

# House Amendment 1446

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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 TITLE.  
1 5 This chapter shall be known and may be cited as the  
1 6 "Private Right of Action for Consumer Frauds Act".  
1 7 Sec. 2. NEW SECTION. 714H.2 DEFINITIONS.  
1 8 1. "Actual damages" means all compensatory damages  
1 9 proximately caused by the prohibited practice or act  
1 10 that are reasonably ascertainable in amount. "Actual  
1 11 damages" does not include damages for bodily injury,  
1 12 pain and suffering, mental distress, loss of  
1 13 consortium, loss of life, or loss of enjoyment of  
1 14 life.  
1 15 2. "Advertisement" means the same as defined in  
1 16 section 714.16.  
1 17 3. "Consumer" means a natural person or the  
1 18 person's legal representative.  
1 19 4. "Consumer merchandise" means merchandise  
1 20 offered for sale or lease, or sold or leased,  
1 21 primarily for personal, family, or household purposes.  
1 22 5. "Deception" means an act or practice that is  
1 23 likely to mislead a substantial number of consumers as  
1 24 to a material fact or facts.  
1 25 6. "Merchandise" means the same as defined in  
1 26 section 714.16.  
1 27 7. "Person" means the same as defined in section  
1 28 714.16.  
1 29 8. "Sale" means any sale or offer for sale of  
1 30 consumer merchandise for cash or credit.  
1 31 9. "Unfair practice" means the same as defined in  
1 32 section 714.16.  
1 33 Sec. 3. NEW SECTION. 714H.3 PROHIBITED PRACTICES  
1 34 AND ACTS.  
1 35 1. A person shall not engage in an unfair  
1 36 practice, deception, fraud, false pretense, or false  
1 37 promise, or the misrepresentation, concealment,  
1 38 suppression, or omission of a material fact, with the  
1 39 intent that others rely upon the unfair practice,  
1 40 deception, fraud, false pretense, false promise,  
1 41 misrepresentation, concealment, suppression, or  
1 42 omission in connection with the advertisement, sale,  
1 43 or lease of consumer merchandise, or the solicitation  
1 44 of contributions for charitable purposes. For the  
1 45 purposes of this chapter, a claimant alleging an  
1 46 unfair practice, deception, fraud, false pretense,  
1 47 false promise, or misrepresentation must prove that  
1 48 the prohibited practice related to a material fact or  
1 49 facts. "Solicitations of contributions for charitable  
1 50 purposes" does not include solicitations made on  
2 1 behalf of a political organization as defined in  
2 2 section 13C.1, solicitations made on behalf of a  
2 3 religious organization as defined in section 13C.1,  
2 4 solicitations made on behalf of a state, regionally,  
2 5 or nationally accredited college or university, or  
2 6 solicitations made on behalf of a nonprofit foundation  
2 7 benefiting a state, regionally, or nationally  
2 8 accredited college or university subject to section  
2 9 509(a)(1) or 509(a)(3) of the Internal Revenue Code of  
2 10 1986.  
2 11 2. A person shall not engage in any practice or  
2 12 act that is in violation of any of the following:  
2 13 a. Section 321.69.  
2 14 b. Chapter 516D.  
2 15 c. Section 516E.5, 516E.9, or 516E.10.  
2 16 d. Chapter 555A.  
2 17 e. Section 714.16, subsection 2, paragraphs "b"  
2 18 through "n".  
2 19 f. Chapter 714A.  
2 20 Sec. 4. NEW SECTION. 714H.4 EXCLUSIONS.  
2 21 1. This chapter shall not apply to any of the  
2 22 following:  
2 23 a. Services offered or provided by any of the  
2 24 following persons, including business entities

2 25 organized under Title XII by those persons and the  
2 26 officers, directors, employees, and agents of those  
2 27 persons or business entities, pursuant to a profession  
2 28 or business for which they are licensed or registered:  
2 29 (1) Insurance companies subject to Title XIII.  
2 30 (2) Attorneys licensed to practice law in this  
2 31 state.  
2 32 (3) Financial institutions which includes any bank  
2 33 incorporated under the provisions of any state or  
2 34 federal law, any savings and loan association or  
2 35 savings bank incorporated under the provisions of any  
2 36 state or federal law, and any credit union organized  
2 37 under the provisions of any state or federal law, and  
2 38 any affiliate or subsidiary of a bank, savings and  
2 39 loan association, savings bank, or credit union.  
2 40 (4) Persons or facilities licensed, certified, or  
2 41 registered under chapters 135B, 135C, 135J, 148, 148A,  
2 42 148B, 148C, 149, 151, 152, 152A, 152B, 153, 154, 154B,  
2 43 154C, 154D, 155A, 156, 169, 522B, 542, 542B, 543B,  
2 44 544A, or 544B.  
2 45 b. Advertising by a retailer for a product, other  
2 46 than a drug or other product claiming to have a  
2 47 health-related benefit or use, if the advertising is  
2 48 prepared by a supplier, unless the retailer  
2 49 participated in the preparation of the advertisement  
2 50 or knew or should have known that the advertisement  
3 1 was deceptive, false, or misleading.  
3 2 c. In connection with an advertisement that  
3 3 violates this chapter, the newspaper, magazine,  
3 4 publication, or other print media in which the  
3 5 advertisement appears, including the publisher of the  
3 6 newspaper, magazine, publication, or other print media  
3 7 in which the advertisement appears, or the radio  
3 8 station, television station, or other electronic media  
3 9 which disseminates the advertisement, including an  
3 10 employee, agent, or representative of the publisher,  
3 11 newspaper, magazine, publication or other print media,  
3 12 or the radio station, television station, or other  
3 13 electronic media.  
3 14 d. The provision of local exchange carrier  
3 15 telephone service pursuant to a certificate issued  
3 16 under section 476.29.  
3 17 e. Public utilities as defined in section 476.1  
3 18 that furnish gas by a piped distribution system or  
3 19 electricity to the public for compensation when  
3 20 engaged in activities subject to regulation by the  
3 21 utilities board pursuant to chapter 476.  
3 22 f. Any advertisement that complies with the  
3 23 statutes, rules, and regulations of the federal trade  
3 24 commission.  
3 25 g. Conduct that is required or permitted by the  
3 26 orders or rules of, or a statute administered by, a  
3 27 federal, state, or local governmental agency.  
3 28 h. An affirmative act that violates this chapter  
3 29 but is specifically required by other applicable law,  
3 30 to the extent that the actor could not reasonably  
3 31 avoid a violation of this chapter.  
3 32 i. In any action relating to a charitable  
3 33 solicitation, an individual who has engaged in the  
3 34 charitable solicitation as an unpaid, uncompensated  
3 35 volunteer and who does not receive monetary gain of  
3 36 any sort from engaging in the solicitation.  
3 37 2. "Material fact" as used in this chapter does  
3 38 not include repairs of damage to, adjustments on, or  
3 39 replacements of parts with new parts of otherwise new  
3 40 merchandise if the repairs, adjustments, or  
3 41 replacements are made to achieve compliance with  
3 42 factory specifications and are made before sale of the  
3 43 merchandise at retail and the actual cost of any labor  
3 44 and parts charged to or performed by a retailer for  
3 45 any such repairs, adjustments, and parts does not  
3 46 exceed three hundred dollars or ten percent of the  
3 47 actual cost to a retailer including freight of the  
3 48 merchandise, whichever is less, provided that the  
3 49 seller posts in a conspicuous place notice that  
3 50 repairs, adjustments, or replacements will be  
4 1 disclosed upon request. The exclusion provided in  
4 2 this subsection does not apply to the concealment,  
4 3 suppression, or omission of a material fact if the  
4 4 purchaser requests disclosure of any repair,  
4 5 adjustment, or replacement.

4 6 Sec. 5. NEW SECTION. 714H.5 PRIVATE RIGHT OF  
4 7 ACTION.

4 8 1. A consumer who suffers an ascertainable loss of  
4 9 money or property as the result of such prohibited  
4 10 practice or act may bring an action at law to recover  
4 11 actual damages. The court may order such equitable  
4 12 relief as it deems necessary to protect the public  
4 13 from further violations, including temporary and  
4 14 permanent injunctive relief.

4 15 2. If the court finds that a person has violated  
4 16 this chapter and the consumer is awarded actual  
4 17 damages, the court shall award to the consumer the  
4 18 costs of the action and to the consumer's attorney  
4 19 reasonable fees. Reasonable attorney fees shall be  
4 20 determined by the value of the time reasonably  
4 21 expended by the attorney including but not limited to  
4 22 consideration of the following factors:

4 23 a. The time and labor required.

4 24 b. The novelty and difficulty of the issues in the  
4 25 case.

4 26 c. The skills required to perform the legal  
4 27 services properly.

4 28 d. The preclusion of other employment by the  
4 29 attorney due to the attorney's acceptance of the case.

4 30 e. The customary fee.

4 31 f. Whether the fee is fixed or contingent.

4 32 g. The time limitations imposed by the client or  
4 33 the circumstances of the case.

4 34 h. The amount of money involved in the case and  
4 35 the results obtained.

4 36 i. The experience, reputation, and ability of the  
4 37 attorney.

4 38 j. The undesirability of the case.

4 39 k. The nature and length of the professional  
4 40 relationship between the attorney and the client.

4 41 1. Attorney fee awards in similar cases.

4 42 3. In order to recover damages, a claim under this  
4 43 section shall be proved by a preponderance of the  
4 44 evidence.

4 45 4. If the finder of fact finds by a preponderance  
4 46 of clear, convincing, and satisfactory evidence that a  
4 47 prohibited practice or act in violation of this  
4 48 chapter constitutes willful and wanton disregard for  
4 49 the rights or safety of another, in addition to an  
4 50 award of actual damages, statutory damages up to three  
5 1 times the amount of actual damages may be awarded to a  
5 2 prevailing consumer.

5 3 5. An action pursuant to this chapter must be  
5 4 brought within two years of the occurrence of the last  
5 5 event giving rise to the cause of action under this  
5 6 chapter or within two years of the discovery of the  
5 7 violation of this chapter by the person bringing the  
5 8 action, whichever is later.

5 9 6. This section shall not affect a consumer's  
5 10 right to seek relief under any other theory of law.

5 11 7. A person shall not be held liable in any action  
5 12 brought under this section for a violation of this  
5 13 chapter if the person shows by a preponderance of the  
5 14 evidence that the violation was not intentional and  
5 15 resulted from a bona fide error notwithstanding the  
5 16 maintenance of procedures reasonably adopted to avoid  
5 17 the error.

5 18 Sec. 6. NEW SECTION. 714H.6 ATTORNEY GENERAL  
5 19 NOTIFICATION.

5 20 1. A party filing a petition, counterclaim,  
5 21 cross-petition, or pleading, or any count thereof, in  
5 22 intervention alleging a violation under this chapter,  
5 23 within seven days following the date of filing such  
5 24 pleading, shall provide a copy to the attorney general  
5 25 and, within seven days following entry of any final  
5 26 judgment in the action, shall provide a copy of the  
5 27 judgment to the attorney general.

5 28 2. A party appealing to district court a small  
5 29 claims order or judgment involving an issue raised  
5 30 under this chapter, within seven days of providing  
5 31 notice of the appeal, shall notify the attorney  
5 32 general in writing and provide a copy of the pleading  
5 33 raising the issue and a copy of the small claims court  
5 34 order or judgment.

5 35 3. A party appealing an order or judgment  
5 36 involving an issue raised under this chapter, within

5 37 seven days following the date such notice of appeal is  
5 38 filed with the court, shall notify the attorney  
5 39 general in writing and provide a copy of the pleading  
5 40 raising the issue and a copy of the court order or  
5 41 judgment being appealed.

5 42 4. Upon timely application to the court in which  
5 43 an action involving an issue raised under this chapter  
5 44 is pending, the attorney general may intervene as a  
5 45 party at any time or may be heard at any time. The  
5 46 attorney general's failure to intervene shall not  
5 47 preclude the attorney general from bringing a separate  
5 48 enforcement action.

5 49 5. All copies of pleadings, orders, judgments, and  
5 50 notices required by this section to be sent to the  
6 1 attorney general shall be sent by certified mail  
6 2 unless the attorney general has previously been  
6 3 provided such copies of pleadings, orders, judgments,  
6 4 or notices in the same action by certified mail, in  
6 5 which case subsequent mailings may be made by regular  
6 6 mail. Failure to provide the required mailings to the  
6 7 attorney general shall not be grounds for dismissal of  
6 8 an action under this chapter, but shall be grounds for  
6 9 a subsequent action by the attorney general to vacate  
6 10 or modify the judgment.

6 11 Sec. 7. NEW SECTION. 714H.7 SEVERABILITY CLAUSE.

6 12 If any provision of this chapter or its application  
6 13 to any person or circumstances is held invalid, the  
6 14 invalidity does not affect other provisions or  
6 15 applications of this chapter that can be given effect  
6 16 without the invalid provision or application, and to  
6 17 this end the provisions of this chapter are severable.

6 18 Sec. 8. APPLICABILITY. This Act applies to causes  
6 19 of actions accruing on or after the effective date of  
6 20 this Act.>

6 21 #2. Title page, line 1, by striking the word  
6 22 <cause> and inserting the following: <right>.

6 23 #3. Title page, line 2, by striking the word  
6 24 <providing> and inserting the following: <including>.

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6 28 SWAIM of Davis

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6 32 PALMER of Mahaska

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6 36 R. OLSON of Polk

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