

February 7, 2013

The Honorable Jeff King, Chairperson  
Senate Committee on Judiciary  
Statehouse, Room 341-E  
Topeka, Kansas 66612

Dear Senator King:

**SUBJECT:** Fiscal Note for SB 90 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 90 is respectfully submitted to your committee.

SB 90 would amend the Kansas Consumer Protection Act (KCPA) by adding language which limits a consumer's standing to seek private remedies for violations of the Act, limits the scope of violations for which a private remedy may be sought, and limits the amount recoverable by a consumer pursuant to the private remedies statute. If adopted, the bill's amendments would apply retroactively to any action pending as of the effective date of the act.

Current law allows "aggrieved" individual consumers to recover damages or a civil penalty for violations of the KCPA. It also allows consumers "who suffer loss" as a result of a violation to bring a class action for the damages caused by the violation. SB 90 would add language defining "aggrieved" and "suffers loss" to mean that a consumer would have standing under this statute only if the consumer can prove on an individual basis that a violation of KCPA caused the consumer to enter into the transaction that resulted in the damages. The bill also states that an award of damages would not be made without proof that the person seeking the damages suffered a loss. "Loss" would mean an amount of money equal to the difference between the amount paid by the consumer for the good or service and the actual market value.

The Attorney General notes that SB 90 would result in pending private remedy actions to be altered mid-stream. There may also be a decrease in the number of KCPA cases taken on by attorneys in private practice due to the shrinking class of consumers who would qualify for private remedies. The scope of the violation would be reduced by the phrase "caused the consumer to enter into the transaction" indicating that a violation could lead to private action only if it occurred on the front end of the transaction. Current law allows for violations that occur "in connection with" a consumer transaction. Under the bill there would be an increased burden associated with proving a violation of the KCPA and reduced amounts that would be recoverable. The decrease in private cases would likely lead to an increase in cases taken by the

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Attorney General's Consumer Protection Division. However, it is not possible to predict the number or nature of any additional cases.

The Office of Judicial Administration states the SB 90 would have no fiscal effect on the Judiciary. Any fiscal effect associated with SB 90 is not reflected in *The FY 2014 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", with a long horizontal flourish extending to the right.

Steven J. Anderson, CPA, MBA  
Director of the Budget

cc: Mary Rinehart, Judiciary  
Willie Prescott, Attorney General's Office