
Judiciary Committee

HB 1032

Title: An act relating to the consumer protection act.

Brief Description: Modifying consumer protection act provisions.

Sponsors: Representatives Goodman, Eddy, Pedersen, Appleton, Condotta, Warnick, Johnson, Ross, Harris, Nealey, Fagan, Kelley, Hurst and Moeller; by request of Attorney General.

Brief Summary of Bill

- Changes the attorneys' fees provision in the Consumer Protection Act (CPA) to allow the Attorney General, rather than any prevailing party, to recover costs and reasonable attorneys' fees and allow the prevailing defendant to recover attorneys' fees only if the state's claim was frivolous.
- Amends definitions in the CPA to include unlawful acts affecting persons outside the state conducted by persons located in the state.

Hearing Date: 1/12/11

Staff: Trudes Tango (786-7384).

Background:

Consumer Protection Act

The Consumer Protection Act (CPA) prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce directly or indirectly affecting the people of Washington. The CPA allows a person injured by a violation of the act to bring a private cause of action for damages.

In addition, the CPA allows the Attorney General (AG) to bring a CPA action in the name of the state or on behalf of persons residing in the state. In an action brought by the AG, the prevailing

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party may, in the discretion of the court, recover the costs of the action and reasonable attorneys' fees.

A recent state supreme court case found that the CPA does not allow nonresidents of Washington to bring CPA claims for acts occurring outside of Washington. The court looked at the definitions and other statutory language in the CPA and concluded that the legislature intended to limit the CPA to deceptive acts that affect Washington residents. *Schnall v. AT&T Wireless Services, Inc.*, 168 Wn.2d 125, 142 (2010).

Attorneys' Fees

Generally in civil actions, each party is responsible for paying their own costs and attorneys' fees, unless otherwise permitted by statute, contract, or recognized grounds in equity.

Washington has an attorneys' fee statute that allows a court in a civil action to award a prevailing party reasonable expenses, including attorneys' fees, if the action brought by the nonprevailing party was frivolous and advanced without reasonable cause. The prevailing party must bring a motion within a certain time period. The court must consider all evidence presented at the time of the motion to determine whether the nonprevailing party's position was frivolous and advanced without reasonable cause. The court's findings must be in writing.

Summary of Bill:

The attorneys' fee provision in CPA actions brought by the AG is amended. The AG, rather than a prevailing party, may recover the costs of the action and reasonable attorneys' fees. A prevailing defendant in the action may recover reasonable attorneys' fees if the court finds that the state's action was frivolous. The procedural requirements regarding frivolous actions apply.

The definition of "person" in the CPA is amended to include natural persons or entities residing or located outside the state. The definitions of "trade" and "commerce" are amended to include commerce involving a person outside the state conducted by a person residing in the state.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.