

## THEFT, FRAUD, AND RELATED OFFENSES

### 714.1 Theft defined.

A person commits theft when the person does any of the following:

1. Takes possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof.
2. Misappropriates property which the person has in trust, or property of another which the person has in the person's possession or control, whether such possession or control is lawful or unlawful, by using or disposing of it in a manner which is inconsistent with or a denial of the trust or of the owner's rights in such property, or conceals found property, or appropriates such property to the person's own use, when the owner of such property is known to the person.
  - a. Failure by a bailee or lessee of personal property to return the property within seventy-two hours after a time specified in a written agreement of lease or bailment shall be evidence of misappropriation.
  - b. If a time is not specified in the written agreement of lease or bailment for the expiration or termination of the lease or bailment or for the return of the personal property, failure by a lessee or bailee to return the property within five days after proper notice to the lessee or bailee shall be evidence of misappropriation. For the purposes of this paragraph, "*proper notice*" means a written notice of the expiration or termination of the lease or bailment agreement sent to the lessee or bailee by certified or restricted certified mail at the address of the lessee or bailee specified in the agreement. The notice shall be considered effective on the date of the mailing of the notice regardless of whether or not the lessee or bailee signs a receipt for the notice.
3. Obtains the labor or services of another, or a transfer of possession, control, or ownership of the property of another, or the beneficial use of property of another, by deception. Where compensation for goods and services is ordinarily paid immediately upon the obtaining of such goods or the rendering of such services, the refusal to pay or leaving the premises without payment or offer to pay or without having obtained from the owner or operator the right to pay subsequent to leaving the premises gives rise to an inference that the goods or services were obtained by deception.
4. Exercises control over stolen property, knowing such property to have been stolen, or having reasonable cause to believe that such property has been stolen, unless the person's purpose is to promptly restore it to the owner or to deliver it to an appropriate public officer. The fact that the person is found in possession of property which has been stolen from two or more persons on separate occasions, or that the person is a dealer or other person familiar with the value of such property and has acquired it for a consideration which is far below its reasonable value, shall be evidence from which the court or jury may infer that the person knew or believed that the property had been stolen.
5. Takes, destroys, conceals or disposes of property in which someone else has a security interest, with intent to defraud the secured party.
6. Makes, utters, draws, delivers, or gives any check, share draft, draft, or written order on any bank, credit union, person, or corporation, and obtains property, the use of property, including rental property, or service in exchange for such instrument, if the person knows that such check, share draft, draft, or written order will not be paid when presented.

Whenever the drawee of such instrument has refused payment because of insufficient funds, and the maker has not paid the holder of the instrument the amount due thereon within ten days of the maker's receipt of

notice from the holder that payment has been refused by the drawee, the court or jury may infer from such facts that the maker knew that the instrument would not be paid on presentation. Notice of refusal of payment shall be by certified mail, or by personal service in the manner prescribed for serving original notices.

Whenever the drawee of such instrument has refused payment because the maker has no account with the drawee, the court or jury may infer from such fact that the maker knew that the instrument would not be paid on presentation.

7. Obtains gas, electricity or water from a public utility or obtains cable television or telephone service from an unauthorized connection to the supply or service line or by intentionally altering, adjusting, removing or tampering with the metering or service device so as to cause inaccurate readings.

8. Knowingly and without authorization accesses or causes to be accessed a computer, computer system, or computer network, or any part thereof, for the purpose of obtaining computer services, information, or property or knowingly and without authorization and with the intent to permanently deprive the owner of possession, takes, transfers, conceals, or retains possession of a computer, computer system, or computer network or any computer software or computer program, or computer data contained in a computer, computer system, or computer network.

9. *a.* Obtains the temporary use of video rental property with the intent to deprive the owner of the use and possession of the video rental property without the consent of the owner.

*b.* Lawfully obtains the temporary use of video rental property and fails to return the video rental property by the agreed time with the intent to deprive the owner of the use and possession of the video rental property without the consent of the owner. The aggregate value of the video rental property involved shall be the original retail value of the video rental property.

10. Any act that is declared to be theft by any provision of the Code.

[C51, § 2612, 26152618, 2620, 2621; R60, § 806, 807, 4236, 4237, 42404243, 4245, 4246, 4251; C73, § 3895, 3902, 39053911, 3915; C97, § 4831, 48374842, 4844, 4845, 4850, 4852, 5076; S13, § 4850, 4852-c, -d, -e; C24, § 13005, 13010, 1301413016, 13018, 13027, 13030, 13031, 1303513037, 13042, 1304613048, 13052; C27, 31, 35, § 13005, 13010, 1301413016, 13018, 13027, 13030, 13031, 13034a113037, 13042, 1304613048, 13052; C39, § **13005, 13010, 1301413016, 13018, 13027, 13030, 13031, 13034.113037, 13042, 1304613048, 13052**; C46, 50, 54, 58, § 709.1, 709.6709.9, 709.11, 710.1, 710.4, 710.5, 710.9710.12, 712.1, 713.2713.4, 713.7; C62, 66, § 709.1, 709.6709.9, 709.11, 709.20, 710.1, 710.4, 710.5, 710.9710.12, 712.1, 713.2713.4, 713.7; C71, 73, 75, 77, § 709.1, 709.6709.9, 709.11, 709.20, 709.25, 710.1, 710.4, 710.5, 710.9710.12, 710.14, 712.1, 713.2713.4, 713.7; C79, 81, § 714.1]

85 Acts, ch 164, § 1; 89 Acts, ch 170, § 1; 97 Acts, ch 167, §1; 2000 Acts, ch 1201, §9; 2005 Acts, ch 84, §1

## Footnotes

Computer terminology, see §702.1A

## 714.2 Degrees of theft.

1. The theft of property exceeding ten thousand dollars in value, or the theft of property from the person of another, or from a building which has been destroyed or left unoccupied because of physical disaster, riot, bombing, or the proximity of battle, or the theft of property which has been removed from a building because of a physical disaster, riot, bombing, or the proximity of battle, is theft in the first degree. Theft in the first degree is a class "C" felony.

2. The theft of property exceeding one thousand dollars but not exceeding ten thousand dollars in value or theft of a motor vehicle as defined in chapter 321 not exceeding ten thousand dollars in value, is theft in the second degree. Theft in the second degree is a class "D" felony. However, for purposes of this subsection, "*motor vehicle*" does not include a motorized bicycle as defined in section 321.1, subsection 40, paragraph "b".

3. The theft of property exceeding five hundred dollars but not exceeding one thousand dollars in value, or the theft of any property not exceeding five hundred dollars in value by one who has before been twice convicted of theft, is theft in the third degree. Theft in the third degree is an aggravated misdemeanor.

4. The theft of property exceeding two hundred dollars in value but not exceeding five hundred dollars in value is theft in the fourth degree. Theft in the fourth degree is a serious misdemeanor.

5. The theft of property not exceeding two hundred dollars in value is theft in the fifth degree. Theft in the fifth degree is a simple misdemeanor.

[C51, § 2612, 2618; R60, § 4237, 4243, 4247, 4251; C73, § 3902, 3908, 3915; C97, § 4831, 4840, 4846, 4850; S13, § 4850; C24, 27, 31, 35, 39, § **13006, 13016, 13026, 13028**; C46, 50, 54, 58, § 709.2, 709.9, 709.19, 710.2; C62, 66, 71, 73, 75, 77, § 709.2, 709.9, 709.19, 709.20, 710.2; C79, 81, § 714.2; 81 Acts, ch 204, § 9]

83 Acts, ch 134, § 1; 92 Acts, ch 1060, § 1; 99 Acts, ch 153, §11

### **714.3 Value.**

The value of property is its highest value by any reasonable standard at the time that it is stolen. Reasonable standard includes but is not limited to market value within the community, actual value, or replacement value.

If money or property is stolen from the same person or location by two or more acts, or from different persons by two or more acts which occur in approximately the same location or time period, or from different locations by two or more acts within a thirty-day period, so that the thefts are attributable to a single scheme, plan, or conspiracy, these acts may be considered a single theft and the value may be the total value of all the property stolen.

[C51, § 2625; R60, § 4250; C73, § 3909, 3914; C97, § 4842, 4849; C24, 27, 31, 35, 39, § **13007, 13032**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 709.3, 710.6; C79, 81, § 714.3]

84 Acts, ch 1162, § 1; 85 Acts, ch 195, §60; 2004 Acts, ch 1087, §1

### **714.4 Claim of right.**

No person who takes, obtains, disposes of, or otherwise uses or acquires property, is guilty of theft by reason of such act if the person reasonably believes that the person has a right, privilege or license to do so, or if the person does in fact have such right, privilege or license.

[C79, 81, § 714.4]

### **714.5 Library materials and equipment unpurchased merchandise evidence of intention.**

The fact that a person has concealed library materials or equipment as defined in section 702.22 or unpurchased property of a store or other mercantile establishment, either on the premises or outside the premises, is material evidence of intent to deprive the owner, and the finding of library materials or

equipment or unpurchased property concealed upon the person or among the belongings of the person, is material evidence of intent to deprive and, if the person conceals or causes to be concealed library materials or equipment or unpurchased property, upon the person or among the belongings of another, the finding of the concealed materials, equipment or property is also material evidence of intent to deprive on the part of the person concealing the library materials, equipment or goods.

The fact that a person fails to return library materials for two months or more after the date the person agreed to return the library materials, or fails to return library equipment for one month or more after the date the person agreed to return the library equipment, is evidence of intent to deprive the owner, provided a reasonable attempt, including the mailing by restricted certified mail of notice that such material or equipment is overdue and criminal actions will be taken, has been made to reclaim the materials or equipment. Notices stating the provisions of this section and of section 808.12 with regard to library materials or equipment shall be posted in clear public view in all public libraries, in all libraries of educational, historical or charitable institutions, organizations or societies, in all museums and in all repositories of public records.

After the expiration of three days following the due date, the owner of borrowed library equipment may request the assistance of a dispute resolution center, mediation center or appropriate law enforcement agency in recovering the equipment from the borrower.

The owner of library equipment may require deposits by borrowers and in the case of late returns the owner may impose graduated penalties of up to twenty-five percent of the value of the equipment, based upon the lateness of the return.

In the case of lost library materials or equipment, arrangements may be made to make a monetary settlement.

[C62, 66, 71, 73, 75, 77, § 709.21; C79, 81, § 714.5]

85 Acts, ch 187, §2; 87 Acts, ch 56, §1

#### **714.6 Land.**

The mere trespass on or occupation of land, contrary to the rights of the owner thereof, is not theft.

[C79, 81, § 714.6]

#### **714.6A Video rental property theft evidence of intention affirmative defense.**

1. The fact that a person obtains possession of video rental property by means of deception, including but not limited to furnishing a false name, address, or other identification to the owner, is evidence that possession was obtained with intent to knowingly deprive the owner of the use and possession of the video rental property.

2. The fact that a person, having lawfully obtained possession of video rental property, fails to pay the owner the fair market value of the video rental property or to return or make arrangements acceptable to the owner to return the video rental property to the owner within forty-eight hours after receipt of written notice and demand from the owner is evidence of an intent to knowingly deprive the owner of the use and possession of the video rental property.

3. It shall be an affirmative defense to a prosecution under section 714.1, subsection 9, paragraph "a", if the defendant in possession of video rental property pays the owner the fair market value of the video rental

property or returns the property to the owner within forty-eight hours of arrest, together with any standard overdue charges for the period that the owner was unlawfully deprived of possession, but not to exceed one hundred twenty days, and the value of the damage to the property, if any.

2000 Acts, ch 1201, §10

#### **714.7 Operating vehicle without owner's consent.**

Any person who shall take possession or control of any railroad vehicle, or any self-propelled vehicle, aircraft, or motor boat, the property of another, without the consent of the owner of such, but without the intent to permanently deprive the owner thereof, shall be guilty of an aggravated misdemeanor. A violation of this section may be proved as a lesser included offense on an indictment or information charging theft.

[C97, § 4813, 4814; S13, § 4823; C24, 27, 31, 35, § 13092, 1312513127; C39, § **5006.05, 1312513127**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 321.76, 716.13716.15; C79, 81, § 714.7]

**714.7A Veterans' grave markers.** Transferred to § 35B.16A; 2006 Acts, ch 1107, § 3.

#### **714.7B Theft detection devices shield or removal prohibited.**

1. A person shall not intentionally manufacture or attempt to manufacture, sell or attempt to sell, possess, use, distribute or attempt to distribute, a theft detection shielding device.

2. A person shall not remove or attempt to remove a theft detection device with the intent of committing a theft and without the permission of the merchant who is displaying or selling the goods, wares, or merchandise.

3. A person shall not possess any tool, instrument, or device with the intent to use it in the unlawful removal of a theft detection device.

4. For purposes of this section, "*theft detection shielding device*" means any laminated or coated bag or device designed to shield merchandise from detection by an electronic or magnetic theft alarm system or any other system designed to alert a person of a possible theft. "*Theft detection device*" means any electronic or other device attached to goods, wares, or merchandise on display or for sale by a merchant.

5. A person who violates subsection 1 or 3 commits a serious misdemeanor.

6. A person who violates subsection 2 commits the following:

*a.* A simple misdemeanor if the value of the goods, wares, or merchandise does not exceed two hundred dollars.

*b.* A serious misdemeanor if the value of the goods, wares, or merchandise exceeds two hundred dollars.

2000 Acts, ch 1108, §1

#### **714.7C Theft of pseudoephedrine enhancement.**

Notwithstanding section 714.2, subsection 5, a person who commits a simple misdemeanor theft of a product containing pseudoephedrine from a retailer as defined in section 126.23A commits a serious misdemeanor.

2004 Acts, ch 1127, §3; 2005 Acts, ch 15, §6, 14

### **714.7D Retail motor fuel.**

Upon a second or subsequent conviction of a person under section 714.2, subsection 5, for theft of motor fuel from a retail dealer as defined in section 214A.1, the court may order the state department of transportation to suspend the driver's license or nonresident operating privilege of the convicted person for up to thirty days in lieu of, or in addition to, a fine or imprisonment.

2005 Acts, ch 141, §3

### **714.8 Fraudulent practices defined.**

A person who does any of the following acts is guilty of a fraudulent practice:

1. Makes, tenders or keeps for sale any warehouse receipt, bill of lading, or any other instrument purporting to represent any right to goods, with knowledge that the goods represented by such instrument do not exist.
2. Knowingly attaches or alters any label to any goods offered or kept for sale so as to materially misrepresent the quality or quantity of such goods, or the maker or source of such goods.
3. Knowingly executes or tenders a false certification under penalty of perjury, false affidavit, or false certificate, if the certification, affidavit, or certificate is required by law or given in support of a claim for compensation, indemnification, restitution, or other payment.
4. Makes any entry in or alteration of any public records, or any records of any corporation, partnership, or other business enterprise or nonprofit enterprise, knowing the same to be false.
5. Removes, alters or defaces any serial or other identification number, or any owners' identification mark, from any property not the person's own.
6. For the purpose of soliciting assistance, contributions, or other thing of value, falsely represents oneself to be a veteran of the armed forces of the United States, or a member of any fraternal, religious, charitable, or veterans organization, or any pretended organization of a similar nature, or to be acting on behalf of such person or organization.
7. Manufactures, sells, or keeps for sale any token or device suitable for the operation of a coin-operated device or vending machine, with the intent that such token or device may be so used, or with the representation that they can be so used; provided, that the owner or operator of any coin-operated device or vending machine may sell slugs or tokens for use in the person's own devices.
8. Manufactures or possesses any false or counterfeit label, with the intent that it be placed on merchandise to falsely identify its origin or quality, or who sells any such false or counterfeit label with the representation that it may be so used.
9. Alters or renders inoperative or inaccurate any meter or measuring device used in determining the value of or compensation for the purchase, use or enjoyment of property, with the intent to defraud any person.
10. Does any act expressly declared to be a fraudulent practice by any other section of the Code.
11. Removes, defaces, covers, alters, or destroys any component part number as defined in section 321.1, vehicle identification number as defined in section 321.1, or product identification number as defined in section 321.1, for the purpose of concealing or misrepresenting the identity or year of manufacture of the component part or vehicle.

12. Knowingly transfers or assigns a legal or equitable interest in property, as defined in section 702.14, for less than fair consideration, with the intent to obtain public assistance under chapters 16, 35B, 35D, and 347B, or Title VI, subtitles 2 through 6, or accepts a transfer of or an assignment of a legal or equitable interest in property, as defined in section 702.14, for less than fair consideration, with the intent of enabling the party transferring the property to obtain public assistance under chapters 16, 35B, 35D, and 347B, or Title VI, subtitles 2 through 6. A transfer or assignment of property for less than fair consideration within one year prior to an application for public assistance benefits shall be evidence of intent to transfer or assign the property in order to obtain public assistance for which a person is not eligible by reason of the amount of the person's assets. If a person is found guilty of a fraudulent practice in the transfer or assignment of property under this subsection the maximum sentence shall be the penalty established for a serious misdemeanor and sections 714.9, 714.10 and 714.11 shall not apply.

13. *Fraudulent practices in connection with targeted small business programs.*

a. Knowingly transfers or assigns assets, ownership, or equitable interest in property of a business to a woman or minority person primarily for the purpose of obtaining benefits under targeted small business programs if the transferor would otherwise not be qualified for such programs.

b. Solicits and is awarded a state contract on behalf of a targeted small business for the purpose of transferring the contract to another for a percentage if the person transferring or intending to transfer the work had no intention of performing the work.

c. Knowingly falsifying information on an application for the purpose of obtaining benefits under targeted small business programs.

A violation under this subsection is grounds for decertification of the targeted small business connected with the violation. Decertification shall be in addition to any penalty otherwise authorized by this section.

14. Makes payment pursuant to an agreement with a dealer or market agency for livestock held by the dealer or market agency by use of a financial instrument which is a check, share draft, draft, or written order on any financial institution, as defined in section 203C.1, if after seven days from the date that possession of the livestock is transferred pursuant to the purchase, the financial institution refuses payment on the instrument because of insufficient funds in the maker's account.

This subsection is not applicable if the maker pays the holder of the instrument the amount due on the instrument within one business day from a receipt of notice by certified mail from the holder that payment has been refused by the financial institution.

As used in this subsection, "*dealer*" means a person engaged in the business of buying or selling livestock, either on the person's own account, or as an employee or agent of a vendor or purchaser. "*Market agency*" means a person engaged in the business of buying or selling livestock on a commission basis.

15. Obtains or attempts to obtain the transfer of possession, control, or ownership, of the property of another by deception through communications conducted primarily by telephone and involving direct or implied claims that the other person contacted has won or is about to win a prize, or involving direct or implied claims that the other person contacted may be able to recover any losses suffered by such other person in connection with a prize promotion.

16. Knowingly provides false information to the treasurer of state when claiming, pursuant to section 556.19, an interest in unclaimed property held by the state, or knowingly provides false information to a person or fails to disclose the nature, value, and location of unclaimed property prior to entering into a contract to receive compensation to recover or assist in the recovery of property reported as unclaimed pursuant to section 556.11.

17. A packer who includes a confidentiality provision in a contract with a livestock seller in violation of section 202A.4.

18. Manufactures, creates, reproduces, alters, possesses, uses, transfers, or otherwise knowingly contributes to the production or use of a fraudulent retail sales receipt or universal price code label with intent to defraud another person engaged in the business of retailing.

For purposes of this subsection:

*a. "Retail sales receipt"* means a document intended to evidence payment for goods or services.

*b. "Universal price code label"* means the unique ten-digit bar code placed on the packaging of an item that may be used for purposes including but not limited to tracking inventory, maintaining price information in a computerized database, and serving as proof of purchase of a particular item.

19. A contractor who enforces a provision in a production contract that provides that information contained in the production contract is confidential as provided in section 202.3.

20. A contract seller who intentionally provides inaccurate information with regard to any matter required to be disclosed under section 558.70, subsection 1, or section 558A.4.

[C51, § 2744, 2755; R60, § 4394, 4405; C73, § 4073, 4084, 4088; C97, § 5041, 5056, 5068; C24, 27, § 13045, 13058, 13059, 13071; C31, 35, § 13045, 13058, 13059, 13071, 13092-d1; C39, § **13045, 13058, 13059, 13071, 13092.1**; C46, § 713.1, 713.13, 713.14, 713.26, 714.12; C50, 54, 58, 62, § 713.1, 713.13, 713.14, 713.26, 713.36713.38, 714.12; C66, 71, 73, 75, 77, § 713.1, 713.13, 713.14, 713.26, 713.36713.38, 713.40, 714.12; C79, 81, § 714.8]

84 Acts, ch 1048, § 2; 85 Acts, ch 195, §61; 90 Acts, ch 1156, § 12; 91 Acts, ch 15, §1; 91 Acts, ch 258, §65; 94 Acts, ch 1023, §70; 94 Acts, ch 1185, §1; 96 Acts, ch 1038, § 2; 99 Acts, ch 88, §9, 13; 99 Acts, ch 107, §1; 99 Acts, ch 108, §11; 99 Acts, ch 169, §21, 22, 24; 2002 Acts, ch 1136, §5, 6

## Footnotes

Subsection 3, see also § 720.2

### **714.9 Fraudulent practice in the first degree.**

Fraudulent practice in the first degree is a fraudulent practice where the amount of money or value of property involved exceeds ten thousand dollars.

Fraudulent practice in the first degree is a class "C" felony.

[C79, 81, § 714.9]

92 Acts, ch 1060, § 2

### **714.10 Fraudulent practice in the second degree.**

Fraudulent practice in the second degree is the following:

1. A fraudulent practice where the amount of money or value of property or services involved exceeds one thousand dollars but does not exceed ten thousand dollars.



2. A fraudulent practice where the amount of money or value of property or services involved does not exceed one thousand dollars by one who has been convicted of a fraudulent practice twice before.

Fraudulent practice in the second degree is a class "D" felony.

[C79, 81, § 714.10]

92 Acts, ch 1060, § 3

#### **714.11 Fraudulent practice in the third degree.**

Fraudulent practice in the third degree is the following:

1. A fraudulent practice where the amount of money or value of property or service involved exceeds five hundred dollars but does not exceed one thousand dollars.
2. A fraudulent practice as set forth in section 714.8, subsections 2, 8 and 9.
3. A fraudulent practice where it is not possible to determine an amount of money or value of property and service involved.

Fraudulent practice in the third degree is an aggravated misdemeanor.

[C79, 81, § 714.11]

92 Acts, ch 1060, § 4

#### **714.12 Fraudulent practice in the fourth degree.**

Fraudulent practice in the fourth degree is a fraudulent practice where the amount of money or value of property or services involved exceeds two hundred dollars but does not exceed five hundred dollars.

Fraudulent practice in the fourth degree is a serious misdemeanor.

[C79, 81, § 714.12]

92 Acts, ch 1060, § 5; 99 Acts, ch 153, §12

#### **714.13 Fraudulent practice in the fifth degree.**

Fraudulent practice in the fifth degree is a fraudulent practice where the amount of money or value of property or services involved does not exceed two hundred dollars.

Fraudulent practice in the fifth degree is a simple misdemeanor.

[C79, 81, § 714.13]

92 Acts, ch 1060, § 6; 99 Acts, ch 153, §13

#### **714.14 Value for purposes of fraudulent practices.**

The value of property or service is its highest value by any reasonable standard at the time the fraudulent practice is committed. Reasonable standard includes but is not limited to market value within the community,

actual value, or replacement value.

If money or property or service is obtained by two or more acts from the same person or location, or from different persons by two or more acts which occur in approximately the same location or time period so that the fraudulent practices are attributable to a single scheme, plan, or conspiracy, these acts may be considered as a single fraudulent practice and the value may be the total value of all money, property, and service involved.

[C79, 81, § 714.14]

84 Acts, ch 1162, § 2

### **714.15 Reproduction of sound recordings.**

For the purposes of this section:

*"Person"* shall mean person as defined in section 4.1, subsection 20.

*"Owner"* means any person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded, and from which the transferred recorded sounds are derived.

1. Except as provided in subsection 3, it is unlawful for a person knowingly to:

*a.* Transfer or cause to be transferred any sounds recorded on a phonograph record, disc, wire, tape, film or other article without the consent of the owner; or

*b.* Sell; distribute; circulate; offer for sale, distribution or circulation; possess for the purpose of sale, distribution or circulation; or cause to be sold, distributed, circulated; offered for sale, distribution or circulation; or possessed for sale, distribution or circulation, any article or device on which sounds have been transferred without the consent of the person who owns the master phonograph record, master disc, master tape or other device or article from which the sounds are derived.

2. It is unlawful for a person to sell, distribute, circulate, offer for sale, distribution or circulation or possess for the purposes of sale, distribution or circulation, any phonograph record, disc, wire, tape, film or other article on which sounds have been transferred unless the phonograph record, disc, wire, tape, film or other article bears the actual name and address of the transferor of the sounds in a prominent place on its outside face or package.

3. This section does not apply to a person who transfers or causes to be transferred sounds intended for or in connection with radio or television broadcast transmission or related uses, synchronized sound tracks of motion pictures or sound tracks recorded for synchronizing with motion pictures, for archival purposes or for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer.

4. A person who violates the provisions of this section is guilty of theft.

[C77, § 713.44, 713.45; C79, 81, § 714.15]

### **714.16 Consumer frauds.**

1. Definitions:

- a. The term "*advertisement*" includes the attempt by publication, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise.
- b. "*Buyer*", as used in subsection 2, paragraph "h", means the person to whom the water system is being sold, leased, or rented.
- c. "*Consumer information pamphlet*" means a publication which explains water quality, health effects, quality expectations for drinking water, and the effectiveness of water treatment systems.
- d. "*Consummation of sale*" means completion of the act of selling, leasing, or renting.
- e. "*Contaminant*" means any particulate, chemical, microbiological, or radiological substance in water which has a potentially adverse health effect and for which a maximum contaminant level (MCL) or treatment technique requirement or an action level established in lieu of a maximum contaminant level (MCL), has been specified in the national primary drinking water regulations.
- f. "*Deception*" means an act or practice which has the tendency or capacity to mislead a substantial number of consumers as to a material fact or facts.
- g. "*Label*", as used in subsection 2, paragraph "h", means the written, printed, or graphic matter permanently affixed or attached to or printed on the water treatment system.
- h. "*Manufacturer's performance data sheet*" means a booklet, document, or other printed material containing, at a minimum, the information required pursuant to subsection 2, paragraph "h".
- i. The term "*merchandise*" includes any objects, wares, goods, commodities, intangibles, securities, bonds, debentures, stocks, real estate or services.
- j. The term "*person*" includes any natural person or the person's legal representative, partnership, corporation (domestic and foreign), company, trust, business entity or association, and any agent, employee, salesperson, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.
- k. The term "*sale*" includes any sale, offer for sale, or attempt to sell any merchandise for cash or on credit.
- l. "*Seller*", as used in subsection 2, paragraph "h", means the person offering the water treatment system for sale, lease, or rent.
- m. The term "*subdivided lands*" refers to improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into five or more lots or parcels; provided, however, it does not apply to the leasing of apartments, offices, stores or similar space within an apartment building, industrial building or commercial building unless an undivided interest in the land is granted as a condition precedent to occupying space in said structure.
- n. "*Unfair practice*" means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.
- o. "*Water treatment system*" means a device or assembly for which a claim is made that it will improve the quality of drinking water by reducing one or more contaminants through mechanical, physical, chemical, or biological processes or combinations of the processes. As used in this paragraph and in subsection 2, paragraph "h", each model of a water treatment system shall be deemed a distinct water treatment system.
2. a. The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false

promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

It is deceptive advertising within the meaning of this section for a person to represent in connection with the lease, sale, or advertisement of any merchandise that the advertised merchandise has certain performance characteristics, accessories, uses, or benefits or that certain services are performed on behalf of clients or customers of that person if, at the time of the representation, no reasonable basis for the claim existed. The burden is on the person making the representation to demonstrate that a reasonable basis for the claim existed.

A retailer who uses advertising for a product, other than a drug or other product claiming to have a health related benefit or use, prepared by a supplier shall not be liable under this section unless the retailer participated in the preparation of the advertisement; knew or should have known that the advertisement was deceptive, false, or misleading; refused to withdraw the product from sales upon the request of the attorney general pending a determination of whether the advertisement was deceptive, false, or misleading; refused upon the request of the attorney general to provide the name and address of the supplier; or refused to cooperate with the attorney general in an action brought against the supplier under this section.

*"Material fact"* as used in this subsection does not include repairs of damage to or adjustments on or replacements of parts with new parts of otherwise new merchandise if the repairs, adjustments or replacements are made to achieve compliance with factory specifications and are made before sale of the merchandise at retail and the actual cost of any labor and parts charged to or performed by a retailer for any such repairs, adjustments and parts does not exceed three hundred dollars or ten percent of the actual cost to a retailer including freight of the merchandise, whichever is less, providing that the seller posts in a conspicuous place notice that repairs, adjustments or replacements will be disclosed upon request. The exemption provided in this paragraph does not apply to the concealment, suppression or omission of a material fact if the purchaser requests disclosure of any repair, adjustment or replacement.

*b.* The advertisement for sale, lease or rent, or the actual sale, lease, or rental of any merchandise at a price or with a rebate or payment or other consideration to the purchaser which is contingent upon the procurement of prospective customers provided by the purchaser, or the procurement of sales, leases, or rentals to persons suggested by the purchaser, is declared to be an unlawful practice rendering any obligation incurred by the buyer in connection therewith, completely void and a nullity. The rights and obligations of any contract relating to such contingent price, rebate, or payment shall be interdependent and inseverable from the rights and obligations relating to the sale, lease, or rental.

*c.* It is an unlawful practice for any person to advertise the sale of merchandise at reduced rates due to the cessation of business operations and after the date of the first such advertisement remain in business under the same or substantially the same ownership, or under the same or substantially the same trade name, or to continue to offer for sale the same type of merchandise at the same location for more than one hundred twenty days. As used in this paragraph *"person"* includes a person who acquires an ownership interest in the business either within sixty days before the initial advertisement of the sale or at any time after the initial advertisement of the sale. In addition, a person acquiring an ownership interest shall comply with paragraph *"g"* if the person adds additional merchandise to the sale.

*d.* (1) No person shall offer or advertise within this state for sale or lease, any subdivided lands without first filing with the real estate commission true and accurate copies of all road plans, plats, field notes, and diagrams of water, sewage, and electric power lines as they exist at the time of the filing, however, this filing is not required for a subdivision subject to section 306.21 or chapter 354. A filing shall be accompanied by a fee of fifty dollars for each subdivision included, payable to the real estate commission.

(2) False or misleading statements filed pursuant to subparagraph (1) or section 306.21 or chapter 354, and advertising, offers to sell, or contracts not in substantial conformity with the filings made pursuant to section 306.21 or chapter 354 are unlawful.

*e.* Any violations of chapter 123 or any other provisions of law by a manufacturer, distiller, vintner, importer, or any other person participating in the distribution of alcoholic liquor or beer as defined in chapter 123.

*f.* A violation of a provision of sections 535C.1 through 535C.10 is an unlawful practice.

*g.* It is an unlawful practice for a person to acquire directly or indirectly an interest in a business which has either gone out of business or is going out of business and conduct or continue a going-out-of-business sale where additional merchandise has been added to the merchandise of the liquidating business for the purposes of the sale, unless the person provides a clear and conspicuous notice in all advertisements that merchandise has been added. The advertisement shall also state the customary retail price of the merchandise that has been added or brought in for the sale. The person acquiring the interest shall obtain a permit to hold the sale before commencing the sale. If the sale is to be held in a city which has an ordinance regulating going-out-of-business sales, then the permit shall be obtained from the city. If the sale is to be located outside of a city or in a city which does not have an ordinance regulating going-out-of-business sales, then the permit shall be obtained from the county in which the proposed sale is to be held. The county board of supervisors shall prescribe the procedures necessary to obtain the permit. The permit shall state the percentage of merchandise for sale that was obtained from the liquidating business and the percentage of merchandise for sale that was added from other sources. The permit or an accurate reproduction of the permit shall be clearly and conspicuously posted at all entrances to the site of the sale and at all locations where sales are consummated. A person who violates this paragraph, including any misrepresentation of the presence and the percentage of additional merchandise that had been added to that of the liquidating company, is liable for a civil penalty of not to exceed one thousand dollars for each day of each violation. The civil penalties collected shall be deposited in the general fund of the political entity which prosecutes the violation. The civil penalty is in addition to and not in lieu of any criminal penalty. A political entity enforcing this paragraph may obtain a preliminary injunction without posting a bond to enjoin a violation of paragraph "c" and this paragraph pending a hearing.

This paragraph does not prohibit a city or county from adopting an ordinance prohibiting the conducting of a going-out-of-business sale in which additional merchandise is added to the merchandise of the liquidating business for the purposes of the sale.

*h.* It is an unlawful practice for a person to sell, lease, rent, or advertise the sale, lease, or rental of a water treatment system in this state, for which claims or representations of removing health-related contaminants are made, unless the water treatment system:

(1) Has been performance tested by a third-party testing agency that has been authorized by the Iowa department of public health. Alternatively, in lieu of third-party performance testing of the manufacturer's water treatment system, the manufacturer may rely upon the manufacturer's own test data after approval of the data by an accepted third-party evaluator as provided in this subparagraph. The Iowa department of public health shall review the qualifications of a third-party evaluator proposed by the manufacturer. The department may accept or reject a proposed third-party evaluator based upon the required review. If a third-party evaluator, accepted by the Iowa department of public health, finds that the manufacturer's test data is reliable, adequate, and fairly presented, the manufacturer may rely upon that data to satisfy the requirements of this subparagraph after filing a copy of the test data and the report of the third-party evaluator with the Iowa department of public health. The testing agency shall use, or the evaluator shall review for the use of, approved methods of performance testing determined to be appropriate by the state hygienic laboratory.

(2) Has met the performance testing requirements specified in the testing protocol.

(3) Bears a conspicuous and legible label stating, "*IMPORTANT NOTICE Read the Manufacturer's Performance Data Sheet*" and is accompanied by a manufacturer's performance data sheet.

The manufacturer's performance data sheet shall be given to the buyer and shall be signed and dated by the buyer and the seller prior to the consummation of the sale of the water treatment system. The manufacturer's performance data sheet shall contain information including, but not limited to:

(a) The name, address, and telephone number of the seller.

(b) The name, brand, or trademark under which the unit is sold, and its model number.

(c) Performance and test data including, but not limited to, the list of contaminants certified to be reduced by the water treatment system; the test influent concentration level of each contaminant or surrogate for that contaminant; the percentage reduction or effluent concentration of each contaminant or surrogate; where applicable, the maximum contaminant level (MCL) or a treatment technique requirement or an action level established in lieu of a maximum contaminant level (MCL) specified in the national primary drinking water regulations; where applicable, the approximate capacity in gallons; where applicable, the period of time during which the unit is effective in reducing contaminants based upon the contaminant or surrogate influent concentrations used for the performance tests; where applicable, the flow rate, pressure, and operational temperature of the water during the performance tests.

(d) Installation instructions.

(e) The recommended operational procedures and requirements necessary for the proper operation of the unit including, but not limited to, electrical requirements; maximum and minimum pressure; flow rate; temperature limitations; maintenance requirements; and where applicable, replacement frequencies.

(f) The seller's limited warranty.

(4) Is accompanied by the consumer information pamphlet compiled by the Iowa department of public health.

The consumer information pamphlet provided to the buyer of a water treatment system shall be compiled by the Iowa department of public health, reviewed annually, and updated as necessary. The consumer information pamphlet shall be distributed to persons selling water treatment systems and the costs of the consumer information pamphlet shall be borne by persons selling water treatment systems. The Iowa department of public health shall adopt rules pursuant to chapter 17A and charge all fees necessary to administer this section.

*i.* It is an unlawful practice for a person to sell, lease, rent, or advertise the sale, lease, or rental of a water treatment system in this state for which false or deceptive claims or representations of removing health-related contaminants are made.

*j.* It is an unlawful practice for a person to make any representation or claim that the seller's water treatment system has been approved or endorsed by any agency of the state.

*k.* It is an unlawful practice for a supplier to commit a deceptive act or practice under chapter 537B.

*l.* It is an unlawful practice for a repair facility or manufacturer or distributor of aftermarket crash parts, as defined in section 537B.4, to commit a deceptive act or practice under chapter 537B.

*m.* It is an unlawful practice for a person to advertise the sale of wood products without disclosing information which may affect the price of the product.

An advertisement for all plywood and dimension lumber products shall include the grade and species, in accordance with federal products standards 1 and 20, and the measure. The products advertised shall also be labeled according to the federal products standards.

An advertisement for any other wood product shall include the grade and species, according to the applicable federal product standards, and the measure. These products need not be labeled.

An advertisement for any wood products must also include the following:

(1) The condition of the wood product, including but not limited to the following designations:

(a) Green.

(b) Kiln-dried.

(c) Air-dried or partially air-dried.

(2) Whether the wood product consists of seconds, culls, shop grade, or ungraded material.

Use of any contrived or unrecognized grading standard is prohibited, and any factors affecting the final delivered price of the products shall be disclosed and displayed in a conspicuous place.

This paragraph applies only to persons who offer wood products for sale in the ordinary course of business, except that this paragraph does not apply to any person who produces rough-sawn lumber, commonly referred to as native lumber, in this state. For purposes of this paragraph:

*"Dimension lumber"* means softwood lumber nominally referred to as *"two inch by four inch"* or greater.

*"Labeling"* means all labels and other written, printed, branded, or graphic matter upon any building material.

*"Plywood"* means a structural material consisting of sheets or chips of wood glued or cemented together.

*"Wood products"* means any wood products derived from trees as a result of any work or manufacturing process upon the wood, and intended primarily for use as a building material.

n. (1) It is an unlawful practice for a person to misrepresent the geographic location of a supplier of a service or product by listing a fictitious business name or an assumed business name in a local telephone directory or directory assistance database if all of the following apply:

(a) The name purportedly represents the geographic location of the supplier.

(b) The listing does not identify the address, including the city and state, of the supplier.

(c) Calls made to a local telephone number are routinely forwarded to or otherwise transferred to a business location that is outside the local calling area covered by the local telephone directory or directory assistance database.

(2) A telephone company, provider of directory assistance, publisher of a local telephone directory, or officer, employee, or agent of such company, provider, or publisher shall not be liable in a civil action under this section for publishing in any directory or directory assistance database the listing of a fictitious or assumed business name of a person in violation of subparagraph (1) unless the telephone company, directory assistance provider, directory publisher, or officer, employee, or agent of the company, provider, or publisher is the person committing such violation.

(3) For purposes of this paragraph:

(a) "*Local telephone directory*" means a telephone classified advertising directory or the business section of a telephone directory that is distributed free of charge to some or all telephone subscribers in a local area.

(b) "*Local telephone number*" means a telephone number that has a three-number prefix used by the provider of telephone service for telephone customers physically located within the area covered by the local telephone directory in which the number is listed. The term does not include long distance numbers or 800, 888, or 900 exchange numbers listed in the telephone directory.

3. When it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in any practice declared to be unlawful by this section or when the attorney general believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in, any such practice, the attorney general may:

a. Require such person to file on such forms as the attorney general may prescribe a statement or report in writing under oath or otherwise, as to all the facts and circumstances concerning the sale or advertisement of merchandise by such person, and such other data and information as the attorney general may deem necessary;

b. Examine under oath any person in connection with the sale or advertisement of any merchandise;

c. Examine any merchandise or sample thereof, record, book, document, account or paper as the attorney general may deem necessary; and

d. Pursuant to an order of a district court impound any record, book, document, account, paper, or sample of merchandise that is produced in accordance with this section, and retain the same in the attorney general's possession until the completion of all proceedings in connection with which the same are produced.

4. a. To accomplish the objectives and to carry out the duties prescribed by this section, the attorney general, in addition to other powers conferred upon the attorney general by this section, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe such forms and promulgate such rules as may be necessary, which rules shall have the force of law.

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

c. Paragraph "b" does not apply unless the person has first asserted a right against self-incrimination and the attorney general has elected to provide the person with a written statement that the information, documents, testimony, or other evidence at issue are subject to paragraph "b". After a person has been provided with such a written statement by the attorney general, a claim of privilege against self-incrimination is not a defense to any action or proceeding to obtain the information, documents, testimony, or other evidence. The limitation on the use of evidence in a criminal proceeding contained in this section does not apply to any prosecution or proceeding for perjury or contempt of court committed in the course of the giving or production of the information, documents, testimony, or other evidence.

5. Service by the attorney general of any notice requiring a person to file a statement or report, or of a



subpoena upon any person, shall be made personally within this state, but if such cannot be obtained, substituted service therefor may be made in the following manner:

- a. Personal service thereof without this state; or
- b. The mailing thereof by registered mail to the last known place of business, residence or abode within or without this state of such person for whom the same is intended; or
- c. As to any person other than a natural person, in the manner provided in the Rules of Civil Procedure as if a petition had been filed; or
- d. Such service as a district court may direct in lieu of personal service within this state.

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

- a. Granting injunctive relief, restraining the sale or advertisement of any merchandise by such persons.
- b. Dissolving a corporation created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or revoking or suspending any other licenses, permits, or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice.
- c. Granting such other relief as may be required until the person files the statement or report, or obeys the subpoena.

7. A civil action pursuant to this section shall be by equitable proceedings. If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in interest any moneys or property, real or personal, which have been acquired by means of a practice declared to be unlawful by this section, including the appointment of a receiver in cases of substantial and willful violation of this section. If a person has acquired moneys or property by any means declared to be unlawful by this section and if the cost of administering reimbursement outweighs the benefit to consumers or consumers entitled to the reimbursement cannot be located through reasonable efforts, the court may order disgorgement of moneys or property acquired by the person by awarding the moneys or property to the state to be used by the attorney general for the administration and implementation of this section. Except in an action for the concealment, suppression, or omission of a material fact with intent that others rely upon it, it is not necessary in an action for reimbursement or an injunction, to allege or to prove reliance, damages, intent to deceive, or that the person who engaged in an unlawful act had knowledge of the falsity of the claim or ignorance of the truth. A claim for reimbursement may be proved by any competent evidence, including evidence that would be appropriate in a class action.

In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose a civil penalty not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful under this section; provided, however, a course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person. In addition, on the motion of the attorney general or its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of intentional violation of a temporary restraining order, preliminary injunction, or permanent injunction issued

under authority of this section. A penalty imposed pursuant to this subsection is in addition to any penalty imposed pursuant to section 537.6113. Civil penalties ordered pursuant to this subsection shall be paid to the treasurer of state to be deposited in the general fund of the state.

8. When a receiver is appointed by the court pursuant to this section, the receiver shall have the power to sue for, collect, receive and take into possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice declared to be illegal and prohibited by this section, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use or employment of any unlawful practices and submits proof to the satisfaction of the court that the person has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent the person has sustained out-of-pocket losses. In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

9. Subject to an order of the court terminating the business affairs of any person after receivership proceedings held pursuant to this section, the provisions of this section shall not bar any claim against any person who has acquired any moneys or property, real or personal, by means of any practice herein declared to be unlawful.

10. A civil action pursuant to this section may be commenced in the county in which the person against whom it is brought resides, has a principal place of business, or is doing business, or in the county where the transaction or any substantial portion of the transaction occurred, or where one or more of the victims reside.

11. In an action brought under this section, the attorney general is entitled to recover costs of the court action and any investigation which may have been conducted, including reasonable attorneys' fees, for the use of this state.

12. If any provision of this section or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions of applications of the section which can be given effect without the invalid provision or application and to this end the provisions of this section are severable.

13. The attorney general or the designee of the attorney general is deemed to be a regulatory agency under chapter 692 for the purpose of receiving criminal intelligence data relating to violations of this section.

14. This section does not apply to the newspaper, magazine, publication, or other print media in which the advertisement appears, or to the radio station, television station, or other electronic media which disseminates the advertisement if the newspaper, magazine, publication, radio station, television station, or other print or electronic media has no knowledge of the fraudulent intent, design, or purpose of the advertiser at the time the advertisement is accepted; and provided, further, that nothing herein contained shall apply to any advertisement which complies with the rules and regulations of, and the statutes administered by the federal trade commission.

15. The attorney general may bring an action on behalf of the residents of this state, or as *parens patriae*, under the federal Telemarketing and Consumer Fraud and Abuse Prevention Act, Pub. L. No. 103-297, and pursue any and all enforcement options available under that Act. Subsequent amendments to that Act which do not substantially alter its structure and purpose shall not be construed to affect the authority of the attorney general to pursue an action pursuant to this section, except to the extent the amendments specifically restrict the authority of the attorney general.

77, § 713.24; C79, 81, § 714.16]

83 Acts, ch 146, § 12; 85 Acts, ch 16, § 1, 2; 87 Acts, ch 164, § 17; 88 Acts, ch 1016, § 1, 2; 89 Acts, ch 93, § 7; 89 Acts, ch 129, § 1; 90 Acts, ch 1010, § 6; 90 Acts, ch 1236, § 53; 91 Acts, ch 212, § 1; 92 Acts, ch 1062, § 3; 94 Acts, ch 1142, §5; 98 Acts, ch 1200, §13; 2000 Acts, ch 1079, §1; 2000 Acts, ch 1232, §85; 2001 Acts, ch 58, §15, 16; 2002 Acts, ch 1119, §194, 203

#### **714.16A Additional civil penalty for consumer frauds committed against elderly fund established.**

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

A civil penalty imposed by a court or determined and accepted by the attorney general pursuant to this section shall be paid to the treasurer of state, who shall deposit the money in the elderly victim fund, a separate fund created in the state treasury and administered by the attorney general for the investigation and prosecution of frauds against the elderly. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state. An award of reimbursement pursuant to section 714.16 has priority over a civil penalty imposed by the court pursuant to this subsection.

2. In determining whether to impose a civil penalty under subsection 1, and the amount of any such penalty, the court shall consider the following:

- a. Whether the defendant's conduct was in willful disregard of the rights of the older person.
- b. Whether the defendant knew or should have known that the defendant's conduct was directed to an older person.
- c. Whether the older person was substantially more vulnerable to the defendant's conduct because of age, poor health, infirmity, impaired understanding, restricted mobility, or disability, than other persons.
- d. Any other factors the court deems appropriate.

3. As used in this section, "*older person*" means a person who is sixty-five years of age or older.

91 Acts, ch 102, §1; 94 Acts, ch 1142, §6; 98 Acts, ch 1200, §4

#### **714.16B Identity theft civil cause of action.**

In addition to any other remedies provided by law, a person as defined under section 714.16, subsection 1, suffering a pecuniary loss as a result of an identity theft by another person under section 715A.8, or a financial institution on behalf of an account holder suffering a pecuniary loss as a result of an identity theft by another person under section 715A.8, may bring an action against such other person to recover all of the following:

1. Five thousand dollars or three times the actual damages, whichever is greater.
2. Reasonable costs incurred due to the violation of section 715A.8, including all of the following:
  - a. Costs for repairing the victim's credit history or credit rating.

b. Costs incurred for bringing a civil or administrative proceeding to satisfy a debt, lien, judgment, or other obligation of the victim.

c. Punitive damages, attorney fees, and court costs.

For purposes of this section, "*financial institution*" means the same as defined in section 527.2, and includes an insurer organized under Title XIII, subtitle 1, of this Code, or under the laws of any other state or the United States.

99 Acts, ch 47, §1; 2005 Acts, ch 18, §2

#### **714.16C Consumer education and litigation fund.**

1. A consumer education and litigation fund is created as a separate fund in the state treasury to be administered by the attorney general. Moneys credited to the fund shall include amounts received as a result of a state or federal civil consumer fraud judgment or settlement, civil penalties, costs, or attorney fees, and amounts which are specifically directed to the credit of the fund by the judgment or settlement, and amounts which are designated by the judgment or settlement for use by the attorney general for consumer litigation or education purposes. Moneys designated for consumer reimbursement shall not be credited to the fund, except to the extent that such moneys are permitted to be used for enforcement of section 714.16.

2. For each fiscal year, not more than one million one hundred twenty-five thousand dollars is appropriated from the fund to the department of justice to be used for public education relating to consumer fraud and for enforcement of section 714.16 and federal consumer laws, and not more than seventy-five thousand dollars is appropriated from the fund to the department of justice to be used for investigation, prosecution, and consumer education relating to consumer and criminal fraud committed against older Iowans.

3. Notwithstanding section 8.33, moneys credited to the fund shall not revert to any other fund. Notwithstanding section 12C.7, interest or earnings on the moneys in the fund shall be credited to the fund.

2007 Acts, ch 213, §24

#### **714.17 Unlawful advertising and selling courses of instruction.**

It shall be unlawful for any person, firm, association, or corporation maintaining, advertising, or conducting in Iowa any course of instruction for profit, or for tuition charge, whether by classroom instructions or by correspondence, to:

1. Falsely advertise or represent to any person any matter material to such course of instruction. All advertising of such courses of instruction shall adhere to and comply with the rules and regulations of the federal trade commission as of July 4, 1965.

2. Collect tuition or other charges in excess of one hundred fifty dollars in the case of correspondence courses of study, in advance of the receipt and approval by the pupil of the first assignment or lesson of such course. Any contract providing for advance payment of more than one hundred fifty dollars shall be voidable on the part of the pupil or any person liable for the tuition provided for in the contract.

3. Promise or guarantee employment utilizing information, training, or skill purported to be provided or otherwise enhanced by a course, unless the promisor or guarantor offers the student or prospective student a bona fide contract of employment agreeing to employ said student or prospective student for a period of not less than one hundred twenty days in a business or other enterprise regularly conducted by the promisor or guarantor and in which such information, training, or skill is a normal condition of employment.

[C66, 71, 73, 75, 77, § 713A.1; C79, 81, § 714.17]

### **714.18 Evidence of financial responsibility.**

Except as otherwise provided in subsection 4, every person, firm, association, or corporation maintaining or conducting in Iowa any such course of instruction, by classroom instruction or by correspondence, or soliciting in Iowa the sale of such course, shall file with the secretary of state:

1. A continuous corporate surety bond to the state of Iowa in the sum of fifty thousand dollars conditioned for the faithful performance of all contracts and agreements with students made by such person, firm, association, or corporation, or their salespersons; but the aggregate liability of the surety for all breaches of the conditions of the bond shall not exceed the sum of the bond. The surety on the bond may cancel the bond upon giving thirty days' written notice to the secretary of state and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation.

2. A statement designating a resident agent for the purpose of receiving service in civil actions. In the absence of such designation, service may be had upon the secretary of state if service cannot otherwise be made in this state.

3. A copy of any catalog, prospectus, brochure, or other advertising material intended for distribution in Iowa. Such material shall state the cost of the course offered, the schedule of refunds for portions of the course not completed, and if no refunds are to be paid, the material shall so state. Any contract induced by advertising materials not previously filed as provided in this chapter shall be voidable on the part of the pupil or any person liable for the tuition provided for in the contract.

4. A school licensed under the provisions of section 157.8 or 158.7 shall file with the secretary of state:

*a.* A continuous corporate surety bond to the state of Iowa in the sum of fifty thousand dollars or ten percent of the total annual tuition collected, whichever is less, conditioned for the faithful performance of all contracts and agreements with students made by such school. A school desiring to file a surety bond based on a percentage of annual tuition shall provide to the secretary of state, in the form prescribed by the secretary, a notarized statement attesting to the total amount of tuition collected in the preceding twelve-month period. The secretary shall determine the sufficiency of the statement and the amount of the bond. Tuition information submitted pursuant to this paragraph shall be kept confidential.

If the school has filed a performance bond with an agency of the United States government pursuant to federal law, the secretary of state shall reduce the bond required by this paragraph by an amount equal to the amount of the federal bond.

The aggregate liability of the surety for all breaches of the conditions of the bond shall not exceed the sum of the bond. The surety on the bond may cancel the bond upon giving thirty days' written notice to the secretary of state and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation.

The secretary of state may accept a letter of credit from a bank in lieu of the corporate surety bond required by this paragraph.

*b.* The statement required in subsection 2.

*c.* The materials required in subsection 3.

[C66, 71, 73, 75, 77, § 713A.2; C79, 81, § 714.18]

85 Acts, ch 212, § 21; 89 Acts, ch 240, § 6; 90 Acts, ch 1222, § 1, 2; 2002 Acts, ch 1140, §4042

**714.19 Nonapplicability.**

None of the provisions of sections 714.17 to 714.22 shall apply to the following:

1. Colleges or universities authorized by the laws of Iowa or any other state or foreign country to grant degrees.
2. Schools of nursing accredited by the board of nursing or an equivalent public board of another state or foreign country.
3. Public schools.
4. Private and nonprofit schools recognized by the department of education or a local school board for the purpose of complying with chapter 299 and employing certified teachers.
5. Nonprofit schools exclusively engaged in training persons with physical disabilities in the state of Iowa.
6. Schools and educational programs conducted by firms, corporations, or persons for the training of their own employees, for which no fee is charged.
7. Seminars, refresher courses and schools of instruction sponsored by professional, business, or farming organizations or associations for the members and employees of members of such organizations or associations.
8. Private business schools accredited by the accrediting commission for business schools or an acknowledged accrediting agency.
9. Private college preparatory schools accredited or probationally accredited under section 256.11, subsection 13.

[C66, 71, 73, 75, 77, § 713A.3; C79, 81, § 714.19]

86 Acts, ch 1245, § 1498; 89 Acts, ch 240, § 7; 96 Acts, ch 1129, §108; 2001 Acts, ch 24, §59

**714.20 One contract per person.**

It shall be unlawful to sell more than one lifetime contract to any one person.

[C66, 71, 73, 75, 77, § 713A.4; C79, 81, § 714.20]

**714.21 Penalty.**

Violation of any of the provisions of section 714.17, 714.18 or 714.20 shall be a serious misdemeanor.

[C66, 71, 73, 75, 77, § 713A.5; C79, 81, § 714.21]

**714.22 Trade and vocational schools exemption conditions.**

The provisions of sections 714.17 through 714.21 shall not apply to trade or vocational schools if they meet either of the following conditions:

1. File a bond or a bond is filed on their behalf by a parent corporation with the secretary of state as required by section 714.18.

2. File an annual sworn statement, or such statement is filed on their behalf by a parent corporation, certified by a certified public accountant, showing all assets and liabilities of the trade or vocational school and the assets of any parent corporation. The statement shall show the trade or vocational school's net worth, or the net worth of the parent corporation, to be not less than five times the amount of the bond required by section 714.18. If a parent corporation files the statement or its net worth is included in the statement to comply with this subsection, the parent corporation shall appoint a registered agent and otherwise is subject to section 714.18, subsection 2 and is liable for the breach of any contract or agreement with students as well as liable for any fraud in connection with the contract or agreement or for any violation of section 714.16 by the trade or vocational school or any of its agents or salespersons.

[C73, 75, 77, § 713A.6; C79, 81, § 714.22]

85 Acts, ch 212, §21; 86 Acts, ch 1237, § 43; 2002 Acts, ch 1140, §43; 2005 Acts, ch 19, §118

### **714.23 Refund policies.**

1. A person offering a course of instruction at the postsecondary level, for profit, that is more than four months in length and leads to a degree, diploma, or license, shall make a pro rata refund of no less than ninety percent of the tuition for a terminating student to the appropriate agency based upon the ratio of completed number of scheduled school days to sixty percent of the scheduled school days of the school term or course.

2. Notwithstanding the provisions of subsection 1, the following refund policy shall apply:

*a.* If a terminating student has completed sixty percent or more of a school term or course that is more than four months in length, the person offering the course of instruction is not required to refund tuition for the student. However, if, at any time, a student terminates a school term or course that is more than four months in length due to the student's physical incapacity or due to the transfer of the student's spouse's employment to another city, the terminating student shall receive a refund of tuition in an amount which equals the amount of tuition multiplied by the ratio of the remaining number of school days to the total school days of the school term or course.

*b.* A refund of ninety percent of the tuition for a terminating student shall be paid to the appropriate agency based upon the ratio of completed number of school days to the total school days of the school term or course. This paragraph applies to those persons offering courses of instruction at the postsecondary level, for profit, whose cohort default rate for students under the Stafford loan program as defined by the United States department of education is more than one hundred ten percent of the national average cohort default rate for that program for that period or six percent, whichever is higher.

3. If the financial obligations of a student are for three or fewer months duration, this section does not apply.

4. Refunds shall be paid to the appropriate agency within thirty days following the student's termination.

5. A student who terminates a course of instruction or term shall not be charged any fee or other monetary penalty for terminating a course of instruction or term other than a reduction in tuition refund as specified in this section.

6. A violation of this section is a simple misdemeanor.

85 Acts, ch 220, §1; 90 Acts, ch 1222, § 3; 91 Acts, ch 97, §61

**714.24** Reserved.

**714.25 Disclosure.**

1. For purposes of this chapter, unless the context otherwise requires, "*proprietary school*" means a person offering a course of instruction at the postsecondary level, for profit, that is more than four months in length and leads to a degree, diploma, or license.

2. A proprietary school shall, prior to the time a student is obligated for payment of any moneys, inform the student, the college student aid commission, and in the case of a school licensed under section 157.8, the board of cosmetology arts and sciences or in the case of a school licensed under section 158.7, the board of barbering, of all of the following:

*a.* The total cost of the course of instruction as charged by the school.

*b.* An estimate of any fees which may be charged the student by others which would be required if the student is to successfully complete the course and, if applicable, obtain a degree, diploma, or license.

*c.* The percentage of students who successfully complete the course, the percentage who terminate prior to completing the course, and the period of time upon which the school has based these percentages. The reporting period shall not be less than one year in length and shall not extend more than five years into the past.

*d.* If claims are made by the school as to successful placement of students in jobs upon completion of the course of study, the school shall provide the student with all of the following:

(1) The percentage of graduating students who were placed in jobs in fields related to the course of instruction.

(2) The percentage of graduating students who went on to further education immediately upon graduation.

(3) The percentage of students who, ninety days after graduation, were without a job and had not gone on to further education.

(4) The period of time upon which the reports required by paragraphs "*a*" through "*c*" were based. The reporting period shall not be less than one year in length and shall not extend more than five years into the past.

*e.* If claims are made by the school as to income levels of students who have graduated and are working in fields related to the school's course of instruction, the school shall inform the student of the method used to derive such information.

88 Acts, ch 1274, § 47; 89 Acts, ch 296, § 87; 90 Acts, ch 1222, § 4; 2007 Acts, ch 10, §182

**714.26 Intellectual property counterfeiting.**

1. *Definitions.* As used in this section unless the context otherwise requires:

*a.* "*Counterfeit mark*" means any unauthorized reproduction or copy of intellectual property, or intellectual property affixed to any item knowingly sold, offered for sale, manufactured, or distributed, or identifying services offered or rendered, without authority of the owner of the intellectual property.

*b.* "*Intellectual property*" means any trademark, service mark, trade name, label, term, device, design, or



word adopted or used by a person to identify the items or services of the person.

*c. "Retail value"* means the highest value of an item determined by any reasonable standard at the time the item bearing or identified by a counterfeit mark is seized. If a seized item bearing or identified by a counterfeit mark is a component of a finished product, *"retail value"* also means the highest value, determined by any reasonable standard, of the finished product on which the component would have been utilized. The retail value shall be the retail value of the aggregate quantity of all items seized which bear or are identified by a counterfeit mark. For purposes of this paragraph, reasonable standard includes but is not limited to the market value within the community, actual value, replacement value, or the counterfeiter's regular selling price for the item bearing or identified by a counterfeit mark, or the intellectual property owner's regular selling price for an item similar to the item bearing or identified by a counterfeit mark.

*2. Criminal offense.* A person who knowingly manufactures, produces, displays, advertises, distributes, offers for sale, sells, possesses with intent to sell or distributes any item or knowingly provides service bearing or identified by a counterfeit mark commits intellectual property counterfeiting.

*a.* A person commits intellectual property counterfeiting in the first degree if any of the following apply:

- (1) The person is manufacturing or producing an item bearing or identified by a counterfeit mark.
- (2) The offense involves more than one thousand items bearing or identified by a counterfeit mark or the total retail value of such items is equal to or greater than ten thousand dollars.
- (3) The offense is a third or subsequent violation of this section.

Intellectual property counterfeiting in the first degree is a class "C" felony.

*b.* A person commits intellectual property counterfeiting in the second degree if any of the following apply:

- (1) The offense involves more than one hundred items but does not involve more than one thousand items bearing or identified by a counterfeit mark or the total retail value of such items is equal to or greater than one thousand dollars but less than ten thousand dollars.
- (2) The offense is a second violation of this section.

Intellectual property counterfeiting in the second degree is a class "D" felony.

*c.* All intellectual property counterfeiting which is not intellectual property counterfeiting in the first degree or second degree is intellectual property counterfeiting in the third degree. Intellectual property counterfeiting in the third degree is an aggravated misdemeanor.

*3. Evidence.* Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of ownership of the intellectual property in dispute.

*4. Seizure and disposition.* Any items bearing or identified by a counterfeit mark, and all personal property, including but not limited to any items, objects, tools, machines, equipment, instrumentalities, or vehicles used in connection with a violation of this section, shall be seized by any law enforcement agency.

*a.* All seized personal property shall be disposed of in accordance with section 809.5 or as provided in paragraph *"b"*.

*b.* Upon request of the intellectual property owner, all seized items bearing or identified by a counterfeit mark shall be released by the seizing agency to the intellectual property owner for destruction or disposition. If the

intellectual property owner does not request release of the seized items, the items shall be destroyed unless the intellectual property owner consents to another disposition.

2004 Acts, ch 1112, §1; 2004 Acts, ch 1175, §390