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消费维权公益诉讼制度研究

The Study of Commonweal Litigation system
of Consumer Rights and Benefits

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摘要

只有在一个建立起了完善的消费维权公益诉讼制度体系的国家中，消费者的公共利益才能得到切实的维护，人们的普遍消费权益才能得到真正的实现，一个健全的消费者保护的法律体系才能营造起来。建立起完善的消费维权公益诉讼制度，对于我国消费者权益保护法律制度的完善具有非常重要的意义。本文对消费维权公益诉讼这一制度的相关问题进行了研究，以期对我国的消费者权益保护立法与实践有所启示。

本文包含三个部分：前言，正文和结语，正文分为四章：

第一章“消费维权公益诉讼概述”。本章介绍了公益诉讼的概念及历史沿革，消费维权公益诉讼的含义及特征，以及消费维权公益诉讼的法理基础及经济分析。消费维权公益诉讼与传统的普通消费侵权救济诉讼方式相比，有其显著的独有特征，消费维权公益诉讼是一种有经济效益的诉讼。

第二章“建立我国消费维权公益诉讼制度的必要性”。本章首先论述了我国消费者权益保护诉讼的现实状况，指出了现行消费者诉讼制度存在的问题：诉讼主体制度不健全、诉讼效益不经济、举证责任不合理。然后分析了我国建立消费维权公益诉讼制度的必要性：保护消费者公共利益的需要、弥补诉讼救济途径不足的需要、制止侵犯消费者权益行为进一步加剧的需要等。

第三章“国外消费者权益保护诉讼制度研究及借鉴”。本章介绍了美国的消费者集团诉讼和德国的消费者团体诉讼，并分析了我国移植美德两国消费者诉讼模式的可能性，总结了我国消费者诉讼制度需要完善的地方。

第四章“我国建立消费维权公益诉讼制度的可行性及设想”。本章论述了我国建立消费维权公益诉讼制度的可行性并对我国建立消费维权公益诉讼制度提出了几点设想：健全原告资格制度、举证责任合理分担、减轻诉讼费用、建立诉讼集约机制、适当延长诉讼时效等，以期对推动我国建立消费维权公益诉讼制度的出台提供一些思路。

关键词：消费维权；公益诉讼；研究

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Abstract

Only in the country that founded the perfect commonweal litigation system of the consumer rights and benefits, consumer's common benefits could obtain the practical maintenance, then people's universal expense rights and benefits could obtain real realization and a perfect legal framework that consumer rights and benefits are protected could build. Building a perfect commonweal litigation system of the consumer rights and benefits has very great significance. This article explores related question about the commonweal litigation system of the consumer rights and benefits, wish to have the enlightenment to our country's legislation and the practice of consumer rights and interests protection.

This article contains three parts: introduction, body and conclusion, the body is divided into four chapters:

In Part 1. It focuses on the basic theory of the commonweal litigation of the consumer rights and benefits. It explains the concept and historical evolution of the commonweal litigation, the meaning and characteristics of the commonweal litigation of the consumer rights and benefits, and the legal basis and economic analysis of the system. Comparing to the traditional litigation of the consumer rights and benefits, the commonweal litigation of the consumer rights and benefits has its unique characteristics, and it has economic effectiveness.

In Part 2. It focuses on the necessity of setting up the commonweal litigation system of the consumer rights and benefits. First it points out the problem that the current litigation system of consumer rights and benefits has: litigant system has defect, litigation does not benefit in economy, the responsibility of affording proof is not reasonable. Finally it analyze the necessity of setting up the commonweal litigation system of the consumer rights and benefits: the need to protect consumers' common benefits, make up for lack of litigation relief, stop further acts of infringement to the consumers' benefits, and so on.

In Part 3. It focuses on the consumer group litigation of the United States and

the consumer organisation litigation of Germany. It tries to analyze the possibility of learn from the two countries and the system that need to retain and perfect for China.

In Part 4. It focuses on the feasibility of building the commonweal litigation system of the consumer rights and benefits in China, and introduces several points: building a perfect litigant system, sharing the responsibility of affording proof reasonably, reducing the cost of litigation, setting up litigation encouraging mechanism, extending the statute of limitation, and so on. With a view to promoting the proceedings of setting up commonweal litigation system of the consumer rights and benefits in China.

Key Words: Consumer rights; commonweal litigation; Research

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前言

消费活动是经济活动的重要环节之一，对消费者权益的保护关系到市场经济的正常运行和繁荣发展，也关系到整个社会的安定有序和健康发展。

近年来，我国消费侵权纠纷一直居高不下，且频频出现较大影响的大众侵权案件，如问题奶粉案、肯德基麦当劳苏丹红案、欧典地板案、全国牙防组违规认证案等，很多案件不法经营者的行为不但严重侵害了特定消费者的个体权益，而且对不特定消费者群体和社会的正常商业秩序等公共利益造成无可置疑的损害。由于传统消费诉讼制度存在诸多缺陷，受到侵害的消费者及相关公众通过诉讼途径得到救济的比例很低。

随着消费者维权意识的增强，消费者个人为了维护公共利益而提起的诉讼在不断增加，从福建龙岩市邱建东辞职专打标的为 1.2 元的电信资费官司，到南北律师状告铁道部春运期间涨价违反程序；从河南农民葛锐因 0.3 元入厕费与郑州铁路分局打了 2 年多的官司，到贵州游客米龙告世博园票价歧视……，消费维权公益诉讼在我国可以说是方兴未艾，这些反映了消费维权公益诉讼在我国的现实需要。2006 年，中国消费者协会联合全国 45 个城市的消费者权益保护组织共同开展一场声势浩大的“全国城镇消费维权状况”调查，结果显示：消费者对加强新时期消费者权益保护工作期望甚深，近 69% 消费者支持建立消费维权公益诉讼制度。在我国的消费者保护法律制度建设中，成立公益诉讼已经成为一个迫切的需要。

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