

CHAPTER 123

REGULATION OF ELECTRONIC MAIL AND INTERNET DRUG SALES

H.F. 610

AN ACT relating to the transmission of electronic mail including the transmission of unsolicited bulk electronic mail, and the sale or offer for direct sale of prescription drugs and the sale of adulterated or misbranded drugs through the use of electronic mail or the internet, and providing for penalties.

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

Section 1. NEW SECTION. 716A.1 DEFINITIONS.

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

1. "Computer" means the same as defined in section 702.1A.
2. "Computer data" means the same as defined in section 702.1A.
3. "Computer network" means the same as defined in section 702.1A.
4. "Computer operation" means arithmetic, logical, monitoring, storage, or retrieval functions, or any combination thereof, and includes, but is not limited to, communication with, storage of data to, or retrieval of data from any device or human hand manipulation of electronic or magnetic impulses. "Computer operation" for a particular computer may also mean any function for which the computer was generally designed.
5. "Computer program" means an ordered set of data representing coded instructions or statements that, when executed by a computer, causes the computer to perform one or more computer operations.
6. "Computer services" means computer time or services, including data processing services, internet services, electronic mail services, electronic message services, or information or data stored in connection therewith.
7. "Computer software" means a set of computer programs, procedures, and associated documentation concerned with computer data or with computer operation, a computer program, or a computer network.
8. "Electronic mail service provider" means a person who does either of the following:
 - a. Is an intermediary in sending or receiving electronic mail.
 - b. Provides to end users of electronic mail services the ability to send or receive electronic mail.
9. "Encryption" means the enciphering of intelligible data into unintelligible form or the deciphering of unintelligible data into intelligible form.
10. "Owner" means an owner or lessee of a computer or a computer network or an owner, lessee, or licensee of computer data, a computer program, or computer software.
11. "Person" means the same as defined in section 4.1.
12. "Property" means all of the following:
 - a. Real property.
 - b. Computers, computer equipment, computer networks, and computer services.
 - c. Financial instruments, computer data, computer programs, computer software, and all other personal property regardless of whether they are any of the following:
 - (1) Tangible or intangible.
 - (2) In a format readable by humans or by a computer.
 - (3) In transit between computers or within a computer network or between any devices which comprise a computer.
 - (4) Located on any paper or in any device on which it is stored by a computer or by a person.
13. "Uses" means, when referring to a computer or computer network, causing or attempting to cause any of the following:
 - a. A computer or computer network to perform or to stop performing computer operations.

- b. The withholding or denial of the use of a computer, computer network, computer program, computer data, or computer software to another user.
- c. A person to put false information into a computer.

Sec. 2. NEW SECTION. 716A.2 TRANSMISSION OF UNSOLICITED BULK ELECTRONIC MAIL — CRIMINAL PENALTIES.

- 1. A person who does any of the following is guilty of an aggravated misdemeanor:
 - a. Uses a computer or computer network with the intent to falsify or forge electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk electronic mail through or into the computer network of an electronic mail service provider or its subscribers.
 - b. Knowingly sells, gives, or otherwise distributes or possesses with the intent to sell, give, or otherwise distribute computer software that does any of the following:
 - (1) Is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information.
 - (2) Has only limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission information or other routing information.
 - (3) Is marketed by that person acting alone or with another for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.
- 2. A person is guilty of a class “D” felony for committing a violation of subsection 1 when either of the following apply:
 - a. The volume of unsolicited bulk electronic mail transmitted exceeds ten thousand attempted recipients in any twenty-four-hour period, one hundred thousand attempted recipients in any thirty-day time period, or one million attempted recipients in any twelve-month time period.
 - b. The revenue generated from a specific unsolicited bulk electronic mail transmission exceeds one thousand dollars or the total revenue generated from all unsolicited bulk electronic mail transmitted to any electronic mail service provider by the person exceeds fifty thousand dollars.
- 3. A person is guilty of a class “D” felony if the person knowingly hires, employs, uses, or permits a person less than eighteen years of age to assist in the transmission of unsolicited bulk electronic mail in violation of subsection 2.
- 4. Transmission of electronic mail from an organization to a member of the organization shall not be a violation of this section.

Sec. 3. NEW SECTION. 716A.3 SALE OR OFFER FOR DIRECT SALE OF PRESCRIPTION DRUGS — CRIMINAL PENALTIES.

- 1. The retail sale or offer of direct retail sale of a prescription drug, as defined in section 155A.3, through the use of electronic mail or the internet by a person other than a licensed pharmacist, physician, dentist, optometrist, podiatric physician, or veterinarian, is prohibited. A person who violates this subsection is guilty of a simple misdemeanor.
- 2. A person who knowingly sells an adulterated or misbranded drug through the use of electronic mail or the internet is guilty of a class “D” felony. However, if the death of a person occurs as the result of consuming a drug, as defined in section 155A.3, sold in violation of this section, the violation is a class “B” felony.

Sec. 4. NEW SECTION. 716A.4 USE OF ENCRYPTION — CRIMINAL PENALTY.

A person who willfully uses encryption to further a violation of this chapter is guilty of an offense which is separate and distinct from the predicate criminal activity and punishable as an aggravated misdemeanor.

Sec. 5. NEW SECTION. 716A.5 VENUE FOR CRIMINAL VIOLATIONS.

For the purpose of venue, a violation of this chapter shall be considered to have been committed in any county in which any of the following apply:

1. An act was performed in furtherance of any course of conduct which violated this chapter.
2. The owner has a place of business in the state.
3. An offender has control or possession of any proceeds of the violation, or of any books, records, documents, property, financial instrument, computer software, computer program, computer data, or other material or objects used in furtherance of the violation.
4. Access to a computer or computer network was made by wires, electromagnetic waves, microwaves, or any other means of communication.
5. The offender resides.
6. A computer which is an object or an instrument of the violation is located at the time of the alleged offense.

Sec. 6. NEW SECTION. 716A.6 CIVIL RELIEF — DAMAGES.

1. A person who is injured by a violation of this chapter may bring a civil action seeking relief from a person whose conduct violated this chapter and recover any damages incurred including loss of profits, attorney fees, and court costs.
2. A person who is injured by the transmission of unsolicited bulk electronic mail in violation of this chapter, may elect, in lieu of actual damages, to recover either of the following:
 - a. The lesser of ten dollars for each unsolicited bulk electronic mail message transmitted in violation of this chapter, or twenty-five thousand dollars per day the messages are transmitted by the violator.
 - b. One dollar for each intended recipient of an unsolicited bulk electronic mail message where the intended recipient is an end user of the electronic mail service provider, or twenty-five thousand dollars for each day an attempt is made to transmit an unsolicited bulk electronic mail message to an end user of the electronic mail service provider.
3. a. A violation of this chapter is a violation of section 714.16, subsection 2, paragraph “a”. All the powers conferred upon the attorney general to accomplish the objectives and carry out the duties prescribed pursuant to section 714.16 are also conferred upon the attorney general to enforce this chapter, including, but not limited to, the power to issue subpoenas, adopt rules which shall have the force of law, and seek injunctive relief and civil penalties.
 - b. In seeking reimbursement pursuant to section 714.16, subsection 7, from a person who has committed a violation of this chapter, the attorney general may seek an order from the court that the person pay to the attorney general on behalf of consumers the amounts for which the person would be liable under subsection 1 or 2, for each consumer who has a cause of action pursuant to this section. Section 714.16, as it relates to consumer reimbursement, shall apply to consumer reimbursement pursuant to this section.
4. At the request of any party to an action brought pursuant to this section, the court may, in its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the computer, computer network, computer data, computer program, and computer software involved in order to prevent possible recurrence of the same or a similar act by another person, and to protect any trade secrets of any party and in such a way as to protect the privacy of nonparties who complain about violations pursuant to this section.
5. This section shall not be construed to limit a person’s right to pursue any additional civil remedy otherwise allowed by law.
6. An action brought pursuant to this section shall be commenced before the earlier of five years after the last act in the course of conduct constituting a violation of this chapter or two years after the injured person discovers or reasonably should have discovered the last act in the course of conduct constituting a violation of this chapter.
7. Personal jurisdiction may be exercised over any person who engages in any conduct in this state governed by this chapter.
8. The injured person shall not have a cause of action against the electronic mail service provider that merely transmits the unsolicited bulk electronic mail over its computer network.

Sec. 7. NEW SECTION. 716A.7 FORFEITURES FOR VIOLATIONS OF THIS CHAPTER. All property, including all income or proceeds earned but not yet received from a third party

as a result of a violation of this chapter, used in connection with a violation of this chapter, known by the owner thereof to have been used in violation of this chapter, shall be subject to seizure and forfeiture pursuant to chapter 809A.

Sec. 8. Chapter 714E, Code 2005, is repealed.

Approved May 12, 2005

CHAPTER 124

SAFETY-RELATED INFORMATION CONCERNING CHILDREN — DISSEMINATION

H.F. 753

AN ACT requiring certain safety-related information concerning a child to be provided to a parent, guardian, or foster parent or other custodian of a child.

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

Section 1. Section 232.2, subsection 4, Code 2005, is amended by adding the following new paragraph:

NEW PARAGRAPH. k. If it is part of the child's records or it is otherwise known that the child has behaved in a manner that threatened the safety of another person, has committed a violent act causing bodily injury to another person, or has been a victim or perpetrator of sexual abuse, that information shall be addressed in the plan and shall be provided to the child's parent, guardian, or foster parent or other person with custody of the child. The information shall be provided whether the child's placement is voluntary or made pursuant to a court determination. The information shall be provided at the time it is learned by the department or agency developing the plan and, if possible, at the time of the child's placement. The information shall only be withheld if ordered by the court or it is determined by the department or agency developing the plan that providing the information would be detrimental to the child or to the family with whom the child is living. In determining whether providing the information would be detrimental, the court, department, or agency shall consider any history of abuse within the child's family or toward the child.

Sec. 2. Section 232.48, subsection 4, Code 2005, is amended to read as follows:

4. A predisposition report shall not be disclosed except as provided in this section and in division VIII of this chapter. The court shall permit the child's attorney to inspect the predisposition report prior to consideration by the court. The court may order counsel not to disclose parts of the report to the child, or to the child's parent, guardian, guardian ad litem, or custodian if the court finds that disclosure would seriously harm the treatment or rehabilitation of the child. **If the report indicates the child has behaved in a manner that threatened the safety of another person, has committed a violent act causing bodily injury to another person, or has been a victim or perpetrator of sexual abuse, unless otherwise ordered by the court, the child's parent, guardian, or foster parent or other person with custody of the child shall be provided with that information.**