

SENATE BILL REPORT

SB 5025

As of January 14, 2021

Title: An act relating to the consumer protection improvement act.

Brief Description: Concerning the consumer protection improvement act.

Sponsors: Senators Rolfes, Billig, Conway, Das, Dhingra, Hasegawa, Hunt, Keiser, Kuderer, Lovelett, Pedersen, Saldaña, Salomon, Stanford, Van De Wege, Wellman and Wilson, C.; by request of Attorney General.

Brief History:

Committee Activity: Law & Justice: 1/14/21.

Brief Summary of Bill

- Increases maximum civil penalties for a violation of the Consumer Protection Act (CPA).
- Enhances penalties that may apply to unlawful acts or practices targeting specific individuals or communities based on demographic characteristics.
- Allows reasonable attorneys' fees to only be awarded when the state's action is found to be frivolous and when a prevailing defendant under the CPA is not a small business.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Shani Bauer (786-7468)

Background: The Consumer Protection Act (CPA), first enacted in 1961, prohibits unfair or deceptive practices in trade or commerce. It includes prohibitions on anti-competitive behavior and restraints on trade. The Legislature has enacted dozens of statutes covering specific areas of the marketplace, violation of which constitute per se violations of the

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CPA. The attorney general and private consumers can bring actions to enforce violations of the CPA.

Maximum civil penalties for violation of the CPA are set out as follows:

- violation of any injunction issued under the CPA—\$25,000
- any contract, trust, or conspiracy in restraint of trade or commerce or monopolization or attempt to monopolize any part of trade or commerce—\$100,000 for an individual or \$500,000 for a corporation; and
- unfair methods of competition and unfair or deceptive acts or practices in trade or commerce—\$2,000 for each violation.

When the attorney general brings an action in the name of the state or on behalf of a private citizen to restrain a person from engaging in unlawful acts under the CPA, the court may award costs, including reasonable attorneys' fees, to the prevailing party.

Limitation of actions applies to any county or municipality in the same manner as actions brought by private parties. With limited exception however, there is no limitation to actions brought in the name or for the benefit of the state.

Summary of Bill: Maximum civil penalties for violation of the CPA are increased as follows:

- violation of any injunction issued under the CPA—\$215,000
- any contract, trust, or conspiracy in restraint of trade or commerce or monopolization or attempt to monopolize any part of trade or commerce—\$260,000 for an individual or \$1,300,000 for a corporation; and
- unfair methods of competition and unfair or deceptive acts or practices in trade or commerce—\$13,350 for each violation.

An enhanced penalty of \$10,000 shall apply to unlawful acts or practices targeting specific individuals or communities based on demographic characteristics, including age; race; national origin; citizenship or immigration status; sex; sexual orientation; presence of any sensory, mental, or physical disability; religion; veteran status; or status as a member of the armed forces.

When the attorney general brings an action in the name of the state or on behalf of a private citizen to restrain a person from engaging in unlawful acts under the CPA, the court may award costs, including reasonable attorneys' fees, to the prevailing party, if the prevailing party is the attorney general or a small business. Reasonable attorneys' fees may only be awarded to a prevailing defendant that is not a small business upon a finding by the court that the state's action was frivolous. Small business is defined as any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, or that is controlled by an entity, with 50 or fewer employees and collects \$1,000,000 or less in gross annual revenue.

There is no time limitation to any state action asserting a claim for civil penalties under the CPA.

This act may be known and cited as the Consumer Protection Improvement Act.

Appropriation: None.

Fiscal Note: Requested on January 12, 2021.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.