

House Study Bill 80

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 relating to 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 1307DP 83
5 rh/rj/14

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1 1 Section 1. NEW SECTION. 714H.1 TITLE.
1 2 This chapter shall be known and may be cited as the
1 3 "Private Remedy for Consumer Fraud Act".
1 4 Sec. 2. NEW SECTION. 714H.2 DEFINITIONS.
1 5 1. "Advertisement" means the same as defined in section
1 6 714.16.
1 7 2. "Consumer" means a natural person or the person's legal
1 8 representative.
1 9 3. "Consumer merchandise" means merchandise offered for
1 10 sale or lease, or sold or leased, primarily for personal,
1 11 family, or household purposes.
1 12 4. "Deception" means the same as defined in section
1 13 714.16.
1 14 5. "Merchandise" means the same as defined in section
1 15 714.16 except that, for the purposes of this chapter,
1 16 "merchandise" does not include services offered or provided by
1 17 any of the following pursuant to a profession or business for
1 18 which they are licensed or registered:
1 19 a. Insurance companies subject to Title XIII.
1 20 b. Attorneys licensed to practice law in this state.
1 21 c. Financial institutions as defined in section 423.2,
1 22 subsection 6.
1 23 d. Public utilities as defined in section 476.1, when
1 24 engaged in activities subject to regulation by the utilities
1 25 board pursuant to chapter 476.
1 26 e. Persons or facilities licensed, certified, or
1 27 registered under chapter 135B, 135C, 135J, 148, 148A, 148B,
1 28 148C, 149, 151, 152, 152A, 152B, 153, 154, 154B, 154C, 154D,
1 29 155A, 169, 522B, 542, 542B, 544A, or 544B.
1 30 6. "Person" means the same as defined in section 714.16.
1 31 7. "Sale" means any sale or offer for sale of consumer
1 32 merchandise for cash or credit.
1 33 8. "Unfair practice" means the same as defined in section
1 34 714.16.
1 35 Sec. 3. NEW SECTION. 714H.3 PROHIBITED PRACTICES AND
2 1 ACTS.
2 2 1. A person shall not engage in an unfair practice,
2 3 deception, fraud, false pretense, false promise, or
2 4 misrepresentation, or the concealment, suppression, or
2 5 omission of a material fact with the intent that others rely
2 6 upon the concealment, suppression, or omission, in connection
2 7 with the advertisement, sale, or lease of consumer
2 8 merchandise, or the solicitation of contributions for
2 9 charitable purposes.
2 10 2. A person shall not engage in any practice or act that
2 11 is in violation of any of the following:
2 12 a. Section 321.69.
2 13 b. Chapter 516D.
2 14 c. Section 516E.5, 516E.9, or 516E.10.
2 15 d. Chapter 555A.
2 16 e. Section 714.16, subsection 2, paragraphs "b" through
2 17 "n".
2 18 f. Chapter 714A.
2 19 Sec. 4. NEW SECTION. 714H.4 EXCLUSIONS.

2 20 1. This chapter shall not apply to any of the following:

2 21 a. Advertising by a retailer for a product, other than a
2 22 drug or other product claiming to have a health-related
2 23 benefit or use, if the advertising is prepared by a supplier,
2 24 unless the retailer participated in the preparation of the
2 25 advertisement or knew or should have known that the
2 26 advertisement was deceptive, false, or misleading.

2 27 b. In connection with an advertisement that violates this
2 28 chapter, the newspaper, magazine, publication, or other print
2 29 media in which the advertisement appears, or the radio
2 30 station, television station, or other electronic media which
2 31 disseminates the advertisement if the newspaper, magazine,
2 32 publication, radio station, television station, or other print
2 33 or electronic media has no knowledge of the fraudulent intent,
2 34 design, or purpose of the advertiser at the time the
2 35 advertisement is accepted.

3 1 c. Any advertisement that complies with the statutes,
3 2 rules, and regulations of the federal trade commission.

3 3 2. "Material fact" as used in this chapter does not
3 4 include repairs of damage to or adjustments on or replacements
3 5 of parts with new parts of otherwise new merchandise if the
3 6 repairs, adjustments, or replacements are made to achieve
3 7 compliance with factory specifications and are made before
3 8 sale of the merchandise at retail and the actual cost of any
3 9 labor and parts charged to or performed by a retailer for any
3 10 such repairs, adjustments, and parts does not exceed three
3 11 hundred dollars or ten percent of the actual cost to a
3 12 retailer including freight of the merchandise, whichever is
3 13 less, providing that the seller posts in a conspicuous place
3 14 notice that repairs, adjustments, or replacements will be
3 15 disclosed upon request. The exclusion provided in this
3 16 subsection does not apply to the concealment, suppression, or
3 17 omission of a material fact if the purchaser requests
3 18 disclosure of any repair, adjustment, or replacement.

3 19 Sec. 5. NEW SECTION. 714H.5 PRIVATE CAUSE OF ACTION.

3 20 1. A consumer who suffers damage or injury as the result
3 21 of a prohibited practice or act in violation of this chapter
3 22 may bring an action at law to recover actual damages. The
3 23 court may order such equitable relief as it deems necessary to
3 24 protect the public from further violations, including
3 25 temporary and permanent injunctive relief.

3 26 2. If the court finds that a person has violated this
3 27 chapter, the court shall award to the consumer the costs of
3 28 the action and to the consumer's attorney reasonable fees.
3 29 Reasonable attorney fees shall be determined by the value of
3 30 the time reasonably expended by the attorney including but not
3 31 limited to consideration of the following factors:

3 32 a. The time and labor required.

3 33 b. The novelty and difficulty of the issues in the case.

3 34 c. The skills required to perform the legal services
3 35 properly.

4 1 d. The preclusion of other employment by the attorney due
4 2 to the attorney's acceptance of the case.

4 3 e. The customary fee.

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

4 5 g. The time limitations imposed by the client or the
4 6 circumstances of the case.

4 7 h. The amount of money involved in the case and the
4 8 results obtained.

4 9 i. The experience, reputation, and ability of the
4 10 attorney.

4 11 j. The undesirability of the case.

4 12 k. The nature and length of the professional relationship
4 13 between the attorney and the client.

4 14 l. Damage awards in similar cases.

4 15 3. In order to recover damages, a claim under this section
4 16 shall be proved by a preponderance of the evidence.

4 17 4. If the finder of fact finds that a prohibited practice
4 18 or act in violation of this chapter constitutes willful
4 19 disregard for the rights or safety of another, in addition to
4 20 an award of actual damages, statutory damages up to three
4 21 times the amount of actual damages may be awarded to a
4 22 prevailing consumer.

4 23 5. An action pursuant to this chapter must be brought
4 24 within five years of the occurrence of the last event giving
4 25 rise to the cause of action under this chapter or within five
4 26 years of the discovery of the violation of this chapter by the
4 27 person bringing the action, whichever is later.

4 28 6. This section shall not affect a consumer's right to
4 29 seek relief under any other theory of law.

4 30 Sec. 6. NEW SECTION. 714H.6 ATTORNEY GENERAL

4 31 NOTIFICATION.

4 32 1. A party filing a petition, counterclaim,
4 33 cross-petition, or pleading in intervention alleging a
4 34 violation under this chapter, within seven days following the
4 35 date of filing such pleading, shall provide a copy to the
5 1 attorney general and, within seven days following entry of any
5 2 final judgment in the action, shall provide a copy of the
5 3 judgment to the attorney general. This subsection shall not
5 4 apply to small claims actions, except as provided in
5 5 subsection 2.

5 6 2. A party appealing to district court a small claims
5 7 order or judgment involving an issue raised under this
5 8 chapter, within seven days of providing notice of the appeal,
5 9 shall notify the attorney general in writing and provide a
5 10 copy of the pleading raising the issue and a copy of the small
5 11 claims court order or judgment.

5 12 3. A party appealing an order or judgment involving an
5 13 issue raised under this chapter, within seven days following
5 14 the date such notice of appeal is filed with the court, shall
5 15 notify the attorney general in writing and provide a copy of
5 16 the pleading raising the issue and a copy of the court order
5 17 or judgment being appealed.

5 18 4. Upon timely application to the court in which an action
5 19 involving an issue raised under this chapter is pending, the
5 20 attorney general may intervene as a party at any time or may
5 21 be heard at any time. The attorney general's failure to
5 22 intervene shall not preclude the attorney general from
5 23 bringing a separate enforcement action.

5 24 5. All copies of pleadings, orders, judgments, and notices
5 25 required by this section to be sent to the attorney general
5 26 shall be sent by certified mail unless the attorney general
5 27 has previously been provided such copies of pleadings, orders,
5 28 judgments, or notices in the same action by certified mail, in
5 29 which case subsequent mailings may be made by regular mail.
5 30 Failure to provide the required mailings to the attorney
5 31 general shall not be grounds for dismissal of an action under
5 32 this chapter, but shall be grounds for a subsequent action by
5 33 the attorney general to vacate or modify the judgment.

5 34 EXPLANATION

5 35 This bill creates a private remedy for certain consumer
6 1 fraud Act violations.

6 2 The bill creates a private cause of action for consumer
6 3 fraud violations. The bill provides that a consumer who
6 4 suffers damage or injury as a result of a prohibited practice
6 5 or act declared to violate the bill may bring an action at law
6 6 to recover actual damages, and may seek court protection from
6 7 further violations, including temporary and permanent
6 8 injunctive relief. In addition, a prevailing consumer in such
6 9 an action shall be awarded costs and reasonable attorney fees
6 10 to be determined by the value of time reasonably expended by
6 11 the attorney including but not limited to certain factors as
6 12 specified in the bill. In addition, if the finder of fact
6 13 finds that a prohibited practice or act in violation of the
6 14 bill constitutes willful disregard for the rights or safety of
6 15 another, in addition to an award of actual damages, statutory
6 16 damages up to three times the amount of actual damages may be
6 17 awarded to a prevailing consumer.

6 18 The bill defines a prohibited practice or act to include an
6 19 unfair practice, deception, fraud, false pretense, false
6 20 promise, or misrepresentation, or the concealment,
6 21 suppression, or omission of a material fact with the intent
6 22 that others rely on the concealment, suppression, or omission,
6 23 in connection with the advertisement, sale, or lease of
6 24 consumer merchandise, or the solicitation of contributions for
6 25 charitable purposes. "Merchandise" does not include service
6 26 offered or provided by certain insurance companies, attorneys,
6 27 financial institutions, public utilities, hospitals, health
6 28 care facilities, hospice programs, physicians and surgeons,
6 29 osteopathic physicians and surgeons, physical therapists,
6 30 occupational therapists, physician assistants, podiatrists,
6 31 chiropractors, nurses, dieticians, respiratory care
6 32 practitioners and therapists, dentists, optometrists,
6 33 psychologists, social workers, behavioral therapists,
6 34 pharmacists, veterinarians, insurance producers, public
6 35 accountants, engineers, architects, and landscape architects.

7 1 The bill does not apply to certain advertising by a
7 2 retailer for a product unless the retailer participated in the
7 3 preparation of the advertisement or knew or should have known
7 4 that the advertisement was deceptive or misleading, print
7 5 media in which the advertisement appears or electronic media
7 6 which disseminates the advertisement if the print or

7 7 electronic media has no knowledge of the fraudulent intent,
7 8 design, or purpose of the advertiser at the time the
7 9 advertisement is accepted, and any advertisement that complies
7 10 with the statutes, rules, and regulations of the federal trade
7 11 commission.

7 12 The bill authorizes the attorney general to oversee private
7 13 consumer fraud actions, including small claims court actions,
7 14 by requiring a party filing a petition, counterclaim,
7 15 cross-petition, or pleading in intervention alleging a
7 16 violation under the bill to provide a copy of the relevant
7 17 documents, including judgments and notices of appeal, to the
7 18 attorney general. In addition, the attorney general may
7 19 intervene as a party in a private consumer fraud action at any
7 20 time, or may be heard in such an action at any time.

7 21 The bill provides that failure to provide all mailings of
7 22 petitions, orders, judgments, and notices of appeal to the
7 23 attorney general shall not be grounds for dismissal, but shall
7 24 be grounds for a subsequent action by the attorney general to
7 25 vacate or modify the judgment.

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