

FEB 25 2000

COMMERCE AND REGULATION

HOUSE FILE
BY REYNOLDS

2469

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

A BILL FOR

1 An Act relating to prohibiting certain telephone solicitations,
2 establishing certain requirements for contracts associated
3 with such solicitations, establishing a list of persons not
4 wishing to receive such solicitations, and providing for civil
5 penalties.

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

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HF 2469

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

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

16 d. "Department" means the department of commerce.

17 e. "Doing business in this state" means a business which
18 conducts telephonic sales calls from a location in this state
19 or from other states or nations to consumers located in this
20 state.

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

24 g. "Telephone solicitor" means a person doing business in
25 this state, who makes or causes to be made a telephonic sales
26 call, including, but not limited to, calls made by use of
27 automatic dialing-announcing device equipment.

28 h. "Telephonic sales call" means a call made by a
29 telephone solicitor to a consumer for any of the following
30 purposes:

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

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

34 (3) To obtain information that will or may be used for the
35 direct solicitation of a sale of a consumer good or service or

1 an offer of extension of credit for such purpose.

2 i. "Unsolicited telephonic sales call" means a telephonic
3 sales call other than a call made as follows:

4 (1) In response to an express request of the person
5 called.

6 (2) 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 (3) To a person with whom the telephone solicitor has a
10 prior or existing business relationship.

11 (4) By a newspaper publisher or such publisher's agent or
12 employee in connection with the publisher's business.

13 2. A telephone solicitor who makes an unsolicited
14 telephonic sales call to a residential, mobile, or telephonic
15 paging device telephone number shall identify the solicitor's
16 self by the solicitor's true first and last name, and the
17 business on whose behalf the solicitor is making the
18 telephonic sales call, immediately upon making contact by
19 telephone with the person who is the object of the telephone
20 solicitation.

21 3. a. A residential, mobile, or telephonic paging device
22 telephone subscriber desiring to be placed on a "no sales
23 solicitation calls" listing indicating that the subscriber
24 does not wish to receive unsolicited telephonic sales calls
25 may notify the department and shall be placed on that listing
26 upon receipt by the department of a five dollar initial
27 listing fee. The listing shall be renewed by the department
28 biannually for each consumer upon receipt of a renewal request
29 accompanied by a five dollar renewal fee.

30 b. The department shall update its "no sales solicitation
31 calls" listing upon receipt of an initial listing or renewal
32 request made by a consumer.

33 c. The department, by rule, shall establish a fee to be
34 imposed on all telephone solicitors sufficient to pay for the
35 costs associated with the administration and maintenance of

1 the "no sales solicitation calls" listing.

2 d. A fee imposed and collected under this section shall be
3 deposited in the general fund of the state and is appropriated
4 to the department for the administration of this section.

5 4. A telephone solicitor shall not make or cause to be
6 made any unsolicited telephonic sales call to any residential,
7 mobile, or telephonic paging device telephone number if the
8 number for that telephone appears in the then current
9 quarterly listing published by the department. A telephone
10 solicitor or person who offers for sale consumer information
11 which includes residential, mobile, or telephonic paging
12 device telephone numbers, except directory assistance and
13 telephone directories sold by a telephone company or an
14 organization exempt under § 501(c)(3) or (6) of the Internal
15 Revenue Code, shall screen and exclude those numbers which
16 appear on the division's then current "no sales solicitation
17 calls" list from any consumer information offer or sold. This
18 subsection does not apply to a person licensed pursuant to
19 chapter 543B who calls an actual or prospective seller or
20 lessor of real property if such call is made in response to a
21 yard sign or other form of real estate sales advertisement
22 placed by the seller or lessor.

23 5. a. A contract made pursuant to a telephonic sales call
24 is not valid and enforceable against a consumer unless made in
25 compliance with this subsection.

26 b. A contract made pursuant to a telephonic sales call
27 must satisfy all of the following:

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

30 (2) The contract must comply with all other applicable
31 laws and rules.

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

34 (4) The contract must contain the name, address, and
35 telephone number of the seller, the total price of the

1 contract, and a detailed description of the goods or services
2 being sold.

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

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

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

10 c. This subsection does not apply to contractual sales
11 specifically regulated by other law, or to the sale of cable
12 television services to a franchised cable television
13 operator's existing subscribers within that cable television
14 operator's franchise area, or to any sales where no prior
15 payment is made to the merchant and an invoice accompanies the
16 goods or services allowing the consumer no less than seven
17 days to cancel or return the goods or services without
18 obligation for any payment.

19 6. a. A merchant who engages a telephone solicitor to
20 make or cause to be made a telephonic sales call shall not
21 make or submit any charge to a consumer's credit card account
22 or make or cause to be made any electronic transfer of funds
23 until after the merchant receives from the consumer a copy of
24 the contract, signed by the consumer, which complies with this
25 section.

26 b. This subsection does not apply to any of the following:

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

32 (2) A transaction in which the consumer may obtain a full
33 refund for the return of undamaged and unused goods or a
34 cancellation of services notice to the seller within seven
35 days after receipt by the consumer, and the seller will

1 process the refund within thirty days after receipt of the
2 returned merchandise by the consumer.

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

7 (a) The name, address, and telephone number of the
8 merchant.

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

10 (c) Any limitations or restrictions that apply to the
11 offer.

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

14 7. a. Except as otherwise provided in paragraph "b", a
15 person shall not make or knowingly allow a telephonic sales
16 call to be made using automatic dialing-announcing device
17 equipment for the selection or dialing of telephone numbers or
18 the playing of a recorded message when a connection is
19 completed to a telephone number called.

20 b. This subsection does not prohibit the use of an
21 automatic dialing-announcing device as provided in section
22 476.57 so long as the telephone numbers selected for automatic
23 dialing have been screened to exclude any telephone subscriber
24 who is included on the department's then current "no sales
25 solicitation calls" listing or any unlisted telephone number,
26 or if the calls made concern a good or service that has been
27 previously ordered or purchased.

28 8. The department shall investigate any complaints
29 received concerning a violation of this section. If, after
30 investigating a complaint, the department finds that there has
31 been a violation of this section, the department may bring an
32 action to impose a civil penalty and to seek other relief,
33 including injunctive relief, as the court deems appropriate
34 against the telephone solicitor. A civil penalty imposed for
35 a violation shall not exceed ten thousand dollars per

1 violation and shall be deposited in the general fund of the
2 state. The department may waive a civil penalty if the
3 violator has previously made full restitution or reimbursement
4 or has paid actual damages to a consumer who was injured as a
5 result of the violation.

6 9. a. In a civil action resulting from a transaction
7 involving a violation of this section, the prevailing party,
8 after judgment in the trial court and exhaustion of all
9 appeals, if any, is entitled to costs and reasonable attorney
10 fees.

11 b. In a civil action initiated by the department, the
12 court may award to the prevailing party reasonable attorney
13 fees and costs if the court finds that there was no
14 justiciable issue of either law or fact raised by the losing
15 party or if the court finds that the losing party acted in bad
16 faith.

17 10. The board shall by rule ensure that telecommunications
18 providers inform their customers of the customers' rights
19 under this section. The notification shall be made by both of
20 the following:

21 a. Annual inserts in the billing statements mailed to
22 customers.

23 b. Conspicuous publication of the notice in the consumer
24 information pages of the local telephone directories.

25 EXPLANATION

26 This bill creates new Code section 476B.1 and establishes
27 restrictions on telephone solicitations.

28 The bill provides that a telephone solicitor who makes an
29 unsolicited telephonic sales call to a residential, mobile, or
30 telephonic paging device telephone number shall identify the
31 solicitor's self by the solicitor's true first and last name,
32 and the business on whose behalf the solicitor is making the
33 sales call, immediately upon making contact by telephone with
34 the person who is the object of the telephone solicitation.

35 The bill provides that a residential, mobile, or telephonic

1 paging device telephone subscriber desiring to be placed on a
2 "no sales solicitation calls" listing indicating that the
3 subscriber does not wish to receive unsolicited telephonic
4 sales calls may notify the department and be placed on that
5 listing upon receipt by the department of a \$5 initial listing
6 fee. The listing shall be renewed by the department annually
7 for each consumer upon receipt of a renewal request
8 accompanied by a \$5 renewal fee.

9 The bill provides that the department, by rule, shall
10 establish a fee to be imposed on all telephone solicitors
11 sufficient to pay for the costs associated with the
12 administration and maintenance of the "no sales solicitation
13 calls" listing.

14 The bill provides that a telephone solicitor shall not make
15 or cause to be made any unsolicited telephonic sales call to
16 any residential, mobile, or telephonic paging device telephone
17 number if the number for that telephone appears in the then
18 current quarterly listing published by the department. The
19 bill excludes from this prohibition a person licensed pursuant
20 to Code chapter 543B who calls an actual or prospective seller
21 or lessor of real property when such call is made in response
22 to a yard sign or other form of advertisement placed by the
23 seller or lessor.

24 The bill provides that a contract made pursuant to a
25 telephonic sales call must be reduced to writing and signed by
26 the consumer; must comply with all other applicable laws and
27 rules; must match the description of goods or services as
28 principally used in the telephone solicitation; must contain
29 the name, address, and telephone number of the seller, the
30 total price of the contract, and a detailed description of the
31 goods or services being sold; must contain, in bold,
32 conspicuous type, immediately preceding the signature, the
33 statement "You are not obligated to pay any money unless you
34 sign this contract and return it to the seller."; and the
35 contract shall not exclude from its terms any oral or written

1 representations made by the telephone solicitor to the
2 consumer in connection with the transaction.

3 The bill provides that the department of commerce is to
4 investigate any complaints received concerning a violation of
5 this section. If, after investigating a complaint, the
6 department finds that there has been a violation of this
7 section, the department may bring an action to impose a civil
8 penalty and to seek other relief, including injunctive relief,
9 as the court deems appropriate against the telephone
10 solicitor. A civil penalty imposed for a violation shall not
11 exceed \$10,000 per violation and shall be deposited in the
12 general fund of the state.

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