

FILED MAR 04 1992

SENATE FILE 2276  
BY COMMITTEE ON JUDICIARY  
*approved (p. 600)*  
(SUCCESSOR TO SSB 2074)

Passed Senate, Date 3/10/92 (p. 702) Passed House, Date 3/17/92 (p. 653)  
Vote: Ayes 47 Nays 0 Vote: Ayes 80 Nays 17  
Approved April 13, 1992 (p. 1272)

*Motion to reconsider 3/17 (p. 656)  
w/d 4/3 (p. 1069)*

A BILL FOR

- 1 An Act relating to consumer fraud and providing penalties and
- 2 providing an effective date.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SENATE FILE 2276

H-5385

1 Amend Senate File 2276, as passed by the Senate, as  
 2 follows:  
 3 1. Page 2, by striking lines 1 through 3 and  
 4 inserting the following: "moneys or property to the  
 5 general fund of the state. Except in an action for  
 6 the concealment,".

By VAN MAANEN of Mahaska

H-5385 FILED MARCH 19, 1992

*Ruled out of order 4/3*

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1 Section 1. Section 82.6, Code 1991, is amended to read as  
2 follows:

3 82.6 PENALTY.

4 1. Any seller who violates the provisions of this chapter  
5 shall be guilty of a simple misdemeanor.

6 2. A violation of this chapter is a violation of section  
7 714.16, subsection 2, paragraph "a".

8 Sec. 2. Section 203B.5, Code 1991, is amended by adding  
9 the following new subsection:

10 NEW SUBSECTION. 5. A violation of this chapter is a  
11 violation of section 714.16, subsection 2, paragraph "a".

12 Sec. 3. Section 714.16, subsection 7, Code Supplement  
13 1991, is amended to read as follows:

14 7. A civil action pursuant to this section shall be by  
15 equitable proceedings. If it appears to the attorney general  
16 that a person has engaged in, is engaging in, or is about to  
17 engage in a practice declared to be unlawful by this section,  
18 the attorney general may seek and obtain in an action in a  
19 district court a temporary restraining order, preliminary  
20 injunction, or permanent injunction prohibiting the person  
21 from continuing the practice or engaging in the practice or  
22 doing an act in furtherance of the practice. The court may  
23 make orders or judgments as necessary to prevent the use or  
24 employment by a person of any prohibited practices, or which  
25 are necessary to restore to any person in interest any moneys  
26 or property, real or personal, which have been acquired by  
27 means of a practice declared to be unlawful by this section,  
28 including the appointment of a receiver in cases of  
29 substantial and willful violation of this section. If a  
30 person has acquired moneys or property by any means declared  
31 to be unlawful by this section and if the cost of  
32 administering restitution outweighs the benefit to consumers  
33 or consumers entitled to the restitution cannot be located  
34 through reasonable efforts, the court may order disgorgement  
35 of moneys or property acquired by the person by awarding the

1 moneys or property to the state to be used by the attorney  
2 general for the administration and implementation of this  
3 section. Except in an action for the concealment,  
4 suppression, or omission of a material fact with intent that  
5 others rely upon it, it is not necessary in an action for  
6 restitution or an injunction, to allege or to prove reliance,  
7 damages, intent to deceive, or that the person who engaged in  
8 an unlawful act had knowledge of the falsity of the claim or  
9 ignorance of the truth. A claim for restitution may be proved  
10 by any competent evidence, including evidence that would be  
11 appropriate in a class action.

12 In addition to the remedies otherwise provided for in this  
13 subsection, the attorney general may request and the court may  
14 impose a civil penalty not to exceed forty thousand dollars  
15 per violation against a person found by the court to have  
16 engaged in a method, act, or practice declared unlawful under  
17 this section; provided, however, a course of conduct shall not  
18 be considered to be separate and different violations merely  
19 because the conduct is repeated to more than one person. In  
20 addition, on the motion of the attorney general or its own  
21 motion, the court may impose a civil penalty of not more than  
22 five thousand dollars for each day of intentional violation of  
23 a temporary restraining order, preliminary injunction, or  
24 permanent injunction issued under authority of this section.  
25 A penalty imposed pursuant to this subsection is in addition  
26 to any penalty imposed pursuant to section 537.6113. Civil  
27 penalties ordered pursuant to this subsection shall be paid to  
28 the treasurer of state to be deposited in the general fund of  
29 the state.

30 Sec. 4. EFFECTIVE DATE. This Act, being deemed of  
31 immediate importance, takes effect upon enactment.

32 EXPLANATION

33 This bill provides that violations of chapter 82, governing  
34 door-to-door sales, and chapter 203B, the Iowa drug, device,  
35 and cosmetic Act, are unfair practices under the Iowa consumer

1 fraud law. Also the bill provides that under certain  
2 circumstances the courts have discretion to order a person who  
3 commits consumer fraud to turn over all moneys or property  
4 obtained through the person's illegal conduct to the state for  
5 use by the attorney general in administering the consumer  
6 fraud law. Also, the bill takes effect upon enactment.

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SENATE FILE 2276  
FISCAL NOTE

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A fiscal note for Senate File 2276 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 2276 provides that violations of consumer fraud laws relating to door-to-door sales and health laws, are unfair practices under the Iowa consumer fraud law. In certain circumstances, courts have discretion to order a person who commits consumer fraud to turn over all money or property obtained through illegal conduct to the State. Senate File 2276 takes effect upon enactment.

Assumptions

1. No additional staff is required in the Attorney General's Office.
2. Enforcement would become more efficient.

Fiscal Impact

The Attorney General's Office estimates that Senate File 2276 will generate an additional \$100,000 annually for both FY 1993 and FY 1994. The receipts are generated by recoveries from consumer fraud offenders.

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Source: Office of the Attorney General

(LSB 5150SV, BAL)

FILED MARCH 9, 1992

BY DENNIS PROUTY, FISCAL DIRECTOR

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CONNOLLY, CH.  
FURMAN 28-97  
DRAKE

SSB 2074

JUDICIARY — Now —

SENATE/HOUSE FILE 2276  
BY (PROPOSED ATTORNEY GENERAL  
BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

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TLSB 5150DP 74

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7 BACKGROUND STATEMENT

8 SUBMITTED BY THE AGENCY

9 This bill is in response to the decision of the Iowa  
10 supreme court in Iowa v. Santa Rosa Sales and Marketing, Inc.,  
11 475 N.W.2d 210 (Iowa 1991). This decision rejected the  
12 proposition that violations of chapter 82 governing door-to-  
13 door sales were also violations of the Iowa consumer fraud law  
14 and thus actionable by the attorney general. This means that  
15 consumers are now required to bring individual actions to  
16 recover money lost through violations of chapter 82. Many  
17 consumers lack sufficient resources to do this and case-by-  
18 case enforcement does not provide sufficient incentive for con-  
19 artists to obey the law.

20 Although not specifically referred to in the Santa Rosa  
21 opinion, violations of the drug, device, and cosmetic Act  
22 raise similar enforcement issues, primarily in relation to  
23 efforts to protect Iowans from health fraud. Therefore, this  
24 bill also includes language making violations of that Act  
25 actionable by the attorney general.

26 The supreme court in Santa Rosa also determined that the  
27 district court did not have any authority to require a  
28 defendant found liable for consumer fraud to disgorge money  
29 acquired from consumers who could no longer be located, and  
30 that the money therefore had to be returned to the defendant.  
31 This bill would permit a court to require disgorgement of the  
32 money obtained by fraud where consumers to whom restitution is  
33 owed cannot be located. Permitting violators to keep such  
34 funds provides them with an incentive to produce incomplete or  
35 inaccurate customer (victim) lists, and encourages delay in



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1 providing relief, since the ability to locate people on a  
2 customer list diminishes over time.

3 This bill also invites the court to weigh the benefits of  
4 consumer restitution as against the costs of administering the  
5 restitution, and to order money illegally obtained from  
6 consumers to be used to enforce the consumer fraud law where  
7 the benefits of restitution are outweighed by the costs. For  
8 example, a court might determine that the costs of sending  
9 \$1.00 checks to one thousand consumers outweighs the marginal  
10 benefit to consumers, and that the wrongdoer should instead  
11 pay the \$1,000 to the state to be used to protect consumers  
12 and prevent further such losses. This will provide the  
13 necessary deterrence to protect Iowa consumers and legitimate  
14 businesses and relieve some of the burden on taxpayers by  
15 requiring the money turned over to the attorney general to be  
16 used for the purposes of enforcing the consumer fraud law.

17 Because this bill is in the nature of corrective  
18 legislation, intended to restore to the office of the attorney  
19 general remedial and enforcement options formerly exercised by  
20 that office, this law will take effect immediately upon  
21 enactment.

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SENATE FILE 2276

AN ACT

RELATING TO CONSUMER FRAUD AND PROVIDING PENALTIES AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 82.6, Code 1991, is amended to read as follows:

82.6 PENALTY.

1. Any seller who violates the provisions of this chapter shall be guilty of a simple misdemeanor.

2. A violation of this chapter is a violation of section 714.16, subsection 2, paragraph "a".

Sec. 2. Section 203B.5, Code 1991, is amended by adding the following new subsection:

NEW SUBSECTION. 5. A violation of this chapter is a violation of section 714.16, subsection 2, paragraph "a".

Sec. 3. Section 714.16, subsection 7, Code Supplement 1991, is amended to read as follows:

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 restitution outweighs the benefit to consumers or consumers entitled to the restitution 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 restitution 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 restitution 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.

Sec. 4. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

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MICHAEL E. GRONSTAL  
President of the Senate

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ROBERT C. ARNOULD  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2276, Seventy-fourth General Assembly.

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JOHN F. DWYER  
Secretary of the Senate

Approved April 13, 1992

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TERRY E. BRANSTAD  
Governor