

# Senate Study Bill 1037

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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