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Washington's CEMA Amendments Take Effect June 11 – What Consumer-Facing Companies Should Know

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Background: The litigation wave

Recent court decisions have significantly expanded the reach of Washington's Commercial Electronic Mail Act (CEMA), a statute enacted in 1998 in response to dial-up era concerns. The claims driving today's litigation wave follow a recognizable pattern: A merchant sends a promotional email with a subject line announcing that a sale "ends tonight" or "ends today" – and then, days or a week later, announces the sale has been extended. Under the expansive reading of CEMA adopted by the Washington Supreme Court in April 2025, that sequence could give rise to a statutory claim for each email sent, regardless of whether the email body contains qualifying language.

In *Brown v. Old Navy*, 4 Wn. 3d 580 (2025), the court rejected a narrower reading of CEMA, under which the statute reached only false or misleading subject-line information concerning the **commercial nature** of the email. Instead, the court held that CEMA's prohibition on "false or misleading" email subject lines reaches **any** inaccurate subject line claim – including otherwise routine promotional language like "ends tonight," "today only" or "50% off" – regardless of whether the email body clarifies the claim. Separately, CEMA prohibits sending or "assisting" the sending of unconsented commercial text messages.

The result has been a surge in class action filings. With $500 in statutory damages per violation – and no express statutory requirement that the plaintiff prove actual harm or intent on the part of defendants – the potential aggregate exposure from a single campaign often reaches into the tens or hundreds of millions of dollars for large retailers. A CEMA violation is also automatically deemed an "unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying" Washington's Consumer Protection Act (CPA), enabling plaintiffs to sue retailers and other defendants under both statutes. More than 100 CEMA lawsuits were filed in the 12 months following *Brown*, compared to just eight over the preceding two decades.

What the 2026 amendments change

On March 23, 2026, Washington Gov. Bob Ferguson signed HB 2274 into law, providing tailored reforms to CEMA that take effect on June 11, 2026.

- **Reduced statutory damages.** Per-violation statutory damages are reduced from $500 to $100. This is significant, but high-volume senders remain exposed to substantial aggregate liability even at the lower amount. A campaign reaching one million Washington recipients could still generate up to $100 million in statutory exposure.
- **Knowledge requirement.** For email subject line claims, the statute now includes an express requirement that the sender knew, or that knowledge was fairly implied from objective circumstances, that the subject line was false or misleading at the time of sending. In practice, this may provide a defense where a sender can document that a sale's end date was set in good faith and an extension was genuinely unplanned, but it may not help where internal records show that extensions were routine or anticipated. For text message claims, the knowledge standard remains unchanged.
- **Prospective application only.** The amendments apply only to lawsuits "commenced on or after" June 11, 2026.

Geographic reach: Risk is not limited to businesses in

Washington

CEMA has been interpreted to apply to commercial emails and text messages sent to Washington residents, regardless of where the sender is located. Any retailer or consumer-facing business with customers in Washington faces potential exposure, even if it has no physical presence in the state.

Practical risk mitigation: What companies should do now

- **Audit existing campaigns** for subject lines that contain duration, discount or urgency claims that were later qualified or extended.
- **Ensure subject lines are independently accurate** – do not rely on email body text to correct or qualify a claim in the subject line.
- **Document the good-faith basis** for subject line representations at the time each email is sent, including promotional calendars and approval records.
- **Audit third-party and affiliate email partners** to ensure their practices meet the same standards.

We're here to help

Cooley has deep experience advising and defending consumer-facing companies across the country in consumer protection law compliance and class action matters, including email and SMS marketing litigation and CEMA challenges. We can assist with proactive compliance counseling – including auditing your email marketing practices, drafting compliance protocols and structuring defensible documentation frameworks – and with defense of pending or threatened CEMA claims in both state and federal court.

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