

SENATE BILL REPORT

SB 5191

As of February 5, 2021

Title: An act relating to regulating unfair business practices and prohibiting predatory price increases during states of emergency.

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

Sponsors: Senators Darneille, King, Billig, Carlyle, Conway, Das, Hasegawa, Hunt, Kuderer, Lias, Lovelett, Nguyen, Nobles, Randall, Salomon, Stanford and Wilson, C.; by request of Attorney General.

Brief History:

Committee Activity: Law & Justice: 2/08/21.

Brief Summary of Bill

- Prohibits excessive price increases for certain goods and services during a state of emergency.
- Provides investigative and enforcement authority with the attorney general.
- Imposes a civil penalty of no more than \$25,000 per violation.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

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.

Summary of Bill: In the event of a state of emergency no person shall sell, rent, or offer to sell or rent at an excessive price the following goods and services:

- 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 implement this new law by executive order.

A state of emergency means a natural or man made disaster resulting from an epidemic, pandemic, earthquake, flood, fire, riot, storm, volcanic eruption, act of war, threat of war, military action, terrorist attack, or any other event for which a state of emergency has been declared by the Governor of the state of Washington or the President of the United States.

An excessive price means a price more than 10 percent greater than the price at which the person sold, rented, or offered for sale or rent the same product or service immediately prior to the state of emergency. When the price prior to the state of emergency can not be determined, an excessive price shall be presumed where the price is more than 10 percent greater than the price of the same product or service offered for sale or rent by other similarly situated sellers prior to the state of emergency.

However, it is not a violation if the price increase is attributable to a cost imposed by a supplier or attributable to costs for labor or materials.

The attorney general may investigate violations of this new law. The attorney general may issue subpoenas or civil investigative demands under the authority of the consumer protection act where there is a reason to believe a person has violated this new law. The attorney general may issue a cease and desist order to stop violations. If the recipient of a cease and desist order does not comply within five calendar days of receipt of the order, the attorney general may file an action in superior court to enforce the order. The court may enjoin a person from violations and may impose a civil penalty of not more than \$10,000 per violation of the cease and desist order. In a successful action to enforce a cease and desist order the court shall award the attorney general costs of the legal action, reasonable costs of the investigation, and reasonable attorney fees. Additionally, every person who violates this new law must pay a civil penalty of no more than \$25,000 per violation.

A violation of the new law, including a violation of the cease and desist order, is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act. The remedies of this new law are in addition to any other remedies provided by law.

The attorney general must produce and maintain on its website translated versions of this new law in the top ten languages spoken in Washington State, and at the discretion of the attorney general, in other languages.

Appropriation: None.

Fiscal Note: Requested on February 5, 2021.

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

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