

ACT 179

S.B. NO. 2619

A Bill for an Act Relating to Fair Trade Regulations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 480, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§480- Additional civil penalties for consumer frauds committed against elders. (a) If a person commits a violation under section 480-2 which is directed toward, targets, or injures an elder, a court, in addition to any other civil penalty, may impose a civil penalty not to exceed \$10,000 for each violation.

(b) In determining the amount, if any, of civil penalty under subsection (a), the court shall consider the following:

- (1) Whether the person’s conduct was in wilful disregard of the rights of the elder;
- (2) Whether the person knew or should have known that the person’s conduct was directed toward or targeted an elder;
- (3) Whether the elder was more vulnerable to the person’s conduct than other consumers because of age, poor health, infirmity, impaired understanding, restricted mobility, or disability;
- (4) The extent of injury, loss, or damages suffered by the elder; and
- (5) Any other factors the court deems appropriate.

(c) As used in this chapter, “elder” means a consumer who is sixty-two years of age or older.”

SECTION 2. Section 480-13, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any consumer who is injured by any unfair or deceptive act or practice forbidden or declared unlawful by section 480-2:

- (1) May sue for damages sustained by the consumer[,] and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than \$1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable [attorneys] attorneys’ fees together with the costs of suit; [and] provided that where the plaintiff is an elder, the plaintiff, in the alternative, may be awarded a sum not less than \$5,000

or threefold any damages sustained by the plaintiff, whichever sum is the greater, and reasonable attorneys' fees together with the costs of suit. In determining whether to adopt the \$5,000 alternative amount in an award to an elder, the court shall consider the factors set forth in section 480- ; and

- (2) May bring proceedings to enjoin the unlawful practices, and if the decree is for the plaintiff, the plaintiff shall be awarded reasonable [attorneys] attorneys' fees together with the cost of suit.”

SECTION 3. Section 487-14, Hawaii Revised Statutes, is amended to read as follows:

“**§487-14 Restitution.** (a) In any action brought by the director of the office of consumer protection, the court may include in its orders or judgments such provisions as may be necessary to effect restitution. Any person in whose favor restitution is ordered need not accept restitution, but the person's acceptance and full performance of restitution shall bar recovery by the person of any other damages in any action on account of the same acts or practices against the person making restitution.

(b) Whenever a corporation is ordered to pay restitution under subsection (a), the court hearing the action may include in its orders or judgments that the corporation and the individual directors, officers, or agents of the corporation who authorized, ordered, or had done, or participated in any of the unlawful acts and practices which caused, in whole or in part, injuries to any person, are jointly and severally liable for the payment of restitution.

(c) Whenever a domestic or foreign limited liability company is ordered to pay restitution under subsection (a), the court hearing the action may include in its orders or judgments that the limited liability company and the individual members, managers, or agents of the limited liability company who authorized, ordered, had done, or participated in any of the unlawful acts and practices that caused, in whole or in part, injuries to any person, are jointly and severally liable for the payment of restitution.

(d) The office of consumer protection may establish and maintain an account for purposes of holding and disbursing moneys received or recovered by it and which are due consumers as restitution.

(e) The director of the office of consumer protection may assign to a consumer for collection that portion of any judgment awarding restitution to that consumer.

(f) If a person commits a violation of section 480-2 which is directed toward, targets, or injures an elder, the court, in addition to the restitution authorized by section (a), may award the elder an additional sum up to but not to exceed the amount of restitution ordered in subsection (a). In determining the amount, if any, of an award under this subsection, the court shall consider the factors set forth in section 480-_____.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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SECTION 6. This Act shall take effect upon its approval.

(Approved July 15, 1998.)

Note

1. Edited pursuant to HRS §23G-16.5.