

SENATE BILL REPORT

SB 5815

As of February 22, 2007

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

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

Sponsors: Senators Weinstein, Kline, Poulsen, Eide, Murray, Pridemore, Oemig and Jacobsen.

Brief History:

Committee Activity: Consumer Protection & Housing: 2/22/07.

SENATE COMMITTEE ON CONSUMER PROTECTION & HOUSING

Staff: Vanessa Firnhaber-Baker (786-7471)

Background: The consumer protection act (CPA) prohibits unfair or deceptive practices in trade or commerce. The act includes prohibitions on anti-competitive behavior and restraints on trade. The act may be enforced by private parties, the state, counties, municipalities, and all political subdivisions of the state.

In a suit for a CPA violation, a prevailing plaintiff is entitled to recover: (1) the actual damages sustained; (2) the costs of the suit; and (3) reasonable attorney's fees. Additionally, a 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 capped at \$10,000 in superior court and \$50,000 in district court.

Treble damages are available to private parties, counties, municipalities, and all political subdivisions of the state.

If the State of Washington prevails on a suit alleging anti-trust violations under the Consumer Protection Act, the State is entitled to recover damages, costs of the suit, and reasonable attorney fees. Treble damages are not available.

Summary of Bill: The bill as referred to committee not considered.

Summary of Proposed Substitute As Heard In Committee (Consumer Protection & Housing): In a suit for a CPA violation, the court has the discretion to award up to \$50,000 in damages for each CPA violation by the defendant in order to advance the interests of the CPA.

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 \$50,000 in damages may be awarded to private parties and to the counties, municipalities, and political subdivisions of the state. The damages are also recoverable by the Attorney General in CPA suits brought on behalf of the state.

If the State prevails on an anti-trust claim under the CPA, the state may recover up to \$50,000 in damages in order to advance the interests of the CPA if the trier of fact determines it to be just.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The damages permitted under the Consumer Protection Act (CPA) are designed to encourage private enforcement of the law by giving citizens an incentive to act as private attorneys general. This bill further encourages this private enforcement by providing additional incentives. Private suits under the CPA benefit the public at large because the Attorney General's office does not have the resources to completely enforce the CPA. Under current law, there is no incentive to bring suit when the actual damages are low because the amount of exemplary damages is tied to the underlying amount of harm and so there is no way to deter businesses from committing these types of violations. This bill allows courts to take into account all the circumstances of a CPA violation and not just the actual damages; for example, the court can consider if the plaintiff was particularly vulnerable or if the defendant's actions were particularly egregious. Also, this discretionary damages scheme permits the court to consider whether there were mitigating circumstances that demonstrate that the defendant should not be penalized with exemplary damages. It is difficult for plaintiffs to prevail on a CPA claim and this bill does not make it any easier to prevail. A vibrant consumer protection act ensures that our market place has healthy, good competition and prevents the market from being brought down to the lowest common denominator. The current statute has two different caps on exemplary damages: \$50,000 for district court and \$10,000 for superior court; this bill eliminates that discrepancy. District courts can and do award treble damages in excess of \$10,000 for CPA violations.

CON: The damages allowed under this bill are more properly termed "punitive damages" rather than statutory damages. Punitive damages are disfavored in the law; the state Supreme Court will only allow them when the Legislature authorizes it. The Legislature has only authorized punitive damages in three instances. There is no discrepancy under the current law between the treble damages available in district court and those available in superior court; \$10,000 is the limit in both courts. The language of the bill is confusing and ambiguous; it is very difficult to tell what "each violation" means. The current law has served consumers and businesses well. The bill does not offer any parity because defendants are not permitted to recover attorney's fees if they prevail.

Persons Testifying: PRO: Betsy Hollingsworth, Seattle University School of Law; Larry Shannon, Washington State Trial Lawyers Association.

CON: Kenton Brine, Property Casualty Insurers Association; Cliff Webster, Liability Reform Coalition.