

SENATE BILL REPORT

SB 6840

As Reported By Senate Committee On:
Consumer Protection & Housing, February 05, 2008

Title: An act relating to authorizing county prosecutors and city attorneys to enforce certain provisions of the consumer protection act.

Brief Description: Authorizing county prosecutors and city attorneys to enforce certain provisions of the consumer protection act.

Sponsors: Senators Weinstein and Kline.

Brief History:

Committee Activity: Consumer Protection & Housing: 2/1/08, 2/5/08 [DP, DNP].

SENATE COMMITTEE ON CONSUMER PROTECTION & HOUSING

Majority Report: Do pass.

Signed by Senators Weinstein, Chair; Kauffman, Vice Chair; Haugen, Jacobsen, Kilmer and McCaslin.

Minority Report: Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; Delvin and Tom.

Staff: Vanessa Firnhaber-Baker (786-7471)

Background: The Consumer Protection Act (CPA) prohibits unfair or deceptive practices in trade or commerce and anti-competitive behavior. The CPA may be enforced by the person harmed by the CPA violation or by the Attorney General (AG). A lawsuit brought by the AG for a CPA violation is brought on behalf of all Washington residents.

In a CPA suit brought by the AG, the prevailing party may be awarded attorney's fees and costs. Also, the court may order the defendant to pay restitution to any persons harmed directly or indirectly by the defendant's actions. The court must consider other related litigation to avoid double recovery.

Cities and counties may sue a third party for a CPA violation, but only if the violation harmed the city or county itself. Cities and counties may not bring CPA suits on behalf of their jurisdiction's citizens.

Before a lawsuit has been filed, the AG may use its civil investigative authority to demand documents, oral testimony, and answers to interrogatories from third parties that it believes has information relevant to the investigation of a possible CPA violation.

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.

Summary of Bill: County prosecutors and city attorneys may enforce the CPA by bringing a lawsuit on behalf of the residents of their jurisdiction.

In a CPA suit brought by a county prosecutor or city attorney, the prevailing party may be awarded attorney's fees and costs. Also, the court may order the defendant to pay restitution to any persons harmed directly or indirectly by the defendant's actions. The court must consider other related litigation to avoid double recovery.

Before a lawsuit has been filed, a county prosecutor or city attorney may use his or her civil investigative authority to demand documents, oral testimony, and answers to interrogatories from third parties that it believes has information relevant to the investigation of a possible CPA violation. The county prosecutor or city attorney must provide copies of all documents, testimony, and interrogatory answers to the AG's staff, unless the AG directs otherwise.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The Attorney General (AG) only has six offices and limited resources; city and county attorneys can offer additional resources and offices. The AG has a statewide perspective while city and county attorneys have a ground level perspective; often consumers first turn to their local prosecutor when they have problems. City and county attorneys don't want to usurp the AG's authority; we want to assist them and give them more resources to help consumers. While working on this bill, we offered the AG the right to veto, or the right of first refusal, on consumer protection act (CPA) suits brought by city and county attorneys, and the AG was not interested. This would not cost the state anything. County prosecutors already do some consumer protection work. Local attorneys would like to have an additional way to go after scams and frauds; this bill would provide that.

CON: The CPA is there to protect people on a statewide basis, not a local basis. The AG protects the entire marketplace, not individuals. Allowing city or county prosecutors to bring CPA suits might result in potential duplications or conflicts in actions brought. Local prosecutors already have the tools they need to go after CPA violations. The AG already does a great job at consumer protection; we should not try to fix what isn't broken. This area of law is very complicated; over 75 statutes have per se CPA violation provisions. The AG collaborates with state regulators to interpret the CPA; it will be confusing and detrimental if local prosecutors are interpreting the CPA too. We are willing to work with any jurisdiction that has CPA concerns.

Persons Testifying: PRO: Suzanne Skinner, Seattle City Attorney's Office.

CON: Doug Walsh, Attorney General's Office.