

COMMERCE
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SENATE FILE 400
BY HOLVECK

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

A BILL FOR

1 An Act relating to telephone solicitations, by requiring certain
2 acts and disclosures in conjunction with the use of automatic
3 dialing-announcing device equipment, establishing certain
4 restrictions on telephone solicitors, establishing certain
5 requirements for contracts associated with such solicitations,
6 establishing a list for persons not wishing to receive such
7 solicitations, establishing a private cause of action, making
8 an appropriation, providing for civil penalties, and making
9 criminal penalties applicable.

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

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SF 400
COMMERCE

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 of the
12 caller's telephone number or identity to the recipient of the
13 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 use an initial
2 prerecorded message of a duration no greater than seven
3 seconds prior to a live operator intercept, or calls which
4 involve an initial message from a live operator.

5 c. Notwithstanding paragraph "b", ADAD equipment shall not
6 be operated in a manner that impedes or prevents the function
7 of a recipient's caller identification when the caller's
8 equipment is capable of allowing the display of the caller's
9 telephone number or identity.

10 d. Notwithstanding paragraph "b", a person who uses or
11 employs ADAD equipment as provided in this section shall
12 identify the person within the first fifteen seconds of a call
13 and provide the recipient of the call with the name and
14 telephone number of a person whom the recipient may call to
15 request that no further calls be made to the recipient.

16 Sec. 2. NEW SECTION. 476B.1 TELEPHONE SOLICITATION
17 RESTRICTIONS.

18 1. As used in this section, unless the context otherwise
19 requires:

20 a. "Board" means the utilities board created in section
21 474.1.

22 b. "Consumer" means an actual or prospective purchaser,
23 lessee, or recipient of a consumer good or service.

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

31 d. "Division" means the utilities division of the
32 department of commerce.

33 e. "Doing business in this state" means a business which
34 conducts telephone solicitations from a location in this state
35 or from other states or nations to consumers located in this

1 state.

2 f. "Merchant" means a person who, directly or indirectly,
3 offers or makes available to a consumer any consumer good or
4 service.

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

10 (1) To solicit a sale of a consumer good or service.

11 (2) To offer an extension of credit for a consumer good or
12 service.

13 (3) To obtain information that will or may be used for the
14 direct solicitation of a sale of a consumer good or service or
15 for an offer of extension of credit for such purpose.

16 h. "Telephone solicitor" means a person doing business in
17 this state, who makes or causes to be made a telephone
18 solicitation, including, but not limited to, calls made by use
19 of automatic dialing-announcing device equipment.

20 i. "Unsolicited telephone solicitation" means a telephone
21 solicitation other than a call made as follows:

22 (1) In response to an express request of the person
23 called.

24 (2) Primarily in connection with an existing debt or
25 contract, payment, or performance of which has not been
26 completed at the time of such call.

27 (3) To a person with whom the telephone solicitor has a
28 prior or existing business relationship.

29 (4) To a residential subscriber if the telephone
30 solicitation is made on behalf of a not-for-profit
31 organization exempt from paying taxes under section 501(c) of
32 the Internal Revenue Code, and if a bona fide member of the
33 exempt organization makes the communication.

34 2. a. A telephone solicitor who makes an unsolicited
35 telephone solicitation to a residential, mobile, or telephonic

1 paging device telephone number shall identify the telephone
2 solicitor's self by the telephone solicitor's true first and
3 last name, and the business on whose behalf the telephone
4 solicitor is making the unsolicited telephone solicitation,
5 immediately upon making contact by telephone with the person
6 who is the object of the unsolicited telephone solicitation.

7 b. (1) The division shall establish and maintain a "no
8 telephone solicitation calls" listing as provided in this
9 subsection. The division may enter into an agreement with
10 another person to maintain the "no telephone solicitation
11 calls" listing, as deemed appropriate by the division. A
12 consumer who is a residential, mobile, or telephonic paging
13 device telephone subscriber desiring to be placed on a "no
14 telephone solicitation calls" listing indicating that the
15 consumer does not wish to receive unsolicited telephone
16 solicitations may notify the division and be placed on that
17 listing upon receipt by the division of a ten dollar initial
18 listing fee. The inclusion of a consumer on the listing may
19 be renewed by such consumer annually upon submitting a renewal
20 request to the division accompanied by a five dollar renewal
21 fee.

22 (2) The division shall update its "no telephone
23 solicitation calls" listing on a quarterly basis, including
24 initial listing and renewal requests submitted by consumers to
25 the division during the calendar quarter immediately preceding
26 the date of such updating. The division, upon request, shall
27 provide a copy of the most current quarterly listing for a fee
28 as established by the division to a telephone solicitor
29 requesting such list, in either a printed or electronic form.

30 (3) A fee imposed and collected under this section shall
31 be deposited in the general fund of the state and is
32 appropriated to the division, limited to an amount which is
33 sufficient for the administration of this section.

34 (4) If, pursuant to 47 U.S.C. § 227(c)(3), the federal
35 communications commission establishes a single national

1 database of telephone numbers of consumers who object to
2 receiving telephone solicitations, the commission shall
3 include the portion of such national database including
4 consumer telephone numbers located in this state in the "no
5 telephone solicitation calls" listing established and
6 maintained by the division.

7 c. 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 that telephone number appears in the current
11 quarterly listing provided by the division. A telephone
12 solicitor or person who offers for sale consumer information
13 which includes residential, mobile, or telephonic paging
14 device telephone numbers, except directory assistance and
15 telephone directories sold by a telephone company or an
16 organization exempt under section 501(c) of the Internal
17 Revenue Code, shall screen and exclude those numbers which
18 appear on the division's current "no telephone solicitation
19 calls" list from any consumer information offered or sold.
20 This subsection does not apply to a person licensed pursuant
21 to chapter 543B who calls an actual or prospective seller or
22 lessor of real property if such call is made in response to a
23 yard sign or other form of real estate sales advertisement
24 placed by the seller or lessor.

25 d. Upon a determination by the board, after a hearing
26 conducted pursuant to chapter 17A, that a person has violated
27 a provision of this subsection, the board shall reduce the
28 findings of the hearing to writing, shall deliver a copy of
29 the findings to the person, may issue an order requiring the
30 person to cease and desist from engaging in the conduct
31 resulting in the violation, and may assess a civil penalty of
32 not more than ten thousand dollars against the person.

33 e. The board, by rule, shall ensure that
34 telecommunications providers inform their customers of the
35 customers' rights under this section. The notification shall

1 be made by both of the following:

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

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

6 3. a. A contract made pursuant to a telephone
7 solicitation is not valid and enforceable against a consumer
8 unless made in compliance with this subsection.

9 b. A contract made pursuant to a telephone solicitation
10 must satisfy all of the following:

11 (1) The contract must be reduced to writing and signed by
12 the consumer.

13 (2) The contract must comply with all other applicable
14 laws and rules.

15 (3) The contract must match the description of goods or
16 services as principally used in the telephone solicitation.

17 (4) The contract must contain the name, address, and
18 telephone number of the seller, the total price of the
19 contract, and a detailed description of the goods or services
20 being sold.

21 (5) The contract must contain, in bold, conspicuous type,
22 immediately preceding the signature, the following statement:

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

25 (6) The contract must not exclude from its terms any oral
26 or written representations made by the telephone solicitor to
27 the consumer in connection with the transaction.

28 c. This subsection does not apply to contractual sales
29 specifically regulated under chapter 714D or other law, or to
30 the sale of financial services, security sales, or sales
31 transacted by insurance companies or their wholly owned
32 subsidiaries or agents, or to the sale of cable television
33 services to a franchised cable television operator's existing
34 subscribers within that cable television operator's franchise
35 area, or to any sales where no prior payment is made to the

1 merchant and an invoice accompanies the goods or services
2 allowing the consumer no less than seven days to cancel or
3 return the goods or services without obligation for any
4 payment.

5 4. a. A merchant who engages a telephone solicitor to
6 make or cause to be made a telephone solicitation shall not
7 make or submit any charge to a consumer's credit card account
8 or make or cause to be made any electronic transfer of funds
9 until after the merchant receives from the consumer a copy of
10 the contract, signed by the consumer, which complies with this
11 section.

12 b. This subsection does not apply to chapter 714D or to
13 any of the following:

14 (1) A transaction made pursuant to prior negotiations in
15 the course of a visit by the consumer to a merchant operating
16 a retail business establishment which has a fixed permanent
17 location and where consumer goods are displayed or offered for
18 sale on a continuing basis.

19 (2) A transaction in which the consumer may obtain a full
20 refund for the return of undamaged and unused goods or a
21 cancellation of services notice to the seller within seven
22 days after receipt by the consumer, and the seller will
23 process the refund within thirty days after receipt of the
24 returned merchandise by the consumer.

25 (3) A transaction in which the consumer purchases goods or
26 services pursuant to an examination of a television, radio, or
27 print advertisement or a sample, brochure, or catalog of the
28 merchant that contains all of the following:

29 (a) The name, address, and telephone number of the
30 merchant.

31 (b) A description of the goods or services being sold.

32 (c) Any limitations or restrictions that apply to the
33 offer.

34 (4) A transaction in which the merchant is a bona fide
35 charitable organization or a newspaper.

1 5. A violation of subsection 3 or 4 is a violation of
2 section 714.16, subsection 2, paragraph "a". The remedies and
3 penalties provided by section 714.16, including but not
4 limited to injunctive relief and civil penalties, apply to
5 violations of this section.

6 6. A consumer who receives more than one telephone
7 solicitation within any twelve-month period by or on behalf of
8 the same person in violation of this section may do one or
9 both of the following:

10 a. Bring an action to enjoin further violations.

11 b. Bring an action to recover the greater of the
12 following:

13 (1) Actual monetary damages incurred by the consumer as a
14 result of a violation of this section.

15 (2) Not less than one hundred dollars but not more than
16 two thousand dollars for each violation of this section.

17 7. In a civil action resulting from a transaction
18 involving a violation of this section, a prevailing plaintiff,
19 after judgment in the trial court and exhaustion of all
20 appeals, if any, is entitled to costs and reasonable attorney
21 fees.

22 Sec. 3. IMPLEMENTATION OF ACT. Section 25B.2, subsection
23 3, shall not apply to this Act.

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.

31 The bill also provides that a person who uses or employs
32 ADAD equipment must identify the person within the first 15
33 seconds of a call and provide the recipient of the call with
34 the name and telephone number of a person who the recipient
35 may call to request that no further calls be made to the

1 recipient.

2 A person violating the ADAD restrictions provided in this
3 bill is guilty of a serious misdemeanor, as provided under
4 current law for a violation of Code section 476.57. A serious
5 misdemeanor is punishable by confinement for no more than one
6 year, and by a fine of at least \$250 but not more than \$1,500.

7 The bill also creates new Code section 476B.1 and
8 establishes restrictions on telephone solicitations.

9 The bill provides that a telephone solicitor who makes an
10 unsolicited telephone solicitation to a residential, mobile,
11 or telephonic paging device telephone number shall identify
12 the solicitor's self by the solicitor's true first and last
13 name, and the business on whose behalf the solicitor is making
14 the telephone call, immediately upon making contact by
15 telephone with the person who is the object of the telephone
16 solicitation. The bill provides that a consumer who is a
17 residential, mobile, or telephonic paging device telephone
18 subscriber desiring to be placed on a "no telephone
19 solicitation calls" listing, indicating that the consumer does
20 not wish to receive unsolicited telephone solicitations, may
21 notify the utilities division of the department of commerce
22 and be placed on that listing upon receipt by the division of
23 a \$10 initial listing fee. The listing shall be renewed by
24 the division annually for each consumer upon receipt of a
25 renewal request accompanied by a \$5 renewal fee.

26 The bill provides that a telephone solicitor shall not make
27 or cause to be made any unsolicited telephone solicitation to
28 any residential, mobile, or telephonic paging device telephone
29 number if the number for that telephone appears in the current
30 quarterly listing provided by the division. The bill excludes
31 from this prohibition a person licensed pursuant to Code
32 chapter 543B who calls an actual or prospective seller or
33 lessor of real property when such call is made in response to
34 a yard sign or other form of advertisement placed by the
35 seller or lessor.

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

15 The bill provides that a merchant who engages a telephone
16 solicitor to make telephone solicitations shall not charge a
17 consumer's credit card account or make any electronic transfer
18 of funds until after the merchant receives from the consumer a
19 copy of the contract, signed by the consumer, which complies
20 with the contract provisions of this new Code section.

21 The bill provides that a violation of the contract
22 provisions or the prohibition on charging a consumer's credit
23 card account or making any electronic transfer of funds until
24 after receiving a copy of the signed contract is a violation
25 of the consumer protection provisions contained in Code
26 section 714.16. The bill provides that the remedies and
27 penalties provided in Code section 714.16, including but not
28 limited to injunctive relief and civil penalties, apply to
29 such violations.

30 The bill also provides that a consumer who receives more
31 than one telephone solicitation in violation of the new Code
32 section within any 12-month period by or on behalf of the same
33 person may bring an action to enjoin further violations, and
34 may also bring an action to recover the greater of actual
35 monetary damages incurred by the consumer as a result of a

1 violation or an amount not less than \$100 but not more than
2 \$2,000 for each knowing violation, as well as costs and
3 reasonable attorney fees.

4 The bill may include a state mandate as defined in Code
5 section 25B.3. This bill makes inapplicable Code section
6 25B.2, subsection 3, which would relieve a political
7 subdivision from complying with a state mandate if funding for
8 the cost of the state mandate is not provided or specified.
9 Therefore, political subdivisions are required to comply with
10 any state mandate included in this bill.

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