

HOUSE BILL REPORT

SSB 5025

As Reported by House Committee On:
Consumer Protection & Business

Title: An act relating to the consumer protection improvement act.

Brief Description: Concerning the consumer protection improvement act.

Sponsors: Senate Committee on Law & Justice (originally sponsored 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).

Brief History:

Committee Activity:

Consumer Protection & Business: 3/10/21, 3/17/21 [DPA].

**Brief Summary of Substitute Bill
(As Amended By Committee)**

- Increases the maximum civil penalties for a violation of the Consumer Protection Act.
- Establishes an enhanced civil penalty for unlawful acts or practices targeting specific individuals or communities based on demographic characteristics.
- Provides civil penalty actions are exempt from limitations restricting the time in which the action must be brought by the state.
- Requires the Office of the Attorney General to regularly evaluate civil penalty levels and provide the Legislature with a report.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: Do pass as amended. Signed by 4 members: Representatives Kirby,

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.

Chair; Walen, Vice Chair; Ryu and Santos.

Minority Report: Do not pass. Signed by 1 member: Representative Vick, Ranking Minority Member.

Minority Report: Without recommendation. Signed by 2 members: Representatives Dufault, Assistant Ranking Minority Member; Corry.

Staff: John Burzynski (786-7133).

Background:

The Consumer Protection Act.

The Consumer Protection Act (CPA) prohibits unfair or deceptive practices in trade or commerce, and the formation of contracts, combinations, and conspiracies in restraint of trade or commerce, and monopolies.

Persons injured by violations of the CPA may bring a civil action to enjoin further violations and recover actual damages, costs, and attorney's fees. If the state is injured by a violation of the CPA, the state can bring a civil action to recover actual damages, costs, and attorney's fees.

The Attorney General may also 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 enjoin violations of the CPA and obtain restitution. 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 the statutorily authorized maximums against any person who violates the CPA. Civil penalties are paid to the state.

Civil Penalty Maximums.

The maximum civil penalty for violating the terms of any injunction issued pursuant to the CPA is \$25,000.

The maximum civil penalty for individuals who violate the CPA's prohibition on contracts, combinations, and conspiracies in restraint of trade or commerce, and monopolies is \$100,000.

The maximum civil penalty for non-individuals (e.g., corporations) that violate the CPA's prohibition on contracts, combinations, and conspiracies in restraint of trade or commerce, and monopolies is \$500,000.

The maximum civil penalty for any person who violates the CPA's prohibition on unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce is \$2,000 per violation.

Limitations Period.

Generally, civil actions are subject to statutes of limitation that restrict the time period in which the action may be brought. Washington law exempts most civil actions brought in the name of the state, or for the benefit of the state, from all limitation periods. Actions brought by the Attorney General under the CPA's provisions governing actions brought in name of the state, *parens patriae*, and to seek civil penalties are not expressly subject to or exempted from any limitation period.

In 2016 the Washington Supreme Court held that "when the attorney general enforces antitrust laws under [the name of the state and *parens patriae* provisions of] RCW 19.86.080, he or she acts 'in the name of or for the benefit of ... the state' within the meaning of RCW 4.16.160. In the absence of an express statute to the contrary, the State's action for injunctive relief and restitution pursuant to .080 is exempt from the statute of limitations in RCW 19.86.120 and from the general statutes of limitations in chapter 4.16 RCW." The Court declined to reach the separate issue of whether an action brought by the Attorney General under RCW 19.86.140 seeking civil penalties is subject to a limitation period.

Summary of Amended Bill:

Civil Penalties.

The amended bill:

- increases the maximum civil penalty for violating the terms of any injunction issued pursuant to the CPA to \$125,000;
- increases the maximum civil penalty for individuals who violate the CPA's prohibition on contracts, combinations, and conspiracies in restraint of trade or commerce, and monopolies to \$180,000;
- increases the maximum civil penalty for non-individuals (e.g., corporations) that violate the CPA's prohibition on contracts, combinations, and conspiracies in restraint of trade or commerce, and monopolies to \$900,000; and
- increases the maximum civil penalty for any person who violates the CPA's prohibition on unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce to \$7,500 per violation.

Additionally, commission of 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, is subject to an enhanced penalty of \$5,000.

Limitations Period.

An action asserting a claim for civil penalties under the CPA is expressly identified as an action brought in the name or for the benefit of the state and exempted from limitations

restricting the time in which the action must be brought.

Reporting Requirement.

By December 1, 2022, and every five years thereafter, the Office of the Attorney General must evaluate the efficacy of the maximum civil penalty amounts in deterring violations of the CPA and the difference, if any, between the current penalty amounts and the penalty amounts adjusted for inflation, and provide the Legislature with a report of its findings and any recommendations.

Amended Bill Compared to Substitute Bill:

The amended bill increases the maximum civil penalties authorized by law, but to a lesser extent than the substitute bill would have:

- For a violation of the terms of a CPA injunction, the maximum civil penalty is increased to \$125,000 (instead of \$215,000).
- For an individual violation of the CPA restrictions on contracts, combinations, or conspiracies in restraint of trade or commerce, and monopolies, the maximum civil penalty is increased to \$180,000 (instead of \$260,000).
- For an entity violation of the CPA restrictions on contracts, combinations, or conspiracies in restraint of trade or commerce, and monopolies, the maximum civil penalty is increased to \$900,000 (instead of \$1,300,000).
- For a violation of the CPA restriction on unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce, the maximum civil penalty is increased to \$7,500 (instead of \$13,350).
- The enhanced penalty for unlawful acts or practices that target or impact specific individuals or communities based on demographic characteristics is established at \$5,000 (instead of \$10,000).

Additionally, the amended bill includes a provision requiring the Office of the Attorney General to regularly evaluate the efficacy of the CPA civil penalty amounts and provide the Legislature with a report and any recommendations.

Appropriation: None.

Fiscal Note: Available.

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) Washington currently has some of the weakest consumer protection civil penalties in the nation. Neighboring jurisdictions have higher penalties. It has been

decades since penalty levels were increased. The current civil penalties for unfair or deceptive acts or practices were enacted 51 years ago. The current civil penalties for antitrust violations were last increased 38 years ago. Washington currently has no enhanced penalty for targeting vulnerable consumers, unlike many other states.

Strong penalties will deter violations of the CPA, provide accountability, and level the playing field. Businesses also benefit from the CPA, can bring actions under the act, and will benefit under this legislation. The civil penalty levels in the bill reflect a compromise with the business community.

Older adults are disproportionately affected by the practices prohibited by the CPA, and the impact of such practices can be financially and emotionally devastating. Enhanced penalties should apply to demographic targeting.

(Opposed) None.

(Other) An increase in the civil penalty levels is justified by the number of years that have passed since the penalties were last increased.

Small businesses support the CPA and benefit from its antitrust provisions. The provisions in current law that allow defendants to recover attorney's fees if they prevail is an important protection for small businesses and incentivizes the Attorney General to conduct a thorough investigation before proceeding with an action.

The civil penalty maximums in the striking amendment reflect a compromise and are supported. Without the striking amendment, some parties will oppose the bill. A step up in penalties to reflect 100 percent of the changes in the cost of living since the penalties were adopted would be too substantial an increase in light of current economic conditions; a step up to 50 percent to 70 percent is more appropriate right now. The Legislature can revisit the civil penalty level in a few years and reevaluate.

The CPA should be modified to eliminate exemptions allowing labor unions to engage in unfair or deceptive acts or practices. Some unions are reported to be pressuring and deceiving employees into signing up for membership, making membership irrevocable, withholding political contributions without authorization, and forging member signatures.

Persons Testifying: (In support) Senator Rolfes, prime sponsor; Brittany Gregory and Shannon Smith, Washington State Office of the Attorney General; and Cathy MacCaul, AARP Washington State.

(Other) Maxford Nelsen, Freedom Foundation; Cliff Webster, Liability Reform Coalition; Robert Battles, Association of Washington Businesses; and Jim King, Independent Business Association.

Persons Signed In To Testify But Not Testifying: None.