

House Amendment 1483

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1 1 Amend the amendment, H=1150, to House File 712, as
1 2 follows:
1 3 #1. By striking page 1, line 1, through page 6,
1 4 line 16, and inserting the following:
1 5 <Amend House File 712 as follows:
1 6 #____. By striking everything after the enacting
1 7 clause and inserting the following:
1 8 <Section 1. NEW SECTION. 714H.1 TITLE.
1 9 This chapter shall be known and may be cited as the
1 10 "Private Right of Action for Consumer Frauds Act".
1 11 Sec. 2. NEW SECTION. 714H.2 DEFINITIONS.
1 12 1. "Actual damages" means all economic damages
1 13 proximately caused by the prohibited practice or act
1 14 that are reasonably ascertainable in amount.
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 a practice or act
1 36 the person knows or reasonably should know is an
1 37 unfair practice, deception, fraud, false pretense, or
1 38 false promise, or the misrepresentation, concealment,
1 39 suppression, or omission of a material fact, with the
1 40 intent that others rely upon the unfair practice,
1 41 deception, fraud, false pretense, false promise,
1 42 misrepresentation, concealment, suppression, or
1 43 omission in connection with the advertisement, sale,
1 44 or lease of consumer merchandise, or the solicitation
1 45 of contributions for charitable purposes. For the
1 46 purposes of this chapter, a claimant alleging an
1 47 unfair practice, deception, fraud, false pretense,
1 48 false promise, or misrepresentation must prove that
1 49 the prohibited practice related to a material fact or
1 50 facts. "Solicitations of contributions for charitable
2 1 purposes" does not include solicitations made on
2 2 behalf of a political organization as defined in
2 3 section 13C.1, solicitations made on behalf of a
2 4 religious organization as defined in section 13C.1,
2 5 solicitations made on behalf of a state, regionally,
2 6 or nationally accredited college or university, or
2 7 solicitations made on behalf of a nonprofit foundation
2 8 benefiting a state, regionally, or nationally
2 9 accredited college or university subject to section
2 10 509(a)(1) or 509(a)(3) of the Internal Revenue Code of
2 11 1986.
2 12 2. A person shall not engage in any practice or
2 13 act that is in violation of any of the following:
2 14 a. Section 321.69.
2 15 b. Chapter 516D.
2 16 c. Section 516E.5, 516E.9, or 516E.10.
2 17 d. Chapter 555A.
2 18 e. Section 714.16, subsection 2, paragraphs "b"
2 19 through "n".
2 20 f. Chapter 714A.
2 21 Sec. 4. NEW SECTION. 714H.4 EXCLUSIONS.
2 22 1. This chapter shall not apply to any of the
2 23 following:
2 24 a. Merchandise offered or provided by any of the

2 25 following persons, including business entities
2 26 organized under Title XII by those persons and the
2 27 officers, directors, employees, and agents of those
2 28 persons or business entities, pursuant to a profession
2 29 or business for which they are licensed or registered:
2 30 (1) Insurance companies subject to Title XIII.
2 31 (2) Attorneys licensed to practice law in this
2 32 state.
2 33 (3) Financial institutions which includes any bank
2 34 incorporated under the provisions of any state or
2 35 federal law, any savings and loan association or
2 36 savings bank incorporated under the provisions of any
2 37 state or federal law, any credit union organized under
2 38 the provisions of any state or federal law, and any
2 39 affiliate or subsidiary of a bank, savings and loan
2 40 association, savings bank, or credit union, and any
2 41 industrial loan licensee under chapter 536A or
2 42 regulated loan licensee under chapter 536.
2 43 (4) Persons or facilities licensed, certified, or
2 44 registered under chapters 135B, 135C, 135J, 148, 148A,
2 45 148B, 148C, 149, 151, 152, 152A, 152B, 153, 154, 154B,
2 46 154C, 154D, 155A, 156, 169, 522B, 542, 542B, 543B,
2 47 544A, or 544B.
2 48 b. Advertising by a retailer for a product, other
2 49 than a drug or other product claiming to have a
2 50 health-related benefit or use, if the advertising is
3 1 prepared by a supplier, unless the retailer
3 2 participated in the preparation of the advertisement
3 3 or knew or should have known that the advertisement
3 4 was deceptive, false, or misleading.
3 5 c. In connection with an advertisement that
3 6 violates this chapter, the newspaper, magazine,
3 7 publication, or other print media in which the
3 8 advertisement appears, including the publisher of the
3 9 newspaper, magazine, publication, or other print media
3 10 in which the advertisement appears, or the radio
3 11 station, television station, or other electronic media
3 12 which disseminates the advertisement, including an
3 13 employee, agent, or representative of the publisher,
3 14 newspaper, magazine, publication or other print media,
3 15 or the radio station, television station, or other
3 16 electronic media.
3 17 d. Any advertisement that complies with the
3 18 statutes, rules, and regulations of the federal trade
3 19 commission.
3 20 e. The provision of local exchange carrier
3 21 telephone service pursuant to a certificate issued
3 22 under section 476.29.
3 23 f. Public utilities as defined in section 476.1
3 24 that furnish gas by a piped distribution system or
3 25 electricity to the public for compensation.
3 26 g. The provision of cable television service or
3 27 video service pursuant to a franchise under section
3 28 364.2 or 477A.2.
3 29 h. Conduct in compliance with the orders or rules
3 30 of, or a statute administered by, a federal, state, or
3 31 local governmental agency.
3 32 i. Actions alleging bodily injury.
3 33 j. In any action relating to a charitable
3 34 solicitation, an individual who has engaged in the
3 35 charitable solicitation as an unpaid, uncompensated
3 36 volunteer and who does not receive monetary gain of
3 37 any sort from engaging in the solicitation.
3 38 k. An affirmative act that violates this chapter
3 39 but is specifically required by other applicable law,
3 40 to the extent that the actor could not reasonably
3 41 avoid a violation of this chapter.
3 42 2. "Material fact" as used in this chapter does
3 43 not include repairs of damage to, adjustments on, or
3 44 replacements of parts with new parts of otherwise new
3 45 merchandise if the repairs, adjustments, or
3 46 replacements are made to achieve compliance with
3 47 factory specifications and are made before sale of the
3 48 merchandise at retail and the actual cost of any labor
3 49 and parts charged to or performed by a retailer for
3 50 any such repairs, adjustments, and parts does not
4 1 exceed three hundred dollars or ten percent of the
4 2 actual cost to a retailer including freight of the
4 3 merchandise, whichever is less, provided that the
4 4 seller posts in a conspicuous place notice that
4 5 repairs, adjustments, or replacements will be

4 6 disclosed upon request. The exclusion provided in
4 7 this subsection does not apply to the concealment,
4 8 suppression, or omission of a material fact if the
4 9 purchaser requests disclosure of any repair,
4 10 adjustment, or replacement.

4 11 Sec. 5. NEW SECTION. 714H.5 PRIVATE RIGHT OF
4 12 ACTION.

4 13 1. A consumer who suffers an ascertainable loss of
4 14 money or property as the result of such prohibited
4 15 practice or act may bring an action at law to recover
4 16 actual damages. The court may order such equitable
4 17 relief as it deems necessary to protect the public
4 18 from further violations, including temporary and
4 19 permanent injunctive relief.

4 20 2. If the court finds that a person has violated
4 21 this chapter and the consumer is awarded actual
4 22 damages, the court shall award to the consumer the
4 23 costs of the action and to the consumer's attorney
4 24 reasonable fees. Reasonable attorney fees shall be
4 25 determined by the value of the time reasonably
4 26 expended by the attorney including but not limited to
4 27 consideration of the following factors:

4 28 a. The time and labor required.
4 29 b. The novelty and difficulty of the issues in the
4 30 case.

4 31 c. The skills required to perform the legal
4 32 services properly.

4 33 d. The preclusion of other employment by the
4 34 attorney due to the attorney's acceptance of the case.

4 35 e. The customary fee.

4 36 f. Whether the fee is fixed or contingent.

4 37 g. The time limitations imposed by the client or
4 38 the circumstances of the case.

4 39 h. The amount of money involved in the case and
4 40 the results obtained.

4 41 i. The experience, reputation, and ability of the
4 42 attorney.

4 43 j. The undesirability of the case.

4 44 k. The nature and length of the professional
4 45 relationship between the attorney and the client.

4 46 l. Attorney fee awards in similar cases.

4 47 3. In order to recover damages, a claim under this
4 48 section shall be proved by a preponderance of the
4 49 evidence.

4 50 4. If the finder of fact finds by a preponderance
5 1 of clear, convincing, and satisfactory evidence that a
5 2 prohibited practice or act in violation of this
5 3 chapter constitutes willful and wanton disregard for
5 4 the rights or safety of another, in addition to an
5 5 award of actual damages, statutory damages up to three
5 6 times the amount of actual damages may be awarded to a
5 7 prevailing consumer.

5 8 5. An action pursuant to this chapter must be
5 9 brought within two years of the occurrence of the last
5 10 event giving rise to the cause of action under this
5 11 chapter or within two years of the discovery of the
5 12 violation of this chapter by the person bringing the
5 13 action, whichever is later.

5 14 6. This section shall not affect a consumer's
5 15 right to seek relief under any other theory of law.

5 16 Sec. 6. NEW SECTION. 714H.6 ATTORNEY GENERAL
5 17 NOTIFICATION.

5 18 1. A party filing a petition, counterclaim,
5 19 cross-petition, or pleading, or any count thereof, in
5 20 intervention alleging a violation under this chapter,
5 21 within seven days following the date of filing such
5 22 pleading, shall provide a copy to the attorney general
5 23 and, within seven days following entry of any final
5 24 judgment in the action, shall provide a copy of the
5 25 judgment to the attorney general.

5 26 2. A party appealing to district court a small
5 27 claims order or judgment involving an issue raised
5 28 under this chapter, within seven days of providing
5 29 notice of the appeal, shall notify the attorney
5 30 general in writing and provide a copy of the pleading
5 31 raising the issue and a copy of the small claims court
5 32 order or judgment.

5 33 3. A party appealing an order or judgment
5 34 involving an issue raised under this chapter, within
5 35 seven days following the date such notice of appeal is
5 36 filed with the court, shall notify the attorney

5 37 general in writing and provide a copy of the pleading
5 38 raising the issue and a copy of the court order or
5 39 judgment being appealed.
5 40 4. Upon timely application to the court in which
5 41 an action involving an issue raised under this chapter
5 42 is pending, the attorney general may intervene as a
5 43 party at any time or may be heard at any time. The
5 44 attorney general's failure to intervene shall not
5 45 preclude the attorney general from bringing a separate
5 46 enforcement action.
5 47 5. All copies of pleadings, orders, judgments, and
5 48 notices required by this section to be sent to the
5 49 attorney general shall be sent by certified mail
5 50 unless the attorney general has previously been
6 1 provided such copies of pleadings, orders, judgments,
6 2 or notices in the same action by certified mail, in
6 3 which case subsequent mailings may be made by regular
6 4 mail. Failure to provide the required mailings to the
6 5 attorney general shall not be grounds for dismissal of
6 6 an action under this chapter, but shall be grounds for
6 7 a subsequent action by the attorney general to vacate
6 8 or modify the judgment.
6 9 Sec. 7. NEW SECTION. 714H.7 CLASS ACTIONS
6 10 BARRED.
6 11 A class action lawsuit alleging violations of this
6 12 chapter shall not be available. Nothing in this
6 13 chapter shall be construed to limit the attorney
6 14 general from bringing a class action lawsuit pursuant
6 15 to section 714.16.
6 16 Sec. 8. NEW SECTION. 714H.8 SEVERABILITY CLAUSE.
6 17 If any provision of this chapter or its application
6 18 to any person or circumstances is held invalid, the
6 19 invalidity does not affect other provisions or
6 20 applications of this chapter that can be given effect
6 21 without the invalid provision or application, and to
6 22 this end the provisions of this chapter are severable.
6 23 Sec. 9. APPLICABILITY. This Act applies to causes
6 24 of actions accruing on or after the effective date of
6 25 this Act.>
6 26 #____. Title page, line 1, by striking the word
6 27 <cause> and inserting the following: <right>.
6 28 #____. Title page, line 2, by striking the word
6 29 <providing> and inserting the following:
6 30 <including>.>
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