

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.
- l. 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.

2009 Acts, ch 167, §5, 9

Referred to in §321.69A

[SP] Section applies to causes of actions accruing on or after July 1, 2009; 2009 Acts, ch 167, §9