

House Study Bill 697

Conference Committee Text

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1 1 Section 1. Section 714.8, subsection 15, Code 1995, is
1 2 amended to read as follows:
1 3 15. Obtains or attempts to obtain the transfer of
1 4 possession, control, or ownership, of the property of another
1 5 by deception through communications conducted primarily by
1 6 telephone and involving direct or implied claims that
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~~the~~
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1 7
.
~~other~~
- a person
.
~~contacted~~
- has
.
~~won or is about to win a prize,~~
-
1 8
.
~~or involving direct or implied claims that the other person~~
-
1 9
.
~~contacted~~
- been selected, or may be selected, to receive a
1 10 prize, award, premium, or bonus, or will recover, or may be
1 11 able to recover, any losses suffered
.
~~by such other person~~
- in
1 12 connection with a
.
~~prize promotion~~
- telephone solicitation.
1 13 Sec. 2. NEW SECTION. 714B.2A REGISTRATION.
1 14 1. A person and the employer of a person who obtains or
1 15 attempts to obtain the transfer of possession, control, or
1 16 ownership of the property of another through communications
1 17 conducted primarily by telephone, shall register with the
1 18 attorney general prior to soliciting any resident of this
1 19 state, if the solicitation involves direct or implied claims
1 20 that a person has been selected, or may be selected, to
1 21 receive a prize, award, premium, or bonus, or will recover, or
1 22 may be able to recover, any losses suffered in connection with
1 23 a telephone solicitation.
1 24 2. A registrant under this section shall provide on forms
1 25 provided by the attorney general, all of the following:
1 26 a. The registrant's true name.
1 27 b. The registrant's date of birth and social security
1 28 number, if applicable.
1 29 c. The registrant's driver's license number and state of
1 30 issue, if applicable.
1 31 d. All aliases and assumed or fictitious names used by the
1 32 registrant in connection with such solicitations.

1 33 e. Any other information deemed necessary by the attorney
1 34 general to identify or locate the registrant including, but
1 35 not limited to, the registrant's home address and home
2 1 telephone number, if applicable, and the registrant's business
2 2 address and business telephone number.

2 3 3. For purposes of this section, an "employer" is any
2 4 person who supervises, directs, or controls the activities of
2 5 a person making a solicitation pursuant to subsection 1 at the
2 6 time the solicitation is made.

2 7 4. The required registration of any aliases and assumed or
2 8 fictitious names shall not be construed as permitting the use
2 9 of such aliases or assumed or fictitious names, or that the
2 10 practice is otherwise permitted under section 714.8,
2 11 subsection 15, section 714.16, or any other statute.

2 12 5. The requirements of this section do not apply to a
2 13 domestic corporation, a foreign corporation that has obtained
2 14 a certificate of authority pursuant to section 490.1501, or to
2 15 an officer, director, employee, or agent of such domestic or
2 16 foreign corporation, unless it appears to the attorney general
2 17 that such domestic or foreign corporation, or an officer,
2 18 director, employee, or agent of such domestic or foreign
2 19 corporation has engaged in, is engaging in, or is about to
2 20 engage in, any practice in violation of section 714.16, and
2 21 that such domestic or foreign corporation or an officer,
2 22 director, employee, or agent of such domestic or foreign
2 23 corporation has received notification from the attorney
2 24 general that registration is required.

2 25 6. a. A person required to register with the attorney
2 26 general pursuant to this section, and who fails to do so
2 27 within five days after receiving notice of such failure and
2 28 the requirements of this section from the attorney general,
2 29 either orally or in writing, is guilty of an aggravated
2 30 misdemeanor.

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

3 1 EXPLANATION

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

3 6 New section 714B.2A is established and requires that a
3 7 person and the employer of a person who obtains or attempts to
3 8 obtain the transfer of possession, control, or ownership of
3 9 the property of another through communications conducted
3 10 primarily by telephone, shall register with the attorney
3 11 general prior to soliciting any resident of this state if the
3 12 solicitation involves direct or implied claims that a person
3 13 has been selected, or may be selected, to receive a prize,
3 14 award, premium, or bonus, or will recover, or may be able to
3 15 recover, any losses suffered in connection with a telephone
3 16 solicitation.

3 17 The requirements of new section 714.2A do not apply to a
3 18 domestic corporation, a foreign corporation that has obtained
3 19 a certificate of authority pursuant to section 490.1501, or to
3 20 an officer, director, employee, or agent of such domestic or
3 21 foreign corporation, unless it appears to the attorney general
3 22 that such person has engaged in, is engaging in, or is about
3 23 to engage in, any practice in violation of section 714.16
3 24 (consumer frauds), and that such person has received
3 25 notification from the attorney general that registration is
3 26 required.

3 27 A person required to register with the attorney general and
3 28 who fails to do so within five days after receiving notice of
3 29 such failure and the requirements of this section from the

3 30 attorney general, either orally or in writing, is guilty of an
3 31 aggravated misdemeanor. A person required to register with
3 32 the attorney general and who intentionally provides false
3 33 information, either orally or in writing, related to the
3 34 registration which is required under this section, is guilty
3 35 of a class "D" felony.

4 1 BACKGROUND STATEMENT

4 2 SUBMITTED BY THE AGENCY

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

4 17 Section 714.8, subsection 15, makes it a fraudulent
4 18 practice to attempt to obtain property of another by deceptive
4 19 prize or recovery telephone schemes. The attorney general has
4 20 initiated many successful prosecutions under this section as a
4 21 result of transferring phone lines of elderly victims to the
4 22 attorney general's office, where the calls are taken by
4 23 undercover investigators posing as the elderly victim. Some
4 24 defendants have unsuccessfully argued in court that the
4 25 statute, as written, does not apply where the "other person
4 26 contacted" is an undercover investigator. While the attorney
4 27 general and the courts have not agreed with this
4 28 interpretation, it would be best to clarify the statute. It
4 29 is also important for purposes of statutory construction by
4 30 the courts that section 714.8, subsection 15, parallel the
4 31 language of the new registration statute included in this
4 32 bill.

4 33 LSB 4289DP 76

4 34 mj/cf/24