

House Amendment 1155

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1 1 Amend House File 712 as follows:
1 2 #1. By striking everything after the enacting
1 3 clause and inserting the following:
1 4 <Section 1. NEW SECTION. 714H.1 PROHIBITED
1 5 PRACTICES OR ACTS == PRIVATE RIGHT OF ACTION.
1 6 1. A person who reasonably relies upon an act or
1 7 practice declared unlawful by section 714.16 in
1 8 entering into a transaction and thereby suffering an
1 9 ascertainable loss of money or property may bring an
1 10 action under this chapter to enjoin further
1 11 violations, or to recover as damages the out-of-pocket
1 12 loss the person sustained as a result of such act or
1 13 practice, or both. The out-of-pocket loss shall be no
1 14 more than the difference between what the person paid
1 15 for the product or service and what the product or
1 16 service was actually worth in the absence of the
1 17 unlawful act or practice.
1 18 2. At least ten days prior to the commencement of
1 19 any action brought under this chapter, any person
1 20 intending to bring such an action shall notify the
1 21 prospective defendant of the intended action and give
1 22 the prospective defendant an opportunity to confer
1 23 with the person, the person's counsel, or other
1 24 representative as to the proposed action. Such notice
1 25 shall be given to the prospective defendant by mail,
1 26 postage prepaid, to the prospective defendant's usual
1 27 place of business, or if the prospective defendant has
1 28 no usual place of business, to the prospective
1 29 defendant's last known address.
1 30 3. If the court finds by clear and convincing
1 31 evidence that the use or employment of the act or
1 32 practice declared unlawful by section 714.16 was
1 33 willful with the purpose of deceiving the public, the
1 34 court may award up to three times the actual damages
1 35 sustained, or five hundred dollars per person,
1 36 whichever is greater.
1 37 4. In determining whether to award enhanced
1 38 damages under subsection 3 and the amount of such
1 39 penalty, the court shall consider all of the
1 40 following:
1 41 a. Whether the amount of the actual damages
1 42 awarded would have a deterrent effect upon the
1 43 defendant.
1 44 b. The seriousness of the violation, including the
1 45 nature, circumstances, frequency, and gravity of any
1 46 prohibited act or practice.
1 47 c. The history of any previous violations.
1 48 d. The good faith of the person found to be in
1 49 violation, including whether the person took prompt
1 50 and appropriate remedial action upon learning of the
2 1 alleged violation.
2 2 e. Any other matter that justice may require.
2 3 5. Any person who is entitled to bring an action
2 4 under subsection 1 on the person's own behalf against
2 5 an alleged violator for damages for an act or practice
2 6 declared unlawful by section 714.16 may bring a class
2 7 action against such person on behalf of any class of
2 8 persons of which the person is a member and which has
2 9 been damaged by such act or practice, in the manner
2 10 provided in the Iowa rules of civil procedure
2 11 governing class actions.
2 12 6. Punitive or exemplary damages shall not be
2 13 allowed in an action maintained under this section.
2 14 Sec. 2. NEW SECTION. 714H.2 ATTORNEY FEES AND
2 15 COSTS.
2 16 A court may award reasonable attorney fees and
2 17 costs to any of the following persons:
2 18 1. A prevailing plaintiff upon a finding by the
2 19 court that the defendant's use or employment of the
2 20 act or practice declared unlawful by section 714.16
2 21 was willful with the purpose of deceiving the public.
2 22 2. A prevailing defendant upon a finding by the
2 23 court that the action was groundless in fact or law or
2 24 brought in bad faith, or brought for the purpose of

2 25 harassment.
2 26 Sec. 3. NEW SECTION. 714H.3 LIMITATIONS OF
2 27 ACTIONS.
2 28 An action shall not be brought more than one year
2 29 after the person bringing the action discovers or
2 30 reasonably should have discovered a loss resulting
2 31 from an act or practice declared unlawful by section
2 32 714.16, except that an action shall not be brought
2 33 under this chapter more than four years from the first
2 34 act or practice giving rise to the cause of action.
2 35 Sec. 4. NEW SECTION. 714H.4 EXEMPTIONS.
2 36 This chapter shall not apply to any of the
2 37 following:
2 38 1. An act or practice required or permitted by or
2 39 in accordance with state or federal law, rule or
2 40 regulation, judicial or administrative decision, or
2 41 formal or informal agency action.
2 42 2. An act or practice by the publisher, owner,
2 43 agent, or employee of a newspaper, periodical, radio
2 44 or television station, or any other person without
2 45 knowledge of the deceptive character of the
2 46 advertisement in the publication or dissemination of
2 47 an advertisement supplied by another.
2 48 3. An act or practice by a retailer who has, in
2 49 good faith, engaged in the dissemination of claims of
2 50 a manufacturer or wholesaler without actual knowledge
3 1 that the act or practice was in violation of section
3 2 714.16.>
3 3 #2. Title page, line 1, by striking the word
3 4 <cause> and inserting the following: <right>.
3 5 #3. Title page, line 2, by striking the words <an
3 6 applicability provision> and inserting the following:
3 7 <penalties>.
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3 11 _____
3 12 UPMEYER of Hancock
3 13 HF 712.702 83
3 14 rh/rj/22786