

House Study Bill 78 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON SODERBERG)

A BILL FOR

1 An Act relating to the provision of telecommunications services
2 to multiple-unit residential buildings or complexes.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 477.15 Definitions.

2 1. For purposes of this section, unless the context
3 otherwise requires:

4 a. "*Manufactured home community*" and "*mobile home park*" mean
5 the same as defined in section 562B.7.

6 b. "*Multiple-unit residential building or complex*" means
7 a building or complex utilized for residential purposes and
8 consisting of at least two or more individual dwelling units,
9 or a manufactured home community or mobile home park, whether
10 leased or owned.

11 c. "*Residential agent*" means the property owner, manager,
12 lessee, or other person in possession or control of a
13 multiple-unit residential building or complex.

14 d. "*Telecommunications provider*" means a person, firm, or
15 corporation providing telecommunications service pursuant to a
16 cable or video service franchise granted pursuant to chapter
17 477A or chapter 364, a certificate of public convenience and
18 necessity issued pursuant to section 476.29, or as authorized
19 by a municipality which provides telecommunications service
20 directly to its residents.

21 e. "*Telecommunications service*" means the provision of
22 cable service or video service as defined in section 477A.1,
23 high-speed internet service, or telephone service whether by
24 coaxial cable, fiber optic line, or copper telephone line.

25 2. A residential agent of a multiple-unit residential
26 building or complex located within the service area in which
27 a telecommunications provider is authorized to provide
28 telecommunications service shall be subject to the following:

29 a. The residential agent shall not preclude or prevent
30 an occupant, tenant, or lessee of the building or complex
31 from receiving telecommunications service from a particular
32 telecommunications provider or municipality, demand or
33 accept payment from any occupant, tenant, or lessee in
34 any form as a condition of permitting the installation of
35 telecommunications service equipment or facilities or the

1 maintenance of such equipment or facilities on the premises
2 of the building or complex, or discriminate in rental charges
3 or in any other manner against an occupant, tenant, or lessee
4 receiving telecommunications services from a particular
5 telecommunications provider or municipality.

6 *b.* The residential agent shall not preclude or prevent a
7 telecommunications provider from entering upon the premises of
8 a multiple-unit residential building or complex for the purpose
9 of or in connection with the construction or installation
10 of telecommunications service equipment or facilities;
11 or constructing or installing upon, beneath, or over the
12 premises, including any buildings or other structures located
13 thereon, hardware, cable, equipment, materials, or other
14 telecommunications service equipment or facilities utilized
15 by the telecommunications provider in the construction or
16 installation of telecommunications service.

17 3. A telecommunications provider shall not install
18 telecommunications service equipment or facilities on the
19 premises of a multiple-unit residential building or complex
20 unless an occupant, tenant, or lessee of the building or
21 complex requests the delivery of telecommunications service.
22 In any instance in which a request for service is made, the
23 telecommunications provider may install telecommunications
24 service equipment or facilities throughout the building or
25 complex in a manner which enables the telecommunications
26 provider to provide telecommunications service to occupants,
27 tenants, or lessees of other residential units within the
28 building or complex without requiring the installation of
29 additional equipment or facilities other than within the
30 residential units occupied by such other occupants, tenants,
31 or lessees.

32 4. *a.* A telecommunications provider may remit reasonable
33 compensation to a residential agent for marketing support or
34 for a right of entry for the installation of telecommunications
35 service equipment or facilities, or the provision of

1 telecommunications service, as follows:

2 (1) Pursuant to a compensation agreement initiated by the
3 telecommunications provider with a residential agent.

4 (2) At the written request of a residential agent received
5 by a telecommunications provider within twenty days of the
6 date on which the agent is notified of the telecommunications
7 provider's intention to install telecommunications service
8 equipment or facilities as provided in subsection 5. Unless
9 such a request is received from the residential agent, it
10 shall be conclusively presumed that the agent does not claim
11 or intend to request or require reasonable compensation.
12 The notice shall include the amount requested as reasonable
13 compensation by the agent.

14 *b.* Compensation received pursuant to this subsection shall
15 not confer an exclusive right of entry with respect to a
16 particular telecommunications provider. If compensation is
17 agreed to, no other payment or compensation shall be requested
18 or received by the residential agent, unless damage is incurred
19 during the course of the installation. A telecommunications
20 provider shall agree to indemnify a residential agent for any
21 damages caused by the installation, operation, or removal of
22 telecommunications service equipment or facilities.

23 5. *a.* Prior to the installation of telecommunications
24 service equipment or facilities, a telecommunications provider
25 shall notify the residential agent in writing of the intent
26 to proceed with installation. Notification shall include the
27 address of the multiple-unit residential building or complex,
28 the name of the telecommunications provider, the anticipated
29 installation date, and either a proposed amount of reasonable
30 compensation or contact information regarding the twenty-day
31 time frame for compensation notification as provided in
32 subsection 4.

33 *b.* In any instance in which a telecommunications provider
34 intends to install telecommunications service equipment or
35 facilities within or upon a multiple-unit residential building

1 or complex containing twelve or more residential units,
2 the written notice required pursuant to paragraph "a" shall
3 further acknowledge that the residential agent may require
4 the submission of written plans identifying the manner in
5 which telecommunications equipment and facilities are to be
6 installed, including the proposed location of coaxial cable,
7 fiber optic cable, or copper wire. Approval of such plans
8 by the residential agent, if required by the agent, shall
9 not be unreasonably withheld and consent to and approval
10 of such plans shall be presumed unless, within thirty days
11 following receipt thereof, the residential agent identifies
12 in writing the specific manner in which the plans deviate
13 from generally accepted construction or safety standards and
14 contemporaneously submits an alternative construction plan
15 providing for the installation of telecommunications service
16 equipment or facilities in an economically feasible manner.
17 A telecommunications provider may proceed with the plan
18 originally submitted if an alternative plan is not submitted
19 within thirty days, or if the alternative plan fails to comply
20 with generally accepted construction and safety standards or
21 does not provide for the installation of telecommunications
22 service equipment or facilities in an economically feasible
23 manner.

24 6. a. A residential agent having provided timely written
25 notice of a request for reasonable compensation pursuant to
26 subsection 4, paragraph "a", subparagraph (2), may assert a
27 claim for such compensation if the agent has not received the
28 compensation within thirty days following receipt of the notice
29 by the telecommunications provider, or the telecommunications
30 provider has not agreed to pay the amount requested or an
31 alternative amount acceptable to the agent within a mutually
32 agreeable time frame. If compensation remains unpaid after
33 sixty days following receipt of the notice, or within the time
34 frame mutually agreed upon, the agent may bring suit to enforce
35 the claim in any court of competent jurisdiction, and, in

1 connection therewith, may require that the amount or reasonable
2 compensation be determined by the court. Any such action shall
3 be commenced within six months of receipt of the notice of a
4 request for reasonable compensation.

5 *b.* In an action to determine the amount of reasonable
6 compensation, the residential agent may submit evidence of
7 a decrease in the fair market value of the multiple-unit
8 residential building or complex occasioned by the installation
9 of the telecommunications service equipment or facilities,
10 that the agent has a specific alternative use for the space
11 occupied by the telecommunications service equipment or
12 facilities, the loss of which will result in a monetary loss
13 to the owner, or that installation of the telecommunications
14 service equipment or facilities substantially interferes
15 with the use or occupancy of the building or complex. In
16 determining reasonable compensation, the court shall not
17 consider or include potential earnings by a residential agent
18 were the agent to install or provide telecommunications service
19 independently.

20 *c.* Neither the giving of a notice requesting reasonable
21 compensation pursuant to subsection 4, paragraph "a",
22 subparagraph (2), nor the assertion of a specific claim or
23 initiation of a legal action to enforce such claim as provided
24 in paragraphs "a" and "b" of this subsection shall delay or
25 impair the right of a telecommunications provider to construct
26 or install telecommunications service equipment or facilities
27 or maintain telecommunications service with respect to a
28 multiple-unit residential building or complex.

29 EXPLANATION

30 This bill concerns the installation of telecommunications
31 service equipment and facilities, and the provision of
32 telecommunications service, to multiple-unit residential
33 buildings or complexes.

34 The bill provides several definitions. The bill defines
35 a "multiple-unit residential building or complex" as a

1 building or complex utilized for residential purposes and
2 consisting of at least two or more individual dwelling
3 units, or a manufactured home community or mobile home park,
4 whether leased or owned. A "residential agent" is defined
5 as the property owner, manager, lessee, or other person in
6 possession or control of a building or complex. The bill
7 defines a "telecommunications provider" as a person, firm, or
8 corporation providing telecommunications service pursuant to
9 a cable or video service franchise granted pursuant to Code
10 chapter 364 or 477A, or pursuant to a certificate of public
11 convenience and necessity issued pursuant to Code section
12 476.29, or as authorized by a municipality which provides
13 telecommunications service directly to its residents. The
14 bill defines "telecommunications service" as the provision of
15 cable service or video service, high-speed internet service, or
16 telephone service.

17 The bill prohibits a residential agent of a multiple-unit
18 residential building or complex from preventing or precluding
19 an occupant, tenant, or lessee of the building or complex
20 from receiving telecommunications service from a particular
21 telecommunications provider or municipality, from demanding or
22 accepting a payment from any occupant, tenant, or lessee as a
23 condition of permitting the installation of telecommunications
24 service equipment or facilities or the maintenance of such
25 equipment or facilities on the premises of the building or
26 complex, or from discriminating in rental charges or in any
27 other manner against an occupant, tenant, or lessee receiving
28 telecommunications services from a particular provider.
29 Additionally, the bill prohibits an agent from precluding or
30 preventing a provider from entering upon the premises of a
31 building or complex for the purpose of or in connection with
32 the construction or installation of telecommunications service
33 equipment or facilities; or constructing or installing upon,
34 beneath, or over the premises, including any buildings or
35 other structures located thereon, hardware, cable, equipment,

1 materials, or other telecommunications service equipment or
2 facilities utilized by the provider in the construction or
3 installation of telecommunications service.

4 The bill states that an occupant, tenant, or lessee of the
5 building or complex must request delivery of telecommunications
6 service prior to an installation of telecommunications service
7 equipment or facilities by a provider, and that if such
8 a request is made, the provider may install equipment or
9 facilities throughout the building or complex in a manner which
10 enables the provider to provide telecommunications service to
11 additional occupants, tenants, or lessees.

12 The bill authorizes the payment of reasonable compensation
13 for marketing support or for a right of entry for the
14 installation of telecommunications service equipment or
15 facilities or the provision of telecommunications service by
16 a provider to an agent, either when initiated by the provider
17 or upon receipt of a written request from the agent. In the
18 latter case, the bill requires the request to be received by
19 the provider within 20 days from the date of notification
20 by the provider to the agent of an intent to install
21 telecommunications service equipment or facilities. The bill
22 provides that absent such a request, it will be presumed that
23 the agent does not intend to request or require reasonable
24 compensation. The bill clarifies that any compensation
25 received shall not confer an exclusive right of entry with
26 respect to a particular telecommunications provider, that no
27 other payment or compensation shall be requested or received
28 by the residential agent unless damage is incurred during
29 the course of the installation, and that the provider shall
30 agree to indemnify an agent for any damages caused by the
31 installation, operation, or removal of telecommunications
32 service equipment or facilities.

33 With regard to the required notification of an intent to
34 install, the bill provides that the notification shall be
35 in writing and shall include the address of the building or

1 complex, the name of the provider, the anticipated installation
2 date, and either a proposed amount of reasonable compensation
3 or contact information regarding the 20-day time frame for
4 requesting compensation. If the installation involves a
5 building or complex containing 12 or more residential units,
6 the bill states that the notice shall acknowledge that the
7 agent may require the submission of written plans identifying
8 the manner in which telecommunications equipment and facilities
9 are to be installed. The bill states that approval of such
10 plans by the agent, if required, shall not be unreasonably
11 withheld and consent to and approval of such plans shall be
12 presumed unless, within 30 days following receipt of the
13 plans, the agent identifies in writing the specific manner in
14 which they deviate from generally accepted construction or
15 safety standards, and unless an alternative plan providing
16 for the installation of telecommunications facilities in an
17 economically feasible manner is submitted by the agent. The
18 bill authorizes a provider to proceed with the plan originally
19 submitted if an alternative plan is not submitted within 30
20 days, or if the alternative plan fails to comply with generally
21 accepted construction and safety standards or does not provide
22 for the installation of telecommunications service equipment or
23 facilities in an economically feasible manner.

24 The bill permits an agent to assert a claim for reasonable
25 compensation if the agent has not received compensation
26 within 30 days following receipt by a provider of a request
27 from an agent, or if the provider has not agreed to pay the
28 amount requested or an alternative amount acceptable to the
29 agent within a mutually agreeable time frame. In the event
30 compensation remains unpaid after 60 days following receipt of
31 the request, or within the time frame mutually agreed upon, the
32 bill authorizes an agent to bring suit to enforce the claim
33 in any court of competent jurisdiction, and to require that
34 the amount of reasonable compensation be determined by the
35 court. The bill specifies that such an action must be brought

1 within six months of receipt of the notice of a request for
2 reasonable compensation. The bill provides that in an action
3 to determine the amount of reasonable compensation, the agent
4 may submit evidence of a decrease in the fair market value
5 caused by the installation of the telecommunications service
6 equipment or facilities, or that the agent has a specific
7 alternative use for the space occupied by the equipment or
8 facilities, the loss of which will result in a monetary loss to
9 the owner, or that installation of the equipment or facilities
10 substantially interferes with the use and occupancy of the
11 building or complex. In determining reasonable compensation,
12 a court is directed not to consider or include potential
13 earnings by an agent in the event the agent installed or
14 provided telecommunications service independently. The bill
15 states that providing notice requesting reasonable compensation
16 or asserting a claim or initiating an action shall not delay
17 or impair the right of a provider to construct or install
18 telecommunications service equipment or facilities or maintain
19 telecommunications service.