

FINAL BILL REPORT

SSB 5059

C 108 L 15
Synopsis as Enacted

Brief Description: Creating the patent troll prevention act.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Frockt, Fain, Pedersen and Chase; by request of Attorney General).

Senate Committee on Law & Justice
House Committee on Judiciary

Background: Patent Law. Patent law is based in the U.S. Constitution and federal law. Article One, Section 8, Clause 8 of the U.S. Constitution secures for limited times to authors and inventors the exclusive right to their respective writings and discoveries. A patent is an intellectual property right granted by government to an inventor to exclude others from making, using, offering for sale, or selling the invention. Generally the term of a new patent is 20 years from the date on which the application for the patent was filed with the U.S. Patent and Trademark Office. A patent filed with the government is open to public disclosure. A patent right is effective only in the U.S. and its territories, and the right may be legally enforced in court to prevent infringement with the exclusive right. There is no legal requirement for a patented invention to actually be developed. A patent right may be sold, assigned, or licensed.

Washington State Consumer Protection Act (CPA). Washington's CPA declares unlawful "unfair competition and unfair acts or deceptive acts or practices" in the conduct of trade or commerce. A person may bring a lawsuit to recover actual damages sustained from an unfair or deceptive act. A court in its discretion may award an injured person treble damages not to exceed \$25,000 including costs of the lawsuit and attorney fees. The Attorney General's Office may enforce CPA to protect consumers from fraud and unfair business practices.

Summary: The Patent Troll Prevention Act is a new chapter in Title 19 RCW. A person may not make assertions of patent infringement in bad faith. An assertion of patent infringement is when a person sends a demand threatening a target with litigation while asserting that the target infringed a patent or that the target should obtain a license in order to avoid litigation. In a lawsuit, a court may consider certain non-exclusive factors as evidence of a good or bad faith assertion. Bad faith factors include whether a demand does not contain specific information such as a patent number, the name and address of the patent owner, and facts relating to specific areas in how the target is infringing the patent, or failing to provide the preceding information upon request.

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.

A violation is an unfair or deceptive act in trade or commerce under CPA. The Attorney General is authorized to bring an action under CPA in the name of the state, or on behalf of persons residing in the state to enforce the provisions.

An assertion of a patent infringement under federal law regarding biological products are not subject to the act.

Votes on Final Passage:

Senate	41	6
House	94	3

Effective: July 24, 2015