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SENATE FILE
BY FIEGEN

2181

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

A BILL FOR

1 An Act creating a private cause of action for certain consumer
2 fraud violations.

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

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SF 2181
JUDICIARY

1 Section 1. Section 714.16, subsection 1, Code Supplement
2 2001, is amended by adding the following new paragraphs:

3 NEW PARAGRAPH. aa. "Agricultural merchandise" means
4 merchandise sold to be used in the production of agricultural,
5 horticultural, viticultural, and dairy products; livestock,
6 wildlife, poultry, bees, fish, and products thereof; and any
7 and all products raised or produced on farms.

8 NEW PARAGRAPH. ia. "Nonprofit organization" means a
9 charitable organization, a political organization, or a
10 religious organization as defined in section 13C.1; a
11 nonprofit corporation as defined in section 504A.2; a public
12 or nonpublic school, college, or university; or a fraternal
13 benefit society as defined in section 512B.3.

14 NEW PARAGRAPH. ib. "Office supplies and services" means
15 any goods, or services incident to the use of such goods,
16 including but not limited to supplies and equipment and
17 promotional advertising, to be used in the operation of any
18 office, including but not limited to offices of any business,
19 home business, or nonprofit organization, or of any farm, but
20 shall not include goods or services purchased for the purpose
21 of resale.

22 Sec. 2. Section 714.16, subsection 7, Code Supplement
23 2001, is amended to read as follows:

24 7. a. (1) A Unless otherwise provided, a civil action
25 pursuant to this section shall be by equitable proceedings.
26 If it appears to the attorney general that a person has
27 engaged in, is engaging in, or is about to engage in a
28 practice declared to be unlawful by this section, the attorney
29 general may seek and obtain in an action in a district court a
30 temporary restraining order, preliminary injunction, or
31 permanent injunction prohibiting the person from continuing
32 the practice or engaging in the practice or doing an act in
33 furtherance of the practice. The court may make orders or
34 judgments as necessary to prevent the use or employment by a
35 person of any prohibited practices, or which are necessary to

1 restore to any person in interest any moneys or property, real
2 or personal, which have been acquired by means of a practice
3 declared to be unlawful by this section, including the
4 appointment of a receiver in cases of substantial and willful
5 violation of this section. If a person has acquired moneys or
6 property by any means declared to be unlawful by this section
7 and if the cost of administering reimbursement outweighs the
8 benefit to consumers or consumers entitled to the
9 reimbursement cannot be located through reasonable efforts,
10 the court may order disgorgement of moneys or property
11 acquired by the person by awarding the moneys or property to
12 the state to be used by the attorney general for the
13 administration and implementation of this section. Except in
14 an action for the concealment, suppression, or omission of a
15 material fact with intent that others rely upon it, it is not
16 necessary in an action for reimbursement or an injunction, to
17 allege or to prove reliance, damages, intent to deceive, or
18 that the person who engaged in an unlawful act had knowledge
19 of the falsity of the claim or ignorance of the truth. A
20 claim for reimbursement may be proved by any competent
21 evidence, including evidence that would be appropriate in a
22 class action.

23 (2) In addition to the remedies otherwise provided for in
24 ~~this subsection~~ subparagraph (1), the attorney general may
25 request and the court may impose a civil penalty not to exceed
26 forty thousand dollars per violation against a person found by
27 the court to have engaged in a method, act, or practice
28 declared unlawful under this section; provided, however, a
29 course of conduct shall not be considered to be separate and
30 different violations merely because the conduct is repeated to
31 more than one person. In addition, on the motion of the
32 attorney general or its own motion, the court may impose a
33 civil penalty of not more than five thousand dollars for each
34 day of intentional violation of a temporary restraining order,
35 preliminary injunction, or permanent injunction issued under

1 authority of this section. A penalty imposed pursuant to this
2 subsection subparagraph is in addition to any penalty imposed
3 pursuant to section 537.6113. Civil penalties ordered
4 pursuant to this subsection subparagraph shall be paid to the
5 treasurer of state to be deposited in the general fund of the
6 state.

7 b. (1) Any person or nonprofit organization may bring an
8 action at law to recover actual damages, if the person or
9 nonprofit organization purchases, leases, or rents merchandise
10 for personal, family, or household purposes, agricultural
11 merchandise, office supplies or services, or a business
12 opportunity as defined in section 523B.1, regardless of the
13 dollar amount of initial investment; or is solicited for
14 charitable contributions, and suffers the loss of any moneys
15 or property, real or personal, as the result of a practice
16 declared to be unlawful by this section or by another section,
17 the violation of which is declared to violate this section.
18 The court may order such equitable relief as it deems
19 necessary to protect the public from further violations,
20 including temporary and permanent injunctive relief. A
21 prevailing plaintiff shall also be entitled to reasonable
22 attorney fees and the costs of bringing the action. Except in
23 an action for the concealment, suppression, or omission of a
24 material fact with intent that others rely upon it, it is not
25 necessary in an action for damages or an injunction, to allege
26 or to prove reliance, intent to deceive, or that the person
27 who engaged in the unlawful act had knowledge of the falsity
28 of the claim or ignorance of the truth. If the fact finder
29 finds that the use of a practice declared to be unlawful by
30 this section was willful, punitive damages may be awarded to a
31 prevailing plaintiff.

32 (2) Within seven days following commencement of any action
33 brought under subparagraph (1), the plaintiff shall provide a
34 copy of the petition to the attorney general and, within seven
35 days following entry of any final judgment in the action,

1 shall provide a copy of the judgment to the attorney general.
2 In addition, the party appealing an order or judgment issued
3 in any action brought under subparagraph (1) shall provide a
4 copy of the notice of appeal to the attorney general within
5 seven days following the date such notice is filed with the
6 court. All copies of petitions, judgments, and notices of
7 appeal shall be sent by certified mail and shall be
8 accompanied by a written statement identifying the copied
9 document as pertaining to an action under this paragraph.
10 Failure to provide the required copies to the attorney general
11 shall not be grounds for dismissal of an action under this
12 section. However, no final judgment shall be entered until
13 the attorney general files notice that the attorney general
14 will not participate as a party to the proceeding or until at
15 least sixty days have passed since the petition was mailed to
16 the attorney general by the plaintiff or on behalf of the
17 plaintiff as shown by the proof of mailing on file in the
18 case. No appeal shall be docketed until proof of mailing of
19 the notice of appeal to the attorney general has been filed in
20 the Iowa supreme court. The attorney general may intervene as
21 a party at any time within sixty days of receiving a copy of a
22 petition as set forth above, or may be heard at any point in
23 any judicial proceeding pursuant to this paragraph. The
24 attorney general's failure to intervene as a party or
25 otherwise participate in the action shall not preclude any
26 later action by the attorney general. Reimbursement awarded
27 to the attorney general pursuant to paragraph "a",
28 subparagraph (1), on behalf of a plaintiff who has filed an
29 action pursuant to subparagraph (1) of this paragraph,
30 concerning the same set of facts shall be deducted from any
31 damages awarded to the plaintiff in an action filed under this
32 paragraph.

33 c. Any claim made under this section shall be required to
34 be proved by a preponderance of the evidence.

EXPLANATION

1 This bill amends Code section 714.16 to provide a private
2 cause of action for violations of the consumer fraud Act.

3 The bill provides that a consumer fraud victim who is a
4 person or nonprofit organization who purchases, leases, or
5 rents merchandise for personal, family, or household purposes,
6 agricultural merchandise, office supplies or services, or
7 certain business opportunities, or who is solicited for
8 charitable contributions, may bring a civil action and be
9 awarded actual damages, attorney fees, costs, injunctive
10 relief, and punitive damages for willful violations.

11 The bill further authorizes the attorney general to oversee
12 private consumer fraud actions by permitting the attorney
13 general to intervene within 60 days of receipt of a petition
14 or be heard at any point in any private proceeding. The bill
15 assists the attorney general in monitoring private actions by
16 requiring private parties to provide copies of petitions,
17 judgments, decrees, and notices of appeal.

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