

SENATE BILL REPORT

SB 6669

As Reported By Senate Committee On:
Labor, Commerce & Financial Institutions, February 4, 2002

Title: An act relating to applying the consumer protection act to certain actions of real estate salespersons and brokers.

Brief Description: Regarding the consumer protection act.

Sponsors: Senators Thibaudeau and Prentice.

Brief History:

Committee Activity: Labor, Commerce & Financial Institutions: 1/28/02, 2/4/02 [DP].

SENATE COMMITTEE ON LABOR, COMMERCE & FINANCIAL INSTITUTIONS

Majority Report: Do pass.

Signed by Senators Prentice, Chair; Keiser, Vice Chair; Fairley, Franklin, Gardner, Rasmussen and Regala.

Staff: Matthew Adams (786-7784)

Background: Washington's Consumer Protection Act (CPA) protects citizens from harmful business practices. The CPA declares that unfair methods of competition and deceptive trade or commercial practices are unlawful. The CPA does not apply, however, to the Residential Real Property Transfer-Seller's Disclosure Act.

Current law requires a seller of residential real property to complete a disclosure statement and deliver it to the buyer. A seller may hire a licensed real estate agent or broker to assist in the transaction.

To be liable under the seller disclosure statute, an agent or broker must have actual knowledge of an error, inaccuracy, or omission in the disclosure statement. The "actual knowledge" requirement does not encompass facts which the broker should have known.

Summary of Bill: An agent or broker is liable under the CPA if the agent or broker has actual knowledge that the seller's disclosure statement contains any error, inaccuracy, or omission and fails to disclose material information to the buyer or the buyer's agent. The CPA does not apply to all other practices covered by the seller disclosure statute.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill responds to concerns about a recent Washington Supreme Court decision. The court held that the seller disclosure law reflects legislative intent to preclude agents and brokers from liability under the Consumer Protection Act for fraudulent concealment arising directly from their conduct in completing the seller disclosure statement.

Testimony Against: The Consumer Protection Act should not apply to realtors because the seller's disclosure statute imposes duties on sellers. This bill will result in a chilling effect of full disclosure and realtors will not assist in completing forms.

Testified: PRO: Senator Pat Thibaudeau, prime sponsor; CON: Bob Mitchell, WA Assoc. of Realtors; Christopher Osborn, Short, Cressman and Burgess Law Firm; John Demco, The Demco Law Firm.