

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



Statement of Adam Teitelbaum
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Before the
Committee of the Whole

Public Hearing
Bill 24-658, Consumer Protection Procedures Amendment Act of 2022
November 3, 2022

Introduction

Good afternoon, Chairman Mendelson, Councilmembers, staff and residents of the District. My name is Adam Teitelbaum, and I am the Director of the Office of Consumer Protection at the Office of the Attorney General for the District of Columbia (OAG). I am here to express OAG's support for Bill 24-658. Thank you, Councilmember Pinto, for introducing this bill, which will provide important updates to the District's consumer protection laws.

OAG's Role in Protecting District Consumers

OAG enforces the Consumer Protection Procedures Act (CPPA) to protect District consumers from a wide variety of misconduct by businesses, including deceptive practices, employment abuses, violations of tenants' rights and civil rights, and conduct that harms the environment. Through its enforcement of the CPPA, OAG has delivered more than \$35 million in restitution back to consumers; collected more than \$88 million in payments and penalties; and obtained nearly \$80 million to support victims of the opioid crisis. However, the CPPA should be updated to ensure it effectively deters violations of the law and clarified to avoid the need to litigate the meaning of several its provisions. This bill will provide these important updates and clarifications.

Updates and Clarifications to the CPPA

The bill makes several necessary updates and clarifications to the CPPA. First, it clarifies that businesses that "supply" goods and services are included in the definition of "merchant," regardless of whether there is a formal exchange of money or value. This ensures that businesses providing purportedly "free" services, such as social media companies, cannot engage in deceptive

business practices. This is an important clarification because OAG has expended significant resources litigating this issue. For example, in our lawsuit against Facebook stemming from the Cambridge Analytica data breach, Facebook argued that it was not subject to the CPPA because it provides a “free” service and therefore is not a merchant. Although OAG won that argument, clarifying the definition of “merchant” to make clear that companies that are involved in the marketplace for goods and services, even if they do not directly charge users, are subject to the CPPA will avoid this inefficient expenditure of resources in future litigation.

Next, the bill would expressly prohibit “unlawful” transactions, which would bring District law in line with consumer protection statutes in other states. Currently, the CPPA prohibits only “unfair or deceptive” trade practices. Although OAG has successfully argued that the violation of other laws during a consumer transaction violates the CPPA, those battles have been hard-fought, and this amendment would make the law crystal clear: if you violate any law while doing business with a District consumer, you are subject to liability under the CPPA. This provision would mirror a similar provision contained in California’s consumer protection statute.¹

The bill also would prohibit harmful practices that OAG has observed in the consumer protection space. For example, because there have been several reports of charitable groups or political action committees making misrepresentations in connection with their solicitations, the bill adds a new section to the Charitable Solicitations Act clearly prohibiting misrepresentations in soliciting donations.

In addition, we have seen businesses threaten defamation lawsuits against consumers for filing a consumer protection complaint with OAG. This threat of retaliation has a chilling effect on victims or witnesses who would otherwise come forward. The bill therefore updates the CPPA to prohibit this type of retaliatory conduct—a provision common in other District laws. We would also support adding language to the bill to ensure that the prohibition on retaliatory conduct applies equally with respect to consumer complaints made to the Department of Licensing and Consumer Protection (DLCP). This is critical, as DLCP and OAG have a shared mission of protecting District consumers from all manner of harmful business practices. OAG and DLCP’s predecessor agency, the Department of Consumer and Regulatory Affairs, have a strong history of coordinating closely, including by sharing information about concerning trends and referring matters to each other within our respective areas of expertise. We look forward to continuing that close relationship with the new DLCP, and we will work to find additional ways to collaborate to ensure the CPPA continues to serve the needs of District consumers.

Tools for OAG to Enforce the CPPA

The bill will also clarify OAG’s enforcement and investigative authority and would expressly allow OAG to use commonly accepted investigative and enforcement tools to protect consumers, vulnerable adults, and the elderly.

First, to help ensure the CPPA effectively deters misconduct, the bill would establish minimum penalties for companies found to have violated the CPPA in OAG actions. Because the CPPA does not mandate any penalties, courts do not always order them. In one recent OAG case in which a

¹ See Cal. Bus. & Prof. Code § 17200.

residential property management company was held liable for engaging in deceptive advertising and other harmful conduct, the court did not order the company to pay any penalties. The company only had to pay back the ill-gotten gains, leaving the company no worse off than before it engaged in the deceptive practices. If companies need only return money to consumers they deceive when they get caught—with no penalty—companies are not incentivized to follow the law. This change would align the District’s law with the laws of other states, and with District laws in other contexts, including the False Claims Act—which sets a minimum penalty of \$5,500 for each false or fraudulent claim made to the District. D.C Code § 2-381.02(a).

The bill also would allow a court to order remedies in cases brought by OAG that are designed to prevent additional harms to consumers, such as enjoining a company from engaging in certain practices, freezing the company’s assets, placing it in receivership, or dissolving the company. This would align the CPPA with the remedies permitted under the Nonprofit Corporations Act, D.C Code § 29-412.20(a), and the Tenant Receivership Act, D.C. Code § 42-3651.05.

In addition, the bill would allow the Court to require wrongdoers to pay reasonable costs and fees that OAG incurred during an investigation. This is important to prevent companies from discouraging enforcement by aggressively litigating frivolous arguments. For example, several companies have challenged OAG’s authority to issue investigative subpoenas, despite OAG’s express authority to do so under the CPPA, delaying investigations and causing the District to incur additional costs. Companies will be less likely to engage in wasteful litigation if they know they will have to pay costs when they lose.

The bill also will allow OAG to more effectively work with other law enforcement agencies to prevent misconduct by authorizing us to share confidential documents with other law enforcement agencies. Some companies have asked courts to order OAG not to share documents marked as confidential with other law enforcement agencies, such as attorneys general in other states. The inclusion of this common information-sharing practice in the CPPA would foreclose future attempts to prevent efficient and effective cooperation with other law enforcement agencies.

The bill also authorizes OAG to require subjects of consumer protection and financial exploitation investigations to answer written questions under oath during an investigation. Currently, OAG can subpoena documents in those investigations, but cannot require companies to submit written answers to questions under oath, a common tool in investigations. Allowing OAG to get written answers to questions will allow OAG to quickly conclude investigations that do not lead to further action and will speed up those that result in a lawsuit. OAG already has this authority for investigations under the False Claims Act, D.C. Code § 2-381.01 *et seq.*, and the District’s antitrust laws, § 28-4501. Extending this authority to consumer protection and elder abuse investigations would enable OAG to establish basic facts—like the number of impacted District residents and their contact information—without having to rely on time-consuming and expensive document review.

Clarifying Amendments

Finally, OAG suggests adding two provisions to the bill to further clarify the CPPA. First, OAG suggests adding a provision clarifying that the burden of proof for OAG actions under the CPPA is preponderance of the evidence, which is the default standard for civil cases and is the standard

used in other states. Second, OAG supports an amendment proposed by other consumer advocates that would clarify that those who act on behalf of merchants can be held accountable for violating the CPPA, even if they don't have a direct contractual relationship with a consumer.

Conclusion

In short, this bill would help solve recurring problems in CPPA enforcement and modernize the District's consumer law by adding the tools and authority commonly available to attorneys general in other states. The CPPA is one of the most important tools available to protect District residents from malicious business practices, but these clarifications and updates are needed to support OAG's efforts to protect the public. District residents deserve fair and effective consumer protection laws, and OAG stands ready to build upon its history of protecting the public from those who would deceive them. Thank you, and I welcome any questions.