, calls made by use
15 of automatic dialing-announcing device equipment.

16 9. "Unsolicited telephone solicitation" means a telephone
17 solicitation other than a call made as follows:

18 a. In response to an express request of the person called.

19 b. Primarily in connection with an existing debt or
20 contract, payment, or performance of which has not been
21 completed at the time of such call.

22 c. To a person with whom the telephone solicitor has a
23 prior or existing business relationship.

24 d. To a residential subscriber if the telephone
25 solicitation is made on behalf of a not-for-profit
26 organization exempt from paying taxes under section 501(c) of
27 the Internal Revenue Code, and if a bona fide member of the
28 exempt organization makes such communication.

29 Sec. 3. NEW SECTION. 476B.2 TELEPHONE SOLICITATION
30 RESTRICTIONS.

31 A telephone solicitor who makes an unsolicited telephone
32 solicitation to a residential, mobile, or telephonic paging
33 device telephone number shall identify the telephone
34 solicitor's self by the telephone solicitor's true first and
35 last name, and the business on whose behalf the telephone

1 solicitor is making the unsolicited telephone solicitation,
2 immediately upon making contact by telephone with the person
3 who is the object of the unsolicited telephone solicitation.

4 Sec. 4. NEW SECTION. 476B.3 NO-CALL LISTING.

5 1. The department shall establish and maintain a "no
6 telephone solicitation calls" listing as provided in this
7 section. The department may enter into an agreement with
8 another person to maintain the "no telephone solicitation
9 calls" listing, as deemed appropriate by the department.

10 2. A residential, mobile, or telephonic paging device
11 telephone subscriber desiring to be placed on a "no telephone
12 solicitation calls" listing indicating that the subscriber
13 does not wish to receive unsolicited telephone solicitations
14 shall notify the department and be placed on that listing upon
15 receipt by the department of a ten dollar initial listing fee.
16 The listing shall be renewed by the department annually for
17 each consumer upon receipt of a renewal request accompanied by
18 a five dollar renewal fee.

19 3. The department shall update its "no telephone
20 solicitation calls" listing quarterly.

21 4. Upon request and payment of a fee as established by the
22 department, the department shall provide a copy of the list to
23 a telephone solicitor requesting such list, in either a
24 printed or electronic form. Notwithstanding chapter 22, the
25 fee charged by the department for the list in printed or
26 electronic form shall not be limited to publication or copying
27 costs, but may be set at a level to cover all costs of
28 administering this chapter.

29 5. A fee imposed and collected under this section shall be
30 deposited in the general fund of the state and is appropriated
31 to the department for the administration of this section.

32 6. If, pursuant to 47 U.S.C. § 227(c)(3), the federal
33 communications commission establishes a single national
34 database of telephone numbers of subscribers who object to
35 receiving telephone solicitations, the commission shall

1 include the portion of such national database including
2 subscriber telephone numbers located in this state in the "no
3 telephone solicitation calls" listing established and
4 maintained by the department.

5 Sec. 5. NEW SECTION. 476B.4 TELEPHONE SOLICITATIONS
6 PROHIBITED -- RESTRICTIONS ON SALES OF TELEPHONE NUMBERS.

7 1. A telephone solicitor shall not make or cause to be
8 made any unsolicited telephone solicitations to any
9 residential, mobile, or telephonic paging device telephone
10 number if the number for that telephone appears in the current
11 listing provided by the department.

12 2. A telephone solicitor or person who offers for sale
13 consumer information which includes residential, mobile, or
14 telephonic paging device telephone numbers, except directory
15 assistance and telephone directories sold by a telephone
16 company or an organization exempt under section 501(c)(3) or
17 (6) of the Internal Revenue Code, shall screen and exclude
18 those numbers which appear on the department's current "no
19 telephone solicitation calls" list from any consumer
20 information offer or sale.

21 3. This section does not apply to a person licensed
22 pursuant to chapter 543B who calls an actual or prospective
23 seller or lessor of real property if such call is made in
24 response to a yard sign or other form of real estate sales
25 advertisement placed by the seller or lessor.

26 Sec. 6. NEW SECTION. 476B.5 REQUIREMENTS FOR CONTRACTS
27 MADE PURSUANT TO TELEPHONE SOLICITATION.

28 1. A contract made pursuant to a telephone solicitation is
29 not valid and enforceable against a consumer unless made in
30 compliance with this section.

31 2. A contract made pursuant to a telephone solicitation
32 must satisfy all of the following:

33 a. The contract must be reduced to writing and signed by
34 the consumer.

35 b. The contract must comply with all other applicable laws

1 and rules.

2 c. The contract must match the description of goods or
3 services as principally used in the telephone solicitation.

4 d. The contract must contain the name, address, and
5 telephone number of the seller, the total price of the
6 contract, and a detailed description of the goods or services
7 being sold.

8 e. The contract must contain, in bold, conspicuous type,
9 immediately preceding the signature, the following statement:

10 "You are not obligated to pay any money unless you sign
11 this contract and return it to the seller."

12 f. The contract must not exclude from its terms any oral
13 or written representations made by the telephone solicitor to
14 the consumer in connection with the transaction.

15 3. This section does not apply to contractual sales
16 specifically regulated by other law, or to the sale of
17 financial services, security sales, or sales transacted by
18 insurance companies or their wholly owned subsidiaries or
19 agents, or to the sale of cable television services to a
20 franchised cable television operator's existing subscribers
21 within that cable television operator's franchise area, or to
22 any sales where no prior payment is made to the merchant and
23 an invoice accompanies the goods or services allowing the
24 consumer no less than seven days to cancel or return the goods
25 or services without obligation for any payment.

26 Sec. 7. NEW SECTION. 476B.6 RESTRICTIONS ON CHARGES TO
27 CREDIT CARD ACCOUNTS AND ELECTRONIC TRANSFERS OF FUNDS.

28 1. A merchant who engages a telephone solicitor to make or
29 cause to be made a telephone solicitation shall not make or
30 submit any charge to a consumer's credit card account or make
31 or cause to be made any electronic transfer of funds until
32 after the merchant receives from the consumer a copy of the
33 contract, signed by the consumer, which complies with section
34 476B.5.

35 2. This section does not apply to any of the following:

1 a. A transaction made pursuant to prior negotiations in
2 the course of a visit by the consumer to a merchant operating
3 a retail business establishment which has a fixed permanent
4 location and where consumer goods are displayed or offered for
5 sale on a continuing basis.

6 b. A transaction in which the consumer may obtain a full
7 refund for the return of undamaged and unused goods or a
8 cancellation of services notice to the seller within seven
9 days after receipt by the consumer, and the seller will
10 process the refund within thirty days after receipt of the
11 returned merchandise by the consumer.

12 c. A transaction in which the consumer purchases goods or
13 services pursuant to an examination of a television, radio, or
14 print advertisement or a sample, brochure, or catalog of the
15 merchant that contains all of the following:

16 (1) The name, address, and telephone number of the
17 merchant.

18 (2) A description of the goods or services being sold.

19 (3) Any limitations or restrictions that apply to the
20 offer.

21 d. A transaction in which the merchant is a bona fide
22 charitable organization or a newspaper.

23 Sec. 8. NEW SECTION. 476B.7 RESTRICTIONS ON USE OF
24 AUTOMATIC DIALING-ANNOUNCING EQUIPMENT.

25 1. Except as otherwise provided in subsection 2, a person
26 shall not make or knowingly allow a telephone solicitation to
27 be made using automatic dialing-announcing device equipment
28 for the selection or dialing of telephone numbers or the
29 playing of a recorded message when a connection is completed
30 to a telephone number called.

31 2. This section does not prohibit the use of an automatic
32 dialing-announcing device as provided in section 476.57
33 provided that the telephone numbers selected for automatic
34 dialing have been screened to exclude any consumer who is
35 included on the department's current "no telephone

1 solicitation calls" listing or any unlisted telephone number,
2 or that the calls made concern a good or service that has been
3 previously ordered or purchased.

4 Sec. 9. NEW SECTION. 476B.8 INVESTIGATIONS -- CIVIL
5 ACTIONS -- CIVIL PENALTY -- AND OTHER REMEDIES.

6 1. The attorney general shall investigate any complaints
7 received concerning a violation of this chapter.

8 2. If, after investigating a complaint, the attorney
9 general finds that a violation of this chapter has occurred,
10 the attorney general may bring a civil action to impose a
11 civil penalty not to exceed ten thousand dollars per violation
12 and to seek other relief, including injunctive relief, as the
13 court deems appropriate against the telephone solicitor.

14 3. A civil penalty imposed under this section may be
15 recovered in an action brought by the attorney general, or the
16 attorney general may compromise such civil penalty, and upon
17 agreement of the violator to pay the compromised amount,
18 terminate an action to recover such civil penalty. The
19 attorney general may waive a civil penalty if the violator has
20 previously made full restitution or reimbursement or has paid
21 actual damages to a consumer who was injured as a result of
22 the violation.

23 4. A civil penalty paid for a violation of this section
24 shall be deposited in the general fund of the state.

25 Sec. 10. NEW SECTION. 476B.9 PRIVATE CAUSE OF ACTION --
26 DAMAGES AND INJUNCTIVE RELIEF.

27 A consumer who receives more than one telephone
28 solicitation within any twelve-month period by or on behalf of
29 the same person in violation of this chapter may do one or
30 both of the following:

31 1. Bring an action to enjoin further violations.

32 2. Bring an action to recover the greater of the
33 following:

34 a. Actual monetary damages incurred by the consumer as a
35 result of a violation of this chapter.

1 b. Not less than one hundred dollars but not more than two
2 thousand dollars for each knowing violation of this chapter.

3 Sec. 11. NEW SECTION. 476B.10 ATTORNEY FEES.

4 1. In a civil action initiated by the attorney general,
5 the court may award to the prevailing party reasonable
6 attorney fees and costs if the court finds that there was no
7 justiciable issue of either law or fact raised by the losing
8 party or if the court finds that the losing party acted in bad
9 faith.

10 2. In a civil action resulting from a transaction
11 involving a violation of this chapter, the prevailing party,
12 after judgment in the trial court and exhaustion of all
13 appeals, if any, is entitled to costs and reasonable attorney
14 fees.

15 Sec. 12. NEW SECTION. 476B.11 NOTIFICATION OF RIGHTS.

16 The board shall by rule ensure that telecommunications
17 providers inform their customers of the customers' rights
18 under this chapter. The notification shall be made by at
19 least both of the following:

20 1. Annual inserts in the billing statements mailed to
21 customers.

22 2. Conspicuous publication of the notice in the consumer
23 information pages of the local telephone directories.

24 EXPLANATION

25 This bill provides that a person using ADAD (automatic
26 dialing-announcing device) equipment is prohibited from using
27 equipment in a manner that impedes or prevents the function of
28 a recipient's caller identification when the caller's ADAD
29 equipment is capable of allowing the display of the caller's
30 telephone number or identity. A person is also prohibited
31 from operating ADAD equipment acquired on or after July 1,
32 2001, that is incapable of allowing the display of the
33 caller's telephone number or identity. A person violating
34 this provision is guilty of a serious misdemeanor, as provided
35 under current law for a violation of Code section 476.57. New

1 Code section 476B.7 also addresses ADAD calls and makes them
2 applicable to the civil penalties in new Code chapter 476B.

3 The bill also creates new Code chapter 476B establishing
4 restrictions on telephone solicitations.

5 New Code section 476B.1 provides definitions for the new
6 chapter.

7 The bill provides in new Code section 476B.2 that a
8 telephone solicitor who makes an unsolicited telephone
9 solicitation to a residential, mobile, or telephonic paging
10 device telephone number shall identify the solicitor's self by
11 the solicitor's true first and last name, and the business on
12 whose behalf the solicitor is making the telephone call,
13 immediately upon making contact by telephone with the person
14 who is the object of the telephone solicitation.

15 The bill provides in new Code section 476B.3 that a
16 residential, mobile, or telephonic paging device telephone
17 subscriber desiring to be placed on a "no telephone
18 solicitation calls" listing indicating that the subscriber
19 does not wish to receive unsolicited telephone solicitations
20 may notify the department of commerce and be placed on that
21 listing upon receipt by the department of a \$10 initial
22 listing fee. The listing shall be renewed by the department
23 annually for each subscriber upon receipt of a renewal request
24 accompanied by a \$5 renewal fee. The department shall update
25 the list quarterly and shall make it available to telephone
26 solicitors for a fee to be determined by the department.

27 The bill provides in new Code section 476B.4 that a
28 telephone solicitor shall not make or cause to be made any
29 unsolicited telephone solicitation to any residential, mobile,
30 or telephonic paging device telephone number if the number for
31 that telephone appears in the current no-call listing provided
32 by the department. Restrictions are also placed in sale of
33 consumer telephone numbers that appear on the current listing
34 provided by the department. The bill excludes from this
35 prohibition a person licensed pursuant to Code chapter 543B

1 who calls an actual or prospective seller or lessor of real
2 property when such call is made in response to a yard sign or
3 other form of advertisement placed by the seller or lessor.

4 The bill provides in new Code section 476B.5 that a
5 contract made pursuant to a telephone solicitation call must
6 be reduced to writing and signed by the consumer; must comply
7 with all other applicable laws and rules; must match the
8 description of goods or services as principally used in the
9 telephone solicitation; must contain the name, address, and
10 telephone number of the seller, the total price of the
11 contract, and a detailed description of the goods or services
12 being sold; must contain, in bold, conspicuous type,
13 immediately preceding the signature, the statement "You are
14 not obligated to pay any money unless you sign this contract
15 and return it to the seller."; and the contract shall not
16 exclude from its terms any oral or written representations
17 made by the telephone solicitor to the consumer in connection
18 with the transaction.

19 New Code section 476B.6 restricts charges to credit card
20 accounts or electronic funds transfers until the merchant
21 receives a signed contract from the consumer.

22 The bill provides in new Code section 476B.8 that the
23 attorney general is to investigate any complaints received
24 concerning a violation of this provision of the bill. If,
25 after investigating a complaint, the attorney general finds
26 that there has been a violation, the attorney general may
27 bring an action to impose a civil penalty and to seek other
28 relief, including injunctive relief, as the court deems
29 appropriate against the telephone solicitor. A civil penalty
30 imposed for a violation shall not exceed \$10,000 per violation
31 and shall be deposited in the general fund of the state.

32 The bill provides in new Code section 476B.9 that a
33 consumer who receives more than one telephone solicitation in
34 violation of the new Code section within any 12-month period
35 by or on behalf of the same person may bring an action to

1 enjoin further violations; and may also bring an action to
2 recover the greater of actual monetary damages incurred by the
3 consumer as a result of a violation or an amount not less than
4 \$100 but not more than \$2,000 for each knowing violation.

5 New Code section 476B.10 provides for recovery of attorney
6 fees by the prevailing party in an action.

7 New Code section 476B.11 requires adoption of rules by the
8 utilities board related to customer notification of rights
9 under the bill.

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