

BILL ANALYSIS

Senate Research Center

S.B. 1166
By: Hegar
State Affairs
4/3/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the Deceptive Trade Practices Act (DTPA) allows the consumer protection division of the Office of the Attorney General to request that a trier of fact impose a civil penalty of not more than \$20,000 per violation, with no cap, on businesses who have conducted false, misleading, or deceptive acts or practices in Texas. Prior to passage of S.B. 1212 in 2003, the statute allowed imposition of a penalty of \$2,000 per violation, capped at a total of \$10,000. These amounts proved to be too low for egregious misconduct. The uncapped \$20,000 per violation penalty may be excessive, particularly if the conduct was inadvertent or did not cause actual damages.

S.B. 1166 provides a penalty of not more than \$10,000 per violation, capped at ten times the actual damages caused by the misconduct. However, if a businesses' action were "intentional," as that term is defined in DTPA, then the penalty that may be assessed remains \$20,000 per violation, with no cap. Consequently, under S.B. 1166, inadvertent conduct is not subject to an excessive penalty, but the attorney general can continue to pursue significant remedies against businesses whose false, misleading, or deceptive conduct was intentional. The bill does not affect the attorney general's power to obtain injunctive relief, to recover damages, and to obtain reimbursement of funds or property wrongfully acquired. The bill also does not amend any aspect of DTPA allowing individuals to file or pursue civil causes of action to recover damages under DTPA.

As proposed, S.B. 1166 amends current law relating to certain procedures and civil penalties under the Deceptive Trade Practices-Consumer Protection Act.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 17.47(c), Business & Commerce Code, as follows:

(c) Requires the amount of a penalty for a violation of the Deceptive Trade Practices Act to be not more than \$10,000 per violation, not to exceed ten times the amount of actual damages, as determined by the trier of fact or not more than \$20,000 per violation, as determined by the trier of fact if the trier of fact determines that the person intentionally committed the violation. Deletes existing text authorizing the consumer protection division, in addition to the request for a temporary restraining order, or permanent injunction in a proceeding brought under Subsection (a) (relating to authorizing the consumer protection division to bring an action against the person to restrain) of this section, to request, and authorizing the trier of fact to award, a civil penalty to be paid to the state in an amount of not more than \$20,000 per violation and, if the act or practice that is the subject of the proceeding was calculated to acquire or deprive money or other property from a consumer who was 65 years of age or older when the act of practice occurred, an additional amount of not more than \$250,000.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2013.