

Miller
Dvorsky
Redfern

SSB.3049

Judiciary

Succeeded by

SENATE/HOUSE FILE

HF 2372

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 certain providers of consumer services by
2 eliminating the registration requirement for physical exercise
3 clubs, making social referral service providers subject to
4 provisions relating to door-to-door sales, and making
5 penalties applicable.

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

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1 Section 1. Section 552.14, subsection 2, paragraph a, Code
2 1999, is amended by striking the paragraph.

3 Sec. 2. Section 552.16, subsection 2, Code 1999, is
4 amended to read as follows:

5 2. If the physical exercise club does not fully open for
6 business before the two hundred eleventh day after the date it
7 enters into the first physical exercise club contract or if
8 the club does not remain fully open for thirty days, the
9 buyers whose payments are held in escrow under this section
10 shall receive a full refund, including the buyer's pro rata
11 share of any interest earned thereon, from the escrow agent.
12 Refunds pursuant to this section shall be made not later than
13 the two hundred forty-first day after the date the first
14 physical exercise club contract was signed. If the escrow
15 agent fails to make a full refund as provided for in this
16 section, the attorney general shall hold a hearing and
17 determine whether the physical exercise club has fully opened
18 and has remained open for thirty days, and if not, determine
19 those persons who, as buyers, are entitled to a refund and, if
20 appropriate, distribute the escrow proceeds. Notice shall be
21 provided to the physical exercise club at ~~its place of~~
22 ~~business as shown on its registration statement~~ the address
23 specified in the contract pursuant to section 552.4 and to all
24 buyers who have funds in the escrow account. All hearings
25 held under this section shall be held in accordance with
26 chapter 17A.

27 Sec. 3. Section 555A.1, subsection 3 and 4, Code 1999, are
28 amended to read as follows:

29 3. a. "Door-to-door sale" means a sale, lease, or rental
30 of consumer goods or services with a purchase price of twenty-
31 five dollars or more, whether under single or multiple
32 contracts, in which the seller or the seller's representative
33 personally solicits the sale, including those in response to
34 or following an invitation by the buyer, and the buyer's
35 agreement or offer to purchase is made at a place other than

1 the place of business of the seller. Door-to-door sale does
2 not include a transaction:

3 a- (1) Made pursuant to prior negotiations in the course
4 of a visit by the buyer to a retail business establishment
5 having a fixed permanent location where the goods are
6 exhibited or the services are offered for sale on a continuing
7 basis.

8 b- (2) In which the consumer is accorded the right of
9 rescission by the provisions of the Consumer Credit Protection
10 Act, 15 U.S.C. § 1635, or rules issued pursuant to this
11 chapter.

12 c- (3) In which the buyer has initiated the contact and
13 the goods or services are needed to meet a bona fide immediate
14 personal emergency of the buyer, and the buyer furnishes the
15 seller with a separate dated and signed personal statement in
16 the buyer's handwriting describing the situation requiring
17 immediate remedy and expressly acknowledging and waiving the
18 right to cancel the sale within three business days.

19 d- (4) Conducted and consummated entirely by mail or
20 telephone; and without any other contact between the buyer and
21 the seller or its representative prior to delivery of the
22 goods or performance of the services.

23 e- (5) In which the buyer has initiated the contact and
24 specifically requested the seller to visit the buyer's home
25 for the purpose of repairing or performing maintenance upon
26 the buyer's personal property. If in the course of such a
27 visit, the seller sells the buyer the right to receive
28 additional services or goods other than replacement parts
29 necessarily used in performing the maintenance or in making
30 the repairs, the sale of those additional goods or services
31 would not fall within this exclusion.

32 f- (6) Pertaining to the sale or rental of real property,
33 to the sale of insurance and prepaid health service plans, or
34 to the sale of securities or commodities by a broker-dealer
35 registered with the securities and exchange commission.

1 4. b. "Door-to-door sale", irrespective of the place or
2 manner of sale, also means a the following:

3 (1) A sale of funeral services or funeral merchandise
4 regulated under chapter 523A7--~~irrespective of the place or~~
5 ~~manner of sale~~.

6 (2) A sale of a social referral service or an ancillary
7 service. For purposes of this subparagraph, "social referral
8 service" means a service for a fee providing matching or
9 introduction of individuals for the purpose of dating,
10 matrimony, or general social contact not otherwise prohibited
11 by law, and "ancillary service" means goods or services
12 directly or indirectly related to or to be provided in
13 connection with a social referral service.

14 Sec. 4. Section 552.15, Code 1999, is repealed.

15 EXPLANATION

16 This bill amends provisions relating to the protection of
17 consumers who enter into certain contractual agreements and to
18 the registration responsibilities of certain persons offering
19 such contractual agreements to consumers.

20 The bill eliminates the requirement that physical exercise
21 clubs register with the office of attorney general's consumer
22 protection division.

23 The bill also includes the sale of social referral services
24 or ancillary services under provisions of Code chapter 555A,
25 relating to door-to-door sales. The bill provides that
26 "social referral service" means a service for a fee providing
27 matching or introduction of individuals for the purpose of
28 dating, matrimony, or general social contact not otherwise
29 prohibited by law, and that "ancillary service" means goods or
30 services directly or indirectly related to or to be provided
31 in connection with a social referral service. A person who
32 violates Code chapter 555A as it relates to the sale of social
33 referral services or ancillary services is guilty of a simple
34 misdemeanor, and is also subject to the remedies provided
35 under Code section 714.16, relating to consumer frauds.

3049



THOMAS J. MILLER
ATTORNEY GENERAL

CONSUMER PROTECTION DIVISION
HOOVER BUILDING
DES MOINES, IOWA 50319
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Department of Justice

MEMORANDUM

TO: Members of the General Assembly
FROM: John Pederson, Legislative Liaison
DATE: January 10, 2000
SUBJECT: Repeal of Physical Exercise Club Registration Requirements and Provision of Cancellation Rights in Dating Service Contracts

The Iowa Attorney General's Office is submitting a bill request for legislation amending chapter 552 relating to physical exercise clubs to repeal the requirement to register with the Office of the Attorney General. When this chapter was originally enacted, in 1988, consumer complaints to the Attorney General relating to physical exercise clubs were rampant. The most common complaints were from consumers who were misled by representations made by club owners who advertised new facilities to entice consumers to join, but whose facilities failed to include some of the advertised features. The registration requirement was included in the chapter in order to provide the Attorney General with information relating to new facilities. Since enactment, complaints about physical exercise clubs have diminished substantially. The registration requirement has helped in this endeavor. However, it is the Attorney General's view that the registration requirement is no longer necessary, given that the chapter otherwise provides the Attorney General with sufficient authority to address abusive practices by physical exercise clubs. The repeal of the registration requirement will benefit Iowa's physical exercise clubs by reducing administrative costs and the costs of registration. It also will benefit law enforcement by the Attorney General by freeing up a substantial portion of the time of an investigator who otherwise oversees registration to address consumer complaints and investigations of consumer fraud, generally.

The other part of the bill amends the Iowa door to door sales act to provide consumers who enter into dating club contracts three business days to cancel, regardless of the place or manner of sale. A similar approach has been taken regarding physical exercise club contracts (section 552.4), buying club memberships (section 552A.3), contracts for campground memberships (section 557B.10), and sales of funeral merchandise and services (section 555A.1(4)). The Attorney General's office has received numerous complaints about dating club contracts. Providing consumers who sign the contracts three business days to consider the purchase ensures that consumers have sufficient time to fully consider entering into the agreement.

H. 3/6/00 Judiciary
H. 3/14/00 Do Pass

FILED FEB 28 '00

SENATE FILE **2372**
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3049)

Passed Senate, Date (p.516) 3/2/00 Passed House, Date (p.898) 3/22/00
Vote: Ayes 47 Nays 0 Vote: Ayes 100 Nays 0
Approved 3/30/00

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SF 2372

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6 business before the two hundred eleventh day after the date it
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8 the club does not remain fully open for thirty days, the
9 buyers whose payments are held in escrow under this section
10 shall receive a full refund, including the buyer's pro rata
11 share of any interest earned thereon, from the escrow agent.
12 Refunds pursuant to this section shall be made not later than
13 the two hundred forty-first day after the date the first
14 physical exercise club contract was signed. If the escrow
15 agent fails to make a full refund as provided for in this
16 section, the attorney general shall hold a hearing and
17 determine whether the physical exercise club has fully opened
18 and has remained open for thirty days, and if not, determine
19 those persons who, as buyers, are entitled to a refund and, if
20 appropriate, distribute the escrow proceeds. Notice shall be
21 provided to the physical exercise club at ~~its place of~~
22 ~~business-as-shown-on-its-registration-statement~~ the address
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24 buyers who have funds in the escrow account. All hearings
25 held under this section shall be held in accordance with
26 chapter 17A.

27 Sec. 3. Section 555A.1, subsections 3 and 4, Code 1999,
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30 of consumer goods or services with a purchase price of twenty-
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2 not include a transaction:

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4 of a visit by the buyer to a retail business establishment
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7 basis.

8 b- (2) In which the consumer is accorded the right of
9 rescission by the provisions of the Consumer Credit Protection
10 Act, 15 U.S.C. § 1635, or rules issued pursuant to this
11 chapter.

12 c- (3) In which the buyer has initiated the contact and
13 the goods or services are needed to meet a bona fide immediate
14 personal emergency of the buyer, and the buyer furnishes the
15 seller with a separate dated and signed personal statement in
16 the buyer's handwriting describing the situation requiring
17 immediate remedy and expressly acknowledging and waiving the
18 right to cancel the sale within three business days.

19 d- (4) Conducted and consummated entirely by mail or
20 telephone; and without any other contact between the buyer and
21 the seller or its representative prior to delivery of the
22 goods or performance of the services.

23 e- (5) In which the buyer has initiated the contact and
24 specifically requested the seller to visit the buyer's home
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26 the buyer's personal property. If in the course of such a
27 visit, the seller sells the buyer the right to receive
28 additional services or goods other than replacement parts
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30 the repairs, the sale of those additional goods or services
31 would not fall within this exclusion.

32 f- (6) Pertaining to the sale or rental of real property,
33 to the sale of insurance and prepaid health service plans, or
34 to the sale of securities or commodities by a broker-dealer
35 registered with the securities and exchange commission.

1 4- b. "Door-to-door sale", irrespective of the place or
2 manner of sale, also means a the following:

3 (1) A sale of funeral services or funeral merchandise
4 regulated under chapter 523A7--irrespective-of-the-place-or
5 manner-of-sale.

6 (2) A sale of a social referral service or an ancillary
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14 Sec. 4. Section 552.15, Code 1999, is repealed.

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22 protection division.

23 The bill also includes the sale of social referral services
24 or ancillary services under provisions of Code chapter 555A,
25 relating to door-to-door sales. The bill provides that
26 "social referral service" means a service for a fee providing
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28 dating, matrimony, or general social contact not otherwise
29 prohibited by law, and that "ancillary service" means goods or
30 services directly or indirectly related to or to be provided
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33 referral services or ancillary services is guilty of a simple
34 misdemeanor, and is also subject to the remedies provided
35 under Code section 714.16, relating to consumer frauds.

SENATE FILE 2372

AN ACT

RELATING TO CERTAIN PROVIDERS OF CONSUMER SERVICES BY
ELIMINATING THE REGISTRATION REQUIREMENT FOR PHYSICAL
EXERCISE CLUBS, MAKING SOCIAL REFERRAL SERVICE PROVIDERS
SUBJECT TO PROVISIONS RELATING TO DOOR-TO-DOOR SALES, AND
MAKING PENALTIES APPLICABLE.

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

Section 1. Section 552.14, subsection 2, paragraph a, Code 1999, is amended by striking the paragraph.

Sec. 2. Section 552.16, subsection 2, Code 1999, is amended to read as follows:

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Refunds pursuant to this section shall be made not later than the two hundred forty-first day after the date the first physical exercise club contract was signed. If the escrow agent fails to make a full refund as provided for in this section, the attorney general shall hold a hearing and determine whether the physical exercise club has fully opened and has remained open for thirty days, and if not, determine those persons who, as buyers, are entitled to a refund and, if appropriate, distribute the escrow proceeds. Notice shall be provided to the physical exercise club at its-place-of-business-as-shown-on-its-registration-statement the address specified in the contract pursuant to section 552.4 and to all buyers who have funds in the escrow account. All hearings held under this section shall be held in accordance with chapter 17A.

Sec. 3. Section 555A.1, subsections 3 and 4, Code 1999, are amended to read as follows:

3. a. "Door-to-door sale" means a sale, lease, or rental of consumer goods or services with a purchase price of twenty-five dollars or more, whether under single or multiple contracts, in which the seller or the seller's representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. Door-to-door sale does not include a transaction:

a- (1) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis.

b- (2) In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, 15 U.S.C. § 1635, or rules issued pursuant to this chapter.

c- (3) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days.

d- (4) Conducted and consummated entirely by mail or telephone; and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services.

e- (5) In which the buyer has initiated the contact and specifically requested the seller to visit the buyer's home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion.

f- (6) Pertaining to the sale or rental of real property, to the sale of insurance and prepaid health service plans, or to the sale of securities or commodities by a broker-dealer registered with the securities and exchange commission.

4- b. "Door-to-door sale", irrespective of the place or manner of sale, also means a the following:

(1) A sale of funeral services or funeral merchandise regulated under chapter 523A, ~~irrespective of the place or manner of sale.~~

(2) A sale of a social referral service or an ancillary service. For purposes of this subparagraph, "social referral service" means a service for a fee providing matching or introduction of individuals for the purpose of dating, matrimony, or general social contact not otherwise prohibited by law, and "ancillary service" means goods or services

directly or indirectly related to or to be provided in connection with a social referral service.

Sec. 4. Section 552.15, Code 1999, is repealed.

MARY E. KRAMER
President of the Senate

BRENT SIEGRIST
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2372, Seventy-eighth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved 3/30, 2000

THOMAS J. VILSACK
Governor