

STATE LIBRARY OF IOWA



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VII. Consumer
Protection

**AN ACT
TO PREVENT
CONSUMER FRAUD**

STATE OF IOWA

**RICHARD C. TURNER
Attorney General
Department of Justice
Des Moines, Iowa**

CHAPTER 438, ACTS OF THE 61ST
GENERAL ASSEMBLY

An Act outlawing certain consumer frauds, and providing more effective regulatory and enforcement procedures.

**Be it enacted by the General Assembly
of the State of Iowa:**

Section 1. Section seven hundred thirteen point twenty-four (713.24), Code 1962, is hereby amended by striking the present section in its entirety and inserting in lieu thereof the following:

1. Definitions:

a. The term "advertisement" includes the attempt by publication, dissemination, solicitation or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise;

b. The term "merchandise" includes any objects, wares, goods, commodities, intangibles, securities, bonds, debentures, stocks, real estate or services;

c. The term "person" includes any natural person or his legal representative, partnership, corporation (domestic and foreign), company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof;

d. The term "sale" includes any sale, offer for sale, or attempt to sell any merchandise for cash or on credit.

e. The term "subdivided lands" refers to improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into five or more lots or parcels; provided, however, it does not apply to the leasing of apartments, offices, stores or similar space within an apartment building, industrial building or commercial building unless an undivided interest in the land is granted as a condition precedent to occupying space in said structure.

2. The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression

or omission, in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

b. The advertisement for sale, lease or rent, or the actual sale, lease, or rental of any merchandise at a price or with a rebate or payment to the purchaser which is contingent upon the procurement of prospective customers provided by the purchaser, or the procurement of sales, leases, or rentals to persons suggested by the purchaser, is declared to be an unlawful practice, unless the agreement or promise of such contingent price, rebate, or payment, is in writing and made a part of the contract of such sale, lease or rental. The rights and obligations of the contract relating to such contingent price, rebate, or payment shall be interdependent and inseparable from the rights and obligations relating to the sale, lease, or rental.

c. It shall be unlawful for any person to advertise the sale of merchandise at reduced rates due to the cessation of business operations and after the date of the first such advertisement remain in business under the same, or substantially the same, ownership, under the same, or substantially the same trade name, or continue to offer for sale the same type of merchandise at the same location for more than one hundred twenty (120) days.

d. (1) No person shall offer or advertise within this state for sale or lease, any subdivided lands without first filing with the real estate commission, true and accurate copies of all road plans, plats, field notes and diagrams of water, sewage and electric power lines as they exist at the time of such filing, provided such filing shall not be required for a subdivision subject to section three hundred six point fifteen (306.15) or chapter four hundred nine (409) of the Code. Each such filing shall be accompanied by a fee of fifty (50) dollars for each subdivision included, payable to the real estate commission.

(2) False or misleading statements filed pursuant to sub-paragraph one (1) of paragraph "d" of subsection

two (2) of section one (1) of this Act or section three hundred six point fifteen (306.15) or chapter four hundred nine (409) of the Code, and advertising, offers to sell, or contracts not in substantial conformity with the filings made pursuant to section three hundred six point fifteen (306.15) or chapter four hundred nine (409) of the Code are unlawful.

3. When it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in any practice declared to be unlawful by this Act or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in, any such practice, he may:

a. Require such person to file on such forms as he may prescribe a statement or report in writing under oath or otherwise, as to all the facts and circumstances concerning the sale or advertisement of merchandise by such person, and such other data and information as he may deem necessary;

b. Examine under oath any person in connection with the sale or advertisement of any merchandise;

c. Examine any merchandise or sample thereof, record, book, document, account or paper as he may deem necessary; and

d. Pursuant to an order of a district court impound any record, book, document, account, paper, or sample of merchandise that is produced in accordance with this Act, and retain the same in his possession until the completion of all proceedings in connection with which the same are produced.

4. a. To accomplish the objectives and to carry out the duties prescribed by this Act, the attorney general, in addition to other powers conferred upon him by this Act, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe such forms and promulgate such rules and regulations as may be necessary, which

rules and regulations shall have the force of law.

b. No information or evidence provided the attorney general by a person pursuant to subsections three (3) and four (4) of this Act shall be admitted in evidence, or used in any manner whatsoever, in any criminal prosecution. If a criminal prosecution under the provisions of this Act is initiated in a state court against a person who has provided information pursuant to subsections three (3) and four (4) of this Act, the state shall have the burden of proof that the information so provided was not used in any manner to further the criminal investigation or prosecution.

5. Service by the attorney general of any notice requiring a person to file a statement or report, or of a subpoena upon any person, shall be made personally within this state, but if such cannot be obtained, substituted service therefor may be made in the following manner:

a. Personal service thereof without this state; or

b. The mailing thereof by registered mail to the last known place of business, residence or abode within or without this state of such person for whom the same is intended; or

c. As to any person other than a natural person, in the manner provided in the Rules of Civil Procedure as if a petition had been filed; or

d. Such service as a district court may direct in lieu of personal service within this state.

6. If any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general, the attorney general may, after notice, apply to a district court and, after hearing thereof, request an order:

a. Granting injunctive relief, restraining the sale or advertisement of any merchandise by such persons;

b. Dissolving a corporation created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or revoking or suspending any other licenses, permits or

certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

c. Granting such other relief as may be required; until the person files the statement or report, or obeys the subpoena.

7. Whenever it appears to the attorney general that a person has engaged in, is engaging in or is about to engage in any practice declared to be unlawful by this Act he may seek and obtain in an action in a district court an injunction prohibiting such person from continuing such practices or engaging therein or doing any acts in furtherance thereof after appropriate notice to such person. Such notice shall state generally the relief sought and be served in accordance with subsection five (5) of section one (1) of this Act at least three (3) days prior to the institution of such action. 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 necessary to restore to any person in interest any moneys or property, real or personal which may have been acquired by means of any practice in this Act declared to be unlawful including the appointment of a receiver in cases of substantial and willful violation of the provisions of this Act.

8. When a receiver is appointed by the court pursuant to this Act, he shall have the power to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice declared to be illegal and prohibited by this Act, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use or employment of any unlawful practices and submits

proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses. In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

9. Subject to an order of the court terminating the business affairs of any person after receivership proceedings held pursuant to this Act, the provisions of this Act shall not bar any claim against any person who as acquired any moneys or property, real or personal, by means of any practice herein declared to be unlawful.

10. In any action brought under the provisions of this Act, the attorney general is entitled to recover costs for the use of this state.

11. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions of applications of the Act which can be given effect without the invalid provision or application and to this end the provisions of this Act are severable.

12. Nothing contained in this Act shall apply to the owner or publisher of newspapers, magazines, publications or printed matter wherein such advertisement appears, or to the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser; 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.

Sec. 2. Section seven hundred thirteen point twenty-five (713.25), Code 1962, is hereby repealed.

Sec. 3. Section four hundred ninety-six A point ninety-one (496A.91), Code 1962, is hereby amended by adding the

following subsection:

"3. The corporation has failed or refused to file a statement or report, or obey a subpoena issued by the attorney general, as provided in section seven hundred thirteen point twenty-four (713.24) of the Code."

Sec. 4. Section three hundred six point fifteen (306.15), Code 1962, is hereby amended by striking the present section in its entirety and inserting in lieu thereof the following:

"All road plans, plats and field notes and true and accurate diagrams of water, sewage and electric power lines for rural subdivisions shall be filed with and recorded by the county auditor and approved by the board of supervisors and the county engineer before the subdivision is laid out and platted, and if any proposed rural subdivision is within one (1) mile of the corporate limits of any city or town such road plans shall also be approved by the city engineer or council of the adjoining municipality. Such plans shall be clearly designated as 'completed', 'partially completed' or 'proposed' with a statement of the portion completed and the expected date of full completion. In the event such road plans are not approved as herein provided such roads shall not become the part of any road system as defined in chapter three hundred six (306) of the Code."

VINCENT B. STEFFEN
Speaker of the House

ROBERT D. FULTON
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 561, Sixty-first General Assembly.

WILLIAM R. KENDRICK
Chief Clerk of the House

Approved _____, 1965.

HAROLD E. HUGHES
Governor