

MAR 6 1996
Place On Calendar

HOUSE FILE 2464
BY COMMITTEE ON COMMERCE AND
REGULATION

(SUCCESSOR TO HSB 697)

Passed House, Date ^(p. 675) 3/13/96 Passed Senate, Date _____
Vote: Ayes 97 Nays 0 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to consumer protection by requiring the
2 registration of certain persons seeking to engage in regulated
3 businesses in this state, and providing for civil and criminal
4 penalties.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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HOUSE FILE 2464

S-5513

1 Amend House File 2464 as follows:
2 1. Page 1, line 12, by inserting after the word
3 "solicitation." the following: "This subsection does
4 not apply to a prize, award, premium, or bonus which
5 is offered or given by chance where a purchase or
6 payment is not required to enter and win such prize,
7 award, premium, or bonus, or to an offer where the
8 receipt of the premium is conditioned upon the
9 purchase of an item or service if such condition is
10 disclosed and receipt of the prize does not involve an
11 element of chance. For purposes of this subsection,
12 "chance" exists if a person is guaranteed to receive
13 an item and, at the time of the offer, the specific
14 item the person will receive is not identified."

By MICHAEL E. GRONSTAL

S-5513 FILED MARCH 25, 1996

HF 2464

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1 Section 1. Section 714.8, subsection 15, Code 1995, is
2 amended to read as follows:

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

13 Sec. 2. NEW SECTION. 714B.2A REGISTRATION.

14 1. A person and the employer of a person who obtains or
15 attempts to obtain the transfer of possession, control, or
16 ownership of the property of another through communications
17 conducted primarily by telephone, shall register with the
18 attorney general prior to soliciting any resident of this
19 state, if the solicitation involves direct or implied claims
20 that a person has been selected, or may be selected, to
21 receive a prize, award, premium, or bonus, or will recover, or
22 may be able to recover, any losses suffered in connection with
23 a telephone solicitation.

24 2. A registrant under this section shall provide on forms
25 provided by the attorney general, all of the following:

26 a. The registrant's true name.

27 b. The registrant's date of birth and social security
28 number, if applicable.

29 c. The registrant's driver's license number and state of
30 issue, if applicable.

31 d. All aliases and assumed or fictitious names used by the
32 registrant in connection with such solicitations.

33 e. Any other information deemed necessary by the attorney
34 general to identify or locate the registrant including, but
35 not limited to, the registrant's home address and home

1 telephone number, if applicable, and the registrant's business
2 address and business telephone number.

3 3. For purposes of this section, an "employer" is any
4 person who supervises, directs, or controls the activities of
5 a person making a solicitation pursuant to subsection 1 at the
6 time the solicitation is made.

7 4. The required registration of any aliases and assumed or
8 fictitious names shall not be construed as permitting the use
9 of such aliases or assumed or fictitious names, or that the
10 practice is otherwise permitted under section 714.8,
11 subsection 15, section 714.16, or any other statute.

12 5. The requirements of this section do not apply to a
13 domestic corporation, a foreign corporation that has obtained
14 a certificate of authority pursuant to section 490.1501, or to
15 an officer, director, employee, or agent of such domestic or
16 foreign corporation, unless it appears to the attorney general
17 that such domestic or foreign corporation, or an officer,
18 director, employee, or agent of such domestic or foreign
19 corporation has engaged in, is engaging in, or is about to
20 engage in, any practice in violation of section 714.16, and
21 that such domestic or foreign corporation or an officer,
22 director, employee, or agent of such domestic or foreign
23 corporation has received notification from the attorney
24 general that registration is required.

25 6. a. A person required to register with the attorney
26 general pursuant to this section, and who fails to do so
27 within five days after receiving notice of such failure and
28 the requirements of this section from the attorney general,
29 either orally or in writing, is guilty of an aggravated
30 misdemeanor.

31 b. A person required to register with the attorney general
32 pursuant to this section, and who intentionally provides false
33 information, either orally or in writing, related to the
34 registration which is required under subsection 2, is guilty
35 of a class "D" felony.

EXPLANATION

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2 This bill amends section 714.8, subsection 15, to indicate
3 that a fraudulent practice is committed when a person attempts
4 to obtain the property of another by deception through
5 communications conducted primarily by telephone.

6 New section 714B.2A is established and requires that a
7 person and the employer of a person who obtains or attempts to
8 obtain the transfer of possession, control, or ownership of
9 the property of another through communications conducted
10 primarily by telephone, shall register with the attorney
11 general prior to soliciting any resident of this state if the
12 solicitation involves direct or implied claims that a person
13 has been selected, or may be selected, to receive a prize,
14 award, premium, or bonus, or will recover, or may be able to
15 recover, any losses suffered in connection with a telephone
16 solicitation.

17 The requirements of new section 714.2A do not apply to a
18 domestic corporation, a foreign corporation that has obtained
19 a certificate of authority pursuant to section 490.1501, or to
20 an officer, director, employee, or agent of such domestic or
21 foreign corporation, unless it appears to the attorney general
22 that such person has engaged in, is engaging in, or is about
23 to engage in, any practice in violation of section 714.16
24 (consumer frauds), and that such person has received
25 notification from the attorney general that registration is
26 required.

27 A person required to register with the attorney general and
28 who fails to do so within five days after receiving notice of
29 such failure and the requirements of this section from the
30 attorney general, either orally or in writing, is guilty of an
31 aggravated misdemeanor. A person required to register with
32 the attorney general and who intentionally provides false
33 information, either orally or in writing, related to the
34 registration which is required under this section, is guilty
35 of a class "D" felony.

Sukup, Chair

Weigel

Mitchell

HSB697

COMMERCE AND REGULATION

Succeeded By

SF/HF 2464

SENATE/HOUSE FILE

BY (PROPOSED ATTORNEY GENERAL'S BILL)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

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2 registration of certain persons seeking to engage in regulated
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5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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Statement?

1 Section 1. Section 714.8, subsection 15, Code 1995, is
2 amended to read as follows:

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

13 Sec. 2. NEW SECTION. 714B.2A REGISTRATION.

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18 attorney general prior to soliciting any resident of this
19 state, if the solicitation involves direct or implied claims
20 that a person has been selected, or may be selected, to
21 receive a prize, award, premium, or bonus, or will recover, or
22 may be able to recover, any losses suffered in connection with
23 a telephone solicitation.

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29 c. The registrant's driver's license number and state of
30 issue, if applicable.

31 d. All aliases and assumed or fictitious names used by the
32 registrant in connection with such solicitations.

33 e. Any other information deemed necessary by the attorney
34 general to identify or locate the registrant including, but
35 not limited to, the registrant's home address and home

1 telephone number, if applicable, and the registrant's business
2 address and business telephone number.

3 3. For purposes of this section, an "employer" is any
4 person who supervises, directs, or controls the activities of
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6 time the solicitation is made.

7 4. The required registration of any aliases and assumed or
8 fictitious names shall not be construed as permitting the use
9 of such aliases or assumed or fictitious names, or that the
10 practice is otherwise permitted under section 714.8,
11 subsection 15, section 714.16, or any other statute.

12 5. The requirements of this section do not apply to a
13 domestic corporation, a foreign corporation that has obtained
14 a certificate of authority pursuant to section 490.1501, or to
15 an officer, director, employee, or agent of such domestic or
16 foreign corporation, unless it appears to the attorney general
17 that such domestic or foreign corporation, or an officer,
18 director, employee, or agent of such domestic or foreign
19 corporation has engaged in, is engaging in, or is about to
20 engage in, any practice in violation of section 714.16, and
21 that such domestic or foreign corporation or an officer,
22 director, employee, or agent of such domestic or foreign
23 corporation has received notification from the attorney
24 general that registration is required.

25 6. a: A person required to register with the attorney
26 general pursuant to this section, and who fails to do so
27 within five days after receiving notice of such failure and
28 the requirements of this section from the attorney general,
29 either orally or in writing, is guilty of an aggravated
30 misdemeanor.

31 b. A person required to register with the attorney general
32 pursuant to this section, and who intentionally provides false
33 information, either orally or in writing, related to the
34 registration which is required under subsection 2, is guilty
35 of a class "D" felony.

EXPLANATION

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2 This bill amends section 714.8, subsection 15, to indicate
3 that a fraudulent practice is committed when a person attempts
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19 a certificate of authority pursuant to section 490.1501, or to
20 an officer, director, employee, or agent of such domestic or
21 foreign corporation, unless it appears to the attorney general
22 that such person has engaged in, is engaging in, or is about
23 to engage in, any practice in violation of section 714.16
24 (consumer frauds), and that such person has received
25 notification from the attorney general that registration is
26 required.

27 A person required to register with the attorney general and
28 who fails to do so within five days after receiving notice of
29 such failure and the requirements of this section from the
30 attorney general, either orally or in writing, is guilty of an
31 aggravated misdemeanor. A person required to register with
32 the attorney general and who intentionally provides false
33 information, either orally or in writing, related to the
34 registration which is required under this section, is guilty
35 of a class "D" felony.

1 BACKGROUND STATEMENT
2 SUBMITTED BY THE AGENCY

3 Sections 1 and 2 of the bill provide that persons engaged
4 in fraudulent prize notification or "recovery" schemes are
5 nearly always located out-of-state and they use false names
6 and addresses when contacting victims in order to avoid
7 detection and prosecution. Their victims are nearly always
8 elderly. Soon after the victims lose their money, the
9 perpetrators shut down their operation and disappear before
10 they can be identified. Investigations by the attorney
11 general are frequently hampered by individuals intentionally
12 providing false information to the attorney general to conceal
13 their identity. This bill would deter fraudulent prize
14 notification schemes by making detection of the perpetrators
15 more likely and by prohibiting the false statements regarding
16 a person's identity that further complicate investigations.

17 Section 714.8, subsection 15, makes it a fraudulent
18 practice to attempt to obtain property of another by deceptive
19 prize or recovery telephone schemes. The attorney general has
20 initiated many successful prosecutions under this section as a
21 result of transferring phone lines of elderly victims to the
22 attorney general's office, where the calls are taken by
23 undercover investigators posing as the elderly victim. Some
24 defendants have unsuccessfully argued in court that the
25 statute, as written, does not apply where the "other person
26 contacted" is an undercover investigator. While the attorney
27 general and the courts have not agreed with this
28 interpretation, it would be best to clarify the statute. It
29 is also important for purposes of statutory construction by
30 the courts that section 714.8, subsection 15, parallel the
31 language of the new registration statute included in this
32 bill.

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