

Senate File 2239 - Introduced

SENATE FILE 2239

BY WAHLS

A BILL FOR

1 An Act relating to telemarketing consumer frauds and modifying
2 civil penalties.

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

1 Section 1. Section 714.16, subsection 7, Code 2024, is
2 amended to read as follows:

3 7. a. A civil action pursuant to [this section](#) shall be by
4 equitable proceedings. If it appears to the attorney general
5 that a person has engaged in, is engaging in, or is about to
6 engage in a practice declared to be unlawful by [this section](#),
7 the attorney general may seek and obtain in an action in a
8 district court a temporary restraining order, preliminary
9 injunction, or permanent injunction prohibiting the person from
10 continuing the practice or engaging in the practice or doing an
11 act in furtherance of the practice. The court may make orders
12 or judgments as necessary to prevent the use or employment by
13 a person of any prohibited practices, or which are necessary
14 to restore to any person in interest any moneys or property,
15 real or personal, which have been acquired by means of a
16 practice declared to be unlawful by [this section](#), including the
17 appointment of a receiver in cases of substantial and willful
18 violation of [this section](#). If a person has acquired moneys or
19 property by any means declared to be unlawful by [this section](#)
20 and if the cost of administering reimbursement outweighs the
21 benefit to consumers or consumers entitled to the reimbursement
22 cannot be located through reasonable efforts, the court may
23 order disgorgement of moneys or property acquired by the person
24 by awarding the moneys or property to the state to be used by
25 the attorney general for the administration and implementation
26 of [this section](#). Except in an action for the concealment,
27 suppression, or omission of a material fact with intent that
28 others rely upon it, it is not necessary in an action for
29 reimbursement or an injunction, to allege or to prove reliance,
30 damages, intent to deceive, or that the person who engaged
31 in an unlawful act had knowledge of the falsity of the claim
32 or ignorance of the truth. A claim for reimbursement may be
33 proved by any competent evidence, including evidence that would
34 be appropriate in a class action.

35 b. In addition to the remedies otherwise provided for in

1 this subsection, the attorney general may request and the
2 court may impose a civil penalty not to exceed forty thousand
3 dollars per violation against a person found by the court to
4 have engaged in a method, act, or practice declared unlawful
5 under [this section](#); provided, however, a course of conduct
6 shall not be considered to be separate and different violations
7 merely because the conduct is repeated to more than one person.
8 Notwithstanding the forty thousand dollar civil penalty, if
9 the unfair practice, deception, fraud, false pretense, false
10 promise, or misrepresentation in violation of subsection 2,
11 paragraph "a", was made over the telephone, the civil penalty
12 shall not exceed eighty thousand dollars per violation. In
13 addition, on the motion of the attorney general or its own
14 motion, the court may impose a civil penalty of not more than
15 five thousand dollars for each day of intentional violation
16 of a temporary restraining order, preliminary injunction, or
17 permanent injunction issued under authority of [this section](#).
18 A penalty imposed pursuant to [this subsection](#) is in addition
19 to any penalty imposed pursuant to [section 537.6113](#). Civil
20 penalties ordered pursuant to [this subsection](#) shall be paid to
21 the treasurer of state to be deposited in the general fund of
22 the state.

23

EXPLANATION

24 The inclusion of this explanation does not constitute agreement with
25 the explanation's substance by the members of the general assembly.

26 This bill relates to telemarketing consumer fraud and
27 modifies civil penalties.

28 Under current law, it is a consumer fraud for a person to
29 act, use, or employ an unfair practice, deception, fraud, false
30 pretense, false promise, and misrepresentation or concealment,
31 suppression, and omission of a material fact with the intent
32 for another person to rely on the act or omission in connection
33 with a sale, lease, or advertisement of merchandise or in
34 the solicitation of contributions for a charitable purpose
35 regardless of whether the person had been misled, deceived, or

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1 damaged. A person who does so is subject to a civil penalty no
2 greater than \$40,000 per violation. Under the bill, a person
3 who does so over the telephone is subject to an \$80,000 civil
4 penalty per violation.