
Judiciary Committee

HB 2055

Title: An act relating to recovering costs in consumer protection actions.

Brief Description: Concerning the recovery of costs in consumer protection actions.

Sponsors: Representatives Rodne, Morris, Smith, Pedersen, Nealey, Goodman, Orwall, Fagan, Johnson, Harris, Hansen, Moeller, Warnick, Jinkins, Roberts, Kirby, Ross, Pollet and Morrell; by request of Attorney General.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Modifies the attorneys' fees provisions in the Consumer Protection Act and the computer spyware law to allow the Attorney General, rather than any prevailing party, to recover prevailing party attorneys' fees and costs.

Hearing Date: 1/14/14

Staff: Edie Adams (786-7180).

Background:

Consumer Protection Act

Under the state's Unfair Business Practices - Consumer Protection Act (CPA), a variety of business practices are declared unlawful. These practices include:

- Engaging in unfair methods of competition and unfair or deceptive acts or practices in the conduct of commerce, including contracts or conspiracies in restraint of trade;
- Monopolizing or attempting to monopolize trade or commerce;
- Entering agreements not to purchase from the competitors of a particular seller when the agreement substantially lessens competition or tends to create a monopoly; and
- Acquiring corporate stock when the acquisition substantially lessens competition or tends to create a monopoly.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In addition to the acts specifically declared unlawful by the CPA, a variety of other statutes declare violations of their provisions to be violations of the CPA.

A person injured by a violation of the CPA may bring a private cause of action for injunctive relief and the recovery of actual damages and reasonable attorneys' fees. Recovery may also include the trebling of actual damages (not to exceed \$25,000 for some violations) and civil penalties.

In addition, the CPA allows the Attorney General to bring a CPA action in the name of the state or on behalf of persons residing in the state. An action by the Attorney General may seek to prevent or restrain violations of the act and may seek restoration for persons injured by violation of the CPA. In an action brought by the Attorney General, the prevailing party may, in the discretion of the court, recover the costs of the action and reasonable attorneys' fees. Under case law, trial courts exercising their discretionary power to award or deny attorney's fees to prevailing defendants are to consider: (1) the need to curb serious abuses of governmental power; (2) the necessity of providing fair treatment to vindicated defendants; (3) the strong public interest in continued vigorous state prosecution of consumer protection violations; and (4) the necessity of avoiding hindsight logic in making the determination.

Computer Spyware Law

Legislation enacted in 2005 generally prohibits the unauthorized installation of computer spyware if installed through deceptive means. Several types of computer spyware activities are prohibited, including collecting personally identifying information or web browsing histories, taking control of a user's computer to send electronic mail or viruses, creating unauthorized financial charges, opening multiple pop-up advertisements, and modifying security settings.

The Attorney General is authorized to bring a civil action to enjoin violations of the computer spyware law and recover either actual damages, or \$100,000 per violation, whichever is greater. In addition, a court may increase the damage award up to three times if the defendant has engaged in a pattern and practice of prohibited activities, but the maximum allowable damage award is \$2 million. The court has the discretion to also award costs and reasonable attorneys' fees to the prevailing party in the action.

Summary of Bill:

In an action brought by the Attorney General to enforce the CPA or the computer spyware law, the court may award costs and reasonable attorneys' fees to the Attorney General as prevailing party, but costs and reasonable attorneys' fee may not be awarded to a prevailing defendant.

Appropriation: None.

Fiscal Note: Requested on January 9, 2014.

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