
**Consumer Protection & Business
Committee**

ESSB 5191

Brief Description: Regulating unfair business practices and prohibiting predatory price increases during states of emergency.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Darneille, King, Billig, Carlyle, Conway, Das, Hasegawa, Hunt, Kuderer, Liias, Lovelett, Nguyen, Nobles, Randall, Salomon, Stanford and Wilson, C.; by request of Attorney General).

Brief Summary of Engrossed Substitute Bill

- Prohibits the sale, rental, or offering for sale or rental of certain goods and services at an excessive price during a state of emergency.
- Authorizes the Attorney General to investigate violations of the act, issue cease-and-desist letters, and enforce the act by filing an action in court to obtain injunctive relief and a civil penalty of up to \$25,000 per violation.
- Establishes violations of the act are unfair or deceptive acts in trade or commerce and an unfair method of competition for the purpose of applying the Consumer Protection Act.

Hearing Date: 3/15/21

Staff: John Burzynski (786-7133).

Background:

The Consumer Protection Act (CPA) prohibits unfair or deceptive practices in trade or commerce, and the formation of contracts, combinations, and conspiracies in restraint of trade or commerce, and monopolies.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Persons injured by violations of the CPA may bring a civil action to enjoin further violations and recover actual damages, costs, and attorney's fees. If the state is injured by a violation of the CPA, the state can bring a civil action to recover actual damages, costs, and attorney's fees.

The Attorney General may also bring an action in the name of the state, or as *parens patriae* on behalf of persons residing in the state, against any person to enjoin violations of the CPA and obtain restitution. The prevailing party may, in the discretion of the court, recover costs and attorney's fees. The Attorney General may also seek civil penalties up to the statutorily authorized maximums against any person who violates the CPA. Civil penalties are paid to the state.

Summary of Engrossed Substitute Bill:

Excessive Pricing During a State of Emergency.

During a state of emergency, no person in the affected counties may sell, rent, or offer to sell or rent a covered good or service at an excessive price.

"State of emergency" means an event for which a state of emergency has been declared by the Governor.

Covered goods and services include building materials; consumer food items; goods or services used for emergency cleanup; emergency supplies; gasoline; health care services; housing; medical supplies; repair or reconstruction services; transportation, freight, and storage services; and personal protective equipment. The Governor may modify the list of covered goods based on the context of a particular emergency.

"Excessive price" means a price more than 15 percent greater than the price at which the person sold, rented, or offered the same product or service immediately prior to the state of emergency. If the person did not sell, rent, or offer the product or service immediately prior to the state of emergency, or the price charged prior to the state of emergency cannot be determined, a price is presumed to be excessive if it is more than 15 percent greater than the price of the same product or service offered by other similarly situated sellers prior to the state of emergency. If a state of emergency continues for more than one year, the price on the anniversary of the state of emergency becomes the new baseline price for determining whether a price is excessive.

Exception for Price Increases Attributable to Additional Costs.

A person who increases a price does not violate the act if the price increase is attributable to an additional cost imposed by a supplier of a good or service or to other costs of providing the good or service, including an additional cost for labor or materials used to provide a product or service.

Enforcement by the Attorney General.

The Attorney General is authorized to investigate violations of the act and issue subpoenas and

civil investigation demands to persons believed to be violating the act.

The Attorney General is authorized to issue cease-and-desist letters to restrain and prevent violations of the act. If the recipient does not comply within five days, the Attorney General may file an action in superior court to enforce the ease-and-desist letter. If the court finds the recipient violated the act and failed to comply with the ease-and-desist letter, the court shall enjoin further violations, impose a civil penalty of not more than \$10,000 per violation of the ease-and-desist letter, and award the Attorney General costs and reasonable attorneys' fees.

Violations of the act are subject to a civil penalty of not more than \$25,000 per violation. However, no additional civil penalty may be assessed for the same violation under the Consumer Protection Act.

The Attorney General must produce and maintain on its website translated versions of this act in the top 10 languages spoken in Washington and may provide translations in additional languages. The notice must be made available upon request in printed form.

Enforcement through the Consumer Protection Act.

The Legislature finds the practices covered by this act are matters vitally affecting the public interest. Violations of the act are deemed unfair or deceptive acts in trade or commerce and an unfair method of competition for the purpose of applying the Consumer Protection Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.