
SUBSTITUTE SENATE BILL 5079

State of Washington

62nd Legislature

2011 Regular Session

By Senate Judiciary (originally sponsored by Senators Conway, Kline, Pflug, Kohl-Welles, Haugen, Fraser, and Chase; by request of Attorney General)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to the consumer protection act; and amending RCW
2 19.86.080 and 19.86.010.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 19.86.080 and 2007 c 66 s 1 are each amended to read
5 as follows:

6 (1) The attorney general may bring an action in the name of the
7 state, or as parens patriae on behalf of persons residing in the state,
8 against any person to restrain and prevent the doing of any act herein
9 prohibited or declared to be unlawful; and the ((prevailing party))
10 attorney general may, in the discretion of the court, recover the costs
11 of said action including a reasonable ((attorney's)) attorneys' fee.

12 (2) Reasonable attorneys' fees may be awarded to a prevailing
13 defendant upon a finding by the court that the state's action was
14 brought in bad faith. The defendant shall comply with, and the court
15 shall be guided by, the procedural standards of RCW 4.84.185 in
16 determining whether to award reasonable attorneys' fees.

17 (3) The court may make such additional orders or judgments as may
18 be necessary to restore to any person in interest any moneys or

1 property, real or personal, which may have been acquired by means of
2 any act herein prohibited or declared to be unlawful.

3 ~~((3))~~ (4) Upon a violation of RCW 19.86.030, 19.86.040,
4 19.86.050, or 19.86.060, the court may also make such additional orders
5 or judgments as may be necessary to restore to any person in interest
6 any moneys or property, real or personal, which may have been acquired,
7 regardless of whether such person purchased or transacted for goods or
8 services directly with the defendant or indirectly through resellers.
9 The court shall exclude from the amount of monetary relief awarded in
10 an action pursuant to this subsection any amount that duplicates
11 amounts that have been awarded for the same violation. The court
12 should consider consolidation or coordination with other related
13 actions, to the extent practicable, to avoid duplicate recovery.

14 **Sec. 2.** RCW 19.86.010 and 1961 c 216 s 1 are each amended to read
15 as follows:

16 As used in this chapter:

17 (1) "Person" shall include, where applicable, natural persons,
18 corporations, trusts, unincorporated associations and partnerships,
19 regardless of whether the natural persons or entities reside or are
20 located in the state of Washington.

21 (2) "Trade" and "commerce" shall include the sale of assets or
22 services, and any commerce directly or indirectly affecting the people
23 of the state of Washington, and shall include, but not be limited to,
24 commerce involving a person outside the state conducted by a person
25 residing in the state.

26 (3) "Assets" shall include any property, tangible or intangible,
27 real, personal, or mixed, and wherever situate, and any other thing of
28 value.

29 (4) "Bad faith" means implying or involving actual or constructive
30 fraud, or a design to mislead or deceive another, or a neglect or
31 refusal to fulfill some duty or some contractual obligation, not
32 prompted by an honest mistake as to one's rights or duties, but by some
33 interested or sinister motive.

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