

Heaton, Chair
Thomas
Norback

HSB 709
ECONOMIC DEVELOPMENT

HOUSE FILE ^{Su} 02515 ^{By}
BY (PROPOSED COMMITTEE ON
ECONOMIC DEVELOPMENT
BILL BY CHAIRPERSON TEIG)

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

A BILL FOR

1 An Act relating to telephone solicitations by establishing
2 certain restrictions on the manner in which ADAD equipment is
3 used, establishing certain restrictions on telephone
4 solicitors, establishing certain requirements for contracts
5 associated with such solicitations, establishing a list for
6 persons not wishing to receive such solicitations,
7 establishing a private cause of action, making an
8 appropriation, and providing for civil penalties.

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

10
11
12
13
14
15
16
17
18
19
20
21
23

1 Section 1. Section 476.57, subsections 1 and 2, Code 1999,
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 ID when the caller's equipment is
8 capable of allowing the display of the caller's telephone
9 number or identity.

10 Sec. 2. NEW SECTION. 476B.1 TELEPHONE SOLICITATION
11 RESTRICTIONS.

12 1. As used in this section, unless the context otherwise
13 requires:

14 a. "Board" means the utilities board created in section
15 474.1.

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

18 c. "Consumer good or service" means any real property or
19 any tangible or intangible personal property which is normally
20 used for personal, family, or household purposes, including,
21 without limitation, any such property intended to be attached
22 to or installed in any real property without regard to whether
23 it is so attached or installed, as well as cemetery lots and
24 timeshare estates, and any service related to such property.

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

26 e. "Doing business in this state" means a business which
27 conducts telephone solicitations from a location in this state
28 or from other states or nations to consumers located in this
29 state.

30 f. "Merchant" means a person who, directly or indirectly,
31 offers or makes available to a consumer any consumer good or
32 service.

33 g. "Telephone solicitation" means any voice communication
34 over a telephone for the purpose of encouraging the purchase
35 or rental of, or investment in, property, goods, services,

1 wherever originated, and includes any of the following
2 purposes:

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

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

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

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

13 i. "Unsolicited telephone solicitation" means a telephone
14 solicitation other than a call made as follows:

15 (1) In response to an express request of the person
16 called.

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

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

22 (4) To a residential subscriber if the telephone
23 solicitation is made on behalf of a not-for-profit
24 organization exempt from paying taxes under section 501(c) of
25 the Internal Revenue Code, and if a bona fide member of the
26 exempt organization makes such communication.

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

35 3. a. The department shall establish and maintain a "no

1 telephone solicitation calls" listing as provided in this
 2 subsection. The department may enter into an agreement with
 3 another person to maintain the "no telephone solicitation
 4 calls" listing, as deemed appropriate by the department. A
 5 residential, mobile, or telephonic paging device telephone
 6 subscriber desiring to be placed on a "no telephone
 7 solicitation calls" listing indicating that the subscriber
 8 does not wish to receive unsolicited telephone solicitations
 9 shall notify the department and be placed on that listing upon
 10 receipt by the department of a ten dollar initial listing fee.
 11 The listing shall be renewed by the department annually for
 12 each consumer upon receipt of a renewal request accompanied by
 13 a five dollar renewal fee.

14 b. The department shall update its "no telephone
 15 solicitation calls" listing upon receipt of an initial listing
 16 or renewal request made by a consumer. Upon request, the
 17 department shall provide a copy of the list for a fee as
 18 established by the department to a telephone solicitor
 19 requesting such list, in either a printed or electronic form.

20 c. A fee imposed and collected under this section shall be
 21 deposited in the general fund of the state and is appropriated
 22 to the department for the administration of this section.

23 d. If, pursuant to 47 U.S.C. § 227(c)(3), the federal
 24 communications commission establishes a single national
 25 database of telephone numbers of subscribers who object to
 26 receiving telephone solicitations, the commission shall
 27 include the portion of such national database including
 28 subscriber telephone numbers located in this state in the "no
 29 telephone solicitation calls" listing established and
 30 maintained by the department.

31 4. A telephone solicitor shall not make or cause to be
 32 made any unsolicited telephone solicitations to any
 33 residential, mobile, or telephonic paging device telephone
 34 number if the number for that telephone appears in the current
 35 listing provided by the department. A telephone solicitor or

1 person who offers for sale consumer information which includes
2 residential, mobile, or telephonic paging device telephone
3 numbers, except directory assistance and telephone directories
4 sold by a telephone company or an organization exempt under
5 section 501(c)(3) or (6) of the Internal Revenue Code, shall
6 screen and exclude those numbers which appear on the
7 department's current "no telephone solicitation calls" list
8 from any consumer information offer or sold. This subsection
9 does not apply to a person licensed pursuant to chapter 543B
10 who calls an actual or prospective seller or lessor of real
11 property if such call is made in response to a yard sign or
12 other form of real estate sales advertisement placed by the
13 seller or lessor.

14 5. a. A contract made pursuant to a telephone
15 solicitation is not valid and enforceable against a consumer
16 unless made in compliance with this subsection.

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

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

21 (2) The contract must comply with all other applicable
22 laws and rules.

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

25 (4) The contract must contain the name, address, and
26 telephone number of the seller, the total price of the
27 contract, and a detailed description of the goods or services
28 being sold.

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

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

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

1 c. This subsection does not apply to contractual sales
 2 specifically regulated by other law, or to the sale of
 3 financial services, security sales, or sales transacted by
 4 insurance companies or their wholly owned subsidiaries or
 5 agents, or to the sale of cable television services to a
 6 franchised cable television operator's existing subscribers
 7 within that cable television operator's franchise area, or to
 8 any sales where no prior payment is made to the merchant and
 9 an invoice accompanies the goods or services allowing the
 10 consumer no less than seven days to cancel or return the goods
 11 or services without obligation for any payment.

12 6. a. A merchant who engages a telephone solicitor to
 13 make or cause to be made a telephone solicitation shall not
 14 make or submit any charge to a consumer's credit card account
 15 or make or cause to be made any electronic transfer of funds
 16 until after the merchant receives from the consumer a copy of
 17 the contract, signed by the consumer, which complies with this
 18 section.

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

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

25 (2) A transaction in which the consumer may obtain a full
 26 refund for the return of undamaged and unused goods or a
 27 cancellation of services notice to the seller within seven
 28 days after receipt by the consumer, and the seller will
 29 process the refund within thirty days after receipt of the
 30 returned merchandise by the consumer.

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

35 (a) The name, address, and telephone number of the

1 merchant.

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

3 (c) Any limitations or restrictions that apply to the
4 offer.

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

7 7. a. Except as otherwise provided in paragraph "b", a
8 person shall not make or knowingly allow a telephone
9 solicitation to be made using automatic dialing-announcing
10 device equipment for the selection or dialing of telephone
11 numbers or the playing of a recorded message when a connection
12 is completed to a telephone number called.

13 b. This subsection does not prohibit the use of an
14 automatic dialing-announcing device as provided in section
15 476.57 so long as the telephone numbers selected for automatic
16 dialing have been screened to exclude any consumer who is
17 included on the department's current "no telephone
18 solicitation calls" listing or any unlisted telephone number,
19 or if the calls made concern a good or service that has been
20 previously ordered or purchased.

21 8. The attorney general shall investigate any complaints
22 received concerning a violation of this section. If, after
23 investigating a complaint, the attorney general finds that a
24 violation of this section has occurred, the attorney general
25 may bring a civil action to impose a civil penalty not to
26 exceed ten thousand dollars per violation and to seek other
27 relief, including injunctive relief, as the court deems
28 appropriate against the telephone solicitor. A civil penalty
29 imposed for a violation of this section shall be deposited in
30 the general fund of the state. A civil penalty imposed under
31 this section may be recovered in an action brought by the
32 attorney general, or the attorney general may compromise such
33 civil penalty, and upon agreement of the violator to pay the
34 compromised amount, terminate an action to recover such civil
35 penalty. The attorney general may waive a civil penalty if

1 the violator has previously made full restitution or
2 reimbursement or has paid actual damages to a consumer who was
3 injured as a result of the violation.

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

8 a. Bring an action to enjoin further violations.

9 b. Bring an action to recover the greater of the
10 following:

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

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

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

21 b. In a civil action initiated by the attorney general,
22 the court may award to the prevailing party reasonable
23 attorney fees and costs if the court finds that there was no
24 justiciable issue of either law or fact raised by the losing
25 party or if the court finds that the losing party acted in bad
26 faith.

27 11. The board shall by rule ensure that telecommunications
28 providers inform their customers of the customers' rights
29 under this section. The notification shall be made by both of
30 the following:

31 a. Annual inserts in the billing statements mailed to
32 customers.

33 b. Conspicuous publication of the notice in the consumer
34 information pages of the local telephone directories.

35

EXPLANATION

1 This bill provides that a person using ADAD (automatic
2 dialing-announcing device) equipment is prohibited from using
3 equipment in a manner that impedes or prevents the function of
4 a recipient's caller ID when the caller's ADAD equipment is
5 capable of allowing the display of the caller's telephone
6 number or identity. A person violating this provision is
7 guilty of a serious misdemeanor, as provided under current law
8 for a violation of Code section 476.57.

9 The bill creates new Code section 476B.1 and establishes
10 restrictions on telephone solicitations.

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

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

1 lessor.

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

16 The bill provides that the attorney general is to
 17 investigate any complaints received concerning a violation of
 18 this provision of the bill. If, after investigating a
 19 complaint, the attorney general finds that there has been a
 20 violation, the attorney general may bring an action to impose
 21 a civil penalty and to seek other relief, including injunctive
 22 relief, as the court deems appropriate against the telephone
 23 solicitor. A civil penalty imposed for a violation shall not
 24 exceed \$10,000 per violation and shall be deposited in the
 25 general fund of the state.

26 The bill also provides that a consumer who receives more
 27 than one telephone solicitation in violation of the new Code
 28 section within any 12-month period by or on behalf of the same
 29 person may bring an action to enjoin further violations; and
 30 may also bring an action to recover the greater of actual
 31 monetary damages incurred by the consumer as a result of a
 32 violation or an amount not less than \$100 but not more than
 33 \$2,000 for each knowing violation.

34
35

FEB 29 2000
WAYS AND MEANS

HOUSE FILE 2515
BY COMMITTEE ON ECONOMIC
DEVELOPMENT

(SUCCESSOR TO HSB 709)

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

A BILL FOR

1 An Act relating to telephone solicitations by establishing
2 certain restrictions on telephone solicitors, establishing
3 certain requirements for contracts associated with such
4 solicitations, establishing a list for persons not wishing to
5 receive such solicitations, establishing a private cause of
6 action, making an appropriation, and providing for civil
7 penalties.

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

9
10
11
12
13
14
15
16
17
18
19
20
21
22

HF 2515

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. "Division" means the utilities division of the
17 department of commerce.

18 e. "Doing business in this state" means a business which
19 conducts telephone solicitations from a location in this state
20 or from other states or nations to consumers located in this
21 state.

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

25 g. "Telephone solicitation" means any voice communication
26 over a telephone for the purpose of encouraging the purchase
27 or rental of, or investment in, property, goods, services,
28 wherever originated, and includes any of the following
29 purposes:

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

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

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

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

5 i. "Unsolicited telephone solicitation" means a telephone
6 solicitation other than a call made as follows:

7 (1) In response to an express request of the person
8 called.

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

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

14 (4) To a residential subscriber if the telephone
15 solicitation is made on behalf of a not-for-profit
16 organization exempt from paying taxes under section 501(c) of
17 the Internal Revenue Code, and if a bona fide member of the
18 exempt organization makes such communication.

19 2. a. A telephone solicitor who makes an unsolicited
20 telephone solicitation to a residential, mobile, or telephonic
21 paging device telephone number shall identify the telephone
22 solicitor's self by the telephone solicitor's true first and
23 last name, and the business on whose behalf the telephone
24 solicitor is making the unsolicited telephone solicitation,
25 immediately upon making contact by telephone with the person
26 who is the object of the unsolicited telephone solicitation.

27 b. (1) The division shall establish and maintain a "no
28 telephone solicitation calls" listing as provided in this
29 subsection. The division may enter into an agreement with
30 another person to maintain the "no telephone solicitation
31 calls" listing, as deemed appropriate by the division. A
32 consumer who is a residential, mobile, or telephonic paging
33 device telephone subscriber desiring to be placed on a "no
34 telephone solicitation calls" listing indicating that the
35 consumer does not wish to receive unsolicited telephone

1 solicitations shall notify the division and be placed on that
2 listing upon receipt by the division of a ten dollar initial
3 listing fee. The inclusion of a consumer on the listing may
4 be renewed by such consumer annually upon submitting a renewal
5 request to the division accompanied by a five dollar renewal
6 fee.

7 (2) The division shall update its "no telephone
8 solicitation calls" listing on a quarterly basis, including
9 initial listing and renewal requests submitted by consumers to
10 the division during the calendar quarter immediately preceding
11 the date of such updating. The division, upon request, shall
12 provide a copy of the most current quarterly listing for a fee
13 as established by the division to a telephone solicitor
14 requesting such list, in either a printed or electronic form.

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

19 (4) If, pursuant to 47 U.S.C. § 227(c)(3), the federal
20 communications commission establishes a single national
21 database of telephone numbers of consumers who object to
22 receiving telephone solicitations, the commission shall
23 include the portion of such national database including
24 consumer telephone numbers located in this state in the "no
25 telephone solicitation calls" listing established and
26 maintained by the division.

27 c. A telephone solicitor shall not make or cause to be
28 made any unsolicited telephone solicitations to any
29 residential, mobile, or telephonic paging device telephone
30 number if the number for that telephone appears in the current
31 quarterly listing provided by the division. A telephone
32 solicitor or person who offers for sale consumer information
33 which includes residential, mobile, or telephonic paging
34 device telephone numbers, except directory assistance and
35 telephone directories sold by a telephone company or an

1 organization exempt under section 501(c) of the Internal
2 Revenue Code, shall screen and exclude those numbers which
3 appear on the division's current "no telephone solicitation
4 calls" list from any consumer information offer or sold. This
5 subsection does not apply to a person licensed pursuant to
6 chapter 543B who calls an actual or prospective seller or
7 lessor of real property if such call is made in response to a
8 yard sign or other form of real estate sales advertisement
9 placed by the seller or lessor.

10 d. Upon a determination by the board, after a hearing
11 conducted pursuant to chapter 17A, that a person has violated
12 a provision of this subsection, the board shall reduce the
13 findings of the hearing to writing and deliver a copy of the
14 findings to the person, may issue an order requiring the
15 person to cease and desist from engaging in the conduct
16 resulting in the violation, and may assess a civil penalty of
17 not more than ten thousand dollars against the person.

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

22 (1) Annual inserts in the billing statements mailed to
23 such customers.

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

26 3. a. A contract made pursuant to a telephone
27 solicitation is not valid and enforceable against a consumer
28 unless made in compliance with this subsection.

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

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

33 (2) The contract must comply with all other applicable
34 laws and rules.

35 (3) The contract must match the description of goods or

1 services as principally used in the telephone solicitation.

2 (4) The contract must contain the name, address, and
3 telephone number of the seller, the total price of the
4 contract, and a detailed description of the goods or services
5 being sold.

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

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

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

13 c. This subsection does not apply to contractual sales
14 specifically regulated under chapter 714D or other law, or to
15 the sale of financial services, security sales, or sales
16 transacted by insurance companies or their wholly owned
17 subsidiaries or agents, or to the sale of cable television
18 services to a franchised cable television operator's existing
19 subscribers within that cable television operator's franchise
20 area, or to any sales where no prior payment is made to the
21 merchant and an invoice accompanies the goods or services
22 allowing the consumer no less than seven days to cancel or
23 return the goods or services without obligation for any
24 payment.

25 4. a. A merchant who engages a telephone solicitor to
26 make or cause to be made a telephone solicitation shall not
27 make or submit any charge to a consumer's credit card account
28 or make or cause to be made any electronic transfer of funds
29 until after the merchant receives from the consumer a copy of
30 the contract, signed by the consumer, which complies with this
31 section.

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

34 (1) A transaction made pursuant to prior negotiations in
35 the course of a visit by the consumer to a merchant operating

1 a retail business establishment which has a fixed permanent
2 location and where consumer goods are displayed or offered for
3 sale on a continuing basis.

4 (2) A transaction in which the consumer may obtain a full
5 refund for the return of undamaged and unused goods or a
6 cancellation of services notice to the seller within seven
7 days after receipt by the consumer, and the seller will
8 process the refund within thirty days after receipt of the
9 returned merchandise by the consumer.

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

14 (a) The name, address, and telephone number of the
15 merchant.

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

17 (c) Any limitations or restrictions that apply to the
18 offer.

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

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

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

30 a. Bring an action to enjoin further violations.

31 b. Bring an action to recover the greater of the
32 following:

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

35 (2) Not less than one hundred dollars but not more than

1 two thousand dollars for each violation of this section.
2 7. In a civil action resulting from a transaction
3 involving a violation of this section, a prevailing plaintiff,
4 after judgment in the trial court and exhaustion of all
5 appeals, if any, is entitled to costs and reasonable attorney
6 fees.

7 EXPLANATION

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

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

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

1 seller or lessor.

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

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

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

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

1 monetary damages incurred by the consumer as a result of a
2 violation or an amount not less than \$100 but not more than
3 \$2,000 for each knowing violation, as well as costs and
4 reasonable attorney fees.

5

HOUSE FILE 2515

H-8230

- 1 Amend House File 2515 as follows:
- 2 1. Page 3, line 2, by striking the words "a ten
- 3 dollar" and inserting the following: "an".
- 4 2. Page 3, line 3, by inserting after the word
- 5 "fee" the following: "in an amount to be determined
- 6 by the division".
- 7 3. Page 3, by striking lines 4 through 6 and
- 8 inserting the following: "be renewed by such consumer
- 9 as provided by the division."
- 10 4. Page 3, line 8, by striking the words "on a
- 11 quarterly basis" and inserting the following: "at
- 12 least quarterly".
- 13 5. Page 3, by striking lines 9 through 12 and
- 14 inserting the following: "initial listing and renewal
- 15 requests. The division, upon request, shall provide
- 16 the most current listing for a fee".
- 17 6. Page 3, line 23, by inserting after the word
- 18 "include" the following: ", if possible,".
- 19 7. Page 3, lines 30 and 31, by striking the words
- 20 "current quarterly".
- 21 8. Page 4, line 12, by striking the words "this
- 22 subsection" and inserting the following: "paragraph
- 23 "b" or "c"".
- 24 9. Page 6, line 21, by inserting after the word
- 25 "subsection" the following: "2, paragraph "a", or
- 26 subsection".

By HORBACH of Tama

H-8230 FILED MARCH 7, 2000

27
28
29
30
31
32
33
34
35