

By: Van de Putte

S.B. No. 1212

Substitute the following for S.B. No. 1212:

By: Kolkhorst

C.S.S.B. No. 1212

A BILL TO BE ENTITLED

1

AN ACT

2 relating to participation by the attorney general's consumer
3 protection division and the award of civil penalties in an action
4 under the Deceptive Trade Practices-Consumer Protection Act.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 17.47, Business & Commerce Code, is
7 amended by amending Subsection (c) and adding Subsections (g) and
8 (h) to read as follows:

9 (c) In addition to the request for a temporary restraining
10 order, or permanent injunction in a proceeding brought under
11 Subsection (a) of this section, the consumer protection division
12 may request, and the trier of fact may award, a civil penalty to be
13 paid to the state in an amount of:

14 (1) not more than \$20,000 [~~\$2,000~~] per violation [~~, not~~
15 ~~to exceed a total of \$10,000~~]; and [~~or~~]

16 (2) [~~not more than \$10,000 per violation, not to~~
17 ~~exceed a total of \$100,000,~~] if [~~the consumer protection division~~
18 ~~determines that~~] the act or practice that is the subject of the
19 proceeding was calculated to acquire or deprive money or other
20 property from a consumer who was 65 years of age or older when the
21 act or practice occurred, an additional amount of not more than
22 \$250,000.

23 (g) In determining the amount of penalty imposed under
24 Subsection (c), the trier of fact shall consider:

1 (1) the seriousness of the violation, including the
2 nature, circumstances, extent, and gravity of any prohibited act or
3 practice;

4 (2) the history of previous violations;

5 (3) the amount necessary to deter future violations;

6 (4) the economic effect on the person against whom the
7 penalty is to be assessed;

8 (5) knowledge of the illegality of the act or
9 practice; and

10 (6) any other matter that justice may require.

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

16 SECTION 2. Subchapter E, Chapter 17, Business & Commerce
17 Code, is amended by adding Section 17.501 to read as follows:

18 Sec. 17.501. CONSUMER PROTECTION DIVISION PARTICIPATION IN
19 CLASS ACTION. (a) A consumer filing an action under Section 17.50
20 that is to be maintained as a class action shall send to the
21 consumer protection division:

22 (1) a copy of the notice required by Section
23 17.505(a), by registered or certified mail, at the same time the
24 notice is given to the person complained against; and

25 (2) a copy of the petition in the action not later than
26 the earlier of:

27 (A) the 30th day after the date the petition is

1 filed; or

2 (B) the 10th day before the date of any hearing on
3 class certification or a proposed settlement.

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

7 (c) The court, on a showing of good cause, may allow the
8 consumer protection division, as representative of the public, to
9 intervene in an action to which this section applies. The consumer
10 protection division shall file its motion for intervention with the
11 court before which the action is pending and serve a copy of the
12 motion on each party to the action.

13 SECTION 3. This Act takes effect September 1, 2003.

14 SECTION 4. The change in law made by this Act applies only
15 to an action instituted on or after the effective date of this Act.
16 An action instituted before the effective date of this Act is
17 governed by the law in effect when the action was instituted, and
18 the former law is continued in effect for that purpose.