

Senate Study Bill 1082

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON KREIMAN)

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

A BILL FOR

1 An Act providing for a private cause of action for certain
2 consumer fraud violations.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1831SC 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.
1 16 6. "Person" means the same as defined in section 714.16.
1 17 7. "Sale" means any sale or offer for sale of consumer
1 18 merchandise for cash or credit.
1 19 8. "Unfair practice" means the same as defined in section
1 20 714.16.
1 21 Sec. 3. NEW SECTION. 714H.3 PROHIBITED PRACTICES AND
1 22 ACTS.
1 23 1. A person shall not engage in an unfair practice,
1 24 deception, fraud, false pretense, false promise, or
1 25 misrepresentation, or the concealment, suppression, or
1 26 omission of a material fact with the intent that others rely
1 27 upon the concealment, suppression, or omission, in connection
1 28 with the advertisement, sale, or lease of consumer
1 29 merchandise, or the solicitation of contributions for
1 30 charitable purposes. Except in an action for the concealment,
1 31 suppression, or omission of a material fact with intent that
1 32 others rely on it, an action under this chapter shall not
1 33 require an allegation or proof of reliance, intent to deceive,
1 34 or that the person who engaged in an unlawful act had
1 35 knowledge of the falsity of the claim or ignorance of the
2 1 truth.
2 2 2. A person shall not engage in any practice or act that
2 3 is in violation of any of the following:
2 4 a. Section 321.69.
2 5 b. Chapter 516D.
2 6 c. Section 516E.5, 516E.9, or 516E.10.
2 7 d. Chapter 555A.
2 8 e. Section 714.16, subsection 2, paragraphs "b" through
2 9 "n".
2 10 f. Chapter 714A.
2 11 Sec. 4. NEW SECTION. 714H.4 EXCLUSIONS.
2 12 1. This chapter shall not apply to any of the following:
2 13 a. Advertising by a retailer for a product, other than a
2 14 drug or other product claiming to have a health-related
2 15 benefit or use, if the advertising is prepared by a supplier,
2 16 unless the retailer participated in the preparation of the
2 17 advertisement or knew or should have known that the
2 18 advertisement was deceptive, false, or misleading.

2 19 b. In connection with an advertisement that violates this
2 20 chapter, the newspaper, magazine, publication, or other print
2 21 media in which the advertisement appears, or the radio
2 22 station, television station, or other electronic media which
2 23 disseminates the advertisement if the newspaper, magazine,
2 24 publication, radio station, television station, or other print
2 25 or electronic media has no knowledge of the fraudulent intent,
2 26 design, or purpose of the advertiser at the time the
2 27 advertisement is accepted.

2 28 c. Any advertisement that complies with the statutes and
2 29 regulations of the federal trade commission.

2 30 2. "Material fact" as used in this chapter does not
2 31 include repairs of damage to or adjustments on or replacements
2 32 of parts with new parts of otherwise new merchandise if the
2 33 repairs, adjustments, or replacements are made to achieve
2 34 compliance with factory specifications and are made before
2 35 sale of the merchandise at retail and the actual cost of any
3 1 labor and parts charged to or performed by a retailer for any
3 2 such repairs, adjustments, and parts does not exceed three
3 3 hundred dollars or ten percent of the actual cost to a
3 4 retailer including freight of the merchandise, whichever is
3 5 less, providing that the seller posts in a conspicuous place
3 6 notice that repairs, adjustments, or replacements will be
3 7 disclosed upon request. The exclusion provided in this
3 8 subsection does not apply to the concealment, suppression, or
3 9 omission of a material fact if the purchaser requests
3 10 disclosure of any repair, adjustment, or replacement.

3 11 Sec. 5. NEW SECTION. 714H.5 PRIVATE CAUSE OF ACTION.

3 12 1. A consumer who suffers damage or injury as the result
3 13 of a prohibited practice or act in violation of this chapter
3 14 may bring an action at law to recover actual damages. The
3 15 court may order such equitable relief as it deems necessary to
3 16 protect the public from further violations, including
3 17 temporary and permanent injunctive relief.

3 18 2. If the court finds that a person has violated this
3 19 chapter, the court shall award to the consumer the costs of
3 20 the action and to the consumer's attorney reasonable fees.
3 21 Reasonable attorney fees shall be determined by the value of
3 22 the time reasonably expended by the attorney including but not
3 23 limited to consideration of the following factors:

3 24 a. The time and labor required.

3 25 b. The novelty and difficulty of the issues in the case.

3 26 c. The skills required to perform the legal services
3 27 properly.

3 28 d. The preclusion of other employment by the attorney due
3 29 to the attorney's acceptance of the case.

3 30 e. The customary fee.

3 31 f. Whether the fee is fixed or contingent.

3 32 g. The time limitations imposed by the client or the
3 33 circumstances of the case.

3 34 h. The amount of money involved in the case and the
3 35 results obtained.

4 1 i. The experience, reputation, and ability of the
4 2 attorney.

4 3 j. The undesirability of the case.

4 4 k. The nature and length of the professional relationship
4 5 between the attorney and the client.

4 6 1. Damage awards in similar cases.

4 7 3. In order to recover damages, a claim under this section
4 8 shall be proved by a preponderance of the evidence.

4 9 4. If the finder of fact finds that a prohibited practice
4 10 or act in violation of this chapter constitutes willful
4 11 disregard for the rights or safety of another, in addition to
4 12 an award of actual damages, statutory damages up to three
4 13 times the amount of actual damages may be awarded to a
4 14 prevailing consumer.

4 15 5. This section shall not affect a consumer's right to
4 16 seek relief under any other theory of law.

4 17 Sec. 6. NEW SECTION. 714H.6 ATTORNEY GENERAL
4 18 NOTIFICATION.

4 19 1. A party filing a petition, counterclaim,
4 20 cross-petition, or pleading in intervention alleging a
4 21 violation under this chapter, within seven days following the
4 22 date of filing such pleading, shall provide a copy to the
4 23 attorney general and, within seven days following entry of any
4 24 final judgment in the action, shall provide a copy of the
4 25 judgment to the attorney general. This subsection shall not
4 26 apply to small claims actions, except as provided in
4 27 subsection 2.

4 28 2. A party appealing to district court a small claims
4 29 order or judgment involving an issue raised under this

4 30 chapter, within seven days of providing notice of the appeal,
4 31 shall notify the attorney general in writing and provide a
4 32 copy of the pleading raising the issue and a copy of the small
4 33 claims court order or judgment.

4 34 3. A party appealing an order or judgment involving an
4 35 issue raised under this chapter, within seven days following
5 1 the date such notice of appeal is filed with the court, shall
5 2 notify the attorney general in writing and provide a copy of
5 3 the pleading raising the issue and a copy of the court order
5 4 or judgment being appealed.

5 5 4. Upon timely application to the court in which an action
5 6 involving an issue raised under this chapter is pending, the
5 7 attorney general may intervene as a party at any time or may
5 8 be heard at any time. The attorney general's failure to
5 9 intervene shall not preclude the attorney general from
5 10 bringing a separate enforcement action.

5 11 5. All copies of pleadings, orders, judgments, and notices
5 12 required by this section to be sent to the attorney general
5 13 shall be sent by certified mail unless the attorney general
5 14 has previously been provided such copies of pleadings, orders,
5 15 judgments, or notices in the same action by certified mail, in
5 16 which case subsequent mailings may be made by regular mail.
5 17 Failure to provide the required mailings to the attorney
5 18 general shall not be grounds for dismissal of an action under
5 19 this chapter, but shall be grounds for a subsequent action by
5 20 the attorney general to vacate or modify the judgment.

5 21 EXPLANATION

5 22 This bill creates a private remedy for certain consumer
5 23 fraud Act violations.

5 24 The bill creates a private cause of action for consumer
5 25 fraud violations. The bill provides that a consumer who
5 26 suffers damage or injury as a result of a prohibited practice
5 27 or act declared to violate the bill may bring an action at law
5 28 to recover actual damages, and may seek court protection from
5 29 further violations, including temporary and permanent
5 30 injunctive relief. In addition, a prevailing consumer in such
5 31 an action shall be awarded costs and reasonable attorney fees
5 32 to be determined by the value of time reasonably expended by
5 33 the attorney including but not limited to certain factors as
5 34 specified in the bill. In addition, if the finder of fact
5 35 finds that a prohibited practice or act in violation of the
6 1 bill constitutes willful disregard for the rights or safety of
6 2 another, in addition to an award of actual damages, statutory
6 3 damages up to three times the amount of actual damages may be
6 4 awarded to a prevailing consumer.

6 5 The bill defines a prohibited practice or act to include an
6 6 unfair practice, deception, fraud, false pretense, false
6 7 promise, or misrepresentation, or the concealment,
6 8 suppression, or omission of a material fact with the intent
6 9 that others rely on the concealment, suppression, or omission,
6 10 in connection with the advertisement, sale, or lease of
6 11 consumer merchandise, or the solicitation of contributions for
6 12 charitable purposes.

6 13 The bill does not apply to certain advertising by a
6 14 retailer for a product unless the retailer participated in the
6 15 preparation of the advertisement or knew or should have known
6 16 that the advertisement was deceptive or misleading, print
6 17 media in which the advertisement appears or electronic media
6 18 which disseminates the advertisement if the print or
6 19 electronic media has no knowledge of the fraudulent intent,
6 20 design, or purpose of the advertiser at the time the
6 21 advertisement is accepted, and any advertisement that complies
6 22 with the statutes and regulations of the federal trade
6 23 commission.

6 24 The bill authorizes the attorney general to oversee private
6 25 consumer fraud actions, including small claims court actions,
6 26 by requiring a party filing a petition, counterclaim,
6 27 cross-petition, or pleading in intervention alleging a
6 28 violation under the bill to provide a copy of the relevant
6 29 documents, including judgments and notices of appeal, to the
6 30 attorney general. In addition, the attorney general may
6 31 intervene as a party in a private consumer fraud action at any
6 32 time, or may be heard in such an action at any time.

6 33 The bill provides that failure to provide all mailings of
6 34 petitions, orders, judgments, and notices of appeal to the
6 35 attorney general shall not be grounds for dismissal, but shall
7 1 be grounds for a subsequent action by the attorney general to
7 2 vacate or modify the judgment.