

HB 2241 -- Court Procedures

Sponsor: Stevenson

This bill changes the laws regarding merchandising practices by limiting a person's recovery to out-of-pocket loss instead of actual damages and requiring proof that the method, act, or practice declared unlawful by the court under the Merchandising Practices Act caused the person to enter into the transaction that resulted in the loss. In order to recover damages in an individual action, each class member is required to prove that the method, act, or practice declared unlawful by the court under the Merchandising Practices Act caused each member to enter into the transaction that resulted in the loss. The court may provide injunctive relief to protect the prevailing party and determine a proposed award of reasonable attorney fees. Each member of the class action must submit a statement requesting a specific dollar amount and provide information regarding the nature of the loss, injury, or damage. No judgment will be entered until the trier of fact has determined the amount owed to each class member, and the amount of judgment cannot exceed the sum owed to each member.

In any civil action brought under the Merchandising Practices Act, the courts must be guided by the policies of the Federal Trade Commission and interpretations given by the commission and the federal courts to 15 U.S.C. Section 45(a)(1). The bill also states the legislative intent of the General Assembly that courts follow the Supreme Court opinions of *Daubert v. Merrell Dow Pharmaceuticals*; *General Electric Company v. Joiner*; and *Kumho Tire Company v. Carmichael* in their interpretation and application of the bill.

An expert witness may give his or her opinion when the testimony in a civil action is based on the facts as proved by other witnesses. The facts used by the expert witness to form his or her opinion do not have to be admissible in evidence in order for the opinion to be admitted if the facts are of a type reasonably relied upon by an expert in that particular field. Any facts or data that are otherwise inadmissible are prohibited from being disclosed to a jury unless the evidence is more helpful to the jury in evaluating the expert's opinion than the prejudicial effect.

The bill also provides procedures for qualifying expert witnesses where the opinion is based upon scientific, technical, or other specialized knowledge including, but not limited to, medical malpractice actions.