

Reported 3/87

MAR 5 1987

HOUSE FILE 416

Place On Calendar

BY COMMITTEE ON SMALL BUSINESS
AND COMMERCE

(Formerly House Study Bill 183)

Passed House, Date 3-10-87 (p 574) Passed Senate, Date 4-14-87

Vote: Ayes 92 Nays 0 Vote: Ayes 49 Nays 0

Approved May 29, 1987

A BILL FOR

- 1 An Act relating to consumer frauds and providing penalties.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HOUSE FILE 416

H-3166

- 1 Amend House File 416 as follows:
- 2 1. Page 2, line 2, by striking the word
- 3 "advertisements" and inserting the following:
- 4 "advertisement".
- 5 2. Page 2, line 3, by striking the words
- 6 "advertisements were" and inserting the following:
- 7 "advertisement was".
- 8 3. Page 2, line 6, by striking the words
- 9 "advertisements were" and inserting the following:
- 10 "advertisement was".

H-3166 FILED MARCH 10, 1987 BY SPEAR of Lee
ADOPTED (p 574)

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1 Section 1. Section 714.16, subsection 1, Code 1987, is
2 amended by adding the following new lettered paragraphs:

3 NEW LETTERED PARAGRAPH. f. "Unfair practice" means an act
4 or practice which causes substantial, unavoidable injury to
5 consumers that is not outweighed by any consumer or
6 competitive benefits which the practice produces.

7 NEW LETTERED PARAGRAPH. g. "Deception" means an act or
8 practice which has the tendency or capacity to mislead a
9 substantial number of consumers as to a material fact or
10 facts.

11 Sec. 2. Section 714.16, subsection 2, paragraph a,
12 unnumbered paragraph 1, Code 1987, is amended to read as
13 follows:

14 The act, use or employment by any a person of any an unfair
15 practice, deception, fraud, false pretense, false promise, or
16 misrepresentation, or the concealment, suppression, or
17 omission of any a material fact with intent that others rely
18 upon such the concealment, suppression, or omission, in
19 connection with the lease, sale, or advertisement of any
20 merchandise, whether or not any a person has in fact been
21 misled, deceived, or damaged thereby, is declared-to-be an
22 unlawful practice.

23 It is deceptive advertising within the meaning of this
24 section for a person to represent in connection with the
25 lease, sale, or advertisement of any merchandise that the
26 advertised merchandise has certain performance
27 characteristics, accessories, uses, or benefits or that
28 certain services are performed on behalf of clients or
29 customers of that person if, at the time of the
30 representation, no reasonable basis for the claim existed.
31 The burden is on the person making the representation to
32 demonstrate that a reasonable basis for the claim existed.

33 A retailer who uses advertising for a product, other than a
34 drug or other product claiming to have a health related
35 benefit or use, prepared by a supplier shall not be liable

1 under this section unless the retailer participated in the
2 preparation of the advertisements; knew or should have known
3 that the advertisements were deceptive, false, or misleading;
4 refused to withdraw the product from sales upon the request of
5 the attorney general pending a determination of whether the
6 advertisements were deceptive, false, or misleading; refused
7 upon the request of the attorney general to provide the name
8 and address of the supplier; or refused to cooperate with the
9 attorney general in an action brought against the supplier
10 under this section.

11 Sec. 3. Section 714.16, subsection 7, Code 1987, is
12 amended to read as follows:

13 7. Whenever A civil action pursuant to this section shall
14 be by equitable proceedings. If it appears to the attorney
15 general that a person has engaged in, is engaging in, or is
16 about to engage in any a practice declared to be unlawful by
17 this section, the attorney general may seek and obtain in an
18 action in a district court an a temporary restraining order,
19 preliminary injunction, or permanent injunction prohibiting
20 such the person from continuing such-practices the practice or
21 engaging therein in the practice or doing any-acts an act in
22 furtherance thereof of the practice. The court may make such
23 orders or judgments as may-be necessary to prevent the use or
24 employment by a person of any prohibited practices, or which
25 may-be are necessary to restore to any person in interest any
26 moneys or property, real or personal, which may have been
27 acquired by means of any a practice in-this-section declared
28 to be unlawful by this section, including the appointment of a
29 receiver in cases of substantial and willful violation of the
30 provisions-of this section. Except in an action for the
31 concealment, suppression, or omission of a material fact with
32 intent that others rely upon it, it is not necessary in an
33 action for restitution or an injunction, to allege or to prove
34 reliance, damages, intent to deceive, or that the person who
35 engaged in an unlawful act had knowledge of the falsity of the

1 claim or ignorance of the truth. A claim for restitution may
2 be proved by any competent evidence, including evidence that
3 would be appropriate in a class action.

4 In addition to the remedies otherwise provided for in this
5 subsection, the attorney general may request and the court may
6 impose a civil penalty not to exceed forty thousand dollars
7 per violation against a person found by the court to have
8 engaged in a method, act, or practice declared unlawful under
9 this section; provided, however, a course of conduct shall not
10 be considered to be separate and different violations merely
11 because the conduct is repeated to more than one person. In
12 addition, on the motion of the attorney general or its own
13 motion, the court may impose a civil penalty of not more than
14 five thousand dollars for each day of intentional violation of
15 a temporary restraining order, preliminary injunction, or
16 permanent injunction issued under authority of this section.
17 A penalty imposed pursuant to this subsection is in addition
18 to any penalty imposed pursuant to section 537.6113. Civil
19 penalties ordered pursuant to this subsection shall be paid to
20 the treasurer of state to be deposited in the general fund of
21 the state.

22 Sec. 4. Section 714.16, Code 1987, is amended by adding
23 the following new subsection 10 and renumbering the subsequent
24 subsections:

25 NEW SUBSECTION. 10. A civil action pursuant to this
26 section may be commenced in the county in which the person
27 against whom it is brought resides, has a principal place of
28 business, or is doing business, or in the county where the
29 transaction or any substantial portion of the transaction
30 occurred, or where one or more of the victims reside.

31 Sec. 5. Section 714.16, subsection 10, Code 1987, is
32 amended to read as follows:

33 10 11. In any an action brought under the-provisions-of
34 this section, the attorney general is entitled to recover
35 costs of the court action and any investigation which may have

1 been conducted, including reasonable attorneys' fees, for the
2 use of this state.

3 Sec. 6. Section 714.16, Code 1987, is amended by adding
4 the following new subsection 13 and renumbering the subsequent
5 subsections:

6 NEW SUBSECTION. 13. The attorney general or the designee
7 of the attorney general is deemed to be a regulatory agency
8 under chapter 692 for the purpose of receiving criminal
9 intelligence data relating to violations of this section.

10 Sec. 7. Section 714.16, subsection 12, Code 1987, is
11 amended to read as follows:

12 ~~12~~ 14. ~~Nothing contained in this~~ This section shall does
13 not apply to the ~~owner or publisher of newspapers, magazines,~~
14 publications newspaper, magazine, publication, or printed
15 ~~matter wherein such~~ other print media in which the
16 advertisement appears, or to the ~~owner or operator of a~~ radio
17 or station, television station, or other electronic media
18 which disseminates such the advertisement when if the owner,
19 ~~publisher or operator~~ newspaper, magazine, publication, radio
20 station, television station, or other print or electronic
21 media has no knowledge of the fraudulent intent, design, or
22 purpose of the advertiser at the time the advertisement is
23 accepted; and provided, further, that nothing herein contained
24 shall apply to any advertisement which complies with the rules
25 and regulations of, and the statutes administered by the
26 federal trade commission.

27 EXPLANATION

28 This bill makes several changes in the consumer fraud
29 statute.

30 Sections 1 and 2 add unfair practices and lease
31 transactions to the list of acts which are unlawful consumer
32 frauds, and provide that it is deceptive advertising to
33 represent to a person that merchandise has performance
34 characteristics, accessories, uses, or benefits or that
35 certain services are performed on behalf of clients if there

1 exists no reasonable basis for the claim.

2 Section 3 relates to the type of action and proof required,
3 and provides for remedies available to the attorney general's
4 office. Enforcement may include a temporary or permanent
5 injunction, civil penalties up to \$40,000, or penalties of
6 \$5,000 a day for violations of injunctions. The civil penalty
7 shall be deposited in the state general fund.

8 Section 4 provides for the proper venue for bringing an
9 enforcement action.

10 Section 5 provides that the attorney general may recover
11 costs of the court action and investigation, including
12 reasonable attorneys' fees.

13 Section 6 provides that the attorney general or the
14 attorney general's designee is considered to be a regulatory
15 agency under chapter 692 for purposes of receiving criminal
16 intelligence data relating to violations of the statute.

17 Section 7 modifies the conditions under which a newspaper,
18 magazine, publication, radio station, television station, or
19 other print or electronic media is liable.

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Amended 3/13/87 Dr Pass 4/1 (A.1034)

House File 416

JUDICIARY. Varn. Chair, Mann and Drake

HOUSE FILE 416
BY COMMITTEE ON SMALL BUSINESS
AND COMMERCE

(As Amended and Passed by the House March 10, 1987)

Passed House, Date 3/10/87 (p.574) Passed Senate, Date 4-14-87 (p.1277)
Vote: Ayes 92 Nays 0 Vote: Ayes 49 Nays 0
Approved May 29 1987

A BILL FOR

1 An Act relating to consumer frauds and providing penalties.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments _____

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18 upon such the concealment, suppression, or omission, in
19 connection with the lease, sale, or advertisement of any
20 merchandise, whether or not any a person has in fact been
21 misled, deceived, or damaged thereby, is declared-to-be an
22 unlawful practice.

23 It is deceptive advertising within the meaning of this
24 section for a person to represent in connection with the
25 lease, sale, or advertisement of any merchandise that the
26 advertised merchandise has certain performance
27 characteristics, accessories, uses, or benefits or that
28 certain services are performed on behalf of clients or
29 customers of that person if, at the time of the
30 representation, no reasonable basis for the claim existed.
31 The burden is on the person making the representation to
32 demonstrate that a reasonable basis for the claim existed.

33 A retailer who uses advertising for a product, other than a
34 drug or other product claiming to have a health related
35 benefit or use, prepared by a supplier shall not be liable

1 under this section unless the retailer participated in the
 2 preparation of the advertisement; knew or should have known
 3 that the advertisement was deceptive, false, or misleading;
 4 refused to withdraw the product from sales upon the request of
 5 the attorney general pending a determination of whether the
 6 advertisement was deceptive, false, or misleading; refused
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 8 and address of the supplier; or refused to cooperate with the
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 18 action in a district court as a temporary restraining order,
 19 preliminary injunction, or permanent injunction prohibiting
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 21 engaging therein, in the practice or doing any-acts an act in
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 23 orders or judgments as may-be necessary to prevent the use or
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 26 moneys or property, real or personal, which may have been
 27 acquired by means of any a practice in-this-section declared
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 32 intent that others rely upon it, it is not necessary in an
 33 action for restitution or an injunction, to allege or to prove
 34 reliance, damages, intent to deceive, or that the person who
 35 engaged in an unlawful act had knowledge of the falsity of the

1 claim or ignorance of the truth. A claim for restitution may
2 be proved by any competent evidence, including evidence that
3 would be appropriate in a class action.

4 In addition to the remedies otherwise provided for in this
5 subsection, the attorney general may request and the court may
6 impose a civil penalty not to exceed forty thousand dollars
7 per violation against a person found by the court to have
8 engaged in a method, act, or practice declared unlawful under
9 this section; provided, however, a course of conduct shall not
10 be considered to be separate and different violations merely
11 because the conduct is repeated to more than one person. In
12 addition, on the motion of the attorney general or its own
13 motion, the court may impose a civil penalty of not more than
14 five thousand dollars for each day of intentional violation of
15 a temporary restraining order, preliminary injunction, or
16 permanent injunction issued under authority of this section.
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21 the state.

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18 which disseminates such the advertisement when if the owner,
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NSB 183

SMALL BUSINESS AND COMMERCE

183

SENATE/HOUSE FILE _____
BY (PREFILED ATTORNEY GENERAL/
DEPARTMENT OF JUSTICE BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

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SUB COMMITTEE ASSIGNMENTS
CHAIR: *Chapman*
COMMITTEE: *Small Business*
2/25/87

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EXPLANATION

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29 statute.

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13 Section 6 provides that the attorney general or the
14 attorney general's designee is considered to be a regulatory
15 agency under chapter 692 for purposes of receiving criminal
16 intelligence data relating to violations of the statute.

17 Section 7 eliminates an exemption from the statute for an
18 advertisement that complies with the rules, regulations, and
19 laws administered by the federal trade commission.

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HOUSE FILE 416

AN ACT
RELATING TO CONSUMER FRAUDS AND PROVIDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 714.16, subsection 1, Code 1987, is amended by adding the following new lettered paragraphs:

NEW LETTERED PARAGRAPH. 1. "Unfair practice" means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.

NEW LETTERED PARAGRAPH. 9. "Deception" means an act or practice which has the tendency or capacity to mislead a substantial number of consumers as to a material fact or facts.

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It is deceptive advertising within the meaning of this section for a person to represent in connection with the lease, sale, or advertisement of any merchandise that the advertised merchandise has certain performance characteristics, accessories, uses, or benefits or that certain services are performed on behalf of clients or customers of that person if, at the time of the representation, no reasonable basis for the claim existed. The burden is on the person making the representation to demonstrate that a reasonable basis for the claim existed.

A retailer who uses advertising for a product, other than a drug or other product claiming to have a health related benefit or use, prepared by a supplier shall not be liable under this section unless the retailer participated in the preparation of the advertisement; knew or should have known that the advertisement was deceptive, false, or misleading; refused to withdraw the product from sales upon the request of the attorney general pending a determination of whether the advertisement was deceptive, false, or misleading; refused upon the request of the attorney general to provide the name and address of the supplier; or refused to cooperate with the attorney general in an action brought against the supplier under this section.

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7. Whenever A civil action pursuant to this section shall be by equitable proceedings. If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in any a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court on a temporary restraining order, preliminary injunction, or permanent injunction prohibiting such the person from continuing such-practices the practice or engaging therein in the practice or doing any-acts an act in furtherance thereof of the practice. The court may make such

orders or judgments as may be necessary to prevent the use or employment by a person of any prohibited practices, or which may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any a practice in this section declared to be unlawful by this section, including the appointment of a receiver in cases of substantial and willful violation of the provisions of this section. Except in an action for the concealment, suppression, or omission of a material fact with intent that others rely upon it, it is not necessary in an action for restitution or an injunction, to allege or to prove reliance, damages, intent to deceive, or that the person who engaged in an unlawful act had knowledge of the falsity of the claim or ignorance of the truth. A claim for restitution may be proved by any competent evidence, including evidence that would be appropriate in a class action.

In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose a civil penalty not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful under this section; provided, however, a course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person. In addition, on the motion of the attorney general or its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of intentional violation of a temporary restraining order, preliminary injunction, or permanent injunction issued under authority of this section. A penalty imposed pursuant to this subsection is in addition to any penalty imposed pursuant to section 537.613. Civil penalties ordered pursuant to this subsection shall be paid to the treasurer of state to be deposited in the general fund of the state.

Sec. 4. Section 714.14, Code 1987, is amended by adding the following new subsection 10 and renumbering the subsequent subsections:

NEW SUBSECTION. 10. A civil action pursuant to this section may be commenced in the county in which the person against whom it is brought resides, has a principal place of business, or is doing business, or in the county where the transaction or any substantial portion of the transaction occurred, or where one or more of the victims reside.

Sec. 5. Section 714.16, subsection 10, Code 1987, is amended to read as follows:

to 11. In any an action brought under the provisions of this section, the attorney general is entitled to recover costs of the court action and any investigation which may have been conducted, including reasonable attorneys' fees, for the use of this state.

Sec. 6. Section 714.16, Code 1987, is amended by adding the following new subsection 13 and renumbering the subsequent subsections:

NEW SUBSECTION. 13. The attorney general or the designee of the attorney general is deemed to be a regulatory agency under chapter 692 for the purpose of receiving criminal intelligence data relating to violations of this section.

Sec. 7. Section 714.16, subsection 12, Code 1987, is amended to read as follows:

to 14. Nothing contained in this section shall apply to the owner or publisher of newspapers, magazines, publications, newspaper, magazine, publication, or printed matter where such other print media in which the advertisement appears, or to the owner or operator of a radio or station, television station, or other electronic media which disseminates such the advertisement when if the owner, publisher or operator newspaper, magazine, publication, radio station, television station, or other print or electronic media has no knowledge of the fraudulent intent, design, or

purpose of the advertiser at the time the advertisement is accepted; and provided, further, that nothing herein contained shall apply to any advertisement which complies with the rules and regulations of, and the statutes administered by the federal trade commission.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 416, Seventy-second General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved May 29, 1987

TERRY E. BRANSTAD
Governor

HF 416