

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1306

Introduced by Senator Stone

February 19, 2016

An act to amend Section 1780 of the Civil Code, relating to consumer remedies.

LEGISLATIVE COUNSEL'S DIGEST

SB 1306, as amended, Stone. Consumer remedies: attorney's fees and litigation costs: ~~prevailing party costs.~~

Existing law, the Consumer Legal Remedies Act, authorizes a consumer who suffers damage from the use of unfair methods of competition and unfair or deceptive acts, as defined, to bring an action to recover damages or other relief. Existing law requires a court to award court costs and attorney's fees to the prevailing plaintiff in an action brought *litigation filed* pursuant to those provisions. Existing law also permits a court to award reasonable attorney's fees to a prevailing defendant only if the court finds that the plaintiff's prosecution of the action was not in good faith.

~~This bill would revise those provisions to instead require a court to award court costs and attorney's fees to the prevailing party in the action.~~

This bill, in litigation pertaining to the California Environmental Quality Act that is filed pursuant to the Consumer Legal Remedies Act, would require the court to award court costs and attorney's fees to the prevailing party in the action.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1780 of the Civil Code is amended to read:

1780. (a) Any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 may bring an action against that person to recover or obtain any of the following:

(1) Actual damages, but in no case shall the total award of damages in a class action be less than one thousand dollars (\$1,000).

(2) An order enjoining the methods, acts, or practices.

(3) Restitution of property.

(4) Punitive damages.

(5) Any other relief that the court deems proper.

(b) (1) Any consumer who is a senior citizen or a disabled person, as defined in subdivisions (f) and (g) of Section 1761, as part of an action under subdivision (a), may seek and be awarded, in addition to the remedies specified therein, up to five thousand dollars (\$5,000) where the trier of fact does all of the following:

(A) Finds that the consumer has suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct.

(B) Makes an affirmative finding in regard to one or more of the factors set forth in subdivision (b) of Section 3345.

(C) Finds that an additional award is appropriate.

(2) Judgment in a class action by senior citizens or disabled persons under Section 1781 may award each class member that additional award if the trier of fact has made the foregoing findings.

(c) Whenever it is proven by a preponderance of the evidence that a defendant has engaged in conduct in violation of paragraph (24) of subdivision (a) of Section 1770, in addition to all other remedies otherwise provided in this section, the court shall award treble actual damages to the plaintiff. This subdivision shall not apply to attorneys licensed to practice law in California, who are subject to the California Rules of Professional Conduct and to the mandatory fee arbitration provisions of Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, when the fees charged or received are for providing representation in administrative agency appeal

1 proceedings or court proceedings for purposes of procuring,
2 maintaining, or securing public social services on behalf of a person
3 or group of persons.

4 (d) An action under subdivision (a) or (b) may be commenced
5 in the county in which the person against whom it is brought
6 resides, has his or her principal place of business, or is doing
7 business, or in the county where the transaction or any substantial
8 portion thereof occurred.

9 In any action subject to this section, concurrently with the filing
10 of the complaint, the plaintiff shall file an affidavit stating facts
11 showing that the action has been commenced in a county described
12 in this section as a proper place for the trial of the action. If a
13 plaintiff fails to file the affidavit required by this section, the court
14 shall, upon its own motion or upon motion of any party, dismiss
15 the action without prejudice.

16 ~~(e) The court shall award court costs and attorney's fees to a~~
17 ~~prevailing party in litigation filed pursuant to this section.~~

18 *(e) (1) Except as provided in paragraph (2), the court shall*
19 *award court costs and attorney's fees to a prevailing plaintiff in*
20 *litigation filed pursuant to this section. Reasonable attorney's fees*
21 *may be awarded to a prevailing defendant upon a finding by the*
22 *court that the plaintiff's prosecution of the action was not in good*
23 *faith.*

24 *(2) In litigation pertaining to the California Environmental*
25 *Quality Act that is filed pursuant to this section, the court shall*
26 *award court costs and attorney's fees to a prevailing party in the*
27 *action.*