

MAR 7 2005
Place On Calendar

HOUSE FILE 610
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HF 413)

Passed House, Date 3-30-05 Passed Senate, Date _____
Vote: Ayes 99 Nays 0 Vote: Ayes _____ Nays _____
Approved 5/12/05

A BILL FOR

1 An Act relating to the transmission of electronic mail including
2 the transmission of unsolicited bulk electronic mail, and the
3 solicitation of the purchase of prescription drugs and the
4 sale of adulterated or misbranded drugs through the use of
5 electronic mail or the internet, and providing for penalties.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HF
610

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

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

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

4 1. "Computer" means the same as defined in section 702.1A.

5 2. "Computer data" means the same as defined in section
6 702.1A.

7 3. "Computer network" means the same as defined in section
8 702.1A.

9 4. "Computer operation" means arithmetic, logical,
10 monitoring, storage, or retrieval functions, or any
11 combination thereof, and includes, but is not limited to,
12 communication with, storage of data to, or retrieval of data
13 from any device or human hand manipulation of electronic or
14 magnetic impulses. "Computer operation" for a particular
15 computer may also mean any function for which the computer was
16 generally designed.

17 5. "Computer program" means an ordered set of data
18 representing coded instructions or statements that, when
19 executed by a computer, causes the computer to perform one or
20 more computer operations.

21 6. "Computer services" means computer time or services,
22 including data processing services, internet services,
23 electronic mail services, electronic message services, or
24 information or data stored in connection therewith.

25 7. "Computer software" means a set of computer programs,
26 procedures, and associated documentation concerned with
27 computer data or with computer operation, a computer program,
28 or a computer network.

29 8. "Electronic mail service provider" means a person who
30 does either of the following:

31 a. Is an intermediary in sending or receiving electronic
32 mail.

33 b. Provides to end users of electronic mail services the
34 ability to send or receive electronic mail.

35 9. "Encryption" means the enciphering of intelligible data

1 into unintelligible form or the deciphering of unintelligible
2 data into intelligible form.

3 10. "Owner" means an owner or lessee of a computer or a
4 computer network or an owner, lessee, or licensee of computer
5 data, a computer program, or computer software.

6 11. "Person" means the same as defined in section 4.1.

7 12. "Property" means all of the following:

8 a. Real property.

9 b. Computers, computer equipment, computer networks, and
10 computer services.

11 c. Financial instruments, computer data, computer
12 programs, computer software, and all other personal property
13 regardless of whether they are any of the following:

14 (1) Tangible or intangible.

15 (2) In a format readable by humans or by a computer.

16 (3) In transit between computers or within a computer
17 network or between any devices which comprise a computer.

18 (4) Located on any paper or in any device on which it is
19 stored by a computer or by a person.

20 13. "Uses" means, when referring to a computer or computer
21 network, causing or attempting to cause any of the following:

22 a. A computer or computer network to perform or to stop
23 performing computer operations.

24 b. The withholding or denial of the use of a computer,
25 computer network, computer program, computer data, or computer
26 software to another user.

27 c. A person to put false information into a computer.

28 Sec. 2. NEW SECTION. 716A.2 TRANSMISSION OF UNSOLICITED
29 BULK ELECTRONIC MAIL -- CRIMINAL PENALTIES.

30 1. A person who does any of the following is guilty of an
31 aggravated misdemeanor:

32 a. Uses a computer or computer network with the intent to
33 falsify or forge electronic mail transmission information or
34 other routing information in any manner in connection with the
35 transmission of unsolicited bulk electronic mail through or

1 into the computer network of an electronic mail service
2 provider or its subscribers.

3 b. Knowingly sells, gives, or otherwise distributes or
4 possesses with the intent to sell, give, or otherwise
5 distribute computer software that does any of the following:

6 (1) Is primarily designed or produced for the purpose of
7 facilitating or enabling the falsification of electronic mail
8 transmission information or other routing information.

9 (2) Has only limited commercially significant purpose or
10 use other than to facilitate or enable the falsification of
11 electronic mail transmission information or other routing
12 information.

13 (3) Is marketed by that person acting alone or with
14 another for use in facilitating or enabling the falsification
15 of electronic mail transmission information or other routing
16 information.

17 2. A person is guilty of a class "D" felony for committing
18 a violation of subsection 1 when either of the following
19 apply:

20 a. The volume of unsolicited bulk electronic mail
21 transmitted exceeds ten thousand attempted recipients in any
22 twenty-four-hour period, one hundred thousand attempted
23 recipients in any thirty-day time period, or one million
24 attempted recipients in any twelve-month time period.

25 b. The revenue generated from a specific unsolicited bulk
26 electronic mail transmission exceeds one thousand dollars or
27 the total revenue generated from all unsolicited bulk
28 electronic mail transmitted to any electronic mail service
29 provider by the person exceeds fifty thousand dollars.

30 3. A person is guilty of a class "D" felony if the person
31 knowingly hires, employs, uses, or permits a person less than
32 eighteen years of age to assist in the transmission of
33 unsolicited bulk electronic mail in violation of subsection 2.

34 4. Transmission of electronic mail from an organization to
35 a member of the organization shall not be a violation of this

1 section.

2 Sec. 3. NEW SECTION. 716A.3 SOLICITATIONS FOR
3 PRESCRIPTION DRUGS -- CRIMINAL PENALTIES.

4 1. A person, other than a licensed pharmacist, physician,
5 dentist, podiatric physician, or veterinarian, who solicits
6 the purchase of a prescription drug, as defined in section
7 155A.3, through the use of electronic mail or the internet is
8 guilty of a simple misdemeanor.

9 2. A person who knowingly sells an adulterated or
10 misbranded drug through the use of electronic mail or the
11 internet is guilty of a class "D" felony. However, if the
12 death of a person occurs as the result of consuming a drug, as
13 defined in section 155A.3, sold in violation of this section,
14 the violation is a class "B" felony.

15 Sec. 4. NEW SECTION. 716A.4 USE OF ENCRYPTION --
16 CRIMINAL PENALTY.

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

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

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

26 1. An act was performed in furtherance of any course of
27 conduct which violated this chapter.

28 2. The owner has a place of business in the state.

29 3. An offender has control or possession of any proceeds
30 of the violation, or of any books, records, documents,
31 property, financial instrument, computer software, computer
32 program, computer data, or other material or objects used in
33 furtherance of the violation.

34 4. Access to a computer or computer network was made by
35 wires, electromagnetic waves, microwaves, or any other means

1 of communication.

2 5. The offender resides.

3 6. A computer which is an object or an instrument of the
4 violation is located at the time of the alleged offense.

5 Sec. 6. NEW SECTION. 716A.6 CIVIL RELIEF -- DAMAGES.

6 1. A person who is injured by a violation of this chapter
7 may bring a civil action seeking relief from a person whose
8 conduct violated this chapter and recover any damages incurred
9 including loss of profits, attorney fees, and court costs.

10 2. A person who is injured by the transmission of
11 unsolicited bulk electronic mail in violation of this chapter,
12 may elect, in lieu of actual damages, to recover either of the
13 following:

14 a. The lesser of ten dollars for each unsolicited bulk
15 electronic mail message transmitted in violation of this
16 chapter, or twenty-five thousand dollars per day the messages
17 are transmitted by the violator.

18 b. One dollar for each intended recipient of an
19 unsolicited bulk electronic mail message where the intended
20 recipient is an end user of the electronic mail service
21 provider, or twenty-five thousand dollars for each day an
22 attempt is made to transmit an unsolicited bulk electronic
23 mail message to an end user of the electronic mail service
24 provider.

25 3. a. A violation of this chapter is a violation of
26 section 714.16, subsection 2, paragraph "a". All the powers
27 conferred upon the attorney general to accomplish the
28 objectives and carry out the duties prescribed pursuant to
29 section 714.16 are also conferred upon the attorney general to
30 enforce this chapter, including, but not limited to, the power
31 to issue subpoenas, adopt rules which shall have the force of
32 law, and seek injunctive relief and civil penalties.

33 b. In seeking reimbursement pursuant to section 714.16,
34 subsection 7, from a person who has committed a violation of
35 this chapter, the attorney general may seek an order from the

1 court that the person pay to the attorney general on behalf of
2 consumers the amounts for which the person would be liable
3 under subsection 1 or 2, for each consumer who has a cause of
4 action pursuant to this section. Section 714.16, as it
5 relates to consumer reimbursement, shall apply to consumer
6 reimbursement pursuant to this section.

7 4. At the request of any party to an action brought
8 pursuant to this section, the court may, in its discretion,
9 conduct all legal proceedings in such a way as to protect the
10 secrecy and security of the computer, computer network,
11 computer data, computer program, and computer software
12 involved in order to prevent possible recurrence of the same
13 or a similar act by another person, and to protect any trade
14 secrets of any party and in such a way as to protect the
15 privacy of nonparties who complain about violations pursuant
16 to this section.

17 5. This section shall not be construed to limit a person's
18 right to pursue any additional civil remedy otherwise allowed
19 by law.

20 6. An action brought pursuant to this section shall be
21 commenced before the earlier of five years after the last act
22 in the course of conduct constituting a violation of this
23 chapter or two years after the injured person discovers or
24 reasonably should have discovered the last act in the course
25 of conduct constituting a violation of this chapter.

26 7. Personal jurisdiction may be exercised over any person
27 who engages in any conduct in this state governed by this
28 chapter.

29 8. The injured person shall not have a cause of action
30 against the electronic mail service provider that merely
31 transmits the unsolicited bulk electronic mail over its
32 computer network.

33 Sec. 7. NEW SECTION. 716A.7 FORFEITURES FOR VIOLATIONS
34 OF THIS CHAPTER.

35 All property, including all income or proceeds earned but

1 not yet received from a third party as a result of a violation
2 of this chapter, used in connection with a violation of this
3 chapter, known by the owner thereof to have been used in
4 violation of this chapter, shall be subject to seizure and
5 forfeiture pursuant to chapter 809A.

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

7 EXPLANATION

8 This bill relates to the transmission of electronic mail
9 including the transmission of unsolicited bulk electronic
10 mail, and the solicitation of the purchase of a prescription
11 drug and the sale of adulterated or misbranded drugs through
12 the use of electronic mail or the internet.

13 The bill prohibits the use of a computer or computer
14 network to falsify or force electronic mail transmission
15 information through an electronic mail service provider. The
16 bill prohibits the knowing sale or distribution of computer
17 software primarily designed to falsify electronic mail
18 transmission information, has limited commercially significant
19 purpose or use other than to facilitate false electronic mail
20 transmission information, or is marketed for use in
21 facilitating false electronic mail transmission information.
22 A person violating these provisions is guilty of an aggravated
23 misdemeanor. An aggravated misdemeanor is punishable by
24 confinement for no more than two years and a fine of at least
25 \$500 but not more than \$5,000.

26 However, a person violating the provisions is guilty of a
27 class "D" felony if the volume of unsolicited bulk electronic
28 mail is either transmitted to more than 10,000 recipients in
29 any 24-hour period, 100,000 recipients in any 30-day period,
30 1,000,000 recipients in any 12-month period, or if the revenue
31 from a specific transmission exceeds \$1,000 or the revenues
32 from all transactions of the person exceed \$50,000. A person
33 committing a violation shall also be guilty of a class "D"
34 felony if the person employs or uses a minor to assist in the
35 violation.

1 The bill provides that a person who is not a licensed
2 pharmacist, physician, dentist, podiatric physician, or
3 veterinarian that solicits the purchase of a prescription drug
4 through the use of electronic mail or the internet is guilty
5 of a simple misdemeanor. A simple misdemeanor is punishable
6 by confinement for no more than 30 days or a fine of at least
7 \$50 but not more than \$500 or by both. A person who knowingly
8 sells an adulterated or misbranded drug through the use of
9 electronic mail or the internet is guilty of a class "D"
10 felony. A class "D" felony is punishable by confinement for
11 no more than five years and a fine of at least \$750 but not
12 more than \$7,500. In the event the adulterated or misbranded
13 drug sold causes the death of a person who consumes the drug,
14 the penalty for the sale is a class "B" felony. A class "B"
15 felony is punishable by confinement for no more than 25 years.

16 The bill prohibits the use of encryption to further a
17 violation of new Code chapter 716A and establishes a separate
18 penalty for the use of encryption as an aggravated
19 misdemeanor. An aggravated misdemeanor is punishable by
20 confinement for no more than two years and a fine of at least
21 \$500 but not more than \$5,000.

22 The bill provides for the appropriate place of venue for
23 prosecution of criminal violations of new Code chapter 716A.
24 The bill provides that persons injured by violations of Code
25 chapter 716A may bring a civil action seeking damages,
26 attorney fees, and court costs. In a civil action brought by
27 a person injured by the transmission of unsolicited bulk
28 electronic mail, the person may choose to seek statutory
29 damages instead of actual damages. The bill provides that
30 statutory damages be the lesser of \$10 for each unsolicited
31 message transmitted in violation of Code chapter 716A or
32 \$25,000 per day the unsolicited messages are transmitted by
33 the violator, or may seek statutory damages in the amount of
34 \$1 for each intended recipient of an unsolicited message or
35 \$25,000 for each day an attempt is made to transmit an

1 unsolicited message in violation of Code chapter 716A. The
2 bill provides that the attorney general may enforce violations
3 of the provisions of Code chapter 716A as violations of Code
4 section 714.16 relating to consumer frauds and seek such
5 reimbursement as an injured person is also entitled under Code
6 chapter 716A.

7 The court may take necessary steps to protect the secrecy
8 and security of information brought before the court to
9 prevent recurrence of the actions, to protect trade secrets,
10 and to protect the privacy of the person bringing the action.
11 A civil action brought against a violator of Code chapter 716A
12 must be commenced within five years after the last violation
13 or within two years after discovery of the violation of the
14 injured person, whichever is sooner.

15 The bill provides that property used in connection with a
16 violation of Code chapter 716A shall be subject to seizure and
17 forfeiture pursuant to Code chapter 809A. The bill repeals
18 Code chapter 714E relating to bulk electronic mail
19 transmissions.

HOUSE FILE 610

H-1167

1 Amend House File 610 as follows:

2 1. Page 4, line 2, by striking the words
3 "SOLICITATIONS FOR" and inserting the following: "SALE
4 OR OFFER FOR DIRECT SALE OF".

5 2. Page 4, by striking lines 4 through 7, and
6 inserting the following:

7 "1. The retail sale or offer of direct retail sale
8 of a prescription drug, as defined in section 155A.3,
9 through the use of electronic mail or the internet by
10 a person other than a licensed pharmacist, physician,
11 dentist, optometrist, podiatric physician, or
12 veterinarian, is prohibited. A person who violates
13 this subsection is".

14 3. Title page, line 3, by striking the words
15 "solicitation of the purchase" and inserting the
16 following: "sale or offer for direct sale".

By DIX of Butler
PETERSEN of Polk

H-1167 FILED MARCH 23, 2005

LSB 2239HV 81

Fiscal Services Division
Legislative Services Agency
Fiscal Note

HF 610 – Anti-Spam Legislation (LSB 2239 HV)

Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)

Fiscal Note Version - New

Description

House File 610 relates to the transmission of electronic mail including the transmission of unsolicited bulk electronic mail, and the solicitation of the purchase of a prescription drug, and the sale of adulterated or misbranded drugs through the use of electronic mail or the internet. House File 610 imposes penalties for a variety of actions, including simple misdemeanors, aggravated misdemeanors, Class D felonies, and a Class B felony. The Bill also permits civil remedies. The Bill also repeals Chapter 714E, Code of Iowa.

Background

1. Chapter 714E, Code of Iowa, relates to electronic mail transmissions and provides civil remedies in certain instances.
2. House File 610 creates new crimes. There are no data with which to project the impact of the Bill.

Assumptions

1. The average State costs for one simple misdemeanor conviction ranges from \$14 (court costs) to \$270 (court costs plus indigent defense).
2. The average State costs for one aggravated misdemeanor conviction ranges from \$1,100 (court costs and probation) to \$5,700 (court costs including a jury trial, indigent defense, prison, and parole).
3. The average State costs for one Class D felony conviction ranges from \$2,800 (court costs, probation, and indigent defense) to \$12,000 (court costs including a jury trial, indigent defense, prison, and parole).
4. The average State cost for one Class B felony conviction ranges from \$5,200 (court costs, indigent defense, and probation) to \$54,000 (court costs including a jury trial, indigent defense, prison, and parole).
5. These costs may be incurred over multiple fiscal years, as the trial occurs and the criminal sentence is served.
6. The average cost for one civil proceeding is approximately \$5,200 for the Judicial Branch.
7. The average cost for one forfeiture proceeding is approximately \$132 for the Judicial Branch.
8. It is anticipated that there will be no significant fiscal impact on the Office of the Attorney General.

Correctional Impact

The creation of a new offense carries the potential for a correctional impact on court caseloads, prisons, county jails, and Community-Based Corrections (CBC) resources. Depending upon the location of offenders (within Iowa or not) and law enforcement and prosecution activities, there may be a significant increase in the number of aggravated misdemeanor and Class D felony convictions. However, due to a lack of information, that impact cannot be estimated.

Fiscal Impact

The fiscal impact of HF 610 cannot be determined due to insufficient information.

Sources

Department of Human Rights, Criminal and Juvenile Justice Planning Division
Department of Corrections
Judicial Branch
Office of the State Public Defender
Office of the Attorney General

/s/ Holly M. Lyons

March 9, 2005

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

HOUSE FILE 610
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HF 413)

(As Amended and Passed by the House March 30, 2005)

Passed House, Date _____ Passed Senate, Date 4-27-05
Vote: Ayes _____ Nays _____ Vote: Ayes 50 Nays 0
Approved _____

A BILL FOR

1 An Act relating to the transmission of electronic mail including
2 the transmission of unsolicited bulk electronic mail, and the
3 sale or offer for direct sale of prescription drugs and the
4 sale of adulterated or misbranded drugs through the use of
5 electronic mail or the internet, and providing for penalties.

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

7

8

House Amendments _____

9

10

11

12

13

14

15

16

17

18

19

20

HF 610

kk/es/25

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

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

4 1. "Computer" means the same as defined in section 702.1A.

5 2. "Computer data" means the same as defined in section
6 702.1A.

7 3. "Computer network" means the same as defined in section
8 702.1A.

9 4. "Computer operation" means arithmetic, logical,
10 monitoring, storage, or retrieval functions, or any
11 combination thereof, and includes, but is not limited to,
12 communication with, storage of data to, or retrieval of data
13 from any device or human hand manipulation of electronic or
14 magnetic impulses. "Computer operation" for a particular
15 computer may also mean any function for which the computer was
16 generally designed.

17 5. "Computer program" means an ordered set of data
18 representing coded instructions or statements that, when
19 executed by a computer, causes the computer to perform one or
20 more computer operations.

21 6. "Computer services" means computer time or services,
22 including data processing services, internet services,
23 electronic mail services, electronic message services, or
24 information or data stored in connection therewith.

25 7. "Computer software" means a set of computer programs,
26 procedures, and associated documentation concerned with
27 computer data or with computer operation, a computer program,
28 or a computer network.

29 8. "Electronic mail service provider" means a person who
30 does either of the following:

31 a. Is an intermediary in sending or receiving electronic
32 mail.

33 b. Provides to end users of electronic mail services the
34 ability to send or receive electronic mail.

35 9. "Encryption" means the enciphering of intelligible data

1 into unintelligible form or the deciphering of unintelligible
2 data into intelligible form.

3 10. "Owner" means an owner or lessee of a computer or a
4 computer network or an owner, lessee, or licensee of computer
5 data, a computer program, or computer software.

6 11. "Person" means the same as defined in section 4.1.

7 12. "Property" means all of the following:

8 a. Real property.

9 b. Computers, computer equipment, computer networks, and
10 computer services.

11 c. Financial instruments, computer data, computer
12 programs, computer software, and all other personal property
13 regardless of whether they are any of the following:

14 (1) Tangible or intangible.

15 (2) In a format readable by humans or by a computer.

16 (3) In transit between computers or within a computer
17 network or between any devices which comprise a computer.

18 (4) Located on any paper or in any device on which it is
19 stored by a computer or by a person.

20 13. "Uses" means, when referring to a computer or computer
21 network, causing or attempting to cause any of the following:

22 a. A computer or computer network to perform or to stop
23 performing computer operations.

24 b. The withholding or denial of the use of a computer,
25 computer network, computer program, computer data, or computer
26 software to another user.

27 c. A person to put false information into a computer.

28 Sec. 2. NEW SECTION. 716A.2 TRANSMISSION OF UNSOLICITED
29 BULK ELECTRONIC MAIL -- CRIMINAL PENALTIES.

30 1. A person who does any of the following is guilty of an
31 aggravated misdemeanor:

32 a. Uses a computer or computer network with the intent to
33 falsify or forge electronic mail transmission information or
34 other routing information in any manner in connection with the
35 transmission of unsolicited bulk electronic mail through or

1 into the computer network of an electronic mail service
2 provider or its subscribers.

3 b. Knowingly sells, gives, or otherwise distributes or
4 possesses with the intent to sell, give, or otherwise
5 distribute computer software that does any of the following:

6 (1) Is primarily designed or produced for the purpose of
7 facilitating or enabling the falsification of electronic mail
8 transmission information or other routing information.

9 (2) Has only limited commercially significant purpose or
10 use other than to facilitate or enable the falsification of
11 electronic mail transmission information or other routing
12 information.

13 (3) Is marketed by that person acting alone or with
14 another for use in facilitating or enabling the falsification
15 of electronic mail transmission information or other routing
16 information.

17 2. A person is guilty of a class "D" felony for committing
18 a violation of subsection 1 when either of the following
19 apply:

20 a. The volume of unsolicited bulk electronic mail
21 transmitted exceeds ten thousand attempted recipients in any
22 twenty-four-hour period, one hundred thousand attempted
23 recipients in any thirty-day time period, or one million
24 attempted recipients in any twelve-month time period.

25 b. The revenue generated from a specific unsolicited bulk
26 electronic mail transmission exceeds one thousand dollars or
27 the total revenue generated from all unsolicited bulk
28 electronic mail transmitted to any electronic mail service
29 provider by the person exceeds fifty thousand dollars.

30 3. A person is guilty of a class "D" felony if the person
31 knowingly hires, employs, uses, or permits a person less than
32 eighteen years of age to assist in the transmission of
33 unsolicited bulk electronic mail in violation of subsection 2.

34 4. Transmission of electronic mail from an organization to
35 a member of the organization shall not be a violation of this

1 section.

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

4 1. The retail sale or offer of direct retail sale of a
5 prescription drug, as defined in section 155A.3, through the
6 use of electronic mail or the internet by a person other than
7 a licensed pharmacist, physician, dentist, optometrist,
8 podiatric physician, or veterinarian, is prohibited. A person
9 who violates this subsection is guilty of a simple
10 misdemeanor.

11 2. A person who knowingly sells an adulterated or
12 misbranded drug through the use of electronic mail or the
13 internet is guilty of a class "D" felony. However, if the
14 death of a person occurs as the result of consuming a drug, as
15 defined in section 155A.3, sold in violation of this section,
16 the violation is a class "B" felony.

17 Sec. 4. NEW SECTION. 716A.4 USE OF ENCRYPTION --
18 CRIMINAL PENALTY.

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

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

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

28 1. An act was performed in furtherance of any course of
29 conduct which violated this chapter.

30 2. The owner has a place of business in the state.

31 3. An offender has control or possession of any proceeds
32 of the violation, or of any books, records, documents,
33 property, financial instrument, computer software, computer
34 program, computer data, or other material or objects used in
35 furtherance of the violation.

1 4. Access to a computer or computer network was made by
2 wires, electromagnetic waves, microwaves, or any other means
3 of communication.

4 5. The offender resides.

5 6. A computer which is an object or an instrument of the
6 violation is located at the time of the alleged offense.

7 Sec. 6. NEW SECTION. 716A.6 CIVIL RELIEF -- DAMAGES.

8 1. A person who is injured by a violation of this chapter
9 may bring a civil action seeking relief from a person whose
10 conduct violated this chapter and recover any damages incurred
11 including loss of profits, attorney fees, and court costs.

12 2. A person who is injured by the transmission of
13 unsolicited bulk electronic mail in violation of this chapter,
14 may elect, in lieu of actual damages, to recover either of the
15 following:

16 a. The lesser of ten dollars for each unsolicited bulk
17 electronic mail message transmitted in violation of this
18 chapter, or twenty-five thousand dollars per day the messages
19 are transmitted by the violator.

20 b. One dollar for each intended recipient of an
21 unsolicited bulk electronic mail message where the intended
22 recipient is an end user of the electronic mail service
23 provider, or twenty-five thousand dollars for each day an
24 attempt is made to transmit an unsolicited bulk electronic
25 mail message to an end user of the electronic mail service
26 provider.

27 3. a. A violation of this chapter is a violation of
28 section 714.16, subsection 2, paragraph "a". All the powers
29 conferred upon the attorney general to accomplish the
30 objectives and carry out the duties prescribed pursuant to
31 section 714.16 are also conferred upon the attorney general to
32 enforce this chapter, including, but not limited to, the power
33 to issue subpoenas, adopt rules which shall have the force of
34 law, and seek injunctive relief and civil penalties.

35 b. In seeking reimbursement pursuant to section 714.16,

1 subsection 7, from a person who has committed a violation of
2 this chapter, the attorney general may seek an order from the
3 court that the person pay to the attorney general on behalf of
4 consumers the amounts for which the person would be liable
5 under subsection 1 or 2, for each consumer who has a cause of
6 action pursuant to this section. Section 714.16, as it
7 relates to consumer reimbursement, shall apply to consumer
8 reimbursement pursuant to this section.

9 4. At the request of any party to an action brought
10 pursuant to this section, the court may, in its discretion,
11 conduct all legal proceedings in such a way as to protect the
12 secrecy and security of the computer, computer network,
13 computer data, computer program, and computer software
14 involved in order to prevent possible recurrence of the same
15 or a similar act by another person, and to protect any trade
16 secrets of any party and in such a way as to protect the
17 privacy of nonparties who complain about violations pursuant
18 to this section.

19 5. This section shall not be construed to limit a person's
20 right to pursue any additional civil remedy otherwise allowed
21 by law.

22 6. An action brought pursuant to this section shall be
23 commenced before the earlier of five years after the last act
24 in the course of conduct constituting a violation of this
25 chapter or two years after the injured person discovers or
26 reasonably should have discovered the last act in the course
27 of conduct constituting a violation of this chapter.

28 7. Personal jurisdiction may be exercised over any person
29 who engages in any conduct in this state governed by this
30 chapter.

31 8. The injured person shall not have a cause of action
32 against the electronic mail service provider that merely
33 transmits the unsolicited bulk electronic mail over its
34 computer network.

35 Sec. 7. NEW SECTION. 716A.7 FORFEITURES FOR VIOLATIONS

1 OF THIS CHAPTER.

2 All property, including all income or proceeds earned but
3 not yet received from a third party as a result of a violation
4 of this chapter, used in connection with a violation of this
5 chapter, known by the owner thereof to have been used in
6 violation of this chapter, shall be subject to seizure and
7 forfeiture pursuant to chapter 809A.

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

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

HOUSE FILE 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.

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.

CHRISTOPHER C. RANTS
Speaker of the House

JOHN P. KIBBIE
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 610, Eighty-first General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved 5/12/05, 2005

THOMAS J. VILSACK
Governor