

CHAPTER 216.

[S. B. 55.]

CONSUMER PROTECTION—UNFAIR COMPETITION AND ACTS.

AN ACT relating to consumer protection; defining terms used herein; prohibiting restraints of trade, unfair competition, and unfair or deceptive acts or practices in trade or commerce; and providing for enforcement.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. As used in this act:

Consumer protection act. Definitions.

(1) "Person" shall include, where applicable, natural persons, corporations, trusts, unincorporated associations and partnerships.

(2) "Trade" and "Commerce" shall include the sale of assets or services, and any commerce directly or indirectly affecting the people of the state of Washington.

(3) "Assets" shall include any property, tangible or intangible, real, personal, or mixed, and wherever situate, and any other thing of value.

Unfair competition, acts, unlawful.

SEC. 2. Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

Contracts, combinations, unlawful.

SEC. 3. Every contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce is hereby declared unlawful.

Monopoly as unlawful.

SEC. 4. It shall be unlawful for any person to monopolize, or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of trade or commerce.

Unlawful to contract where effect tends to create monopoly.

SEC. 5. It shall be unlawful for any person to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, or services, whether patented or unpatented, for use, consumption, enjoyment, or resale, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agree-

ment, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodity or services of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for such sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

SEC. 6. It shall be unlawful for any corporation to acquire, directly or indirectly, the whole or any part of the stock or assets of another corporation where the effect of such acquisition may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Stock acquisition unlawful where effect tends to create monopoly—Exceptions.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

In addition to any other remedy provided by this act, the superior court may order any corporation to divest itself of the stock or assets held contrary to this section, in the manner and within the time fixed by said order.

Divestment of stock as penalty.

SEC. 7. The labor of a human being is not a commodity or article of commerce. Nothing contained in this act shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual

Specific organizations excepted under act.

help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof.

Attorney general may use injunctive process.

SEC. 8. The attorney general may bring an action in the name of the state against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful.

Civil actions available—Punitive damages allowable.

SEC. 9. Any person who is injured in his business or property by a violation of sections 3, 4, 5, or 6 of this act, or any person so injured because he refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of sections 3, 4, 5, or 6 of this act, may bring a civil action in the superior court to enjoin further violations, to recover the actual damages sustained by him together with the costs of the suit, including a reasonable attorney's fee, and the court may in its discretion, increase the award of damages to an amount not to exceed three times the actual damages sustained. For the purpose of this section "person" shall include the counties, municipalities, and all political subdivisions of this state.

Whenever the state of Washington is injured by reason of a violation of sections 3, 4, 5, or 6 of this act, it may sue therefor in the superior court to recover the actual damages sustained by it and to recover the costs of the suit including a reasonable attorney's fee.

Assurance of discontinuance—Use—Effect.

SEC. 10. In the enforcement of this act, the attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this act, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston County.

Such assurance of discontinuance shall not be considered an admission of a violation for any purpose.

SEC. 11. (1) Whenever the attorney general believes that any person may be in possession, custody, or control of any original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate, which he believes to be relevant to the subject matter of an investigation of a possible violation of sections 3, 4, 5, or 6 of this act, he may, prior to the institution of a civil proceeding thereon, execute in writing and cause to be served upon such a person, a civil investigative demand requiring such person to produce such documentary material and permit inspection and copying: *Provided*, That this section shall not be applicable to criminal prosecutions.

Civil
investigative
demand. Use.

(2) Each such demand shall:

Contents of
demand.

(a) State the statute and section or sections thereof, the alleged violation of which is under investigation, and the general subject matter of the investigation;

(b) Describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demand;

(c) Prescribe a return date within which the documentary material is to be produced; and

(d) Identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

(3) No such demand shall:

(a) Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this state; or

(b) Require the disclosure of any documentary material which would be privileged, or which for

any other reason would not be required by a subpoena duces tecum issued by a court of this state.

Service of
demand.

(4) Service of any such demand may be made by:

(a) Delivering a duly executed copy thereof to the person to be served, or, if such person is not a natural person, to any officer of the person to be served; or

(b) Delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(c) Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this state, or, if said person has no place of business in this state, to his principal office or place of business.

(5) Documentary material demanded pursuant to the provisions of this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the attorney general.

(6) No documentary material produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by a superior court for good cause shown, be produced for inspection or copying by, nor shall the contents thereof be disclosed to, other than an authorized employee of the attorney general, without the consent of the person who produced such material: *Provided*, That, under such reasonable terms and conditions as the attorney general shall prescribe, the copies of such documentary material shall be available for inspection and copying by the person who produced such material or any duly authorized representative of such person. The attorney general or any assistant attorney general may use such copies of documentary material as he de-

terminated necessary in the enforcement of this act, including presentation before any court: *Provided*, That any such material which contains trade secrets shall not be presented except with the approval of the court in which action is pending after adequate notice to the person furnishing such material.

(7) At any time before the return date specified in the demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside a demand issued pursuant to subsection (1), stating good cause, may be filed in the superior court for Thurston County, or in such other county where the parties reside. A petition, by the person on whom the demand is served, stating good cause, to require the attorney general or any person to perform any duty imposed by the provisions of this section, and all other petitions in connection with a demand, may be filed in the superior court for Thurston County, or in the county where the parties reside.

(8) A person upon whom a demand is served pursuant to the provisions of this section shall comply with the terms thereof unless otherwise provided by order of court issued under subsection (7) hereof. Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigative demand under this section, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, custody, or control of any person which is the subject of any demand duly served upon any person shall be guilty of an offense against the state, and shall be subject, upon conviction, to a fine not to exceed five thousand dollars or to imprisonment for a term of not more than one year, or both.

Unlawful acts
relating to
demand—
Penalty.

SEC. 12. Any action to enforce a claim for damages under section 9 shall be forever barred unless

Statute of
limitations
applicable.

commenced within four years after the cause of action accrues: *Provided*, That whenever any action is brought by the attorney general for a violation of sections 3, 4, 5, or 6, except actions for the recovery of a civil penalty for violation of an injunction or actions under section 9, the running of the foregoing statute of limitations, with respect to every private right of action for damages under section 9 which is based in whole or part on any matter complained of in said action by the attorney general, shall be suspended during the pendency thereof.

Final decree as evidence in other action.

SEC. 13. A final judgment or decree rendered in any action brought under section 8 by the state of Washington to the effect that a defendant has violated sections 3, 4, 5, or 6 shall be prima facie evidence against such defendant in any action brought by any party against such defendant under section 9 of this act as to all matters which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, That this section shall not apply to consent judgments or decrees where the court makes no finding of illegality.

Violation of sections 3 or 4 or injunctions issued thereunder, civil penalty—Enforcement.

SEC. 14. Every person who shall violate sections 3 or 4 of this act or the terms of any injunction issued as in this act provided, shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars.

For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties.

With respect to violations of sections 3 and 4, the attorney general, acting in the name of the state, may seek recovery of such penalties in a civil action.

SEC. 15. Upon petition by the attorney general, the court may, in its discretion, order the dissolution,

or suspension or forfeiture of franchise, of any corporation which shall violate sections 3 or 4 of this act or the terms of any injunction issued as in this act provided.

Corporation franchise action as penalty.

SEC. 16. Personal service of any process in an action under this act may be made upon any person outside the state if such person has engaged in conduct in violation of this act which has had the impact in this state which this act reprehends. Such persons shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185.

Service of process on out-of-state violator.

SEC. 17. Nothing in this act shall apply to actions or transactions otherwise permitted, prohibited or regulated under laws administered by the insurance commissioner of this state, the Washington public service commission, the federal power commission or any other regulatory body or officer acting under statutory authority of this state or the United States.

Act inapplicable, when—RCW 9.01.090 not applicable to act.

RCW 9.01.090 shall not be applicable to the terms of this act and no penalty or remedy shall result from a violation of this act except as expressly provided herein.

SEC. 18. If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby.

Severability.

SEC. 19. This act shall be known and designated as the "Consumer Protection Act."

Short title.

SEC. 20. The legislature hereby declares that the purpose of this act is to complement the body of federal law governing restraints of trade, unfair competition and unfair, deceptive, and fraudulent acts

Purpose.

or practices in order to protect the public and foster fair and honest competition. It is the intent of the legislature that, in construing this act, the courts be guided by the interpretation given by the federal courts to the various federal statutes dealing with the same or similar matters and that in deciding whether conduct restrains or monopolizes trade or commerce or may substantially lessen competition, determination of the relevant market or effective area of competition shall not be limited by the boundaries of the state of Washington. To this end this act shall be liberally construed that its beneficial purposes may be served.

It is, however, the intent of the legislature that this act shall not be construed to prohibit acts or practices which are reasonable in relation to the development and preservation of business or which are not injurious to the public interest, nor shall this act be construed to repeal by implication the Fair Trade Act contained in chapter 19.89 RCW.

Passed the Senate March 9, 1961.

Passed the House, March 9, 1961.

Approved by the Governor March 20, 1961.

CHAPTER 217.

[S. B. 58.]

AID FOR PAROLED OR DISCHARGED PRISONERS.

AN ACT relating to the board of prison terms and paroles; providing a program of aid and assistance for paroled or discharged prisoners; adding seven new sections to chapter 133, Laws of 1955 and to chapter 9.95 RCW; and making an appropriation.

Be it enacted by the Legislature of the State of Washington:

New sections.

SECTION 1. Seven new sections are added to chapter 133, Laws of 1955 and to chapter 9.95 RCW to read as set forth in sections 2 through 8 of this act.