

Senate Study Bill 181

Conference Committee Text

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1 1 Section 1. Section [9C.1](#), Code 1995, is amended to read as
1 2 follows:
1 3 9C.1 DEFINITIONS.
1 4

~~The term "transient~~
~~"Transient merchant" as used~~
~~herein~~

1 5

~~shall mean and include~~
~~in this chapter includes~~ every
1 6 merchant, whether an individual person, a firm, corporation,
1 7 partnership, or association, and whether owner, agent, bailee,
1 8 consignee, or employee, who shall bring or cause to be brought
1 9 within the state of Iowa any goods, wares, or merchandise of
1 10 any kind, nature, or description, with the intention of
1 11 temporarily or intermittently selling or offering to sell at
1 12 retail such goods, wares, or merchandise within the state of
1 13 Iowa.

~~The term "transient~~
~~"Transient merchant"~~

~~shall~~
~~also~~
1 14

~~mean and include~~
~~includes~~ every merchant, whether an
1 15 individual person, a firm, corporation, partnership, or an
1 16 association, who shall by itself, or by agent, consignee, or
1 17 employee temporarily or intermittently engage in or conduct at
1 18 one or more locations a business within the state of Iowa for
1 19 the sale at retail of any goods, wares, or merchandise of any
1 20 nature or description. A merchant engaging in business shall
1 21 be presumed to be temporarily or intermittently in business
1 22 unless it is the intention of

~~such~~
~~the~~ merchant to remain
1 23 continuously in business at each location where the merchant
1 24 is engaged in business within the state of Iowa as a merchant
1 25 for a period of more than sixty days. The provisions of this
1 26 chapter shall not be construed to apply to persons selling at
1 27 wholesale to merchants,

~~nor to~~
~~transient vendors of drugs,~~

~~nor~~

1 28

~~to~~

- persons running a huckster wagon, or selling or
 - 1 29 distributing livestock feeds, fresh meats, fish, fruit, or
 - 1 30 vegetables,

~~nor to~~

- or persons selling their own work or
 - 1 31 production either by themselves or employees.
 - 1 32 "Merchandise" means as defined in section 714.16.
 - 1 33 Sec. 2. Section [554.9402](#), subsection 2, unnumbered
 - 1 34 paragraph 1, Code 1995, is amended to read as follows:
 - 1 35 A financing statement which otherwise complies with
 - 2 1 subsection 1 is sufficient when it is signed by the secured
 - 2 2 party instead of the debtor if

~~it~~

- a previously recorded
 - 2 3 financing statement exists which was executed by the debtor in
 - 2 4 favor of that secured party and if the financing statement
 - 2 5 signed by the secured party is filed to perfect a security
 - 2 6 interest in
 - 2 7 Sec. 3. Section [714.16](#), subsection 4, paragraphs b and c,
 - 2 8 Code 1995, are amended by striking the paragraphs and
 - 2 9 inserting in lieu thereof the following:
 - 2 10 b. Subject to paragraph "c", information, documents,
 - 2 11 testimony, or other evidence provided the attorney general by
 - 2 12 a person pursuant to subsection 3 and paragraph "a" of this
 - 2 13 subsection, or provided by a person as evidence in any civil
 - 2 14 action brought pursuant to this section, shall not be admitted
 - 2 15 in evidence, or used in any manner whatsoever, in any criminal
 - 2 16 prosecution or forfeiture proceeding against that person. If
 - 2 17 a criminal prosecution or forfeiture proceeding is initiated
 - 2 18 in a state court against a person who has provided information
 - 2 19 pursuant to paragraph "c", the state shall have the burden of
 - 2 20 proof that the information provided was not used in any manner
 - 2 21 to further the criminal investigation, prosecution, or
 - 2 22 forfeiture proceeding.
 - 2 23 c. Paragraph "b" shall not apply unless the person has
 - 2 24 first asserted a right against self-incrimination and the
 - 2 25 attorney general has elected to provide the person with a
 - 2 26 written statement that the information, documents, testimony,
 - 2 27 or other evidence at issue are subject to paragraph "b".
 - 2 28 After a person has been provided such written statement by the
 - 2 29 attorney general, a claim of privilege against self-
 - 2 30 incrimination is not a defense to any action or proceeding to
 - 2 31 obtain the information, documents, testimony, or other
 - 2 32 evidence. Nothing in this section limiting the use of
 - 2 33 evidence in a criminal proceeding shall apply to any
 - 2 34 prosecution or proceeding for perjury or contempt of court
 - 2 35 committed in the course of the giving or production of the
 - 3 1 information, documents, testimony, or other evidence.
 - 3 2 Sec. 4. Section [714.16](#), subsections 5 and 6, Code 1995,
 - 3 3 are amended to read as follows:
 - 3 4 5. Service by the attorney general of any notice requiring
 - 3 5 a person to file a statement or report, or of a subpoena upon
 - 3 6 any person, shall be made personally within this state or by
 - 3 7 certified mail to the last known place of business, residence,
 - 3 8 or abode within this state of such person, but if such cannot
 - 3 9 be obtained, substituted service

~~therefor~~

- of the notice or
 - 3 10 subpoena may be made in any of the following

~~manner~~

- manners:

- 3 11 a. Personal service

~~thereof~~

~~of the notice or subpoena~~

3 12 without this state

~~;~~ or

3 13 b. The mailing

~~thereof~~

~~of the notice or subpoena~~ by

3 14

~~registered~~

~~certified~~ mail to the last known place of business,

3 15 residence, or abode within or without this state of such

3 16 person for whom the

~~same~~

~~notice or subpoena~~ is intended

~~;~~ or

3 17 c. As to any person other than a natural person, in the
3 18 manner provided in the Rules of Civil Procedure as if a
3 19 petition had been filed

~~;~~ or

3 20 d. Such service as a district court may direct in lieu of
3 21 personal service or service by certified mail within this
3 22 state.

3 23 6. If any person fails or refuses to file any statement or
3 24 report, or obey any subpoena issued by the attorney general,
3 25 the attorney general may, after notice, apply to

~~a~~

~~the Polk~~

3 26 county district court or the district court for the county in

3 27 which the person resides or is located and, after hearing

3 28

~~thereof~~

~~, request an order~~ doing any of the following:

3 29 a. Granting injunctive relief, restraining the sale or
3 30 advertisement of any merchandise by such persons

~~;~~

3 31 b. Dissolving a corporation created by or under the laws
3 32 of this state or revoking or suspending the certificate of
3 33 authority to do business in this state of a foreign
3 34 corporation or revoking or suspending any other licenses,
3 35 permits, or certificates issued pursuant to law to such person
4 1 which are used to further the allegedly unlawful practice

~~;~~

4 2

~~and~~

4 3 c. Granting such other relief as may be required; until
4 4 the person files the statement or report, or obeys the
4 5 subpoena.

4 6 Sec. 5. Section [714.16](#), Code 1995, is amended by adding
4 7 the following new subsection:

4 8 NEW SUBSECTION. 15. The attorney general may bring an
4 9 action on behalf of the residents of this state, or as parens
4 10 patriae, under the federal telemarketing and consumer fraud
4 11 and abuse prevention Act, Pub. L. No. 103-297, and pursue any
4 12 and all enforcement options available under that Act.
4 13 Subsequent amendments to that Act which do not substantially
4 14 alter its structure and purpose shall not be construed to
4 15 affect the authority of the attorney general to pursue an
4 16 action pursuant to this section, except to the extent the
4 17 amendments specifically restrict the authority of the attorney
4 18 general.

4 19 Sec. 6. Section 714.16A, subsection 1, Code 1995, is
4 20 amended to read as follows:

4 21 1. If a person violates section 714.16, and the violation
4 22 is committed against an older person, in an action brought by
4 23 the attorney general, in addition to any other civil penalty,
4 24 the court may impose an additional civil penalty not to exceed
4 25 five thousand dollars for each such violation. Additionally,
4 26 the attorney general may accept a civil penalty as determined
4 27 by the attorney general in settlement of an investigation of a
4 28 violation of section 714.16, regardless of whether an action
4 29 has been filed pursuant to section 714.16.

4 30 A civil penalty imposed by a court or determined and
4 31 accepted by the attorney general pursuant to this section
4 32 shall be paid to the treasurer of state, who shall deposit the
4 33 money in the elderly victim fund, a separate fund created in
4 34 the state treasury and administered by the attorney general
4 35 for the investigation and prosecution of frauds against the
5 1 elderly. Notwithstanding section 8.33, any balance in the
5 2 fund on June 30 of any fiscal year shall not revert to the
5 3 general fund of the state. An award of reimbursement pursuant
5 4 to section 714.16 has priority over a civil penalty imposed by
5 5 the court pursuant to this subsection.

5 6 Sec. 7. Section 725.12, Code 1995, is amended by adding
5 7 the following new unnumbered paragraph:

5 8 NEW UNNUMBERED PARAGRAPH. A violation of this section is a
5 9 violation of section 714.16, subsection 2, paragraph "a".

5 10 EXPLANATION

5 11 This bill amends provisions relating to certain consumer
5 12 protections.

5 13 Section 9C.1 is amended to define "merchandise" which is
5 14 sold by transient merchants as the same as provided for in
5 15 section 714.16, subsection 1.

5 16 Section 554.9402, which relates to financing statements
5 17 under the uniform commercial code, is amended to provide that
5 18 a financing statement which is signed by the secured party
5 19 instead of the debtor and is otherwise sufficient under the
5 20 section, is sufficient only if there exists a previously
5 21 recorded financing statement executed by the debtor in favor
5 22 of the secured party.

5 23 Section 714.16, subsection 4, is amended by striking
5 24 current paragraphs "b" and "c", which provide limited immunity
5 25 from criminal prosecution to a person providing information in
5 26 a civil action brought by the attorney general under section
5 27 714.16, and rewriting those paragraphs to provide that such
5 28 immunity shall not arise unless the person providing the
5 29 information has first asserted a right against self-
5 30 incrimination and the attorney general provides a written
5 31 statement that information provided by the person will not be
5 32 used in a subsequent criminal action.

5 33 Section 714.16, subsection 5, is amended to provide that
5 34 the notice requiring a person to file a statement or report,
5 35 or of a subpoena, which currently must be made personally when
6 1 made within this state, may now also be made by certified mail
6 2 to the last known place of business, residence, or abode of
6 3 the person within the state. Certified mail is defined in
6 4 Code section 618.15. Section 714.16, subsection 6, is amended

6 5 to provide that the attorney general may commence an action
6 6 under section 714.16 against a person who fails to respond to
6 7 a subpoena or other formal investigation request of the
6 8 attorney general in the Polk county district court, as well as
6 9 the district court in the county in which the person resides
6 10 or is located.

6 11 Section 714.16 is amended by adding a new subsection which
6 12 provides that the attorney general may bring an action on
6 13 behalf of the residents of this state under the federal
6 14 Telemarketing and Consumer Fraud and Abuse Prevention Act.

6 15 Section 714.16A is amended to provide that the attorney
6 16 general may establish and accept a settlement amount related
6 17 to an investigation of a consumer fraud allegedly committed
6 18 against an older person which does not proceed to court.

6 19 Section 725.12, which relates to illegal lotteries, is
6 20 amended to provide that a violation of that section is also a
6 21 violation of section 714.16, subsection 2, paragraph "a",
6 22 relating to fraudulent and deceptive advertising.

6 23 LSB 1170SC 76

6 24 mj/jw/5