

SHB 1495 - S COMM AMD

By Committee on Labor, Commerce & Consumer Protection

ADOPTED 04/04/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires otherwise.

5 (1) "Article or product" means any tangible article or product, but
6 excludes: (a) Any services sold, offered for sale, or made available
7 in this state, including free services and online services; (b) any
8 product subject to regulation by the United States food and drug
9 administration and that is primarily used for medical or medicinal
10 purposes; (c) food and beverages; and (d) restaurant services.

11 (2) "Copyrightable end product" means a work within the subject
12 matter of copyright as specified in section 102 of Title 17, United
13 States Code, and which for the purposes of this chapter includes mask
14 works protection as specified in section 902 of Title 17, United States
15 Code.

16 (3) "Essential component" means a component of an article or
17 product provided or to be provided to a third party pursuant to a
18 contract, including a purchase order, without which the article or
19 product will not perform as intended and for which there is no
20 substitute component available that offers a comparable range and
21 quality of functionalities and is available in comparable quantities
22 and at a comparable price.

23 (4) "Manufacture" means to directly manufacture, produce, or
24 assemble an article or product subject to section 2 of this act, in
25 whole or substantial part, but does not include contracting with or
26 otherwise engaging another person, or that person engaging another
27 person, to develop, manufacture, produce, or assemble an article or
28 product subject to section 2 of this act.

29 (5) "Material competitive injury" means at least a three percent
30 retail price difference between the article or product made in

1 violation of section 2 of this act designed to harm competition and a
2 directly competing article or product that was manufactured without the
3 use of stolen or misappropriated information technology, with such a
4 price difference occurring over a four-month period of time.

5 (6) "Retail price" means the retail price of stolen or
6 misappropriated information technology charged at the time of, and in
7 the jurisdiction where, the alleged theft or misappropriation occurred,
8 multiplied by the number of stolen or misappropriated items used in the
9 business operations of the person alleged to have violated section 2 of
10 this act.

11 (7)(a) "Stolen or misappropriated information technology" means
12 hardware or software that the person referred to in section 2 of this
13 act acquired, appropriated, or used without the authorization of the
14 owner of the information technology or the owner's authorized licensee
15 in violation of applicable law, but does not include situations in
16 which the hardware or software alleged to have been stolen or
17 misappropriated was not available for retail purchase on a stand-alone
18 basis at or before the time it was acquired, appropriated, or used by
19 such a person.

20 (b) Information technology is considered to be used in a person's
21 business operations if the person uses the technology in the
22 manufacture, distribution, marketing, or sales of the articles or
23 products subject to section 2 of this act.

24 NEW SECTION. **Sec. 2.** Any person who manufactures an article or
25 product while using stolen or misappropriated information technology in
26 its business operations after notice and opportunity to cure as
27 provided in section 5 of this act and, with respect to remedies sought
28 under section 6(6) or 7 of this act, causes a material competitive
29 injury as a result of such use of stolen or misappropriated information
30 technology, is deemed to engage in an unfair act where such an article
31 or product is sold or offered for sale in this state, either separately
32 or as a component of another article or product, and in competition
33 with an article or product sold or offered for sale in this state that
34 was manufactured without violating this section. A person who engages
35 in such an unfair act, and any articles or products manufactured by the
36 person in violation of this section, is subject to the liabilities and

1 remedial provisions of this chapter in an action by the attorney
2 general or any person described in section 6(5) of this act, except as
3 provided in sections 3 through 9 of this act.

4 NEW SECTION. **Sec. 3.** No action may be brought under this chapter,
5 and no liability results, where:

6 (1) The end article or end product sold or offered for sale in this
7 state and alleged to violate section 2 of this act is:

8 (a) A copyrightable end product;

9 (b) Merchandise manufactured by or on behalf of, or pursuant to a
10 license from, a copyright owner and which displays or embodies a name,
11 character, artwork, or other indicia of or from a work that falls
12 within (a) of this subsection, or merchandise manufactured by or on
13 behalf of, or pursuant to a license from, a copyright or trademark
14 owner and that displays or embodies a name, character, artwork, or
15 other indicia of or from a theme park, theme park attraction, or other
16 facility associated with a theme park; or

17 (c) Packaging, carrier media, or promotional or advertising
18 materials for any end article, end product, or merchandise that falls
19 within (a) or (b) of this subsection;

20 (2) The allegation that the information technology is stolen or
21 misappropriated is based on a claim that the information technology or
22 its use infringes a patent or misappropriates a trade secret under
23 applicable law or that could be brought under any provision of Title 35
24 of the United States Code;

25 (3) The allegation that the information technology is stolen or
26 misappropriated is based on a claim that the defendant's use of the
27 information technology violates the terms of a license that allows
28 users to modify and redistribute any source code associated with the
29 technology free of charge; or

30 (4) The allegation is based on a claim that the person violated
31 section 2 of this act by aiding, abetting, facilitating, or assisting
32 someone else to acquire, appropriate, use, sell, or offer to sell, or
33 by providing someone else with access to, information technology
34 without authorization of the owner of the information technology or the
35 owner's authorized licensee in violation of applicable law.

1 NEW SECTION. **Sec. 4.** No injunction may issue against a person
2 other than the person adjudicated to have violated section 2 of this
3 act, and no attachment order may issue against articles or products
4 other than articles or products in which the person alleged to violate
5 section 2 of this act holds title. A person other than the person
6 alleged to violate section 2 of this act includes any person other than
7 the actual manufacturer who contracts with or otherwise engages another
8 person to develop, manufacture, produce, market, distribute, advertise,
9 or assemble an article or product alleged to violate section 2 of this
10 act.

11 NEW SECTION. **Sec. 5.** (1) No action may be brought under section
12 2 of this act unless the person subject to section 2 of this act
13 received written notice of the alleged use of the stolen or
14 misappropriated information technology from the owner or exclusive
15 licensee of the information technology or the owner's agent and the
16 person: (a) Failed to establish that its use of the information
17 technology in question did not violate section 2 of this act; or (b)
18 failed, within ninety days after receiving such a notice, to cease use
19 of the owner's stolen or misappropriated information technology.
20 However, if the person commences and thereafter proceeds diligently to
21 replace the information technology with information technology whose
22 use would not violate section 2 of this act, such a period must be
23 extended for an additional period of ninety days, not to exceed one
24 hundred eighty days total. The information technology owner or the
25 owner's agent may extend any period described in this section.

26 (2) To satisfy the requirements of this section, written notice
27 must, under penalty of perjury: (a) Identify the stolen or
28 misappropriated information technology; (b) identify the lawful owner
29 or exclusive licensee of the information technology; (c) identify the
30 applicable law the person is alleged to be violating and state that the
31 notifier has a reasonable belief that the person has acquired,
32 appropriated, or used the information technology in question without
33 authorization of the owner of the information technology or the owner's
34 authorized licensee in violation of such applicable law; (d) to the
35 extent known by the notifier, state the manner in which the information
36 technology is being used by the defendant; (e) state the articles or

1 products to which the information technology relates; and (f) specify
2 the basis and the particular evidence upon which the notifier bases
3 such an allegation.

4 (3) The written notification must state, under penalty of perjury,
5 that, after a reasonable and good-faith investigation, the information
6 in the notice is accurate based on the notifier's reasonable knowledge,
7 information, and belief.

8 NEW SECTION. **Sec. 6.** (1) No earlier than ninety days after the
9 provision of notice in accordance with section 5 of this act, the
10 attorney general, or any person described in subsection (5) of this
11 section, may bring an action against any person that is subject to
12 section 2 of this act:

13 (a) To enjoin violation of section 2 of this act, including by
14 enjoining the person from selling or offering to sell in this state
15 articles or products that are subject to section 2 of this act, except
16 as provided in subsection (6) of this section. However, such an
17 injunction does not encompass articles or products to be provided to a
18 third party that establishes that such a third party has satisfied one
19 or more of the affirmative defenses set forth in section 8(1) of this
20 act with respect to the manufacturer alleged to have violated section
21 2 of this act;

22 (b) Only after a determination by the court that the person has
23 violated section 2 of this act, to recover the greater of:

24 (i) Actual direct damages, which may be imposed only against the
25 person who violated section 2 of this act; or

26 (ii) Statutory damages of no more than the retail price of the
27 stolen or misappropriated information technology, which may be imposed
28 only against the person who violated section 2 of this act; or

29 (c) In the event the person alleged to have violated section 2 of
30 this act has been subject to a final judgment or has entered into a
31 final settlement, or any products manufactured by such a person and
32 alleged to violate section 2 of this act have been the subject of an
33 injunction or attachment order, in any federal or state court in this
34 state or any other state, arising out of the same theft or
35 misappropriation of information technology, the court shall dismiss the
36 action with prejudice. If such a person is a defendant in an ongoing
37 action, or any products manufactured by such a person and alleged to

1 violate section 2 of this act are the subject of an ongoing injunction
2 or attachment order, in any federal or state court in this state or any
3 other state, arising out of the same theft or misappropriation of
4 information technology, the court shall stay the action against such a
5 person pending resolution of the other action. In the event the other
6 action results in a final judgment or final settlement, the court shall
7 dismiss the action with prejudice against the person. Dismissals under
8 this subsection are res judicata to actions filed against the person
9 alleged to have violated section 2 of this act arising out of the same
10 theft or misappropriation of information technology.

11 (2) After determination by the court that a person has violated
12 section 2 of this act and entry of a judgment against the person for
13 violating section 2 of this act, the attorney general, or a person
14 described in subsection (5) of this section, may add to the action a
15 claim for actual direct damages against a third party who sells or
16 offers to sell in this state products made by that person in violation
17 of section 2 of this act, subject to the provisions of section 8 of
18 this act. However, damages may be imposed against a third party only
19 if:

20 (a) The third party's agent for service of process was properly
21 served with a copy of a written notice sent to the person alleged to
22 have violated section 2 of this act that satisfies the requirements of
23 section 5 of this act at least ninety days prior to the entry of the
24 judgment;

25 (b) The person who violated section 2 of this act did not make an
26 appearance or does not have sufficient attachable assets to satisfy a
27 judgment against the person;

28 (c) Such a person either manufactured the final product or produced
29 a component equal to thirty percent or more of the value of the final
30 product;

31 (d) Such a person has a direct contractual relationship with the
32 third party respecting the manufacture of the final product or
33 component; and

34 (e) The third party has not been subject to a final judgment or
35 entered into a final settlement in any federal or state court in this
36 state or any other state arising out of the same theft or
37 misappropriation of information technology. However, in the event the
38 third party is a party to an ongoing suit for damages, or has entered

1 an appearance as an interested third party in proceedings in rem, in
2 any federal or state court in this state or any other state arising out
3 of the same theft or misappropriation of information technology, the
4 court shall stay the action against the third party pending resolution
5 of the other action. In the event the other action results in a final
6 judgment, the court shall dismiss the action with prejudice against the
7 third party and dismiss any in rem action as to any articles or
8 products manufactured for such a third party or that have been or are
9 to be supplied to such a third party. Dismissals under this subsection
10 are res judicata to actions filed against the person alleged to have
11 violated section 2 of this act arising out of the same theft or
12 misappropriation of information technology.

13 (3) An award of damages against such a third party pursuant to
14 subsection (2) of this section must be the lesser of the retail price
15 of the stolen or misappropriated information technology at issue or two
16 hundred fifty thousand dollars, less any amounts recovered from the
17 person adjudicated to have violated section 2 of this act, and
18 subsection (4)(a) of this section does not apply to such an award or
19 recovery against the third party.

20 (4) In an action under this chapter, a court may:

21 (a) Against the person adjudicated to have violated section 2 of
22 this act, increase the damages up to three times the damages authorized
23 by subsection (1)(b) of this section where the court finds that the
24 person's use of the stolen or misappropriated information technology
25 was willful;

26 (b) With respect to an award under subsection (1) of this section
27 only, award costs and reasonable attorneys' fees to: (i) A prevailing
28 plaintiff in actions brought by an injured person under section 2 of
29 this act; or (ii) a prevailing defendant in actions brought by an
30 allegedly injured person; and

31 (c) With respect to an action under subsection (2) of this section
32 brought by a private plaintiff only, award costs and reasonable
33 attorneys' fees to a third party for all litigation expenses
34 (including, without limitation, discovery expenses) incurred by that
35 party if it prevails on the requirement set forth in subsection (2)(c)
36 of this section or who qualifies for an affirmative defense under
37 section 8 of this act. However, in a case in which the third party
38 received a copy of the notification described in subsection (2)(a) of

1 this section at least ninety days before the filing of the action under
2 subsection (2) of this section, with respect to a third party's
3 reliance on the affirmative defenses set forth in section 8(1) (c) and
4 (d) of this act, the court may award costs and reasonable attorneys'
5 fees only if all of the conduct on which the affirmative defense is
6 based was undertaken by the third party, and the third party notified
7 the plaintiff of the conduct, prior to the end of the ninety- day
8 period.

9 (5) A person is deemed to have been injured by the sale or offer
10 for sale of a directly competing article or product subject to section
11 2 of this act if the person establishes by a preponderance of the
12 evidence that:

13 (a) The person manufactures articles or products that are sold or
14 offered for sale in this state in direct competition with articles or
15 products that are subject to section 2 of this act;

16 (b) The person's articles or products were not manufactured using
17 stolen or misappropriated information technology of the owner of the
18 information technology;

19 (c) The person suffered economic harm, which may be shown by
20 evidence that the retail price of the stolen or misappropriated
21 information technology was twenty thousand dollars or more; and

22 (d) If the person is proceeding in rem or seeks injunctive relief,
23 that the person suffered material competitive injury as a result of the
24 violation of section 2 of this act.

25 (6)(a) If the court determines that a person found to have violated
26 section 2 of this act lacks sufficient attachable assets in this state
27 to satisfy a judgment rendered against it, the court may enjoin the
28 sale or offering for sale in this state of any articles or products
29 subject to section 2 of this act, except as provided in section 4 of
30 this act.

31 (b) To the extent that an article or product subject to section 2
32 of this act is an essential component of a third party's article or
33 product, the court shall deny injunctive relief as to such an essential
34 component, provided that the third party has undertaken good faith
35 efforts within the third party's rights under its applicable contract
36 with the manufacturer to direct the manufacturer of the essential
37 component to cease the theft or misappropriation of information
38 technology in violation of section 2 of this act, which may be

1 satisfied, without limitation, by the third party issuing a written
2 directive to the manufacturer demanding that it cease the theft or
3 misappropriation and demanding that the manufacturer provide the third
4 party with copies of invoices, purchase orders, licenses, or other
5 verification of lawful use of the information technology at issue.

6 (7) The court shall determine whether a cure period longer than the
7 period reflected in section 5 of this act would be reasonable given the
8 nature of the use of the information technology that is the subject of
9 the action and the time reasonably necessary either to bring such use
10 into compliance with applicable law or to replace the information
11 technology with information technology that would not violate section
12 2 of this act. If the court deems that a longer cure period would be
13 reasonable, then the action shall be stayed until the end of that
14 longer cure period. If by the end of that longer cure period, the
15 defendant has established that its use of the information technology in
16 question did not violate section 2 of this act, or the defendant ceased
17 use of the stolen or misappropriated information technology, then the
18 action must be dismissed.

19 NEW SECTION. **Sec. 7.** (1) In a case in which the court is unable
20 to obtain personal jurisdiction over a person subject to section 2 of
21 this act, the court may proceed in rem against any articles or products
22 subject to section 2 of this act sold or offered for sale in this state
23 in which the person alleged to have violated section 2 of this act
24 holds title. Except as provided in section 4 of this act and
25 subsection (2) through (4) of this section, all such articles or
26 products are subject to attachment at or after the time of filing a
27 complaint, regardless of the availability or amount of any monetary
28 judgment.

29 (2) At least ninety days prior to the enforcement of an attachment
30 order against articles or products pursuant to subsection (1) of this
31 section, the court shall notify any person in possession of the
32 articles or products of the pending attachment order. Prior to the
33 expiration of the ninety day period, any person for whom the articles
34 or products were manufactured, or to whom the articles or products have
35 been or are to be supplied, pursuant to an existing contract or
36 purchase order, may:

1 (a) Establish that the person has satisfied one or more of the
2 affirmative defenses set forth in section 8(1) of this act with respect
3 to the manufacturer alleged to have violated section 2 of this act, in
4 which case the attachment order must be dissolved only with respect to
5 those articles or products that were manufactured for such a person, or
6 have been or are to be supplied to such a person, pursuant to an
7 existing contract or purchase order; or

8 (b) Post a bond with the court equal to the retail price of the
9 allegedly stolen or misappropriated information technology or twenty-
10 five thousand dollars, whichever is less, in which case the court shall
11 stay enforcement of the attachment order against the articles or
12 products and shall proceed on the basis of its jurisdiction over the
13 bond. The person posting the bond shall recover the full amount of
14 such bond, plus interest, after the issuance of a final judgment.

15 (3) In the event the person posting the bond pursuant to subsection
16 (2)(b) of this section is entitled to claim an affirmative defense in
17 section 8 of this act, and that person establishes with the court that
18 the person is entitled to any affirmative defense, the court shall
19 award costs and reasonable attorneys' fees to the person posting the
20 bond and against the plaintiff in the event the plaintiff proceeds with
21 an action pursuant to section 6(2) of this act against the person
22 posting the bond.

23 (4) In the event that the court does not provide notification as
24 described in subsection (2) of this section, the court, upon motion of
25 any third party, shall stay the enforcement of the attachment order for
26 ninety days as to articles or products manufactured for the third
27 party, or that have been or are to be supplied to the third party,
28 pursuant to an existing contract or purchase order, during which ninety
29 day period the third party may avail itself of the options set forth in
30 subsection (2)(a) and (b) of this section.

31 NEW SECTION. **Sec. 8.** (1) A court may not award damages against
32 any third party pursuant to section 6(2) of this act where that party,
33 after having been afforded reasonable notice of at least ninety days by
34 proper service upon such a party's agent for service of process and
35 opportunity to plead any of the affirmative defenses set forth in this
36 subsection, establishes by a preponderance of the evidence any of the
37 following:

1 (a) Such a person is the end consumer or end user of an article or
2 product subject to section 2 of this act, or acquired the article or
3 product after its sale to an end consumer or end user;

4 (b) Such a person is a business with annual revenues not in excess
5 of fifty million dollars;

6 (c) The person acquired the articles or products:

7 (i) And had either: A code of conduct or other written document
8 governing the person's commercial relationships with the manufacturer
9 adjudicated to have violated section 2 of this act and which includes
10 commitments, such as general commitments to comply with applicable
11 laws, that prohibit use of the stolen or misappropriated information
12 technology by such manufacturer; or written assurances from the
13 manufacturer of the articles or products that the articles or products,
14 to the manufacturer's reasonable knowledge, were manufactured without
15 the use of stolen or misappropriated information technology in the
16 manufacturer's business operations. However, with respect to this
17 subsection (c)(i), within one hundred eighty days of receiving written
18 notice of the judgment against the manufacturer for a violation of
19 section 2 of this act and a copy of a written notice that satisfies the
20 requirements of section 5 of this act, the person must undertake
21 commercially reasonable efforts to do any of the following:

22 (A) Exchange written correspondence confirming that such a
23 manufacturer is not using the stolen or misappropriated information
24 technology in violation of section 2 of this act, which may be
25 satisfied, without limitation, by obtaining written assurances from the
26 manufacturer accompanied by copies of invoices, purchase orders,
27 licenses, or other verification of lawful use of the information
28 technology at issue;

29 (B) Direct the manufacturer to cease the theft or misappropriation,
30 which may be satisfied, without limitation, by the third party issuing
31 a written directive to the manufacturer demanding that it cease such
32 theft or misappropriation and demanding that the manufacturer provide
33 the third party with copies of invoices, purchase orders, licenses, or
34 other verification of lawful use of the information technology at
35 issue; and for purposes of clarification, the third party need take no
36 additional action to fully avail itself of this affirmative defense; or

37 (C) In a case in which the manufacturer has failed to cease such a
38 theft or misappropriation within the one hundred eighty-day period, and

1 the third party has not fulfilled either option (c)(i)(A) of this
2 subsection or option (c)(i)(B) of this subsection, cease the future
3 acquisition of the articles or products from the manufacturer during
4 the period that the manufacturer continues to engage in the theft or
5 misappropriation subject to section 2 of this act where doing so would
6 not constitute a breach of an agreement between the person and the
7 manufacturer for the manufacture of the articles or products in
8 question that was entered into on or before one hundred eighty days
9 after the effective date of this section; or

10 (ii) Pursuant to an agreement between the person and a manufacturer
11 for the manufacture of the articles or products in question that was
12 entered into before one hundred eighty days after the effective date of
13 this section. However, within one hundred eighty days of receiving
14 written notice of the judgment against the manufacturer for a violation
15 of section 2 of this act and a copy of a written notice that satisfies
16 the requirements of section 5 of this act, the person must undertake
17 commercially reasonable efforts to do any of the following:

18 (A) Obtain from the manufacturer written assurances that such a
19 manufacturer is not using the stolen or misappropriated information
20 technology in violation of section 2 of this act, which may be
21 satisfied, without limitation, by obtaining written assurances from the
22 manufacturer accompanied by copies of invoices, purchase orders,
23 licenses, or other verification of lawful use of the information
24 technology at issue;

25 (B) Direct the manufacturer to cease the theft or misappropriation,
26 which may be satisfied, without limitation, by the third party issuing
27 a written directive to the manufacturer demanding that it cease such
28 theft or misappropriation and demanding that the manufacturer provide
29 the third party with copies of invoices, purchase orders, licenses, or
30 other verification of lawful use of the information technology at
31 issue; and for purposes of clarification, the third party need take no
32 additional action to fully avail itself of this affirmative defense; or

33 (C) In a case in which the manufacturer has failed to cease the
34 theft or misappropriation within the one hundred eighty-day period, and
35 the third party has not fulfilled either option (c)(ii)(A) of this
36 subsection or option (c)(ii)(B) of this subsection, cease the future
37 acquisition of the articles or products from the manufacturer during

1 the period that the manufacturer continues to engage in the theft or
2 misappropriation subject to section 2 of this act where doing so would
3 not constitute a breach of such agreement;

4 (d) The person has made commercially reasonable efforts to
5 implement practices and procedures to require its direct manufacturers,
6 in manufacturing articles or products for such person, not to use
7 stolen or misappropriated information technology in violation of
8 section 2 of this act. A person may satisfy this subsection (1)(d) by:

9 (i) Adopting and undertaking commercially reasonable efforts to
10 implement a code of conduct or similar written requirements, which are
11 applicable to the person's direct manufacturers, that prohibit the use
12 of stolen or misappropriated information technology by such a
13 manufacturer, subject to a right of audit, and the person either: (A)
14 Has a practice of auditing its direct manufacturers on a periodic basis
15 in accordance with generally accepted industry standards; or (B)
16 requires in its agreements with its direct manufacturers that they
17 submit to audits by a third party, which may include a third-party
18 association of businesses representing the owner of the stolen or
19 misappropriated intellectual property, and further provides that a
20 failure to remedy any deficiencies found in such an audit that
21 constitute a violation of the applicable law of the jurisdiction where
22 the deficiency occurred constitutes a breach of the contract, subject
23 to cure within a reasonable period of time; or

24 (ii) Adopting and undertaking commercially reasonable efforts to
25 implement a code of conduct or similar written requirements, which are
26 applicable to the person's direct manufacturers, that prohibit use of
27 stolen or misappropriated information technology by such a
28 manufacturer, and the person undertakes practices and procedures to
29 address compliance with the prohibition against the use of the stolen
30 or misappropriated information technology in accordance with the
31 applicable code of conduct or written requirements; or

32 (e) The person does not have a contractual relationship with the
33 person alleged to have violated section 2 of this act respecting the
34 manufacture of the articles or products alleged to have been
35 manufactured in violation of section 2 of this act.

36 (2) A third party must have the opportunity to be heard regarding
37 whether an article or product is an essential component provided or to

1 be provided to a third party, and must have the right to file a motion
2 to dismiss any action brought against it under section 6(2) of this
3 act.

4 (3) The court may not enforce any award for damages against such a
5 third party until after the court has ruled on that party's claim of
6 eligibility for any of the affirmative defenses set out in this
7 section, and prior to such a ruling may allow discovery, in an action
8 under section 6(2) of this act, only on the particular defenses raised
9 by the third party.

10 (4) The court shall allow discovery against a third party on an
11 issue only after all discovery on that issue between the parties has
12 been completed and only if the evidence produced as a result of the
13 discovery does not resolve an issue of material dispute between the
14 parties.

15 (5) Any confidential or otherwise sensitive information submitted
16 by a party pursuant to this section is subject to a protective order.

17 NEW SECTION. **Sec. 9.** A court may not enforce an award of damages
18 against a third party pursuant to section 6(2) of this act for a period
19 of eighteen months from the effective date of this section.

20 NEW SECTION. **Sec. 10.** A violation of this chapter may not be
21 considered a violation of the state consumer protection act, and
22 chapter 19.86 RCW does not apply to this chapter. The remedies
23 provided under this chapter are the exclusive remedies for the parties.

24 NEW SECTION. **Sec. 11.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 12.** Sections 1 through 10 of this act
29 constitute a new chapter in Title 19 RCW."

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By Committee on Labor, Commerce & Consumer Protection

ADOPTED 04/04/2011

1 On page 1, line 3 of the title, after "state;" strike the remainder
2 of the title and insert "adding a new chapter to Title 19 RCW; and
3 prescribing penalties."

--- END ---