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**SENATE BILL 5025**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** 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

AN ACT Relating to the consumer protection improvement act; amending RCW 19.86.010, 19.86.080, 19.86.140, and 4.16.160; creating new sections; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature finds that:

(1) Strong consumer protection and antitrust penalties are critical to protecting consumers and ensuring a fair marketplace;

(2) Strong penalties ensure accountability, deter violations, and ensure a level playing field for businesses;

(3) Washington currently does not provide strong penalties for violations of the state's consumer protection act, which prohibits unfair or deceptive acts or practices and unfair methods of competition;

(4) Washington's penalty for unfair or deceptive acts or practices has not kept pace with inflation, and has not increased since 1970;

(5) Washington's penalty for unfair methods of competition has also not kept pace with inflation, and has not increased since 1983;

(6) Consequently, Washington has one of the lowest consumer protection penalties in the United States;

(7) 24 state legislatures representing more than 200 million Americans have passed enhanced penalties for violations that target or impact certain vulnerable populations, but Washington does not have an enhanced penalty;

(8) Many Washingtonians are hurting financially due to the impacts of the global pandemic;

(9) Washington's weak penalties place Washington consumers at greater risk; and

(10) Washingtonians deserve strong consumer protections to ensure entities that illegally, unfairly, and deceptively go after their hard-earned dollars are held accountable.

**Sec.**  RCW 19.86.010 and 1961 c 216 s 1 are each amended to read as follows:

As used in this chapter:

(1) "Assets" shall include any property, tangible or intangible, real, personal, or mixed, and wherever situate, and any other thing of value.

(2) "Person" shall include, where applicable, natural persons, corporations, trusts, unincorporated associations and partnerships.

((~~(2)~~)) (3) "Small business" means 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 dollars or less in gross annual revenues.

(4) "Trade" and "commerce" shall include the sale of assets or services, and any commerce directly or indirectly affecting the people of the state of Washington.

((~~(3) "Assets" shall include any property, tangible or intangible, real, personal, or mixed, and wherever situate, and any other thing of value.~~))

**Sec.**  RCW 19.86.080 and 2007 c 66 s 1 are each amended to read as follows:

(1) The attorney general may bring an action in the name of the state, or as parens patriae on behalf of persons residing in the state, against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful; and the attorney general or a small business, if the prevailing party, may, in the discretion of the court, recover the costs of said action, including ((~~a~~)) reasonable ((~~attorney's fee~~)) attorneys' fees.

(2) Reasonable attorneys' fees may be awarded to a prevailing defendant that is not a small business upon a finding by a court that the state's action was frivolous.

(3) The court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any act herein prohibited or declared to be unlawful.

((~~(3)~~)) (4) Upon a violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, the court may also make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired, regardless of whether such person purchased or transacted for goods or services directly with the defendant or indirectly through resellers. The court shall exclude from the amount of monetary relief awarded in an action pursuant to this subsection any amount that duplicates amounts that have been awarded for the same violation. The court should consider consolidation or coordination with other related actions, to the extent practicable, to avoid duplicate recovery.

**Sec.**  RCW 19.86.140 and 1983 c 288 s 2 are each amended to read as follows:

Every person who shall violate the terms of any injunction issued as in this chapter provided, shall forfeit and pay a civil penalty of not more than ((~~twenty-five thousand~~)) 215,000 dollars.

Every person, other than a corporation, who violates RCW 19.86.030 or 19.86.040 shall pay a civil penalty of not more than ((~~one hundred thousand~~)) 260,000 dollars. Every corporation which violates RCW 19.86.030 or 19.86.040 shall pay a civil penalty of not more than ((~~five hundred thousand~~)) 1,300,000 dollars.

Every person who violates RCW 19.86.020 shall forfeit and pay a civil penalty of not more than ((~~two thousand~~)) 13,350 dollars for each violation: PROVIDED, That nothing in this paragraph shall apply to any radio or television broadcasting station which broadcasts, or to any publisher, printer or distributor of any newspaper, magazine, billboard or other advertising medium who publishes, prints or distributes, advertising in good faith without knowledge of its false, deceptive or misleading character.

For unlawful acts or practices that target or impact specific individuals or communities based on demographic characteristics including, but not limited to, 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, as that term is defined in 10 U.S.C. Sec. 101, an enhanced penalty of 10,000 dollars shall apply.

For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties.

With respect to violations of RCW 19.86.030 and 19.86.040, the attorney general, acting in the name of the state, may seek recovery of such penalties in a civil action.

**Sec.**  RCW 4.16.160 and 1986 c 305 s 701 are each amended to read as follows:

The limitations prescribed in this chapter shall apply to actions brought in the name or for the benefit of any county or other municipality or quasimunicipality of the state, in the same manner as to actions brought by private parties: PROVIDED, That, except as provided in RCW 4.16.310, there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state, including actions asserting a claim for civil penalties under RCW 19.86.140: AND FURTHER PROVIDED, That no previously existing statute of limitations shall be interposed as a defense to any action brought in the name or for the benefit of the state, although such statute may have run and become fully operative as a defense prior to February 27, 1903, nor shall any cause of action against the state be predicated upon such a statute.

NEW SECTION. **Sec.**  This act may be known and cited as the consumer protection improvement act.

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