

MAR 28 2002
COMMERCE AND REGULATION

HOUSE FILE 2593
BY FORD

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

A BILL FOR

1 An Act relating to limitations on telephone solicitations, and
2 providing for civil remedies and penalties.

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

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HF 2593

1 Section 1. NEW SECTION. 476B.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "Board" means the utilities board created in section
5 474.1.

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

8 3. "Consumer good or service" means any real property or
9 any tangible or intangible personal property which is normally
10 used for personal, family, or household purposes, including,
11 without limitation, any such property intended to be attached
12 to or installed in any real property without regard to whether
13 it is so attached or installed, as well as cemetery lots and
14 timeshare estates, and any service related to such property.

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

16 5. "Doing business in this state" means a business which
17 conducts telephone solicitations from a location in this state
18 or from other states or nations to consumers located in this
19 state.

20 6. "Merchant" means a person who, directly or indirectly,
21 offers or makes available to a consumer any consumer good or
22 service.

23 7. "Telephone solicitation" means any voice communication
24 over a telephone for the purpose of encouraging the purchase
25 or rental of, or investment in, property, goods, services,
26 wherever originated, and includes any of the following
27 purposes:

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

29 b. To offer an extension of credit for a consumer good or
30 service.

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

34 8. "Telephone solicitor" means a person doing business in
35 this state, who makes or causes to be made a telephone

1 solicitation, including, but not limited to, calls made by use
2 of automatic dialing-announcing device equipment.

3 9. "Unsolicited telephone solicitation" means a telephone
4 solicitation other than a call made as follows:

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

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

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

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

16 Sec. 2. NEW SECTION. 476B.2 TELEPHONE SOLICITATION
17 DISCLOSURE REQUIREMENTS.

18 1. A telephone solicitor who makes an unsolicited
19 telephone solicitation to a residential, mobile, or telephonic
20 paging device telephone number shall identify the telephone
21 solicitor's self by the telephone solicitor's first and last
22 name, and the business on whose behalf the telephone solicitor
23 is making the unsolicited telephone solicitation, immediately
24 upon making contact by telephone with the person who is the
25 object of the unsolicited telephone solicitation.

26 2. Upon request of the consumer, or at least by the end of
27 the telephone solicitation if such solicitation results in the
28 sale of goods or services to the consumer, the telephone
29 solicitor shall provide the name of the telephone solicitation
30 business and a telephone number for the telephone solicitation
31 business.

32 3. If the solicitation results in the sale of goods or
33 services to the consumer, the telephone solicitor shall also
34 inform the consumer that the consumer may cancel the
35 transaction at any time prior to midnight of the third

1 business day after the date of the transaction by calling the
2 telephone number required to be disclosed in subsection 2.
3 This right of cancellation is separate from the consumer's
4 rights under sections 476B.5 and 476B.6.

5 Sec. 3. NEW SECTION. 476B.3 REGISTRATION OF TELEPHONE
6 SOLICITORS.

7 1. A telephone solicitor who makes a telephone
8 solicitation to a consumer in this state shall register with
9 the department, obtain a registration number from the
10 department, and pay a registration fee to the department. The
11 fee that an individual telephone solicitor is required to pay
12 shall be based on the number of telephone lines used by the
13 telephone solicitor to make telephone solicitations. A
14 telephone solicitor who registers with the department shall
15 pay an annual registration renewal fee to the department.

16 2. All telephone solicitors shall be licensed and bonded
17 as a condition of registration pursuant to rules adopted by
18 the board.

19 Sec. 4. NEW SECTION. 476B.4 TELEPHONE SOLICITOR
20 REQUIREMENTS.

21 A telephone solicitor shall not do any of the following:

22 1. Make a telephone solicitation to a person in this state
23 unless the telephone solicitor is registered with the
24 department.

25 2. Divulge any consumer data, except as necessary to
26 complete a transaction for a particular consumer.

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

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

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

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

1 b. The contract must comply with all other applicable laws
2 and rules.

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

5 d. The contract must contain the name, address, and
6 telephone number of the telephone solicitor and of the
7 merchant of the goods or services, if different from the
8 telephone solicitor, the total price of the contract, and a
9 detailed description of the goods or services being sold.

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

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

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

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

28 Sec. 6. NEW SECTION. 476B.6 RESTRICTIONS ON CHARGES TO
29 CREDIT CARD ACCOUNTS AND ELECTRONIC TRANSFERS OF FUNDS.

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

1 476B.5.

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

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

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

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

18 (1) The name, address, and telephone number of the
19 merchant.

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

21 (3) Any limitations or restrictions that apply to the
22 offer.

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

25 Sec. 7. NEW SECTION. 476B.8 INVESTIGATIONS -- CIVIL
26 ACTIONS -- CIVIL PENALTY -- OTHER REMEDIES.

27 1. The attorney general may bring a civil action to impose
28 a civil penalty of five hundred dollars per violation and to
29 seek other relief, including injunctive relief, as the court
30 deems appropriate against the telephone solicitor.

31 2. A civil penalty imposed under this section may be
32 recovered in an action brought by the attorney general, or the
33 attorney general may compromise such civil penalty, and upon
34 agreement of the violator to pay the compromised amount,
35 terminate an action to recover such civil penalty. The

1 attorney general may waive a civil penalty if the violator has
2 previously made full restitution or reimbursement or has paid
3 actual damages to a consumer who was injured as a result of
4 the violation.

5 3. A civil penalty paid for a violation of this section
6 shall be deposited in the general fund of the state.

7 Sec. 8. NEW SECTION. 476B.9 PRIVATE CAUSE OF ACTION --
8 DAMAGES AND INJUNCTIVE RELIEF.

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

13 1. Bring an action to enjoin further violations.

14 2. Bring an action to recover the greater of the
15 following:

16 a. Actual monetary damages incurred by the consumer as a
17 result of a violation of this chapter.

18 b. Five hundred dollars for each knowing violation of this
19 chapter.

20 Sec. 9. NEW SECTION. 476B.10 ATTORNEY FEES.

21 1. In a civil action initiated by the attorney general,
22 the court may award to the prevailing party reasonable
23 attorney fees and costs if the court finds that there was no
24 justiciable issue of either law or fact raised by the losing
25 party or if the court finds that the losing party acted in bad
26 faith.

27 2. In a civil action resulting from a transaction
28 involving a violation of this chapter, the prevailing party,
29 after judgment in the trial court and exhaustion of all
30 appeals, if any, is entitled to costs and reasonable attorney
31 fees.

32 Sec. 10. NEW SECTION. 476B.11 NOTIFICATION OF RIGHTS.

33 The board shall by rule ensure that telecommunications
34 providers inform their customers of the customers' rights
35 under this chapter. The notification shall be made by at

1 least both of the following:

2 1. Annual inserts in the billing statements mailed to
3 customers.

4 2. Conspicuous publication of the notice in the consumer
5 information pages of the local telephone directories.

6 EXPLANATION

7 This bill creates new Code chapter 476B establishing
8 restrictions on telephone solicitations.

9 New Code section 476B.1 provides definitions for the new
10 chapter.

11 The bill provides in new Code section 476B.2 that a
12 telephone solicitor who makes an unsolicited telephone
13 solicitation to a residential, mobile, or telephonic paging
14 device telephone number shall identify the solicitor's self by
15 the solicitor's first and last name, and the business on whose
16 behalf the solicitor is making the telephone call, immediately
17 upon making contact by telephone with the person who is the
18 object of the telephone solicitation. The telephone solicitor
19 also must disclose the name and telephone number of the
20 telephone solicitation business, and inform the consumer of
21 the right to cancel the transaction within three business
22 days.

23 The bill requires in new Code section 476B.3 that telephone
24 solicitors register with the state, pay registration fees, and
25 be licensed and bonded according to rules adopted by the
26 board.

27 New Code section 476B.4 requires a telephone solicitor to
28 be registered before making a telephone solicitation, and not
29 to divulge any consumer data, except as necessary to complete
30 a transaction.

31 The bill provides in new Code section 476B.5 that a
32 contract made pursuant to a telephone solicitation call must
33 be reduced to writing and signed by the consumer; must comply
34 with all other applicable laws and rules; must match the
35 description of goods or services as principally used in the

1 telephone solicitation; must contain the name, address, and
2 telephone number of the seller, the total price of the
3 contract, and a detailed description of the goods or services
4 being sold; must contain, in bold, conspicuous type,
5 immediately preceding the signature, the statement "You are
6 not obligated to pay any money unless you sign this contract
7 and return it to the seller."; and the contract shall not
8 exclude from its terms any oral or written representations
9 made by the telephone solicitor to the consumer in connection
10 with the transaction.

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

14 The bill provides in new Code section 476B.8 that the
15 attorney general may bring an action to impose a civil penalty
16 and to seek other relief, including injunctive relief, as the
17 court deems appropriate against the telephone solicitor. A
18 civil penalty is \$500 per violation and shall be deposited in
19 the general fund of the state.

20 The bill provides in new Code section 476B.9 that a
21 consumer who receives more than one telephone solicitation in
22 violation of the new Code section within any 12-month period
23 by or on behalf of the same person may bring an action to
24 enjoin further violations; and may also bring an action to
25 recover the greater of actual monetary damages incurred by the
26 consumer as a result of a violation or an amount of \$500 for
27 each knowing violation.

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

30 New Code section 476B.11 requires adoption of rules by the
31 utilities board related to customer notification of rights
32 under the bill.

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