

CHAPTER 101

REGULATION OF FREE OFFERS AND BUYING CLUB MEMBERSHIPS

H.F. 229

AN ACT relating to the regulation of free offers and buying club memberships.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 552A.3, Code 2015, is amended to read as follows:

552A.3 Right of cancellation — requirement of writing.

The requirements of sections 555A.1 through 555A.5, relating to door-to-door sales, shall apply to sales of buying club memberships, irrespective of the place or manner of sale or the purpose for which they are purchased, except that in connection with the sale of a buying club membership transacted through the internet by a company primarily engaged in the sale of goods through the internet, section 555A.4, subsections 1 and 3 shall not apply. In addition to the requirements of chapter 555A, a contract shall not be enforceable against a person acquiring a membership in a buying club unless the contract is in writing and signed by the purchaser.

Sec. 2. Section 714.16, subsection 2, Code 2015, is amended by adding the following new paragraph:

NEW PARAGRAPH. o. (1) It is an unlawful practice for a person to make a free offer to a consumer, or impose a financial obligation on the consumer as a result of the consumer's acceptance of a free offer, unless the person provides the consumer with clear and conspicuous information regarding the terms of the free offer before the consumer agrees to accept the free offer, including at a minimum all of the following:

(a) Identification of all goods or services, or enrollments in a membership, subscription, or service contract, that the consumer will receive or incur a financial obligation for as a result of accepting the free offer.

(b) The cost to the consumer of any financial obligation the consumer will incur if the consumer accepts the free offer, including any fees or charges.

(c) Any requirement, if applicable, that the consumer take affirmative action to reject the free offer and instructions about how the consumer is to indicate the consumer's rejection of the free offer.

(d) A statement, if applicable, that by accepting the free offer, the consumer will become obligated for additional goods or services, or enrollment in a membership, subscription, or service contract, unless the consumer takes affirmative action to cancel the free offer or otherwise reject receipt of the additional goods or services or the enrollment in a membership, subscription, or service contract.

(e) The consumer's right to cancel the free offer using procedures specifically intended for that purpose that, at a minimum, enable the consumer to cancel by calling a toll-free telephone number or to cancel in a manner substantially similar to that by which the consumer accepted the free offer.

(f) The time period during which the consumer must cancel in order to avoid incurring a financial obligation as a result of accepting the free offer.

(g) If applicable, the consumer's right to receive a credit on goods or services received as a result of accepting the free offer when the goods or services are returned or rejected, and the time period during which the goods or services must be returned or rejected for the purpose of receiving a credit.

(2) It is an unlawful practice for a person to cause a consumer to incur a financial obligation as a result of accepting a free offer unless one of the following occurs:

(a) The person obtains the consumer's billing information directly from the consumer. For purposes of this subparagraph division, a person obtains a consumer's billing information directly from the consumer if the billing information is obtained by the person or by the person's agent or employee.

(b) The consumer gives affirmative consent at the time the consumer accepts a free offer for the person to provide billing information to a person other than the person making the free offer.

(3) It is an unlawful practice for a person to impose a financial obligation on a consumer as a result of the consumer's acceptance of a free offer unless the consumer's affirmative consent to the terms of the free offer as disclosed in subparagraph (1) is obtained.

(4) It is an unlawful practice for a person that makes a free offer to a consumer to fail or refuse to cancel the free offer if the consumer has used, or made reasonable efforts to attempt to use, one of the procedures required to be available to the consumer as described in subparagraph (1), subparagraph division (e).

(5) This paragraph "o" does not apply to free offers made in connection with services that are subject to the federal Communications Act of 1934, 47 U.S.C. §151 et seq.

(6) For purposes of this paragraph "o":

(a) "*Affirmative consent*" means a consumer's agreement to incur a financial obligation as a result of accepting a free offer, or to provide the consumer's billing information, given or made in the manner specifically identified for the consumer to indicate the consumer's agreement.

(b) "*Billing information*" means any record or information compiled or maintained with respect to a consumer that identifies the consumer and provides a means by which the consumer's financial obligation incurred by accepting a free offer may be paid or otherwise satisfied, including but not limited to information pertaining to a consumer's credit card, payment card, charge card, debit card, checking, savings, or other banking account, and electronic funds transfer information.

(c) "*Clear and conspicuous information*" means language that is readily understandable and presented in such size, color, contrast, and location, or audibility and cadence, compared to other language, as to be readily noticed and understood, and that is in close proximity to the request for consent to a free offer.

(d) "*Consumer*" means an individual who seeks to accept or accepts a free offer.

(e) (i) "*Free offer*" means an offer of goods or services without cost, or for a one-time payment to cover only incidental charges such as shipping or handling, to a consumer that, if accepted, causes the consumer to incur a financial obligation for any of the following:

(A) The goods or services received.

(B) Additional goods or services other than those initially received.

(C) Enrollment in a membership, subscription, or service contract as a result of accepting the offer.

(ii) "*Free offer*" does not include a free good or service that is received by a consumer as a result of the consumer's entering into an agreement for enrollment in a membership, subscription, or service contract that is not otherwise a free offer or a consequence of the consumer's agreement to accept a free offer.

(iii) "*Free offer*" does not include enrollment in a subscription to a publication, including but not limited to a magazine, newspaper, or other periodical, if the consumer may cancel the subscription at any time and receive a refund for issues not yet distributed, or in the case of a newspaper, a refund for newspapers that would otherwise be distributed after the expiration of the current month.