

AMENDED IN ASSEMBLY MARCH 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1108

Introduced by Assembly Member Nielsen

February 18, 2011

~~An act to amend Section 1032 of, and to repeal Section 1034 of, the Code of Civil Procedure, relating to civil actions. An act to amend Section 1780 of the Civil Code, relating to consumer remedies.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1108, as amended, Nielsen. ~~Litigation costs: court rules.~~
Consumer remedies: litigation costs: prevailing party.

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 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.

~~Existing law provides that prejudgment costs shall be claimed and contested in accordance with rules adopted by the Judicial Council. Existing law also requires the Judicial Council to establish by rule allowable costs on appeal and the procedure for claiming those costs.~~

~~This bill would repeal those provisions, and make other conforming changes:~~

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

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

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

3 1780. (a) Any consumer who suffers any damage as a result
4 of the use or employment by any person of a method, act, or
5 practice declared to be unlawful by Section 1770 may bring an
6 action against that person to recover or obtain any of the following:

7 (1) Actual damages, but in no case shall the total award of
8 damages in a class action be less than one thousand dollars
9 (\$1,000).

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

11 (3) Restitution of property.

12 (4) Punitive damages.

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

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

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

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

24 (C) Finds that an additional award is appropriate.

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

28 (c) Whenever it is proven by a preponderance of the evidence
29 that a defendant has engaged in conduct in violation of paragraph
30 (24) of subdivision (a) of Section 1770, in addition to all other
31 remedies otherwise provided in this section, the court shall award
32 treble actual damages to the plaintiff. This subdivision shall not
33 apply to attorneys licensed to practice law in California, who are

1 subject to the California Rules of Professional Conduct and to the
2 mandatory fee arbitration provisions of Article 13 (commencing
3 with Section 6200) of Chapter 4 of Division 3 of the Business and
4 Professions Code, when the fees charged or received are for
5 providing representation in administrative agency appeal
6 proceedings or court proceedings for purposes of procuring,
7 maintaining, or securing public social services on behalf of a person
8 or group of persons.

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

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

21 (e) The court shall award court costs and attorney's fees to a
22 prevailing plaintiff party in litigation filed pursuant to this section.
23 ~~Reasonable attorney's fees may be awarded to a prevailing~~
24 ~~defendant upon a finding by the court that the plaintiff's~~
25 ~~prosecution of the action was not in good faith.~~

26 SECTION 1. ~~Section 1032 of the Code of Civil Procedure is~~
27 ~~amended to read:~~

28 1032. (a) ~~As used in this section, unless the context clearly~~
29 ~~requires otherwise:~~

30 (1) ~~"Complaint" includes a cross-complaint.~~

31 (2) ~~"Defendant" includes a cross-defendant or a person against~~
32 ~~whom a complaint is filed.~~

33 (3) ~~"Plaintiff" includes a cross-complainant or a party who files~~
34 ~~a complaint in intervention.~~

35 (4) ~~"Prevailing party" includes the party with a net monetary~~
36 ~~recovery, a defendant in whose favor a dismissal is entered, a~~
37 ~~defendant where neither plaintiff nor defendant obtains any relief,~~
38 ~~and a defendant as against those plaintiffs who do not recover any~~
39 ~~relief against that defendant. When any party recovers other than~~
40 ~~monetary relief and in situations other than as specified, the~~

1 ~~“prevailing party” shall be as determined by the court, and under~~
2 ~~those circumstances, the court, in its discretion, may allow costs~~
3 ~~or not and, if allowed may apportion costs between the parties on~~
4 ~~the same or adverse sides.~~
5 ~~(b) Except as otherwise expressly provided by statute, a~~
6 ~~prevailing party is entitled as a matter of right to recover costs in~~
7 ~~any action or proceeding.~~
8 ~~(c) Nothing in this section shall prohibit parties from stipulating~~
9 ~~to alternative procedures for awarding costs in the litigation.~~
10 ~~SEC. 2. Section 1034 of the Code of Civil Procedure is~~
11 ~~repealed.~~