

**2SHB 1850 - H AMD 1348**

By Representative Pollet

1 Beginning on page 7, after line 7, strike all material through  
2 "violation." on page 8, line 3 and insert the following:

3 "(b)(i) If the commission determines on the basis of the hearing  
4 conducted pursuant to (a) of this subsection that a violation has  
5 occurred, the commission shall then determine if a consumer, class of  
6 consumers, business, class of businesses, controller or processor, or  
7 class of controllers or processors suffered injury as a result of the  
8 violation. "Injury" may include harm to competition, consumer  
9 privacy, or unfair business advantages as a result of a violation.

10 (ii) The commission may issue an order that may require the  
11 violator to do any or all of the following:

12 (A) Cease and desist the violation; or

13 (B) Pay an administrative fine of up to \$2,500 for each  
14 violation, or up to \$7,500 for each intentional violation and each  
15 violation involving the personal data of a child.

16 (iii) The commission may also refer the violation to the attorney  
17 general for enforcement of any order or injunction, or to obtain  
18 damages pursuant to the consumer protection act, chapter 19.86 RCW.

19 (iv) In addition to any other remedies provided by law, the  
20 commission's order issued pursuant to this subsection (5)(b) may be  
21 enforced in accordance with chapter 34.05 RCW.

22 (c) If the commission does not take an enforcement action that  
23 includes recovery of damages for injured consumers, businesses, or  
24 other persons or entities, and does not refer the violation to the  
25 attorney general, any injured consumer or entity may proceed with an  
26 action pursuant to chapter 19.86 RCW, including for remedies provided  
27 in RCW 19.86.090, for the injury or injuries to competition and  
28 privacy interests of individuals. The injured consumer or entity must  
29 provide 60 days' written notice prior to bringing an action, as may  
30 be required by rule of the commission or attorney general. If the  
31 commission or attorney general commences an enforcement action in  
32 that period, the injured consumer or entity may not proceed unless  
33 the action is not pursued.

1 (d) (i) After the commission issues a cease and desist order  
2 pursuant to (b) of this subsection, on its own initiative or upon the  
3 complaint of a consumer who initiated the complaint from which that  
4 order originated, the commission may determine whether or not a  
5 violator has complied with that order.

6 (ii) If the commission determines that the violator has not  
7 complied with that order and the consumer suffered actual damages due  
8 to noncompliance, the commission may issue additional enforcement  
9 orders and penalties.

10 (iii) The commission may also refer the violation and  
11 determination of noncompliance to the attorney general for  
12 enforcement.

13 (iv) If the commission or the attorney general does not take  
14 additional enforcement action with regard to continued violations,  
15 any injured person may bring a civil action under the consumer  
16 protection act, chapter 19.86 RCW, to obtain injunctive relief and  
17 for recovery of those actual damages, penalties, and reasonable  
18 attorneys' fees. The injured consumer or entity must provide 60 days'  
19 written notice prior to bringing an action, as may be required by  
20 rule of the commission or attorney general. If the commission or  
21 attorney general commences an enforcement action in that period, the  
22 injured consumer or entity may not proceed unless the action is not  
23 pursued."

EFFECT: Modifies provisions related to the private right of  
action that is currently authorized after the Commission determines  
that a violation has occurred or that the Commission's order has not  
been complied with and:

(1) Removes the requirement that the Commission determine if the  
consumer suffered actual damages as a result of the violation.  
Removes the definition of "actual damages."

(2) Requires the Commission, after the Commission's determination  
that a violation has occurred, to determine if a consumer, class of  
consumers, business, class of businesses, controller or processor, or  
class of controllers or processors suffered injury as a result of the  
violation. Provides that "injury" may include harm to competition or  
consumer privacy, or unfair business advantages as a result of a  
violation.

(3) Authorizes the Commission to refer violations to the Attorney  
General for enforcement under the Consumer Protection Action (CPA),  
in addition to the Commission's existing authority to issue cease and  
desist orders or impose administrative fines.

(4) Authorizes any injured consumer or entity to bring an action  
under the CPA if the Commission does not take an enforcement action  
which includes recovery of damages for injured consumers, businesses,  
or other persons or entities and does not refer the violation to the  
Attorney General. Requires the injured consumer or entity to provide

a 60-day written notice prior to bringing an action if required by rule of the Commission or the Attorney General.

(5) Authorizes the Commission to issue additional enforcement orders and penalties if the Commission determines that its cease and desist order has not been complied with. Authorizes the Commission to refer the violation and the determination of noncompliance to the Attorney General for enforcement.

(6) Authorizes any injured person to bring a civil action under the CPA if the Commission or the Attorney General does not take additional enforcement action with regard to continued violations. Requires the injured consumer or entity to provide a 60-day written notice prior to bringing an action if required by rule of the Commission or the Attorney General.

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