

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.
- When a prevailing defendant under the CPA is not a small business, allows reasonable attorneys' fees to only be awarded when the state's action is found to be frivolous

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

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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.

Staff Summary of Public Testimony: PRO: This is attorney general request for legislation providing much needed updates to the amount of civil penalties for CPA actions. Only five states have lower penalties than Washington for consumer violations. Penalties have not increased since the 1970s and antitrust penalties have not increased since 1983. Strong penalties help to protect consumers by acting as a deterrent for bad behavior. Penalties should not be just a cost of doing business. Increased penalties will provide a bigger hammer for the attorney general when protecting Washingtonians.

The per act penalty is not sufficient. For example, the attorney general fought against foreclosure rescue scams where scammers took hundreds of thousands of dollars from homeowners in the state. For one particular perpetrator, the attorney general found 35 violations, with approximately half of those with signed contracts. The \$36,000 penalty did not come close to acting as a deterrent when the perpetrators profited many thousands of dollars. There are similar situations in door to door sales, annuities, and investments where there are not a lot of individual violations, but very high consumer losses.

Older adults are disproportionately impacted by fraudulent activities. Seniors have lost hundreds of thousands of dollars from foreclosure scams. The current law is too weak and should be updated. Enhanced penalties for vulnerable populations is also a positive step. Washington ranks 11th in the United States for overall fraud. This is an important first step, but there is more to do.

CON: The lack of a statute of limitations is a concern. This provides no closure and no time limit on when an action may be brought. If this bill were only an increase in penalties, we do not know that we would object. However, there should be a cap on the number of violations that may be aggregated. Sometimes a single act can result in many violations. These should only lead to one penalty. The lack of a cap makes Washington an outlier with other states. Many states have requirements that defendants must have acted knowingly, willingly, or intentionally.

The CPA is a powerful enforcement tool as it sits. The cost of defending a suit can be as much as \$750,000 to go to trial. There is no reason to single out large corporations from

recovering attorneys' fees and costs if they are the prevailing party. Showing that an action is frivolous is a very high bar.

OTHER: The definition of small business is convoluted. We are asking for a clarifying amendment. Homeowners are especially vulnerable and should be protected. We would like this to specifically apply to HOAs.

Persons Testifying: PRO: Senator Christine Rolfes, Prime Sponsor; Jim King, Independent Business Association; Brittany Gregory, Washington State Office of the Attorney General; Shannon Smith, Washington State Office of the Attorney General; Cathy MacCaul, AARP Washington State.

CON: Zosia Stanley, Washington State Hospital Association; Scott Hazlegrove, Washington State Auto Dealers Association; Robert Battles, Association of Washington Business; Cliff Webster, Carney Badley Spellman.

OTHER: Patrick Connor, National Federation of Independent Business; Raelene Schifano, citizen; Patrick Johansen, Rise Up Washington.

Persons Signed In To Testify But Not Testifying: No one.