

**CHAPTER 16****TELECOMMUNICATIONS — SERVICE CHANGES***H.F. 588*

**AN ACT** prohibiting unauthorized changes in telecommunications service, prohibiting certain acts in the advertisement or solicitation of changes in telecommunications service, and providing remedies and penalties.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. NEW SECTION. 476.103 UNAUTHORIZED CHANGE IN SERVICE — CIVIL PENALTY.

1. Notwithstanding the deregulation of a communications service or facility under section 476.1D, the board may adopt rules to protect consumers from unauthorized changes in telecommunications service. Such rules shall not impose undue restrictions upon competition in telecommunications markets.

2. As used in this section, unless the context otherwise requires:

a. "Change in service" means the designation of a new provider of a telecommunications service to a consumer, including the initial selection of a service provider, and includes the addition or deletion of a telecommunications service for which a separate charge is made to a consumer account.

b. "Consumer" means a person other than a service provider who uses a telecommunications service.

c. "Executing service provider" means, with respect to any change in telecommunications service, a service provider who executes an order for a change in service received from another service provider.

d. "Service provider" means a person providing a telecommunications service.

e. "Submitting service provider" means a service provider who requests another service provider to execute a change in service.

f. "Telecommunications service" means a local exchange or long distance telephone service other than commercial mobile radio service.

3. The board shall adopt rules prohibiting an unauthorized change in telecommunications service. The rules shall be consistent with federal communications commission regulations regarding procedures for verification of customer authorization of a change in service. The rules, at a minimum, shall provide for all of the following:

a. (1) A submitting service provider shall obtain verification of customer authorization of a change in service before submitting such change in service.

(2) Verification appropriate under the circumstances for all other changes in service.

(3) The verification may be in written, oral, or electronic form and may be performed by a qualified third party.

(4) The reasonable time period during which the verification is to be retained, as determined by the board.

b. A customer shall be notified of any change in service.

c. Appropriate compensation for a customer affected by an unauthorized change in service.

d. Board determination of potential liability, including assessment of damages, for unauthorized changes in service among the customer, previous service provider, executing service provider, and submitting service provider.

e. A provision encouraging service providers to resolve customer complaints without involvement of the board.

f. The prompt reversal of unauthorized changes in service.

g. Procedures for a customer, service provider, or the consumer advocate to submit to the board complaints of unauthorized changes in service.

4. a. In addition to any applicable civil penalty set out in section 476.51, a service provider who violates a provision of this section, a rule adopted pursuant to this section, or an order lawfully issued by the board pursuant to this section, is subject to a civil penalty, which, after notice and opportunity for hearing, may be levied by the board, of not more than ten thousand dollars per violation. Each violation is a separate offense.

b. A civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the size of the service provider, the gravity of the violation, any history of prior violations by the service provider, remedial actions taken by the service provider, the nature of the conduct of the service provider, and any other relevant factors.

c. A civil penalty collected pursuant to this subsection shall be forwarded by the executive secretary of the board to the treasurer of state to be credited to the general fund of the state and to be used only for consumer education programs administered by the board.

d. A penalty paid by a rate-of-return regulated utility pursuant to this section shall be excluded from the utility's costs when determining the utility's revenue requirement, and shall not be included either directly or indirectly in the utility's rates or charges to its customers.

e. The board shall not commence an administrative proceeding to impose a civil penalty under this section for acts subject to a civil enforcement action pending in court under section 714D.7.

5. If the board determines, after notice and opportunity for hearing, that a service provider has shown a pattern of violations of the rules adopted pursuant to this section, the board may by order do any of the following:

a. Prohibit any other service provider from billing charges to residents of Iowa on behalf of the service provider determined to have engaged in such a pattern of violations.

b. Prohibit certificated local exchange service providers from providing exchange access services to the service provider.

c. Limit the billing or access services prohibition under paragraph "a" or "b" to a period of time. Such prohibition may be withdrawn upon a showing of good cause.

d. Revoke the certificate of public convenience and necessity of a local exchange service provider.

6. The board has primary jurisdiction over a complaint pursuant to this section initiated by a service provider.

7. Subsection 6 does not preclude proceedings before the federal communications commission to enforce applicable federal law. However, a service provider or a consumer, for the same alleged acts, shall not pursue a complaint both before the federal communications commission and pursuant to this section.

8. The board shall adopt competitively neutral rules establishing procedures for the solicitation, imposition, and lifting of preferred carrier freezes. A valid preferred carrier freeze prevents a change in service unless the subscriber gives the service provider from whom the freeze was requested the subscriber's express consent.

Sec. 2. NEW SECTION. 714D.1 LEGISLATIVE INTENT.

The general assembly finds that customers of telephone services have been subjected to fraud in the sale and advertisement of telephone long distance and local service, as well as other services related to residential and business telephone service. The general assembly further finds that companies acting in a lawful manner have lost customers to companies that obtain customers through fraud and deception.

It is the intent of the general assembly to protect telephone service subscribers from fraud and to provide statutory remedies for the victims of fraud in the sale of telecommunications service. It is the intent of the general assembly to provide the attorney general with additional remedies to address the issue of fraud in the sale of telecommunications service. It is further the intent of the general assembly that this chapter does not limit the rights or remedies that are otherwise available to a consumer or the attorney general under any other law.

Sec. 3. NEW SECTION. 714D.2 DEFINITIONS.

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

1. "Advertisement" means the same as defined in section 714.16, subsection 1.
2. "Consumer" means a person who is not a telecommunications service provider and who uses telecommunications services.
3. "Deception" means the same as defined in section 714.16, subsection 1.
4. "Person" means the same as defined in section 714.16, subsection 1.
5. "Sweepstakes box" means the box or receptacle into which a person may place an entry form or document used to enter a sweepstakes, contest, or drawing of any description, and promotional materials attached to such entry form or document.
6. "Telecommunications Act" means 47 U.S.C. § 258, a portion of the federal Telecommunications Act of 1996, relating to changes in telephone service, and including regulations adopted pursuant to that section.
7. "Telecommunications service" means local exchange or long distance telephone service, and any additional service or merchandise for which any charge or assessment appears on a billing statement directed to a person by a provider of local exchange or long distance telephone service, but does not include commercial mobile radio service or charges or assessments imposed on consumers of local exchange or long distance telephone service or on such additional service or merchandise by governmental entities.
8. "Telecommunications service provider" means a person who advertises, sells, leases, or provides telecommunications services to another person.
9. "Unfair practice" means the same as defined in section 714.16, subsection 1, and also means any failure of a person to comply with the Telecommunications Act or with any statute or rule enforced by the utilities board within the utilities division of the department of commerce relating to a telecommunications service selection or change.

Sec. 4. NEW SECTION. 714D.3 UNFAIR AND DECEPTIVE PRACTICES.

The act, use, or employment by a person of deception or an unfair practice in connection with the lease, sale, or advertisement of a telecommunications service or the solicitation of authority to provide or execute a change of a telecommunications service is an unlawful practice.

Sec. 5. NEW SECTION. 714D.4 PROHIBITION OF SWEEPSTAKES BOXES.

The use of a sweepstakes box by a person to solicit authority to provide or execute a change of a consumer's telecommunications service is an unlawful practice.

Sec. 6. NEW SECTION. 714D.5 CONDITIONS ON USE OF PRIZE PROMOTIONS TO SOLICIT AUTHORITY TO PROVIDE OR CHANGE TELECOMMUNICATIONS SERVICES.

1. It is an unlawful practice for a person to use a form or document which is to be used or intended to be used by another person to enter a sweepstakes, contest, or drawing of any description as written authority to provide or execute a change of a consumer's telecommunications service.
2. It is an unlawful practice for a person to solicit the lease or sale of or to solicit the authority to provide or execute a change of a telecommunications service to another person through or in conjunction with a sweepstakes, contest, or drawing without clearly, conspicuously, and fully disclosing in all direct mail solicitations to the other person the fact that the sweepstakes, contest, or drawing is intended to solicit authority to provide or execute a change of a telecommunications service. The disclosure required shall include, at a minimum, all of the following:
  - a. A statement that an acceptance or change of telecommunications service is not required to enter the sweepstakes, contest, or drawing.
  - b. An alternative means by which a person may enter the sweepstakes, contest, or drawing without accepting or authorizing a change in a telecommunications service.

c. The name and telephone number of the entity soliciting the person to accept or to authorize a change of telecommunications service through the use of or in conjunction with the sweepstakes, contest, or drawing.

d. A brief description of the nature of the telecommunications service for which authorization is sought through the use of or in conjunction with the sweepstakes, contest, or drawing.

Sec. 7. NEW SECTION. 714D.6 PRIVATE ACTION.

1. In addition to any other remedy, a consumer may bring an action against a person who commits an unlawful practice under this chapter to recover from the person all of the following:

a. The amount of any moneys or property acquired by the person from the consumer by means of an unlawful practice under this section, or two hundred dollars, whichever is greater.

b. If a court finds that the consumer prevails in the action and that the unlawful practice was an intentional violation of this chapter, five hundred dollars or twice the amount of the consumer's actual damages, whichever is greater.

c. Costs and reasonable attorney fees.

2. A cause of action under this section shall not apply unless, prior to filing the action, the consumer has submitted a complaint to the utilities board within the utilities division of the department of commerce, the utilities board has failed to resolve the complaint to the consumer's satisfaction within one hundred twenty days of the date the complaint was submitted, and the consumer dismisses the complaint before the utilities board. The requirement that a consumer complaint be submitted to the utilities board and resolved by the utilities board to the consumer's satisfaction within one hundred twenty days of filing before the consumer may file an action pursuant to this section shall not apply to an action by the attorney general to recover moneys for the consumer pursuant to section 714D.7 or any other law. A finding by the utilities board that a respondent has complied with rules governing carrier selection procedures adopted by the utilities board shall be an affirmative defense to any claim brought under this section or section 476.103 or 714D.7 that an unauthorized change in service has occurred.

Sec. 8. NEW SECTION. 714D.7 CIVIL ENFORCEMENT.

1. A violation of this chapter or a rule adopted pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph "a". The remedies and penalties provided by section 714.16, including but not limited to injunctive relief and civil penalties, apply to violations of this chapter.

2. In seeking reimbursement pursuant to section 714.16, subsection 7, from a person who has committed an unlawful practice under this chapter, the attorney general may seek an order from the court that the person pay to the attorney general on behalf of consumers the amounts for which the person would be liable under section 714D.6 for each consumer who has a cause of action pursuant to section 714D.6. Section 714.16, as it relates to consumer reimbursement, applies to amounts recovered by the attorney general as reimbursement under this chapter. However, a consumer who is awarded monetary damages pursuant to section 714D.6 is not eligible for monetary relief under this section for the same unlawful practice.

3. The remedies provided pursuant to this chapter are in addition to any other remedies provided to the state or to a person under other law.

4. The attorney general shall not file a civil enforcement action under this chapter or under section 714.16 against a person for an act which is the subject of an administrative proceeding to impose a civil penalty which has been initiated against the person by the utilities board within the utilities division of the department of commerce. This subsection shall not be construed to limit the authority of the attorney general to file a civil enforcement or other enforcement action against a person for violating a prior agreement entered into by the person with the attorney general or a court order obtained by the attorney general

against the person. This subsection shall not be construed to limit the authority of the attorney general to file a civil enforcement or other enforcement action against the person for acts which are not the subject of an administrative proceeding which has been initiated against the person by the utilities board.

Approved April 7, 1999

## CHAPTER 17

### ELECTIONS — SAC AND FOX SETTLEMENT PRECINCT

H.F. 679

AN ACT relating to drawing the Sac and Fox Indian settlement precinct in Tama county.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 49.3, subsection 3, Code 1999, is amended to read as follows:

3. ~~Precincts~~ Except as provided in section 49.4, subsection 3, precincts established after July 1, 1994, shall be composed of contiguous territory within a single county. The boundaries of all precincts shall follow the boundaries of areas for which official population figures are available from the most recent federal decennial census.

Sec. 2. Section 49.4, subsection 3, Code 1999, is amended to read as follows:

3. Notwithstanding any other provision of this chapter, Indian settlement land held in trust by the secretary of the interior of the United States for the Sac and Fox tribe of the Mississippi in Iowa and its trust land contiguous to the Indian settlement lying in Tama, Toledo and Indian Village townships of Tama county shall be an election precinct, and the ~~The~~ polling place of that precinct shall be located ~~in the structure commonly called the Indian school located in section 19, township 83 north, range 15 west, or on the Indian settlement in such a structure as designated by the election commissioner of Tama county.~~

The Indian settlement precinct shall be redrawn to include land contiguous to the Indian settlement when such land is purchased by the settlement and added to the Indian settlement land held in trust by the secretary of the interior of the United States. Upon recording of the deed transferring the land to the United States in trust, the county recorder shall notify the county commissioner of that fact. If the commissioner is notified more than seventy days before the next scheduled election, the commissioner shall redraw the precinct for that election. The commissioner shall notify the board of supervisors of the redrawn precinct boundaries and shall certify the redrawn boundaries to the state commissioner. Land completely surrounded by the boundaries of the Indian settlement precinct, but not included in the settlement precinct, shall be included in the precinct in which such land was located prior to redrawing of the Indian settlement precinct. The commissioner shall notify registered voters in each of the redrawn precincts of the change in the precincts and the proper polling place for those affected voters.

Sec. 3. Section 49.8, Code 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 7. When territory contiguous to the Indian settlement is added to the Indian settlement land held in trust by the secretary of the interior of the United States.

Approved April 7, 1999