

SENATE BILL REPORT

SB 5079

As of January 28, 2011

Title: An act relating to the consumer protection act.

Brief Description: Modifying consumer protection act provisions.

Sponsors: Senators Conway, Kline, Pflug, Kohl-Welles, Haugen, Fraser and Chase; by request of Attorney General.

Brief History:

Committee Activity: Judiciary: 1/28/11.

SENATE COMMITTEE ON JUDICIARY

Staff: Lidia Mori (786-7755)

Background: The Consumer Protection Act (CPA) prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce directly or indirectly affecting the people of Washington. The CPA allows a person injured by a violation of the act to bring a private cause of action for damages, and it allows the Attorney General (AG) to bring a CPA action in the name of the state or on behalf of persons residing in the state. In an action brought by the AG, the prevailing party may, in the discretion of the court, recover the costs of the action and reasonable attorneys' fees.

A recent state Supreme Court case found that the CPA does not allow nonresidents of Washington to bring CPA claims for acts occurring outside of Washington. The court looked at the definitions and other statutory language in the CPA and concluded that the Legislature intended to limit the CPA to deceptive acts that affect Washington residents. *Schnall v. AT&T Wireless Services, Inc.*, 168 Wn.2d 125, 142 (2010).

Generally in civil actions, each party is responsible for paying their own costs and attorneys' fees, unless otherwise permitted by statute, contract, or recognized grounds in equity. Washington has an attorneys' fee statute that allows a court in a civil action to award a prevailing party reasonable expenses, including attorneys' fees, if the action brought by the nonprevailing party was frivolous and advanced without reasonable cause. The prevailing party must bring a motion and the court will consider all evidence presented at the time of the motion to determine whether the nonprevailing party's position was frivolous and advanced without reasonable cause. The court's findings must be in writing.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill: The attorneys' fee provision in CPA actions brought by the AG is amended. The AG, rather than a prevailing party, may recover the costs of the action and reasonable attorneys' fees. A prevailing defendant in the action may recover reasonable attorneys' fees if the court finds that the state's action was frivolous.

The definition of "person" in the CPA is amended to include natural persons or entities residing or located outside the state. The definitions of "trade" and "commerce" are amended to include commerce involving a person outside the state conducted by a person residing in the state.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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