
SENATE BILL 5688

State of Washington 52nd Legislature 1991 Regular Session

By Senator Talmadge.

Read first time February 14, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to consumer protection; amending RCW 19.86.010 and
2 19.86.090; reenacting and amending RCW 43.10.067; adding a new chapter
3 to Title 43 RCW; adding a new section to chapter 19.86 RCW; and
4 prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** As used in this chapter:

7 (1) "Commission" means the Washington state consumer protection
8 commission.

9 (2) "Person" includes one or more individuals, partnerships,
10 associations, organizations, corporations, cooperatives, legal
11 representatives, trustees and receivers, or group of persons; it
12 includes any owner, lessee, proprietor, manager, agent, or employee,
13 whether one or more natural persons; and further includes political or
14 civil subdivisions of the state and an agency or instrumentality of the
15 state or of a political or civil subdivision thereof.

1 NEW SECTION. **Sec. 2.** There is created the "Washington state
2 consumer protection commission," which is composed of five members to
3 be appointed by the governor with the advice and consent of the senate,
4 one of whom shall be designated as chairperson by the governor.

5 NEW SECTION. **Sec. 3.** One of the original members of the
6 commission is appointed for a term of one year, one for a term of two
7 years, one for a term of three years, one for a term of four years, one
8 for a term of five years, but their successors shall be appointed for
9 terms of five years each, except that an individual chosen to fill a
10 vacancy shall be appointed only for the unexpired term of the member
11 whom the individual succeeds.

12 A member is eligible for reappointment.

13 A vacancy in the commission shall be filled within thirty days, the
14 remaining members to exercise all powers of the commission.

15 A member of the commission may be removed by the governor for
16 inefficiency, neglect of duty, misconduct or malfeasance in office,
17 after being given a written statement of the charges and an opportunity
18 to be heard.

19 NEW SECTION. **Sec. 4.** Each member of the commission shall be
20 compensated in accordance with RCW 43.03.250 and, while in session or
21 on official business, shall receive reimbursement for travel expenses
22 incurred during such time in accordance with RCW 43.03.050 and
23 43.03.060.

24 NEW SECTION. **Sec. 5.** The commission may employ personnel and
25 take administrative actions deemed appropriate for carrying out the
26 powers and duties of the commission under this chapter. The commission

1 may delegate any of its powers or duties to employees or members of the
2 office staff.

3 NEW SECTION. **Sec. 6.** The commission shall adopt an official
4 seal, which shall be judicially noticed.

5 NEW SECTION. **Sec. 7.** The principal office of the commission
6 shall be in the city of Olympia, but it may meet and exercise any or
7 all of its powers at any other place in the state, and may establish
8 district offices as it deems necessary.

9 NEW SECTION. **Sec. 8.** The commission, each biennium, shall report
10 to the governor, describing the investigations, proceedings, and
11 hearings it has conducted and their outcome, the decisions it has
12 rendered, the recommendations it has issued, and the other work
13 performed by it, and shall make recommendations for further legislation
14 as may appear desirable. The commission may present its reports to the
15 legislature; the commission's reports shall be made available upon
16 request.

17 NEW SECTION. **Sec. 9.** The commission shall formulate policies to
18 effectuate the purposes of this chapter and may make recommendations to
19 agencies and officers of the state or local subdivisions of government
20 in aid of policies and purposes.

21 NEW SECTION. **Sec. 10.** The commission has the following
22 functions, powers, and duties:

23 (1) To appoint an executive secretary and chief examiner, and
24 investigators, examiners, clerks, and other employees and agents as it
25 may deem necessary except attorneys, which are provided by the attorney

1 general under chapter 43.10 RCW, fix their compensation within the
2 limitations provided by law, and prescribe their duties;

3 (2) To obtain upon request and utilize the services of all
4 governmental departments and agencies;

5 (3) To adopt, amend, and rescind suitable rules to carry out the
6 provisions of this chapter, and the policies and practices of the
7 commission;

8 (4) To receive, investigate, and pass upon complaints alleging
9 violations of consumer protection laws;

10 (5) To issue publications and results of investigations and
11 research as in its judgment will tend to promote good will and minimize
12 or eliminate violations of consumer protection laws;

13 (6) To make technical studies as are appropriate to effectuate the
14 purposes and policies of this chapter and to publish and distribute the
15 reports of studies;

16 (7) To cooperate and act jointly or by division of labor with the
17 United States or other states, and with political subdivisions of the
18 state of Washington and their respective consumer agencies to carry out
19 the purposes of this chapter. The commission may perform and be
20 reimbursed for services for these agencies;

21 (8) To foster consumer awareness through seminars, conferences,
22 educational programs, and other activities.

23 NEW SECTION. **Sec. 11.** The commission has power to create
24 advisory agencies and councils, local, regional, or state-wide, as in
25 its judgment will aid in effectuating the purposes of this chapter.
26 The commission may empower them to study consumer issues and to make
27 recommendations to the commission for the development of policies and
28 procedures in general and in specific instances, and for programs of

1 formal and informal education which the commission may recommend to the
2 appropriate state agency.

3 Advisory agencies and councils shall be composed of representative
4 citizens, serving without pay, but with reimbursement for travel
5 expenses in accordance with RCW 43.03.050 and 43.03.060, and the
6 commission may make provision for technical and clerical assistance to
7 agencies and councils and for the expenses of assistance. The
8 commission may use organizations specifically experienced in dealing
9 with consumer issues.

10 NEW SECTION. **Sec. 12.** The commission has power to hold
11 hearings, subpoena witnesses, compel their attendance, administer
12 oaths, take the testimony of a person under oath, and in connection
13 therewith, to require the production for examination of books or papers
14 relating to any matter under investigation or in question before the
15 commission. The commission may make rules as to the issuance of
16 subpoenas by individual members, as to service of complaints,
17 decisions, orders, recommendations, and other process or papers of the
18 commission, its member, agent, or agency, either personally or by
19 registered mail, return receipt requested, or by leaving a copy at the
20 principal office or place of business of the person required to be
21 served. The return post office receipt, when service is by registered
22 mail, shall be proof of service of the same.

23 NEW SECTION. **Sec. 13.** No person shall be excused from
24 attending and testifying or from producing records, correspondence,
25 documents, or other evidence in obedience to the subpoena of the
26 commission or of an individual member, on the ground that the testimony
27 or evidence required of the person may tend to incriminate or subject
28 the person to a penalty or forfeiture, but no person shall be

1 prosecuted or subjected to a penalty or forfeiture for or on account of
2 a transaction, matter, or thing concerning which the person is
3 compelled, after having claimed the privilege against
4 self-incrimination, to testify or produce evidence, except that a
5 person so testifying shall not be exempt from prosecution and
6 punishment for perjury committed in so testifying. Such immunity shall
7 extend only to natural persons so compelled to testify.

8 NEW SECTION. **Sec. 14.** In case of contumacy or refusal to obey
9 a subpoena issued to a person, the superior court of a county within
10 the jurisdiction of which the investigation, proceeding, or hearing is
11 carried on or within the jurisdiction of which the person guilty of
12 contumacy or refusal to obey is found or resides or transacts business,
13 upon application by the commission shall have jurisdiction to issue to
14 the person an order requiring the person to appear before the
15 commission, its member, agent, or agency, there to produce evidence if
16 so ordered, or there to give testimony touching the matter under
17 investigation or in question. A failure to obey an order of the court
18 may be punished by the court as contempt.

19 NEW SECTION. **Sec. 15.** Witnesses before the commission, its
20 member, agent, or agency, shall be paid the same fees and mileage that
21 are paid witnesses in the courts of this state. Witnesses whose
22 depositions are taken and the person taking the same shall be entitled
23 to same fees as are paid for like services in the courts of the state.

24 NEW SECTION. **Sec. 16.** It is unlawful for an employer or other
25 person to discharge, expel, or otherwise discriminate against a person
26 because he or she has opposed a violation of consumer protection laws,

1 or because he or she has reported a violation of consumer protection
2 laws, testified, or assisted in a proceeding under this chapter.

3 NEW SECTION. **Sec. 17.** It is unlawful for a person to aid,
4 abet, encourage, or incite the commission of a violation of consumer
5 protection laws, or to attempt to obstruct or prevent any other person
6 from complying with the provisions of this chapter or any order issued
7 under this chapter.

8 NEW SECTION. **Sec. 18.** When the commission has reason to
9 believe that a person has been or is using an unfair method of
10 competition or unfair or deceptive act or practice in commerce, and if
11 the commission determines that a proceeding by it would be in the
12 public interest, it shall issue and serve upon the person a complaint
13 stating its charges and containing a notice of a hearing upon a day and
14 at a place stated in the notice at least thirty days after the service
15 of the complaint. The person receiving the complaint shall have the
16 right to appear at the place and time stated in the notice and show
17 cause why an order should not be entered by the commission requiring
18 the person to cease and desist from the violation of the law charged in
19 the complaint. A person may make application, and upon good cause
20 shown may be allowed by the commission to intervene and appear in the
21 proceeding by counsel or in person. The testimony in such proceeding
22 shall be reduced to writing and filed in the office of the commission.

23 If after the hearing the commission is of the opinion that the
24 method of competition or the act or practice in question is prohibited
25 by chapter 19.86 RCW or other law of this state, it shall make a report
26 in writing in which it states its findings as to the facts and shall
27 issue and cause to be served on the person an order requiring the
28 person to cease and desist from using the method of competition or the

1 act or practice. Until the expiration of the time allowed for filing
2 a petition for review, if no petition has been duly filed, or, if a
3 petition for review has been filed within the time then until the
4 record in the proceeding has been filed in a superior court of this
5 state as provided in section 19 of this act, the commission may at any
6 time, upon notice and in such manner as it deems proper, modify or set
7 aside, in whole or in part, any report or order made or issued by it
8 under this section.

9 After the expiration of the time allowed for filing a petition for
10 review, if no petition has been duly filed within such time, the
11 commission may at any time, after notice and opportunity for hearing,
12 reopen and alter, modify, or set aside, in whole or in part, any report
13 or order made or issued by it under this section, when in the opinion
14 of the commission conditions of fact or of law have so changed as to
15 require such action or if the public interest requires it. A person
16 may, within sixty days after service upon him, her, or it of a report
17 or order under this section entered after a reopening, obtain a review
18 in the appropriate superior court of this state in the manner provided
19 in this chapter.

20 NEW SECTION. **Sec. 19.** (1) A person required by an order of
21 the commission to cease and desist from using a method of competition
22 or act or practice may obtain a review of the order in the superior
23 court of the county where the method of competition or the act or
24 practice in question was used or where the person resides or carries on
25 business, by filing in the court, within sixty days from the date of
26 the service of the order, a written petition praying that the order of
27 the commission be set aside. A copy of the petition shall be
28 transmitted by the clerk of the court to the commission, and the
29 commission shall file with the court the record in the proceeding.

1 Upon the filing of the petition the court shall have jurisdiction of
2 the proceeding and of the question determined therein concurrently with
3 the commission until the filing of the record and shall have power to
4 make and enter a decree affirming, modifying, or setting aside the
5 order of the commission, and enforcing the same to the extent that the
6 order is affirmed and to issue such writs as are ancillary to its
7 jurisdiction or are necessary in its judgment to prevent injury to the
8 public or to competitors pendente lite. The findings of the commission
9 as to the facts, if supported by evidence, shall be conclusive. To the
10 extent that the order of the commission is affirmed, the court shall
11 issue its own order commanding obedience to the terms of the order of
12 the commission. If either party applies to the court for leave to
13 adduce additional evidence, and shows to the satisfaction of the court
14 that additional evidence is material and that there were reasonable
15 grounds for the failure to adduce such evidence in the proceeding
16 before the commission, the court may order additional evidence to be
17 taken before the commission and to be adduced upon the hearing in the
18 manner and upon the terms and conditions as to the court may seem
19 proper. The commission may modify its findings as to the facts, or
20 make new findings, by reason of the additional evidence so taken, and
21 it shall file the modified or new findings, which, if supported by
22 evidence, shall be conclusive, and its recommendation, if any, for the
23 modification or setting aside of its original order, with the return of
24 the additional evidence. The judgment and decree of the court shall be
25 final, except that the same shall be subject to review by the
26 Washington supreme court upon certiorari, as provided in this chapter.

27 (2) Upon the filing of the record with the superior court the
28 jurisdiction of the superior court to affirm, enforce, modify, or set
29 aside orders of the commission shall be exclusive.

1 Such proceedings in the superior court shall be given precedence
2 over other cases pending, and shall be in every way expedited.

3 NEW SECTION. **Sec. 20.** Complaints, orders, and other processes
4 of the commission under sections 18 through 23 of this act may be
5 served by anyone duly authorized by the commission, either by: (1)
6 Delivering a copy to the person to be served, or to a member of the
7 partnership to be served, or the president, secretary, or other
8 executive officer or a director of the corporation to be served; (2)
9 leaving a copy at the residence or the principal office or place of
10 business of the person, partnership, or corporation; or (3) mailing a
11 copy by registered mail or by certified mail addressed to the person,
12 partnership, or corporation at his, her, or its residence or principal
13 office or place of business. The verified return by the person serving
14 the complaint, order, or other process setting forth the manner of the
15 service shall be proof of the same, and the return post office receipt
16 for the complaint, order, or other process mailed by registered mail or
17 by certified mail shall be proof of service.

18 NEW SECTION. **Sec. 21.** An order of the commission to cease and
19 desist shall become final:

20 (1) Upon the expiration of the time allowed for filing a petition
21 for review, if no petition has been duly filed; but the commission may
22 thereafter modify or set aside its order to the extent provided in
23 section 18 of this act;

24 (2) Upon the expiration of the time allowed for filing a petition
25 for certiorari, if the order of the commission has been affirmed, or
26 the petition for review dismissed by the superior court, and no
27 petition for certiorari has been duly filed;

1 (3) Upon the denial of a petition for certiorari, if the order of
2 the commission has been affirmed or the petition for review dismissed
3 by the court of appeals; or

4 (4) Upon the expiration of thirty days from the date of issuance of
5 the final decision of the Washington supreme court, if the court
6 directs that the order of the commission be affirmed or the petition
7 for review dismissed.

8 NEW SECTION. **Sec. 22.** (1) If the Washington supreme court
9 directs that the order of the commission be modified or set aside, the
10 order of the commission rendered in accordance with the final decision
11 of the Washington supreme court shall become final upon the expiration
12 of thirty days from the time it was rendered, unless within the thirty
13 days either party has instituted proceedings to have the order
14 corrected to accord with the final decision, in which event the order
15 of the commission shall become final when so corrected.

16 (2) If the order of the commission is modified or set aside by the
17 superior court, and if (a) the time allowed for filing a petition for
18 certiorari has expired and no petition has been duly filed, (b) the
19 petition for certiorari has been denied, or (c) the decision of the
20 court has been affirmed by the Washington supreme court, then the order
21 of the commission rendered in accordance with the final decision of the
22 superior court shall become final on the expiration of thirty days from
23 the time the order of the commission was rendered, unless within the
24 thirty days either party has instituted proceedings to have the order
25 corrected so that it will accord with the final decision, in which
26 event the order of the commission shall become final when so corrected.

27 (3) If the Washington supreme court orders a rehearing; or if the
28 case is remanded by the superior court to the commission for a
29 rehearing, and if (a) the time allowed for filing a petition for

1 certiorari has expired, and no petition has been duly filed, (b) the
2 petition for certiorari has been denied, or (c) the decision of the
3 court has been affirmed by the Washington supreme court, then the order
4 of the commission rendered upon the rehearing shall become final in the
5 same manner as though no prior order of the commission had been
6 rendered.

7 NEW SECTION. **Sec. 23.** A person who violates an order of the
8 commission to cease and desist after it has become final, and while the
9 order is in effect, shall forfeit and pay to the state of Washington a
10 civil penalty of not more than five thousand dollars for each
11 violation, which shall accrue to the state and may be recovered in a
12 civil action brought by the state. Each separate violation of an order
13 shall be a separate offense, except that in the case of a violation
14 through continuing failure or neglect to obey a final order of the
15 commission each day of continuance of such failure or neglect shall be
16 deemed a separate offense.

17 NEW SECTION. **Sec. 24.** A person who willfully resists,
18 prevents, impedes, or interferes with the commission or its members or
19 representatives in the performance of duty under this chapter, or who
20 willfully violates an order of the commission, is guilty of a
21 misdemeanor, however procedure for the review of the order shall not be
22 deemed to be such willful conduct.

23 NEW SECTION. **Sec. 25.** The provisions of this chapter shall be
24 construed liberally for the accomplishment of the purposes of this
25 chapter. Nothing contained in this chapter shall be deemed to repeal
26 any of the provisions of any other law of this state relating to
27 consumer protection other than a law which purports to require or

1 permit doing an act which is unlawful under this chapter. Nor shall
2 anything herein contained be construed to deny the right to a person to
3 institute an action or pursue a civil or criminal remedy based upon an
4 alleged violation of a law relating to consumer protection.

5 **Sec. 26.** RCW 43.10.067 and 1987 c 364 s 1 and 1987 c 186 s 7 are
6 each reenacted and amended to read as follows:

7 No officer, director, administrative agency, board, or commission
8 of the state, other than the attorney general, shall employ, appoint or
9 retain in employment any attorney for any administrative body,
10 department, commission, agency, or tribunal or any other person to act
11 as attorney in any legal or quasi legal capacity in the exercise of any
12 of the powers or performance of any of the duties specified by law to
13 be performed by the attorney general, except where it is provided by
14 law to be the duty of the judge of any court or the prosecuting
15 attorney of any county to employ or appoint such persons: PROVIDED,
16 That RCW 43.10.040, and RCW 43.10.065 through 43.10.080 shall not apply
17 to the administration of the judicial council, the commission on
18 judicial conduct, the state law library, the law school of the state
19 university, the administration of the state bar act by the Washington
20 State Bar Association, or the representation of an estate administered
21 by the director of the department of revenue or the director's designee
22 pursuant to chapter 11.28 RCW.

23 The authority granted by chapter 1.08 RCW, RCW 44.28.140, and
24 47.01.061 shall not be affected hereby.

25 This section does not apply to the Washington state consumer
26 protection commission.

27 **Sec. 27.** RCW 19.86.010 and 1961 c 216 s 1 are each amended to read
28 as follows:

1 As used in this chapter:

2 (1) "Person" shall include, where applicable, natural persons,
3 corporations, trusts, unincorporated associations and partnerships.

4 (2) "Trade" and "commerce" shall include the sale of assets or
5 services, and any commerce directly or indirectly affecting the people
6 of the state of Washington.

7 (3) "Assets" shall include any property, tangible or intangible,
8 real, personal, or mixed, and wherever situate, and any other thing of
9 value.

10 (4) "Commission" means the Washington state consumer protection
11 commission created in section 2 of this act.

12 **Sec. 28.** RCW 19.86.090 and 1987 c 202 s 187 are each amended to
13 read as follows:

14 Any person who is injured in his or her business or property by a
15 violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or
16 19.86.060, or any person so injured because he or she refuses to accede
17 to a proposal for an arrangement which, if consummated, would be in
18 violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, may
19 bring a civil action in the superior court to enjoin further
20 violations, to recover the actual damages sustained by him or her, or
21 both, together with the costs of the suit, including a reasonable
22 attorney's fee, and the court may in its discretion, increase the award
23 of damages to an amount not to exceed three times the actual damages
24 sustained: PROVIDED, That such increased damage award for violation of
25 RCW 19.86.020 may not exceed (~~ten~~) twenty-five thousand dollars:
26 PROVIDED FURTHER, That such person may bring a civil action in the
27 district court to recover his or her actual damages, except for damages
28 which exceed the amount specified in RCW 3.66.020, and the costs of the
29 suit, including reasonable attorney's fees. The district court may, in

1 its discretion, increase the award of damages to an amount not more
2 than three times the actual damages sustained, but such increased
3 damage award shall not exceed the amount specified in RCW 3.66.020.
4 For the purpose of this section "person" shall include the counties,
5 municipalities, and all political subdivisions of this state.

6 Whenever the state of Washington is injured by reason of a
7 violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, it may
8 sue therefor in the superior court to recover the actual damages
9 sustained by it and to recover the costs of the suit including a
10 reasonable attorney's fee.

11 Proof of public interest or public injury is not required in an
12 action brought under this section.

13 NEW SECTION. Sec. 29. A violation of a consumer-oriented
14 statute is a violation of this chapter.

15 For the purposes of this section, "consumer-oriented statute" means
16 a statute granting specific legal rights to the consumer of a product,
17 good, or service.

18 NEW SECTION. Sec. 30. If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. Sec. 31. (1) Sections 1 through 25 of this act
23 shall constitute a new chapter in Title 43 RCW.

24 (2) Section 29 of this act is added to chapter 19.86 RCW.