



BILL AND AMENDMENT SUMMARY

HF 712 Private Cause of Action for Consumer Fraud

Status of Bill: House Floor
Committee: Judiciary (12-9)
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BILL SUMMARY

Section 1

The section is known as the “Private Remedy for Consumer Fraud Act.”

Section 2 – Definitions

The section defines advertisements, consumer, consumer merchandise, deception, merchandise, person, sale, and unfair practice.

Under the new law, a “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.” This definition mirrors the definition in 714.16 regarding consumer fraud.

“Unfair Practices” is any practice that causes substantial, unavoidable injury to consumers that is not outweighed by consumer or competitive benefits. This definition mirrors the definition in 714.16

“Merchandise” includes objects, wares, goods, commodities, intangibles, securities, bonds, debentures, stocks, real estate or services. This definition mirrors the definition in 714.16. The definition in the bill does include exceptions. This definition of merchandise does not include services provided by insurance companies, attorneys, financial institutions, public utilities, hospitals, health care facilities, hospices, osteopathic medical professionals or surgeons, physical therapists, occupational therapists, physician assistants, podiatrists, chiropractors, nurses, dietitians, respiratory care physicians, dentists, optometrists, psychologists, social workers, behavioral scientists, pharmacists, veterinaries, insurance producers, accountants, land surveyors, architects, or landscape architects.

Section 3 – Prohibited Practices

Prohibits unfair practice, deception, fraud, false pretense, false promise, or misrepresentations. Also prohibits the concealment, suppression, or omission of a material fact with the intent that others rely upon the concealment, suppression, or omission.

The bill also prohibits violations of the auto damage disclosure law (321.69), car rental law (516D), motor vehicle service contracts (516E.5, 516E.9, and 516E.10), door-to-door sales (555A), going out of business sales (714.16(g)), wood products (714.16(m)), water treatment devices (714.16(h)), and car repair practices (714.16(k) and (l)).

Section 4 – Exclusions

The bill excludes conduct that is also excluded from the Consumer Fraud Act that is currently enforced by the Attorney General. The exclusions include:

- Advertisements that are included with retail products but are produced by the manufacturer rather than the retailer.
- Any newspaper, magazine, publication, or other print media, radio or television station, or other electronic media where an advertisement appears. The media must have no knowledge of the fraudulent intent, design or purpose of the advertiser when the advertisement is accepted.
- An advertisement that complies with the rules, statutes and regulations of the Federal Trade Commission.
- Repairs of less than \$300 if the repairs were done so the product complied to the manufacturer's warranty and the retailer posts a sign that says the retailer will disclosure any repaired damage to new merchandise if requested

Section 5 – Private Cause of Action

The bill allows a consumer to sue for fraud. The consumer must prove a “damage or injury.”

Courts can order violators of the bill to pay a consumer's actual damages. In addition, a court can award consumer's attorney fees. Court's can also order treble punitive damages.

Section 6 – Notification

Requires a consumer filing a claim to send a copy to the Attorney General. The Attorney General can intervene in any private action.

Section 7 – Applicability

Limits causes of action arising under the act to those happening on or after the effective date of the act.

AMENDMENT SUMMARY

H-1589 by Huser, Swaim, Palmer, Struyk, and R. Olson (D)

Section 1 – Title

Changes the title of the Act from the “Private Remedy for Consumer Fraud Act” to the “Private Right of Action for Consumer Frauds Act.”

Section 2 – Definitions

Adds a definition for “actual damages.” “Actual damages” are all compensatory damages proximately caused by the prohibited practices. This definition exempts damages for bodily injury, pain or suffering, mental distress, loss of consortium, loss of life, or loss of enjoyment of life from causes of action for consumer frauds. This is intended to assure that traditional products liability cases are not undermined by individuals who will bring suit under this cause because of a lesser standard.

Changes the definition of “deception.” Changes the standard from “tendency or capacity to mislead” to “likely to mislead.” This requires a higher standard to prove deception under this cause. This amendment is sought by industry.

Changes the definition of “merchandise” to move a number of exemptions.

Remaining definitions are the same as the original bill.

Section 3 – Prohibited Practices and Acts

Adds the requirement that the plaintiff prove the defendant “know or should know” that an act was prohibited under the bill and the defendant acted with “intent that others rely” for a violation under the Act. In the original bill, this requirement applied only to claims for omission, concealment, or suppression of a material fact. In the amendment, the requirement additionally applies to unfair practice, deception, fraud, false pretense, false promise, or misrepresentation.

Makes technical changes.

Requires that a plaintiff prove the violation relates to a material fact or facts. In the original bill, the materiality requirement applied to only concealment, suppression, or omission. Under the amendment, in addition to the materiality requirement for concealment, suppression or omission, a plaintiff must prove that any unfair practice, deception, fraud, false promise, false pretense, or misrepresentation related to a material fact or facts.

The amendment adds an exemption for solicitations on behalf of a political or business organization, state, regionally, or nationally accredited college or university, or nonprofit foundation benefitting a state, regionally, or nationally accredited college or university. This amendment tracks the exemptions under Iowa Code chapter 13C for professional fundraiser registrations.

Section 4 – Exclusions

Moves exemptions in the original bill to a separate section on exclusions. Clarifies that the exemptions applies to the services and merchandise of an exempted activity.

Adds exemption for mortuary sciences, real estate agents, local exchange carrier telephone service, cable television, public utilities regulated and unregulated activities, and charitable solicitations.

Adds an exclusion for financial institutions, and extends this exclusion to only small operator industrial loan licensees and small operator regulated loan licensees.

Strikes an element of the media exemption that could have subjected media to liability under the act if the media knew of the fraudulent intent of the advertising retailer.

Adds an exemption for any conduct that is required or permitted by any orders, rules, or statutes administered by a federal, state or local government agency. Adds an exemption for any affirmative act that is specifically required by law if the act would violate this act. This exemption is similar to the order, rules or statutes exemption, but addresses issues beyond enforcement by governmental agencies, such as landlord-tenant law.

Section 5 – Private Right of Action

Requires a plaintiff to suffer an ascertainable loss of money or property. The bill only requires a plaintiff suffer damage or injury. This change is intended to assure a plaintiff suffers an actual loss before having a cause of action.

Requires a consumer to suffer actual damages to receive attorney fees and costs. This change is intended to assure that a defendant cannot be required to pay attorney fees even if there are no losses for the plaintiff.

Requires “clear, convincing, and satisfactory evidence” that a prohibited act under the bill was done in willful or wanton disregard for the rights or safety of another for a plaintiff to receive punitive damages. The bill does not require the “clear, convincing, and satisfactory” test, and only refers to willful conduct.

Shortens the statute of limitations from 5 years to 2 years.

Adds a bona fide error defense. This allows a defendant to claim a violation was unintentional and resulted from a bona fide error despite reasonable procedures to avoid such an error that causes a violation of this act. This defense tracks the defense currently in the Consumer Credit Code, Iowa Code chapter 537.

Section 6 – Attorney General Notification

Strikes the exception that allows plaintiffs to avoid giving notice to the Attorney General of a consumer fraud action if the action is in small claims court. This was intended to assure that all actions, even actions alleging consumer fraud in small claims cases, could be tracked.

Section 7 – Class Action

Allows class action lawsuits based on this act. Requires class action suits to be approved by the Attorney General. The Attorney General is required to approve a class action suit unless the suit is deemed frivolous.

Clarifies that this section does not change the procedural rules required to bring a class action lawsuit. This section is intended as an additional requirement on to the already established rules to bring a class action lawsuit.

Section 8 – Severability Clause

Adds a severability clause. This assure that if any section of this act is stricken by the courts that the remaining sections of the act remain in effect.

Section 9 – Applicability Provision

Adds an applicability provision. This section states that any actions arising from this act only apply to conduct that occurred after the act takes effect.

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