

JAN 21 2005

COMMERCE, REGULATION & LABOR

HOUSE FILE 110

BY STRUYK

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to telephone solicitations including the  
2 establishment of a state do-not-call database, providing for  
3 certain restrictions on telephone solicitors, and providing  
4 for a fee, penalties, and remedies.

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

- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

HF 110

1 Section 1. NEW SECTION. 477A.1 DEFINITIONS.

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

4 1. "Caller identification service" means a telephone  
5 service which permits telephone subscribers to see the  
6 telephone number of incoming calls.

7 2. "Established business relationship" means a prior or  
8 existing relationship formed by a voluntary two-way  
9 communication between a person and a telephone subscriber with  
10 or without an exchange of consideration, on the basis of the  
11 subscriber's purchase or transaction with the person within  
12 one hundred eighty days immediately preceding the date of the  
13 telephone call.

14 3. "Telephone solicitation" means the initiation of a  
15 telephone call or message for the purpose of encouraging the  
16 purchase or rental of, or investment in, property, goods, or  
17 services, which is transmitted to a telephone subscriber, but  
18 does not include a call or message that is any of the  
19 following:

20 a. To any telephone subscriber with that subscriber's  
21 prior express invitation or permission.

22 b. To any telephone subscriber with whom the caller has an  
23 established business relationship or personal relationship.

24 c. By or on behalf of a tax-exempt nonprofit organization  
25 while such entity is engaged in fundraising to support the  
26 charitable purpose for which the entity was established,  
27 provided that a bona fide member of the nonprofit organization  
28 makes the voice communication.

29 4. "Telephone solicitor" means a person doing business in  
30 this state who makes or causes to be made a telephone  
31 solicitation.

32 5. "Telephone subscriber" means a person who has  
33 subscribed to residential telephone or wireless communications  
34 service from a local exchange company or wireless  
35 communications provider or other person living with or

1 residing with such person.

2 Sec. 2. NEW SECTION. 477A.2 DO-NOT-CALL DATABASE AND  
3 LIST.

4 1. The attorney general shall establish and provide for  
5 the operation of a database to compile a list of telephone  
6 numbers of telephone subscribers who object to receiving  
7 telephone solicitations. There shall be no cost to the  
8 subscriber for joining the database.

9 2. The attorney general shall include in the database  
10 telephone subscribers in this state who are included in the  
11 national database established by the federal communications  
12 commission pursuant to 47 U.S.C. § 227(c)(3).

13 3. A telephone solicitor doing business in this state  
14 shall obtain a subscription to receive updated listings of  
15 telephone subscribers in this state who have registered to be  
16 included on the do-not-call list established in this section.

17 4. Information contained in the do-not-call list  
18 established in this section shall be used only for the purpose  
19 of compliance with section 477A.3 and this section. Such  
20 information shall not be considered a public record for the  
21 purposes of chapter 22.

22 Sec. 3. NEW SECTION. 477A.3 SOLICITATION PROHIBITION.

23 A person shall not make or cause to be made a telephone  
24 solicitation to any telephone subscriber in this state who is  
25 included on the do-not-call list established pursuant to  
26 section 477A.2.

27 Sec. 4. NEW SECTION. 477A.4 RULES -- ACCESS FEES.

28 The attorney general shall adopt rules pursuant to chapter  
29 17A to govern the establishment of a state do-not-call  
30 database and to administer this chapter. The rules shall  
31 include all of the following:

32 1. The methods by which a telephone subscriber may give  
33 notice to the attorney general of the subscriber's objection  
34 to receiving telephone solicitations and revocation of such  
35 notice.

1        2. The length of time for which a notice of objection  
2 shall be effective and the effect of a change of telephone  
3 number.

4        3. The methods by which objections and revocations shall  
5 be collected and added to the database.

6        4. The methods by which a person desiring to make  
7 telephone solicitations may obtain access to the database as  
8 required to avoid calling the telephone numbers of telephone  
9 subscribers included in the database, including any fees for  
10 access to the database. The attorney general may utilize any  
11 fees collected for the purposes of establishing and operating  
12 the state do-not-call database.

13        Sec. 5. NEW SECTION. 477A.5 CALLER IDENTIFICATION.

14        1. A telephone solicitor who makes a telephone  
15 solicitation to a telephone subscriber in this state shall at  
16 the beginning of such call state clearly the identity of the  
17 telephone solicitor initiating the call.

18        2. A telephone solicitor who makes a telephone  
19 solicitation to a telephone subscriber in this state shall not  
20 use any method to block or otherwise circumvent the  
21 subscriber's use of a caller identification service.

22        Sec. 6. NEW SECTION. 477A.6 VIOLATIONS -- PENALTIES --  
23 CAUSES OF ACTION.

24        1. A violation of this chapter is an unlawful practice  
25 under section 714.16, subsection 2, paragraph "a". All the  
26 powers conferred upon the attorney general to accomplish the  
27 objectives and carry out the duties prescribed pursuant to  
28 section 714.16 are also conferred upon the attorney general to  
29 enforce this chapter, including seeking injunctive relief and  
30 civil penalties.

31        2. a. A person who has received more than one telephone  
32 solicitation within any twelve-month period by or on behalf of  
33 the same telephone solicitor in violation of this chapter may  
34 bring an action in a court of competent jurisdiction for any  
35 of the following relief:

1 (1) To enjoin future violations.

2 (2) To recover actual monetary loss as a result of the  
3 violation or to receive up to five thousand dollars in  
4 liquidated damages for each knowing or willful violation,  
5 whichever is greater.

6 b. It shall be an affirmative defense in any action  
7 brought under this subsection that the defendant has  
8 established and implemented reasonable practices and  
9 procedures to effectively prevent telephone solicitations in  
10 violation of this chapter.

11 c. An action may not be brought pursuant to this  
12 subsection more than two years after the person bringing the  
13 action knew or should have known of the occurrence of the  
14 alleged violation.

15 3. The remedies, duties, and penalties of this section are  
16 not exclusive and are in addition to all other causes of  
17 action, remedies, and penalties provided by law.

18 EXPLANATION

19 This bill establishes new Code chapter 477A regarding  
20 restrictions on solicitations made by telephone. The bill  
21 provides definitions for "caller identification service",  
22 "established business relationship", "telephone solicitation",  
23 "telephone solicitor", and "telephone subscriber". "Telephone  
24 solicitation" does not include a call to a person with that  
25 person's prior express permission, to a person with whom the  
26 caller has an established business relationship, or by a tax-  
27 exempt nonprofit organization engaging in fundraising to  
28 support the charitable purpose for which the organization was  
29 established.

30 The bill requires the attorney general to establish a  
31 database of residential and wireless telephone subscribers in  
32 this state who object to receiving telephone solicitations.  
33 The list shall include subscribers in this state who have  
34 registered with the national list established by the federal  
35 communications commission. Telephone solicitors doing

1 business in this state must subscribe to updates to the list.  
2 Information contained in the list is not public information  
3 for the purposes of Code chapter 22.

4 The bill prohibits a telephone solicitor from making a  
5 telephone solicitation to any telephone subscriber in this  
6 state who is included on the do-not-call list. The attorney  
7 general shall adopt rules to enforce new Code chapter 477A,  
8 including the methods for telephone subscribers to be included  
9 on the state do-not-call list, the length of time the notice  
10 of objection shall be effective, the methods by which the  
11 objections shall be collected for the database, and the  
12 methods for telephone solicitors to access the database.

13 The bill requires telephone solicitors to immediately  
14 identify themselves when making a telephone solicitation and  
15 may not use any method to block or circumvent the use of a  
16 caller identification system.

17 The attorney general can enforce new Code chapter 477A in  
18 the same manner as a consumer fraud under Code section 714.16.  
19 A person who has received more than one telephone solicitation  
20 within any 12-month period by or on behalf of the same  
21 telephone solicitor in violation of the new Code chapter may  
22 bring a court action to enjoin future violations, and to  
23 recover damages from the violation or to receive up to \$5,000  
24 in liquidated damages for each willful violation. The bill  
25 provides a telephone solicitor an affirmative defense if the  
26 solicitor has established and implemented reasonable practices  
27 and procedures to effectively prevent telephone solicitations  
28 in violation of Code chapter 477A. Individual actions against  
29 telephone solicitors have a statute of limitations period of  
30 two years.

31  
32  
33  
34  
35