
Consumer Protection & Business Committee

SSB 5025

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 Summary of Substitute Bill

- Increases 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.

Hearing Date: 3/10/21

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.

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.

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 Substitute Bill:

Civil Penalties.

Increases the maximum civil penalty for violating the terms of any injunction issued pursuant to the CPA to \$215,000.

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 \$260,000.

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 \$1,300,000.

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 \$13,350 per violation.

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 an enhanced penalty of \$10,000.

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.

Appropriation: None.

Fiscal Note: Available.

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