

H. 4/3/97 Judiciary
FILED MAR 17 1997
H. 4/19/98 Do Pass
H. 3/26/98 Unfinished Bus. Calendar
490

SENATE FILE
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 152)

Passed Senate, Date ^(pass) 4/3/97 Passed House, Date ^(P. 1385) 4-8-98
Vote: Ayes 46 Nays 0 Vote: Ayes 96 Nays 0
Approved May 19, 1998

A BILL FOR

1 An Act relating to the consumer fraud law by providing limited
2 immunity from prosecution for providing certain information,
3 authorizing the attorney general to commence an action related
4 to telemarketing, and authorizing the attorney general to
5 establish and accept a civil penalty in settlement of an
6 investigation.

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

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S.F. 490

1 Section 1. Section 714.16, subsection 4, paragraphs b and
2 c, Code 1997, are amended by striking the paragraphs and
3 inserting in lieu thereof the following:

4 b. Subject to paragraph "c", information, documents,
5 testimony, or other evidence provided to the attorney general
6 by a person pursuant to paragraph "a" or subsection 3, or
7 provided by a person as evidence in any civil action brought
8 pursuant to this section, shall not be admitted in evidence,
9 or used in any manner whatsoever, in any criminal prosecution
10 or forfeiture proceeding against that person. If a criminal
11 prosecution or forfeiture proceeding is initiated in a state
12 court against a person who has provided information pursuant
13 to paragraph "a" or subsection 3, the state shall have the
14 burden of proof that the information provided was not used in
15 any manner to further the criminal investigation, prosecution,
16 or forfeiture proceeding.

17 c. Paragraph "b" does not apply unless the person has
18 first asserted a right against self-incrimination and the
19 attorney general has elected to provide the person with a
20 written statement that the information, documents, testimony,
21 or other evidence at issue are subject to paragraph "b".
22 After a person has been provided with such a written statement
23 by the attorney general, a claim of privilege against self-
24 incrimination is not a defense to any action or proceeding to
25 obtain the information, documents, testimony, or other
26 evidence. The limitation on the use of evidence in a criminal
27 proceeding contained in this section does not apply to any
28 prosecution or proceeding for perjury or contempt of court
29 committed in the course of the giving or production of the
30 information, documents, testimony, or other evidence.

31 Sec. 2. Section 714.16, subsection 6, Code 1997, is
32 amended to read as follows:

33 6. If any a person fails or refuses to file any a
34 statement or report, or obey any subpoena issued by the
35 attorney general, the attorney general may, after notice,

1 apply to ~~a~~ the Polk county district court or the district
2 court for the county in which the person resides or is located
3 and, after hearing thereof, request an order:

4 a. Granting injunctive relief, restraining the sale or
5 advertisement of any merchandise by such persons;.

6 b. Dissolving a corporation created by or under the laws
7 of this state or revoking or suspending the certificate of
8 authority to do business in this state of a foreign
9 corporation or revoking or suspending any other licenses,
10 permits, or certificates issued pursuant to law to such person
11 which are used to further the allegedly unlawful practice;
12 and.

13 c. Granting such other relief as may be required; until
14 the person files the statement or report, or obeys the
15 subpoena.

16 Sec. 3. Section 714.16, Code 1997, is amended by adding
17 the following new subsection:

18 NEW SUBSECTION. 15. The attorney general may bring an
19 action on behalf of the residents of this state, or as parens
20 patriae, under the federal Telemarketing and Consumer Fraud
21 and Abuse Prevention Act, Pub. L. No. 103-297, and pursue any
22 and all enforcement options available under that Act.
23 Subsequent amendments to that Act which do not substantially
24 alter its structure and purpose shall not be construed to
25 affect the authority of the attorney general to pursue an
26 action pursuant to this section, except to the extent the
27 amendments specifically restrict the authority of the attorney
28 general.

29 Sec. 4. Section 714.16A, subsection 1, Code 1997, is
30 amended to read as follows:

31 1. If a person violates section 714.16, and the violation
32 is committed against an older person, in an action brought by
33 the attorney general, in addition to any other civil penalty,
34 the court may impose an additional civil penalty not to exceed
35 five thousand dollars for each such violation. Additionally,

1 the attorney general may accept a civil penalty as determined
2 by the attorney general in settlement of an investigation of a
3 violation of section 714.16, regardless of whether an action
4 has been filed pursuant to section 714.16.

5 A civil penalty imposed by a court or determined and
6 accepted by the attorney general pursuant to this section
7 shall be paid to the treasurer of state, who shall deposit the
8 money in the elderly victim fund, a separate fund created in
9 the state treasury and administered by the attorney general
10 for the investigation and prosecution of frauds against the
11 elderly. Notwithstanding section 8.33, any balance in the
12 fund on June 30 of any fiscal year shall not revert to the
13 general fund of the state. An award of reimbursement pursuant
14 to section 714.16 has priority over a civil penalty imposed by
15 the court pursuant to this subsection.

16 EXPLANATION

17 This bill amends provisions of the consumer fraud law.

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

28 Code section 714.16, subsection 6, is amended to provide
29 that the attorney general may commence an action under Code
30 section 714.16 against a person who fails to respond to a
31 subpoena or other formal investigation request of the attorney
32 general in the Polk county district court, as well as the
33 district court in the county in which the person resides or is
34 located.

35 Code section 714.16 is amended by adding a new subsection

1 which provides that the attorney general may bring an action
2 on behalf of the residents of this state under the federal
3 Telemarketing and Consumer Fraud and Abuse Prevention Act.
4 Code section 714.16A is amended to provide that the
5 attorney general may establish and accept a settlement amount
6 related to an investigation of a consumer fraud allegedly
7 committed against an older person which does not proceed to
8 court.

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King, Chair
Redfern
Salvorsen

SSB 152

Judiciary

SENATE/HOUSE FILE HF 495
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 the consumer fraud law by providing limited
2 immunity from prosecution for providing certain information,
3 amending notice provisions, authorizing the attorney general
4 to commence an action related to telemarketing, and
5 authorizing the attorney general to establish and accept a
6 civil penalty in settlement of an investigation.

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

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1 Section 1. Section 714.16, subsection 4, paragraphs b and
2 c, Code 1997, are amended by striking the paragraphs and
3 inserting in lieu thereof the following:

4 b. Subject to paragraph "c", information, documents,
5 testimony, or other evidence provided to the attorney general
6 by a person pursuant to paragraph "a" or subsection 3, or
7 provided by a person as evidence in any civil action brought
8 pursuant to this section, shall not be admitted in evidence,
9 or used in any manner whatsoever, in any criminal prosecution
10 or forfeiture proceeding against that person. If a criminal
11 prosecution or forfeiture proceeding is initiated in a state
12 court against a person who has provided information pursuant
13 to paragraph "a" or subsection 3, the state shall have the
14 burden of proof that the information provided was not used in
15 any manner to further the criminal investigation, prosecution,
16 or forfeiture proceeding.

17 c. Paragraph "b" does not apply unless the person has
18 first asserted a right against self-incrimination and the
19 attorney general has elected to provide the person with a
20 written statement that the information, documents, testimony,
21 or other evidence at issue are subject to paragraph "b".
22 After a person has been provided with such a written statement
23 by the attorney general, a claim of privilege against self-
24 incrimination is not a defense to any action or proceeding to
25 obtain the information, documents, testimony, or other
26 evidence. The limitation on the use of evidence in a criminal
27 proceeding contained in this section does not apply to any
28 prosecution or proceeding for perjury or contempt of court
29 committed in the course of the giving or production of the
30 information, documents, testimony, or other evidence.

31 Sec. 2. Section 714.16, subsections 5 and 6, Code 1997,
32 are amended to read as follows:

33 5. Service by the attorney general of any a notice
34 requiring a person to file a statement or report, or of a
35 subpoena upon any person, shall be made personally within this

1 state or by certified mail to the last known place of
2 business, residence, or abode within this state of such
3 person, but if such cannot be obtained, substituted service
4 therefor of the notice or subpoena may be made in pursuant to
5 any of the following manner:

6 a. Personal service thereof of the notice or subpoena
7 without this state;-er.

8 b. The mailing thereof of the notice or subpoena by
9 registered certified mail to the last known place of business,
10 residence, or abode within or without this state of such the
11 person for whom the same notice or subpoena is intended;-er.

12 c. As to any person other than a natural person, in the
13 manner provided in the Rules of Civil Procedure as if a
14 petition had been filed;-er.

15 d. Such service as a district court may direct in lieu of
16 personal service or service by certified mail within this
17 state.

18 6. If any a person fails or refuses to file any a
19 statement or report, or obey any subpoena issued by the
20 attorney general, the attorney general may, after notice,
21 apply to a the Polk county district court or the district
22 court for the county in which the person resides or is located
23 and, after hearing thereof, request an order:

24 a. Granting injunctive relief, restraining the sale or
25 advertisement of any merchandise by such persons;-.

26 b. Dissolving a corporation created by or under the laws
27 of this state or revoking or suspending the certificate of
28 authority to do business in this state of a foreign
29 corporation or revoking or suspending any other licenses,
30 permits, or certificates issued pursuant to law to such person
31 which are used to further the allegedly unlawful practice;-
32 and.

33 c. Granting such other relief as may be required;- until
34 the person files the statement or report, or obeys the
35 subpoena.

1 Sec. 3. Section 714.16, Code 1997, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 15. The attorney general may bring an
4 action on behalf of the residents of this state, or as parens
5 patriae, under the federal Telemarketing and Consumer Fraud
6 and Abuse Prevention Act, Pub. L. No. 103-297, and pursue any
7 and all enforcement options available under that Act.
8 Subsequent amendments to that Act which do not substantially
9 alter its structure and purpose shall not be construed to
10 affect the authority of the attorney general to pursue an
11 action pursuant to this section, except to the extent the
12 amendments specifically restrict the authority of the attorney
13 general.

14 Sec. 4. Section 714.16A, subsection 1, Code 1997, is
15 amended to read as follows:

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

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

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EXPLANATION

This bill amends provisions of the consumer fraud law.

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

Section 714.16, subsection 5, is amended to provide that the notice requiring a person to file a statement or report, or of a subpoena, which currently must be made personally when made within this state, may now also be made by certified mail to the last known place of business, residence, or abode of the person within the state. Section 714.16, subsection 6, is amended to provide that the attorney general may commence an action under section 714.16 against a person who fails to respond to a subpoena or other formal investigation request of the attorney general in the Polk county district court, as well as the district court in the county in which the person resides or is located.

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

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

SENATE FILE 490

AN ACT

RELATING TO THE CONSUMER FRAUD LAW BY PROVIDING LIMITED IMMUNITY FROM PROSECUTION FOR PROVIDING CERTAIN INFORMATION, AUTHORIZING THE ATTORNEY GENERAL TO COMMENCE AN ACTION RELATED TO TELEMARKETING, AND AUTHORIZING THE ATTORNEY GENERAL TO ESTABLISH AND ACCEPT A CIVIL PENALTY IN SETTLEMENT OF AN INVESTIGATION.

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

Section 1. Section 714.16, subsection 4, paragraphs b and c, Code 1997, are amended by striking the paragraphs and inserting in lieu thereof the following:

b. Subject to paragraph "c", information, documents, testimony, or other evidence provided to the attorney general by a person pursuant to paragraph "a" or subsection 3, or provided by a person as evidence in any civil action brought pursuant to this section, shall not be admitted in evidence, or used in any manner whatsoever, in any criminal prosecution or forfeiture proceeding against that person. If a criminal prosecution or forfeiture proceeding is initiated in a state court against a person who has provided information pursuant to paragraph "a" or subsection 3, the state shall have the

burden of proof that the information provided was not used in any manner to further the criminal investigation, prosecution, or forfeiture proceeding.

c. Paragraph "b" does not apply unless the person has first asserted a right against self-incrimination and the attorney general has elected to provide the person with a written statement that the information, documents, testimony, or other evidence at issue are subject to paragraph "b". After a person has been provided with such a written statement by the attorney general, a claim of privilege against self-incrimination is not a defense to any action or proceeding to obtain the information, documents, testimony, or other evidence. The limitation on the use of evidence in a criminal proceeding contained in this section does not apply to any prosecution or proceeding for perjury or contempt of court committed in the course of the giving or production of the information, documents, testimony, or other evidence.

Sec. 2. Section 714.16, subsection 6, Code 1997, is amended to read as follows:

6. If any a person fails or refuses to file any a statement or report, or obey any subpoena issued by the attorney general, the attorney general may, after notice, apply to a the Polk county district court or the district court for the county in which the person resides or is located and, after hearing thereof, request an order:

a. Granting injunctive relief, restraining the sale or advertisement of any merchandise by such persons;_

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

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

Sec. 3. Section 714.16, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 15. The attorney general may bring an action on behalf of the residents of this state, or as parens patriae, under the federal Telemarketing and Consumer Fraud and Abuse Prevention Act, Pub. L. No. 103-297, and pursue any and all enforcement options available under that Act. Subsequent amendments to that Act which do not substantially alter its structure and purpose shall not be construed to affect the authority of the attorney general to pursue an action pursuant to this section, except to the extent the amendments specifically restrict the authority of the attorney general.

Sec. 4. Section 714.16A, subsection 1, Code 1997, is amended to read as follows:

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

A civil penalty imposed by a court or determined and accepted by the attorney general pursuant to this section shall be paid to the treasurer of state, who shall deposit the money in the elderly victim fund, a separate fund created in the state treasury and administered by the attorney general for the investigation and prosecution of frauds against the elderly. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the

general fund of the state. An award of reimbursement pursuant to section 714.16 has priority over a civil penalty imposed by the court pursuant to this subsection.

MARY E. KRAMER
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 490, Seventy-seventh General Assembly.

MARY PAT GUNDERSON
Secretary of the Senate

Approved May 19, 1998

TERRY E. BRANSTAD
Governor