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COMMERCE AND REGULATION

HOUSE FILE 2322
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and STEVENS

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

A BILL FOR

1 An Act relating to a consumer's right to cancel executory
2 wireless communications service contracts of four months or
3 more, limiting recovery by the wireless communications service
4 provider under the contract, and providing an effective date.

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

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HF 2322

1 Section 1. Section 537.1301, subsection 41, paragraph b,
2 Code 2001, is amended to read as follows:

3 b. Privileges or benefits with respect to transportation,
4 hotel and restaurant accommodations, communications services,
5 education, entertainment, recreation, physical culture,
6 hospital accommodations, funerals, cemetery accommodations,
7 and the like.

8 Sec. 2. Section 537.3310, subsection 2, Code 2001, is
9 amended to read as follows:

10 2. If the consumer exercises the right to cancel or, in
11 any event, if the creditor attempts to exercise a right to
12 accelerate, the creditor is entitled to recover or retain only
13 that part of the cash price and charges attributable to the
14 part of the creditor's obligation which has been performed.

15 Sec. 3. Section 537.3310, Code 2001, is amended by adding
16 the following new subsection:

17 NEW SUBSECTION. 6. Subsections 1 through 4 apply to all
18 contracts for wireless communications service of four months
19 or more in length. For purposes of this subsection, "wireless
20 communications service" shall have the meaning as defined in
21 section 34A.7A.

22 Sec. 4. EFFECTIVE DATE. This Act, being deemed of
23 immediate importance, takes effect upon enactment.

24 EXPLANATION

25 This bill amends Code section 537.3310, regarding executory
26 contracts in consumer credit transactions covered by the
27 consumer credit code. An executory contract is a contract
28 that has not been fully completed or performed. In general,
29 Code section 537.3310 permits a consumer to cancel future
30 installments in a consumer credit transaction of four
31 installments or more, other than a rental purchase agreement.

32 Current Code language in Code section 537.3310 provides
33 that a creditor may recover only what charges are attributable
34 to what has actually been performed under the contract. The
35 bill adds that the creditor may only retain such charges, as

1 well.

2 In addition, the bill states that subsections 1 through 4
3 of Code section 537.3310 apply to all contracts for wireless
4 communications service of four months or more in length.

5 "Wireless communications service" is given the same meaning as
6 in Code section 34A.7A. That Code section addresses the
7 surcharge for E911 service, and the definition includes
8 cellular telephones and personal communications service. This
9 new subsection would mean wireless communications customers

10 could cancel a contract after four months of service, by
11 mailed or delivered written notice of cancellation. A
12 wireless communications service provider could not exercise a
13 right to accelerate the terms of the contract upon such
14 termination, or otherwise retain or recover amounts other than
15 what had been earned for performance of services to that date.

16 A consumer whose rights have been violated under this
17 section has a cause of action under Code section 537.5201 to
18 recover actual damages, and a penalty between \$100 and \$1000,
19 as determined by the court. If successful, the consumer may
20 also recover costs and reasonable attorney fees.

21 The bill takes effect upon enactment.

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