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SENATE FILE

307

BY BEALL and KREIMAN

Passed Senate, Date _____ Passed House, 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, establishing registration for persons
4 choosing not to receive certain telephone solicitations,
5 establishing a private cause of action, requiring consumer
6 notification of rights, providing for the establishment of
7 fees, and providing penalties.

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

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SF 307
COMMERCE

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

33 8. "Existing business relationship" means an established
34 pattern of activity between a consumer and a merchant,
35 involving an inquiry, application, purchase, or transaction

1 initiated by a consumer regarding consumer goods or services
2 offered by a merchant.

3 9. "Merchant" means a person who, directly or indirectly,
4 offers or makes available to a consumer any consumer good or
5 service.

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

13 11. "Telephone solicitation" means any voice
14 communication, wherever originated, transmitted over a
15 telephone for the purpose of encouraging action on the part of
16 a consumer, including but not limited to any of the following
17 actions:

18 a. The purchase or rental of consumer goods or services.

19 b. Investment in consumer goods or services.

20 c. Soliciting a sale of a consumer good or service.

21 d. Offering an extension of credit for a consumer good or
22 service.

23 e. Obtaining information that will or may be used for the
24 direct solicitation of a sale of a consumer good or service or
25 an offer of extension of credit for such purpose.

26 f. Soliciting a donation for any group, organization, or
27 purpose.

28 12. "Telephone solicitor" means a person doing business in
29 this state, who makes or causes to be made a telephone
30 solicitation, including, but not limited to, calls made by use
31 of ADAD equipment, predictive dialing technology, or an
32 autodialer.

33 13. "Unsolicited telephone solicitation" means a telephone
34 solicitation other than a telephone call made as follows:

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

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

4 c. To a person with whom the telephone solicitor has an
5 existing business relationship.

6 d. To a residential subscriber if the telephone
7 solicitation is made on behalf of a not-for-profit
8 organization exempt from paying taxes under section 501(c) of
9 the Internal Revenue Code, and if a bona fide member of the
10 exempt organization directly makes such call, and does not
11 contract with a telemarketing firm or other third party to
12 make the call.

13 e. By a person licensed pursuant to chapter 543B who makes
14 a telephone call to an actual or prospective seller or lessor
15 of real property if the call is made in response to a yard
16 sign or other form of real estate sales advertisement placed
17 by the seller or lessor.

18 Sec. 2. NEW SECTION. 476B.2 RESTRICTIONS ON THE USE OF
19 CERTAIN TELEMARKETING EQUIPMENT.

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

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

24 b. Make a telephone call to any person registered on the
25 do-not-call list maintained pursuant to section 476B.3 while
26 the person who is making the call is performing paid telephone
27 solicitation services pursuant to contract, including payment
28 by acceptance of a percentage of any charitable donations
29 collected by the person while performing telephone
30 solicitation services.

31 c. Operate any ADAD equipment, predictive dialing
32 technology, or autodialers in a manner that intentionally
33 impedes or prevents the function of a recipient's caller
34 identification if the caller's existing equipment is capable
35 of allowing the display of the caller's telephone number or

1 identity.

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

5 b. Except for ADAD equipment that randomly or sequentially
6 selects the telephone numbers for calling, the prohibition in
7 paragraph "a" does not apply to any of the following, provided
8 that the telephone numbers selected for automatic dialing have
9 been screened to exclude any consumer who is included on the
10 do-not-call list pursuant to section 476B.3 or who has an
11 unlisted telephone number, unless the calls made concern a
12 consumer good or service that has been previously ordered or
13 purchased:

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

19 (2) Calls made with ADAD equipment relating to payment
20 for, service of, or warranty coverage of previously ordered or
21 purchased consumer goods or services or to persons or
22 organizations with an existing business relationship with the
23 persons or organizations using the calls.

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

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

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

32 3. Calls made with ADAD equipment must terminate the
33 connection with any call within ten seconds after the person
34 receiving the call acts to disconnect the call.

35 4. Calls made with predictive dialing technology must meet

1 a standard that allows a live telephone solicitor to engage in
2 conversation with a call recipient within two seconds after
3 the call is answered by the call recipient.

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

5 1. The secretary of state shall contract with a service
6 that maintains a national do-not-call list, so that Iowa
7 telephone subscribers who do not wish to receive unsolicited
8 telephone solicitations utilizing any ADAD equipment,
9 predictive dialing technology, or autodialers may register to
10 be included on the list. The contract shall be made in
11 consultation with the consumer protection division of the
12 department of justice, so that all evidentiary issues and
13 other issues related to enforcement are considered.

14 2. A residential, mobile, or telephonic paging device
15 telephone subscriber who does not wish to receive unsolicited
16 telephone solicitations may register to be included on the do-
17 not-call list contracted for by the secretary of state
18 pursuant to subsection 1.

19 3. A telephone solicitor doing business in Iowa shall pay
20 a fee to be determined pursuant to subsection 5, and shall
21 obtain a subscription to receive the quarterly updated
22 subscription listings of consumers in Iowa who have registered
23 to be included on the do-not-call list referred to in this
24 section.

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

29 5. The secretary of state and consumer protection division
30 of the department of justice shall adopt rules pursuant to
31 chapter 17A to administer this section, including appropriate
32 notices to consumers of the types of telephone calls toward
33 which such registration is directed, and the charging of a fee
34 for subscriptions to the list so that the list income supports
35 the cost of maintaining the list.

1 Sec. 4. NEW SECTION. 476B.4 INVESTIGATIONS -- CIVIL
2 ACTIONS -- CIVIL PENALTY -- OTHER REMEDIES.

3 1. A violation of this chapter is a violation of section
4 714.16, subsection 2, paragraph "a". All the powers conferred
5 upon the attorney general to accomplish the objectives and
6 carry out the duties prescribed pursuant to section 714.16 are
7 also conferred upon the attorney general to enforce this
8 chapter, including, but not limited to, the power to issue
9 subpoenas, adopt rules pursuant to chapter 17A which shall
10 have the force of law, and seek injunctive relief and civil
11 penalties.

12 2. In seeking reimbursement pursuant to section 714.16,
13 subsection 7, from a person who has committed a violation of
14 this chapter, the attorney general may seek an order from the
15 court that the person pay to the attorney general on behalf of
16 consumers the amounts for which the person would be liable
17 under section 476B.5, subsection 2, for each consumer who has
18 a cause of action pursuant to section 476B.5, subsection 2.
19 Section 714.16, as it relates to consumer reimbursement, shall
20 apply to consumer reimbursement pursuant to this section.

21 Sec. 5. NEW SECTION. 476B.5 PRIVATE CAUSE OF ACTION --
22 DAMAGES AND INJUNCTIVE RELIEF.

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

28 1. Preliminary and permanent injunctive relief necessary
29 to protect the public against further violations.

30 2. The greater of actual monetary damages or a sum not
31 less than one hundred dollars but not more than two thousand
32 dollars for each telephone call made in violation of this
33 chapter.

34 3. Costs and reasonable attorney fees.

35 Reimbursement awarded to the attorney general pursuant to

1 section 714.16, subsection 7, on behalf of a plaintiff who has
2 filed an action pursuant to this section concerning the same
3 set of facts shall be deducted from any damages awarded to the
4 plaintiff in an action filed under this section.

5 Sec. 6. NEW SECTION. 476B.6 NOTIFICATION OF RIGHTS.

6 The board shall by rule ensure that telecommunications
7 providers inform customers of the customers' rights under this
8 chapter. The notification shall be made by at least both of
9 the following:

10 1. Annual inserts in the billing statements mailed to
11 customers.

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

14 Sec. 7. Section 476.57, Code 2003, is repealed.

15 EXPLANATION

16 This bill relates to telemarketing.

17 The bill provides definitions for a new Code chapter 476B
18 in new Code section 476B.1, including but not limited to
19 "automatic dialing-announcing device equipment" (ADAD),
20 "autodialer", "caller identification", "predictive dialing
21 technology", and "telephone solicitation".

22 The bill provides in new Code section 476B.2 that a person
23 shall not use certain telemarketing equipment to call any
24 person registered on the do-not-call list established under
25 new Code section 476B.3; shall not call a person registered on
26 the do-not-call list while the person making the call is
27 performing paid telephone solicitation services pursuant to
28 contract; and shall not use certain telemarketing equipment in
29 a manner that intentionally impedes or prevents the function
30 of a recipient's caller identification.

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

35 Calls made with ADAD equipment must terminate the telephone

1 connection within 10 seconds of a hang-up. Calls made with
2 predictive dialing technology must meet a standard that allows
3 a telemarketer to engage in conversation with the call
4 recipient within two seconds after receipt of the call.

5 The bill provides in new Code section 476B.3 that a
6 residential, mobile, or telephonic paging device telephone
7 subscriber who does not wish to receive unsolicited telephone
8 solicitations may register to be included on a do-not-call
9 listing contracted for by the secretary of state with a
10 service that maintains a national do-not-call list. The
11 contract shall be made in consultation with the consumer
12 protection division of the department of justice to encompass
13 enforcement issues. Telephone solicitors doing business in
14 Iowa shall pay a fee and receive a subscription with quarterly
15 updates to the do-not-call list. Fees are to be set by rule
16 at a level to make the program self-maintaining. A telephone
17 solicitor shall not use specified telemarketing equipment to
18 call any consumer in Iowa who is on the list.

19 The bill provides in new Code section 476B.4 that a
20 violation of new Code chapter 476B is a violation of Code
21 section 714.16, subsection 2, paragraph "a", relating to
22 consumer fraud. The bill provides that the attorney general
23 may seek injunctive relief and civil penalties, in addition to
24 consumer reimbursement pursuant to Code section 714.16.

25 The bill provides in new Code section 476B.5 that a
26 consumer who receives more than one telephone solicitation in
27 violation of the new Code section within any 12-month period
28 by or on behalf of the same person may bring an action to
29 enjoin further violations; and may also bring an action to
30 recover the greater of actual monetary damages incurred by the
31 consumer as a result of a violation or an amount not less than
32 \$100 but not more than \$2,000 for each violation; and costs
33 and recovery of reasonable attorney fees.

34 New Code section 476B.6 requires adoption of rules by the
35 utilities board related to customer notification of rights

1 under the bill.

2 Current Code section 476.57, relating to ADAD equipment
3 usage, is repealed.

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