

FILED JAN 13 2005

SENATE FILE
BY KREIMAN

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COMMERCE

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

A BILL FOR

1 An Act relating to telephone solicitations including establishing
2 certain restrictions on telephone solicitors, providing for
3 registration for residential customers objecting to receiving
4 certain telephone solicitations, and providing penalties and
5 remedies.

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

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1 Section 1. NEW SECTION. 477A.1 DEFINITIONS.

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

4 1. "Established business relationship" means a prior or
5 existing relationship formed by a voluntary two-way
6 communication between a person or entity and a telephone
7 subscriber with or without an exchange of consideration, on
8 the basis of the telephone subscriber's purchase or
9 transaction with the person or entity within eighteen months
10 immediately preceding the date of the telephone call or on the
11 basis of the telephone subscriber's inquiry or application
12 regarding products or services offered by the person or entity
13 within the last three months immediately preceding the date of
14 the telephone call, which relationship has not been previously
15 terminated by either party.

16 2. "Telephone solicitation" means the initiation of a
17 telephone call or message for the purpose of encouraging the
18 purchase or rental of, or investment in, property, goods, or
19 services, which is transmitted to any person, but such term
20 does not include a call or message that is any of the
21 following:

22 a. To any person with that person's prior express
23 invitation or permission.

24 b. To any person with whom the caller has an established
25 business relationship.

26 c. By or on behalf of a tax-exempt nonprofit organization
27 while the organization is engaged in fund-raising to support
28 the charitable purpose for which the organization was
29 established provided that a bona fide member of the
30 organization makes the voice communication.

31 3. "Telephone solicitor" means a person doing business in
32 this state that makes or causes to be made a telephone
33 solicitation.

34 4. "Telephone subscriber" means a person that has
35 subscribed to residential telephone or wireless communications

1 service from a local exchange company or wireless
2 communications provider, or any other person living with or
3 residing with such person.

4 Sec. 2. NEW SECTION. 477A.2 DO-NOT-CALL LISTING.

5 1. The secretary of state shall contract with a service to
6 maintain a do-not-call list of telephone subscribers in this
7 state who object to receiving telephone solicitations.

8 2. The secretary of state shall include telephone
9 subscribers in this state who are included in the national
10 database established by the federal communications commission
11 pursuant to 47 U.S.C. § 227(c)(3).

12 3. A telephone solicitor doing business in this state
13 shall obtain a subscription to receive an updated listing of
14 telephone subscribers in this state who have registered to be
15 included on the do-not-call list established in this section.

16 4. Information contained in the do-not-call list
17 established in this section shall be used only for the purpose
18 of compliance with section 477A.3 and this section. Such
19 information shall not be considered a public record for the
20 purposes of chapter 22.

21 Sec. 3. NEW SECTION. 477A.3 SOLICITATION PROHIBITION.

22 A telephone solicitor shall not make or cause to be made a
23 telephone solicitation to any telephone subscriber in this
24 state who has given notice to the secretary of state of the
25 telephone subscriber's objection to receiving telephone
26 solicitations.

27 Sec. 4. NEW SECTION. 477A.4 RULES.

28 The secretary of state, in cooperation with the consumer
29 protection division of the department of justice, shall adopt
30 rules pursuant to chapter 17A to administer this chapter.

31 Sec. 5. NEW SECTION. 477A.5 INVESTIGATIONS -- PENALTIES.

32 1. A violation of this chapter is an unlawful practice
33 under section 714.16, subsection 2, paragraph "a". All the
34 powers conferred upon the attorney general to accomplish the
35 objectives and carry out the duties prescribed pursuant to

1 section 714.16 are also conferred upon the attorney general to
2 enforce this chapter including seeking injunctive relief and
3 civil penalties.

4 2. a. A telephone subscriber who has received more than
5 one telephone solicitation from or on behalf of the same
6 telephone solicitor within any twelve-month period in
7 violation of this chapter may bring a civil action against the
8 telephone solicitor for any of the following relief:

9 (1) To enjoin a future violation.

10 (2) To recover actual monetary loss from the violation or
11 to receive up to five hundred dollars in damages for each
12 violation, whichever is greater.

13 b. In addition to other damages allowed under this
14 section, a court may award liquidated damages up to three
15 times the amount available under paragraph "a" if the court
16 finds the telephone solicitor willfully or knowingly violated
17 this chapter.

18 c. It shall be an affirmative defense in any action
19 brought under this subsection that the telephone solicitor has
20 established and implemented reasonable practices and
21 procedures to effectively prevent telephone solicitation in
22 violation of this chapter.

23 EXPLANATION

24 This bill establishes restrictions on solicitations made by
25 telephone. New Code section 477A.1 provides definitions for
26 "established business relationship", "telephone solicitation",
27 "telephone solicitor", and "telephone subscriber". "Telephone
28 solicitations" does not include calls to a person with that
29 person's prior express permission, to a person with whom the
30 caller has an established business relationship, and by a tax-
31 exempt nonprofit organization engaging in fund-raising to
32 support the charitable purpose for which the organization was
33 established.

34 The bill requires the secretary of state to contract with a
35 service to maintain a state do-not-call list for residential

1 telephone and wireless subscribers in this state who object to
2 receiving telephone solicitations. The list shall include
3 subscribers in this state who have registered with the
4 national list established by the federal communications
5 commission. Telephone solicitors doing business in this state
6 must subscribe to updates to the list. Information contained
7 in the list is not public information for the purposes of Code
8 chapter 22.

9 The bill prohibits a telephone solicitor from making a
10 telephone solicitation to any telephone subscriber in this
11 state who has given notice to the secretary of state of the
12 subscriber's objection to receiving telephone solicitations.
13 The secretary of state may adopt rules to enforce new Code
14 chapter 477A.

15 The attorney general can enforce new Code chapter 477A in
16 the same manner as consumer fraud under Code section 714.16.
17 Residential subscribers who have received more than one
18 telephone call within any 12-month period from or on behalf of
19 the same solicitor in violation of the chapter may bring a
20 court action to enjoin a future violation, and to recover
21 damages from the violation or to receive up to \$500 in damages
22 for each violation, whichever is greater. The court may also
23 award liquidated damages up to three times the amount of
24 damages awarded if the solicitor willfully or knowingly
25 violated Code chapter 477A. The bill provides for an
26 affirmative defense that the solicitor has established and
27 implemented reasonable practices and procedures to effectively
28 prevent telephone solicitation in violation of Code chapter
29 477A.

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