

Sec. 26. IOWA UTILITIES BOARD STUDY. The Iowa utilities board shall conduct a study to determine the overall impact of the Iowa communications network on the private telecommunications industry in Iowa. The board shall provide a written report to the general assembly by no later than January 15, 1996, detailing the results of the study.

Sec. 27. TEMPORARY AUTHORITY OF CHIEF EXECUTIVE OFFICER. All duties and responsibilities of the Iowa telecommunications and technology commission shall be performed by the ICN chief executive officer appointed by the governor pursuant to executive order number 46 signed on January 5, 1993, until such time as the initial appointments to the commission have been made and the commission has organized itself.

Sec. 28. INITIAL IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION APPOINTMENTS. The initial members of the Iowa telecommunications and technology commission shall be appointed on or before July 1, 1994, to the following terms:

1. One member shall be appointed for a term of six years.
2. One member shall be appointed for a term of four years.
3. One member shall be appointed for a term of two years.

Sec. 29. CODE EDITOR TRANSFERS. The Code editor shall transfer sections 18.132 through 18.137 to be a new chapter 8D. The Code editor shall correct all internal citations and references consistent with the transfer of Code sections as provided in this section.

Sec. 30. CONTINUATION OF APPLICABILITY OF EXISTING RULES. Rules applicable to the Iowa communications network in effect on the effective date of this Act shall remain effective until the Iowa telecommunications and technology commission modifies or repeals such rules.

Sec. 31. REPEAL. Section 18.135, Code 1993, is repealed.

Sec. 32. EFFECTIVE DATE. This Act, being deemed of immediate importance, is effective upon enactment.

Approved May 18, 1994

CHAPTER 1185

PRIZE PROMOTIONS

S.F. 2272

AN ACT relating to prize promotions by creating criminal and civil penalties and creating a private cause of action.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 714.8, Code 1993, is amended by adding the following new subsection: **NEW SUBSECTION. 15.** Obtains or attempts to obtain the transfer of possession, control, or ownership, of the property of another by deception through communications conducted primarily by telephone and involving direct or implied claims that the other person contacted has won or is about to win a prize, or involving direct or implied claims that the other person contacted may be able to recover any losses suffered by such other person in connection with a prize promotion.

Sec. 2. **NEW SECTION. 714B.1 DEFINITIONS.**

As used in this chapter, unless the context otherwise requires:

1. "Advertisement" means as defined in section 714.16, subsection 1.
2. "Merchandise" means as defined in section 714.16, subsection 1.
3. "Person" means as defined in section 714.16, subsection 1.
4. "Prize" means a gift, award, cash award, or other merchandise of value that is offered or awarded to a person in a real or purported contest, competition, sweepstakes, puzzle, drawing, scheme, plan, or other selection process.
5. "Retail value" of a prize means the following:
 - a. A price at which the sponsor of the prize can substantiate that a substantial number of the items of merchandise have been sold to the public in the year preceding the date of the written prize notice in the regular course of business other than through a prize promotion.
 - b. No more than one and one-half times the amount the sponsor paid for the prize in a bona fide purchase from an unaffiliated seller, if the sponsor is unable to substantiate a price pursuant to paragraph "a".
6. "Sponsor" means a person who awards another person a prize or who allows the person to receive, use, compete for, or obtain information about a prize.

Sec. 3. NEW SECTION. 714B.2 WRITTEN PRIZE NOTICE — CONTENT — FORM.

1. a. A sponsor of a prize shall not require a person to purchase merchandise or pay or donate money as a condition of awarding a prize or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize, unless the person has first received a written prize notice which satisfies the requirements of subsections 2 and 3. A sponsor shall not create the reasonable impression that such a purchase, payment, or donation is required, unless the person has first received a written prize notice which satisfies the requirements of subsections 2 and 3.
 - b. For purposes of this chapter, a sponsor is deemed to have created the reasonable impression that a payment, purchase, or donation is required as a condition of awarding the person a prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize, if the sponsor does any of the following:
 - (1) Fails to clearly and conspicuously disclose that a purchase, payment, or donation is not required in immediate proximity to, and in the same type and boldness as, each written reference to a purchase, payment, or donation, or in immediate proximity to, and in the same audio volume as, each verbal reference to a purchase, payment, or donation.
 - (2) Uses a verbal or written solicitation, or other advertisement which contains any express or implied representations that a participant's likelihood of receiving a prize or other favorable treatment is enhanced by making a purchase, payment, or donation.
 - (3) Uses a verbal or written solicitation, course of solicitation, or other advertisement which when considered in its totality creates an overall impression that a participant's likelihood of receiving a prize or other favorable treatment is enhanced by making a purchase, payment, or donation.
 - c. A written prize notice satisfying the requirements of subsections 2 and 3 must precede every verbal advertisement by a sponsor which requires a person to purchase merchandise or pay or donate money, or gives the reasonable impression that such a purchase, payment, or donation is required, as a condition of awarding a prize, or as a condition of allowing a person to receive, use, compete for, or obtain information about a prize.
 - d. Each written advertisement by a sponsor which requires a person to purchase merchandise or pay or donate money, or gives the reasonable impression that such a purchase, payment, or donation is required as a condition of awarding a prize or as a condition of allowing a person to receive, use, compete for, or obtain information about a prize, must satisfy the requirements of subsections 2 and 3.
 2. A written prize notice must contain each of the following:
 - a. The true name or names of the sponsor and the street address of the sponsor's actual principal place of business.
 - b. The retail value of each prize the person receiving the notice has been selected to receive or may be eligible to receive.

- c. A statement of the odds the person has of receiving each prize identified in the notice.
- d. Any requirement that the person pay shipping or handling fees, or any other charges to obtain or use a prize, including the nature and amount of the charge.
- e. A statement that a restriction applies and a description of the restriction, if receipt of the prize is subject to a restriction.
- f. Any limitations on eligibility to receive a prize.

g. If a sponsor represents that a person is a winner or finalist, has been specially selected, is in first place, or is otherwise among a limited group of persons with an enhanced likelihood of receiving a prize; or that a person is entering a contest, sweepstakes, drawing, or other competitive enterprise from which a single winner or select group of winners will receive a prize, and if the notice is not prohibited under section 714B.3, subsection 1, paragraph "c", a statement of the maximum number of persons in the group or purported group with this enhanced likelihood of receiving a prize.

h. Any requirement or invitation for the person to view, hear, or attend a sales presentation in order to claim a prize, a good faith estimate of the length of the sales presentation, a description of the merchandise that is the subject of the sales presentation, and the total cost of such merchandise.

3. The information required in the written prize notice pursuant to subsection 2 must be provided as follows:

a. The retail value and the statement of odds required under subsection 2 must be stated in immediate proximity to each identification of a prize on the written notice, and must be in the same size and boldness of type as the reference to the prize.

b. The retail value must be stated in Arabic numerals, and must be in the following form: retail value: \$_____.

c. The statement of odds must include, for each prize, the total number of prizes to be given away and the total number of written prize notices to be distributed. The number of prizes and written prize notices must be stated in Arabic numerals. The statement of odds must be in the following form: _____ (number of prizes) out of _____ (notices distributed).

d. If a person is required to pay shipping or handling fees or any other charges to obtain a prize, to be eligible to obtain a prize, or to participate in a contest, a statement must appear in immediate proximity to each listing of the prize in the written prize notice in not less than ten-point boldface type as follows: **YOU MUST PAY \$ _____ IN ORDER TO RECEIVE OR USE THIS ITEM, or, YOU MUST PAY \$ _____ IN ORDER TO COMPETE FOR THIS ITEM, as applicable.**

e. The information required under subsection 2, paragraphs "e", "f", and "h" must be on the first page of the written prize notice in not less than ten-point boldface type.

f. A statement required under subsection 2, paragraph "g", must appear in immediate proximity to each representation that the person is among a group of persons with an enhanced likelihood of receiving a prize, and must be in the same type size and boldness as the representation.

Sec. 4. NEW SECTION. 714B.3 PROHIBITED PRACTICES.

1. A sponsor of a prize shall not do any of the following:

a. Deliver a written prize notice, or an envelope containing a written prize notice, that contains language, or is designed in a manner, that would have the tendency or capacity to mislead intended recipients as to the source of the written prize notice. This prohibition includes, but is not limited to, a written prize notice or envelope which indicates that the notice or envelope originates from a government agency, public utility, insurance company, consumer reporting agency, debt collector, or law firm, unless the written prize notice or envelope originates from such source.

b. Represent directly or by implication that the number of persons eligible for the prize is limited or that a person has been selected to receive a particular prize, unless the representation is true.

c. Represent that a person is a winner or finalist, has been specially selected, is in first place, or is otherwise among a limited group of persons with an enhanced likelihood of receiving a prize, or that a person is entering a contest, sweepstakes, drawing, or other competitive enterprise, from which a single winner or select group of winners will receive a prize, when in fact the enterprise is a promotional scheme designed to make contact with prospective customers and all or a substantial number of those receiving the notice are awarded the same prize.

d. Represent directly or by implication that a person will have an increased chance of receiving a prize by making multiple or duplicate purchases, payments or donations, or by entering a game, drawing, sweepstakes, or other contest more than one time, unless the representation is true. A sponsor is deemed to have made such representation if the sponsor delivers one or more prize notices to a person after the person has already made a purchase, payment, or donation to the sponsor for the same promotion, or has already entered the same game, drawing, sweepstakes, or other contest, unless the sponsor can demonstrate a bona fide error even though the sponsor has implemented procedures reasonably designed to prevent such duplication.

e. Represent directly or by implication that a person is being notified a second or final time of the opportunity to receive or compete for a prize, unless the representation is true.

f. Represent directly or by implication that a prize notice is urgent, or otherwise convey an impression of urgency by use of description, narrative copy, phrasing on an envelope, or similar method, unless there is a limited time period in which the recipient must take some action to claim or be eligible to receive a prize, and the date by which such action is required appears in immediate proximity to each representation of urgency and in the same type size and boldness as each representation of urgency.

g. Knowingly sell, rent, exchange, transfer, or otherwise furnish to or purchase from other persons, financial data regarding Iowans disclosed in connection with a prize promotion not in compliance with this chapter. For purposes of this chapter, financial data includes credit card numbers, bank account numbers, other payment device numbers, and dollars spent on prize promotions which are not in compliance with this chapter.

h. Request an individual to disclose the individual's phone number, age, birthdate, credit card ownership, or financial data in connection with a prize promotion which is not in compliance with this chapter.

2. If a written prize notice requires or invites a person to view, hear, or attend a sales presentation in order to claim a prize, the sales presentation shall not begin until the sponsor does all of the following:

a. Informs the person of the prize, if any, that has been awarded to the person.

b. If the person is awarded a prize, delivers to the person the prize or the item selected by the person as provided in section 714B.4, if the prize awarded is not available.

Sec. 5. NEW SECTION. 714B.4 PRIZE AWARD REQUIRED.

A sponsor of a prize who represents to a person that the person has been awarded a prize shall, no later than thirty days after making the representation, provide the person with the prize; with a voucher, certificate, or other document indicating the person's unconditional right to receive the prize; or with either of the following items as selected by the person:

1. Any other prize listed in the written prize notice that is available and that is of equal or greater value.

2. The retail value of the prize, as stated in the written notice, in the form of cash, a money order, or a certified check.

Sec. 6. NEW SECTION. 714B.5 INFORMATION REQUESTED BY ATTORNEY GENERAL.

A sponsor shall provide, upon the request of the attorney general made within one year after the termination date of the promotion, a record of the names and addresses of all winners of prizes of one hundred dollars or more.

Sec. 7. NEW SECTION. 714B.6 CRIMINAL PENALTIES.

A person who intentionally violates this chapter is guilty of an aggravated misdemeanor. A person intentionally violates this chapter if the act or acts in violation occur or continue after the attorney general or county attorney has notified the person by certified mail that the person is in violation of this chapter.

Sec. 8. NEW SECTION. 714B.7 CIVIL ENFORCEMENT.

A violation of this chapter constitutes a violation of section 714.16, subsection 2, paragraph "a".

Sec. 9. NEW SECTION. 714B.8 PRIVATE ACTION.

In addition to any other remedies, a person suffering pecuniary loss as a result of a violation of this chapter by another person may bring an action against such other person to recover all of the following:

1. The greater of five hundred dollars or twice the amount of the pecuniary loss.
2. Costs and reasonable attorney fees.

Sec. 10. NEW SECTION. 714B.9 COMPLIANCE WITH OTHER LAWS.

This chapter shall not be construed to permit an activity prohibited by section 714.16, or rules adopted pursuant to that section, or by chapter 725, or other applicable law.

Sec. 11. NEW SECTION. 714B.10 EXEMPTIONS.

This chapter does not apply to the following:

1. Advertising by sponsors registered pursuant to chapter 557B, licensed pursuant to chapter 99B, or regulated pursuant to chapters 99D, 99E, or 99F.
2. Advertising in connection with the sale or purchase of books, recordings, videocassettes, periodicals, and similar goods through a membership group or club which is regulated by the federal trade commission pursuant to code of federal regulations, Title 16, part 4525.1, concerning use of negative option plans by sellers in commerce.
3. Advertising in connection with the sale or purchase of goods ordered through a contractual plan or arrangement such as a continuity plan, subscription arrangement, or a single sale or purchase series arrangement under which the seller ships goods to a consumer who has consented in advance to receive the goods and who, after the receipt of the goods, is given an opportunity to examine the goods and to receive a full refund of charges for the goods upon return of the goods undamaged.
4. Advertising in connection with sales by a catalog seller. For purposes of this section "catalog seller" means a person at least fifty percent of whose annual revenues are derived from the sale of merchandise sold in connection with the distribution of catalogs of at least twenty-four pages, which contain written descriptions or illustrations and sale prices for each item of merchandise and which are distributed in more than one state with a total annual distribution of at least two hundred fifty thousand.

Approved May 19, 1994