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HOUSE BILL 1683

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State of Washington

61st Legislature

2009 Regular Session

By Representatives Kirby, Goodman, Nelson, Campbell, Williams, Orwall, Green, Ormsby, Moeller, and Pedersen

Read first time 01/27/09. Referred to Committee on Judiciary.

1 AN ACT Relating to modifying provisions relating to consumer  
2 protection act violations; amending RCW 19.86.090; and adding a new  
3 section to chapter 19.86 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 19.86.090 and 2007 c 66 s 2 are each amended to read  
6 as follows:

7 Any person who is injured in his or her business or property by a  
8 violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or  
9 19.86.060, or any person so injured because he or she refuses to accede  
10 to a proposal for an arrangement which, if consummated, would be in  
11 violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, may  
12 bring a civil action in ((the)) superior court to enjoin further  
13 violations, to recover the actual damages sustained by him or her, or  
14 both, together with the costs of the suit, including a reasonable  
15 attorney's fee((, and)). In addition, the court may in its discretion,  
16 increase the award of damages up to an amount not to exceed three times  
17 the actual damages sustained: PROVIDED, That such increased damage  
18 award for violation of RCW 19.86.020 may not exceed ((ten thousand  
19 dollars)) the jurisdictional amount specified in RCW 3.66.020:

1 PROVIDED FURTHER, That such person may bring a civil action in the  
2 district court to recover his or her actual damages, except for damages  
3 which exceed the amount specified in RCW 3.66.020, and the costs of the  
4 suit, including reasonable attorney's fees. The district court may, in  
5 its discretion, increase the award of damages to an amount not more  
6 than three times the actual damages sustained, but such increased  
7 damage award shall not exceed the amount specified in RCW 3.66.020.  
8 For the purpose of this section, "person" (~~shall~~) includes the  
9 counties, municipalities, and all political subdivisions of this state.

10 Whenever the state of Washington is injured, directly or  
11 indirectly, by reason of a violation of RCW 19.86.030, 19.86.040,  
12 19.86.050, or 19.86.060, it may sue therefor in (~~the~~) superior court  
13 to recover the actual damages sustained by it, whether direct or  
14 indirect, and to recover the costs of the suit including a reasonable  
15 attorney's fee.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.86 RCW  
17 to read as follows:

18 (1) In a nonper se civil action under RCW 19.86.020 or 19.86.030  
19 through 19.86.060, in order to collect damages, the injured person must  
20 show that the injurious acts or practices:

- 21 (a) Were unfair and deceptive;
- 22 (b) Occurred in the conduct of trade or commerce;
- 23 (c) Were part of a pattern or generalized course of conduct;
- 24 (d) Were the same or similar to prior acts or practices in their  
25 capacity to mislead;
- 26 (e) Were a substantial factor in causing injury to the plaintiff;
- 27 and
- 28 (f) Have a substantial potential for repetition; or, if only one  
29 transaction is complained of, affect or have a substantial potential to  
30 affect other customers.

31 (2)(a) As used in this section:

32 (i) "Substantial potential" means that, on a more likely than not  
33 basis, there exists or was a capacity to mislead other plaintiffs in  
34 the same or similar fashion.

35 (ii) "Repetition" means a recurring or nonisolated incident that  
36 has the same or similar elements and a capacity to mislead other  
37 members of the public.

1           (b) The determinations of (a)(i) and (ii) of this subsection must  
2 be made by the trier of fact.

3           (3) In addition to the remedies available under RCW 19.86.090, the  
4 court may enjoin the defendant or defendants from any future conduct  
5 that is similar to the acts or practices in the underlying action.

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