

House Study Bill 85

SENATE/HOUSE FILE _____
BY (PROPOSED ATTORNEY
GENERAL BILL)

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

A BILL FOR

1 An Act creating a private cause of action for certain consumer
2 fraud violations.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1055DP 80
5 rh/sh/8

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1 1 Section 1. Section 714.16, subsection 1, Code 2003, is
1 2 amended by adding the following new paragraphs:
1 3 NEW PARAGRAPH. aa. "Agricultural merchandise" means
1 4 merchandise sold to be used in the production of agricultural,
1 5 horticultural, viticultural, and dairy products; livestock,
1 6 wildlife, poultry, bees, fish, and products thereof; and any
1 7 and all products raised or produced on farms.
1 8 NEW PARAGRAPH. ia. "Nonprofit organization" means a
1 9 charitable organization, a political organization, or a
1 10 religious organization as defined in section 13C.1; a
1 11 nonprofit corporation as defined in section 504A.2; a public
1 12 or nonpublic school, college, or university; or a fraternal
1 13 benefit society as defined in section 512B.3.
1 14 NEW PARAGRAPH. ib. "Office supplies and services" means
1 15 any goods, or services incident to the use of such goods,
1 16 including but not limited to supplies and equipment and
1 17 promotional advertising, to be used in the operation of any
1 18 office, including but not limited to offices of any business,
1 19 home business, or nonprofit organization, or of any farm, but
1 20 shall not include goods or services purchased for the purpose
1 21 of resale.
1 22 Sec. 2. Section 714.16, subsection 7, Code 2003, is
1 23 amended to read as follows:
1 24 7. a. (1) Unless otherwise provided, a civil action
1 25 pursuant to this section shall be by equitable proceedings.
1 26 If it appears to the attorney general that a person has
1 27 engaged in, is engaging in, or is about to engage in a
1 28 practice declared to be unlawful by this section, the attorney
1 29 general may seek and obtain in an action in a district court a
1 30 temporary restraining order, preliminary injunction, or
1 31 permanent injunction prohibiting the person from continuing
1 32 the practice or engaging in the practice or doing an act in
1 33 furtherance of the practice. The court may make orders or
1 34 judgments as necessary to prevent the use or employment by a
1 35 person of any prohibited practices, or which are necessary to
2 1 restore to any person in interest any moneys or property, real
2 2 or personal, which have been acquired by means of a practice
2 3 declared to be unlawful by this section, including the
2 4 appointment of a receiver in cases of substantial and willful
2 5 violation of this section. If a person has acquired moneys or
2 6 property by any means declared to be unlawful by this section
2 7 and if the cost of administering reimbursement outweighs the
2 8 benefit to consumers or consumers entitled to the
2 9 reimbursement cannot be located through reasonable efforts,
2 10 the court may order disgorgement of moneys or property
2 11 acquired by the person by awarding the moneys or property to
2 12 the state to be used by the attorney general for the
2 13 administration and implementation of this section. Except in
2 14 an action for the concealment, suppression, or omission of a
2 15 material fact with intent that others rely upon it, it is not
2 16 necessary in an action for reimbursement or an injunction, to
2 17 allege or to prove reliance, damages, intent to deceive, or
2 18 that the person who engaged in an unlawful act had knowledge
2 19 of the falsity of the claim or ignorance of the truth. A
2 20 claim for reimbursement may be proved by any competent
2 21 evidence, including evidence that would be appropriate in a
2 22 class action.
2 23 (2) In addition to the remedies otherwise provided for in

2 24 this subsection subparagraph (1), the attorney general may
2 25 request and the court may impose a civil penalty not to exceed
2 26 forty thousand dollars per violation against a person found by
2 27 the court to have engaged in a method, act, or practice
2 28 declared unlawful under this section; provided, however, a
2 29 course of conduct shall not be considered to be separate and
2 30 different violations merely because the conduct is repeated to
2 31 more than one person. In addition, on the motion of the
2 32 attorney general or its own motion, the court may impose a
2 33 civil penalty of not more than five thousand dollars for each
2 34 day of intentional violation of a temporary restraining order,
2 35 preliminary injunction, or permanent injunction issued under
3 1 authority of this section. A penalty imposed pursuant to this
3 2 ~~subsection~~ subparagraph is in addition to any penalty imposed
3 3 pursuant to section 537.6113. Civil penalties ordered
3 4 pursuant to this ~~subsection~~ subparagraph shall be paid to the
3 5 treasurer of state to be deposited in the general fund of the
3 6 state.

3 7 b. (1) Any person or nonprofit organization may bring an
3 8 action at law to recover actual damages, if the person or
3 9 nonprofit organization purchases, leases, or rents merchandise
3 10 for personal, family, or household purposes, agricultural
3 11 merchandise, office supplies or services, or a business
3 12 opportunity as defined in section 523B.1, regardless of the
3 13 dollar amount of initial investment; or is solicited for
3 14 charitable contributions, and suffers the loss of any moneys
3 15 or property, real or personal, as the result of a practice
3 16 declared to be unlawful by this section or by another section,
3 17 the violation of which is declared to violate this section.
3 18 The court may order such equitable relief as it deems
3 19 necessary to protect the public from further violations,
3 20 including temporary and permanent injunctive relief. A
3 21 prevailing plaintiff shall also be entitled to reasonable
3 22 attorney fees and the costs of bringing the action. Except in
3 23 an action for the concealment, suppression, or omission of a
3 24 material fact with intent that others rely upon it, it is not
3 25 necessary in an action for damages or an injunction, to allege
3 26 or to prove reliance, intent to deceive, or that the person
3 27 who engaged in the unlawful act had knowledge of the falsity
3 28 of the claim or ignorance of the truth. If the fact finder
3 29 finds that the use of a practice declared to be unlawful by
3 30 this section was willful, punitive damages may be awarded to a
3 31 prevailing plaintiff.

3 32 (2) Within seven days following commencement of any action
3 33 brought under subparagraph (1), the plaintiff shall provide a
3 34 copy of the petition to the attorney general and, within seven
3 35 days following entry of any final judgment in the action,
4 1 shall provide a copy of the judgment to the attorney general.
4 2 In addition, the party appealing an order or judgment issued
4 3 in any action brought under subparagraph (1) shall provide a
4 4 copy of the notice of appeal to the attorney general within
4 5 seven days following the date such notice is filed with the
4 6 court. All copies of petitions, judgments, and notices of
4 7 appeal shall be sent by certified mail and shall be
4 8 accompanied by a written statement identifying the copied
4 9 document as pertaining to an action under this paragraph.
4 10 Failure to provide the required copies to the attorney general
4 11 shall not be grounds for dismissal of an action under this
4 12 paragraph. However, no final judgment shall be entered until
4 13 the attorney general files notice that the attorney general
4 14 will not participate as a party to the proceeding or until at
4 15 least sixty days have passed since the petition was mailed to
4 16 the attorney general by the plaintiff or on behalf of the
4 17 plaintiff as shown by the proof of mailing on file in the
4 18 case. An appeal shall not be docketed until proof of mailing
4 19 of the notice of appeal to the attorney general has been filed
4 20 in the supreme court. The attorney general may intervene as a
4 21 party at any time within sixty days of receiving a copy of a
4 22 petition as set forth above, or may be heard at any point in
4 23 any judicial proceeding pursuant to this paragraph. The
4 24 attorney general's failure to intervene as a party or
4 25 otherwise participate in the action shall not preclude any
4 26 later action by the attorney general. Reimbursement awarded
4 27 to the attorney general pursuant to paragraph "a",
4 28 subparagraph (1), on behalf of a plaintiff who has filed an
4 29 action pursuant to subparagraph (1) of this paragraph,
4 30 concerning the same set of facts shall be deducted from any
4 31 damages awarded to the plaintiff in an action filed under this
4 32 paragraph.

4 33 c. Any claim made under this section shall be required to
4 34 be proved by a preponderance of the evidence.

EXPLANATION

4 35

5 1 This bill amends Code section 714.16 to provide a private
5 2 cause of action for violations of the consumer fraud Act.

5 3 The bill provides that a consumer fraud victim who is a
5 4 person or nonprofit organization who purchases, leases, or
5 5 rents merchandise for personal, family, or household purposes,
5 6 agricultural merchandise, office supplies or services, or
5 7 certain business opportunities, or who is solicited for
5 8 charitable contributions, may bring a civil action and be
5 9 awarded actual damages, attorney fees, costs, injunctive
5 10 relief, and punitive damages for willful violations.

5 11 The bill further authorizes the attorney general to oversee
5 12 private consumer fraud actions by permitting the attorney
5 13 general to intervene within 60 days of receipt of a petition
5 14 or be heard at any point in any private proceeding. The bill
5 15 assists the attorney general in monitoring private actions by
5 16 requiring private parties to provide copies of petitions,
5 17 judgments, decrees, and notices of appeal.

5 18 The bill prevents double recoveries for consumers by
5 19 providing that any money recovery for a consumer in an action
5 20 by the attorney general is deducted from any money recovery by
5 21 the consumer in a private action under the bill.

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5 23 rh/sh/8.1