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SENATE BILL 6840

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State of Washington

60th Legislature

2008 Regular Session

By Senators Weinstein and Kline

Read first time 01/28/08. Referred to Committee on Consumer Protection & Housing.

1 AN ACT Relating to authorizing county prosecutors and city  
2 attorneys to enforce certain provisions of the consumer protection act;  
3 and amending RCW 19.86.080 and 19.86.110.

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

5 **Sec. 1.** RCW 19.86.080 and 2007 c 66 s 1 are each amended to read  
6 as follows:

7 (1) The attorney general, county prosecutors, or city attorneys may  
8 bring an action in the name of (~~the state~~) their jurisdiction, or as  
9 parens patriae on behalf of persons residing in (~~the state~~) their  
10 jurisdiction, against any person to restrain and prevent the doing of  
11 any act herein prohibited or declared to be unlawful within their  
12 jurisdiction; and the prevailing party may, in the discretion of the  
13 court, recover the costs of said action including a reasonable  
14 attorney's fee.

15 (2) The court may make such additional orders or judgments as may  
16 be necessary to restore to any person in interest any moneys or  
17 property, real or personal, which may have been acquired by means of  
18 any act herein prohibited or declared to be unlawful.

1 (3) Upon a violation of RCW 19.86.030, 19.86.040, 19.86.050, or  
2 19.86.060, the court may also make such additional orders or judgments  
3 as may be necessary to restore to any person in interest any moneys or  
4 property, real or personal, which may have been acquired, regardless of  
5 whether such person purchased or transacted for goods or services  
6 directly with the defendant or indirectly through resellers. The court  
7 shall exclude from the amount of monetary relief awarded in an action  
8 pursuant to this subsection any amount that duplicates amounts that  
9 have been awarded for the same violation. The court should consider  
10 consolidation or coordination with other related actions, to the extent  
11 practicable, to avoid duplicate recovery.

12 **Sec. 2.** RCW 19.86.110 and 1993 c 125 s 1 are each amended to read  
13 as follows:

14 (1)(a) Whenever the attorney general, a county prosecutor, or a  
15 city attorney believes that any person (~~((a))~~) (i) may be in  
16 possession, custody, or control of any original or copy of any book,  
17 record, report, memorandum, paper, communication, tabulation, map,  
18 chart, photograph, mechanical transcription, or other tangible document  
19 or recording, wherever situate, which he or she believes to be relevant  
20 to the subject matter of an investigation of a possible violation of  
21 RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, or  
22 federal statutes dealing with the same or similar matters that the  
23 attorney general, county prosecutor, or city attorney is authorized to  
24 enforce, or (~~((b))~~) (ii) may have knowledge of any information which  
25 the attorney general, county prosecutor, or city attorney believes  
26 relevant to the subject matter of such an investigation, he or she may,  
27 prior to the institution of a civil proceeding thereon, execute in  
28 writing and cause to be served upon such a person, a civil  
29 investigative demand requiring such person to produce such documentary  
30 material and permit inspection and copying, to answer in writing  
31 written interrogatories, to give oral testimony, or any combination of  
32 such demands pertaining to such documentary material or information:  
33 PROVIDED, That this section shall not be applicable to criminal  
34 prosecutions.

35 (b) A copy of any civil investigative demand issued or complaint  
36 filed by a county prosecutor or city attorney under this chapter must  
37 be promptly delivered to the attorney general.

1 (2) Each such demand shall:

2 (a) State the statute and section or sections thereof, the alleged  
3 violation of which is under investigation, and the general subject  
4 matter of the investigation;

5 (b) If the demand is for the production of documentary material,  
6 describe the class or classes of documentary material to be produced  
7 thereunder with reasonable specificity so as fairly to indicate the  
8 material demanded;

9 (c) Prescribe a return date within which the documentary material  
10 is to be produced, the answers to written interrogatories are to be  
11 made, or a date, time, and place at which oral testimony is to be  
12 taken; and

13 (d) Identify the members of the (~~attorney general's~~) staff of the  
14 attorney general, county prosecutor, or city attorney to whom such  
15 documentary material is to be made available for inspection and  
16 copying, to whom answers to written interrogatories are to be made, or  
17 who are to conduct the examination for oral testimony.

18 (3) No such demand shall:

19 (a) Contain any requirement which would be unreasonable or improper  
20 if contained in a subpoena duces tecum, a request for answers to  
21 written interrogatories, or a request for deposition upon oral  
22 examination issued by a court of this state; or

23 (b) Require the disclosure of any documentary material which would  
24 be privileged, or which for any other reason would not be required by  
25 a subpoena duces tecum issued by a court of this state.

26 (4) Service of any such demand may be made by:

27 (a) Delivering a duly executed copy thereof to the person to be  
28 served, or, if such person is not a natural person, to any officer or  
29 managing agent of the person to be served; or

30 (b) Delivering a duly executed copy thereof to the principal place  
31 of business in this state of the person to be served; or

32 (c) Mailing by registered or certified mail a duly executed copy  
33 thereof addressed to the person to be served at the principal place of  
34 business in this state, or, if said person has no place of business in  
35 this state, to his or her principal office or place of business.

36 (5)(a) Documentary material demanded pursuant to the provisions of  
37 this section shall be produced for inspection and copying during normal  
38 business hours at the principal office or place of business of the

1 person served, or at such other times and places as may be agreed upon  
2 by the person served and the attorney general, county prosecutor, or  
3 city attorney;

4 (b) Written interrogatories in a demand served under this section  
5 shall be answered in the same manner as provided in the civil rules for  
6 superior court;

7 (c) The oral testimony of any person obtained pursuant to a demand  
8 served under this section shall be taken in the same manner as provided  
9 in the civil rules for superior court for the taking of depositions.  
10 In the course of the deposition, the assistant attorney general,  
11 assistant county prosecutor, or assistant city attorney conducting the  
12 examination may exclude from the place where the examination is held  
13 all persons other than the person being examined, the person's counsel,  
14 and the officer before whom the testimony is to be taken;

15 (d) Any person compelled to appear pursuant to a demand for oral  
16 testimony under this section may be accompanied by counsel;

17 (e) The oral testimony of any person obtained pursuant to a demand  
18 served under this section shall be taken in the county within which the  
19 person resides, is found, or transacts business, or in such other place  
20 as may be agreed upon between the person served and the attorney  
21 general, county prosecutor, or city attorney.

22 (6) If, after prior court approval, a civil investigative demand  
23 specifically prohibits disclosure of the existence or content of the  
24 demand, unless otherwise ordered by a superior court for good cause  
25 shown, it shall be a misdemeanor for any person if not a bank, trust  
26 company, mutual savings bank, credit union, or savings and loan  
27 association organized under the laws of the United States or of any one  
28 of the United States to disclose to any other person the existence or  
29 content of the demand, except for disclosure to counsel for the  
30 recipient of the demand or unless otherwise required by law.

31 (7) No documentary material, answers to written interrogatories, or  
32 transcripts of oral testimony produced pursuant to a demand, or copies  
33 thereof, shall, unless otherwise ordered by a superior court for good  
34 cause shown, be produced for inspection or copying by, nor shall the  
35 contents thereof be disclosed to, other than an authorized employee of  
36 the attorney general, county prosecutor, or city attorney, without the  
37 consent of the person who produced such material, answered written

1 interrogatories, or gave oral testimony, except as otherwise provided  
2 in this section: PROVIDED, That:

3 (a) Under such reasonable terms and conditions as the attorney  
4 general, county prosecutor, or city attorney shall prescribe, the  
5 copies of such documentary material, answers to written  
6 interrogatories, or transcripts of oral testimony shall be available  
7 for inspection and copying by the person who produced such material,  
8 answered written interrogatories, or gave oral testimony, or any duly  
9 authorized representative of such person;

10 (b) The attorney general, county prosecutor, or city attorney may  
11 provide copies of such documentary material, answers to written  
12 interrogatories, or transcripts of oral testimony to an official of  
13 this state, the federal government, or other state, who is charged with  
14 the enforcement of federal or state antitrust or consumer protection  
15 laws, if before the disclosure the receiving official agrees in writing  
16 that the information may not be disclosed to anyone other than that  
17 official or the official's authorized employees. The county prosecutor  
18 or city attorney shall provide copies of such documentary material,  
19 answers to written interrogatories, or transcripts of oral testimony to  
20 an appropriate member of the attorney general's staff, unless the  
21 attorney general directs otherwise. The material provided under this  
22 subsection (7)(b) is subject to the confidentiality restrictions set  
23 forth in this section and may not be introduced as evidence in a  
24 criminal prosecution; and

25 (c) The attorney general or any assistant attorney general, or  
26 attorneys authorized by the county prosecutor or city attorney, may use  
27 such copies of documentary material, answers to written  
28 interrogatories, or transcripts of oral testimony as ~~((he))~~ they  
29 ~~((s))~~ determine necessary in the enforcement of this chapter, including  
30 presentation before any court: PROVIDED, That any such material,  
31 answers to written interrogatories, or transcripts of oral testimony  
32 which contain trade secrets shall not be presented except with the  
33 approval of the court in which action is pending after adequate notice  
34 to the person furnishing such material, answers to written  
35 interrogatories, or oral testimony.

36 (8) At any time before the return date specified in the demand, or  
37 within twenty days after the demand has been served, whichever period  
38 is shorter, a petition to extend the return date for, or to modify or

1 set aside a demand issued pursuant to subsection (1) of this section,  
2 stating good cause, may be filed in the superior court for Thurston  
3 county, or in such other county where the county prosecutor, city  
4 attorney, or parties reside. A petition, by the person on whom the  
5 demand is served, stating good cause, to require the attorney general,  
6 county prosecutor, or city attorney or any person to perform any duty  
7 imposed by the provisions of this section, and all other petitions in  
8 connection with a demand, may be filed in the superior court for  
9 Thurston county, or in the county where the county prosecutor, city  
10 attorney, or parties reside. The court shall have jurisdiction to  
11 impose such sanctions as are provided for in the civil rules for  
12 superior court with respect to discovery motions.

13 (9) Whenever any person fails to comply with any civil  
14 investigative demand for documentary material, answers to written  
15 interrogatories, or oral testimony duly served upon him or her under  
16 this section, or whenever satisfactory copying or reproduction of any  
17 such material cannot be done and such person refuses to surrender such  
18 material, the attorney general, county prosecutor, or city attorney may  
19 file, in the trial court of general jurisdiction of the county in which  
20 such person resides, is found, or transacts business, and serve upon  
21 such person a petition for an order of such court for the enforcement  
22 of this section, except that if such person transacts business in more  
23 than one county such petition shall be filed in the county in which  
24 such person maintains his or her principal place of business, or in  
25 such other county as may be agreed upon by the parties to such  
26 petition. Whenever any petition is filed in the trial court of general  
27 jurisdiction of any county under this section, such court shall have  
28 jurisdiction to hear and determine the matter so presented and to enter  
29 such order or orders as may be required to carry into effect the  
30 provisions of this section, and may impose such sanctions as are  
31 provided for in the civil rules for superior court with respect to  
32 discovery motions.

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