

HOUSE BILL REPORT

SHB 2072

As Passed House:
February 8, 2024

Title: An act relating to the antitrust penalties improvement act.

Brief Description: Concerning penalties relating to antitrust actions.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Farivar, Taylor, Ryu, Reeves, Slatter, Reed, Ormsby, Ramel, Macri, Goodman, Fosse, Riccelli and Hackney; by request of Attorney General).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/10/24, 1/19/24 [DPS].

Floor Activity:

Passed House: 2/8/24, 59-37.

Brief Summary of Substitute Bill

- Revises the maximum civil penalties that may be imposed for violations of certain antitrust provisions of the Consumer Protection Act.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Taylor, Chair; Farivar, Vice Chair; Cheney, Entenman, Goodman, Peterson, Thai and Walen.

Minority Report: Without recommendation. Signed by 3 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno.

Staff: Edie Adams (786-7180).

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.

Background:

The Consumer Protection Act (CPA) declares a variety of business practices unlawful. These unlawful practices include: engaging in unfair methods of competition and unfair or deceptive acts or practices in the conduct of commerce; the formation of contracts, combinations, and conspiracies in restraint of trade or commerce; and monopolizing or attempting to monopolize trade.

A person injured by a violation of the CPA may bring a civil action to enjoin further violations and to recover actual damages, costs, and attorney's fees. Recovery may also include an increased award of triple the actual damages, up to a maximum of \$25,000.

The Attorney General may bring an action in the name of the state, or on behalf of persons residing in the state, against any person to enjoin violations of the CPA and to obtain restitution for persons injured by the violation. 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 statutorily authorized maximums against any person who violates the CPA.

A violation of the CPA's prohibitions on monopolies and on contracts, combinations, and conspiracies in restraint of trade or commerce are subject to the following maximum penalties:

- for an individual, a penalty of up to \$180,000; and
- for a person that is not an individual, a penalty of up to \$900,000.

Civil penalties imposed in CPA actions are paid to the state.

Summary of Substitute Bill:

Penalties for violations of the CPA provisions that prohibit monopolies or the formation of contracts, combinations, and conspiracies in restraint of trade or commerce are revised. Every person who violates these provisions must pay a civil penalty of up to three times the unlawful gains or loss avoided as a result of each violation.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill aims to ensure a fair marketplace for businesses and consumers by holding businesses accountable if they are not playing by the rules. The bill updates

penalties for violations of existing antitrust laws, such as price fixing, collusion, and optimization. The current antitrust penalties are inadequate and only allow for a maximum penalty of \$900,000 for corporations that violate the law. This creates a dynamic where violators may see penalties as nominal or simply as a cost of doing business, as compared to the potential profits to be gained by engaging in anti-competitive behavior. Simply punishing antitrust behavior will not effectively address the problem. It is important to prevent future occurrences. The bill allows a penalty of up to three times the unjust gains or loss avoided. Tying the penalty directly to illegal profits will act as a deterrent and is the most effective means of protecting Washington consumers and businesses.

(Opposed) None.

(Other) There is currently an overly litigious use of the CPA by the Attorney General's Office. Providing the Attorney General with more tools to go after businesses will have a chilling effect on businesses wanting to come into Washington. A business may unintentionally engage in conduct that is a violation. The CPA is already available and used regularly and the state should stay with the current law and not make things more combative for businesses operating in Washington.

Persons Testifying: (In support) Representative Darya Farivar, prime sponsor; and Jonathan Mark, Attorney General's Office.

(Other) Eric Pratt.

Persons Signed In To Testify But Not Testifying: None.