

**CHAPTER 167****CONSUMER FRAUD — PRIVATE RIGHT OF ACTION***H.F. 712*

**AN ACT** relating to a private right of action for certain consumer fraud violations and including an applicability provision.

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

Section 1. NEW SECTION. 714H.1 TITLE.

This chapter shall be known and may be cited as the “Private Right of Action for Consumer Frauds Act”.

Sec. 2. NEW SECTION. 714H.2 DEFINITIONS.

1. “Actual damages” means all compensatory damages proximately caused by the prohibited practice or act that are reasonably ascertainable in amount. “Actual damages” does not include damages for bodily injury, pain and suffering, mental distress, or loss of consortium, loss of life, or loss of enjoyment of life.
2. “Advertisement” means the same as defined in section 714.16.
3. “Consumer” means a natural person or the person’s legal representative.
4. “Consumer merchandise” means merchandise offered for sale or lease, or sold or leased, primarily for personal, family, or household purposes.
5. “Deception” means an act or practice that is likely to mislead a substantial number of consumers as to a material fact or facts.
6. “Merchandise” means the same as defined in section 714.16.
7. “Person” means the same as defined in section 714.16.
8. “Sale” means any sale or offer for sale of consumer merchandise for cash or credit.
9. “Unfair practice” means the same as defined in section 714.16.

Sec. 3. NEW SECTION. 714H.3 PROHIBITED PRACTICES AND ACTS.

1. A person shall not engage in a practice or act the person knows or reasonably should know is an unfair practice, deception, fraud, false pretense, or false promise, or the misrepresentation, concealment, suppression, or omission of a material fact, with the intent that others rely upon the unfair practice, deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission in connection with the advertisement, sale, or lease of consumer merchandise, or the solicitation of contributions for charitable purposes. For the purposes of this chapter, a claimant alleging an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation must prove that the prohibited practice related to a material fact or facts. “Solicitations of contributions for charitable purposes” does not include solicitations made on behalf of a political organization as defined in section 13C.1, solicitations made on behalf of a religious organization as defined in section 13C.1, solicitations made on behalf of a state, regionally, or nationally accredited college or university, or solicitations made on behalf of a nonprofit foundation benefiting a state, regionally, or nationally accredited college or university subject to section 509(a)(1) or 509(a)(3) of the Internal Revenue Code of 1986.
2. A person shall not engage in any practice or act that is in violation of any of the following:
  - a. Section 321.69.
  - b. Chapter 516D.
  - c. Section 516E.5, 516E.9, or 516E.10.
  - d. Chapter 555A.
  - e. Section 714.16, subsection 2, paragraphs “b” through “n”.
  - f. Chapter 714A.

Sec. 4. NEW SECTION. 714H.4 EXCLUSIONS.

1. This chapter shall not apply to any of the following:

a. Merchandise offered or provided by any of the following persons, including business entities organized under Title XII by those persons and the officers, directors, employees, and agents of those persons or business entities, pursuant to a profession or business for which they are licensed or registered:

(1) Insurance companies subject to Title XIII.

(2) Attorneys licensed to practice law in this state.

(3) Financial institutions which includes any bank incorporated under the provisions of any state or federal law, any savings and loan association or savings bank incorporated under the provisions of any state or federal law, and any credit union organized under the provisions of any state or federal law, and any affiliate or subsidiary of a bank, savings and loan association, savings bank, or credit union.

(4) Persons or facilities licensed, certified, or registered under chapters 135B, 135C, 135J, 148, 148A, 148B, 148C, 149, 151, 152, 152A, 152B, 153, 154, 154B, 154C, 154D, 155A, 156, 169, 522B, 542, 542B, 543B, 544A, or 544B.

b. Advertising by a retailer for a product, other than a drug or other product claiming to have a health-related benefit or use, if the advertising is prepared by a supplier, unless the retailer participated in the preparation of the advertisement or knew or should have known that the advertisement was deceptive, false, or misleading.

c. In connection with an advertisement that violates this chapter, the newspaper, magazine, publication, or other print media in which the advertisement appears, including the publisher of the newspaper, magazine, publication, or other print media in which the advertisement appears, or the radio station, television station, or other electronic media which disseminates the advertisement, including an employee, agent, or representative of the publisher, newspaper, magazine, publication or other print media, or the radio station, television station, or other electronic media.

d. The provision of local exchange carrier telephone service pursuant to a certificate issued under section 476.29.

e. Public utilities as defined in section 476.1 that furnish gas by a piped distribution system or electricity to the public for compensation.

f. Any advertisement that complies with the statutes, rules, and regulations of the federal trade commission.

g. Conduct that is required or permitted by the orders or rules of, or a statute administered by, a federal, state, or local governmental agency.

h. An affirmative act that violates this chapter but is specifically required by other applicable law, to the extent that the actor could not reasonably avoid a violation of this chapter.

i. In any action relating to a charitable solicitation, an individual who has engaged in the charitable solicitation as an unpaid, uncompensated volunteer and who does not receive monetary gain of any sort from engaging in the solicitation.

j. The provision of cable television service or video service pursuant to a franchise under section 364.2 or 477A.2.

k. A corporation holding one or more industrial loan licenses pursuant to chapter 536A and employing fewer than sixty full-time employees or a corporation holding one or more regulated loan licenses pursuant to chapter 536 and employing fewer than sixty full-time employees. For purposes of this paragraph, "corporation" means the same as defined in section 536A.2.

2. "Material fact" as used in this chapter does not include repairs of damage to, adjustments on, or replacements of parts with new parts of otherwise new merchandise if the repairs, adjustments, or replacements are made to achieve compliance with factory specifications and are made before sale of the merchandise at retail and the actual cost of any labor and parts charged to or performed by a retailer for any such repairs, adjustments, and parts does not exceed three hundred dollars or ten percent of the actual cost to a retailer including freight of the merchandise, whichever is less, provided that the seller posts in a conspicuous place notice that repairs, adjustments, or replacements will be disclosed upon request. The exclusion pro-

vided in this subsection does not apply to the concealment, suppression, or omission of a material fact if the purchaser requests disclosure of any repair, adjustment, or replacement.

Sec. 5. NEW SECTION. 714H.5 PRIVATE RIGHT OF ACTION.

1. A consumer who suffers an ascertainable loss of money or property as the result of a prohibited practice or act in violation of this chapter may bring an action at law to recover actual damages. The court may order such equitable relief as it deems necessary to protect the public from further violations, including temporary and permanent injunctive relief.

2. If the court finds that a person has violated this chapter and the consumer is awarded actual damages, the court shall award to the consumer the costs of the action and to the consumer's attorney reasonable fees. Reasonable attorney fees shall be determined by the value of the time reasonably expended by the attorney including but not limited to consideration of the following factors:

- a. The time and labor required.
- b. The novelty and difficulty of the issues in the case.
- c. The skills required to perform the legal services properly.
- d. The preclusion of other employment by the attorney due to the attorney's acceptance of the case.
- e. The customary fee.
- f. Whether the fee is fixed or contingent.
- g. The time limitations imposed by the client or the circumstances of the case.
- h. The amount of money involved in the case and the results obtained.
- i. The experience, reputation, and ability of the attorney.
- j. The undesirability of the case.
- k. The nature and length of the professional relationship between the attorney and the client.

1. Attorney fee awards in similar cases.

3. In order to recover damages, a claim under this section shall be proved by a preponderance of the evidence.

4. If the finder of fact finds by a preponderance of clear, convincing, and satisfactory evidence that a prohibited practice or act in violation of this chapter constitutes willful and wanton disregard for the rights or safety of another, in addition to an award of actual damages, statutory damages up to three times the amount of actual damages may be awarded to a prevailing consumer.

5. An action pursuant to this chapter must be brought within two years of the occurrence of the last event giving rise to the cause of action under this chapter or within two years of the discovery of the violation of this chapter by the person bringing the action, whichever is later.

6. This section shall not affect a consumer's right to seek relief under any other theory of law.

7. A person shall not be held liable in any action brought under this section for a violation of this chapter if the person shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error.

Sec. 6. NEW SECTION. 714H.6 ATTORNEY GENERAL NOTIFICATION.

1. A party filing a petition, counterclaim, cross-petition, or pleading, or any count thereof, in intervention alleging a violation under this chapter, within seven days following the date of filing such pleading, shall provide a copy to the attorney general and, within seven days following entry of any final judgment in the action, shall provide a copy of the judgment to the attorney general.

2. A party appealing to district court a small claims order or judgment involving an issue raised under this chapter, within seven days of providing notice of the appeal, shall notify the attorney general in writing and provide a copy of the pleading raising the issue and a copy of the small claims court order or judgment.

3. A party appealing an order or judgment involving an issue raised under this chapter, within seven days following the date such notice of appeal is filed with the court, shall notify the attorney general in writing and provide a copy of the pleading raising the issue and a copy of the court order or judgment being appealed.

4. Upon timely application to the court in which an action involving an issue raised under this chapter is pending, the attorney general may intervene as a party at any time or may be heard at any time. The attorney general's failure to intervene shall not preclude the attorney general from bringing a separate enforcement action.

5. All copies of pleadings, orders, judgments, and notices required by this section to be sent to the attorney general shall be sent by certified mail unless the attorney general has previously been provided such copies of pleadings, orders, judgments, or notices in the same action by certified mail, in which case subsequent mailings may be made by regular mail. Failure to provide the required mailings to the attorney general shall not be grounds for dismissal of an action under this chapter, but shall be grounds for a subsequent action by the attorney general to vacate or modify the judgment.

Sec. 7. NEW SECTION. 714H.7 CLASS ACTIONS.

A class action lawsuit alleging a violation of this chapter shall not be filed with a court unless it has been approved by the attorney general. The attorney general shall approve the filing of a class action lawsuit alleging a violation of this chapter unless the attorney general determines that the lawsuit is frivolous. This section shall not affect the requirements of any other law or of the Iowa rules of civil procedure relating to class action lawsuits.

Sec. 8. NEW SECTION. 714H.8 SEVERABILITY CLAUSE.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Sec. 9. APPLICABILITY. This Act applies to causes of actions accruing on or after the effective date of this Act.

Approved May 26, 2009

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## CHAPTER 168

### PUBLIC POSTSECONDARY EDUCATION ARTICULATION INFORMATION AND AGREEMENTS

H.F. 815

**AN ACT** relating to articulation agreements between public postsecondary institutions and to the dissemination of articulation information.

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

Section 1. Section 256.9, Code 2009, is amended by adding the following new subsection: NEW SUBSECTION. 61. Develop and implement a plan to provide, at least twice annually to all principals and guidance counselors employed by school districts and accredited nonpublic schools, notice describing how students can find and use the articulation information available on the website maintained by the state board of regents. The plan shall include suggested