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COMMERCE, REGULATION & LABOR

HOUSE FILE

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KUHN, and CONNORS

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to telecommunication services, including creating
2 restrictions for telephone 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 Sec. 11. Section 476.57, Code 2003, is repealed.

2 EXPLANATION

3 This bill relates to telemarketing and prepaid telephone
4 calling cards.

5 The bill provides definitions for a new Code chapter 476B
6 in new Code section 476B.1, including but not limited to
7 "automatic dialing-announcing device equipment" (ADAD),
8 "autodialer", "caller identification", "predictive dialing
9 technology", "prepaid calling card", and "telephone
10 solicitation".

11 The bill provides in new Code section 476B.2 that a person
12 shall not use certain telemarketing equipment to call any
13 person registered on the do-not-call list established under
14 new Code section 476B.3; shall not call a person registered on
15 the do-not-call list while the person making the call is
16 performing paid telephone solicitation services pursuant to
17 contract; and shall not use certain telemarketing equipment in
18 a manner that intentionally impedes or prevents the function
19 of a recipient's caller identification.

20 The bill prohibits the use of ADAD equipment, except for
21 certain defined circumstances and provides that the numbers
22 selected for use exclude any consumer on the do-not-call list
23 or who has an unlisted telephone number.

24 Calls made with ADAD equipment must terminate the telephone
25 connection within 10 seconds of a hang-up. Calls made with
26 predictive dialing technology must meet a standard that allows
27 a telemarketer to engage in conversation with the call
28 recipient within two seconds after receipt of the call.

29 The bill provides in new Code section 476B.3 that a
30 residential, mobile, or telephonic paging device telephone
31 subscriber who does not wish to receive unsolicited telephone
32 solicitations may register to be included on a do-not-call
33 listing contracted for by the secretary of state with a
34 service that maintains a national do-not-call list. The
35 contract shall be made in consultation with the consumer

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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