

CHAPTER 164
CONSUMER FRAUDS
H.F. 416

AN ACT relating to consumer frauds and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 714.16, subsection 1, Code 1987, is amended by adding the following new lettered paragraphs:

NEW LETTERED PARAGRAPH. f. "Unfair practice" means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces.

NEW LETTERED PARAGRAPH. g. "Deception" means an act or practice which has the tendency or capacity to mislead a substantial number of consumers as to a material fact or facts.

Sec. 2. Section 714.16, subsection 2, paragraph a, unnumbered paragraph 1, Code 1987, is amended to read as follows:

The act, use or employment by ~~any~~ a person of ~~any~~ an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of ~~any~~ a material fact with intent that others rely upon ~~such~~ the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise, whether or not ~~any~~ a person has in fact been misled, deceived, or damaged ~~thereby~~, is declared to be an unlawful practice.

It is deceptive advertising within the meaning of this section for a person to represent in connection with the lease, sale, or advertisement of any merchandise that the advertised merchandise has certain performance characteristics, accessories, uses, or benefits or that certain services are performed on behalf of clients or customers of that person if, at the time of the representation, no reasonable basis for the claim existed. The burden is on the person making the representation to demonstrate that a reasonable basis for the claim existed.

A retailer who uses advertising for a product, other than a drug or other product claiming to have a health related benefit or use, prepared by a supplier shall not be liable under this section unless the retailer participated in the preparation of the advertisement; knew or should have known that the advertisement was deceptive, false, or misleading; refused to withdraw the product from sales upon the request of the attorney general pending a determination of whether the advertisement was deceptive, false, or misleading; refused upon the request of the attorney general to provide the name and address of the supplier; or refused to cooperate with the attorney general in an action brought against the supplier under this section.

Sec. 3. Section 714.16, subsection 7, Code 1987, is amended to read as follows:

7. Whenever A civil action pursuant to this section shall be by equitable proceedings. If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in any a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court an a temporary restraining order, preliminary injunction, or permanent injunction prohibiting such the person from continuing such practices the practice or engaging therein in the practice or doing any acts an act in furtherance thereof of the practice. The court may make such orders or judgments as may be necessary to prevent the use or employment by a person of any prohibited practices, or which may be are necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any a practice in this section declared to be unlawful by this section, including the appointment of a receiver in cases of substantial and willful violation of the provisions of this section. Except in an action for the concealment, suppression, or omission of a material fact with intent that others rely upon it, it is not necessary in an action for restitution or an injunction, to allege or to prove reliance, damages, intent to

deceive, or that the person who engaged in an unlawful act had knowledge of the falsity of the claim or ignorance of the truth. A claim for restitution may be proved by any competent evidence, including evidence that would be appropriate in a class action.

In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose a civil penalty not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful under this section; provided, however, a course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person. In addition, on the motion of the attorney general or its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of intentional violation of a temporary restraining order, preliminary injunction, or permanent injunction issued under authority of this section. A penalty imposed pursuant to this subsection is in addition to any penalty imposed pursuant to section 537.6113. Civil penalties ordered pursuant to this subsection shall be paid to the treasurer of state to be deposited in the general fund of the state.

Sec. 4. Section 714.16, Code 1987, is amended by adding the following new subsection 10 and renumbering the subsequent subsections:

NEW SUBSECTION. 10. A civil action pursuant to this section may be commenced in the county in which the person against whom it is brought resides, has a principal place of business, or is doing business, or in the county where the transaction or any substantial portion of the transaction occurred, or where one or more of the victims reside.

Sec. 5. Section 714.16, subsection 10, Code 1987, is amended to read as follows:

10 11. In any an action brought under the provisions of this section, the attorney general is entitled to recover costs of the court action and any investigation which may have been conducted, including reasonable attorneys' fees, for the use of this state.

Sec. 6. Section 714.16, Code 1987, is amended by adding the following new subsection 13 and renumbering the subsequent subsections:

NEW SUBSECTION. 13. The attorney general or the designee of the attorney general is deemed to be a regulatory agency under chapter 692 for the purpose of receiving criminal intelligence data relating to violations of this section.

Sec. 7. Section 714.16, subsection 12, Code 1987, is amended to read as follows:

12 14. Nothing contained in this This section shall does not apply to the owner or publisher of newspapers, magazines, publications newspaper, magazine, publication, or printed matter wherein such other print media in which the advertisement appears, or to the owner or operator of a radio or station, television station, or other electronic media which disseminates such the advertisement when if the owner, publisher or operator newspaper, magazine, publication, radio station, television station, or other print or electronic media has no knowledge of the fraudulent intent, design, or purpose of the advertiser at the time the advertisement is accepted; and provided, further, that nothing herein contained shall apply to any advertisement which complies with the rules and regulations of, and the statutes administered by the federal trade commission.

Approved May 29, 1987