

BILL ANALYSIS

C.S.S.B. 1212
By: Van de Putte
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law permits a court to make additional orders to compensate consumers for actual damages or to restore money or property lost as a result of a defendant's unlawful conduct and allows for civil penalties of up to \$2,000 per violation not to exceed a total of \$10,000. C.S.S.B. 1212 reaffirms that the attorney general has the authority to seek restitution for identifiable individuals in the public interest; increases civil penalty amounts to a maximum of \$20,000 per violation, with no cumulative cap; provides an additional penalty of up to \$250,000 for deceptive acts or practices that target the elderly; includes a list of factors for the court or jury to consider when assessing a civil penalty; and requires notice to the attorney general's consumer protection division of any private class-action lawsuit filed under the Deceptive Trade Practices Act (DTPA).

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Section 17.47, Business & Commerce Code, by amending Subsection (c) and adding Subsections (g) and (h), as follows:

(c) Authorizes the consumer protection division of the attorney general's office, in addition to the request for a temporary restraining order or permanent injunction in a proceeding brought under Subsection (a) of this section, to request, and the trier of fact to award, a civil penalty to be paid to the state in a certain amount of up to \$20,000 per violation. If the act or practice targets an elderly consumer, an additional penalty of up to \$250,000 may be assessed against the defendant.

(g) Adds a list of factors for the court or jury to consider when assessing a penalty including: (1) seriousness of the violation; (2) history of previous violations; (3) amount necessary to deter future violations; (4) the economic effect of the penalty on the defendant; (5) knowledge of the illegality of the act; and (6) any other matter that justice may require. Under the current statute there are no guiding factors when assessing a penalty amount.

(h) Provides that in bringing or participating in an action under this subchapter, the consumer protection division acts in the name of the state and does not establish an attorney-client relationship with another person, including a person to whom the consumer protection division requests that the court award relief.

SECTION 2. Amends Subchapter E, Chapter 17, Business & Commerce Code, by adding Section 17.501, as follows:

Sec. 17.501. CONSUMER PROTECTION DIVISION PARTICIPATION IN CLASS ACTION. (a) Requires a consumer filing an action under Section 17.50 that is to be maintained as a class action to send certain information to the consumer protection division.

(b) Requires the court to abate the action for 60 days if the court finds that notice was not provided to the consumer protection division as required by Subsection (a).

EFFECTIVE DATE

September 1, 2003

COMPARISON OF ORIGINAL TO SUBSTITUTE

The original S.B.1212 included a minimum penalty of \$1,000 per violation. This substitute eliminates the minimum.

The original S.B.1212 included an additional penalty up to \$100,000 per violation if the act or practice targeted an elderly consumer. This substitute caps the additional penalty at \$250,000 total.

The substitute adds a list of factors for the court or jury to consider when assessing a penalty. The original S.B. 1212 did not include guiding factors to consider when assessing a penalty.

Subsection (g) in the original S.B. 1212, Section 1, is now subsection (h) in the substitute version.

The subsection regarding Attorney General intervention in a private class action brought under the DTPA has been eliminated