

# ANTITRUST, TRADE REGULATION AND CONSUMER AFFAIRS SECTION



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The District of Columbia Bar

May 15, 1989

Hon. John Ray, Chair  
Committee on Consumer and  
Regulatory Affairs  
Council of the District of Columbia  
District Building  
District of Columbia

Re: Bill 8-111  
The D.C. Consumer Protection  
Procedures Act of 1989

Dear Chairman Ray:

At the request of Council Chair David Clarke, the Consumer Affairs Committee of Section 2 (Antitrust, Trade Regulation and Consumer Affairs) of the D.C. Bar submits the following comments on Bill 8-111, the District of Columbia Consumer Protection Procedures Act of 1989.<sup>1</sup>

Since its enactment in 1976, the District of Columbia Consumer Protection Procedures Act (CPPA), D.C. Code § 28-3901 et. seq. (1981), has been the principal consumer protection law of the District of Columbia. The bill established an Office of Consumer Protection and empowered the Director of that Office to receive and resolve complaints from consumers. The Office was directed to attempt to settle such complaints on terms acceptable to all parties, but where merchants violated the District's consumer protection laws (including prohibitions contained in the Act itself), the Director of the Office was empowered to present the complaint to an administrative law judge who could order any of several forms of relief for the protection of the individual complainant and the general public. (The Mayor's Reorganization Plan No. 1 of 1983 merged the Office of Consumer Protection into

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<sup>1</sup> Standard Disclaimer - "The views expressed herein represent only those of the Section on Antitrust, Trade Regulation and Consumer Affairs of the District of Columbia Bar and not those of the District of Columbia Bar or of its Board of Governors."

bar who prevail in cases before the administrative law judge. The amount of the fee should be set by the judge based on the market rate for time spent.

### Section 2(c) (Enforcement of DCRA Orders)

Section 2(c) of the bill would provide significant assistance to consumers who had prevailed in DCRA. It would remove a needless obstacle that the current law interposes between their successful hearing at DCRA and their collection of money from a merchant who violated the law.

When a District of Columbia consumer has been injured by a violation of the consumer protection laws, he or she may seek redress in either of two forms. The consumer may file a lawsuit in Superior Court. Unfortunately, unless the claim is under \$2000 (entitling the consumer to bring the suit in the small claims branch), this traditional manner of seeking redress presents some serious obstacles. First, the consumer must pay a \$45 filing fee. Second, the consumer must wait for a year or more before the case is tried. Finally, the consumer must either obtain counsel or be prepared to confront the intricacies of the court rules on a pro se basis. It is very difficult to obtain counsel for consumer cases, because the factual investigation and legal research required in such cases often is as great as the work that would be required in cases involving much larger sums of money.

The Council wisely created an alternate dispute settling mechanism when it passed the Consumer Protection Procedures Act. Consumers can file a simple complaint with DCRA under Title 28, § 3905 of the D.C. Code. If the matter is not settled during the course of a preliminary investigation and settlement conference, the matter can be set for hearing before an administrative law judge of the Section of Hearings. There is no filing fee, the waiting time can be as short as a month or two, and no attorney is necessary. Indeed, DCRA permits complainants to be represented by persons of their choice, including, for example, law students. Both George Washington University's National Law Center and Georgetown University Law Center have programs in which law students actively represent consumers in this forum.

DCRA is an efficient and effective mechanism for obtaining consumer redress where the District's consumer protection laws have been violated, but the statutory scheme includes one flaw that must be corrected. If the administrative law judge orders monetary redress in favor of the consumer, and the merchant chooses to ignore the order, the Department or the consumer must at present file a lawsuit in the Superior Court for enforcement of the order. The consumer is somewhat better off than if he or she had never gone to the Department of Consumer and Regulatory

If you or your staff have any questions, please do not hesitate to call. We would be delighted to identify knowledgeable witnesses for any public hearings or roundtable discussions. Since the provisions of Bill 8-111 are rather straightforward, we anticipate a consensus for passage will readily be reached.

Sincerely,

Mark H. Steinbach

Don Allen Resnikoff  
Co-chairs, Committee on  
Consumer Affairs  
Section 2 of the D.C. Bar

Encl: Bill 8-111