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COMMERCE AND REGULATION

HOUSE FILE 78
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Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to prohibition of certain telephone
2 solicitations, establishment of certain requirements for
3 contracts associated with such solicitations, establishment of
4 a list of persons not wishing to receive such solicitations,
5 making an appropriation, and providing for a civil penalty.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 476B.1 DEFINITIONS.

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

4 1. "Attorney general" means the head of the department of
5 justice, according to chapter 13.

6 2. "Consumer" means an actual or prospective purchaser,
7 lessee, or recipient of a consumer good or service.

8 3. "Consumer good or service" means any real property or
9 any tangible or intangible personal property that is normally
10 used for personal, family, or household purposes, including,
11 without limitation, any such property intended to be attached
12 to or installed in any real property without regard to whether
13 it is so attached or installed, as well as cemetery lots and
14 timeshare estates, and any service related to such property.

15 4. "Department" means the department of justice.

16 5. "Doing business in this state" means a business that
17 conducts telephonic sales calls from a location in this state
18 or from other states or nations to consumers located in this
19 state.

20 6. "Merchant" means a person who, directly or indirectly,
21 offers or makes available to a consumer any consumer good or
22 service.

23 7. "Telephone solicitor" means a person doing business in
24 this state, who makes or causes to be made a telephonic sales
25 call, including, but not limited to, calls made by use of
26 automatic dialing-announcing device equipment.

27 8. "Telephonic sales call" means a call made by a
28 telephone solicitor to a consumer for any of the following
29 purposes:

30 a. To solicit a sale of a consumer good or service.

31 b. To offer an extension of credit for a consumer good or
32 service.

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

1 9. "Unsolicited telephonic sales call" means a telephonic
2 sales call other than a call made as follows:

3 a. In response to an express request of the person called.

4 b. Primarily in connection with an existing debt or
5 contract, payment, or performance of which has not been
6 completed at the time of such call.

7 c. To a person with whom the telephone solicitor has a
8 prior or existing business relationship.

9 d. By a newspaper publisher or such publisher's agent or
10 employee in connection with the publisher's business.

11 Sec. 2. NEW SECTION. 476B.2 TELEPHONIC SALES
12 REQUIREMENTS.

13 A telephone solicitor who makes an unsolicited telephonic
14 sales call to a residential, mobile, or telephonic paging
15 device telephone number shall identify the solicitor's self by
16 the solicitor's true first and last name, and the business on
17 whose behalf the solicitor is making the telephonic sales
18 call, immediately upon making contact by telephone with the
19 person who is the object of the telephone solicitation.

20 Sec. 3. NEW SECTION. 476B.3 NO SALES SOLICITATION CALLS
21 LISTING.

22 1. a. A residential, mobile, or telephonic paging device
23 telephone subscriber desiring to be placed on a no sales
24 solicitation calls listing indicating that the subscriber does
25 not wish to receive unsolicited telephonic sales calls may
26 notify the department and be placed on that listing upon
27 receipt by the department of a ten dollar initial listing fee.
28 The listing shall be renewed by the department annually for
29 each consumer upon receipt of a renewal request accompanied by
30 a five dollar renewal fee.

31 b. The department shall update its no sales solicitation
32 calls listing quarterly.

33 c. The department shall charge a fifty dollar fee to
34 telephone solicitors for access to the quarterly no sales
35 solicitation calls listing.

1 d. The department shall adopt rules pursuant to chapter
2 17A related to administration of the listing process.

3 e. Fees imposed and collected under this section shall be
4 deposited in the general fund of the state and are
5 appropriated to the department for the administration of this
6 chapter.

7 2. A telephone solicitor shall not make or cause to be
8 made any unsolicited telephonic sales call to any residential,
9 mobile, or telephonic paging device telephone number if the
10 number for that telephone appears in the then current
11 quarterly listing published by the department.

12 3. A telephone solicitor or person who offers for sale
13 consumer information which includes residential, mobile, or
14 telephonic paging device telephone numbers, except directory
15 assistance and telephone directories sold by a telephone
16 company or an organization exempt under section 501(c)(3) or
17 (6) of the Internal Revenue Code, shall screen and exclude
18 those numbers which appear on the division's then current no
19 sales solicitation calls list from any consumer information
20 offer or sold.

21 4. This section does not apply to a person licensed
22 pursuant to chapter 543B who calls an actual or prospective
23 seller or lessor of real property if such call is made in
24 response to a yard sign or other form of real estate sales
25 advertisement placed by the seller or lessor.

26 Sec. 4. NEW SECTION. 476B.4 CONTRACT REQUIREMENTS.

27 1. A contract made pursuant to a telephonic sales call is
28 not valid and enforceable against a consumer unless made in
29 compliance with this section.

30 2. A contract made pursuant to a telephonic sales call
31 must satisfy all of the following:

32 a. The contract must be reduced to writing and signed by
33 the consumer.

34 b. The contract must comply with all other applicable laws
35 and rules.

1 c. The contract must match the description of goods or
2 services as principally used in the telephone solicitation.

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

7 e. The contract must contain, in bold, conspicuous type,
8 immediately preceding the signature, the following statement:

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

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

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

25 Sec. 5. NEW SECTION. 476B.5 CONTRACT REQUIRED FOR
26 PAYMENT BY CREDIT CARD OR ELECTRONIC FUNDS TRANSFER.

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

34 2. This section does not apply to any of the following:

35 a. A transaction made pursuant to prior negotiations in

1 the course of a visit by the consumer to a merchant operating
2 a retail business establishment which has a fixed permanent
3 location and where consumer goods are displayed or offered for
4 sale on a continuing basis.

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

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

15 (1) The name, address, and telephone number of the
16 merchant.

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

18 (3) Any limitations or restrictions that apply to the
19 offer.

20 d. A transaction in which the merchant is a bona fide
21 charitable organization or a newspaper.

22 Sec. 6. NEW SECTION. 476B.6 AUTOMATIC DIALING --
23 ANNOUNCING DEVICE.

24 1. Except as otherwise provided in subsection 2, a person
25 shall not make or knowingly allow a telephonic sales call to
26 be made using automatic dialing-announcing device equipment
27 for the selection or dialing of telephone numbers or the
28 playing of a recorded message when a connection is completed
29 to a telephone number called.

30 2. This section does not prohibit the use of an automatic
31 dialing-announcing device as provided in section 476.57 so
32 long as the telephone numbers selected for automatic dialing
33 have been screened to exclude any telephone subscriber who is
34 included on the department's then current no sales
35 solicitation calls listing or any unlisted telephone number,

1 or if the calls made concern a good or service that has been
2 previously ordered or purchased.

3 Sec. 7. NEW SECTION. 476B.7 REMEDIES.

4 1. The attorney general shall investigate any complaints
5 received concerning a violation of this chapter. If, after
6 investigating a complaint, the attorney general finds that
7 there has been a violation of this chapter, the attorney
8 general may bring an action to impose a civil penalty and to
9 seek other relief, including injunctive relief, as the court
10 deems appropriate against the telephone solicitor.

11 2. A civil penalty imposed for a violation shall not
12 exceed ten thousand dollars per violation and shall be
13 deposited in the general fund of the state. The attorney
14 general may waive a civil penalty if the violator has
15 previously made full restitution or reimbursement or has paid
16 actual damages to a consumer who was injured as a result of
17 the violation.

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

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

29 Sec. 8. NEW SECTION. 476B.8 NOTIFICATION OF RIGHTS.

30 The attorney general shall by rule ensure that
31 telecommunications providers inform their customers of the
32 customers' rights under this chapter. The notification shall
33 be made by both of the following:

34 1. Annual inserts in the billing statements mailed to
35 customers.

1 2. Conspicuous publication of the notice in the consumer
2 information pages of the local telephone directories.

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EXPLANATION

4 This bill creates new Code chapter 476B that establishes
5 restrictions on telephone solicitations.

6 The bill provides that a telephone solicitor who makes an
7 unsolicited telephonic sales call to a residential, mobile, or
8 telephonic paging device telephone number shall identify the
9 solicitor's self by the solicitor's true first and last name,
10 and the business on whose behalf the solicitor is making the
11 sales call, immediately upon making contact by telephone with
12 the person who is the object of the telephone solicitation.

13 The bill provides that a residential, mobile, or telephonic
14 paging device telephone subscriber desiring to be placed on a
15 no sales solicitation calls listing indicating that the
16 subscriber does not wish to receive unsolicited telephonic
17 sales calls may notify the department of justice and be placed
18 on that listing upon receipt by the department of a \$10
19 initial listing fee. The listing shall be renewed by the
20 department annually for each consumer upon receipt of a
21 renewal request accompanied by a \$5 renewal fee. The
22 department shall update the listing quarterly, and shall
23 charge a \$50 fee for access to the list. The fees are
24 appropriated to the department for use in administration of
25 the listing. The department is directed to adopt rules
26 regarding administration of the listing.

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

1 seller or lessor.

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

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

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