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COMMERCE, REGULATION & LABOR

HOUSE FILE 31  
BY RAECKER and HEATON

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

**A BILL FOR**

1 An Act relating to telecommunication services, including  
2 establishing certain restrictions on solicitors and the use of  
3 telemarketing equipment, requiring written contracts  
4 associated with telephone solicitations prior to the fund  
5 transfers or charges, establishing registration for persons  
6 choosing not to receive certain telephone solicitations,  
7 regulating certain aspects of prepaid calling services,  
8 establishing a private cause of action, requiring consumer  
9 notification of rights, providing for the establishment of  
10 fees, and providing penalties.

11 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. "ADAD equipment" means automatic dialing-announcing  
5 device equipment, which is a device or system of devices used,  
6 either alone or in conjunction with other equipment, for the  
7 purpose of automatically selecting or dialing telephone  
8 numbers, for disseminating prerecorded messages to the numbers  
9 selected or dialed without the use of a live operator.

10 2. "Autodialer" means an automatic telephone dialing  
11 system or equipment that has both the capacity to store or  
12 produce telephone numbers to be called using a random or  
13 sequential number generator, and to dial such numbers.

14 3. "Board" means the utilities board created in section  
15 474.1.

16 4. "Caller identification" means the display, on the call  
17 recipient's telephone or related equipment, of the caller's  
18 telephone number or identity to the recipient of the call.

19 5. "Consumer" means an actual or prospective purchaser,  
20 lessee, or recipient of a consumer good or service.

21 6. "Consumer good or service" means any real property or  
22 any tangible or intangible personal property that is normally  
23 used for personal, family, or household purposes, including,  
24 without limitation, any such property intended to be attached  
25 to or installed in any real property without regard to whether  
26 such property is so attached or installed, as well as cemetery  
27 lots and timeshare estates, and any service related to such  
28 property.

29 7. "Conversation time" is the time when two-way  
30 telecommunications is possible during a telephone call.

31 8. "Doing business in this state" means a business that  
32 conducts telephone solicitations from a location in this state  
33 or from other states or nations to consumers located in this  
34 state.

35 9. "Existing business relationship" means an established

1 pattern of activity between a consumer and a merchant,  
2 involving an inquiry, application, purchase, or transaction  
3 initiated by a consumer regarding consumer goods or services  
4 offered by a merchant.

5 10. "Merchant" means a person who, directly or indirectly,  
6 offers or makes available to a consumer any consumer good or  
7 service.

8 11. "Predictive dialing technology" means an automated  
9 dialing system or computer software that utilizes a formula or  
10 similar mechanism to initiate a certain greater number of  
11 telephone calls than the number of telephone solicitors  
12 available to speak to prospective customers, with a goal of  
13 keeping the available telephone solicitors continually  
14 speaking to one prospective customer after another.

15 12. "Prepaid calling card" means an object containing an  
16 access number and authorization code that enables an end user  
17 to use prepaid calling services.

18 13. "Prepaid calling card company" means any person  
19 providing prepaid calling services to the public using its own  
20 or another person's telecommunication network or networks.

21 14. "Prepaid calling services" means any prepaid  
22 telecommunications service that allows end users to originate  
23 calls through an access number and authorization code, whether  
24 manually or electronically dialed.

25 15. "Telephone solicitation" means any voice  
26 communication, wherever originated, transmitted over a  
27 telephone for the purpose of encouraging action on the part of  
28 a consumer, including but not limited to any of the following  
29 actions:

- 30 a. The purchase or rental of consumer goods or services.
- 31 b. Investment in consumer goods or services.
- 32 c. Soliciting a sale of a consumer good or service.
- 33 d. Offering an extension of credit for a consumer good or
- 34 service.
- 35 e. Obtaining information that will or may be used for the

1 direct solicitation of a sale of a consumer good or service or  
2 an offer of extension of credit for such purpose.

3 f. Soliciting a donation for any group, organization, or  
4 purpose.

5 16. "Telephone solicitor" means a person doing business in  
6 this state, who makes or causes to be made a telephone  
7 solicitation, including, but not limited to, calls made by use  
8 of ADAD equipment, predictive dialing technology, or an  
9 autodialer.

10 17. "Unsolicited telephone solicitation" means a telephone  
11 solicitation other than a telephone call made as follows:

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

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

16 c. To a person with whom the telephone solicitor has an  
17 existing business relationship.

18 d. To a residential subscriber if the telephone  
19 solicitation is made on behalf of a not-for-profit  
20 organization exempt from paying taxes under section 501(c) of  
21 the Internal Revenue Code, and if a bona fide member of the  
22 exempt organization directly makes such call, and does not  
23 contract with a telemarketing firm or other third party to  
24 make the call.

25 e. By a person licensed pursuant to chapter 543B who makes  
26 a telephone call to an actual or prospective seller or lessor  
27 of real property if the call is made in response to a yard  
28 sign or other form of real estate sales advertisement placed  
29 by the seller or lessor.

30 Sec. 2. NEW SECTION. 476B.2 RESTRICTIONS ON THE USE OF  
31 CERTAIN TELEMARKETING EQUIPMENT.

32 1. A person shall not do any of the following:

33 a. Utilize any ADAD equipment, predictive dialing  
34 technology, or autodialer to call any person registered on the  
35 do-not-call list maintained pursuant to section 476B.3.

1     b. Make a telephone call to any person registered on the  
2 do-not-call list maintained pursuant to section 476B.3 while  
3 the person who is making the call is performing paid telephone  
4 solicitation services pursuant to contract, including payment  
5 by acceptance of a percentage of any charitable donations  
6 collected by the person while performing telephone  
7 solicitation services.

8     c. Operate any ADAD equipment, predictive dialing  
9 technology, or autodialers in a manner that intentionally  
10 impedes or prevents the function of a recipient's caller  
11 identification if the caller's existing equipment is capable  
12 of allowing the display of the caller's telephone number or  
13 identity.

14    2. a. Except as provided in paragraph "b", a person shall  
15 not use, employ, or direct another person to use, or contract  
16 for the use of, ADAD equipment.

17    b. Except for ADAD equipment that randomly or sequentially  
18 selects the telephone numbers for calling, the prohibition in  
19 paragraph "a" does not apply to any of the following, provided  
20 that the telephone numbers selected for automatic dialing have  
21 been screened to exclude any consumer who is included on the  
22 do-not-call list pursuant to section 476B.3 or who has an  
23 unlisted telephone number, unless the calls made concern a  
24 consumer good or service that has been previously ordered or  
25 purchased:

26    (1) Calls made with ADAD equipment by a nonprofit  
27 organization or by an individual using the calls other than  
28 for commercial profit-making purposes or fund-raising, if the  
29 calls do not involve the advertisement or offering for sale,  
30 lease, or rental of consumer goods or services.

31    (2) Calls made with ADAD equipment relating to payment  
32 for, service of, or warranty coverage of previously ordered or  
33 purchased consumer goods or services or to persons or  
34 organizations with an existing business relationship with the  
35 persons or organizations using the calls.

1 (3) Calls made with ADAD equipment relating to the  
2 collection of lawful debts.

3 (4) Calls made with ADAD equipment to members or employees  
4 of the organization making the calls.

5 (5) Calls made with ADAD equipment that use an initial  
6 prerecorded message of a duration no greater than seven  
7 seconds prior to a live operator intercept, or calls that  
8 involve an initial message from a live operator.

9 3. Calls made with ADAD equipment must terminate the  
10 connection with any call within ten seconds after the person  
11 receiving the call acts to disconnect the call.

12 4. Calls made with predictive dialing technology must meet  
13 a standard that allows a live telephone solicitor to engage in  
14 conversation with a call recipient within two seconds after  
15 the call is answered by the call recipient.

16 Sec. 3. NEW SECTION. 476B.3 DO-NOT-CALL LISTING.

17 1. The secretary of state shall contract with a service  
18 that maintains a national do-not-call list, so that Iowa  
19 telephone subscribers who do not wish to receive unsolicited  
20 telephone solicitations utilizing any ADAD equipment,  
21 predictive dialing technology, or autodialers may register to  
22 be included on the list. The contract shall be made in  
23 consultation with the consumer protection division of the  
24 department of justice, so that all evidentiary issues and  
25 other issues related to enforcement are considered.

26 2. A residential, mobile, or telephonic paging device  
27 telephone subscriber who does not wish to receive unsolicited  
28 telephone solicitations may register to be included on the do-  
29 not-call list contracted for by the secretary of state  
30 pursuant to subsection 1.

31 3. A telephone solicitor doing business in Iowa shall pay  
32 a fee to be determined pursuant to subsection 5, and shall  
33 obtain a subscription to receive the quarterly updated  
34 subscription listings of consumers in Iowa who have registered  
35 to be included on the do-not-call list referred to in this

1 section.

2 4. A telephone solicitor shall not make a telephone call  
3 with any ADAD equipment, predictive dialing technology, or  
4 autodialer to any consumer in Iowa whose name is on the do-  
5 not-call list referred to in this section.

6 5. The secretary of state and consumer protection division  
7 of the department of justice shall adopt rules pursuant to  
8 chapter 17A to administer this section, including appropriate  
9 notices to consumers of the types of telephone calls toward  
10 which such registration is directed, and the charging of a fee  
11 for subscriptions to the list so that the list income supports  
12 the cost of maintaining the list.

13 Sec. 4. NEW SECTION. 476B.4 TELEPHONE SOLICITATION  
14 RESTRICTIONS.

15 A telephone solicitor who makes a telephone solicitation to  
16 a residential, mobile, or telephonic paging device telephone  
17 number shall disclose the identity of the telephone solicitor  
18 and the business on whose behalf the telephone solicitor is  
19 making the telephone solicitation, immediately upon making  
20 contact by telephone with the person who is the object of the  
21 telephone solicitation. The telephone solicitor shall also  
22 comply with the provisions of 16 C.F.R. § 310.4 in regard to  
23 required disclosures and other actions of the telephone  
24 solicitor. The business employing the telephone solicitor  
25 shall also comply with the provisions of 16 C.F.R. § 310.4 and  
26 § 310.5, particularly with regard to the use of fictitious  
27 names by employees and recordkeeping by the business regarding  
28 such names.

29 Sec. 5. NEW SECTION. 476B.5 REQUIREMENTS FOR CONTRACTS  
30 MADE PURSUANT TO TELEPHONE SOLICITATION.

31 1. A contract made pursuant to a telephone solicitation is  
32 not valid and enforceable against a consumer unless made in  
33 compliance with this section.

34 2. A contract made pursuant to a telephone solicitation  
35 must satisfy all of the following:

1 a. The contract must be reduced to writing and signed by  
2 the consumer.

3 b. The contract must comply with all other applicable laws  
4 and rules.

5 c. The contract must match the description of consumer  
6 goods or services as principally communicated in the telephone  
7 solicitation.

8 d. The contract must contain the name, address, and  
9 telephone number of the seller, the total price of the  
10 consumer goods or services purchased, and a detailed  
11 description of the consumer goods or services purchased.

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

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

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

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

30 Sec. 6. NEW SECTION. 476B.6 RESTRICTIONS ON CHARGES TO  
31 CREDIT CARD ACCOUNTS AND ELECTRONIC TRANSFERS OF FUNDS.

32 1. A seller who engages a telephone solicitor to make or  
33 cause to be made a telephone solicitation shall not make or  
34 submit any charge to a consumer's credit card account or make  
35 or cause to be made any electronic transfer of funds until



1 after the seller receives from the consumer a copy of the  
2 contract, signed by the consumer, that complies with section  
3 476B.5.

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

5 a. A transaction made pursuant to prior negotiations in  
6 the course of a visit by the consumer to a seller operating a  
7 retail business establishment which has a fixed permanent  
8 location and where consumer goods or services are displayed or  
9 offered for sale on a continuing basis.

10 b. A transaction in which the consumer may obtain a full  
11 refund for the return of undamaged and unused consumer goods  
12 or a cancellation of consumer services by notice to the seller  
13 within seven days after receipt by the consumer, and the  
14 seller will process the refund within thirty days after  
15 receipt of the returned consumer goods or cancellation of the  
16 consumer services by the consumer.

17 c. A transaction in which the consumer purchases consumer  
18 goods or services pursuant to an examination of a television,  
19 radio, or print advertisement or a sample, brochure, or  
20 catalog of the seller that contains all of the following:

21 (1) The name, address, and telephone number of the seller.

22 (2) A description of the consumer goods or services being  
23 sold.

24 (3) Any limitations or restrictions that apply to the  
25 offer.

26 d. A transaction in which the seller is a bona fide  
27 charitable organization or a newspaper.

28 Sec. 7. NEW SECTION. 476B.7 PREPAID CALLING CARDS --  
29 DISCLOSURES -- REQUIREMENTS.

30 1. A prepaid calling card company shall provide all of the  
31 following information about the prepaid calling services in a  
32 prominent area at the point of sale of the prepaid calling  
33 services, legibly and visibly printed on the card, packaging,  
34 or display in such a manner that the consumer may make an  
35 informed decision about the prepaid calling services prior to

1 purchase:

2 a. The maximum charge per minute for the prepaid calling  
3 services.

4 b. All applicable surcharges.

5 c. The expiration policy for the prepaid calling services,  
6 if applicable.

7 The company shall insure by contract with its retailers or  
8 distributors that the information is provided to the consumer.

9 2. A prepaid calling card company shall legibly print all  
10 of the following information on the prepaid calling card:

11 a. The name of the prepaid calling card company, as  
12 registered with the secretary of state.

13 b. A toll-free customer service number.

14 c. A toll-free network access number.

15 d. The authorization code, if such a code is required to  
16 access telecommunications service.

17 3. A prepaid calling card company shall provide all of the  
18 following information and services through its customer  
19 service telephone number:

20 a. Rates and surcharges.

21 b. Balance of use in account.

22 c. Expiration date or period, if applicable.

23 d. A live operator to answer incoming calls twenty-four  
24 hours a day, seven days a week, or electronic voice recording  
25 of consumer messages. A combination of live operators or  
26 recorders may be used. If a recorder is used, the company  
27 shall attempt to contact each consumer no later than the next  
28 business day following the date of the recording.

29 4. A prepaid calling card company shall use the following  
30 billing standards:

31 a. A prepaid calling card company shall only charge a  
32 consumer for conversation time used plus applicable  
33 surcharges.

34 b. The billing increment used by a prepaid calling card  
35 company shall not exceed one minute.

1 c. Conversation time of less than a full minute shall not  
2 be rounded up beyond the next full minute.

3 5. Cards that do not have a specific expiration period  
4 printed on the card, and that have a balance of service  
5 remaining, shall be considered active for a minimum of one  
6 year from the date of first use, or if recharged, from the  
7 date of the last recharge.

8 6. A prepaid calling card company shall have a refund  
9 policy that meets all of the following minimum requirements:

10 a. For prepaid calling services that are rendered unusable  
11 for reasons beyond the consumer's control, and have not  
12 exceeded the expiration period, a prepaid calling card company  
13 shall provide a refund equal to the value remaining in the  
14 account.

15 b. Each company may, but shall not be required to, provide  
16 a refund when a card has been lost or stolen.

17 c. Refunds may be cash or replacement service, at the  
18 prepaid calling card company's option, but must be made to the  
19 consumer within sixty days of the request for a refund by the  
20 consumer.

21 7. All cards sold by a prepaid calling card company in  
22 Iowa on or after July 1, 2003, shall comply with this section.

23 Sec. 8. NEW SECTION. 476B.8 INVESTIGATIONS -- CIVIL  
24 ACTIONS -- CIVIL PENALTY -- OTHER REMEDIES.

25 1. A violation of this chapter is a violation of section  
26 714.16, subsection 2, paragraph "a". All the powers conferred  
27 upon the attorney general to accomplish the objectives and  
28 carry out the duties prescribed pursuant to section 714.16 are  
29 also conferred upon the attorney general to enforce this  
30 chapter, including, but not limited to, the power to issue  
31 subpoenas, adopt rules pursuant to chapter 17A which shall  
32 have the force of law, and seek injunctive relief and civil  
33 penalties.

34 2. In seeking reimbursement pursuant to section 714.16,  
35 subsection 7, from a person who has committed a violation of

1 this chapter, the attorney general may seek an order from the  
2 court that the person pay to the attorney general on behalf of  
3 consumers the amounts for which the person would be liable  
4 under section 476B.9, subsection 2, for each consumer who has  
5 a cause of action pursuant to section 476B.9, subsection 2.  
6 Section 714.16, as it relates to consumer reimbursement, shall  
7 apply to consumer reimbursement pursuant to this section.

8 Sec. 9. NEW SECTION. 476B.9 PRIVATE CAUSE OF ACTION --  
9 DAMAGES AND INJUNCTIVE RELIEF.

10 In addition to any other remedies, a consumer who receives  
11 more than one telephone solicitation within any twelve-month  
12 period by or on behalf of the same person in violation of any  
13 provision of this chapter may bring an action against the  
14 person to recover all of the following:

15 1. Preliminary and permanent injunctive relief necessary  
16 to protect the public against further violations.

17 2. The greater of actual monetary damages or a sum not  
18 less than one hundred dollars but not more than two thousand  
19 dollars for each telephone call made in violation of this  
20 chapter.

21 3. Costs and reasonable attorney fees.

22 Reimbursement awarded to the attorney general pursuant to  
23 section 714.16, subsection 7, on behalf of a plaintiff who has  
24 filed an action pursuant to this section concerning the same  
25 set of facts shall be deducted from any damages awarded to the  
26 plaintiff in an action filed under this section.

27 Sec. 10. NEW SECTION. 476B.10 NOTIFICATION OF RIGHTS.

28 The board shall by rule ensure that telecommunications  
29 providers inform customers of the customers' rights under this  
30 chapter. The notification shall be made by at least both of  
31 the following:

32 1. Annual inserts in the billing statements mailed to  
33 customers.

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



1 protection division of the department of justice to encompass  
2 enforcement issues. Telephone solicitors doing business in  
3 Iowa shall pay a fee and receive a subscription with quarterly  
4 updates to the do-not-call list. Fees are to be set by rule  
5 at a level to make the program self-maintaining. A telephone  
6 solicitor shall not use specified telemarketing equipment to  
7 call any consumer in Iowa who is on the list.

8 The bill provides in new Code section 476B.4 that a  
9 telephone solicitor who makes a telephone solicitation to a  
10 residential, mobile, or telephonic paging device telephone  
11 number shall immediately disclose the identity of the business  
12 and the caller, and shall also comply with certain federal  
13 regulations regarding telemarketing.

14 The bill provides in new Code section 476B.5 that a  
15 contract made pursuant to a telephone solicitation call must  
16 be reduced to writing and signed by the consumer; must comply  
17 with all other applicable laws and rules; must match the  
18 description of consumer goods or services as principally used  
19 in the telephone solicitation; must contain the name, address,  
20 and telephone number of the seller, the total price of the  
21 consumer goods or services purchased, and a detailed  
22 description of the consumer goods or services purchased; must  
23 contain, in bold, conspicuous type, immediately preceding the  
24 signature, the statement "You are not obligated to pay any  
25 money unless you sign this contract and return it to the  
26 seller."; and the contract shall not exclude from its terms  
27 any oral or written representations made by the telephone  
28 solicitor to the consumer in connection with the transaction.

29 New Code section 476B.6 restricts charges to credit card  
30 accounts or electronic funds transfers until the seller  
31 receives a signed contract from the consumer, with specified  
32 exceptions.

33 New Code section 476B.7 requires certain disclosures,  
34 billing standards, and refund policies related to prepaid  
35 calling cards sold in Iowa. The bill also requires

1 availability of, and disclosure of, customer service access by  
2 telephone.

3 The bill provides in new Code section 476B.8 that a  
4 violation of new Code chapter 476B is a violation of Code  
5 section 714.16, subsection 2, paragraph "a", relating to  
6 consumer fraud. The bill provides that the attorney general  
7 may seek injunctive relief and civil penalties, in addition to  
8 consumer reimbursement pursuant to Code section 714.16.

9 The bill provides in new Code section 476B.9 that a  
10 consumer who receives more than one telephone solicitation in  
11 violation of the new Code section within any 12-month period  
12 by or on behalf of the same person may bring an action to  
13 enjoin further violations; and may also bring an action to  
14 recover the greater of actual monetary damages incurred by the  
15 consumer as a result of a violation or an amount not less than  
16 \$100 but not more than \$2,000 for each violation; and costs  
17 and recovery of reasonable attorney fees.

18 New Code section 476B.10 requires adoption of rules by the  
19 utilities board related to customer notification of rights  
20 under the bill.

21 Current Code section 476.57, relating to ADAD equipment  
22 usage, is repealed.

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