

FEB 24 2000
COMMERCE AND REGULATION

HOUSE FILE 2446
BY SCHRADER

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

A BILL FOR

1 An Act establishing certain restrictions and requirements
2 relating to telephone solicitations and providing a civil
3 penalty.

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

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HF 2446

1 Section 1. NEW SECTION. 476B.1 TELEPHONE SOLICITATION
2 RESTRICTIONS.

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

5 a. "Board" means the utilities board created in section
6 474.1.

7 b. "Caller identification service" means a telephone
8 service that displays the caller's telephone number or
9 identity to the recipient of the telephone call.

10 c. "Residential subscriber" means a person who has
11 subscribed to residential telephone service from a local
12 exchange carrier as defined in 476.96, subsection 5, including
13 any other persons living or residing with such person.

14 d. "Telephone solicitation" means any voice communication
15 over a telephone line for the purpose of encouraging the
16 purchase or rental of, or investment in, property, goods, or
17 services, but does not include the following:

18 (1) A communication to a residential subscriber with the
19 subscriber's prior express invitation or permission.

20 (2) A communication by or on behalf of a person with whom
21 a residential subscriber has a prior or current business or
22 personal relationship.

23 (3) A communication by a charitable organization which is
24 subject to chapter 13C, by a professional commercial fund-
25 raiser who has obtained a registration permit pursuant to
26 chapter 13C, or by a religious organization. Such
27 communication may be accomplished through the use of a live
28 operator, the use of ADAD equipment as defined in section
29 476.57, or by other means.

30 2. A person shall not make or cause to be made a telephone
31 solicitation to a residential subscriber in this state who has
32 given notice to the board, pursuant to rules adopted under
33 subsection 3, of such subscriber's objection to receiving
34 telephone solicitations.

35 3. a. The board shall establish and maintain a database

1 including a list of telephone numbers of residential
2 subscribers who object to receiving telephone solicitations.
3 The board shall establish the database no later than January
4 1, 2001.

5 b. The database may be maintained by the board or by
6 another entity under contract with the board.

7 c. The board, no later than January 1, 2001, shall adopt
8 rules which provide for all of the following:

9 (1) A requirement that a local exchange carrier inform its
10 residential subscribers of the opportunity to provide
11 notification to the board or its contractor that the
12 subscriber objects to receiving telephone solicitations.

13 (2) The methods by which a residential subscriber may give
14 notice to the board or its contractor of the subscriber's
15 objection to receiving telephone solicitations, or the
16 revocation of such notice and the manner in which the
17 objections and revocations will be added to the database.

18 (3) The length of time a notice of objection is effective
19 and the effect of a change of telephone number on such notice.

20 (4) The methods by which a person intending to make
21 telephone solicitations can access the database as required to
22 avoid calling the telephone number of a residential subscriber
23 included in the database.

24 (5) Such other matters relating to the database that the
25 board deems necessary.

26 d. If, pursuant to 47 U.S.C. § 227(c)(3), the federal
27 communications commission establishes a single national
28 database of telephone numbers of subscribers who object to
29 receiving telephone solicitations, the board shall include the
30 part of the single national database that relates to this
31 state in the database established and maintained pursuant to
32 this section.

33 4. Information contained in the database established
34 pursuant to this section shall be used only for the purpose of
35 compliance with this section or in a proceeding or action

1 under subsection 6 or 7. The database is not a public record
2 or otherwise subject to disclosure under chapter 22.

3 5. a. A person who makes a telephone solicitation to a
4 residential subscriber in this state, at the beginning of such
5 call, shall state clearly the identity of the person
6 initiating the call.

7 b. A person who makes a telephone solicitation to a
8 residential subscriber in this state shall not knowingly
9 utilize any method to block or otherwise circumvent the
10 subscriber's use of a telephone caller identification service.

11 6. The board shall investigate any complaints received
12 concerning a violation of this section. If, after
13 investigating a complaint, the board finds that there has been
14 a violation of this section, the board may bring an action to
15 impose a civil penalty up to a maximum of two thousand dollars
16 for each knowing violation and to seek other relief, including
17 injunctive relief, as the court deems appropriate against the
18 telephone solicitor.

19 7. A residential subscriber who receives more than one
20 telephone solicitation within any twelve-month period by or on
21 behalf of the same person in violation of this section may do
22 one or both of the following:

23 a. Bring an action to enjoin further violations.

24 b. Bring an action to recover the greater of the
25 following:

26 (1) Actual monetary damages incurred by the residential
27 subscriber as a result of the violation.

28 (2) An amount not to exceed two thousand dollars for each
29 knowing violation.

30 8. The establishment and implementation, with due care, of
31 reasonable practices and procedures that effectively prevent a
32 telephone solicitation that violates this section is a defense
33 in any action or proceeding brought under subsection 6 or 7.

34 9. An action or proceeding shall not be brought under
35 subsection 6 or 7 more than two years after the later of the

1 following:

2 a. The date when the person bringing the action knew or
3 should have known of the occurrence of the alleged violation.

4 b. The date of the termination of any proceeding or action
5 by the board.

6 10. The remedies, duties, prohibitions, and penalties of
7 this section are not exclusive and are in addition to any
8 other remedy, duty, prohibition, or penalty provided by law.

9 11. A provider of a telephone caller identification
10 service is not liable for a violation of this section
11 committed by another person.

12 EXPLANATION

13 This bill creates new Code section 476B.1 relating to
14 telephone solicitations. The bill provides that a person
15 shall not make or cause to be made a telephone solicitation to
16 a residential subscriber in this state who has given notice to
17 the utilities board of the subscriber's objection to receiving
18 telephone solicitations. The utilities board is directed to
19 establish and maintain a database including a list of
20 telephone numbers of residential subscribers who object to
21 receiving telephone solicitations. The database is to be
22 established by no later than January 1, 2001. The bill
23 provides that a person who makes a telephone solicitation to a
24 residential subscriber in this state shall not knowingly
25 utilize any method to block or otherwise circumvent such
26 subscriber's use of a telephone caller identification service.
27 The bill provides that the board is to investigate any
28 complaints received concerning a violation, and if, after
29 investigating a complaint, the board finds that there has been
30 a violation, the board may bring an action to impose a civil
31 penalty up to a maximum of \$2,000 for each knowing violation
32 and to seek other relief, including injunctive relief, as the
33 court deems appropriate. The bill also establishes cause of
34 action against a violator by a residential subscriber who
35 receives more than one telephone solicitation within any 12-

1 month period by or on behalf of the same person in violation
2 of the new Code section. The bill provides that a residential
3 subscriber may bring an action to enjoin further violations,
4 to recover the greater of actual monetary damages or an amount
5 not to exceed \$2,000 for each knowing violation, or both. The
6 bill provides that the establishment and implementation, with
7 due care, of reasonable practices and procedures to
8 effectively prevent telephone solicitations prohibited under
9 this section is a defense in any action.

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