

(P. 558) 3/10/94 House - Judiciary

FILED MAR 4 1994

SENATE FILE 2272

BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 2162)

(P. 621)
Passed Senate, Date 3-10-94

(P. 1555)
Passed House, Date 4-14-94

Vote: Ayes 47 Nays _____

Vote: Ayes 96 Nays 0

Approved May 19, 1994

A BILL FOR

1 An Act relating to prize promotions by creating criminal and
2 civil penalties and creating a private cause of action.

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

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

SI 2214

1 Section 1. Section 714.8, Code 1993, is amended by adding
2 the following new subsection:

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

11 Sec. 2. NEW SECTION. 714B.1 DEFINITIONS.

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

14 1. "Advertisement" means as defined in section 714.16,
15 subsection 1.

16 2. "Merchandise" means as defined in section 714.16,
17 subsection 1.

18 3. "Person" means as defined in section 714.16, subsection
19 1.

20 4. "Prize" means a gift, award, cash award, or other
21 merchandise of value that is offered or awarded to a person in
22 a real or purported contest, competition, sweepstakes, puzzle,
23 drawing, scheme, plan, or other selection process.

24 5. "Retail value" of a prize means the following:

25 a. A price at which the sponsor of the prize can
26 substantiate that a substantial number of the items of
27 merchandise have been sold to the public in the year preceding
28 the date of the written prize notice in the regular course of
29 business other than through a prize promotion.

30 b. No more than one and one-half times the amount the
31 sponsor paid for the prize in a bona fide purchase from an
32 unaffiliated seller, if the sponsor is unable to substantiate
33 a price pursuant to paragraph "a".

34 6. "Sponsor" means a person who awards another person a
35 prize or who allows the person to receive, use, compete for,

1 or obtain information about a prize.

2 Sec. 3. NEW SECTION. 714B.2 WRITTEN PRIZE NOTICE --
3 CONTENT -- FORM.

4 1. a. A sponsor of a prize shall not require a person to
5 purchase merchandise or pay or donate money as a condition of
6 awarding a prize or as a condition of allowing the person to
7 receive, use, compete for, or obtain information about a
8 prize, unless the person has first received a written prize
9 notice which satisfies the requirements of subsections 2 and
10 3. A sponsor shall not create the reasonable impression that
11 such a purchase, payment, or donation is required, unless the
12 person has first received a written prize notice which
13 satisfies the requirements of subsections 2 and 3.

14 b. For purposes of this chapter, a sponsor is deemed to
15 have created the reasonable impression that a payment,
16 purchase, or donation is required as a condition of awarding
17 the person a prize, or as a condition of allowing the person
18 to receive, use, compete for, or obtain information about a
19 prize, if the sponsor does any of the following:

20 (1) Fails to clearly and conspicuously disclose that a
21 purchase, payment, or donation is not required in immediate
22 proximity to, and in the same type and boldness as, each
23 written reference to a purchase, payment, or donation, or in
24 immediate proximity to, and in the same audio volume as, each
25 verbal reference to a purchase, payment, or donation.

26 (2) Uses a verbal or written solicitation, or other
27 advertisement which contains any express or implied
28 representations that a participant's likelihood of receiving a
29 prize or other favorable treatment is enhanced by making a
30 purchase, payment, or donation.

31 (3) Uses a verbal or written solicitation, course of
32 solicitation, or other advertisement which when considered in
33 its totality creates an overall impression that a
34 participant's likelihood of receiving a prize or other
35 favorable treatment is enhanced by making a purchase, payment,

1 or donation.

2 c. A written prize notice satisfying the requirements of
3 subsections 2 and 3 must precede every verbal advertisement by
4 a sponsor which requires a person to purchase merchandise or
5 pay or donate money, or gives the reasonable impression that
6 such a purchase, payment, or donation is required, as a
7 condition of awarding a prize, or as a condition of allowing a
8 person to receive, use, compete for, or obtain information
9 about a prize.

10 d. Each written advertisement by a sponsor which requires
11 a person to purchase merchandise or pay or donate money, or
12 gives the reasonable impression that such a purchase, payment,
13 or donation is required as a condition of awarding a prize or
14 as a condition of allowing a person to receive, use, compete
15 for, or obtain information about a prize, must satisfy the
16 requirements of subsections 2 and 3.

17 2. A written prize notice must contain each of the
18 following:

19 a. The true name or names of the sponsor and the street
20 address of the sponsor's actual principal place of business.

21 b. The retail value of each prize the person receiving the
22 notice has been selected to receive or may be eligible to
23 receive.

24 c. A statement of the odds the person has of receiving
25 each prize identified in the notice.

26 d. Any requirement that the person pay shipping or
27 handling fees, or any other charges to obtain or use a prize,
28 including the nature and amount of the charge.

29 e. A statement that a restriction applies and a
30 description of the restriction, if receipt of the prize is
31 subject to a restriction.

32 f. Any limitations on eligibility to receive a prize.

33 g. If a sponsor represents that a person is a winner or
34 finalist, has been specially selected, is in first place, or
35 is otherwise among a limited group of persons with an enhanced

1 likelihood of receiving a prize; or that a person is entering
2 a contest, sweepstakes, drawing, or other competitive
3 enterprise from which a single winner or select group of
4 winners will receive a prize, and if the notice is not
5 prohibited under section 714B.3, subsection 1, paragraph "c",
6 a statement of the maximum number of persons in the group or
7 purported group with this enhanced likelihood of receiving a
8 prize.

9 h. Any requirement or invitation for the person to view,
10 hear, or attend a sales presentation in order to claim a
11 prize, a good faith estimate of the length of the sales
12 presentation, a description of the merchandise that is the
13 subject of the sales presentation, and the total cost of such
14 merchandise.

15 3. The information required in the written prize notice
16 pursuant to subsection 2 must be provided as follows:

17 a. The retail value and the statement of odds required
18 under subsection 2 must be stated in immediate proximity to
19 each identification of a prize on the written notice, and must
20 be in the same size and boldness of type as the reference to
21 the prize.

22 b. The retail value must be stated in Arabic numerals, and
23 must be in the following form: retail value: \$_____.

24 c. The statement of odds must include, for each prize, the
25 total number of prizes to be given away and the total number
26 of written prize notices to be distributed. The number of
27 prizes and written prize notices must be stated in Arabic
28 numerals. The statement of odds must be in the following
29 form: _____ (number of prizes) out of _____ (notices
30 distributed).

31 d. If a person is required to pay shipping or handling
32 fees or any other charges to obtain a prize, to be eligible to
33 obtain a prize, or to participate in a contest, a statement
34 must appear in immediate proximity to each listing of the
35 prize in the written prize notice in not less than ten-point

1 boldface type as follows: YOU MUST PAY \$_____ IN ORDER TO
2 RECEIVE OR USE THIS ITEM, or, YOU MUST PAY \$_____ IN ORDER TO
3 COMPETE FOR THIS ITEM, as applicable.

4 e. The information required under subsection 2, paragraphs
5 "e", "f", and "h" must be on the first page of the written
6 prize notice in not less than ten-point boldface type.

7 f. A statement required under subsection 2, paragraph "g",
8 must appear in immediate proximity to each representation that
9 the person is among a group of persons with an enhanced
10 likelihood of receiving a prize, and must be in the same type
11 size and boldness as the representation.

12 Sec. 4. NEW SECTION. 714B.3 PROHIBITED PRACTICES.

13 1. A sponsor of a prize shall not do any of the following:

14 a. Deliver a written prize notice, or an envelope
15 containing a written prize notice, that contains language, or
16 is designed in a manner, that would have the tendency or
17 capacity to mislead intended recipients as to the source of
18 the written prize notice. This prohibition includes, but is
19 not limited to, a written prize notice or envelope which
20 indicates that the notice or envelope originates from a
21 government agency, public utility, insurance company, consumer
22 reporting agency, debt collector, or law firm, unless the
23 written prize notice or envelope originates from such source.

24 b. Represent directly or by implication that the number of
25 persons eligible for the prize is limited or that a person has
26 been selected to receive a particular prize, unless the
27 representation is true.

28 c. Represent that a person is a winner or finalist, has
29 been specially selected, is in first place, or is otherwise
30 among a limited group of persons with an enhanced likelihood
31 of receiving a prize, or that a person is entering a contest,
32 sweepstakes, drawing, or other competitive enterprise, from
33 which a single winner or select group of winners will receive
34 a prize, when in fact the enterprise is a promotional scheme
35 designed to make contact with prospective customers and all or

1 a substantial number of those receiving the notice are awarded
2 the same prize.

3 d. Represent directly or by implication that a person will
4 have an increased chance of receiving a prize by making
5 multiple or duplicate purchases, payments or donations, or by
6 entering a game, drawing, sweepstakes, or other contest more
7 than one time, unless the representation is true. A sponsor
8 is deemed to have made such representation if the sponsor
9 delivers one or more prize notices to a person after the
10 person has already made a purchase, payment, or donation to
11 the sponsor for the same promotion, or has already entered the
12 same game, drawing, sweepstakes, or other contest, unless the
13 sponsor can demonstrate a bona fide error even though the
14 sponsor has implemented procedures reasonably designed to
15 prevent such duplication.

16 e. Represent directly or by implication that a person is
17 being notified a second or final time of the opportunity to
18 receive or compete for a prize, unless the representation is
19 true.

20 f. Represent directly or by implication that a prize
21 notice is urgent, or otherwise convey an impression of urgency
22 by use of description, narrative copy, phrasing on an
23 envelope, or similar method, unless there is a limited time
24 period in which the recipient must take some action to claim
25 or be eligible to receive a prize, and the date by which such
26 action is required appears in immediate proximity to each
27 representation of urgency and in the same type size and
28 boldness as each representation of urgency.

29 g. Knowingly sell, rent, exchange, transfer, or otherwise
30 furnish to or purchase from other persons, personal data
31 regarding Iowans who disclosed personal data, purchased
32 merchandise, or made a payment or donation in connection with
33 a prize promotion which is not in compliance with this
34 chapter. For purposes of this chapter, personal data shall
35 include, but not be limited to, name, address, phone number,

1 age, birthdate, sex, credit card ownership, credit card
2 numbers, bank account numbers, dollars spent on prize
3 promotions which are not in compliance with this chapter, and
4 credit or financial statements.

5 2. If a written prize notice requires or invites a person
6 to view, hear, or attend a sales presentation in order to
7 claim a prize, the sales presentation shall not begin until
8 the sponsor does all of the following:

9 a. Informs the person of the prize, if any, that has been
10 awarded to the person.

11 b. If the person is awarded a prize, delivers to the
12 person the prize or the item selected by the person as
13 provided in section 714B.4, if the prize awarded is not
14 available.

15 Sec. 5. NEW SECTION. 714B.4 PRIZE AWARD REQUIRED.

16 A sponsor of a prize who represents to a person that the
17 person has been awarded a prize shall, no later than thirty
18 days after making the representation, provide the person with
19 the prize; with a voucher, certificate, or other document
20 indicating the person's unconditional right to receive the
21 prize; or with either of the following items as selected by
22 the person:

23 1. Any other prize listed in the written prize notice that
24 is available and that is of equal or greater value.

25 2. The retail value of the prize, as stated in the written
26 notice, in the form of cash, a money order, or a certified
27 check.

28 Sec. 6. NEW SECTION. 714B.5 INFORMATION REQUESTED BY
29 ATTORNEY GENERAL.

30 A sponsor shall provide, upon the request of the attorney
31 general made within one year after the termination date of the
32 promotion, a record of the names and addresses of all winners
33 of prizes of one hundred dollars or more.

34 Sec. 7. NEW SECTION. 714B.6 CRIMINAL PENALTIES.

35 A person who intentionally violates this chapter is guilty

1 of an aggravated misdemeanor. A person intentionally violates
2 this chapter if the act or acts in violation occur or continue
3 after the attorney general or county attorney has notified the
4 person by certified mail that the person is in violation of
5 this chapter.

6 Sec. 8. NEW SECTION. 714B.7 CIVIL ENFORCEMENT.

7 A violation of this chapter constitutes a violation of
8 section 714.16, subsection 2, paragraph "a".

9 Sec. 9. NEW SECTION. 714B.8 PRIVATE ACTION.

10 In addition to any other remedies, a person suffering
11 pecuniary loss as a result of a violation of this chapter by
12 another person may bring an action against such other person
13 to recover all of the following:

14 1. The greater of five hundred dollars or twice the amount
15 of the pecuniary loss.

16 2. Costs and reasonable attorney fees.

17 Sec. 10. NEW SECTION. 714B.9 COMPLIANCE WITH OTHER LAWS.

18 This chapter shall not be construed to permit an activity
19 prohibited by section 714.16, or rules adopted pursuant to
20 that section, or by chapter 725, or other applicable law.

21 Sec. 11. NEW SECTION. 714B.10 EXEMPTIONS.

22 This chapter does not apply to the following:

23 1. Advertising by sponsors registered pursuant to chapter
24 557B, licensed pursuant to chapter 99B, or regulated pursuant
25 to chapters 99D, 99E, or 99F.

26 2. Advertising in connection with the sale or purchase of
27 books, recordings, videocassettes, periodicals, and similar
28 goods through a membership group or club which is regulated by
29 the federal trade commission pursuant to code of federal
30 regulations, Title 16, part 4525.1, concerning use of negative
31 option plans by sellers in commerce.

32 3. Advertising in connection with the sale or purchase of
33 goods ordered through a contractual plan or arrangement such
34 as a continuity plan, subscription arrangement, or a single
35 sale or purchase series arrangement under which the seller

1 ships goods to a consumer who has consented in advance to
2 receive the goods and who, after the receipt of the goods, is
3 given an opportunity to examine the goods and to receive a
4 full refund of charges for the goods upon return of the goods
5 undamaged.

6 4. Advertising in connection with sales by a catalog
7 seller. For purposes of this section "catalog seller" means a
8 person at least fifty percent of whose annual revenues are
9 derived from the sale of merchandise sold in connection with
10 the distribution of catalogs of at least twenty-four pages,
11 which contain written descriptions or illustrations and sale
12 prices for each item of merchandise and which are distributed
13 in more than one state with a total annual distribution of at
14 least two hundred fifty thousand.

15 EXPLANATION

16 The bill amends section 714.8 to provide that obtaining or
17 attempting to obtain the transfer of possession, control, or
18 ownership of the property of another by deception through com-
19 munications conducted primarily by telephone is a fraudulent
20 practice.

21 The bill creates a new chapter 714B relating to the
22 regulation of unsolicited promotions offering prizes to
23 consumers. Section 714B.1 establishes definitions for terms
24 used in the chapter. Section 714B.2 requires a written notice
25 containing certain information to be sent to an individual
26 prior to requesting or accepting any money in connection with
27 the prize notification. Section 714B.2 also sets out specific
28 information which must be included in the written notice and
29 the manner in which the information must be presented. The
30 section contains certain prohibitions related to how the
31 information must be given to the individual notified.
32 Information required includes the chances of winning a
33 particular prize, number of notifications delivered, value of
34 the items to be given away as prizes, and the name of the
35 sponsor and solicitor to the offer.

1 Section 715B.3 sets out specific practices in which the
2 sponsor is prohibited from engaging.

3 Section 714B.4 requires the solicitor to provide an
4 alternate prize if the prize indicated in the notice is not
5 available.

6 Section 714B.5 provides that a sponsor is to provide a
7 record of the names and addresses of all winners of \$100 or
8 more, upon the request of the attorney general.

9 Sections 714B.6 through 714B.8 provide for civil and
10 criminal penalties. Section 714B.9 provides that new chapter
11 714B is not to be construed to permit activities prohibited
12 under section 714.16 or chapter 725.

13 Section 714B.10 defines activities which are exempt from
14 the chapter.

15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

SENATE FILE 2272

S-5128

1 Amend Senate File 2272 as follows:

2 1. Page 8, by striking lines 24 and 25, and
3 inserting the following: "557B."

4 2. Page 9, by inserting after line 14 the
5 following:

6 "Sec. ____ . IOWA LOTTERY DISCONTINUED --
7 DISPOSITION OF PROPERTY -- EMPLOYEES TRANSFERRED OR
8 LAID OFF.

9 1. The Iowa lottery board shall discontinue all
10 lottery games established pursuant to chapter 99E
11 effective July 1, 1994. The lottery board shall
12 provide for the termination of all contracts extending
13 beyond July 1, 1994, and provide for the disposition
14 of all property leased or owned by the lottery
15 division.

16 2. Any employee of the lottery division employed
17 pursuant to chapter 19A and whose duty assignment is
18 terminated by this Act, may be transferred to other
19 duties within the department of revenue and finance,
20 reassigned to other duties in another state department
21 or agency, or terminated. The personnel commission
22 shall adopt rules to carry out the transfer of
23 employees under this Act and to carry out subsequent
24 reclassification, reassignments, or terminations made
25 necessary by this Act. The personnel commission shall
26 arbitrate and decide a written appeal made by an
27 employee concerning a transfer, reassignment,
28 reclassification, or termination made necessary by
29 this Act. An employee shall not lose benefits
30 accrued, including but not limited to salary,
31 retirement, vacation, or sick leave because of a
32 transfer or reassignment.

33 3. The members of the lottery board, the
34 commissioner, and any additional employees deemed
35 necessary by the board may continue employment on or
36 after July 1, 1994, to provide for the orderly
37 discontinuation of the lottery games. However, not
38 later than September 30, 1994, the terms of office of
39 the lottery board members and the employment of the
40 commissioner and any other employees remaining on or
41 after July 1, 1994, shall terminate. Any matters
42 regarding the termination of the lottery games
43 established under chapter 99E which remain on October
44 1, 1994, are the responsibility of the director of
45 revenue and finance. The director of revenue and
46 finance shall complete the discontinuation of the
47 lottery games as expeditiously as possible.

48 Sec. ____ . REPEALS.

49 1. Chapters 99B, 99D, 99E, and 99F, Code 1993, are
50 repealed.

S-5128

-1-

(P.601) out of order
3-9-94

S-5128

Page 2

- 1 2. Sections 99D.17, 99E.10, 99F.4, and 99F.7, Code
- 2 Supplement 1993, are repealed."
- 3 3. By renumbering as necessary.

By JIM LIND

S-5128 FILED MARCH 9, 1994
RULED OUT OF ORDER

SENATE FILE 2272

S-5130

- 1 Amend Senate File 2272 as follows:
- 2 1. By striking page 6, line 29 through page 7,
- 3 line 4, and inserting the following:
- 4 "g. Knowingly sell, rent, exchange, transfer, or
- 5 otherwise furnish to or purchase from other persons,
- 6 financial data regarding Iowans disclosed in
- 7 connection with a prize promotion not in compliance
- 8 with this chapter. For purposes of this chapter,
- 9 financial data includes credit card numbers, bank
- 10 account numbers, other payment device numbers, and
- 11 dollars spent on prize promotions which are not in
- 12 compliance with this chapter.
- 13 h. Request an individual to disclose the
- 14 individual's phone number, age, birthdate, credit card
- 15 ownership, or financial data in connection with a
- 16 prize promotion which is not in compliance with this
- 17 chapter."

By AL STURGEON

S-5130 FILED MARCH 9, 1994
ADOPTED

SENATE FILE 2272

S-5141

- 1 Amend Senate File 2272 as follows:
- 2 1. Page 3, line 17, by inserting after the word
- 3 "notice" the following: "or lottery ticket or share".
- 4 2. Page 3, line 25, by inserting after the word
- 5 "notice" the following: "or on the lottery ticket or
- 6 share".
- 7 3. Page 4, by inserting after line 14 the
- 8 following:
- 9 "i. A statement that participating in a contest or
- 10 other selection process for a prize is strictly for
- 11 recreational purposes."
- 12 4. Page 4, line 15, by inserting after the word
- 13 "notice" the following: "or on a lottery ticket or
- 14 share".
- 15 5. Page 5, line 5, by striking the word and
- 16 letter "and "h"" and inserting the following: ""h"
- 17 and "i"".
- 18 6. Page 5, line 14, by inserting after the word
- 19 "notice," the following: "lottery ticket or share,".
- 20 7. Page 8, line 25, by striking the number
- 21 "99E,".

By BRAD BANKS

S-5141 FILED MARCH 10, 1994
RULED OUT OF ORDER

(P. 858) 3/23/94 House - Do Pass

SENATE FILE **2272**
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 2162)

(AS AMENDED AND PASSED BY THE SENATE MARCH 10, 1994)
_____ - New Language by the Senate

Passed Senate, Date _____ Passed House, Date 4-14-94
Vote: Ayes _____ Nays _____ Vote: Ayes 96 Nays 0
Approved May 19, 1994

A BILL FOR

1 An Act relating to prize promotions by creating criminal and
2 civil penalties and creating a private cause of action.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21

S.F. 2272

1 Section 1. Section 714.8, Code 1993, is amended by adding
2 the following new subsection:

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

11 Sec. 2. NEW SECTION. 714B.1 DEFINITIONS.

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

14 1. "Advertisement" means as defined in section 714.16,
15 subsection 1.

16 2. "Merchandise" means as defined in section 714.16,
17 subsection 1.

18 3. "Person" means as defined in section 714.16, subsection
19 1.

20 4. "Prize" means a gift, award, cash award, or other
21 merchandise of value that is offered or awarded to a person in
22 a real or purported contest, competition, sweepstakes, puzzle,
23 drawing, scheme, plan, or other selection process.

24 5. "Retail value" of a prize means the following:

25 a. A price at which the sponsor of the prize can
26 substantiate that a substantial number of the items of
27 merchandise have been sold to the public in the year preceding
28 the date of the written prize notice in the regular course of
29 business other than through a prize promotion.

30 b. No more than one and one-half times the amount the
31 sponsor paid for the prize in a bona fide purchase from an
32 unaffiliated seller, if the sponsor is unable to substantiate
33 a price pursuant to paragraph "a".

34 6. "Sponsor" means a person who awards another person a
35 prize or who allows the person to receive, use, compete for,

1 or obtain information about a prize.

2 Sec. 3. NEW SECTION. 714B.2 WRITTEN PRIZE NOTICE --
3 CONTENT -- FORM.

4 1. a. A sponsor of a prize shall not require a person to
5 purchase merchandise or pay or donate money as a condition of
6 awarding a prize or as a condition of allowing the person to
7 receive, use, compete for, or obtain information about a
8 prize, unless the person has first received a written prize
9 notice which satisfies the requirements of subsections 2 and
10 3. A sponsor shall not create the reasonable impression that
11 such a purchase, payment, or donation is required, unless the
12 person has first received a written prize notice which
13 satisfies the requirements of subsections 2 and 3.

14 b. For purposes of this chapter, a sponsor is deemed to
15 have created the reasonable impression that a payment,
16 purchase, or donation is required as a condition of awarding
17 the person a prize, or as a condition of allowing the person
18 to receive, use, compete for, or obtain information about a
19 prize, if the sponsor does any of the following:

20 (1) Fails to clearly and conspicuously disclose that a
21 purchase, payment, or donation is not required in immediate
22 proximity to, and in the same type and boldness as, each
23 written reference to a purchase, payment, or donation, or in
24 immediate proximity to, and in the same audio volume as, each
25 verbal reference to a purchase, payment, or donation.

26 (2) Uses a verbal or written solicitation, or other
27 advertisement which contains any express or implied
28 representations that a participant's likelihood of receiving a
29 prize or other favorable treatment is enhanced by making a
30 purchase, payment, or donation.

31 (3) Uses a verbal or written solicitation, course of
32 solicitation, or other advertisement which when considered in
33 its totality creates an overall impression that a
34 participant's likelihood of receiving a prize or other
35 favorable treatment is enhanced by making a purchase, payment,

1 or donation.

2 c. A written prize notice satisfying the requirements of
3 subsections 2 and 3 must precede every verbal advertisement by
4 a sponsor which requires a person to purchase merchandise or
5 pay or donate money, or gives the reasonable impression that
6 such a purchase, payment, or donation is required, as a
7 condition of awarding a prize, or as a condition of allowing a
8 person to receive, use, compete for, or obtain information
9 about a prize.

10 d. Each written advertisement by a sponsor which requires
11 a person to purchase merchandise or pay or donate money, or
12 gives the reasonable impression that such a purchase, payment,
13 or donation is required as a condition of awarding a prize or
14 as a condition of allowing a person to receive, use, compete
15 for, or obtain information about a prize, must satisfy the
16 requirements of subsections 2 and 3.

17 2. A written prize notice must contain each of the
18 following:

19 a. The true name or names of the sponsor and the street
20 address of the sponsor's actual principal place of business.

21 b. The retail value of each prize the person receiving the
22 notice has been selected to receive or may be eligible to
23 receive.

24 c. A statement of the odds the person has of receiving
25 each prize identified in the notice.

26 d. Any requirement that the person pay shipping or
27 handling fees, or any other charges to obtain or use a prize,
28 including the nature and amount of the charge.

29 e. A statement that a restriction applies and a
30 description of the restriction, if receipt of the prize is
31 subject to a restriction.

32 f. Any limitations on eligibility to receive a prize.

33 g. If a sponsor represents that a person is a winner or
34 finalist, has been specially selected, is in first place, or
35 is otherwise among a limited group of persons with an enhanced

1 likelihood of receiving a prize; or that a person is entering
2 a contest, sweepstakes, drawing, or other competitive
3 enterprise from which a single winner or select group of
4 winners will receive a prize, and if the notice is not
5 prohibited under section 714B.3, subsection 1, paragraph "c",
6 a statement of the maximum number of persons in the group or
7 purported group with this enhanced likelihood of receiving a
8 prize.

9 h. Any requirement or invitation for the person to view,
10 hear, or attend a sales presentation in order to claim a
11 prize, a good faith estimate of the length of the sales
12 presentation, a description of the merchandise that is the
13 subject of the sales presentation, and the total cost of such
14 merchandise.

15 3. The information required in the written prize notice
16 pursuant to subsection 2 must be provided as follows:

17 a. The retail value and the statement of odds required
18 under subsection 2 must be stated in immediate proximity to
19 each identification of a prize on the written notice, and must
20 be in the same size and boldness of type as the reference to
21 the prize.

22 b. The retail value must be stated in Arabic numerals, and
23 must be in the following form: retail value: \$_____.

24 c. The statement of odds must include, for each prize, the
25 total number of prizes to be given away and the total number
26 of written prize notices to be distributed. The number of
27 prizes and written prize notices must be stated in Arabic
28 numerals. The statement of odds must be in the following
29 form: _____ (number of prizes) out of _____ (notices
30 distributed).

31 d. If a person is required to pay shipping or handling
32 fees or any other charges to obtain a prize, to be eligible to
33 obtain a prize, or to participate in a contest, a statement
34 must appear in immediate proximity to each listing of the
35 prize in the written prize notice in not less than ten-point

1 boldface type as follows: YOU MUST PAY \$ _____ IN ORDER TO
2 RECEIVE OR USE THIS ITEM, or, YOU MUST PAY \$ _____ IN ORDER TO
3 COMPETE FOR THIS ITEM, as applicable.

4 e. The information required under subsection 2, paragraphs
5 "e", "f", and "h" must be on the first page of the written
6 prize notice in not less than ten-point boldface type.

7 f. A statement required under subsection 2, paragraph "g",
8 must appear in immediate proximity to each representation that
9 the person is among a group of persons with an enhanced
10 likelihood of receiving a prize, and must be in the same type
11 size and boldness as the representation.

12 Sec. 4. NEW SECTION. 714B.3 PROHIBITED PRACTICES.

13 1. A sponsor of a prize shall not do any of the following:

14 a. Deliver a written prize notice, or an envelope
15 containing a written prize notice, that contains language, or
16 is designed in a manner, that would have the tendency or
17 capacity to mislead intended recipients as to the source of
18 the written prize notice. This prohibition includes, but is
19 not limited to, a written prize notice or envelope which
20 indicates that the notice or envelope originates from a
21 government agency, public utility, insurance company, consumer
22 reporting agency, debt collector, or law firm, unless the
23 written prize notice or envelope originates from such source.

24 b. Represent directly or by implication that the number of
25 persons eligible for the prize is limited or that a person has
26 been selected to receive a particular prize, unless the
27 representation is true.

28 c. Represent that a person is a winner or finalist, has
29 been specially selected, is in first place, or is otherwise
30 among a limited group of persons with an enhanced likelihood
31 of receiving a prize, or that a person is entering a contest,
32 sweepstakes, drawing, or other competitive enterprise, from
33 which a single winner or select group of winners will receive
34 a prize, when in fact the enterprise is a promotional scheme
35 designed to make contact with prospective customers and all or

1 a substantial number of those receiving the notice are awarded
2 the same prize.

3 d. Represent directly or by implication that a person will
4 have an increased chance of receiving a prize by making
5 multiple or duplicate purchases, payments or donations, or by
6 entering a game, drawing, sweepstakes, or other contest more
7 than one time, unless the representation is true. A sponsor
8 is deemed to have made such representation if the sponsor
9 delivers one or more prize notices to a person after the
10 person has already made a purchase, payment, or donation to
11 the sponsor for the same promotion, or has already entered the
12 same game, drawing, sweepstakes, or other contest, unless the
13 sponsor can demonstrate a bona fide error even though the
14 sponsor has implemented procedures reasonably designed to
15 prevent such duplication.

16 e. Represent directly or by implication that a person is
17 being notified a second or final time of the opportunity to
18 receive or compete for a prize, unless the representation is
19 true.

20 f. Represent directly or by implication that a prize
21 notice is urgent, or otherwise convey an impression of urgency
22 by use of description, narrative copy, phrasing on an
23 envelope, or similar method, unless there is a limited time
24 period in which the recipient must take some action to claim
25 or be eligible to receive a prize, and the date by which such
26 action is required appears in immediate proximity to each
27 representation of urgency and in the same type size and
28 boldness as each representation of urgency.

29 g. Knowingly sell, rent, exchange, transfer, or otherwise
30 furnish to or purchase from other persons, financial data
31 regarding Iowans disclosed in connection with a prize
32 promotion not in compliance with this chapter. For purposes
33 of this chapter, financial data includes credit card numbers,
34 bank account numbers, other payment device numbers, and
35 dollars spent on prize promotions which are not in compliance

1 with this chapter.

2 h. Request an individual to disclose the individual's
3 phone number, age, birthdate, credit card ownership, or
4 financial data in connection with a prize promotion which is
5 not in compliance with this chapter.

6 2. If a written prize notice requires or invites a person
7 to view, hear, or attend a sales presentation in order to
8 claim a prize, the sales presentation shall not begin until
9 the sponsor does all of the following:

10 a. Informs the person of the prize, if any, that has been
11 awarded to the person.

12 b. If the person is awarded a prize, delivers to the
13 person the prize or the item selected by the person as
14 provided in section 714B.4, if the prize awarded is not
15 available.

16 Sec. 5. NEW SECTION. 714B.4 PRIZE AWARD REQUIRED.

17 A sponsor of a prize who represents to a person that the
18 person has been awarded a prize shall, no later than thirty
19 days after making the representation, provide the person with
20 the prize; with a voucher, certificate, or other document
21 indicating the person's unconditional right to receive the
22 prize; or with either of the following items as selected by
23 the person:

24 1. Any other prize listed in the written prize notice that
25 is available and that is of equal or greater value.

26 2. The retail value of the prize, as stated in the written
27 notice, in the form of cash, a money order, or a certified
28 check.

29 Sec. 6. NEW SECTION. 714B.5 INFORMATION REQUESTED BY
30 ATTORNEY GENERAL.

31 A sponsor shall provide, upon the request of the attorney
32 general made within one year after the termination date of the
33 promotion, a record of the names and addresses of all winners
34 of prizes of one hundred dollars or more.

35 Sec. 7. NEW SECTION. 714B.6 CRIMINAL PENALTIES.

1 A person who intentionally violates this chapter is guilty
2 of an aggravated misdemeanor. A person intentionally violates
3 this chapter if the act or acts in violation occur or continue
4 after the attorney general or county attorney has notified the
5 person by certified mail that the person is in violation of
6 this chapter.

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

8 A violation of this chapter constitutes a violation of
9 section 714.16, subsection 2, paragraph "a".

10 Sec. 9. NEW SECTION. 714B.8 PRIVATE ACTION.

11 In addition to any other remedies, a person suffering
12 pecuniary loss as a result of a violation of this chapter by
13 another person may bring an action against such other person
14 to recover all of the following:

15 1. The greater of five hundred dollars or twice the amount
16 of the pecuniary loss.

17 2. Costs and reasonable attorney fees.

18 Sec. 10. NEW SECTION. 714B.9 COMPLIANCE WITH OTHER LAWS.

19 This chapter shall not be construed to permit an activity
20 prohibited by section 714.16, or rules adopted pursuant to
21 that section, or by chapter 725, or other applicable law.

22 Sec. 11. NEW SECTION. 714B.10 EXEMPTIONS.

23 This chapter does not apply to the following:

24 1. Advertising by sponsors registered pursuant to chapter
25 557B, licensed pursuant to chapter 99B, or regulated pursuant
26 to chapters 99D, 99E, or 99F.

27 2. Advertising in connection with the sale or purchase of
28 books, recordings, videocassettes, periodicals, and similar
29 goods through a membership group or club which is regulated by
30 the federal trade commission pursuant to code of federal
31 regulations, Title 16, part 4525.1, concerning use of negative
32 option plans by sellers in commerce.

33 3. Advertising in connection with the sale or purchase of
34 goods ordered through a contractual plan or arrangement such
35 as a continuity plan, subscription arrangement, or a single

1 sale or purchase series arrangement under which the seller
2 ships goods to a consumer who has consented in advance to
3 receive the goods and who, after the receipt of the goods, is
4 given an opportunity to examine the goods and to receive a
5 full refund of charges for the goods upon return of the goods
6 undamaged.

7 4. Advertising in connection with sales by a catalog
8 seller. For purposes of this section "catalog seller" means a
9 person at least fifty percent of whose annual revenues are
10 derived from the sale of merchandise sold in connection with
11 the distribution of catalogs of at least twenty-four pages,
12 which contain written descriptions or illustrations and sale
13 prices for each item of merchandise and which are distributed
14 in more than one state with a total annual distribution of at
15 least two hundred fifty thousand.

16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

Delahery, Chair
Welsh
Jensen

SSB 2162
Commerce

Now
SENATE/HOUSE FILE 2272
BY (PROPOSED ATTORNEY GENERAL
BILL)

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

A BILL FOR

1 An Act relating to prize promotions and establishing criminal and
2 civil penalties and a private cause of action, and providing
3 an effective date.

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

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 Section 1. Section 714.8, Code 1993, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 15. Obtains or attempts to obtain the
4 transfer of possession, control, or ownership, of the property
5 of another by deception through communications conducted
6 primarily by telephone and involving direct or implied claims
7 that the other person contacted has won or is about to win a
8 prize.

9 Sec. 2. NEW SECTION. 714B.1 DEFINITIONS.

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

12 1. "Advertisement" means as defined in section 714.16,
13 subsection 1.

14 2. "Merchandise" means as defined in section 714.16,
15 subsection 1.

16 3. "Person" means as defined in section 714.16, subsection
17 1.

18 4. "Prize" means a gift, award, or other merchandise of
19 value that is offered or awarded to a person in a real or
20 purported contest, competition, sweepstakes, puzzle, drawing,
21 scheme, plan, or other selection process.

22 5. "Retail value" of a prize means the following:

23 a. A price at which the sponsor of the prize can
24 substantiate that a substantial number of the items of
25 merchandise have been sold to the public in the year preceding
26 the date of the written prize notice in the regular course of
27 business other than through a prize promotion.

28 b. No more than one and one-half times the amount the
29 sponsor paid for the prize in a bona fide purchase from an
30 unaffiliated seller, if the sponsor is unable to substantiate
31 a price pursuant to paragraph "a".

32 6. "Sponsor" means a person who awards another person a
33 prize or who allows the person to receive, use, compete for,
34 or obtain information about a prize.

35 Sec. 3. NEW SECTION. 714B.2 WRITTEN PRIZE NOTICE --

1 CONTENT -- FORM.

2 1. a. A sponsor of a prize shall not require a person to
3 purchase merchandise or pay or donate money, as a condition of
4 awarding a prize, or as a condition of allowing the person to
5 receive, use, compete for, or obtain information about a
6 prize, unless the person has first received a written prize
7 notice which satisfies the requirements of subsections 2 and
8 3. A sponsor shall not create the reasonable impression that
9 such a purchase, payment, or donation is required, unless the
10 person has first received a written prize notice which
11 satisfies the requirements of subsections 2 and 3.

12 b. For purposes of this chapter, a sponsor is deemed to
13 have created the reasonable impression that a payment,
14 purchase, or donation is required as a condition of awarding
15 the person a prize, or as a condition of allowing the person
16 to receive, use, compete for, or obtain information about a
17 prize, if the sponsor does any of the following:

18 (1) Fails to clearly and conspicuously disclose that a
19 purchase, payment, or donation is not required in immediate
20 proximity to, and in the same type and boldness as, each
21 written reference to a purchase, payment, or donation, or in
22 immediate proximity to, and in the same audio volume as, each
23 verbal reference to a purchase, payment, or donation.

24 (2) Uses a verbal or written solicitation, or other
25 advertisement which contains any express or implied
26 representations that a participant's likelihood of receiving a
27 prize or other favorable treatment is enhanced by making a
28 purchase, payment, or donation.

29 (3) Uses a verbal or written solicitation, course of
30 solicitation, or other advertisement which when considered in
31 its totality creates an overall impression that a
32 participant's likelihood of receiving a prize or other
33 favorable treatment is enhanced by making a purchase, payment,
34 or donation.

35 2. A written prize notice must contain each of the

1 following:

2 a. The true name or names of the sponsor and the street
3 address of the sponsor's actual principal place of business.

4 b. The retail value of each prize the person receiving the
5 notice has been selected to receive or may be eligible to
6 receive.

7 c. A statement of the odds the person has of receiving
8 each prize identified in the notice.

9 d. Any requirement that the person pay shipping or
10 handling fees, or any other charges to obtain or use a prize,
11 including the nature and amount of the charge.

12 e. A statement that a restriction applies, and a
13 description of the restriction, if receipt of the prize is
14 subject to a restriction.

15 f. Any limitations on eligibility to receive a prize.

16 g. If a sponsor represents that a person is a winner,
17 finalist, has been specially selected, is in first place, or
18 is otherwise among a limited group of persons with an enhanced
19 likelihood of receiving a prize; or that a person is entering
20 a contest, sweepstakes, drawing, or other competitive
21 enterprise, from which a single winner or select group of
22 winners will receive a prize, and if the notice is not
23 prohibited under section 714B.3, subsection 1, paragraph "c",
24 a statement of the maximum number of persons in the group or
25 purported group with this enhanced likelihood of receiving a
26 prize.

27 h. Any requirement or invitation for the person to view,
28 hear, or attend a sales presentation in order to claim a
29 prize, a good faith estimate of the length of the sales
30 presentation, a description of the merchandise that is the
31 subject of the sales presentation, and the total cost of such
32 merchandise.

33 3. The information required in the written prize notice
34 pursuant to subsection 2 must be provided as follows:

35 a. The retail value and the statement of odds required

1 under subsection 2 must be stated in immediate proximity to
2 each identification of a prize on the written notice, and must
3 be in the same size and boldness of type as the reference to
4 the prize.

5 b. The retail value must be stated in Arabic numerals, and
6 must be in the following form: retail value: \$_____.

7 c. The statement of odds must include, for each prize, the
8 total number of prizes to be given away and the total number
9 of written prize notices to be distributed. The number of
10 prizes and written prize notices must be stated in Arabic
11 numerals. The statement of odds must be in the following
12 form: _____ (number of prizes) out of _____ (notices
13 distributed).

14 d. If a person is required to pay shipping or handling
15 fees or any other charges to obtain a prize, to be eligible to
16 obtain a prize, or to participate in a contest, a statement
17 must appear in immediate proximity to each listing of the
18 prize in the written prize notice in not less than ten-point
19 boldface type as follows: YOU MUST PAY \$_____ IN ORDER TO
20 RECEIVE OR USE THIS ITEM, or, YOU MUST PAY \$_____ IN ORDER TO
21 COMPETE FOR THIS ITEM, as applicable.

22 e. The information required under subsection 2, paragraphs
23 "e", "f", and "h" must be on the first page of the written
24 prize notice in not less than ten-point boldface type.

25 f. A statement required under subsection 2, paragraph "g",
26 must appear in immediate proximity to each representation that
27 the person is among a group of persons with an enhanced
28 likelihood of receiving a prize, and must be in the same type
29 size and boldness as the representation.

30 Sec. 4. NEW SECTION. 714B.3 PROHIBITED PRACTICES.

31 1. A sponsor of a prize shall not do any of the following:

32 a. Deliver a written prize notice, or an envelope
33 containing a written prize notice, that contains language, or
34 is designed in a manner, that would have the tendency or
35 capacity to mislead intended recipients as to the source of

1 the written prize notice. This prohibition includes, but is
2 not limited to, a written prize notice or envelope which
3 indicates that the notice or envelope originates from a
4 government agency, public utility, insurance company, consumer
5 reporting agency, debt collector, or law firm, unless the
6 written prize notice or envelope originates from such source.

7 b. Represent directly or by implication that the number of
8 persons eligible for the prize is limited or that a person has
9 been selected to receive a particular prize, unless the
10 representation is true.

11 c. Represent that a person is a winner, finalist, has been
12 specially selected, is in first place, or is otherwise among a
13 limited group of persons with an enhanced likelihood of
14 receiving a prize, or that a person is entering a contest,
15 sweepstakes, drawing, or other competitive enterprise, from
16 which a single winner or select group of winners will receive
17 a prize, when in fact the enterprise is a promotional scheme
18 designed to make contact with prospective customers and all or
19 a substantial number of those receiving the notice are awarded
20 the same prize.

21 d. Represent directly or by implication that a person will
22 have an increased chance of receiving a prize by making
23 multiple or duplicate purchases, payments or donations, or by
24 entering a game, drawing, sweepstakes, or other contest more
25 than one time, unless the representation is true. A sponsor
26 is deemed to have made such representation if the sponsor
27 delivers one or more prize notices to a person after the
28 person has already made a purchase, payment, or donation to
29 the sponsor for the same promotion, or has already entered the
30 same game, drawing, sweepstakes, or other contest, unless the
31 sponsor can demonstrate a bona fide error even though the
32 sponsor has implemented procedures reasonably designed to
33 prevent such duplication.

34 e. Represent directly or by implication that a person is
35 being notified a second or final time of the opportunity to

1 receive or compete for a prize, unless the representation is
2 true.

3 f. Represent directly or by implication that a prize
4 notice is urgent, or otherwise convey an impression of urgency
5 by use of description, narrative copy, phrasing on an
6 envelope, or similar method, unless there is a limited time
7 period in which the recipient must take some action to claim
8 or be eligible to receive a prize, and the date by which such
9 action is required appears in immediate proximity to each
10 representation of urgency and in the same type size and
11 boldness as each representation of urgency.

12 2. If a written prize notice requires or invites a person
13 to view, hear, or attend a sales presentation in order to
14 claim a prize, the sales presentation shall not begin until
15 the sponsor does all of the following:

16 a. Informs the person of the prize, if any, that has been
17 awarded to the person.

18 b. If the person is awarded a prize, delivers to the
19 person the prize or the item selected by the person as
20 provided in section 714B.4, if the prize awarded is not
21 available.

22 Sec. 5. NEW SECTION. 714B.4 PRIZE AWARD REQUIRED.

23 A sponsor of a prize who represents to a person that the
24 person has been awarded a prize shall, no later than thirty
25 days after making the representation, provide the person with
26 the prize, with a voucher, certificate, or other document
27 indicating the person's unconditional right to receive the
28 prize, or with either of the following items as selected by
29 the person:

30 1. Any other prize listed in the written prize notice that
31 is available and that is of equal or greater value.

32 2. The retail value of the prize, as stated in the written
33 notice, in the form of cash, a money order, or a certified
34 check.

35 Sec. 6. NEW SECTION. 714B.5 CRIMINAL PENALTIES.

1 A person who intentionally violates this chapter is guilty
2 of an aggravated misdemeanor. A person intentionally violates
3 this chapter if the act or acts in violation occur or continue
4 after the person has been notified by certified mail that the
5 person is in violation of this chapter.

6 Sec. 7. NEW SECTION. 714B.6 CIVIL ENFORCEMENT.

7 A violation of this chapter constitutes a violation of
8 section 714.16, subsection 2, paragraph "a".

9 Sec. 8. NEW SECTION. 714B.7 PRIVATE ACTION.

10 In addition to any other remedies, a person suffering
11 pecuniary loss as a result of a violation of this chapter by
12 another person may bring an action against such other person
13 to recover all of the following:

14 1. The greater of five hundred dollars or twice the amount
15 of the pecuniary loss.

16 2. Costs and reasonable attorney fees.

17 Sec. 9. NEW SECTION. 714B.8 COMPLIANCE WITH OTHER LAWS.

18 This chapter shall not be construed to permit an activity
19 prohibited by section 714.16, or rules adopted pursuant to
20 that section, or by chapter 725, or other applicable law.

21 Sec. 10. NEW SECTION. 714B.9 EXEMPTIONS.

22 This chapter does not apply to the following:

23 1. Advertising by membership campground operators
24 regulated pursuant to chapter 557B, and rules adopted pursuant
25 to chapter 557B.

26 2. Licensed gambling under chapter 99B.

27 3. Pari-mutuel wagering on racing permitted and regulated
28 under chapter 99D.

29 4. The state lottery created and regulated under chapter
30 99E.

31 5. Excursion boat gambling permitted and regulated under
32 chapter 99F.

33 6. Advertising in connection with the sale or purchase of
34 books, recordings, videocassettes, periodicals, and similar
35 goods through a membership group or club which is regulated by

1 the federal trade commission pursuant to code of federal
2 regulations, Title 16, part 425.1, concerning use of negative
3 option plans by sellers in commerce.

4 7. Advertising in connection with the sale or purchase of
5 goods ordered through a contractual plan or arrangement such
6 as a continuity plan, subscription management, or a single
7 sale or purchase series arrangement under which the seller
8 ships goods to a consumer who has consented in advance to
9 receive the goods and who, after the receipt of the goods, is
10 given an opportunity to examine the goods and to receive a
11 full refund of charges for the goods upon return of the goods
12 undamaged.

13 8. Advertising in connection with sales by a catalog
14 seller. For purposes of this section "catalog seller" means a
15 person at least fifty percent of whose annual revenues are
16 derived from the sale of merchandise sold in connection with
17 the distribution of catalogs of at least twenty-four pages,
18 which contain written descriptions or illustrations and sales
19 prices for each item of merchandise and which are distributed
20 in more than one state with a total annual distribution of at
21 least two hundred fifty thousand.

22 Sec. 11. EFFECTIVE DATE. This Act, being deemed of
23 immediate importance, is effective upon enactment.

24 EXPLANATION

25 This bill relates to promotions which offer prizes or
26 merchandise to consumers.

27 This bill creates new subsection 15 of section 714.8 which
28 will permit prosecutors to bring criminal actions against
29 fraudulent telemarketers when the crime is interrupted in
30 progress. Currently, criminal charges cannot be brought under
31 the fraudulent practices statute against a fraudulent
32 telemarketer who is caught in the act of trying to cheat an
33 Iowan before the consumer sends the money.

34 The bill creates new chapter 714B relating to promotions
35 which offer prizes or merchandise to consumers. Section

1 714B.1 contains definitions used in the chapter.

2 Section 714B.2 prohibits a sponsor from requiring a person
3 to purchase merchandise or pay or donate money as a condition
4 of being awarded, receiving, using, competing for, or
5 receiving information about a prize unless a written prize
6 notice is received by the person. The sponsor is also
7 prohibited from acting in a manner which creates a reasonable
8 impression that such purchase, payment, or donation is
9 required unless a written prize notice is received by the
10 person. The section establishes the form and content of the
11 written prize notice to be provided.

12 Section 714B.3 prohibits a sponsor from delivering prize
13 notices that appear to be from a government agency, public
14 utility, insurance company, consumer reporting agency, debt
15 collector, or law firm unless the notice actually originates
16 from that source. The section prohibits a sponsor from
17 representing that a recipient has been specially selected to
18 win a prize when the enterprise is merely a promotion designed
19 to make contact with the recipient and all or a substantial
20 number of the recipients receive the same prize.

21 Section 714B.4 provides that a sponsor must, no later than
22 30 days after making a representation that the person has been
23 awarded a prize, provide the awarded prize, provide a voucher,
24 certificate, or other document indicating the person's right
25 to receive the prize, or, at the option of the person, another
26 listed prize of greater or equal value or a check or money
27 order for the verifiable retail value of the prize.

28 Section 714B.5 provides that a person who intentionally
29 violates a provision of this chapter commits an aggravated
30 misdemeanor. Section 714B.6 also provides that a violation of
31 this chapter is a violation of section 714.16, subsection 2,
32 paragraph "a" which pertains to consumer frauds.

33 Section 714B.7 creates a private cause of action in favor
34 of an injured party against a person who violates a provision
35 of this chapter. Section 714B.8 provides that the chapter is

1 not to be construed as permitting an activity prohibited under
2 section 714.16, consumer frauds, chapter 725, relating to
3 gaming and lotteries.

4 Section 714B.9 identifies certain exemptions relating to
5 the application of chapter 714B. These exemptions include
6 membership campground operators regulated pursuant to chapter
7 557B; licensed gambling; pari-mutuel wagering; the state
8 lottery; excursion boat gambling; advertising in connection
9 with the sale or purchase of books, records, videocassettes,
10 periodicals, and similar goods; advertising in connection with
11 the sale or purchase of goods ordered through a contractual
12 plan; and advertising in connection with sales by a catalog
13 seller.

14 The bill takes effect upon enactment.

15 BACKGROUND STATEMENT

16 SUBMITTED BY THE AGENCY

17 Misleading prize schemes are currently the most common form
18 of consumer fraud. In these schemes, consumers regularly
19 receive notices in the mail or over the telephone telling them
20 they have won one or more of several "valuable prizes". These
21 prizes often sound too good to be true, such as expensive
22 vacations, automobiles, or large-screen televisions. In fact,
23 when consumers attempt to collect on these so-called "prizes",
24 they often find they must first purchase items they may not
25 need or want such as vitamins, skin-care products, or air
26 filtration systems and often at outrageously high prices. In
27 addition, many consumers find that, once they provide their
28 credit card numbers for these items, no prize is ever
29 delivered. Also, the expensive prizes listed on the cards or
30 mentioned in the calls are seldom provided to any consumers,
31 or turn out to be much less valuable than represented.

32 Unscrupulous telemarketers and direct mail operators from
33 across the country are bombarding Iowans, especially older
34 Iowans, with deceptive prize promotions to induce the payment
35 of large sums of money for worthless products, sham charities,

1 and misleading contests. Many Iowans have lost their life
2 savings and many others are caught in a destructive cycle of
3 mounting phone calls and mail as their names are sold on
4 "mooch lists".

5 This bill addresses these problems by requiring disclosure
6 notices to be provided to consumers before the soliciting
7 companies can collect any money. The notices will provide
8 important information to consumers regarding the odds of
9 winning and requirements or limitations on collecting prizes.
10 The bill also requires that consumers be given a prize if one
11 is promised, or an item of equivalent or greater value or cash
12 if the original prize is not available.

13 This bill is based on similar legislation recently enacted
14 in Minnesota. Although recently enacted, that law already
15 appears to have reduced consumer fraud in prize solicitations.

16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

SENATE FILE 2272

AN ACT
RELATING TO PRIZE PROMOTIONS BY CREATING CRIMINAL AND CIVIL
PENALTIES AND CREATING A PRIVATE CAUSE OF ACTION.

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

Section 1. Section 714.8, Code 1993, is amended by adding the following new subsection:

NEW SUBSECTION. 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.

Sec. 2. NEW SECTION. 714B.1 DEFINITIONS.

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

1. "Advertisement" means as defined in section 714.16, subsection 1.
2. "Merchandise" means as defined in section 714.16, subsection 1.
3. "Person" means as defined in section 714.16, subsection 1.

4. "Prize" means a gift, award, cash award, or other merchandise of value that is offered or awarded to a person in a real or purported contest, competition, sweepstakes, puzzle, drawing, scheme, plan, or other selection process.

5. "Retail value" of a prize means the following:

- a. A price at which the sponsor of the prize can substantiate that a substantial number of the items of merchandise have been sold to the public in the year preceding the date of the written prize notice in the regular course of business other than through a prize promotion.

- b. No more than one and one-half times the amount the sponsor paid for the prize in a bona fide purchase from an unaffiliated seller, if the sponsor is unable to substantiate a price pursuant to paragraph "a".

6. "Sponsor" means a person who awards another person a prize or who allows the person to receive, use, compete for, or obtain information about a prize.

Sec. 3. NEW SECTION. 714B.2 WRITTEN PRIZE NOTICE -- CONTENT -- FORM.

1. a. A sponsor of a prize shall not require a person to purchase merchandise or pay or donate money as a condition of awarding a prize or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize, unless the person has first received a written prize notice which satisfies the requirements of subsections 2 and 3. A sponsor shall not create the reasonable impression that such a purchase, payment, or donation is required, unless the

person has first received a written prize notice which satisfies the requirements of subsections 2 and 3.

b. For purposes of this chapter, a sponsor is deemed to have created the reasonable impression that a payment, purchase, or donation is required as a condition of awarding the person a prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize, if the sponsor does any of the following:

(1) Fails to clearly and conspicuously disclose that a purchase, payment, or donation is not required in immediate proximity to, and in the same type and boldness as, each written reference to a purchase, payment, or donation, or in immediate proximity to, and in the same audio volume as, each verbal reference to a purchase, payment, or donation.

(2) Uses a verbal or written solicitation, or other advertisement which contains any express or implied representations that a participant's likelihood of receiving a prize or other favorable treatment is enhanced by making a purchase, payment, or donation.

(3) Uses a verbal or written solicitation, course of solicitation, or other advertisement which when considered in its totality creates an overall impression that a participant's likelihood of receiving a prize or other favorable treatment is enhanced by making a purchase, payment, or donation.

c. A written prize notice satisfying the requirements of subsections 2 and 3 must precede every verbal advertisement by a sponsor which requires a person to purchase merchandise or pay or donate money, or gives the reasonable impression that such a purchase, payment, or donation is required, as a condition of awarding a prize, or as a condition of allowing a person to receive, use, compete for, or obtain information about a prize.

d. Each written advertisement by a sponsor which requires a person to purchase merchandise or pay or donate money, or

gives the reasonable impression that such a purchase, payment, or donation is required as a condition of awarding a prize or as a condition of allowing a person to receive, use, compete for, or obtain information about a prize, must satisfy the requirements of subsections 2 and 3.

2. A written prize notice must contain each of the following:

a. The true name or names of the sponsor and the street address of the sponsor's actual principal place of business.

b. The retail value of each prize the person receiving the notice has been selected to receive or may be eligible to receive.

c. A statement of the odds the person has of receiving each prize identified in the notice.

d. Any requirement that the person pay shipping or handling fees, or any other charges to obtain or use a prize, including the nature and amount of the charge.

e. A statement that a restriction applies and a description of the restriction, if receipt of the prize is subject to a restriction.

f. Any limitations on eligibility to receive a prize.

g. If a sponsor represents that a person is a winner or finalist, has been specially selected, is in first place, or is otherwise among a limited group of persons with an enhanced likelihood of receiving a prize; or that a person is entering a contest, sweepstakes, drawing, or other competitive enterprise from which a single winner or select group of winners will receive a prize, and if the notice is not prohibited under section 714B.3, subsection 1, paragraph "c", a statement of the maximum number of persons in the group or purported group with this enhanced likelihood of receiving a prize.

h. Any requirement or invitation for the person to view, hear, or attend a sales presentation in order to claim a prize, a good faith estimate of the length of the sales

presentation, a description of the merchandise that is the subject of the sales presentation, and the total cost of such merchandise.

3. The information required in the written prize notice pursuant to subsection 2 must be provided as follows:

a. The retail value and the statement of odds required under subsection 2 must be stated in immediate proximity to each identification of a prize on the written notice, and must be in the same size and boldness of type as the reference to the prize.

b. The retail value must be stated in Arabic numerals, and must be in the following form: retail value: \$_____.

c. The statement of odds must include, for each prize, the total number of prizes to be given away and the total number of written prize notices to be distributed. The number of prizes and written prize notices must be stated in Arabic numerals. The statement of odds must be in the following form: _____ (number of prizes) out of _____ (notices distributed).

d. If a person is required to pay shipping or handling fees or any other charges to obtain a prize, to be eligible to obtain a prize, or to participate in a contest, a statement must appear in immediate proximity to each listing of the prize in the written prize notice in not less than ten-point boldface type as follows: YOU MUST PAY \$_____ IN ORDER TO RECEIVE OR USE THIS ITEM, or, YOU MUST PAY \$_____ IN ORDER TO COMPETE FOR THIS ITEM, as applicable.

e. The information required under subsection 2, paragraphs "e", "f", and "h" must be on the first page of the written prize notice in not less than ten-point boldface type.

f. A statement required under subsection 2, paragraph "g", must appear in immediate proximity to each representation that the person is among a group of persons with an enhanced likelihood of receiving a prize, and must be in the same type size and boldness as the representation.

Sec. 4. NEW SECTION. 714B.3 PROHIBITED PRACTICES.

1. A sponsor of a prize shall not do any of the following:

a. Deliver a written prize notice, or an envelope containing a written prize notice, that contains language, or is designed in a manner, that would have the tendency or capacity to mislead intended recipients as to the source of the written prize notice. This prohibition includes, but is not limited to, a written prize notice or envelope which indicates that the notice or envelope originates from a government agency, public utility, insurance company, consumer reporting agency, debt collector, or law firm, unless the written prize notice or envelope originates from such source.

b. Represent directly or by implication that the number of persons eligible for the prize is limited or that a person has been selected to receive a particular prize, unless the representation is true.

c. Represent that a person is a winner or finalist, has been specially selected, is in first place, or is otherwise among a limited group of persons with an enhanced likelihood of receiving a prize, or that a person is entering a contest, sweepstakes, drawing, or other competitive enterprise, from which a single winner or select group of winners will receive a prize, when in fact the enterprise is a promotional scheme designed to make contact with prospective customers and all or a substantial number of those receiving the notice are awarded the same prize.

d. Represent directly or by implication that a person will have an increased chance of receiving a prize by making multiple or duplicate purchases, payments or donations, or by entering a game, drawing, sweepstakes, or other contest more than one time, unless the representation is true. A sponsor is deemed to have made such representation if the sponsor delivers one or more prize notices to a person after the person has already made a purchase, payment, or donation to the sponsor for the same promotion, or has already entered the same game, drawing, sweepstakes, or other contest, unless the

sponsor can demonstrate a bona fide error even though the sponsor has implemented procedures reasonably designed to prevent such duplication.

e. Represent directly or by implication that a person is being notified a second or final time of the opportunity to receive or compete for a prize, unless the representation is true.

f. Represent directly or by implication that a prize notice is urgent, or otherwise convey an impression of urgency by use of description, narrative copy, phrasing on an envelope, or similar method, unless there is a limited time period in which the recipient must take some action to claim or be eligible to receive a prize, and the date by which such action is required appears in immediate proximity to each representation of urgency and in the same type size and boldness as each representation of urgency.

g. Knowingly sell, rent, exchange, transfer, or otherwise furnish to or purchase from other persons, financial data regarding Iowans disclosed in connection with a prize promotion not in compliance with this chapter. For purposes of this chapter, financial data includes credit card numbers, bank account numbers, other payment device numbers, and dollars spent on prize promotions which are not in compliance with this chapter.

h. Request an individual to disclose the individual's phone number, age, birthdate, credit card ownership, or financial data in connection with a prize promotion which is not in compliance with this chapter.

2. If a written prize notice requires or invites a person to view, hear, or attend a sales presentation in order to claim a prize, the sales presentation shall not begin until the sponsor does all of the following:

a. Informs the person of the prize, if any, that has been awarded to the person.

b. If the person is awarded a prize, delivers to the person the prize or the item selected by the person as provided in section 714B.4, if the prize awarded is not available.

Sec. 5. NEW SECTION. 714B.4 PRIZE AWARD REQUIRED.

A sponsor of a prize who represents to a person that the person has been awarded a prize shall, no later than thirty days after making the representation, provide the person with the prize; with a voucher, certificate, or other document indicating the person's unconditional right to receive the prize; or with either of the following items as selected by the person:

1. Any other prize listed in the written prize notice that is available and that is of equal or greater value.

2. The retail value of the prize, as stated in the written notice, in the form of cash, a money order, or a certified check.

Sec. 6. NEW SECTION. 714B.5 INFORMATION REQUESTED BY ATTORNEY GENERAL.

A sponsor shall provide, upon the request of the attorney general made within one year after the termination date of the promotion, a record of the names and addresses of all winners of prizes of one hundred dollars or more.

Sec. 7. NEW SECTION. 714B.6 CRIMINAL PENALTIES.

A person who intentionally violates this chapter is guilty of an aggravated misdemeanor. A person intentionally violates this chapter if the act or acts in violation occur or continue after the attorney general or county attorney has notified the person by certified mail that the person is in violation of this chapter.

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

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

Sec. 9. NEW SECTION. 714B.8 PRIVATE ACTION.

In addition to any other remedies, a person suffering pecuniary loss as a result of a violation of this chapter by another person may bring an action against such other person to recover all of the following:

1. The greater of five hundred dollars or twice the amount of the pecuniary loss.
2. Costs and reasonable attorney fees.

Sec. 10. NEW SECTION. 714B.9 COMPLIANCE WITH OTHER LAWS.

This chapter shall not be construed to permit an activity prohibited by section 714.16, or rules adopted pursuant to that section, or by chapter 725, or other applicable law.

Sec. 11. NEW SECTION. 714B.10 EXEMPTIONS.

This chapter does not apply to the following:

1. Advertising by sponsors registered pursuant to chapter 557B, licensed pursuant to chapter 99B, or regulated pursuant to chapters 99D, 99E, or 99F.

2. Advertising in connection with the sale or purchase of books, recordings, videocassettes, periodicals, and similar goods through a membership group or club which is regulated by the federal trade commission pursuant to code of federal regulations, Title 16, part 4525.1, concerning use of negative option plans by sellers in commerce.

3. Advertising in connection with the sale or purchase of goods ordered through a contractual plan or arrangement such as a continuity plan, subscription arrangement, or a single sale or purchase series arrangement under which the seller ships goods to a consumer who has consented in advance to receive the goods and who, after the receipt of the goods, is given an opportunity to examine the goods and to receive a full refund of charges for the goods upon return of the goods undamaged.

4. Advertising in connection with sales by a catalog seller. For purposes of this section "catalog seller" means a person at least fifty percent of whose annual revenues are derived from the sale of merchandise sold in connection with

the distribution of catalogs of at least twenty-four pages, which contain written descriptions or illustrations and sale prices for each item of merchandise and which are distributed in more than one state with a total annual distribution of at least two hundred fifty thousand.

LEONARD L. BOSWELL
President of the Senate

HAROLD VAN MAANEN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2272, Seventy-fifth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved May 19, 1994

TERRY E. BRANSTAD
Governor