

MAR 8 2004
Place On Calendar

HOUSE FILE 2485
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HSB 546)

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

A BILL FOR

1 An Act relating to the telemarketing provisions of the consumer
2 fraud Act, and applying remedies and penalties.

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

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HF 2485

1 Section 1. Section 714.16, Code 2003, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 16. A violation of the federal
4 Telemarketing and Consumer Fraud and Abuse Prevention Act, 15
5 U.S.C. § 6101 et seq., and regulations adopted pursuant to the
6 Act, is an unlawful practice.

7 NEW SUBSECTION. 17. A violation of the federal Telephone
8 Consumer Protection Act, 47 U.S.C. § 227, and regulations
9 adopted pursuant to the Act, is an unlawful practice.

10 EXPLANATION

11 This bill amends Code section 714.16, Iowa's consumer fraud
12 Act, to specify that a violation of either of two federal
13 laws, the Consumer Fraud and Abuse Prevention Act or the
14 Telephone Consumer Protection Act, is considered an unlawful
15 practice and is subject to civil enforcement, penalties, and
16 fines under the Iowa consumer fraud Act. Both federal laws
17 authorize the implementation of a national do-not-call
18 registry for persons who want to be free from unwanted
19 telephone solicitations.

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SF 02485

HSB 546

RAECKER-CH
KURTENBACH
PETERSEN

COMMERCE, REGULATION & LABOR

SENATE/HOUSE FILE _____

BY (PROPOSED ATTORNEY
GENERAL BILL)

Passed Senate, Date _____

Passed House, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

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MEMORANDUM

TO: Members of the General Assembly

FROM: Bill Brauch, Special Assistant Attorney General, Director-Consumer Protection Division

DATE: January 2, 2004

RE: Telemarketing Law Enforcement

The Attorney General's Office is proposing this legislation to provide the Attorney General with causes of action in state court for violations of two federal telemarketing laws, the Telemarketing and Consumer Fraud and Abuse Prevention Act and the Telephone Consumer Protection Act. The Attorney General is currently authorized by these two laws to bring actions in federal court, but not state court.

The Telemarketing and Consumer Fraud and Abuse Prevention Act includes the federal "*Do Not Call*" telephone registry requirements adopted by the Federal Trade Commission. It also, among other things, restricts calling times to the hours between 8 a.m. and 9 p.m., requires telemarketers to promptly tell you the identity of the seller or charitable organization and - before they make their pitch - that the call is a sales call or a charitable solicitation, plus disclose information about the goods or services they are offering and the terms of the sale. It further prohibits telemarketers from lying about any terms of the offer.

The Telephone Consumer Protection Act relates to the provisions of the federal "*Do Not Call*" telephone registry adopted by the Federal Communications Commission and also bars telemarketers from calling consumers who ask to be placed on the telemarketer's company-specific do not call list, and restricts unsolicited fax transmissions and artificial (computerized) or prerecorded voice messages.

This bill will provide greater flexibility to the Attorney General to choose state or federal court as the forum for its actions to enforce these laws. As noted above, the Attorney General is currently authorized to bring actions to enforce these laws only in federal court. Since the Attorney General would be permitted to bring state consumer fraud claims in addition to these claims in a federal action, it may be more efficient for the Attorney General to choose to bring the case in state court where the judges are more familiar with actions to enforce state consumer fraud laws. This bill gives the Attorney General that discretion.

Please contact me at my direct line, 281-8772, or by e-mail to: bbrauch@ag.state.ia.us, if you have any questions.

