

4-4-95 Judiciary
(P.245) 2/6/96 Do Pass
3/19/96 Motion to R/c by
FILED MAR 16 1995 Delaney
3/27/96 Motion Withdrawn
(p.1074)

SENATE FILE 401
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 181)

Passed Senate, Date (P.886) 3-19-96 Passed House, Date _____
Vote: Ayes 18 Nays 32 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to consumer-related actions.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 401

1 Section 1. Section 9C.1, Code 1995, is amended to read as
2 follows:

3 9C.1 DEFINITIONS.

4 ~~The term "transient~~ "Transient merchant" as used herein
5 ~~shall mean and include~~ in this chapter includes every
6 merchant, whether an individual person, a firm, corporation,
7 partnership, or association, and whether owner, agent, bailee,
8 consignee, or employee, who shall bring or cause to be brought
9 within the state of Iowa any goods, wares, or merchandise of
10 any kind, nature, or description, with the intention of
11 temporarily or intermittently selling or offering to sell at
12 retail such goods, wares, or merchandise within the state of
13 Iowa. ~~The term "transient~~ "Transient merchant" ~~shall~~ also
14 ~~mean and include~~ includes every merchant, whether an
15 individual person, a firm, corporation, partnership, or an
16 association, who shall by itself, or by agent, consignee, or
17 employee temporarily or intermittently engage in or conduct at
18 one or more locations a business within the state of Iowa for
19 the sale at retail of any goods, wares, or merchandise of any
20 nature or description. A merchant engaging in business shall
21 be presumed to be temporarily or intermittently in business
22 unless it is the intention of ~~such~~ the merchant to remain
23 continuously in business at each location where the merchant
24 is engaged in business within the state of Iowa as a merchant
25 for a period of more than sixty days. The provisions of this
26 chapter shall not be construed to apply to persons selling at
27 wholesale to merchants, ~~nor to~~ transient vendors of drugs, ~~nor~~
28 ~~to~~ persons running a huckster wagon, or selling or
29 distributing livestock feeds, fresh meats, fish, fruit, or
30 vegetables, ~~nor to~~ or persons selling their own work or
31 production either by themselves or employees.

32 "Merchandise" means as defined in section 714.16.

33 Sec. 2. Section 554.9402, subsection 2, unnumbered
34 paragraph 1, Code 1995, is amended to read as follows:

35 A financing statement which otherwise complies with

1 subsection 1 is sufficient when it is signed by the secured
2 party instead of the debtor if it a previously recorded
3 financing statement exists which was executed by the debtor in
4 favor of that secured party and if the financing statement
5 signed by the secured party is filed to perfect a security
6 interest in

7 Sec. 3. Section 714.16, subsection 4, paragraphs b and c,
8 Code 1995, are amended by striking the paragraphs and
9 inserting in lieu thereof the following:

10 b. Subject to paragraph "c", information, documents,
11 testimony, or other evidence provided the attorney general by
12 a person pursuant to subsection 3 and paragraph "a" of this
13 subsection, or provided by a person as evidence in any civil
14 action brought pursuant to this section, shall not be admitted
15 in evidence, or used in any manner whatsoever, in any criminal
16 prosecution or forfeiture proceeding against that person. If
17 a criminal prosecution or forfeiture proceeding is initiated
18 in a state court against a person who has provided information
19 pursuant to paragraph "c", the state shall have the burden of
20 proof that the information provided was not used in any manner
21 to further the criminal investigation, prosecution, or
22 forfeiture proceeding.

23 c. Paragraph "b" shall not apply unless the person has
24 first asserted a right against self-incrimination and the
25 attorney general has elected to provide the person with a
26 written statement that the information, documents, testimony,
27 or other evidence at issue are subject to paragraph "b".
28 After a person has been provided such written statement by the
29 attorney general, a claim of privilege against self-
30 incrimination is not a defense to any action or proceeding to
31 obtain the information, documents, testimony, or other
32 evidence. Nothing in this section limiting the use of
33 evidence in a criminal proceeding shall apply to any
34 prosecution or proceeding for perjury or contempt of court
35 committed in the course of the giving or production of the

1 information, documents, testimony, or other evidence.

2 Sec. 4. Section 714.16, subsections 5 and 6, Code 1995,
3 are amended to read as follows:

4 5. Service by the attorney general of any notice requiring
5 a person to file a statement or report, or of a subpoena upon
6 any person, shall be made personally within this state or by
7 certified mail to the last known place of business, residence,
8 or abode within this state of such person, but if such cannot
9 be obtained, substituted service therefor of the notice or
10 subpoena may be made in any of the following manner manners:

11 a. Personal service thereof of the notice or subpoena
12 without this state;--or.

13 b. The mailing thereof of the notice or subpoena by
14 registered certified mail to the last known place of business,
15 residence, or abode within or without this state of such
16 person for whom the same notice or subpoena is intended;--or.

17 c. As to any person other than a natural person, in the
18 manner provided in the Rules of Civil Procedure as if a
19 petition had been filed;--or.

20 d. Such service as a district court may direct in lieu of
21 personal service or service by certified mail within this
22 state.

23 6. If any person fails or refuses to file any statement or
24 report, or obey any subpoena issued by the attorney general,
25 the attorney general may, after notice, apply to a the Polk
26 county district court or the district court for the county in
27 which the person resides or is located and, after hearing
28 thereof, request an order doing any of the following:

29 a. Granting injunctive relief, restraining the sale or
30 advertisement of any merchandise by such persons;.

31 b. Dissolving a corporation created by or under the laws
32 of this state or revoking or suspending the certificate of
33 authority to do business in this state of a foreign
34 corporation or revoking or suspending any other licenses,
35 permits, or certificates issued pursuant to law to such person

1 which are used to further the allegedly unlawful practice;
2 and.

3 c. Granting such other relief as may be required; until
4 the person files the statement or report, or obeys the
5 subpoena.

6 Sec. 5. Section 714.16, Code 1995, is amended by adding
7 the following new subsection:

8 NEW SUBSECTION. 15. The attorney general may bring an
9 action on behalf of the residents of this state, or as parens
10 patriae, under the federal telemarketing and consumer fraud
11 and abuse prevention Act, Pub. L. No. 103-297, and pursue any
12 and all enforcement options available under that Act.
13 Subsequent amendments to that Act which do not substantially
14 alter its structure and purpose shall not be construed to
15 affect the authority of the attorney general to pursue an
16 action pursuant to this section, except to the extent the
17 amendments specifically restrict the authority of the attorney
18 general.

19 Sec. 6. Section 714.16A, subsection 1, Code 1995, is
20 amended to read as follows:

21 1. If a person violates section 714.16, and the violation
22 is committed against an older person, in an action brought by
23 the attorney general, in addition to any other civil penalty,
24 the court may impose an additional civil penalty not to exceed
25 five thousand dollars for each such violation. Additionally,
26 the attorney general may accept a civil penalty as determined
27 by the attorney general in settlement of an investigation of a
28 violation of section 714.16, regardless of whether an action
29 has been filed pursuant to section 714.16.

30 A civil penalty imposed by a court or determined and
31 accepted by the attorney general pursuant to this section
32 shall be paid to the treasurer of state, who shall deposit the
33 money in the elderly victim fund, a separate fund created in
34 the state treasury and administered by the attorney general
35 for the investigation and prosecution of frauds against the

1 elderly. Notwithstanding section 8.33, any balance in the
2 fund on June 30 of any fiscal year shall not revert to the
3 general fund of the state. An award of reimbursement pursuant
4 to section 714.16 has priority over a civil penalty imposed by
5 the court pursuant to this subsection.

6 Sec. 7. Section 725.12, Code 1995, is amended by adding
7 the following new unnumbered paragraph:

8 NEW UNNUMBERED PARAGRAPH. A violation of this section is a
9 violation of section 714.16, subsection 2, paragraph "a".

10 EXPLANATION

11 This bill amends provisions relating to certain consumer
12 protections.

13 Section 9C.1 is amended to define "merchandise" which is
14 sold by transient merchants as the same as provided for in
15 section 714.16, subsection 1.

16 Section 554.9402, which relates to financing statements
17 under the uniform commercial code, is amended to provide that
18 a financing statement which is signed by the secured party
19 instead of the debtor and is otherwise sufficient under the
20 section, is sufficient only if there exists a previously
21 recorded financing statement executed by the debtor in favor
22 of the secured party.

23 Section 714.16, subsection 4, is amended by striking
24 current paragraphs "b" and "c", which provide limited immunity
25 from criminal prosecution to a person providing information in
26 a civil action brought by the attorney general under section
27 714.16, and rewriting those paragraphs to provide that such
28 immunity shall not arise unless the person providing the
29 information has first asserted a right against self-
30 incrimination and the attorney general provides a written
31 statement that information provided by the person will not be
32 used in a subsequent criminal action.

33 Section 714.16, subsection 5, is amended to provide that
34 the notice requiring a person to file a statement or report,
35 or of a subpoena, which currently must be made personally when

1 made within this state, may now also be made by certified mail
2 to the last known place of business, residence, or abode of
3 the person within the state. Certified mail is defined in
4 Code section 618.15. Section 714.16, subsection 6, is amended
5 to provide that the attorney general may commence an action
6 under section 714.16 against a person who fails to respond to
7 a subpoena or other formal investigation request of the
8 attorney general in the Polk county district court, as well as
9 the district court in the county in which the person resides
10 or is located.

11 Section 714.16 is amended by adding a new subsection which
12 provides that the attorney general may bring an action on
13 behalf of the residents of this state under the federal
14 Telemarketing and Consumer Fraud and Abuse Prevention Act.

15 Section 714.16A is amended to provide that the attorney
16 general may establish and accept a settlement amount related
17 to an investigation of a consumer fraud allegedly committed
18 against an older person which does not proceed to court.

19 Section 725.12, which relates to illegal lotteries, is
20 amended to provide that a violation of that section is also a
21 violation of section 714.16, subsection 2, paragraph "a",
22 relating to fraudulent and deceptive advertising.

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SENATE FILE 401

S-5315

1 Amend Senate File 401 as follows:

2 1. Page 1, lines 30 and 31, by striking the words
3 "work or production either by themselves or employees"
4 and inserting the following: "~~work-or-production~~
5 ~~either-by-themselves-or-employees~~ art or craft
6 production".

7 2. Page 1, by inserting after line 32 the
8 following:

9 "Sec. ____ . Section 537.5201, subsection 1, Code
10 1995, is amended by adding the following new
11 paragraph:

12 NEW PARAGRAPH. bb. Check cashing practices under
13 section 537.8101.

14 Sec. ____ . Section 537.6106, subsection 4, Code
15 1995, is amended to read as follows:

16 4. The administrator shall not make public the
17 name or identity of a person whose acts or conduct the
18 administrator investigates pursuant to this section or
19 the facts disclosed in the investigation, but this
20 subsection does not prohibit disclosures in actions or
21 enforcement proceedings pursuant to this chapter.
22 However, a consumer complaint received by the
23 administrator, including factual allegations which may
24 be considered to violate this chapter, and responses
25 to such complaints filed with the administrator, are
26 public records under chapter 22, and this subsection
27 shall not be interpreted so as to prevent the
28 administrator from making public such complaints and
29 responses.

30 Sec. ____ . Section 537.6113, subsection 2, Code
31 1995, is amended to read as follows:

32 2. The administrator may bring a civil action
33 against a person to recover a civil penalty of no more
34 than ~~five~~ ten thousand dollars for repeatedly and
35 intentionally violating this chapter. ~~No~~ A civil
36 penalty pursuant to this subsection ~~may~~ shall not be
37 imposed for violations of this chapter occurring more
38 than two years before the action is brought or for
39 making unconscionable agreements or engaging in a
40 course of fraudulent or unconscionable conduct."

41 2. By renumbering as necessary.

By MICHAEL E. GRONSTAL

S-5315 FILED MARCH 12, 1996

Adopted
3-19-96

(P. 886)

SENATE FILE 401

S-5316

1 Amend Senate File 401 as follows:

2 1. Page 1, line 4, by inserting before the word
3 "The" the following: "1."

4 2. Page 1, line 32, by striking the word
5 "Merchandise" and inserting the following:

6 "2. "Flea market" means a location, other than a
7 permanent location for a retail store, at which space
8 is rented, leased, or otherwise made available to
9 others for the purpose of conducting business as a
10 transient merchant.

11 3. "Merchandise".

12 3. Page 1, by inserting after line 32 the
13 following:

14 "Sec. . . NEW SECTION. 9C.7A FLEA MARKETS --
15 PROHIBITED SALES.

16 A person conducting business as a transient
17 merchant at a flea market shall not sell, offer for
18 sale, or knowingly permit the sale of baby food,
19 infant formula, or similar product, or any
20 pharmaceutical, over-the-counter drug, cosmetic, or
21 medical device.

22 This section does not apply to a person who at all
23 times while engaged in business as a transient
24 merchant at a flea market makes available for public
25 inspection a valid identification certificate or card
26 identifying the person as an authorized representative
27 of a manufacturer or distributor of such
28 pharmaceutical, over-the-counter drug, cosmetic, or
29 medical device. Such certificate or card must be
30 issued by the manufacturer or distributor to be
31 valid."

32 4. Renumber as necessary.

By MICHAEL GRONSTAL

S-5316 FILED MARCH 12, 1996

adopted

3-14-96

(P. 885)

Deluhery
Douglas
Hansen

SSB-181
Commerce

Succeeded By
SF/HF
SENATE FILE ~~404~~
BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY
CHAIRPERSON DELUHERY)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to consumer-related actions.

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

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2008/01/22
Succeeded By
22/1/72

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3 9C.1 DEFINITIONS.

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5 ~~shall-mean-and-include~~ in this chapter includes every
6 merchant, whether an individual person, a firm, corporation,
7 partnership, or association, and whether owner, agent, bailee,
8 consignee, or employee, who shall bring or cause to be brought
9 within the state of Iowa any goods, wares, or merchandise of
10 any kind, nature, or description, with the intention of
11 temporarily or intermittently selling or offering to sell at
12 retail such goods, wares, or merchandise within the state of
13 Iowa. ~~The term-"transient~~ "Transient merchant" ~~shall~~ also
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15 individual person, a firm, corporation, partnership, or an
16 association, who shall by itself, or by agent, consignee, or
17 employee temporarily or intermittently engage in or conduct at
18 one or more locations a business within the state of Iowa for
19 the sale at retail of any goods, wares, or merchandise of any
20 nature or description. A merchant engaging in business shall
21 be presumed to be temporarily or intermittently in business
22 unless it is the intention of ~~such~~ the merchant to remain
23 continuously in business at each location where the merchant
24 is engaged in business within the state of Iowa as a merchant
25 for a period of more than sixty days. The provisions of this
26 chapter shall not be construed to apply to persons selling at
27 wholesale to merchants, ~~nor-to~~ transient vendors of drugs, ~~nor~~
28 ~~to~~ persons running a huckster wagon, or selling or
29 distributing livestock feeds, fresh meats, fish, fruit, or
30 vegetables, ~~nor-to~~ or persons selling their own work or
31 production either by themselves or employees.

32 "Merchandise" means as defined in section 714.16.

33 Sec. 2. Section 554.9402, subsection 2, unnumbered
34 paragraph 1, Code 1995, is amended to read as follows:

35 A financing statement which otherwise complies with

1 subsection 1 is sufficient when it is signed by the secured
2 party instead of the debtor if it a previously recorded
3 financing statement exists which was executed by the debtor in
4 favor of that secured party and if the financing statement
5 signed by the secured party is filed to perfect a security
6 interest in

7 Sec. 3. Section 714.16, subsection 4, paragraphs b and c,
8 Code 1995, are amended by striking the paragraphs and
9 inserting in lieu thereof the following:

10 b. Subject to paragraph "c", information, documents,
11 testimony, or other evidence provided the attorney general by
12 a person pursuant to subsection 3 and paragraph "a" of this
13 subsection, or provided by a person as evidence in any civil
14 action brought pursuant to this section, shall not be admitted
15 in evidence, or used in any manner whatsoever, in any criminal
16 prosecution or forfeiture proceeding against that person. If
17 a criminal prosecution or forfeiture proceeding is initiated
18 in a state court against a person who has provided information
19 pursuant to paragraph "c", the state shall have the burden of
20 proof that the information provided was not used in any manner
21 to further the criminal investigation, prosecution, or
22 forfeiture proceeding.

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24 first asserted a right against self-incrimination and the
25 attorney general has elected to provide the person with a
26 written statement that the information, documents, testimony,
27 or other evidence at issue are subject to paragraph "b".
28 After a person has been provided such written statement by the
29 attorney general, a claim of privilege against self-
30 incrimination is not a defense to any action or proceeding to
31 obtain the information, documents, testimony, or other
32 evidence. Nothing in this section limiting the use of
33 evidence in a criminal proceeding shall apply to any
34 prosecution or proceeding for perjury or contempt of court
35 committed in the course of the giving or production of the

1 information, documents, testimony, or other evidence.

2 Sec. 4. Section 714.16, subsections 5 and 6, Code 1995,
3 are amended to read as follows:

4 5. Service by the attorney general of any notice requiring
5 a person to file a statement or report, or of a subpoena upon
6 any person, shall be made personally within this state or by
7 certified mail to the last known place of business, residence,
8 or abode within this state of such person, but if such cannot
9 be obtained, substituted service therefor of the notice or
10 subpoena may be made in any of the following manner manners:

11 a. Personal service thereof of the notice or subpoena
12 without this state~~-er.~~

13 b. The mailing thereof of the notice or subpoena by
14 registered certified mail to the last known place of business,
15 residence, or abode within or without this state of such
16 person for whom the same notice or subpoena is intended~~-er.~~

17 c. As to any person other than a natural person, in the
18 manner provided in the Rules of Civil Procedure as if a
19 petition had been filed~~-er.~~

20 d. Such service as a district court may direct in lieu of
21 personal service or service by certified mail within this
22 state.

23 6. If any person fails or refuses to file any statement or
24 report, or obey any subpoena issued by the attorney general,
25 the attorney general may, after notice, apply to a the Polk
26 county district court or the district court for the county in
27 which the person resides or is located and, after hearing
28 thereof, request an order doing any of the following:

29 a. Granting injunctive relief, restraining the sale or
30 advertisement of any merchandise by such persons~~-er.~~

31 b. Dissolving a corporation created by or under the laws
32 of this state or revoking or suspending the certificate of
33 authority to do business in this state of a foreign
34 corporation or revoking or suspending any other licenses,
35 permits, or certificates issued pursuant to law to such person

1 which are used to further the allegedly unlawful practice;
2 and.

3 c. Granting such other relief as may be required; until
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5 subpoena.

6 Sec. 5. Section 714.16, Code 1995, is amended by adding
7 the following new subsection:

8 NEW SUBSECTION. 15. The attorney general may bring an
9 action on behalf of the residents of this state, or as parens
10 patriae, under the federal telemarketing and consumer fraud
11 and abuse prevention Act, Pub. L. No. 103-297, and pursue any
12 and all enforcement options available under that Act.
13 Subsequent amendments to that Act which do not substantially
14 alter its structure and purpose shall not be construed to
15 affect the authority of the attorney general to pursue an
16 action pursuant to this section, except to the extent the
17 amendments specifically restrict the authority of the attorney
18 general.

19 Sec. 6. Section 714.16A, subsection 1, Code 1995, is
20 amended to read as follows:

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22 is committed against an older person, in an action brought by
23 the attorney general, in addition to any other civil penalty,
24 the court may impose an additional civil penalty not to exceed
25 five thousand dollars for each such violation. Additionally,
26 the attorney general may accept a civil penalty as determined
27 by the attorney general in settlement of an investigation of a
28 violation of section 714.16, regardless of whether an action
29 has been filed pursuant to section 714.16.

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31 accepted by the attorney general pursuant to this section
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33 money in the elderly victim fund, a separate fund created in
34 the state treasury and administered by the attorney general
35 for the investigation and prosecution of frauds against the

1 elderly. Notwithstanding section 8.33, any balance in the
2 fund on June 30 of any fiscal year shall not revert to the
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4 to section 714.16 has priority over a civil penalty imposed by
5 the court pursuant to this subsection.

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7 the following new unnumbered paragraph:

8 NEW UNNUMBERED PARAGRAPH. A violation of this section is a
9 violation of section 714.16, subsection 2, paragraph "a".

10

EXPLANATION

11 This bill amends provisions relating to certain consumer
12 protections.

13 Section 9C.1 is amended to define "merchandise" which is
14 sold by transient merchants as the same as provided for in
15 section 714.16, subsection 1.

16 Section 554.9402, which relates to financing statements
17 under the uniform commercial code, is amended to provide that
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21 recorded financing statement executed by the debtor in favor
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26 a civil action brought by the attorney general under section
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29 information has first asserted a right against self-
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31 statement that information provided by the person will not be
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1 made within this state, may now also be made by certified mail
2 to the last known place of business, residence, or abode of
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7 a subpoena or other formal investigation request of the
8 attorney general in the Polk county district court, as well as
9 the district court in the county in which the person resides
10 or is located.

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12 provides that the attorney general may bring an action on
13 behalf of the residents of this state under the federal
14 Telemarketing and Consumer Fraud and Abuse Prevention Act.

15 Section 714.16A is amended to provide that the attorney
16 general may establish and accept a settlement amount related
17 to an investigation of a consumer fraud allegedly committed
18 against an older person which does not proceed to court.

19 Section 725.12, which relates to illegal lotteries, is
20 amended to provide that a violation of that section is also a
21 violation of section 714.16, subsection 2, paragraph "a",
22 relating to fraudulent and deceptive advertising.

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