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COMMERCE AND REGULATION

HOUSE FILE
BY DODERER

579

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 579

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 be placed on that listing upon
26 receipt by the department of a ten dollar initial listing fee.
27 The listing shall be renewed by the department annually for
28 each consumer upon receipt of a renewal request accompanied by
29 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. A fee imposed and collected under this section shall be
34 deposited in the general fund of the state and is appropriated
35 to the department for the administration of this section.

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

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

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

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

26 (2) The contract must comply with all other applicable
27 laws and rules.

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

30 (4) The contract must contain the name, address, and
31 telephone number of the seller, the total price of the
32 contract, and a detailed description of the goods or services
33 being sold.

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

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

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

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

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

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

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

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

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

5 (a) The name, address, and telephone number of the
6 merchant.

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

8 (c) Any limitations or restrictions that apply to the
9 offer.

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

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

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

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

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

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

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

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

19 a. Annual inserts in the billing statements mailed to
20 customers.

21 b. Conspicuous publication of the notice in the consumer
22 information pages of the local telephone directories.

23 EXPLANATION

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

26 The bill provides that a telephone solicitor who makes an
27 unsolicited telephonic sales call to a residential, mobile, or
28 telephonic paging device telephone number shall identify the
29 solicitor's self by the solicitor's true first and last name,
30 and the business on whose behalf the solicitor is making the
31 sales call, immediately upon making contact by telephone with
32 the person who is the object of the telephone solicitation.
33 The bill provides that a residential, mobile, or telephonic
34 paging device telephone subscriber desiring to be placed on a
35 "no sales solicitation calls" listing indicating that the

1 subscriber does not wish to receive unsolicited telephonic
2 sales calls may notify the department and be placed on that
3 listing upon receipt by the department of a \$10 initial
4 listing fee. The listing shall be renewed by the department
5 annually for each consumer upon receipt of a renewal request
6 accompanied by a \$5 renewal fee.

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

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

31 The bill provides that the department of commerce is to
32 investigate any complaints received concerning a violation of
33 this section. If, after investigating a complaint, the
34 department finds that there has been a violation of this
35 section, the department may bring an action to impose a civil

1 penalty and to seek other relief, including injunctive relief,
2 as the court deems appropriate against the telephone
3 solicitor. A civil penalty imposed for a violation shall not
4 exceed \$10,000 per violation and shall be deposited in the
5 general fund of the state.

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