

Senate Amendment 3298

PAG LIN

1 1 Amend Senate File 178 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, or 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 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, and any credit union organized
2 38 under the provisions of any state or federal law, and
2 39 any affiliate or subsidiary of a bank, savings and
2 40 loan association, savings bank, or credit union.
2 41 (4) Persons or facilities licensed, certified, or
2 42 registered under chapters 135B, 135C, 135J, 148, 148A,
2 43 148B, 148C, 149, 151, 152, 152A, 152B, 153, 154, 154B,
2 44 154C, 154D, 155A, 156, 169, 522B, 542, 542B, 543B,
2 45 544A, or 544B.
2 46 b. Advertising by a retailer for a product, other
2 47 than a drug or other product claiming to have a
2 48 health-related benefit or use, if the advertising is
2 49 prepared by a supplier, unless the retailer
2 50 participated in the preparation of the advertisement
3 1 or knew or should have known that the advertisement
3 2 was deceptive, false, or misleading.
3 3 c. In connection with an advertisement that
3 4 violates this chapter, the newspaper, magazine,
3 5 publication, or other print media in which the
3 6 advertisement appears, including the publisher of the
3 7 newspaper, magazine, publication, or other print media
3 8 in which the advertisement appears, or the radio
3 9 station, television station, or other electronic media
3 10 which disseminates the advertisement, including an
3 11 employee, agent, or representative of the publisher,
3 12 newspaper, magazine, publication or other print media,
3 13 or the radio station, television station, or other
3 14 electronic media.
3 15 d. The provision of local exchange carrier
3 16 telephone service pursuant to a certificate issued
3 17 under section 476.29.
3 18 e. Public utilities as defined in section 476.1
3 19 that furnish gas by a piped distribution system or
3 20 electricity to the public for compensation.
3 21 f. Any advertisement that complies with the
3 22 statutes, rules, and regulations of the federal trade
3 23 commission.
3 24 g. Conduct that is required or permitted by the
3 25 orders or rules of, or a statute administered by, a
3 26 federal, state, or local governmental agency.
3 27 h. An affirmative act that violates this chapter
3 28 but is specifically required by other applicable law,
3 29 to the extent that the actor could not reasonably
3 30 avoid a violation of this chapter.
3 31 i. In any action relating to a charitable
3 32 solicitation, an individual who has engaged in the
3 33 charitable solicitation as an unpaid, uncompensated
3 34 volunteer and who does not receive monetary gain of
3 35 any sort from engaging in the solicitation.
3 36 j. The provision of cable television service or
3 37 video service pursuant to a franchise under section
3 38 364.2 or 477A.2.
3 39 k. A corporation holding one or more industrial
3 40 loan licenses pursuant to chapter 536A and employing
3 41 fewer than sixty full-time employees or a corporation
3 42 holding one or more regulated loan licenses pursuant
3 43 to chapter 536 and employing fewer than sixty
3 44 full-time employees. For purposes of this paragraph,
3 45 "corporation" means the same as defined in section
3 46 536A.2.
3 47 2. "Material fact" as used in this chapter does
3 48 not include repairs of damage to, adjustments on, or
3 49 replacements of parts with new parts of otherwise new
3 50 merchandise if the repairs, adjustments, or
4 1 replacements are made to achieve compliance with
4 2 factory specifications and are made before sale of the
4 3 merchandise at retail and the actual cost of any labor
4 4 and parts charged to or performed by a retailer for
4 5 any such repairs, adjustments, and parts does not

4 6 exceed three hundred dollars or ten percent of the
4 7 actual cost to a retailer including freight of the
4 8 merchandise, whichever is less, provided that the
4 9 seller posts in a conspicuous place notice that
4 10 repairs, adjustments, or replacements will be
4 11 disclosed upon request. The exclusion provided in
4 12 this subsection does not apply to the concealment,
4 13 suppression, or omission of a material fact if the
4 14 purchaser requests disclosure of any repair,
4 15 adjustment, or replacement.

4 16 Sec. 5. NEW SECTION. 714H.5 PRIVATE RIGHT OF
4 17 ACTION.

4 18 1. A consumer who suffers an ascertainable loss of
4 19 money or property as the result of a prohibited
4 20 practice or act in violation of this chapter may bring
4 21 an action at law to recover actual damages. The court
4 22 may order such equitable relief as it deems necessary
4 23 to protect the public from further violations,
4 24 including temporary and permanent injunctive relief.

4 25 2. If the court finds that a person has violated
4 26 this chapter and the consumer is awarded actual
4 27 damages, the court shall award to the consumer the
4 28 costs of the action and to the consumer's attorney
4 29 reasonable fees. Reasonable attorney fees shall be
4 30 determined by the value of the time reasonably
4 31 expended by the attorney including but not limited to
4 32 consideration of the following factors:

- 4 33 a. The time and labor required.
4 34 b. The novelty and difficulty of the issues in the
4 35 case.
4 36 c. The skills required to perform the legal
4 37 services properly.
4 38 d. The preclusion of other employment by the
4 39 attorney due to the attorney's acceptance of the case.
4 40 e. The customary fee.
4 41 f. Whether the fee is fixed or contingent.
4 42 g. The time limitations imposed by the client or
4 43 the circumstances of the case.
4 44 h. The amount of money involved in the case and
4 45 the results obtained.
4 46 i. The experience, reputation, and ability of the
4 47 attorney.
4 48 j. The undesirability of the case.
4 49 k. The nature and length of the professional
4 50 relationship between the attorney and the client.

5 1 1. Attorney fee awards in similar cases.
5 2 3. In order to recover damages, a claim under this
5 3 section shall be proved by a preponderance of the
5 4 evidence.

5 5 4. If the finder of fact finds by a preponderance
5 6 of clear, convincing, and satisfactory evidence that a
5 7 prohibited practice or act in violation of this
5 8 chapter constitutes willful and wanton disregard for
5 9 the rights or safety of another, in addition to an
5 10 award of actual damages, statutory damages up to three
5 11 times the amount of actual damages may be awarded to a
5 12 prevailing consumer.

5 13 5. An action pursuant to this chapter must be
5 14 brought within two years of the occurrence of the last
5 15 event giving rise to the cause of action under this
5 16 chapter or within two years of the discovery of the
5 17 violation of this chapter by the person bringing the
5 18 action, whichever is later.

5 19 6. This section shall not affect a consumer's
5 20 right to seek relief under any other theory of law.

5 21 7. A person shall not be held liable in any action
5 22 brought under this section for a violation of this
5 23 chapter if the person shows by a preponderance of the
5 24 evidence that the violation was not intentional and
5 25 resulted from a bona fide error notwithstanding the
5 26 maintenance of procedures reasonably adopted to avoid
5 27 the error.

5 28 Sec. 6. NEW SECTION. 714H.6 ATTORNEY GENERAL
5 29 NOTIFICATION.

5 30 1. A party filing a petition, counterclaim,
5 31 cross-petition, or pleading, or any count thereof, in
5 32 intervention alleging a violation under this chapter,
5 33 within seven days following the date of filing such
5 34 pleading, shall provide a copy to the attorney general
5 35 and, within seven days following entry of any final
5 36 judgment in the action, shall provide a copy of the

5 37 judgment to the attorney general.
5 38 2. A party appealing to district court a small
5 39 claims order or judgment involving an issue raised
5 40 under this chapter, within seven days of providing
5 41 notice of the appeal, shall notify the attorney
5 42 general in writing and provide a copy of the pleading
5 43 raising the issue and a copy of the small claims court
5 44 order or judgment.

5 45 3. A party appealing an order or judgment
5 46 involving an issue raised under this chapter, within
5 47 seven days following the date such notice of appeal is
5 48 filed with the court, shall notify the attorney
5 49 general in writing and provide a copy of the pleading
5 50 raising the issue and a copy of the court order or
6 1 judgment being appealed.

6 2 4. Upon timely application to the court in which
6 3 an action involving an issue raised under this chapter
6 4 is pending, the attorney general may intervene as a
6 5 party at any time or may be heard at any time. The
6 6 attorney general's failure to intervene shall not
6 7 preclude the attorney general from bringing a separate
6 8 enforcement action.

6 9 5. All copies of pleadings, orders, judgments, and
6 10 notices required by this section to be sent to the
6 11 attorney general shall be sent by certified mail
6 12 unless the attorney general has previously been
6 13 provided such copies of pleadings, orders, judgments,
6 14 or notices in the same action by certified mail, in
6 15 which case subsequent mailings may be made by regular
6 16 mail. Failure to provide the required mailings to the
6 17 attorney general shall not be grounds for dismissal of
6 18 an action under this chapter, but shall be grounds for
6 19 a subsequent action by the attorney general to vacate
6 20 or modify the judgment.

6 21 Sec. 7. NEW SECTION. 714H.7 CLASS ACTIONS.
6 22 A class action lawsuit alleging a violation of this
6 23 chapter shall not be filed with a court unless it has
6 24 been approved by the attorney general. The attorney
6 25 general shall approve the filing of a class action
6 26 lawsuit alleging a violation of this chapter unless
6 27 the attorney general determines that the lawsuit is
6 28 frivolous. This section shall not affect the
6 29 requirements of any other law or of the Iowa rules of
6 30 civil procedure relating to class action lawsuits.

6 31 Sec. 8. NEW SECTION. 714H.8 SEVERABILITY CLAUSE.
6 32 If any provision of this chapter or its application
6 33 to any person or circumstances is held invalid, the
6 34 invalidity does not affect other provisions or
6 35 applications of this chapter that can be given effect
6 36 without the invalid provision or application, and to
6 37 this end the provisions of this chapter are severable.

6 38 Sec. 9. APPLICABILITY. This Act applies to causes
6 39 of actions accruing on or after the effective date of
6 40 this Act.>

6 41 #2. Title page, by striking lines 1 and 2 and
6 42 inserting the following: <An Act relating to a
6 43 private right of action for certain consumer fraud
6 44 violations and including an applicability provision.>

6 45
6 46
6 47

6 48 _____
6 48 KEITH A. KREIMAN
6 49 SF 178.701 83
6 50 rh/rj/24408