

Reprinted 3/79

MAR 15 1979

HOUSE FILE 685

Place On Calendar

By COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

(Formerly Study Bill 208)

Passed House, Date 3-27-79 (p. 11-8) Passed Senate, Date _____

Vote: Ayes 93 Nays 0 Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act making it a fraudulent practice to knowingly participate
2 in the transfer or assignment of a property interest with
3 the intent to obtain public assistance for which a person
4 is not eligible, granting the department of social services
5 rule-making authority to implement this Act, and providing
6 penalties.

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

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HOUSE FILE 685

H-3576

1 Amend amendment H-3547 to House File 685 by
2 striking lines 18-24 on page 1 and inserting in
3 lieu thereof the following:
4 "2. Page 2, by striking lines 1 through 6
5 and inserting in lieu thereof the following:
6 "assistance under title eleven (XI) of the Code.
7 All applications to the state".

H-3576 FILED *Adopted 3/27*
MARCH 27, 1979 *(p. 1167)*

BY BRUNER of Story

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1 Section 1. Section seven hundred fourteen point eight
2 (714.8), Code 1979, is amended by adding the following new
3 subsection:

4 NEW SUBSECTION. Knowingly transfers or assigns, or at-
5 tempts to transfer or assign, or knowingly accepts, or at-
6 tempts to accept a transfer of or an assignment of a legal
7 or equitable interest in property, as defined in section seven
8 hundred two point fourteen (702.14) of the Code, for less
9 than fair consideration, with the intent to obtain public
10 assistance under title eleven (XI) of the Code, including
11 but not limited to public assistance benefits in chapters
12 two hundred twenty-two (222), two hundred thirty (230), two
13 hundred thirty-nine (239), two hundred forty-nine (249), two
14 hundred forty-nine A (249A), two hundred fifty-two (252),
15 and two hundred fifty-five (255) of the Code for which any
16 person is not eligible by reason of the amount of the person's
17 assets. A transfer or assignment of property for less than
18 fair consideration within two years of an application for
19 public assistance benefits shall be evidence of intent to
20 transfer or assign the property in order to obtain public
21 assistance for which a person is not eligible by reason of
22 the amount of the person's assets. If a person is found
23 guilty of a fraudulent practice in the transfer or assignment
24 of property under this subsection the maximum sentence shall
25 be the penalty established for an aggravated misdemeanor and
26 sections seven hundred fourteen point nine (714.9) and seven
27 hundred fourteen point ten (714.10) of the Code shall not
28 apply.

29 Sec. 2. Chapter two hundred seventeen (217), Code 1979,
30 is amended by adding the following new section:

31 NEW SECTION. FRAUDULENT TRANSFERS. If a person is found
32 guilty of a fraudulent practice pursuant to section one (1)
33 of this Act the fraudulent transfer or assignment shall be
34 void for the purposes of determining the amount of assets
35 available to a person applying for or receiving public

1 assistance under title eleven (XI) of the Code, including
2 but not limited to public assistance benefits in chapters
3 two hundred twenty-two (222), two hundred thirty (230), two
3547 4 hundred thirty-nine (239), two hundred forty-nine (249), two
5 hundred forty-nine A (249A), two hundred fifty-two (252),
6 and two hundred fifty-five (255) of the Code. All applications
7 for assistance benefits under the applicable chapters of title
8 eleven (XI) of the Code shall include a list of all transfers
9 or assignments of property made by the applicant or the
3545 3525 10 applicant's spouse within two years of the application date.
11 The department of social services shall promulgate rules and
12 regulations, pursuant to chapter seventeen A (17A) of the
13 Code, to implement this Act.

14 EXPLANATION

15 This bill makes it a fraudulent practice to knowingly
16 participate in a transfer or assignment as a transferor,
17 assignor, transferee, or assignee of any property interest
18 for less than fair consideration with the specific intent
19 to obtain public assistance under Title XI of the Code for
20 which a person is not eligible. The applicable penalties
21 for fraudulent practice are established in sections 714.11
22 through 714.13 of the Code and range respectively, depending
23 upon the value of the property involved, from an aggravated
24 misdemeanor punishable by no more than two years imprisonment
25 or five thousand dollars to a simple misdemeanor punishable
26 by no more than thirty days imprisonment or one hundred
27 dollars. The fraudulent transfer or assignment is void for
28 the purposes of determining the amount of assets available
29 to a person applying for or receiving public assistance.
30 The department of social services is charged with the
31 administration of the provisions of the bill.

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LSB 1715H 68

rj/jw/5.1

HOUSE FILE 685

H-3535

- 1 Amend House File 685 as follows:
 2 1. Page 1, line 18, by striking the word "two"
 3 and inserting in lieu thereof the word "three".
 4 2. Page 2, line 10, by striking the word "two"
 5 and inserting in lieu thereof the word "three".

H-3535 FILED *Adopted 3/27 (p. 1168)*
 MARCH 23, 1979

BY MILLER of Buchanan

HOUSE FILE 685

H-3545

- 1 Amend House File 685 as follows:
 2 1. Page 1, line 18 by striking the word "of" and
 3 inserting in lieu thereof the words "prior to".
 4 2. Page 2, line 10 by striking the word "of" and
 5 inserting in lieu thereof the words "prior to".

H-3545 FILED *Adopted 3/27 (p. 1168)*
 MARCH 23, 1979

BY SPEAR of Lee

HOUSE FILE 685

H-3547

- 1 Amend House File 685 as follows:
 2 1. Page 1, by striking lines 4 through 17 and
 3 inserting in lieu thereof the following:
 4 "NEW SUBSECTION. Knowingly transfers or
 5 assigns a legal or equitable interest in property,
 6 as defined in section seven hundred two point
 7 fourteen (702.14) of the Code, for less than fair
 8 consideration, with the intent to obtain public
 9 assistance under title eleven (XI) of the Code, or
 10 accepts a transfer of or an assignment of a legal
 11 or equitable interest in property, as defined in
 12 section seven hundred two point fourteen (702.14) of
 13 the Code, for less than fair consideration, with the
 14 intent of enabling the party transferring the
 15 property to obtain public assistance under title
 16 eleven (XI) of the Code. A transfer or assignment
 17 of property for less than".
 18 2. Page 2, by striking lines 1 through 8 and
 19 inserting in lieu thereof the following: "assistance
 20 under title eleven (XI) of the Code. All applications
 21 for assistance benefits under chapters two hundred
 22 thirty nine (239) and two hundred forty nine A
 23 (249A) of the Code shall include a list of all
 24 transfers".

H-3547 FILED *Adopted as amended by*
 MARCH 23, 1979 *3576 3/27 (p. 1168)*

BY JESSE of Polk
BRUNER of Story

Sen. Judiciary 3/30
Failed recommendation 4/5 (p. 1102)

Amend per 5533
Do Pass 3/26/80 (p. 1103)

HOUSE FILE 685

By COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

(As Amended and Passed by the House)

Re Passed House, Date 4/16/80 (p. 1640) Passed Senate, Date 4/8/80 (p. 1201)

Vote: Ayes 94 Nays _____ Vote: Ayes 43 Nays 2

Approved May 19, 1980

A BILL FOR

1 An Act making it a fraudulent practice to knowingly participate
2 in the transfer or assignment of a property interest with
3 the intent to obtain public assistance for which a person
4 is not eligible, granting the department of social services
5 rule-making authority to implement this Act, and providing
6 penalties.

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

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_____ House Amendments

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1 Section 1. Section seven hundred fourteen point eight
2 (714.8), Code 1979, is amended by adding the following new
3 subsection:

4 NEW SUBSECTION. Knowingly transfers or assigns a legal
5 or equitable interest in property, as defined in section seven
6 hundred two point fourteen (702.14) of the Code, for less
7 than fair consideration, with the intent to obtain public
8 assistance under title eleven (XI) of the Code, or accepts
9 a transfer of or an assignment of a legal or equitable interest
10 in property, as defined in section seven hundred two point
11 fourteen (702.14) of the Code, for less than fair
12 consideration, with the intent of enabling the party
13 transferring the property to obtain public assistance under
14 title eleven (XI) of the Code. A transfer or assignment of
15 property for less than fair consideration within three years
16 prior to an application for public assistance benefits shall
17 be evidence of intent to transfer or assign the property in
18 order to obtain public assistance for which a person is not
19 eligible by reason of the amount of the person's assets.
20 If a person is found guilty of a fraudulent practice in the
21 transfer or assignment of property under this subsection the
22 maximum sentence shall be the penalty established for an
23 aggravated misdemeanor and sections seven hundred fourteen
24 point nine (714.9) and seven hundred fourteen point ten
25 (714.10) of the Code shall not apply.

26 Sec. 2. Chapter two hundred seventeen (217), Code 1979,
27 is amended by adding the following new section:

28 NEW SECTION. FRAUDULENT TRANSFERS. If a person is found
29 guilty of a fraudulent practice pursuant to section one (1)
30 of this Act the fraudulent transfer or assignment shall be
31 void for the purposes of determining the amount of assets
32 available to a person applying for or receiving public
33 assistance under title eleven (XI) of the Code. All
34 applications to the state for assistance benefits under the
35 applicable chapters of title eleven (XI) of the Code shall

1 include a list of all transfers or assignments of property
2 made by the applicant or the applicant's spouse within three
3 years prior to the application date. The department of social
4 services shall promulgate rules and regulations, pursuant
5 to chapter seventeen A (17A) of the Code, to implement this
6 Act.

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SENATE AMENDMENT TO
HOUSE FILE 685

H-5965

- 1 Amend House File 685 as amended, passed and
- 2 reprinted by the House as follows:
- 3 1. Page 1, line 15, by striking the words "three
- 4 years" and inserting in lieu thereof the words "one
- 5 year".
- 6 2. Page 1, line 23, by striking the word
- 7 "aggravated" and inserting in lieu thereof the word
- 8 "serious".
- 9 3. Page 1, line 24, by striking the word "and"
- 10 and inserting in lieu thereof the word ",".
- 11 4. Page 1, line 25, by inserting after the figure
- 12 "(714.10)" the words and figure "and seven hundred
- 13 fourteen point eleven (714.11)".
- 14 5. Page 1, by striking line 26 through page 2,
- 15 line 6.
- 16 6. By correcting section numbers and internal
- 17 references as made necessary by this amendment.
- 18 7. Amend the title, lines 4 and 5, by striking
- 19 the words ", granting the department of social services
- 20 rule-making authority to implement this Act,".

H-5965 FILED APRIL 10, 1980

RECEIVED FROM THE SENATE

House concurred 4/16 (J. 1639)

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HOUSE FILE 685

S-5533

- 1 Amend House File 685 as amended, passed and
- 2 reprinted by the House as follows:
- 3 1. Page 1, line 15, by striking the words "three
- 4 years" and inserting in lieu thereof the words "one
- 5 year".
- 6 2. Page 1, by striking line 26 through page 2,
- 7 line 6.
- 8 3. By correcting section numbers and internal
- 9 references as made necessary by this amendment.
- 10 4. Amend the title, lines 4 and 5, by striking
- 11 the words ", granting the department of social services
- 12 rule-making authority to implement this Act,".

S-5533 FILED

BY COMMITTEE ON JUDICIARY

MARCH 26, 1980

LUCAS J. DeKOSTER, CHAIRPERSON

Adopted 4/5 (p. 1301)

HOUSE FILE 685

S-5669

- 1 Amend House File 685 as amended, passed and re-
- 2 printed by the House as follows:
- 3 1. Page 2, by inserting after line 6 the following
- 4 new section:
- 5 "Sec. ____ . Senate Concurrent Resolution 102 is hereby
- 6 repealed."

S-5669 FILED

BY BOB RUSH

APRIL 8, 1980

WITHDRAWN (*p. 1201*)

HOUSE FILE 685

S-5668

- 1 Amend House File 685 as amended, passed and
- 2 reprinted by the House as follows:
- 3 1. Page 1, line 23, by striking the word
- 4 "aggravated" and inserting in lieu thereof the
- 5 word "serious".
- 6 2. Page 1, line 24, by striking the word "and"
- 7 and inserting in lieu thereof the word ",".
- 8 3. Page 1, line 25, by inserting after the
- 9 figure "(714.10)" the words and figure "and seven hundred
- 10 fourteen point eleven (714.11)".

S-5668 FILED

BY JOHN S. MURRAY

APRIL 8, 1980

ADOPTED (*p. 1301*)

THOMAS J. MILLER
ATTORNEY GENERAL

JOHN G. BLACK
SPECIAL ASSISTANT ATTORNEY GENERAL

STEPHEN C. ROBINSON
ASSISTANT ATTORNEY GENERAL

JONATHAN GOLDEN
ASSISTANT ATTORNEY GENERAL

CANDY MORGAN
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THOMAS MANN JR.
ASSISTANT ATTORNEY GENERAL

CRAIG S. BRENNEISE
ASSISTANT ATTORNEY GENERAL

LAYNE M. LINDEBAK
ASSISTANT ATTORNEY GENERAL

BRENT D. HEGE
ASSISTANT ATTORNEY GENERAL

PATRICIA M. HULTING
ASSISTANT ATTORNEY GENERAL



Department of Justice

ADDRESS REPLY TO
SOCIAL SERVICES DIVISION
SECOND FLOOR
HOOVER BUILDING
DES MOINES IOWA 50319
(515) 281-8330

February 9, 1981

Commissioner Michael V. Reagen, Ph.D.
Iowa Department of Social Services
Fifth Floor
Hoover State Office Building
L O C A L

Dear Commissioner Reagen:

We recently issued an opinion on the enforceability of an Act of the Sixty-Eighth General Assembly, 1980 Session, ch. 1189, more commonly known as H.F. 685. In that opinion, Op.Att'yGen. # 81-1-10(L), we declined to comment on the enforceability of H.F. 685, but instead advised that potential conflicts existed between H.F. 685 and the eligibility requirements for the Supplemental Security Income and Medicaid programs adopted by federal law. We also noted that the precise issue involved in that opinion was before the United States Supreme Court for consideration.

Subsequent to the issuance of the above referred to opinion, we have become aware of an amendment to the SSI and Medicaid programs that was signed into law by President Jimmy Carter on December 28, 1980. That amendment, as contained in Public Law 96-611, specifically addressed the eligibility requirements for participation in the SSI and Medicaid programs. In particular, the statute, as it amends 42 U.S.C. § 1382b, adds a new subsection which requires that any resource owned by an applicant for SSI benefits that is disposed of within 24 months preceding the application for benefits, if such resource was given away or sold for less than fair market value and was disposed of for the purpose of attaining eligibility, must be recaptured and included

Commissioner Michael V. Reagen, Ph.D.
February 9, 1981
Page Two

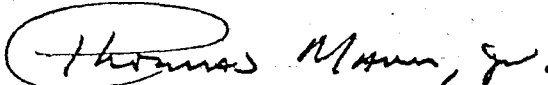
in the applicant's resources for the purpose of determining the applicant's eligibility for SSI benefits. The amendment further states that any such disposal of resources within the 24 month period preceding the application shall be presumed to be made for the purpose of attaining eligibility for benefits.

The amendment, then, would deny benefits to an applicant who (1) gives away or sells resources or interests (2) for less than fair market value (3) with the intent to obtain SSI benefits. This is comparable to the prohibition contained in H.F. 685. We, therefore, can discern no conflict that would prohibit enforcement of H.F. 685.

This is also true with respect to the Medicaid program. Public Law 96-611 also amends the Medicaid Act, 42 U.S.C. § 1396a, by adding a new subsection which would also deny benefits to an applicant who, although otherwise eligible for benefits, disposes of resources for less than fair market value. The act would also require that a plan be developed and implemented for denying benefits if the State plan requires such a denial. It would further require that the procedures implemented not be more restrictive than procedures utilized for denying SSI benefits. As H.F. 685 applies equally to SSI and Medicaid benefits, we can discern no conflict between H.F. 685 and this new amendment.

In summary, Public Law 96-611, as it amends the Social Security Act, prohibits the disposal of resources for the purpose of attaining eligibility for SSI and Medicaid benefits. This is consistent with the prohibition contained in H.F. 685. Accordingly, we can discern no impediment to the enforcement of H.F. 685.

Sincerely,


Thomas Mann, Jr.
Assistant Attorney General

TM/jam

Enclosure

STATUTES: SOCIAL SECURITY: Medicaid and Supplemental Security Income Eligibility Requirements. 42 U.S.C. § 1381 et seq., 42 U.S.C. § 1396 et. seq., 20 C.F.R. § 416.1240, 42 C.F.R. §§ 431.300-307, 435.4, 435.100, 435.300, 435.401, §§ 3.7, 4.1(36)(a), 217.30, 217.30(4)(b), 249.13, 249A.14 703.3, 714.8, Chapters 249 and 249A, The Code 1979, Acts of the Sixty-Eighth General Assembly, 1980 Session, House File 685. A crime is complete under H.F. 685 where a party, with intent to receive public assistance, transfers property for less than fair consideration. Success or failure in attempting to gain public assistance is immaterial to committing a crime under H.F. 685. Where the Department of Social Services has knowledge that an applicant for public assistance has transferred property one year prior to the making of such application, the department should report such transfer to appropriate law enforcement officials. Department employees are required to ask applicants for public assistance for information that will establish their eligibility or non-eligibility for assistance. The county attorney is responsible for investigating or causing to be investigated suspected fraudulent practices to determine if a criminal prosecution is warranted. The disclosure of information to law enforcement officials directed towards the elimination of fraud in a public assistance benefit program will not violate state or federal nondisclosure laws. The mere passive failure to report suspected fraudulent practices does not constitute a crime. The Department of Social Services may jeopardize federal financial participation in its public assistance programs by failing to report suspected fraudulent practices to law enforcement authorities. H.F. 685 should have prospective effect only. We decline to comment on the enforceability of H.F. 685, but advise that participation in its enforcement may jeopardize federal financial participation in Medicaid and SSI programs. (Mann to Reagen, Commissioner, Department of Social Services, 1/30/81) #81-1-10(L)

THOMAS J. MILLER
ATTORNEY GENERAL
JOHN C. BLACK
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CRAIG S. BRENNEISE
ASSISTANT ATTORNEY GENERAL



Department of Justice

ADDRESS REPLY TO:
SOCIAL SERVICES DIVISION
SECOND FLOOR
HOOVER BUILDING
DES MOINES, IOWA 50319
(515) 281-8330

January 30, 1981

Dr. Michael V. Reagen, Ph.D.
Commissioner
Iowa Department of Social Services
Fifth Floor
Hoover State Office Building
D O C A L

Dear Commissioner Reagen:

You have requested an opinion of the Attorney General on whether the Department of Social Services has any responsibility for the enforcement of an Act of the Sixty-Eighth General Assembly, 1980 Session, House File 685 (hereinafter H.F. 685). Specifically, you ask the following questions:

- (1) At what point does the crime take place: at the time of the transfer of property? at the time of the transfer of public assistance? at the time of application for approval? at the time of assistance/services?
- (2) If an individual disposes of property, applies for assistance, and is determined to be ineligible for a reason unrelated to crime taken place?
- (3) What is the Department's responsibility when it has knowledge that a transfer has taken place?

(4) Since divestment of property has no bearing on an applicant's eligibility for public assistance, what responsibility does a local office worker have for investigating the circumstances of suspected transfer? Must the local office worker inquire of the applicant whether such a transfer has taken place within a year of application?

(5) Do federal regulations at 42 C.F.R. 431.300-431.307 dealing with safeguarding information on applicants and recipients prohibit the Department from reporting suspected transfers to law enforcement officials?

(6) What liability does the Department have if it fails to report a transfer of property of which it has knowledge? To whom should such a report be made?

(7) If property has been transferred prior to July 1, 1980 (the effective date of the law) and application for public assistance is made subsequent to July 1, 1980, has a fraudulent practice taken place?

(8) I have attached a response from the Kansas City Regional Office which indicates that for Title XIX purposes we may be out of compliance with Title XIX regulations with the implementation of this law. In light of this, can the Department take any part in the administration of this law?

H.F. 685 amends § 714.8, The Code 1979. Section 714.8 makes anyone who violates the provision thereof guilty of a fraudulent practice. The H.F. 685 amendment to § 714.8 reads as follows:

Section 1. Section seven hundred fourteen point eight (714.8), Code 1979, is amended by adding the following new subsection:

NEW SUBSECTION. Knowingly transfers or assigns a legal or equitable interest in property, as defined in section seven hundred two point fourteen (702.14) of the Code, for less than fair consideration, with the intent to obtain public assistance under title eleven (XI) of the Code, or accepts a transfer of or an assignment of a legal or equitable interest in property, as defined in section seven hundred two point fourteen (702.14) of the Code, for less than fair consideration, with the intent of enabling the party transferring the property to obtain public assistance under title eleven (XI) of the Code. 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 seven hundred fourteen point nine (714.9), seven hundred fourteen point ten (714.10) and seven hundred fourteen point eleven (714.11) of the Code shall not apply.

I. The initial question posed is at what point is a crime committed under H.F. 685. An analysis of the act reveals that there are two alternative bases for establishing

a fraudulent practice under H.F. 685, each of which contain three basic elements. They are as follows: A (1) knowing transfer or assignment of a legal or equitable interest in property, (2) for less than fair consideration, (3) with intent to obtain public assistance, or, in the alternative, it is illegal for anyone to (1) accept a transfer or assignment of a legal or equitable interest in property (2) for less than fair consideration (3) with the intent of enabling the party transferring the property to obtain public assistance.

Once a party has completed all of the three elements referred to above the crime is committed. The corpus delicti or body of the offense is complete. An illegal result has been produced and someone is criminally responsible for the results. State v. Furgison, 217 N.W.2d 613 (Iowa 1974); State v. Dunn, 199 N.W.2d 104 (Iowa 1972). The crime will be complete even though the transferor of the property will have taken no steps to seek or obtain public assistance. In other words, the crime is complete when a party, with intent to obtain public assistance, transfers property for less than fair consideration.

It must be conceded that there is nothing inherently illegal about transferring property for less than fair consideration, nor is there anything inherently illegal about transferring property with intent to defraud. But it is within the power of the legislature to create and define crime, and the only limitation on that power is that the enactment shall not infringe on constitutional rights and privileges. State v. Fuhrmann, 261 N.W.2d 475 (Iowa 1978); State v. Robbins, 257 N.W.2d 63 (Iowa 1977); State v. Watts, 186 N.W.2d 611 (Iowa 1971). Under H.F. 685 the legislature clearly limited the coverage of the act to property transfers for less than fair consideration with the intent to defraud. The gravamen of the crime is the fraudulent intent. In reviewing a similar statute, the United States Supreme Court in Prince v. United States, 352 U.S. 322, 1 L.Ed.2d 370, 77 S.Ct. 403 (1957), stated the following in discussing a statute making it illegal to enter a bank with the intent to commit larceny:

The gravamen of the offense is not the act of entering, which satisfies the terms of the statute even if it is simply walking through

Commissioner Michael V. Reagan
Page Five

an open, public door during normal
business hours. Rather the heart of
the crime is the intent to steal

1 L.Ed.2d at 374. Accord, United States v. Lankford, 573
F.2d 1051 (8th Cir. 1978); Rumfelt v. United States, 445
F.2d 134, cert. den. 92 S.Ct. 92, 404 U.S. 853, 30 L.Ed.2d
94 (7th Cir. 1971).

Accordingly, a crime is complete under H.F. 685 where a
party, with intent to receive public assistance, transfers
property for less than fair consideration.

II. You next ask if a crime has taken place where a
party disposes of property, applies for assistance, and is
found to be ineligible for assistance for reasons unrelated
to the party's resources.

As discussed in division I above, the crime occurs upon
the transfer of property for less than fair consideration
with intent to receive public assistance. Subsequent acts
are immaterial. It is not essential to the crime for the
party to seek, apply for, or receive public assistance. The
legislature did not include any such additional element in
the act, and no additional elements may be read in by
construction. Criminal statutes are to be strictly construed.
State v. Watts, 186 N.W.2d 611 (Iowa 1971); Knott v. Rawlings,
96 N.W.2d 900, 74 A.L.R.2d 868 (Iowa 1959); Lever Brothers
Company v. Erbe, 87 N.W.2d 469 (Iowa 1958).

Accordingly, success or failure in attempting to gain
public assistance is immaterial. Although evidence of an
attempt to receive public assistance or success in receiving
public assistance may be useful in establishing a fraudulent
practice under H.F. 685, it is not essential to proving any
element of the crime. Cf. Pinkney v. United States, 380
F.2d 882 (5th Cir. 1967), cert. den. 88 S.Ct. 831, 19 L.Ed.2d
876, 390 U.S. 908 (1968). Robinson v. United States Board
of Parole, 403 F. Supp. 638 (W.D. N.Y. 1975).

III. In question number three you ask what is the
department's responsibility when it has knowledge that a
transfer of property by an applicant for assistance has
taken place.

As a general proposition, information obtained by the department relative to persons receiving services or assistance from the department is to be held confidential. § 217.30, The Code 1979; 42 C.F.R. § 431.306. However, an exception to the general confidentiality requirements is contained in § 217.30(4)(b), The Code 1979. That section reads as follows:

b. Confidential information described in subsection l, paragraphs "a," "b" and "c" shall be disclosed to public officials, for use in connection with their official duties relating to law enforcement, audits and other purposes directly connected with the administration of such programs, upon written application to and with approval of the commissioner or his designee.
(emphasis added.)

In § 217.30(4)(b), the legislature mandated that confidential information "shall be disclosed" to law enforcement officials for "purposes directly connected with the administration of such programs" administered by the department. The word "shall" as used by the legislature imposes a duty to disclose confidential information to appropriate law enforcement authorities. § 4.1(36)(a), The Code 1979. The only limitation upon such disclosure is that the disclosure be for law enforcement purposes directly connected with the administration of the programs administered by the department.

The question, then, is whether the disclosure of information relative to the transfer of property by an applicant for public assistance will be for purposes directly connected with the administration of programs provided by the department? We conclude that such a disclosure will be for a proper purpose. Under federal regulations, found at 42 C.F.R. § 450.80(a)(1), (2) and (3), the department is required to pursue the elimination of fraud in its programs. That section reads as follows:

(a) State plan requirements. A State plan for medical assistance under title XIX of the Social Security Act must:

(1) Provide that the State agency will establish and maintain (i) methods and criteria for identifying situations in which a question of fraud in the program may exist, and (ii) procedures developed in cooperation with State legal authorities for referring to law enforcement officials situations in which there is valid reason to suspect that fraud has been practiced. The definition of fraud for purposes of this section will be determined in accordance with State law.

(2) Provide for methods of investigation of situations in which there is a question of fraud that do not infringe on the legal rights of persons involved and are consistent with principles recognized as affording due process of law.

(3) Provide that the State agency will designate positions that are responsible for referring situations involving suspected fraud to the proper authorities.

It is clear that the department is required to attempt to eliminate fraud from its programs. The disclosure, then, of information to law enforcement officials directed toward the elimination of fraud in the programs of services or assistance offered by the department will be for a purpose directly connected with the administration of such programs and will not violate the confidentiality requirements of § 217.30, The Code 1979. State v. Washington, 83 Wis.2d 808, 266 N.W.2d 597 (1978).

Commissioner Michael V. Reagan
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We, therefore, conclude that where the department has knowledge that an applicant for public assistance has transferred property prior to the making of such application the department should report such transfer to appropriate law enforcement officials.

IV. You next raise two questions relative to the responsibility of department employees to seek information from an applicant for public assistance relative to a property transfer. Specifically, you ask what responsibility does a local office worker have for investigating the circumstances of a suspected transfer, and must the local office worker inquire of the applicant as to whether such a transfer has taken place within a year of the application for public assistance?

Under chapters 249 and 249A, The Code 1979, the department of social services is given responsibility for the administration of programs providing for supplemental and medical assistance to eligible persons. A part of that administrative responsibility is to determine the eligibility of applicants for assistance under those programs. Accordingly, departmental employees are required to ask applicants for information that will establish their eligibility or noneligibility for assistance. Applicants for governmental benefits bear the burden of showing their eligibility in all respects. Lavine v. Milne, 424 U.S. 577, 47 L.Ed.2d 249, 96 S.Ct. 1010 (1976).

The criteria for participation in the benefit programs are set out in chapters 249 and 249A of the Code. In addition to the criteria contained in those chapters, it is apparent that the legislature, through H.F. 685, created collateral eligibility requirements for the purpose of conserving state resources for distribution among those who really require assistance. Accordingly, it is the responsibility of the department's employees to determine if applicants for assistance meet those requirements.

The additional requirement for eligibility for public assistance imposed by H.F. 685 are that the applicant has not transferred property for less than fair consideration with the intent to seek public assistance. H.F. 685 creates a presumption that a transfer of property for less than fair consideration within one year prior to the application for public assistance is a transfer with fraudulent intent. It

is, therefore, our conclusion that departmental employees must inquire as to whether the applicant for benefits has transferred property within one year prior to the application for public assistance benefits. This conclusion is supported by 42 C.F.R. § 450.80(a)(2), which requires the department to establish methods for investigating fraud.

We do not, however, mean to suggest that local office workers of the department have sole responsibility for investigating the circumstances of a property transfer. Responsibility for enforcing or causing to be enforced H.F. 685 and similar statutes is enjoined upon the county attorney. 1972 Op.Att'yGen. 374; § 249.13, The Code 1979, § 249A.14, The Code 1979. That office is, therefore, also responsible for investigating or causing to be investigated the circumstances surrounding a suspected illegal transfer of property in violation of H.F. 685. The department's responsibility, then, is to ascertain whether an applicant has transferred property for less than fair consideration within one year prior to the application for public assistance benefits. Since a presumption of a fraudulent purpose is created by such a transfer, the department should, upon discovery of such a transfer advise the county attorney. It shall then be the duty of the county attorney to investigate or cause to be investigated the circumstances surrounding the property transfer to determine if a criminal prosecution is warranted.

V. You next ask whether the confidentiality requirements imposed by federal regulations, found at 42 C.F.R. § 431.300-§ 431.307, prohibit the department from reporting suspected transfers of property to law enforcement officials.

The regulations referred to are based on Title 42 U.S.C. § 1396(a)(7), which reads as follows:

[A state plan for medical assistance must] provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan

As concluded in Division III of this opinion, the disclosure of information directed toward the elimination of fraud in a public assistance benefit program will be for a purpose directly connected with the administration of such a program. State v. Washington, 83 Wis.2d 808, 266 N.W.2d 597 (1978). Therefore, such a disclosure will not violate federal or state nondisclosure laws. Washington.

VI. You next ask what the department's liability will be if it fails to report a transfer of property of which it has knowledge, and also inquire as to whom such a report should be made where the department attempts to fulfill its reporting responsibility.

Your second question was answered in division IV of this opinion where we concluded that reports of suspected violations of H.F. 685 should be given to the county attorney.

As to the former question, there is no criminal liability for failure to make a report of a suspected criminal violation. Although § 703.3, The Code 1979, makes a person an accessory after the fact to a criminal violation where the person harbors, aids or conceals an accused person with the intent to prevent apprehension of the accused person, a mere passive failure to disclose the commission or suspected commission of a crime does not make a person an accessory after the fact. State v. Lott, 255 N.W.2d 105 (Iowa 1977); State v. Vesey, 241 N.W.2d 888 (Iowa 1976); State v. Kittelson, 164 N.W.2d 157 (Iowa 1969); State v. Philpott, 222 Iowa 1334, 271 N.W. 617 (1937); State v. Hudson, 50 Iowa 157 (1878); State v. Franks, 377 So.2d 1231 (La. 1979); State v. Atkinson, 298 N.C. 673, 259 S.E.2d 858 (1979); State v. Satterfield, 483 S.W.2d 171 (Ark. 1972); Robinson v. State, 5 Md. App. 723, 249 A.2d 504 (1969). To be an accessory after the fact there must be an overt act to prevent the apprehension of the accused. Id.; 22 C.J.S. Criminal Law §§ 95, 96, and 99 (1961).

On the other hand, the department may jeopardize federal financial participation in its public assistance programs by failing to disclose suspected fraudulent practices to law enforcement authorities. As discussed in Division III of this opinion the department is required by 42 C.F.R. § 450.80(a) to include in its state plan methods and procedures for identifying a situation in which fraud

exists, and for reporting suspected fraud to the proper authorities. The failure of the department to disclose possible fraud situations may violate the requirements of 42 C.F.R. § 450.80(a). Accordingly, the department may jeopardize federal financial participation in its public assistance benefit program for failure to abide by federal requirements for reporting fraud.

VII. Next, you ask if H.F. 685 will apply to property transfers that occurred prior to July 1, 1980. Substantively, you raise a question as to whether the statute will operate prospectively or retrospectively.

Under § 3.7, The Code 1979, statutes are effective on the first day of July following their passage, unless a specified effective date is contained in the Act, or unless approved by the governor on or after the first of July. Statutes approved by the governor on or after the first of July have an effective date on the fifteenth of August.

H.F. 685 does not contain a provision specifying its effective date. It was approved by the governor on May 19, 1980. Therefore, its effective date is July 1, 1980.

Criminal statutes may be applied prospectively only. Retrospective operation is prohibited by both the Iowa and United States Constitutions. This issue was discussed by the Iowa Supreme Court in the case of In Interest of Ponx, 276 N.W.2d 425 (Iowa 1979), where the court stated the following:

Article 1, section 9 of the United States Constitution, and article 1, section 21 of the Iowa Constitution state that no ex post facto law shall be passed. These clauses prohibit the application of a "new punitive measure to conduct already consummated where it operates to the detriment or material disadvantage of the accused. Accordingly, a punitive measure is ex post facto if it punishes past conduct which was not criminal when it occurred.

Since H.F. 685 is a criminal statute, it cannot apply to acts occurring prior to its effective date. Accordingly, we conclude that H.F. 685 should have prospective effect, and should only apply to fraudulent transfers of property that occur after July 1, 1980.

VIII. Finally, you inquire as to whether the Department of Social Services may participate in the enforcement of H.F. 685. You raise this question based on a ruling of the Department of Health and Human Services that H.F. 685 is in conflict with federal regulations governing the Supplemental Security Income and Medicaid programs, Title XVI and Title XIX of the Social Security Act, respectively.

The Medicaid program, authorized by 42 U.S.C. §§ 1396 - 1396K, is a cooperative federal-state effort designed to provide medical assistance to the needy, subject to federal statutory and regulatory guidelines. States that choose to participate in the Medicaid program must adopt a statutory plan setting forth the coverage to be extended to recipients, including the terms upon which individuals will be eligible. Further, they must extend benefits to those who are eligible for federally funded financial assistance, such as recipients of Supplemental Security Income (SSI, 42 U.S.C. § 1381 et. seq.) for the aged, blind and disabled, known as the "categorically needy". In addition thereto, participating states may exercise an option to provide for the payment of medical services to those aged, blind or disabled individuals, known as the "medically needy", whose incomes or resources, while exceeding the financial eligibility requirements for the categorically needy are insufficient to pay for necessary medical care.

Iowa has elected to participate in the above described programs by adopting chs. 249 and 249A, The Code 1979. In doing so, Iowa has agreed to abide by applicable federal statutory and regulatory guidelines.

The issue then, is whether the eligibility requirements for participating in the Iowa Medicaid program conflict with applicable federal law. You provide a copy of a letter from the Deputy Regional Medicaid Director, Department of Health and Human Services, which concludes that a conflict exists. Apparently, the Deputy Director concludes that H.F. 685, which prohibits the transfer of property to obtain eligibility under public assistance programs, conflicts with present federal regulations since it imposes more restrictive eligibility requirements for recipients of Medicaid benefits than are imposed

upon recipients of SSI benefits. The Deputy Director reasons as follows: that there is no current transfer of property prohibition under Title XVI programs; that the transfer prohibition of H.F. 685 will apply to Title XIX programs; that the State of Iowa has elected to use Title XVI eligibility requirements in making Title XIX eligibility determinations; that since H.F. 685 will apply to Title XIX programs it will add a condition of eligibility more restrictive than Title XVI eligibility requirements; that, therefore, the H.F. 685 requirements are not permissible. In light of the Deputy Director's analysis, you ask if the department can legally take any part in the administration of H.F. 685.

It is clear that applicants for Title XVI benefits are subject to resource limitations. Federal law permits a person to dispose of property in order to satisfy the resource limitations imposed under Title XVI (SSI). The applicable statute, 42 U.S.C. § 1382b(b) reads as follows:

(b) The Secretary shall prescribe the period or periods of time within which, and the manner in which, various kinds of property must be disposed of in order not to be included in determining an individual's eligibility for benefits. Any portion of the individual's benefits paid for any such period shall be conditioned upon such disposal; and any benefits so paid shall (at the time of the disposal) be considered overpayments to the extent they would not have been paid had the disposal occurred at the beginning of the period for which such benefits were paid.

Pursuant to the above statute, the Secretary, Department of Health and Human Services promulgated the following rule at 20 C.F.R. § 416.2140:

(a) Where the resources of an individual (and spouse, if any) are determined to exceed the limitations prescribed in § 416.1205, such individual (and spouse, if any) shall not be eligible for payment except under the conditions provided

in this section. Payment will be made to an individual (and spouse, if any) if:

. . . .

(3) The individual agrees in writing to:

(i) Dispose of the nonliquid resources (as defined in § 416.1201) in excess of the limitations prescribed in § 416.1205 within the time period specified in § 416.1242; and

(ii) Repay any overpayments (as defined in § 416.1244) with the proceeds of such disposition.

The Deputy Regional Medicaid Director apparently reasons that the above provisions make it clear that an applicant can transfer property for the specific purpose of attaining eligibility under Title XVI (SSI). Further, that such transfer can be for no consideration as long as it is legally binding. The interpretation of a statute by an agency charged with its enforcement is a substantial factor to be considered in construing the statute. Scarpuzza v. Blum, 426 N.Y.S.2d 505 (1980). We agree with the Director's conclusions. Sinclair v. Department Health and Social Services, 77 Wis. 322, 253 N.W.2d 245 (1977).

The Director, apparently, further reasons that H.F. 685 would apply to the Title XIX benefits, and that H.F. 685 would, because it prohibits a property transfer, add more restrictive requirements for Title XIX (Medicaid) benefits than are presently applied to Title XIX (SSI) recipients. He apparently concludes that this would violate federal law. The regulation applicable to Title XIX is found at 42 C.F.R. § 435.401(c) as follows:

(c) The agency must not use requirements for determining eligibility for optional coverage groups that are--

(1) For families and children, more restrictive than those used under the State's AFDC plan; and

(2) for aged, blind, and disabled individuals, more restrictive than those used under SSI, except for individuals receiving an optional State supplement as specified in § 425.230 or individuals in categories specified by the agency under § 435.121.

We agree with the director that a more restrictive eligibility requirement imposed on Title XIX recipients than those which are imposed on Title XVI recipients would violate the federal regulations. We do not agree, however, that H.F. 685 imposes a more restrictive eligibility requirement on Title XIX recipients than those which are imposed on Title XVI recipients. H.F. 685 applies to both Title XVI and Title XIX. There is nothing in the statute which limits its application. In fact, the clear language of the statute makes it applicable to both Title XVI and Title XIX. It applies to "public assistance under title eleven (XI) of the Code". Title XI of the Iowa Code includes chapters 249 and 249A, the statutes adopting State plans for the distribution of Title XVI and Title XIX benefits respectively. Since H.F. 685 applies to both Title XVI and Title XIX, it cannot impose more restrictive requirements on Title XIX recipients than on Title XVI recipients.

Nevertheless, the validity of H.F. 685 must be held to be suspect -- not because it imposes more restrictive eligibility requirements than are imposed by Title XVI, but rather because of the conflict that may exist between the transfer-of-assets prohibition contained in H.F. 685 and the Title XVI regulations which expressly permit such a transfer. As already discussed, under Title XVI, an applicant for benefits is free to dispose of property, and may do so for less than fair consideration, and may do so for the purpose of attaining eligibility under Title XVI programs. These are the precise things that H.F. 685 would prohibit.

On the surface, then, it would appear that the conflict between H.F. 685 and Title XVI regulations is clear. Thus, the Supremacy Clause of the United States Constitution would prohibit

its enforcement. Chapman v. Houston Welfare Rights Organization, 441 U.S. 600, 60 L.Ed.2d 508, 99 S.Ct. 1905 (1979); Avonson v. Quick Point Pencil Company, 440 U.S. 257, 59 L.Ed.2d 296, 99 S.Ct. 1096 (1979). However, courts which have addressed similar statutory provisions in other states are divided on the question of the existence of a conflict. In Dawson v. Myers, 622 F.2d 1304 (9th Cir. 1980), cert. granted in Beltran v. Myers, 49 U.S.L.W. 3332 (U.S.Sup.Ct. 1980), the court held that there was no conflict between the California transfer-of-assets rule and the regulations under the Medicaid program on the grounds that federal law did not require the California eligibility standards to be identical with SSI eligibility requirements, but rather that the standards be comparable. In Caldwell v. Blum, 621 F.2d 491 (2d Cir. 1980), the court ruled that New York's transfer-of-assets statute was not comparable with the SSI regulations and was therefore unenforceable. The weight of authority holds that the transfer-of-assets rules are unenforceable. Fabula v. Buck, 598 F.2d 869 (4th Cir. 1979); Udina v. Walsh, 440 F. Supp. 1151 (D.C. Mo. 1977); Buckner v. Maher, 424 F. Supp. 366 (D.C. Conn. 1976), affirmed 434 U.S. 898, 98 S.Ct. 290, 54 L.Ed.2d 184; Owen v. Roberts, 377 F. Supp. 45 (D.C. Fla. 1974); contra, Rhinefeld v. Blum, 66 A.D.2d 351, 412 N.Y.S.2d 526 (1979); Lerner v. Division of Family Services, 70 Wis.2d 670, 235 N.W.2d 478 (Wis. 1975); Although the weight of authority would support a conclusion that H.F. 685 is unenforceable, we decline to offer an opinion on this question as the United States Supreme Court will consider this issue this term in the case of Beltran v. Myers cited above.

We do advise, however, that the more prudent course to follow in the interim may be one of not jeopardizing federal support of the Medicaid and SSI programs. This may be done by not participating in the enforcement of H.F. 685.

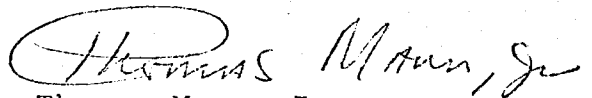
SUMMARY

In summary, we conclude that a crime is complete under H.F. 685 where a party, with intent to receive public assistance, transfers property for less than fair consideration. Success or failure in attempting to gain public assistance is immaterial to committing a crime under H.F. 685. Where the Department of Social Services has knowledge that an applicant for public assistance has transferred property one year prior to the making of such application the department should report such transfer to appropriate law enforcement officials. Department employees are required to ask applicants for public assistance for information that will establish their eligibility or non-eligibility for assistance. The county attorney is responsible for investigating or causing to be investigated suspected fraudulent practices to determine if a criminal prosecution is

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warranted. The disclosure of information to law enforcement officials directed towards the elimination of fraud in a public assistance benefit program will not violate state or federal nondisclosure laws. The mere passive failure to report suspected fraudulent practices does not constitute a crime. The Department of Social Services may jeopardize federal financial participation in its public assistance programs by failing to report suspected fraudulent practices to law enforcement authorities. H.F. 685 should have prospective effect only. We decline to comment on the enforceability of H.F. 685, but advise that participation in its enforcement may jeopardize federal financial participation in Medicaid and SSI programs.

Sincerely,



Thomas Mann, Jr.
Assistant Attorney General

TM/jam

HOUSE FILE 685

AN ACT

MAKING IT A FRAUDULENT PRACTICE TO KNOWINGLY PARTICIPATE IN THE TRANSFER OR ASSIGNMENT OF A PROPERTY INTEREST WITH THE INTENT TO OBTAIN PUBLIC ASSISTANCE FOR WHICH A PERSON IS NOT ELIGIBLE AND PROVIDING PENALTIES.

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

Section 1. Section seven hundred fourteen point eight (714.8), Code 1979, is amended by adding the following new subsection:

NEW SUBSECTION. Knowingly transfers or assigns a legal or equitable interest in property, as defined in section seven hundred two point fourteen (702.14) of the Code, for less than fair consideration, with the intent to obtain public assistance under title eleven (XI) of the Code, or accepts a transfer of or an assignment of a legal or equitable interest in property, as defined in section seven hundred two point fourteen (702.14) of the Code, for less than fair consideration, with the intent of enabling the party transferring the property to obtain public assistance under title eleven (XI) of the Code. 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 seven hundred fourteen point nine (714.9), seven hundred fourteen point ten (714.10) and seven hundred fourteen point eleven (714.11) of the Code shall not apply.

WILLIAM H. HARBOR
Speaker of the House

TERRY E. BRANSTAD
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 685, Sixty-eighth General Assembly.

BRUCE GRAHAM
Assistant Chief Clerk of the House

Approved May 19, 1980

ROBERT D. RAY
Governor