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JUDICIARY

HOUSE FILE 631

BY GARMAN

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to establishing guidelines for comparison price
2 advertising, and providing civil penalties.

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

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1 Section 1. NEW SECTION. 714F.1 DEFINITIONS.

2 For the purposes of this chapter:

3 1. "Advertisement" means the same as defined in section
4 714.16, subsection 1.

5 2. "Deception" means the same as defined in section
6 714.16, subsection 1.

7 3. "Merchandise" means the same as defined in section
8 714.16, subsection 1.

9 4. "On sale" means an advertisement that states or implies
10 that a seller's retail price for merchandise has been reduced,
11 including but not limited to advertisements including terms
12 such as "sale", "now on sale", "reduced", or "special".

13 5. "Person" means the same as defined in section 714.16,
14 subsection 1.

15 6. "Price comparison" means the direct or implied
16 comparison in any advertisement of the seller's current price
17 for merchandise with any other price or statement of value for
18 the merchandise or the making of other claims of price
19 reduction or savings with respect to that merchandise in
20 comparison to other merchandise.

21 7. "Regular price" means the actual, good faith price at
22 which the seller openly and actively offered the merchandise
23 to the public on a regular basis, for a reasonable period of
24 time in the recent, regular course of the seller's business.

25 8. "Seller" means a person who advertises merchandise for
26 sale.

27 Sec. 2. NEW SECTION. 714F.2 DETERMINATION OF REGULAR
28 PRICE.

29 In determining whether merchandise was openly and actively
30 offered to the public on a regular basis whether a period of
31 time was reasonable, or whether a price was in good faith, the
32 following factors shall be considered, as applicable: the
33 particular merchandise or industry, the season, the number
34 sold at the higher price, shelf life, and other material
35 factors. If a seller has actively offered a good faith price

1 for the fourteen selling days immediately before a price
2 reduction, it is presumed that the higher price was offered
3 for a reasonable period of time in the recent course of
4 business. A seller may use a shorter period of time to
5 establish a regular price, but the seller has the burden of
6 showing that the shorter time was reasonable and that the
7 higher price was a good faith price.

8 Sec. 3. NEW SECTION. 714F.3 BASIS FOR COMPARISON --
9 DISCLOSURE.

10 In any price comparison advertisement, the seller shall
11 disclose in the same advertisement the basis for the
12 comparison by a clear and conspicuous reference to the
13 seller's regular, former, or future price, to a competitor's
14 selling price, or to the suggested retail price of the
15 manufacturer of the merchandise, as applicable.

16 1. SELLER'S REGULAR OR FORMER PRICE.

17 a. In any price comparison advertisement of the seller's
18 current price to the seller's regular or former price, the
19 regular or former price shall be the regular price as defined
20 in section 714F.1, subsection 7.

21 b. A seller shall not advertise merchandise as being on
22 sale or otherwise reduced in price from the seller's regular
23 price if, in fact, the price at which the merchandise is
24 advertised as being on sale or otherwise reduced in price from
25 the seller's regular price is the price for which the
26 merchandise was actually sold by the seller for more than six
27 months out of any twelve-month period in which the
28 advertisement was circulated, broadcast, or posted on an
29 internet web site, or, in the case of seasonal merchandise,
30 for more than one-half of the time the seasonal merchandise is
31 offered for sale by the seller unless the price is permanently
32 reduced to sell out the merchandise. An advertisement in
33 which the seller clearly and conspicuously discloses the
34 period of time when the seller's regular price was in effect
35 meets the requirements of this paragraph.

1 2. SELLER'S FUTURE PRICE. In any price comparison
2 advertisement of a seller's current price to the price at
3 which the merchandise will be offered by the seller in the
4 future, the seller shall clearly and conspicuously disclose in
5 the same advertisement all of the following:

6 a. That the price comparison is based on a future price
7 increase.

8 b. The effective date of the future price increase, if
9 more than ninety days after the price comparison, is first
10 stated in an advertisement.

11 In addition, the future increase to the higher price must
12 take effect on the date disclosed in the advertisement or, if
13 not disclosed in the advertisement, within ninety days after
14 the price comparison is stated in the advertisement, except
15 where compliance becomes impossible because of circumstances
16 beyond the seller's control, and the seller continues to offer
17 the merchandise at the higher price for at least as long as
18 the period of time for which the merchandise was advertised at
19 the lower comparison price.

20 3. COMPETITOR'S SELLING PRICE. In any price comparison
21 advertisement of a seller's current price to the price at
22 which the seller states or implies a competitor offers the
23 merchandise, the higher comparison price shall be one at which
24 a competitor located within the retail selling market in which
25 the advertisement is circulated or broadcast has actively and
26 openly offered the merchandise for sale within ninety days
27 prior to the earlier of the dates upon which the seller begins
28 circulating or broadcasting the advertisement. A seller which
29 advertises current prices in comparison to those of
30 competitors specifically named in the advertisement must prove
31 that each competitor named actively and openly offered the
32 merchandise for sale within ninety days prior to the earlier
33 of the dates upon which the seller begins circulating or
34 broadcasting the advertisement.

35 4. SUGGESTED RETAIL PRICE OF THE MANUFACTURER. In any

1 price comparison advertisement of a seller's current price to
2 the suggested retail price of the manufacturer of the
3 merchandise, the suggested retail price of the manufacturer
4 shall be one at which the seller or a competitor or
5 competitors located within the retail selling market in which
6 the advertisement is circulated or broadcast have actively and
7 openly offered the merchandise for sale within ninety days
8 prior to the earlier of the dates upon which the seller begins
9 circulating or broadcasting the advertisement.

10 Sec. 4. NEW SECTION. 714F.4 BURDEN OF PROOF.

11 In any action pursuant to this chapter, the burden shall be
12 on the seller to prove that a price comparison meets the
13 requirements of this chapter.

14 Sec. 5. NEW SECTION. 714F.5 CIVIL ENFORCEMENT.

15 A violation of this chapter is a violation of section
16 714.16, subsection 2, paragraph "a". The remedies and
17 penalties provided by section 714.16, including but not
18 limited to injunctive relief and civil penalties, apply to
19 violations of this chapter. All investigative and enforcement
20 authority granted to the attorney general pursuant to section
21 714.16 shall be available to the attorney general to enforce
22 this chapter, including but not limited to the authority to
23 issue subpoenas, compel testimony, hold public hearings, adopt
24 rules, and investigate violations. In seeking reimbursement
25 pursuant to section 714.16, subsection 7, from a person who
26 has committed a violation of this chapter, the attorney
27 general may seek an order from the court that the person pay
28 to the attorney general on behalf of consumers the amounts for
29 which the person would be liable under section 714F.6, for
30 each consumer who has a cause of action pursuant to section
31 714F.6. Section 714.16, as it relates to consumer
32 reimbursement, applies to amounts recovered by the attorney
33 general as reimbursement under this chapter. However, a
34 consumer who is awarded monetary damages pursuant to section
35 714F.6 is not eligible for monetary relief under this section

1 for the same unlawful practice.

2 Sec. 6. NEW SECTION. 714F.6 PRIVATE ACTION.

3 In addition to any other remedy, a consumer who has lost
4 money as a result of a violation of this chapter may bring an
5 action against the person who committed the violation to
6 recover from the person all of the following:

7 1. The amount of any moneys or property acquired by the
8 person from the consumer by means of a violation of this
9 chapter, or two hundred dollars, whichever is greater.

10 2. Costs and reasonable attorney fees.

11 EXPLANATION

12 This bill establishes new Code chapter 714F, which relates
13 to comparison price advertising. The new Code chapter sets
14 out definitions, including "on sale", meaning an advertisement
15 that states or implies that a seller's retail price for
16 merchandise has been reduced; "price comparison", meaning the
17 direct or implied comparison in any advertisement of the
18 seller's current price for merchandise with any other price or
19 statement of value or claim of price reduction or savings; and
20 "regular price", meaning the actual, good faith price at which
21 the seller openly and actively offered the merchandise to the
22 public on a regular basis, for a reasonable period of time in
23 the recent, regular course of the seller's business.

24 The bill provides that a seller shall disclose the basis
25 for comparison in any comparison advertisement by a clear and
26 conspicuous reference to the seller's regular or former price,
27 the seller's future price, a competitor's price, or the
28 suggested retail price of the manufacturer, and sets out the
29 specifics of disclosure in each circumstance.

30 The bill provides that the burden of proof is on the seller
31 to prove that a price comparison meets the requirements of the
32 Code chapter.

33 The bill provides that a violation of the new Code chapter
34 constitutes a violation of Code section 714.16, subsection 2,
35 paragraph "a", that provides that the act of an unfair

1 practice, deception, fraud, false promise, or the
2 misrepresentation, concealment, suppression or omission of a
3 material fact with the intent to induce the reliance of others
4 is an unlawful practice. Under Code chapter 714, a conviction
5 ranges from a first degree to a fifth degree fraudulent
6 practice, depending on the amount of money, or value of
7 property or services involved. The attorney general is
8 granted authority to enforce the new Code chapter as an
9 equitable action as provided in Code section 714.16, including
10 the authority to issue subpoenas, compel testimony, hold
11 public hearings, adopt rules, and investigate violations. The
12 attorney general may seek reimbursement on behalf of consumers
13 from a person who has committed a violation of this Code
14 chapter. A consumer may alternatively bring a private action
15 against the person who committed the violation to recover the
16 amount of moneys or property acquired by means of a violation
17 of the Code chapter, or \$200, whichever is greater, plus
18 attorney fees and costs. A consumer who recovers monetary
19 damages by private action is not eligible for any share of
20 monetary damages recovered by the attorney general for the
21 same unlawful practice.

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