Raecker: Chair
Johnson
Chapman

HSB 171

COMMERCE AND REGULATION

Succeeded by
SF/HF 5

SENATE/HOUSE FILE _____
BY (PROPOSED ATTORNEY GENERAL
AND DEPARTMENT OF COMMERCE/
UTILITIES DIVISION BILL)

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

A BILL FOR

1 An Act prohibiting unauthorized changes in telecommunications
2 service, prohibiting certain acts in the advertisement or
3 solicitation of changes in telecommunications service, and
4 providing remedies and penalties.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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TLSB 1314DP 78
mj/jw/5

S.F. _____ H.F. _____

Section 1. NEW SECTION. 476.103 UNAUTHORIZED CHANGE IN SERVICE -- CIVIL PENALTY.

1. Notwithstanding the deregulation of a communications service or facility under section 476.1D, the board may adopt rules to protect consumers from unauthorized changes in telecommunications service. Such rules shall not impose undue restrictions upon competition in telecommunications markets.

2. As used in this section, unless the context otherwise requires:

a. "Change in service" means the designation of a new provider of a telecommunications service to a consumer, including the initial selection of a service provider, and includes the addition or deletion of a telecommunications service for which a separate charge is made to a consumer account.

b. "Consumer" means a person other than a service provider who uses a telecommunications service.

c. "Executing service provider" means, with respect to any change in telecommunications service, a service provider who executes an order for a change in service received from another service provider.

d. "Service provider" means a person providing a telecommunications service.

e. "Submitting service provider" means a service provider who requests another service provider to execute a change in service.

f. "Telecommunications service" means a local exchange or long distance telephone service other than commercial mobile radio service.

3. The board shall adopt rules prohibiting an unauthorized change in telecommunications service. The rules shall be consistent with federal communications commission regulations regarding procedures for verification of customer authorization of a change in service. The rules, at a minimum, shall provide for all of the following:

1 a. (1) A submitting service provider shall obtain
2 verification of customer authorization of a change in service
3 before submitting such change in service.
4 (2) Verification appropriate under the circumstances for
5 all other changes in service.
6 (3) The verification may be in written, oral, or
7 electronic form and may be performed by a qualified third
8 party.
9 (4) The reasonable time period during which the
10 verification is to be retained, as determined by the board.
11 b. A customer shall be notified of any change in service.
12 c. Appropriate compensation for a customer affected by an
13 unauthorized change in service.
14 d. Board determination of potential liability, including
15 assessment of damages, for unauthorized changes in service
16 among the customer, previous service provider, executing
17 service provider, and submitting service provider.
18 e. A provision encouraging service providers to resolve
19 customer complaints without involvement of the board.
20 f. The prompt reversal of unauthorized changes in service.
21 g. Procedures for a customer, service provider, or the
22 consumer advocate to submit to the board complaints of
23 unauthorized changes in service.
24 4. a. In addition to any applicable civil penalty set out
25 in section 476.51, a service provider who violates a provision
26 of this section, a rule adopted pursuant to this section, or
27 an order lawfully issued by the board pursuant to this
28 section, is subject to a civil penalty, which, after notice
29 and opportunity for hearing, may be levied by the board, of
30 not more than ten thousand dollars per violation. Each
31 violation is a separate offense.
32 b. A civil penalty may be compromised by the board. In
33 determining the amount of the penalty, or the amount agreed
34 upon in a compromise, the board may consider the size of the
35 service provider, the gravity of the violation, any history of

1 prior violations by the service provider, remedial actions
2 taken by the service provider, the nature of the conduct of
3 the service provider, and any other relevant factors.
4 c. A civil penalty collected pursuant to this subsection
5 shall be forwarded by the executive secretary of the board to
6 the treasurer of state to be credited to the general fund of
7 the state and to be used only for consumer education programs
8 administered by the board.
9 d. A penalty paid by a rate-of-return regulated utility
10 pursuant to this section shall be excluded from the utility's
11 costs when determining the utility's revenue requirement, and
12 shall not be included either directly or indirectly in the
13 utility's rates or charges to its customers.
14 e. The board shall not commence an administrative
15 proceeding to impose a civil penalty under this section for
16 acts subject to a civil enforcement action pending in court
17 under section 714D.7.
18 5. If the board determines, after notice and opportunity
19 for hearing, that a service provider has shown a pattern of
20 violations of the rules adopted pursuant to this subsection,
21 the board may by order do any of the following:
22 a. Prohibit any other service provider from billing
23 charges to residents of Iowa on behalf of the service provider
24 determined to have engaged in such a pattern of violations.
25 b. Prohibit certificated local exchange service providers
26 from providing exchange access services to the service
27 provider.
28 c. Limit the billing or access services prohibition under
29 paragraph "a" or "b" to a period of time. Such prohibition
30 may be withdrawn upon a showing of good cause.
31 d. Revoke the certificate of public convenience and
32 necessity of a local exchange service provider.
33 6. A consumer, for the same alleged act, shall not pursue
34 both a complaint before the board under this section and the
35 remedies under chapter 714D.

1 7. The board has primary jurisdiction over a complaint
2 pursuant to this section initiated by a service provider.
3 8. Subsections 6 and 7 do not preclude proceedings before
4 the federal communications commission to enforce applicable
5 federal law. However, a service provider or a consumer, for
6 the same alleged acts, shall not pursue a complaint both
7 before the federal communications commission and pursuant to
8 this section.
9 9. The board shall adopt rules establishing procedures for
10 the solicitation, imposition, and lifting of preferred carrier
11 freezes. A valid preferred carrier freeze prevents a change
12 in service unless the subscriber gives the service provider
13 from whom the freeze was requested the subscriber's express
14 consent.
15 Sec. 2. NEW SECTION. 714D.1 LEGISLATIVE INTENT.
16 The general assembly finds that customers of telephone
17 services have been subjected to fraud in the sale and
18 advertisement of telephone long distance and local service, as
19 well as other services related to residential and business
20 telephone service. The general assembly further finds that
21 companies acting in a lawful manner have lost customers to
22 companies that obtain customers through fraud and deception.
23 It is the intent of the general assembly to protect
24 telephone service subscribers from fraud and to provide
25 statutory remedies for the victims of fraud in the sale of
26 telecommunications service. It is the intent of the general
27 assembly to provide the attorney general with additional
28 remedies to address the issue of fraud in the sale of
29 telecommunications service. It is further the intent of the
30 general assembly that this chapter does not limit the rights
31 or remedies that are otherwise available to a consumer or the
32 attorney general under any other law.
33 Sec. 3. NEW SECTION. 714D.2 DEFINITIONS.
34 As used in this chapter, unless the context otherwise
35 requires:

1 1. "Advertisement" means the same as defined in section
2 714.16, subsection 1.
3 2. "Consumer" means a person who is not a
4 telecommunications service provider and who uses
5 telecommunications services.
6 3. "Deception" means the same as defined in section
7 714.16, subsection 1.
8 4. "Person" means the same as defined in section 714.16,
9 subsection 1.
10 5. "Sweepstakes box" means the box or receptacle into
11 which a person may place an entry form or document used to
12 enter a sweepstakes, contest, or drawing of any description,
13 and promotional materials attached to such entry form or
14 document.
15 6. "Telecommunications Act" means 47 U.S.C. § 258, a
16 portion of the federal Telecommunications Act of 1996,
17 relating to changes in telephone service, and including
18 regulations adopted pursuant to that section.
19 7. "Telecommunications service" means local exchange or
20 long distance telephone service, and any additional service or
21 merchandise for which any charge or assessment appears on a
22 billing statement directed to a person by a provider of local
23 exchange or long distance telephone service, but does not
24 include commercial mobile radio service or charges or
25 assessments imposed on consumers of local exchange or long
26 distance telephone service or on such additional service or
27 merchandise by governmental entities.
28 8. "Telecommunications service provider" means a person
29 who advertises, sells, leases, or provides telecommunications
30 services to another person.
31 9. "Unfair practice" means the same as defined in section
32 714.16, subsection 1, and also means any failure of a person
33 to comply with the Telecommunications Act or with any statute
34 or rule enforced by the utilities board within the utilities
35 division of the department of commerce relating to a

1 telecommunications service selection or change.
2 Sec. 4. NEW SECTION. 714D.3 UNFAIR AND DECEPTIVE
3 PRACTICES.
4 The act, use, or employment by a person of deception or an
5 unfair practice in connection with the lease, sale, or
6 advertisement of a telecommunications service or the
7 solicitation of authority to provide or execute a change of a
8 telecommunications service is an unlawful practice.
9 Sec. 5. NEW SECTION. 714D.4 PROHIBITION OF SWEEPSTAKES
10 BOXES.
11 The use of a sweepstakes box by a person to solicit
12 authority to provide or execute a change of a consumer's
13 telecommunications service is an unlawful practice.
14 Sec. 6. NEW SECTION. 714D.5 CONDITIONS ON USE OF PRIZE
15 PROMOTIONS TO SOLICIT AUTHORITY TO PROVIDE OR CHANGE
16 TELECOMMUNICATIONS SERVICES.
17 1. It is an unlawful practice for a person to use a form
18 or document which is to be used or intended to be used by
19 another person to enter a sweepstakes, contest, or drawing of
20 any description as written authority to provide or execute a
21 change of a consumer's telecommunications service.
22 2. It is an unlawful practice for a person to solicit the
23 lease or sale of or to solicit the authority to provide or
24 execute a change of a telecommunications service to another
25 person through or in conjunction with a sweepstakes, contest,
26 or drawing without clearly, conspicuously, and fully
27 disclosing in all direct mail solicitations to the other
28 person the fact that the sweepstakes, contest, or drawing is
29 intended to solicit authority to provide or execute a change
30 of a telecommunications service. The disclosure required
31 shall include, at a minimum, all of the following:
32 a. A statement that an acceptance or change of
33 telecommunications service is not required to enter the
34 sweepstakes, contest, or drawing.
35 b. An alternative means by which a person may enter the

1 sweepstakes, contest, or drawing without accepting or
2 authorizing a change in a telecommunications service.
3 c. The name and telephone number of the entity soliciting
4 the person to accept or to authorize a change of
5 telecommunications service through the use of or in
6 conjunction with the sweepstakes, contest, or drawing.
7 d. A brief description of the nature of the
8 telecommunications service for which authorization is sought
9 through the use of or in conjunction with the sweepstakes,
10 contest, or drawing.
11 Sec. 7. NEW SECTION. 714D.6 PRIVATE ACTION.
12 In addition to any other remedy, a consumer suffering a
13 pecuniary loss as a result of an act which is an unlawful
14 practice under this chapter may bring an action against the
15 person committing such act to recover all of the following:
16 1. The greater of five hundred dollars or twice the amount
17 of the pecuniary loss.
18 2. Costs and reasonable attorney fees.
19 Sec. 8. NEW SECTION. 714D.7 CIVIL ENFORCEMENT.
20 1. A violation of this chapter or a rule adopted pursuant
21 to this chapter is a violation of section 714.16, subsection
22 2, paragraph "a". The remedies and penalties provided by
23 section 714.16, including but not limited to injunctive relief
24 and civil penalties, apply to violations of this chapter.
25 2. In seeking reimbursement pursuant to section 714.16,
26 subsection 7, from a person who has committed an unlawful
27 practice under this chapter, the attorney general may seek an
28 order from the court that the person pay to the attorney
29 general on behalf of consumers the amounts for which the
30 person would be liable under section 714D.6 for each consumer
31 who has a cause of action pursuant to section 714D.6. Section
32 714.16, as it relates to consumer reimbursement, applies to
33 amounts recovered by the attorney general as reimbursement
34 under this chapter. However, a consumer who is awarded
35 monetary damages pursuant to section 714D.6 is not eligible

1 for monetary relief under this section for the same unlawful
2 practice.
3 3. The remedies provided pursuant to this chapter are in
4 addition to any other remedies provided to the state or to a
5 person under other law.
6 4. The attorney general shall not file a civil enforcement
7 action under this chapter or under section 714.16 against a
8 person for an act which is the subject of an administrative
9 proceeding to impose a civil penalty which has been initiated
10 against the person by the utilities board within the utilities
11 division of the department of commerce. This subsection shall
12 not be construed to limit the authority of the attorney
13 general to file a civil enforcement or other enforcement
14 action against a person for violating a prior agreement
15 entered into by the person with the attorney general or a
16 court order obtained by the attorney general against the
17 person. This subsection shall not be construed to limit the
18 authority of the attorney general to file a civil enforcement
19 or other enforcement action against the person for acts which
20 are not the subject of an administrative proceeding which has
21 been initiated against the person by the utilities board.
22 EXPLANATION
23 This bill creates new Code section 476.103 and new Code
24 chapter 714D relating to unauthorized provision of or changes
25 in telecommunications services and fraudulent acts associated
26 with the lease, sale, or advertisement of telecommunications
27 service, or with the solicitation of authority to provide or
28 execute a change of telecommunications service or provider.
29 New Code section 476.103 authorizes the utilities board to
30 adopt rules to protect consumers from unauthorized changes in
31 telecommunications services. The board's rules are to provide
32 that a submitting service provider must obtain verification of
33 customer authorization of a change in service before
34 submitting such change in service; the verification must be
35 appropriate under the circumstances for all other changes in

1 service; the verification must be in written, oral, or
2 electronic form and the verification must be performed by a
3 qualified third party; the verification must be retained for a
4 reasonable time period as determined by the board; and a
5 customer shall be notified of any change in service. The
6 rules must also address the potential liability, including
7 assessment of damages, for an unauthorized change in service
8 among the customer, previous service provider, executing
9 service provider, and submitting service provider; the
10 encouragement of service providers to resolve customer
11 complaints without involvement of the board; the prompt
12 reversal of unauthorized changes in service; and procedures
13 for a customer, service provider, and the consumer advocate to
14 submit to the board complaints of unauthorized changes in
15 service. The board, in addition to its civil penalty
16 authority under Code section 476.51, may levy against a
17 service provider who violates a provision of new Code section
18 476.103, a rule adopted pursuant to this section, or an order
19 lawfully issued by the board pursuant to this section, a civil
20 penalty, which may be levied by the board, of not more than
21 $10,000 per violation.
22 New Code chapter 714D establishes prohibitions on the act,
23 use, or employment by a person of deception or unfair
24 practices associated with the lease, sale, or advertisement of
25 telecommunications service, or in connection with the
26 solicitation of authority to provide or execute a change of
27 telecommunications service; the use of a sweepstakes box to
28 solicit authority to provide or execute a change of a person's
29 telecommunications service; the use of forms or documents
30 which are to be used or intended to be used by another person
31 to enter a sweepstakes, contest, or drawing of any description
32 as written authority to provide or execute a change of a
33 person's telecommunications service; and the soliciting or
34 providing of a telecommunications service to another person
35 through or in conjunction with a sweepstakes, contest, or

drawing without clearly, conspicuously, and fully disclosing in all direct mail solicitations to the other person the fact that the sweepstakes, contest, or drawing is intended to solicit authority to provide or execute a change of telecommunications service.

The bill provides that a consumer suffering a pecuniary loss as a result of an unlawful act, in addition to any other remedy, may bring an action against the offending person to recover the greater of $500 or twice the amount of the loss, and costs and reasonable attorney fees.

The bill also provides for civil enforcement of the chapter by the attorney general. The bill provides that the attorney general may exercise the enforcement powers established in Code section 714.16, with respect to a violation of new Code chapter 714D. The remedies provided are in addition to any other remedies provided by law.

TO: Members of the General Assembly

FROM: Attorney General
Iowa Utilities Board

DATE: January 11, 1999

RE: LSB No. TLSB 1314DP 78

During 1996-1998 the Attorney General received more consumer complaints on slamming and cramming than any other consumer issue. During this same period, the Iowa Utilities Board ranked slamming and cramming as the primary consumer concern involving long distance telephone service. Slamming is the practice of switching a consumer's telephone service – usually long distance – without the consumer's permission. Cramming occurs when charges for optional telephone services are "crammed" onto a customer's telephone bill without the customer's knowledge or consent. These services may be provided by the local service company or offered by unregulated third-party providers and, frequently, billed through local phone companies (i.e., information and entertainment calls, pagers, personal 800 numbers, voice mail.)

At the heart of competition in the telecommunications industry is the customers' ability to make changes in their service easily and quickly. Abuses such as slamming and cramming have developed in this competitive environment. The Attorney General and the Utilities Board propose to provide a framework within which consumers may voluntarily make changes in their service without being subjected to fraudelent practices such as slamming and cramming.

The Attorney General and the Utilities Board are jointly filing this legislation to request additional anti-fraud and regulatory authority to fight slamming and cramming. The section of the legislation relating to the Attorney General bans unfair and deceptive practices relating to telecommunications services. It specifically prohibits the use of sweepstakes boxes and puts conditions on the use of prize promotions as both relate to the authority to change telecommunications services. Remedies in this section allow both private action and civil enforcement.

The proposed legislation would require the Utilities Board to adopt slamming and cramming rules that comply with statutory minimum standards concerning verification of customer authorization, notification to customers of any change in service, defining potential liability, reversal of unauthorized changes, complaint procedures, and jurisdiction of complaints initiated by a service provider.

Remedies in this section include civil penalties specifically for slamming/cramming violations and provisions to prevent multiple enforcement actions for the same violation. In addition, the Board would be authorized to prevent other companies from providing access service or billing and collection service to a service provider with a pattern of violations. The Board may also revoke the certificate of a local service provider with a pattern of violations.

Together, the sections provide the Attorney General and the Utilities Board the minimal tools to address slamming and cramming in Iowa. The legislation would also provide, through rules, a process for customers to change service in a competitive environment.

These provisions complement slamming rules issued by the Federal Communications Commission on December 23, 1998. The FCC said, "The states and the Commission have a long history of working together to combat slamming, and we conclude that state involvement is of greater importance than ever before. We conclude that the Commission must work hand-in-hand with the states for the common purpose of eliminating slamming. In the context of this partnership, we expect the states and the Commission to continue sharing information about slamming and to develop together new and creative solutions to combat slamming....We further note that nothing in our rules prohibits states from deterring slamming through means other than regulation of verification procedures, such as general consumer protection requirements or direct regulation of telemarketing sales....States must, however, write and interpret their statutes and regulations in a manner that is consistent with our rules and orders, as well as section 258 [of the Telecommunications Act]. We conclude that state regulation of carrier changes in the intrastate market that is compatible with our rules, along with state enforcement of our rules regarding carrier changes in the intrastate market, will enable states to play a valuable and essential role in the partnership with the Commission to combat slamming and protect consumers." FCC Order, ¶86-89.

Board regulations would be compatible with FCC change-verification procedures. The Board does not anticipate any procedures that would be inefficient for companies doing business in Iowa, but would allow a stronger state role in consumer protection as encouraged by the FCC. This is particularly true in the areas of long distance service and billing and collection, which are deregulated services currently outside the Board's jurisdiction. The Board needs legislation in this session to have clear authority to prevent the slamming of long distance customers.

Substituted for SF 336
MAR 10 1999 3/22/99

Place On Calendar

HOUSE FILE 588
BY COMMITTEE ON COMMERCE
AND REGULATION

(SUCCESSOR TO HSB 171)
(COMPANION TO LSB 1314SV SF336
BY COMMITTEE ON COMMERCE)

Passed House (p.714), Date 3-17-99 Passed Senate (p. 707), Date 3/22/99
Vote: Ayes 95 Nays 0 Vote: Ayes 48 Nays 0
Approved April 7, 1999

A BILL FOR

1 An Act prohibiting unauthorized changes in telecommunications
2 service, prohibiting certain acts in the advertisement or
3 solicitation of changes in telecommunications service, and
4 providing remedies and penalties.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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TLSB 1314HV 78
mj/jw/5

S.F. _____ H.F. 588

1 Section 1. NEW SECTION. 476.103 UNAUTHORIZED CHANGE IN
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8 2. As used in this section, unless the context otherwise
9 requires:
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11 provider of a telecommunications service to a consumer,
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14 service for which a separate charge is made to a consumer
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20 executes an order for a change in service received from
21 another service provider.
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23 telecommunications service.
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25 who requests another service provider to execute a change in
26 service.
27 f. "Telecommunications service" means a local exchange or
28 long distance telephone service other than commercial mobile
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30 3. The board shall adopt rules prohibiting an unauthorized
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34 authorization of a change in service. The rules, at a
35 minimum, shall provide for all of the following:

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5 all other changes in service.
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7 electronic form and may be performed by a qualified third
8 party.
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10 verification is to be retained, as determined by the board.
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13 unauthorized change in service.
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18 e. A provision encouraging service providers to resolve
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20 f. The prompt reversal of unauthorized changes in service.
21 g. Procedures for a customer, service provider, or the
22 consumer advocate to submit to the board complaints of
23 unauthorized changes in service.
24 4. a. In addition to any applicable civil penalty set out
25 in section 476.51, a service provider who violates a provision
26 of this section, a rule adopted pursuant to this section, or
27 an order lawfully issued by the board pursuant to this
28 section, is subject to a civil penalty, which, after notice
29 and opportunity for hearing, may be levied by the board, of
30 not more than ten thousand dollars per violation. Each
31 violation is a separate offense.
32 b. A civil penalty may be compromised by the board. In
33 determining the amount of the penalty, or the amount agreed
34 upon in a compromise, the board may consider the size of the
35 service provider, the gravity of the violation, any history of

1 prior violations by the service provider, remedial actions
2 taken by the service provider, the nature of the conduct of
3 the service provider, and any other relevant factors.
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5 shall be forwarded by the executive secretary of the board to
6 the treasurer of state to be credited to the general fund of
7 the state and to be used only for consumer education programs
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9 d. A penalty paid by a rate-of-return regulated utility
10 pursuant to this section shall be excluded from the utility's
11 costs when determining the utility's revenue requirement, and
12 shall not be included either directly or indirectly in the
13 utility's rates or charges to its customers.
14 e. The board shall not commence an administrative
15 proceeding to impose a civil penalty under this section for
16 acts subject to a civil enforcement action pending in court
17 under section 714D.7.
18 5. If the board determines, after notice and opportunity
19 for hearing, that a service provider has shown a pattern of
20 violations of the rules adopted pursuant to this section, the
21 board may by order do any of the following:
22 a. Prohibit any other service provider from billing
23 charges to residents of Iowa on behalf of the service provider
24 determined to have engaged in such a pattern of violations.
25 b. Prohibit certificated local exchange service providers
26 from providing exchange access services to the service
27 provider.
28 c. Limit the billing or access services prohibition under
29 paragraph "a" or "b" to a period of time. Such prohibition
30 may be withdrawn upon a showing of good cause.
31 d. Revoke the certificate of public convenience and
32 necessity of a local exchange service provider.
33 6. The board has primary jurisdiction over a complaint
34 pursuant to this section initiated by a service provider.
35 7. Subsection 6 does not preclude proceedings before the

1 federal communications commission to enforce applicable
2 federal law. However, a service provider or a consumer, for
3 the same alleged acts, shall not pursue a complaint both
4 before the federal communications commission and pursuant to
5 this section.
6 8. The board shall adopt competitively neutral rules
7 establishing procedures for the solicitation, imposition, and
8 lifting of preferred carrier freezes. A valid preferred
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10 subscriber gives the service provider from whom the freeze was
11 requested the subscriber's express consent.
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18 companies acting in a lawful manner have lost customers to
19 companies that obtain customers through fraud and deception.
20 It is the intent of the general assembly to protect
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22 statutory remedies for the victims of fraud in the sale of
23 telecommunications service. It is the intent of the general
24 assembly to provide the attorney general with additional
25 remedies to address the issue of fraud in the sale of
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2 telecommunications services.
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5 4. "Person" means the same as defined in section 714.16,
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8 which a person may place an entry form or document used to
9 enter a sweepstakes, contest, or drawing of any description,
10 and promotional materials attached to such entry form or
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27 services to another person.
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29 714.16, subsection 1, and also means any failure of a person
30 to comply with the Telecommunications Act or with any statute
31 or rule enforced by the utilities board within the utilities
32 division of the department of commerce relating to a
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35 PRACTICES.

1 The act, use, or employment by a person of deception or an
2 unfair practice in connection with the lease, sale, or
3 advertisement of a telecommunications service or the
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5 telecommunications service is an unlawful practice.
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13 TELECOMMUNICATIONS SERVICES.
14 1. It is an unlawful practice for a person to use a form
15 or document which is to be used or intended to be used by
16 another person to enter a sweepstakes, contest, or drawing of
17 any description as written authority to provide or execute a
18 change of a consumer's telecommunications service.
19 2. It is an unlawful practice for a person to solicit the
20 lease or sale of or to solicit the authority to provide or
21 execute a change of a telecommunications service to another
22 person through or in conjunction with a sweepstakes, contest,
23 or drawing without clearly, conspicuously, and fully
24 disclosing in all direct mail solicitations to the other
25 person the fact that the sweepstakes, contest, or drawing is
26 intended to solicit authority to provide or execute a change
27 of a telecommunications service. The disclosure required
28 shall include, at a minimum, all of the following:
29 a. A statement that an acceptance or change of
30 telecommunications service is not required to enter the
31 sweepstakes, contest, or drawing.
32 b. An alternative means by which a person may enter the
33 sweepstakes, contest, or drawing without accepting or
34 authorizing a change in a telecommunications service.
35 c. The name and telephone number of the entity soliciting

1 the person to accept or to authorize a change of
2 telecommunications service through the use of or in
3 conjunction with the sweepstakes, contest, or drawing.
4 d. A brief description of the nature of the
5 telecommunications service for which authorization is sought
6 through the use of or in conjunction with the sweepstakes,
7 contest, or drawing.
8 Sec. 7. NEW SECTION. 714D.6 PRIVATE ACTION.
9 1. In addition to any other remedy, a consumer may bring
10 an action against a person who commits an unlawful practice
11 under this chapter to recover from the person all of the
12 following:
13 a. The amount of any moneys or property acquired by the
14 person from the consumer by means of an unlawful practice
15 under this section, or two hundred dollars, whichever is
16 greater.
17 b. If a court finds that the consumer prevails in the
18 action and that the unlawful practice was an intentional
19 violation of this chapter, five hundred dollars or twice the
20 amount of the consumer's actual damages, whichever is greater.
21 c. Costs and reasonable attorney fees.
22 2. A cause of action under this section shall not apply
23 unless, prior to filing the action, the consumer has submitted
24 a complaint to the utilities board within the utilities
25 division of the department of commerce, the utilities board
26 has failed to resolve the complaint to the consumer's
27 satisfaction within one hundred twenty days of the date the
28 complaint was submitted, and the consumer dismisses the
29 complaint before the utilities board. The requirement that a
30 consumer complaint be submitted to the utilities board and
31 resolved by the utilities board to the consumer's satisfaction
32 within one hundred twenty days of filing before the consumer
33 may file an action pursuant to this section shall not apply to
34 an action by the attorney general to recover moneys for the
35 consumer pursuant to section 714D.7 or any other law. A

1 finding by the utilities board that a respondent has complied
2 with rules governing carrier selection procedures adopted by
3 the utilities board shall be an affirmative defense to any
4 claim brought under this section or section 476.103 or 714D.7
5 that an unauthorized change in service has occurred.
6 Sec. 8. NEW SECTION. 714D.7 CIVIL ENFORCEMENT.
7 1. A violation of this chapter or a rule adopted pursuant
8 to this chapter is a violation of section 714.16, subsection
9 2, paragraph "a". The remedies and penalties provided by
10 section 714.16, including but not limited to injunctive relief
11 and civil penalties, apply to violations of this chapter.
12 2. In seeking reimbursement pursuant to section 714.16,
13 subsection 7, from a person who has committed an unlawful
14 practice under this chapter, the attorney general may seek an
15 order from the court that the person pay to the attorney
16 general on behalf of consumers the amounts for which the
17 person would be liable under section 714D.6 for each consumer
18 who has a cause of action pursuant to section 714D.6. Section
19 714.16, as it relates to consumer reimbursement, applies to
20 amounts recovered by the attorney general as reimbursement
21 under this chapter. However, a consumer who is awarded
22 monetary damages pursuant to section 714D.6 is not eligible
23 for monetary relief under this section for the same unlawful
24 practice.
25 3. The remedies provided pursuant to this chapter are in
26 addition to any other remedies provided to the state or to a
27 person under other law.
28 4. The attorney general shall not file a civil enforcement
29 action under this chapter or under section 714.16 against a
30 person for an act which is the subject of an administrative
31 proceeding to impose a civil penalty which has been initiated
32 against the person by the utilities board within the utilities
33 division of the department of commerce. This subsection shall
34 not be construed to limit the authority of the attorney
35 general to file a civil enforcement or other enforcement

1 action against a person for violating a prior agreement
2 entered into by the person with the attorney general or a
3 court order obtained by the attorney general against the
4 person. This subsection shall not be construed to limit the
5 authority of the attorney general to file a civil enforcement
6 or other enforcement action against the person for acts which
7 are not the subject of an administrative proceeding which has
8 been initiated against the person by the utilities board.
9 EXPLANATION
10 This bill creates new Code section 476.103 and new Code
11 chapter 714D relating to unauthorized provision of or changes
12 in telecommunications services and fraudulent acts associated
13 with the lease, sale, or advertisement of telecommunications
14 service, or with the solicitation of authority to provide or
15 execute a change of telecommunications service or provider.
16 New Code section 476.103 authorizes the utilities board to
17 adopt rules to protect consumers from unauthorized changes in
18 telecommunications services. The board's rules are to provide
19 that a submitting service provider must obtain verification of
20 customer authorization of a change in service before
21 submitting such change in service; the verification must be
22 appropriate under the circumstances for all other changes in
23 service; the verification must be in written, oral, or
24 electronic form and the verification must be performed by a
25 qualified third party; the verification must be retained for a
26 reasonable time period as determined by the board; and a
27 customer shall be notified of any change in service. The
28 rules must also address the potential liability, including
29 assessment of damages, for an unauthorized change in service
30 among the customer, previous service provider, executing
31 service provider, and submitting service provider; the
32 encouragement of service providers to resolve customer
33 complaints without involvement of the board; the prompt
34 reversal of unauthorized changes in service; and procedures
35 for a customer, service provider, and the consumer advocate to

1 submit to the board complaints of unauthorized changes in
2 service. The board, in addition to its civil penalty
3 authority under Code section 476.51, may levy against a
4 service provider who violates a provision of new Code section
5 476.103, a rule adopted pursuant to this section, or an order
6 lawfully issued by the board pursuant to this section, a civil
7 penalty, which may be levied by the board, of not more than
8 $10,000 per violation.
9 New Code chapter 714D establishes prohibitions on the act,
10 use, or employment by a person of deception or unfair
11 practices associated with the lease, sale, or advertisement of
12 telecommunications service, or in connection with the
13 solicitation of authority to provide or execute a change of
14 telecommunications service; the use of a sweepstakes box to
15 solicit authority to provide or execute a change of a person's
16 telecommunications service; the use of forms or documents
17 which are to be used or intended to be used by another person
18 to enter a sweepstakes, contest, or drawing of any description
19 as written authority to provide or execute a change of a
20 person's telecommunications service; and the soliciting or
21 providing of a telecommunications service to another person
22 through or in conjunction with a sweepstakes, contest, or
23 drawing without clearly, conspicuously, and fully disclosing
24 in all direct mail solicitations to the other person the fact
25 that the sweepstakes, contest, or drawing is intended to
26 solicit authority to provide or execute a change of
27 telecommunications service.
28 The bill provides that a consumer may bring an action
29 against a person who commits an unlawful practice to recover
30 the amount of any moneys or property acquired by the person
31 from the consumer or $200, whichever is greater. However, if
32 the court finds that the unlawful practice was an intentional
33 violation, the consumer may recover $500 or twice the amount
34 of the consumer's actual damages, whichever is greater. The
35 bill provides that a cause of action shall not apply unless,

1 prior to filing the action, the consumer has submitted a
2 complaint to the utilities board within the utilities
3 division, the utilities board has failed to resolve the
4 complaint to the consumer's satisfaction, and the consumer
5 dismisses the complaint before the utilities board.
6 The bill also provides for civil enforcement of the chapter
7 by the attorney general. The bill provides that the attorney
8 general may exercise the enforcement powers established in
9 Code section 714.16, with respect to a violation of new Code
10 chapter 714D. The remedies provided are in addition to any
11 other remedies provided by law.
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AN ACT
PROHIBITING UNAUTHORIZED CHANGES IN TELECOMMUNICATIONS SERVICE, PROHIBITING CERTAIN ACTS IN THE ADVERTISEMENT OR SOLICITATION OF CHANGES IN TELECOMMUNICATIONS SERVICE, AND PROVIDING REMEDIES AND PENALTIES.

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

Section 1. NEW SECTION. 476.103 UNAUTHORIZED CHANGE IN SERVICE -- CIVIL PENALTY.

1. Notwithstanding the deregulation of a communications service or facility under section 476.1D, the board may adopt rules to protect consumers from unauthorized changes in telecommunications service. Such rules shall not impose undue restrictions upon competition in telecommunications markets.

2. As used in this section, unless the context otherwise requires:

a. "Change in service" means the designation of a new provider of a telecommunications service to a consumer, including the initial selection of a service provider, and includes the addition or deletion of a telecommunications service for which a separate charge is made to a consumer account.

b. "Consumer" means a person other than a service provider who uses a telecommunications service.

c. "Executing service provider" means, with respect to any change in telecommunications service, a service provider who executes an order for a change in service received from another service provider.

d. "Service provider" means a person providing a telecommunications service.

e. "Submitting service provider" means a service provider who requests another service provider to execute a change in service.

f. "Telecommunications service" means a local exchange or long distance telephone service other than commercial mobile radio service.

3. The board shall adopt rules prohibiting an unauthorized change in telecommunications service. The rules shall be consistent with federal communications commission regulations regarding procedures for verification of customer authorization of a change in service. The rules, at a minimum, shall provide for all of the following:

a. (1) A submitting service provider shall obtain verification of customer authorization of a change in service before submitting such change in service.

(2) Verification appropriate under the circumstances for all other changes in service.

(3) The verification may be in written, oral, or electronic form and may be performed by a qualified third party.

(4) The reasonable time period during which the verification is to be retained, as determined by the board.

b. A customer shall be notified of any change in service.

c. Appropriate compensation for a customer affected by an unauthorized change in service.

d. Board determination of potential liability, including assessment of damages, for unauthorized changes in service among the customer, previous service provider, executing service provider, and submitting service provider.

e. A provision encouraging service providers to resolve customer complaints without involvement of the board.

f. The prompt reversal of unauthorized changes in service.

g. Procedures for a customer, service provider, or the consumer advocate to submit to the board complaints of unauthorized changes in service.

4. a. In addition to any applicable civil penalty set out in section 476.51, a service provider who violates a provision of this section, a rule adopted pursuant to this section, or an order lawfully issued by the board pursuant to this section, is subject to a civil penalty, which, after notice

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and opportunity for hearing, may be levied by the board, of not more than ten thousand dollars per violation. Each violation is a separate offense.

b. A civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the size of the service provider, the gravity of the violation, any history of prior violations by the service provider, remedial actions taken by the service provider, the nature of the conduct of the service provider, and any other relevant factors.

c. A civil penalty collected pursuant to this subsection shall be forwarded by the executive secretary of the board to the treasurer of state to be credited to the general fund of the state and to be used only for consumer education programs administered by the board.

d. A penalty paid by a rate-of-return regulated utility pursuant to this section shall be excluded from the utility's costs when determining the utility's revenue requirement, and shall not be included either directly or indirectly in the utility's rates or charges to its customers.

e. The board shall not commence an administrative proceeding to impose a civil penalty under this section for acts subject to a civil enforcement action pending in court under section 714D.7.

5. If the board determines, after notice and opportunity for hearing, that a service provider has shown a pattern of violations of the rules adopted pursuant to this section, the board may by order do any of the following:

a. Prohibit any other service provider from billing charges to residents of Iowa on behalf of the service provider determined to have engaged in such a pattern of violations.

b. Prohibit certificated local exchange service providers from providing exchange access services to the service provider.

c. Limit the billing or access services prohibition under paragraph "a" or "b" to a period of time. Such prohibition may be withdrawn upon a showing of good cause.

d. Revoke the certificate of public convenience and necessity of a local exchange service provider.

6. The board has primary jurisdiction over a complaint pursuant to this section initiated by a service provider.

7. Subsection 6 does not preclude proceedings before the federal communications commission to enforce applicable federal law. However, a service provider or a consumer, for the same alleged acts, shall not pursue a complaint both before the federal communications commission and pursuant to this section.

8. The board shall adopt competitively neutral rules establishing procedures for the solicitation, imposition, and lifting of preferred carrier freezes. A valid preferred carrier freeze prevents a change in service unless the subscriber gives the service provider from whom the freeze was requested the subscriber's express consent.

Sec. 2. NEW SECTION. 714D.1 LEGISLATIVE INTENT.

The general assembly finds that customers of telephone services have been subjected to fraud in the sale and advertisement of telephone long distance and local service, as well as other services related to residential and business telephone service. The general assembly further finds that companies acting in a lawful manner have lost customers to companies that obtain customers through fraud and deception.

It is the intent of the general assembly to protect telephone service subscribers from fraud and to provide statutory remedies for the victims of fraud in the sale of telecommunications service. It is the intent of the general assembly to provide the attorney general with additional remedies to address the issue of fraud in the sale of telecommunications service. It is further the intent of the general assembly that this chapter does not limit the rights or remedies that are otherwise available to a consumer or the attorney general under any other law.

Sec. 3. NEW SECTION. 714D.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Advertisement" means the same as defined in section 714.16, subsection 1.

2. "Consumer" means a person who is not a telecommunications service provider and who uses telecommunications services.

3. "Deception" means the same as defined in section 714.16, subsection 1.

4. "Person" means the same as defined in section 714.16, subsection 1.

5. "Sweepstakes box" means the box or receptacle into which a person may place an entry form or document used to enter a sweepstakes, contest, or drawing of any description, and promotional materials attached to such entry form or document.

6. "Telecommunications Act" means 47 U.S.C. § 258, a portion of the federal Telecommunications Act of 1996, relating to changes in telephone service, and including regulations adopted pursuant to that section.

7. "Telecommunications service" means local exchange or long distance telephone service, and any additional service or merchandise for which any charge or assessment appears on a billing statement directed to a person by a provider of local exchange or long distance telephone service, but does not include commercial mobile radio service or charges or assessments imposed on consumers of local exchange or long distance telephone service or on such additional service or merchandise by governmental entities.

8. "Telecommunications service provider" means a person who advertises, sells, leases, or provides telecommunications services to another person.

9. "Unfair practice" means the same as defined in section 714.16, subsection 1, and also means any failure of a person to comply with the Telecommunications Act or with any statute or rule enforced by the utilities board within the utilities division of the department of commerce relating to a telecommunications service selection or change.

Sec. 4. NEW SECTION. 714D.3 UNFAIR AND DECEPTIVE PRACTICES.

The act, use, or employment by a person of deception or an unfair practice in connection with the lease, sale, or advertisement of a telecommunications service or the solicitation of authority to provide or execute a change of a telecommunications service is an unlawful practice.

Sec. 5. NEW SECTION. 714D.4 PROHIBITION OF SWEEPSTAKES BOXES.

The use of a sweepstakes box by a person to solicit authority to provide or execute a change of a consumer's telecommunications service is an unlawful practice.

Sec. 6. NEW SECTION. 714D.5 CONDITIONS ON USE OF PRIZE PROMOTIONS TO SOLICIT AUTHORITY TO PROVIDE OR CHANGE TELECOMMUNICATIONS SERVICES.

1. It is an unlawful practice for a person to use a form or document which is to be used or intended to be used by another person to enter a sweepstakes, contest, or drawing of any description as written authority to provide or execute a change of a consumer's telecommunications service.

2. It is an unlawful practice for a person to solicit the lease or sale of or to solicit the authority to provide or execute a change of a telecommunications service to another person through or in conjunction with a sweepstakes, contest, or drawing without clearly, conspicuously, and fully disclosing in all direct mail solicitations to the other person the fact that the sweepstakes, contest, or drawing is intended to solicit authority to provide or execute a change of a telecommunications service. The disclosure required shall include, at a minimum, all of the following:

a. A statement that an acceptance or change of telecommunications service is not required to enter the sweepstakes, contest, or drawing.

b. An alternative means by which a person may enter the sweepstakes, contest, or drawing without accepting or authorizing a change in a telecommunications service.

c. The name and telephone number of the entity soliciting the person to accept or to authorize a change of telecommunications service through the use of or in conjunction with the sweepstakes, contest, or drawing.

d. A brief description of the nature of the telecommunications service for which authorization is sought through the use of or in conjunction with the sweepstakes, contest, or drawing.

Sec. 7. NEW SECTION. 714D.6 PRIVATE ACTION.

1. In addition to any other remedy, a consumer may bring an action against a person who commits an unlawful practice under this chapter to recover from the person all of the following:

a. The amount of any moneys or property acquired by the person from the consumer by means of an unlawful practice under this section, or two hundred dollars, whichever is greater.

b. If a court finds that the consumer prevails in the action and that the unlawful practice was an intentional violation of this chapter, five hundred dollars or twice the amount of the consumer's actual damages, whichever is greater.

c. Costs and reasonable attorney fees.

2. A cause of action under this section shall not apply unless, prior to filing the action, the consumer has submitted a complaint to the utilities board within the utilities division of the department of commerce, the utilities board has failed to resolve the complaint to the consumer's satisfaction within one hundred twenty days of the date the complaint was submitted, and the consumer dismisses the complaint before the utilities board. The requirement that a consumer complaint be submitted to the utilities board and resolved by the utilities board to the consumer's satisfaction within one hundred twenty days of filing before the consumer may file an action pursuant to this section shall not apply to an action by the attorney general to recover moneys for the consumer pursuant to section 714D.7 or any other law. A finding by the utilities board that a respondent has complied

with rules governing carrier selection procedures adopted by the utilities board shall be an affirmative defense to any claim brought under this section or section 476.103 or 714D.7 that an unauthorized change in service has occurred.

Sec. 8. NEW SECTION. 714D.7 CIVIL ENFORCEMENT.

1. A violation of this chapter or a rule adopted pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph "a". The remedies and penalties provided by section 714.16, including but not limited to injunctive relief and civil penalties, apply to violations of this chapter.

2. In seeking reimbursement pursuant to section 714.16, subsection 7, from a person who has committed an unlawful practice under this chapter, the attorney general may seek an order from the court that the person pay to the attorney general on behalf of consumers the amounts for which the person would be liable under section 714D.6 for each consumer who has a cause of action pursuant to section 714D.6. Section 714.16, as it relates to consumer reimbursement, applies to amounts recovered by the attorney general as reimbursement under this chapter. However, a consumer who is awarded monetary damages pursuant to section 714D.6 is not eligible for monetary relief under this section for the same unlawful practice.

3. The remedies provided pursuant to this chapter are in addition to any other remedies provided to the state or to a person under other law.

4. The attorney general shall not file a civil enforcement action under this chapter or under section 714.16 against a person for an act which is the subject of an administrative proceeding to impose a civil penalty which has been initiated against the person by the utilities board within the utilities division of the department of commerce. This subsection shall not be construed to limit the authority of the attorney general to file a civil enforcement or other enforcement action against a person for violating a prior agreement entered into by the person with the attorney general or a court order obtained by the attorney general against the

person. This subsection shall not be construed to limit the authority of the attorney general to file a civil enforcement or other enforcement action against the person for acts which are not the subject of an administrative proceeding which has been initiated against the person by the utilities board.

RON J. CORBETT
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 588, Seventy-eighth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved 4/7/99 1999

THOMAS J. VILSACK
Governor