

Redfern  
Lundby  
Flynn

SSB-1138  
Commerce

Succeeded in  
SENATE/HOUSE FILE SF/HF 336  
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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1 Section 1. NEW SECTION. 476.103 UNAUTHORIZED CHANGE IN  
2 SERVICE -- CIVIL PENALTY.

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

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

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

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

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

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

24 e. "Submitting service provider" means a service provider  
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  
29 radio service.

30 3. The board shall adopt rules prohibiting an unauthorized  
31 change in telecommunications service. The rules shall be  
32 consistent with federal communications commission regulations  
33 regarding procedures for verification of customer  
34 authorization of a change in service. The rules, at a  
35 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

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

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

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

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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 fraudulent 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.

*Substituted by  
HF 588  
3/22/99  
(p. 707)*

FILED MAR 8 1999

SENATE FILE 336  
BY COMMITTEE ON COMMERCE

**WITHDRAWN**  
*3/22/99  
(p. 708)*

(SUCCESSOR TO SSB 1138)  
(COMPANION TO LSB 1314HV  
BY COMMITTEE ON COMMERCE  
AND REGULATION)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

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*SF 336*

1 Section 1. NEW SECTION. 476.103 UNAUTHORIZED CHANGE IN  
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4 service or facility under section 476.1D, the board may adopt  
5 rules to protect consumers from unauthorized changes in  
6 telecommunications service. Such rules shall not impose undue  
7 restrictions upon competition in telecommunications markets.

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

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

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

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

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

24 e. "Submitting service provider" means a service provider  
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  
29 radio service.

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

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2 verification of customer authorization of a change in service  
3 before submitting such change in service.

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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  
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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 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  
9 carrier freeze prevents a change in service unless the  
10 subscriber gives the service provider from whom the freeze was  
11 requested the subscriber's express consent.

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13 The general assembly finds that customers of telephone  
14 services have been subjected to fraud in the sale and  
15 advertisement of telephone long distance and local service, as  
16 well as other services related to residential and business  
17 telephone service. The general assembly further finds that  
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  
21 telephone service subscribers from fraud and to provide  
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  
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27 general assembly that this chapter does not limit the rights  
28 or remedies that are otherwise available to a consumer or the  
29 attorney general under any other law.

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

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34 714.16, subsection 1.

35 2. "Consumer" means a person who is not a

1 telecommunications service provider and who uses  
2 telecommunications services.

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

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

7 5. "Sweepstakes box" means the box or receptacle into  
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  
11 document.

12 6. "Telecommunications Act" means 47 U.S.C. § 258, a  
13 portion of the federal Telecommunications Act of 1996,  
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17 long distance telephone service, and any additional service or  
18 merchandise for which any charge or assessment appears on a  
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20 exchange or long distance telephone service, but does not  
21 include commercial mobile radio service or charges or  
22 assessments imposed on consumers of local exchange or long  
23 distance telephone service or on such additional service or  
24 merchandise by governmental entities.

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26 who advertises, sells, leases, or provides telecommunications  
27 services to another person.

28 9. "Unfair practice" means the same as defined in section  
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  
4 solicitation of authority to provide or execute a change of a  
5 telecommunications service is an unlawful practice.

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

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

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