

# SENATE BILL REPORT

## SB 5025

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As of January 22, 2009

**Title:** An act relating to statutory costs.

**Brief Description:** Changing provisions regarding statutory costs.

**Sponsors:** Senators Kline, McCaslin and Carrell.

**Brief History:**

**Committee Activity:** Judiciary: 1/21/09.

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### SENATE COMMITTEE ON JUDICIARY

**Staff:** Juliana Roe (786-7438)

**Background:** Statutory costs include filing fees, service of process fees, reasonable expenses incurred in obtaining records, witness fees, and statutory attorneys' fees. The statutory attorneys' fee is generally \$200. However, in district court cases, the prevailing party is not entitled to the statutory attorneys' fee if the judgment is for less than \$50. If the judgment is at least \$50 but less than \$200, the statutory attorneys' fee is \$125.

Some of the statutes relating to costs are designed to encourage early settlement between the parties. A defendant is entitled to costs if, before the action is commenced, the defendant offered to pay the full amount owed to the plaintiff and the plaintiff refused the offer. A defendant is also entitled to costs if, after an action is commenced, the defendant deposits with the court the amount the defendant believes is owed plus costs and the plaintiff refuses to accept it, and subsequently recovers a lesser amount than offered.

**Summary of Bill:** A plaintiff is the prevailing party and, therefore, entitled to costs if, after an action is commenced, the defendant offers and the plaintiff accepts full or partial payment when the plaintiff had given the defendant prior written notice that the defendant could still be liable for costs regardless of full or partial payment. Upon application by the plaintiff, the court is to enter a judgment for those costs, except those costs that are paid before entry of judgment. The same provision applies to cases in district court. However, the plaintiff is not entitled to the statutory attorneys' fees portion of costs unless the amount asked for in the complaint, exclusive of costs, is \$50 or more. In a case where the amount asked for is at least \$50 but less than \$200, the statutory attorneys' fee is \$125. Nothing prevents a party from

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demanding, offering, or accepting payment of statutory costs, or from reducing or waiving statutory costs, before entry of judgment.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: This bill has been around for a couple of years. It encourages people to settle accounts without having to go to trial. It allows for an informal settlement process. There are new concerns raised this year, and we will likely provide a proposed substitute to this bill.

CON: We have concerns with regard to portions of the bill as it stands. We are hopeful we can bring forward an agreed proposed substitute. One specific area of concern relates to when a debtor decides to hold off on paying the debt and then reconsiders and pays the debt right before judgment. That is a scenario that causes stress for both the parties and the court system. Another concern relates to costs. Costs can be imposed for many things including quiet title, will disputes, and divorce actions. In addition, there are many times when it is difficult to figure out which party is the prevailing party. This bill tinkers with a core statute that is frequently used. We should be cautious in making amendments. We may inadvertently do something that discourages settlements or, worse, creates a trap for the unwary. There is also a concern with regard to the term waiver. It is too ambiguous.

**Persons Testifying:** PRO: Kevin Underwood, Washington Collector's Association.

CON: Mel Sorensen, Thomas Crowell, Washington Defense Trial Lawyers.