

SENATE FILE **2400**
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2245)

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

6
7

SENATE FILE 2400

S-5224

1 Amend Senate File 2400 as follows:
2 1. Page 1, line 29, by striking the word
3 "diver's" and inserting the following: "driver's".
By ANDY MCKEAN

S-5224 FILED MARCH 6, 1996

12
13
14
15
16
17
18
19
20
21
22
23

S.F. 2400

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

1

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.

**SENATE FILE 2400
FISCAL NOTE**

The estimate for Senate File 2400 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 2400 amends Section 714.8, Subsection 15, Code of Iowa to indicate that a fraudulent practice is committed when a person attempts to obtain the property of another by deception through communications conducted primarily by telephone. The Bill requires that a person and the employer of a person who obtains or attempts to obtain the transfer of possession, control, or ownership of the property of another through communications conducted primarily by telephone, shall register with the Attorney General. The registration shall be prior to soliciting any resident of Iowa if the solicitation involves direct or implied claims that a person has or may be selected, to receive a prize, award, premium, or bonus, or will or may recover any losses suffered in connection with a telephone solicitation. The Bill also states requirements of registration do not apply to a domestic corporation, a foreign corporation that has obtained a certificate of authority, or agents of such corporations unless it appears to the Attorney General they are involved in consumer fraud and have received notification from the Attorney General that registration is required. A person required to register with the Attorney General and who fails to do so within five days after receiving notice of such failure is guilty of an aggravated misdemeanor. A person required to register and who intentionally provides false information is guilty of a Class "D" felony.

ASSUMPTIONS

Sufficient information is not available to estimate the number of offenses or convictions.

CORRECTIONAL IMPACT

Senate File 2400 defines new offenses, which may result in a potential impact to the correctional system. However, the exact impact on prison population cannot be determined. It is anticipated that any impact would not be significant.

FISCAL IMPACT

Sufficient information is not available to determine the fiscal impact on SF 2400. However, any impact is not anticipated to be significant.

SOURCES

Department of Human Services
Criminal and Juvenile Justice Planning Division
Department of Corrections

(LSB 4289SV, PQP)

FILED MARCH 12, 1996

BY DENNIS PROUTY, FISCAL DIRECTOR

McKean
Gianetto
Vilsack
Newhouse
Redfern

SSB-2245

Judiciary
led by
SP MF 2400

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

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:

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, 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 diver'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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

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

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

BACKGROUND STATEMENT
SUBMITTED BY THE AGENCY

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

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