SPONSOR: Sen. Gay & Rep. Griffith & Rep. Bush
Sens. Lockman, Sokola, Wilson; Reps. Baumbach, Heffernan, Osienski

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 256
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 6 AND 29 OF THE DELAWARE CODE RELATING TO CONSUMER PROTECTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2522, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2522. Proceedings brought by the Attorney General.

(a) Whenever it appears to the Attorney General that a person has engaged in, is engaging in or is about to engage in any practice declared by this subchapter to be unlawful, the Attorney General may institute an action in accordance with subchapter II of Chapter 25 of Title 29 in order to enjoin such practices or any acts being done in furtherance thereof. The complaint shall state the nature of the conduct constituting a violation of this subchapter and the relief sought thereunder. ~~Such action shall be brought in a court of competent jurisdiction in the county in which the alleged unlawful practice has been, is, or is about to be performed.~~

(b) If a court of competent jurisdiction finds that any person has wilfully violated this subchapter, upon petition to the court by the Attorney General in the original complaint or made at any time following the court's finding of a wilful violation, the person shall forfeit and pay to the State a civil penalty of not more than $10,000 for each violation. For purposes of this subchapter, a wilful violation occurs when the person committing the violation knew or should have known that the conduct was of the nature prohibited by this subchapter.

(c) If a court of competent jurisdiction finds that any person has violated this subchapter, upon petition to the court by the Attorney General in the original complaint or made at any time following the court's finding of a violation, the court may order the violator to cease and desist the unlawful conduct prospectively, return any moneys obtained unlawfully, and when appropriate freeze designated assets of the violator, order restitution, rescission, or recoupment, or grant other relief appropriate to prevent violators from being unjustly enriched.

Section 2. Amend § 2522, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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§ 2522. Proceedings; judicial remedies.

(a) The Attorney General and the Director shall have standing to seek, on behalf of the State, any remedy in this chapter whenever it appears that a person has violated or is about to violate any provision of Chapter 25 of Title 6, any provision of Chapter 35 of Title 6, Chapters 51 through 67 of Title 25, Chapter 70 of Title 25, §§ 841, 914, 915, and 915A of Title 11, or any other law or regulation that the Division of Consumer Protection is authorized to enforce. The Attorney General or the Director may initiate an investigation, administrative proceeding, or court proceeding to enjoin or sanction the unlawful conduct.

(b) If, in any court proceeding brought under subsection (a) of this section above, any person is found to have committed a wilful violation, the court shall order the violator to pay to the State a civil penalty of not more than $10,000 for each violation.

(c) If, in any court proceeding brought under subsection (a) of this section, any person is found to have committed a violation, the court ~~Where a wilful violation is found, any court entertaining the action~~ may ~~additionally~~ order the violator to cease and desist the unlawful conduct prospectively, return any moneys obtained unlawfully, and when appropriate freeze designated assets of the violator, order restitution, rescission, or recoupment, or grant ~~to seek~~ other relief appropriate to prevent violators from being unjustly enriched.

Section 3. Amend § 2524, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2524. Administrative remedies.

(a) After notice and an administrative hearing, any violation or apparent threat of violation of any provision of Chapter 25 of Title 6, or of any law or regulation the Division of Consumer Protection is charged to enforce, may be sanctioned by the issuance of a cease and desist order as provided in § 2525 of this title.

(b) If, in any administrative proceeding brought under § 2523 of this title, a person is found to have committed a wilful violation, the Director or hearing officer shall order the violator to pay to the State a civil penalty of not more than $5,000 for each violation. ~~After notice and an administrative hearing, any wilful violation of § 2513 or § 2532 of Title 6, or of a lawful cease and desist order of the Director or the hearing officer, may be sanctioned by an administrative penalty up to $5000 per violation, a cease and desist order, and an order of restitution, rescission, recoupment, or other relief appropriate to prevent violators from being unjustly enriched.~~

(c) After the expiration of the 30-day appeal period in which no appeal has been filed, if the violator fails to pay all penalties and restitution or other amounts administratively determined, the Director may file a complaint in any court of competent jurisdiction and obtain a judgment for the amounts that have not been paid. The amounts shall be treated by

the court as an unpaid debt, and the merits of the administrative findings may not be contested.

Section 4. Amend § 2525, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2525. Cease and desist orders.

(a) *By agreement*. — At any time after it appears to the Director that a person has engaged in, is engaging in, or is about to engage in any practice declared to be unlawful by Chapter 25 of Title 6, Chapter 35 of Title 6, Chapters 51 through 67 of Title 25, Chapter 70 of Title 25, or any other laws and regulations which the Division of Consumer Protection is authorized to enforce, the Director may issue a cease and desist order pursuant to an agreement with such person. Each such agreement may provide for:

(1) The immediate discontinuance of each practice set forth in the agreement;

(2) Any such relief, remedies, penalties, fines, or recoveries authorized by this chapter, including restitution, rescission, recoupment, or other relief appropriate to prevent violators from being unjustly enriched; and

(3) Any other action deemed by the Director to be necessary to remedy such practice or practices.

(b) *By administrative order*. — Upon the finding of a violation of any provision of Chapter 25 of Title 6, or of any law or regulation the Division of Consumer Protection is charged to enforce, after notice and a hearing, the designated hearing officer may issue a cease and desist order against the violator. Such cease and desist order may provide for any relief as indicated in subsection (a) of this section above.

(c) *By summary administrative order*. — (1) Where the Director in the Director's discretion perceives an immediate threat to the public interest as a result of a violation of any provision of Chapter 25 of Title 6, or of any law or regulation the Division of Consumer Protection is charged to enforce, the Director may issue a summary cease and desist order ordering an immediate discontinuance of the unlawful practice identified in the order~~.~~, which order must include findings of fact and conclusions of law sufficient to put the respondent on notice of the reasons for the issuance of the order. ~~A complaint detailing the specific allegations against the alleged violator shall accompany any summary cease and desist order served upon the alleged violator~~. Before issuing the summary order, the Director or the Director's designee shall attempt to obtain voluntary compliance from the alleged violator by letter or telephone call.

(2) The ~~complaint and~~ summary cease and desist order shall be served upon the alleged violator by first class and certified mail to the alleged violator's last known address. Service shall be deemed effective upon mailing. Within ~~10~~ 15 business days after the mailing of the ~~complaint and~~ summary order, the alleged violator may request, in writing, a hearing on the charges. A~~n~~ summary order that was not the subject of a hearing may

not be appealed to the Superior Court.

(3) If the alleged violator makes a written request for a hearing, ~~T~~the Division of Consumer Protection shall provide a hearing on the charges ~~in the complaint~~ within ~~10~~ 15 business days after the ~~issuance of the complaint and the cease and desist order~~ receipt by the Director of Consumer Protection of the alleged violator's written request for a hearing. A written ~~opinion and~~ order, containing findings of fact and conclusions of law, shall issue within ~~10~~ 15 business days after the close of the hearing.

(4) If the alleged violator makes a written request for a hearing but none is provided within ~~10~~ 15 business days after the ~~issuance of the order~~ receipt by the Director of Consumer Protection of the written request for a hearing, the summary order shall expire at the end of the ~~tenth~~ fifteenth business day after ~~it was issued~~ the receipt by the Director of Consumer Protection of the written request for a hearing unless the alleged violator waives that alleged violator's right to a prompt hearing by agreeing to a hearing at a later date. If the alleged violator makes a written request for a hearing and one is provided within ~~10~~ 15 business days of the receipt by the Director of Consumer Protection of the written request, but no ~~decision~~ order is issued within ~~10~~ 15 business days after the close of the hearing, the summary order shall expire at the end of the ~~tenth~~ fifteenth business day after the close of the hearing, unless the alleged violator agrees to be bound by the summary order until a later date. An order that has expired in accordance with the restrictions of this paragraph may not be reissued as a summary order.

(5) The order issued after the hearing may provide for any administrative remedy contained in § 2524 of this title. Any person aggrieved by the order issued after the hearing shall have 30 days to appeal the order to the Superior Court, as provided in § 2523(d) of this title.

(6) Any person who wilfully violates a cease and desist order may be sanctioned as provided in § 2524(b) or § 2526 of this title.