
Judiciary Committee

HB 1099

Title: An act relating to providing consumers the option to cancel contracts over the internet when entered into by the same means.

Brief Description: Providing consumers the option to cancel contracts over the internet when entered into by the same means.

Sponsors: Representatives Morris and Appleton.

Brief Summary of Bill

- Requires people who offer contracts through the internet to allow consumers to terminate the contract through the same means if the contract contains a provision that allows for the consumer to terminate it.
- Declares that actions in violation of this requirement are unfair or deceptive acts in trade or commerce and an unfair method of competition when applying the consumer protection act.

Hearing Date: 1/20/15

Staff: Brent Campbell (786-7152).

Background:

Washington Consumer Protection Act.

Washington's consumer protection act (CPA) declares that "unfair or deceptive acts or practices" occurring in trade are unlawful.

The CPA provides that any person who is injured in his or her business or property through such practices may bring a civil action to recover actual damages sustained and costs of the suit, including reasonable attorney's fees. Treble damages may also be awarded in the courts discretion, provided the damage award does not exceed \$25,000. To prevail in a private action under the CPA, a plaintiff must establish five elements: (1) an unfair or deceptive act or practice;

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(2) occurring in trade or practice; (3) a public interest impact; (4) injury to plaintiff in his or her business or property; and (5) a causal link between the unfair or deceptive acts and the injury suffered by plaintiff.

The CPA also authorizes the attorney general to bring an action in the name of the state, or as parens patriae on behalf of persons residing in the state, against any person in order to restrain and prevent unfair and deceptive acts or practices.

Standard Form Contracts.

Standard form contracts, sometimes called contracts of adhesion or boilerplate contracts, are contracts between parties where the terms and conditions of the contract are set by one of the parties and the other parties must either accept or decline the contract in its entirety. In the context of internet contracts, contracts where a party is asked to accept a contract by clicking "I accept" or "I agree" are called "clickwrap agreements." Courts will generally enforce standard form contracts such as these, including provisions of the contract dictating means of termination, based on the theory of freedom of contract. However, provisions of such contracts may be deemed unenforceable based on contract law. For instance, certain provisions may be deemed unenforceable if they are unconscionable.

Summary of Bill:

Any person who offers a consumer the option of entering into a contract for goods or services on the internet must give that consumer the option to terminate the contract through the internet if the contract has a provision that allows for termination. This requirement only applies to contracts made, entered into, or renewed after the effective date.

Any consumer injured by a violation of this may bring a civil action to recover either \$1,000 or damages in the amount provided for in the CPA, whichever is greater. A person who prevails in such actions is also entitled to recover attorneys' fees, court costs, and reasonable costs incurred to enforce the judgment. These practices are matters vitally affecting the public interest for purposes of applying the CPA. Violations are not reasonable in relation to the development and preservation of business, an unfair or deceptive act in trade or commerce, and an unfair method of competition for purposes of applying the CPA.

A new chapter is added to Title 19 RCW.

Appropriation: None.

Fiscal Note: Not requested.

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