

HOUSE BILL REPORT

SSB 5531

As Passed House - Amended:

April 8, 2009

Title: An act relating to modifying provisions relating to consumer protection act violations.

Brief Description: Modifying provisions relating to consumer protection act violations.

Sponsors: Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Regala, Keiser, Kohl-Welles, Kauffman, Kline, Oemig, Pridemore, Tom and Franklin).

Brief History:

Committee Activity:

Judiciary: 3/25/09, 3/26/09 [DPA].

Floor Activity

Passed House - Amended: 4/8/09, 59-39.

Brief Summary of Substitute Bill (As Amended by House)

- Changes the maximum amount of treble damages allowed in a Consumer Protection Act (CPA) claim to \$25,000.
- Changes the manner in which a claimant in a private CPA action can establish that the act or practice is injurious to the public interest.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 6 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Kelley, Kirby, Ormsby and Roberts.

Minority Report: Do not pass. Signed by 4 members: Representatives Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Ross and Warnick.

Staff: Trudes Tango (786-7384)

Background:

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

The Consumer Protection Act (CPA) prohibits unfair or deceptive practices in trade or commerce. The CPA includes prohibitions on anti-competitive behavior and restraints on trade. The Office of the Attorney General may bring an action in the name of the state on behalf of persons injured by a violation of the CPA. A private party may also bring an action to enforce the CPA. The action may be brought in superior or district court.

Private Actions Under the CPA.

To prevail on a private CPA claim, a plaintiff must show: (1) an unfair or deceptive act or practice; (2) the act or practice occurred in trade or commerce; (3) a public interest impact; (4) injury to the plaintiff in his or her business or property; and (5) causation. Courts have developed certain factors to consider, based on the specific facts of the case, to determine whether there is a public interest impact.

Damages Under the CPA.

In an action for a CPA violation, a prevailing plaintiff may recover: (1) the actual damages sustained; (2) the costs of the suit; and (3) a reasonable attorney's fee. Additionally, the court has the discretion to award additional damages in the amount of up to three times the actual damages sustained by the plaintiff. These discretionary treble damages are limited to \$10,000 in superior court. In district court, the limit on treble damages is the district court's civil jurisdictional amount, which is \$75,000.

Summary of Amended Bill:

The maximum amount of treble damages in district and superior court for a violation of the CPA is \$25,000.

In a private action in which an unfair or deceptive act or practice is alleged, a claimant may establish that the act or practice is injurious to the public interest because it:

- violates a statute which incorporates the CPA;
- violates a statute that contains a specific legislative declaration of public interest impact; or
- injured other persons, or had or has the capacity to injure other persons.

The changes made to the CPA apply to all causes of action that accrue on or after the effective date of the act.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: 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 National Consumer Law Center noted two flaws in Washington's CPA; the limited amount of damages and the complicated public interest test. This bill simplifies, streamlines, and makes the public interest test very usable. The majority of other states have punitive damages, but Washington does not. The treble damages in the CPA is supposed to act as a deterrent, but the \$10,000 cap is no longer a deterrent. The CPA provides a remedy for consumers injured by unfair business practices. Deceptive businesses pull consumers away from fair and responsible businesses. The CPA helps to create a strong marketplace, deters deceptive business practices, and rewards good business behavior. Senior citizens are often the victims in consumer transactions and there will likely be an increase in fraudulent schemes, such as foreclosure rescue scams, because of the worsening economy. Fraudulent transactions have a devastating impact on consumers. The CPA is not a "get-rich-quick" plan for lawyers. These types of cases are difficult to bring. The plaintiff is still required to show a demonstration of the potential for repetition, but the case law test creates an insurmountable barrier for consumers. The CPA should be amended to provide that the consumer cannot waive in advance his or her rights under the CPA.

(Opposed) The bill is not an accurate reflection of the public interest impact requirements under the case law. The bill creates a lower standard which is not appropriate, especially in conjunction with raising the treble damages. In a recent case, the court stated that the public interest impact requires a real and substantial potential for repetition. The courts are clear regarding what is required to demonstrate repetition. The court stated that it is the likelihood that additional plaintiffs have been injured in exactly the same fashion that changes a private action to a public interest. Using different language will cause confusion in the courts. The bill would essentially overturn the court's test. The standard in the bill would allow a plaintiff to bring a claim even if the act occurred only once, as long as the plaintiff can show that the act could have occurred again. There are numerous existing statutes and many bills going through the Legislature this session that reference the CPA; they would come under the terms of this bill. Just referencing the CPA statute would satisfy the public interest test. The bill should state whether it applies to acts that have occurred before or after the effective date of the bill. Removing the presumption created by the Office of the Attorney General bringing an action is a good step forward for this bill. The measure of damages of \$25,000 in the House companion bill reflects actual inflation more than the \$50,000 amount in the Senate bill.

Persons Testifying: (In support) Larry Shannon, Washington State Association for Justice; Bruce Neas, Columbia Legal Services; Yuh-line Nioh, Statewide Poverty Action; and David Leon.

(Opposed) Cliff Webster, Liability Reform Coalition; Kris Teff, Association of Washington Business; and Mel Sorensen, Washington Defense Trail Lawyers.

Persons Signed In To Testify But Not Testifying: None.