
HOUSE BILL 2770

State of Washington

60th Legislature

2008 Regular Session

By Representatives Kenney, Lantz, Upthegrove, Conway, Morrell, Schual-Berke, McIntire, Hudgins, Simpson, and Rolfes; by request of Governor Gregoire

Read first time 01/16/08. Referred to Committee on Insurance, Financial Services & Consumer Protection.

1 AN ACT Relating to homeownership security, responsible mortgage
2 lending, and improving protections for residential mortgage loan
3 consumers; amending RCW 19.146.005 and 61.24.030; reenacting and
4 amending RCW 9.94A.515 and 9A.82.010; adding new sections to chapter
5 19.146 RCW; adding a new section to chapter 30.04 RCW; adding a new
6 section to chapter 31.04 RCW; adding a new section to chapter 31.12
7 RCW; adding a new section to chapter 32.04 RCW; adding a new section to
8 chapter 33.04 RCW; adding a new chapter to Title 19 RCW; and
9 prescribing penalties.

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

11 NEW SECTION. **Sec. 1.** The legislature finds that responsible
12 mortgage lending and homeownership are important to the citizens of the
13 state of Washington. The legislature declares that protecting our
14 residents and our economy from the threat of widespread foreclosures
15 and providing homeowners with access to residential mortgage loans on
16 fair and equitable terms is in the public interest. The legislature
17 further finds that this act is necessary to encourage responsible
18 lending, protect borrowers, and preserve access to credit in the
19 residential real estate lending market.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply

2 throughout this chapter unless the context clearly requires otherwise.

3 (1) "Adjustable rate mortgage" means a borrower's residential
4 mortgage loan where the interest rate is periodically adjusted based on
5 a prescribed index.

6 (2) "Application" means the same as in Regulation X, Real Estate
7 Settlement Procedures, 24 C.F.R. Sec. 3500, as used in an application
8 for a residential mortgage loan.

9 (3) "Borrower" means any applicant who consults with or retains a
10 person subject to this chapter in an effort to seek information about
11 obtaining a loan, regardless of whether that person actually obtains
12 such a loan. Borrower includes a coborrower, cosigner, or guarantor.

13 (4) "Department" means the department of financial institutions.

14 (5) "Director" means the director of the department of financial
15 institutions.

16 (6) "Financial institution" means commercial banks and alien banks
17 subject to regulation under Title 30 RCW, savings banks subject to
18 regulation under Title 32 RCW, savings associations subject to
19 regulation under Title 33 RCW, credit unions subject to regulation
20 under chapter 31.12 RCW, consumer loan companies subject to regulation
21 under chapter 31.04 RCW, and mortgage brokers and lenders subject to
22 regulation under chapter 19.146 RCW.

23 (7) "Fully indexed rate" means the index rate prevailing at the
24 time a residential mortgage loan is made, plus the margin that will
25 apply after the expiration of an introductory interest rate.

26 (8) "Negative amortization" means an increase in the principal
27 balance of a loan caused when the loan agreement allows for scheduled
28 payments that, when aggregated, do not fully amortize the principal
29 balance of the loan.

30 (9) "Person" means individuals, partnerships, associations, limited
31 liability companies, limited liability partnerships, trusts,
32 corporations, and all other legal entities.

33 (10) "Residential mortgage loan" means an extension of credit,
34 including an open-end credit plan, in which the loan is secured by
35 residential real property located in this state used, or intended to be
36 used or occupied, as the principal dwelling of the borrower that is
37 improved by a one-to-four residential unit. It does not include a
38 reverse mortgage or a borrower credit transaction that is secured by

1 rental property. It does not include a bridge loan. It does not
2 include loans to individuals making or acquiring a residential mortgage
3 loan solely with his or her own funds for his or her own investment.
4 For purposes of this subsection, a "bridge loan" is any temporary loan,
5 having a maturity of one year or less, for the purpose of acquisition
6 or construction of a dwelling intended to become the borrower's
7 principal dwelling.

8 (11) "The interagency guidance on nontraditional mortgage product
9 risks" means the guidance document issued in September 2006 by the
10 office of the comptroller of the currency, the board of governors of
11 the federal reserve system, the federal deposit insurance corporation,
12 the office of thrift supervision, and the national credit union
13 administration, and the guidance on nontraditional mortgage product
14 risks released in November 2006 by the conference of state bank
15 supervisors and the American association of residential mortgage
16 regulators.

17 (12) "The statement on subprime mortgage lending" means the
18 guidance document issued in June 2007 by the office of the comptroller
19 of the currency, the board of governors of the federal reserve system,
20 the federal deposit insurance corporation, the office of thrift
21 supervision, and the national credit union administration, and the
22 statement on subprime mortgage lending released in July 2007 by the
23 conference of state bank supervisors, the American association of
24 residential mortgage regulators, and the national association of
25 consumer credit administrators.

26 NEW SECTION. **Sec. 3.** (1) In addition to any other requirements
27 under federal or state law, a residential mortgage loan may not be made
28 unless a disclosure summary of all material terms, as adopted by the
29 department in subsection (2) of this section, is placed on a separate
30 sheet of paper and has been provided by a financial institution to the
31 borrower within three business days following receipt of a loan
32 application. If the terms of the residential mortgage loan change, a
33 new disclosure summary must be provided to the borrower within three
34 days of any such change or at least three days before closing,
35 whichever is earlier.

36 (2) The department shall adopt, by rule, a disclosure summary with
37 a content and format containing simple, plain-language terms that are

1 reasonably understandable to the average person without the aid of
2 third-party resources and shall include, but not be limited to, the
3 following items: Fees and discount points on the loan; interest rates
4 of the loan; broker fees; the broker's yield spread premium; whether
5 the loan contains prepayment penalties; whether the loan contains a
6 balloon payment; whether the property taxes and property tax insurance
7 are escrowed; whether the loan payments will adjust at the fully
8 indexed rates; and other key terms and conditions of the loan.

9 (3) The director may, at his or her discretion, require by rule
10 other information to be included in the disclosure summary if the
11 director determines that it is necessary to protect consumers. The
12 director may by rule prescribe a standard form of disclosure summary to
13 be used by financial institutions in fulfilling the requirements of
14 this section.

15 NEW SECTION. **Sec. 4.** (1) The department shall apply the
16 interagency guidance on nontraditional mortgage product risks and the
17 statement on subprime lending to financial institutions.

18 (2)(a) Financial institutions shall adopt and adhere to internal
19 policies and procedures that are reasonably intended to achieve the
20 objectives set forth in the interagency guidance on nontraditional
21 mortgage product risks and the statement on subprime lending.

22 (b) The department shall adopt rules as required to implement this
23 section.

24 NEW SECTION. **Sec. 5.** A financial institution may not make or
25 facilitate the origination of a residential mortgage loan that includes
26 a prepayment penalty or fee that extends beyond sixty days prior to the
27 initial reset period of an adjustable rate mortgage.

28 NEW SECTION. **Sec. 6.** A financial institution may not make or
29 facilitate a residential mortgage loan that includes any provisions
30 that impose negative amortization on borrowers.

31 NEW SECTION. **Sec. 7.** A person licensed or subject to licensing,
32 or otherwise, subject to regulation, pursuant to chapter 19.146 RCW, or
33 a consumer loan company licensed or subject to licensing under chapter
34 31.04 RCW may not steer, counsel, or direct any potential borrower to

1 accept a loan product with a risk grade less favorable than the risk
2 grade that the borrower would qualify for based on the lender's then
3 current underwriting guidelines, prudently applied, considering the
4 information available to the licensee, including the information
5 provided by the borrower. A licensee or other regulated person has not
6 violated this requirement if the risk grade determination applied to a
7 borrower is reasonably based on the lender's underwriting guidelines
8 for the borrower's appropriate risk grade category.

9 NEW SECTION. **Sec. 8.** The department may adopt rules necessary to
10 implement this chapter.

11 NEW SECTION. **Sec. 9.** It is unlawful for any person in connection
12 with making, brokering, or obtaining a residential mortgage loan to
13 directly or indirectly:

14 (1)(a) Employ any scheme, device, or artifice to defraud or mislead
15 any borrower during the lending process; (b) defraud or mislead any
16 lender, defraud or mislead any person, or engage in any unfair or
17 deceptive practice toward any person in the lending process; or (c)
18 obtain property by fraud or misrepresentation in the lending process;

19 (2) Make any deliberate misstatement, misrepresentation, or
20 omission during the mortgage lending process knowing that it may be
21 relied on by a mortgage lender, borrower, or any other party to the
22 mortgage lending process;

23 (3) Use or facilitate the use of any deliberate misstatement,
24 misrepresentation, or omission, knowing the same to contain a
25 misstatement, misrepresentation, or omission, during the mortgage
26 lending process with the intention that it be relied on by a mortgage
27 lender, borrower, or any other party to the mortgage lending process;
28 or

29 (4) Receive any proceeds or anything of value in connection with a
30 residential mortgage closing that such person knew resulted from a
31 violation of subsection (1), (2), or (3) of this section.

32 NEW SECTION. **Sec. 10.** (1) Any person who knowingly violates
33 section 9 of this act or who knowingly aids or abets in the violation
34 of section 9 of this act is guilty of a class B felony punishable under

1 RCW 9A.20.021(1)(b). Mortgage fraud is a serious level III offense per
2 chapter 9.94A RCW.

3 (2) Any person who knowingly alters, destroys, shreds, mutilates,
4 or conceals a record, document, or other object, or attempts to do so,
5 with the intent to impair the investigation and prosecution of this
6 crime is guilty of a class B felony punishable under RCW
7 9A.20.021(1)(b).

8 (3) No information may be returned more than (a) five years after
9 the violation, or (b) three years after the actual discovery of the
10 violation, whichever date of limitation is later.

11 (4) Any person who violates this chapter is subject to civil
12 forfeiture statutes.

13 NEW SECTION. **Sec. 11.** (1)(a) It is unlawful for a person who has
14 knowingly received any of the proceeds derived, directly or indirectly,
15 from a pattern of mortgage fraud activity to use or invest, whether
16 directly or indirectly, any part of the proceeds, or the proceeds
17 derived from the investment or use thereof, in the acquisition of any
18 title to, or any right, interest, or equity in, real property or in the
19 establishment or operation of any enterprise.

20 (b) A violation of this subsection is a class B felony.

21 (2)(a) It is unlawful for a person knowingly to acquire or
22 maintain, directly or indirectly, any interest in or control of any
23 enterprise or real property through a pattern of mortgage fraud.

24 (b) A violation of this subsection is a class B felony.

25 (3)(a) It is unlawful for a person knowingly to conspire or attempt
26 to violate subsection (1) or (2) of this section.

27 (b) A violation of this subsection is a class C felony.

28 NEW SECTION. **Sec. 12.** Any penalty imposed for violation of this
29 chapter is in addition to, and not in lieu of, any civil or
30 administrative penalty or sanction otherwise authorized by law.

31 NEW SECTION. **Sec. 13.** The director or the director's designee
32 may, at his or her discretion, take such actions as provided for in
33 Titles 30, 32, and 33 RCW, and chapters 31.12, 31.04, and 19.146 RCW,
34 to enforce, investigate, or examine persons covered by this chapter.

1 NEW SECTION. **Sec. 14.** A new section is added to chapter 19.146
2 RCW to read as follows:

3 The director or the director's designee may take such action as
4 provided for in this chapter to enforce, investigate, or examine
5 persons covered by chapter 19.--- RCW (sections 1 through 13 of this
6 act).

7 NEW SECTION. **Sec. 15.** A new section is added to chapter 30.04 RCW
8 to read as follows:

9 The director or the director's designee may take such action as
10 provided for in this title to enforce, investigate, or examine persons
11 covered by chapter 19.--- RCW (sections 1 through 13 of this act).

12 NEW SECTION. **Sec. 16.** A new section is added to chapter 31.04 RCW
13 to read as follows:

14 The director or the director's designee may take such action as
15 provided for in this chapter to enforce, investigate, or examine
16 persons covered by chapter 19.--- RCW (sections 1 through 13 of this
17 act).

18 NEW SECTION. **Sec. 17.** A new section is added to chapter 31.12 RCW
19 to read as follows:

20 The director or the director's designee may take such action as
21 provided for in this chapter to enforce, investigate, or examine
22 persons covered by chapter 19.--- RCW (sections 1 through 13 of this
23 act).

24 NEW SECTION. **Sec. 18.** A new section is added to chapter 32.04 RCW
25 to read as follows:

26 The director or the director's designee may take such action as
27 provided for in this title to enforce, investigate, or examine persons
28 covered by chapter 19.--- RCW (sections 1 through 13 of this act).

29 NEW SECTION. **Sec. 19.** A new section is added to chapter 33.04 RCW
30 to read as follows:

31 The director or the director's designee may take such action as
32 provided for in this title to enforce, investigate, or examine persons
33 covered by chapter 19.--- RCW (sections 1 through 13 of this act).

1 NEW SECTION. **Sec. 20.** A new section is added to chapter 19.146
2 RCW to read as follows:

3 The activities of a mortgage broker affect the public interest, and
4 require that all actions of mortgage brokers, designated brokers, loan
5 originators, and persons working with or for mortgage brokers be
6 actuated by good faith, abstain from deception, and practice honesty
7 and equity in all matters related to their profession. The duty of
8 preserving the integrity of the mortgage broker business rests upon the
9 mortgage broker, designated broker, loan originator, and persons
10 working with or for mortgage brokers.

11 **Sec. 21.** RCW 19.146.005 and 2006 c 19 s 1 are each amended to read
12 as follows:

13 The legislature finds and declares that the brokering of
14 residential real estate loans substantially affects the public
15 interest, requiring that all actions in mortgage lending be actuated by
16 good faith, and that mortgage brokers, designated brokers, loan
17 originators, and other persons working with or for mortgage brokers
18 abstain from deception, and practice honesty and equity in all matters
19 relating to their profession. The practices of mortgage brokers and
20 loan originators have had significant impact on the citizens of the
21 state and the banking and real estate industries. It is the intent of
22 the legislature to establish a state system of licensure in addition to
23 rules of practice and conduct of mortgage brokers and loan originators
24 to promote honesty and fair dealing with citizens and to preserve
25 public confidence in the lending and real estate community.

26 **Sec. 22.** RCW 61.24.030 and 1998 c 295 s 4 are each amended to read
27 as follows:

- 28 It shall be requisite to a trustee's sale:
- 29 (1) That the deed of trust contains a power of sale;
 - 30 (2) That the deed of trust contains a statement that the real
31 property conveyed is not used principally for agricultural purposes;
32 provided, if the statement is false on the date the deed of trust was
33 granted or amended to include that statement, and false on the date of
34 the trustee's sale, then the deed of trust must be foreclosed
35 judicially. Real property is used for agricultural purposes if it is
36 used in an operation that produces crops, livestock, or aquatic goods;

1 (3) That a default has occurred in the obligation secured or a
2 covenant of the grantor, which by the terms of the deed of trust makes
3 operative the power to sell;

4 (4) That no action commenced by the beneficiary of the deed of
5 trust is now pending to seek satisfaction of an obligation secured by
6 the deed of trust in any court by reason of the grantor's default on
7 the obligation secured: PROVIDED, That (a) the seeking of the
8 appointment of a receiver shall not constitute an action for purposes
9 of this chapter; and (b) if a receiver is appointed, the grantor shall
10 be entitled to any rents or profits derived from property subject to a
11 homestead as defined in RCW 6.13.010. If the deed of trust was granted
12 to secure a commercial loan, this subsection shall not apply to actions
13 brought to enforce any other lien or security interest granted to
14 secure the obligation secured by the deed of trust being foreclosed;

15 (5) That the deed of trust has been recorded in each county in
16 which the land or some part thereof is situated;

17 (6) That prior to the date of the notice of trustee's sale and
18 continuing thereafter through the date of the trustee's sale, the
19 trustee must have a street address in this state where personal service
20 of process may be made; and

21 (7) That at least thirty days before notice of sale shall be
22 recorded, transmitted or served, written notice of default shall be
23 transmitted by the beneficiary or trustee to the borrower and grantor
24 at their last known addresses by both first class and either registered
25 or certified mail, return receipt requested, and the beneficiary or
26 trustee shall cause to be posted in a conspicuous place on the
27 premises, a copy of the notice, or personally served on the borrower
28 and grantor. This notice shall contain the following information:

29 (a) A description of the property which is then subject to the deed
30 of trust;

31 (b) Each county in which the deed of trust is recorded and the
32 document number given to the deed of trust upon recording by each
33 county auditor or recording officer;

34 (c) That the beneficiary has declared the borrower or grantor to be
35 in default, and a concise statement of the default alleged;

36 (d) An itemized account of the amount or amounts in arrears if the
37 default alleged is failure to make payments;

1 (e) An itemized account of all other specific charges, costs, or
2 fees that the borrower, grantor, or any guarantor is or may be obliged
3 to pay to reinstate the deed of trust before the recording of the
4 notice of sale;

5 (f) The total of (d) and (e) of this subsection, designated clearly
6 and conspicuously as the amount necessary to reinstate the note and
7 deed of trust before the recording of the notice of sale;

8 (g) That failure to cure the alleged default within thirty days of
9 the date of mailing of the notice, or if personally served, within
10 thirty days of the date of personal service thereof, may lead to
11 recordation, transmittal, and publication of a notice of sale, and that
12 the property described in (a) of this subsection may be sold at public
13 auction at a date no less than one hundred twenty days in the future;

14 (h) That the effect of the recordation, transmittal, and
15 publication of a notice of sale will be to (i) increase the costs and
16 fees and (ii) publicize the default and advertise the grantor's
17 property for sale;

18 (i) That the effect of the sale of the grantor's property by the
19 trustee will be to deprive the grantor of all their interest in the
20 property described in (a) of this subsection; (~~and~~)

21 (j) That the borrower, grantor, and any guarantor has recourse to
22 the courts pursuant to RCW 61.24.130 to contest the alleged default on
23 any proper ground; and

24 (k) In the event the property secured by the deed of trust is
25 owner-occupied residential property, a statement, prominently set out
26 at the beginning of the notice, which shall state as follows:

27 "You should take care to protect your interest in your home. This
28 notice of default (your failure to pay) is the first step in a process
29 that could result in you losing your home. You should carefully review
30 your options. For example:

31 Can you pay and stop the foreclosure process?

32 Do you dispute the failure to pay?

33 Can you sell your property to preserve your equity?

34 Are you able to refinance this loan with a new loan from another
35 lender with payments, terms, and fees that are more affordable?

36 Do you qualify for any government or private homeowner assistance
37 programs?

1 Do you know if filing for bankruptcy is an option? What are the
2 pros and cons of doing so?

3 Do not ignore this notice; because if you do nothing, you could
4 lose your home at a foreclosure sale. (No foreclosure sale can be held
5 any sooner than ninety days after a notice of sale is issued and a
6 notice of sale cannot be issued until thirty days after this notice.)
7 Also, if you do nothing to pay what you owe, be careful of people who
8 claim they can help you. There are many individuals and businesses
9 that watch for the notices of sale in order to unfairly profit as a
10 result of borrowers' distress.

11 You may feel you need help understanding what to do. There are a
12 number of professional resources available, including home loan
13 counselors and attorneys, who may assist you. Many legal services are
14 lower-cost or even free, depending on your ability to pay. If you
15 desire legal help in understanding your options or handling this
16 default, you may obtain a referral (at no charge) by contacting the
17 county bar association in the county where your home is located. These
18 legal referral services also provide information about lower-cost or
19 free legal services for those who qualify."

20 **Sec. 23.** RCW 9.94A.515 and 2007 c 368 s 14 and 2007 c 199 s 10 are
21 each reenacted and amended to read as follows:

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TABLE 2	
CRIMES INCLUDED WITHIN	
EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1)) Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050) Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2))

1 Malicious placement of an explosive 1
2 (RCW 70.74.270(1))
3 XII Assault 1 (RCW 9A.36.011)
4 Assault of a Child 1 (RCW 9A.36.120)
5 Malicious placement of an imitation
6 device 1 (RCW 70.74.272(1)(a))
7 Rape 1 (RCW 9A.44.040)
8 Rape of a Child 1 (RCW 9A.44.073)
9 Trafficking 2 (RCW 9A.40.100(2))
10 XI Manslaughter 1 (RCW 9A.32.060)
11 Rape 2 (RCW 9A.44.050)
12 Rape of a Child 2 (RCW 9A.44.076)
13 X Child Molestation 1 (RCW 9A.44.083)
14 Indecent Liberties (with forcible
15 compulsion) (RCW
16 9A.44.100(1)(a))
17 Kidnapping 1 (RCW 9A.40.020)
18 Leading Organized Crime (RCW
19 9A.82.060(1)(a))
20 Malicious explosion 3 (RCW
21 70.74.280(3))
22 Sexually Violent Predator Escape
23 (RCW 9A.76.115)
24 IX Abandonment of Dependent Person 1
25 (RCW 9A.42.060)
26 Assault of a Child 2 (RCW 9A.36.130)
27 Criminal Mistreatment 1 (RCW
28 9A.42.020)
29 Explosive devices prohibited (RCW
30 70.74.180)
31 Hit and Run--Death (RCW
32 46.52.020(4)(a))
33 Homicide by Watercraft, by being
34 under the influence of intoxicating
35 liquor or any drug (RCW
36 79A.60.050)

1 Inciting Criminal Profiteering (RCW
2 9A.82.060(1)(b))
3 Malicious placement of an explosive 2
4 (RCW 70.74.270(2))
5 Robbery 1 (RCW 9A.56.200)
6 Sexual Exploitation (RCW 9.68A.040)
7 Vehicular Homicide, by being under
8 the influence of intoxicating liquor
9 or any drug (RCW 46.61.520)
10 VIII Arson 1 (RCW 9A.48.020)
11 Homicide by Watercraft, by the
12 operation of any vessel in a
13 reckless manner (RCW
14 79A.60.050)
15 Manslaughter 2 (RCW 9A.32.070)
16 Promoting Commercial Sexual Abuse
17 of a Minor (RCW 9.68A.101)
18 Promoting Prostitution 1 (RCW
19 9A.88.070)
20 Theft of Ammonia (RCW 69.55.010)
21 Vehicular Homicide, by the operation
22 of any vehicle in a reckless manner
23 (RCW 46.61.520)
24 VII Burglary 1 (RCW 9A.52.020)
25 Child Molestation 2 (RCW 9A.44.086)
26 Civil Disorder Training (RCW
27 9A.48.120)
28 Dealing in depictions of minor engaged
29 in sexually explicit conduct (RCW
30 9.68A.050)
31 Drive-by Shooting (RCW 9A.36.045)
32 Homicide by Watercraft, by disregard
33 for the safety of others (RCW
34 79A.60.050)
35 Indecent Liberties (without forcible
36 compulsion) (RCW 9A.44.100(1)
37 (b) and (c))

1 Introducing Contraband 1 (RCW
2 9A.76.140)
3 Malicious placement of an explosive 3
4 (RCW 70.74.270(3))
5 Negligently Causing Death By Use of a
6 Signal Preemption Device (RCW
7 46.37.675)
8 Sending, bringing into state depictions
9 of minor engaged in sexually
10 explicit conduct (RCW 9.68A.060)
11 Unlawful Possession of a Firearm in
12 the first degree (RCW 9.41.040(1))
13 Use of a Machine Gun in Commission
14 of a Felony (RCW 9.41.225)
15 Vehicular Homicide, by disregard for
16 the safety of others (RCW
17 46.61.520)
18 VI Bail Jumping with Murder 1 (RCW
19 9A.76.170(3)(a))
20 Bribery (RCW 9A.68.010)
21 Incest 1 (RCW 9A.64.020(1))
22 Intimidating a Judge (RCW 9A.72.160)
23 Intimidating a Juror/Witness (RCW
24 9A.72.110, 9A.72.130)
25 Malicious placement of an imitation
26 device 2 (RCW 70.74.272(1)(b))
27 Possession of Depictions of a Minor
28 Engaged in Sexually Explicit
29 Conduct (RCW 9.68A.070)
30 Rape of a Child 3 (RCW 9A.44.079)
31 Theft of a Firearm (RCW 9A.56.300)
32 Unlawful Storage of Ammonia (RCW
33 69.55.020)
34 V Abandonment of Dependent Person 2
35 (RCW 9A.42.070)

1 Advancing money or property for
2 extortionate extension of credit
3 (RCW 9A.82.030)
4 Bail Jumping with class A Felony
5 (RCW 9A.76.170(3)(b))
6 Child Molestation 3 (RCW 9A.44.089)
7 Criminal Mistreatment 2 (RCW
8 9A.42.030)
9 Custodial Sexual Misconduct 1 (RCW
10 9A.44.160)
11 Domestic Violence Court Order
12 Violation (RCW 10.99.040,
13 10.99.050, 26.09.300, 26.10.220,
14 26.26.138, 26.50.110, 26.52.070,
15 or 74.34.145)
16 Driving While Under the Influence
17 (RCW 46.61.502(6))
18 Extortion 1 (RCW 9A.56.120)
19 Extortionate Extension of Credit (RCW
20 9A.82.020)
21 Extortionate Means to Collect
22 Extensions of Credit (RCW
23 9A.82.040)
24 Incest 2 (RCW 9A.64.020(2))
25 Kidnapping 2 (RCW 9A.40.030)
26 Perjury 1 (RCW 9A.72.020)
27 Persistent prison misbehavior (RCW
28 9.94.070)
29 Physical Control of a Vehicle While
30 Under the Influence (RCW
31 46.61.504(6))
32 Possession of a Stolen Firearm (RCW
33 9A.56.310)
34 Rape 3 (RCW 9A.44.060)
35 Rendering Criminal Assistance 1
36 (RCW 9A.76.070)

1 Sexual Misconduct with a Minor 1
2 (RCW 9A.44.093)
3 Sexually Violating Human Remains
4 (RCW 9A.44.105)
5 Stalking (RCW 9A.46.110)
6 Taking Motor Vehicle Without
7 Permission 1 (RCW 9A.56.070)
8 IV Arson 2 (RCW 9A.48.030)
9 Assault 2 (RCW 9A.36.021)
10 Assault 3 (of a Peace Officer with a
11 Projectile Stun Gun) (RCW
12 9A.36.031(1)(h))
13 Assault by Watercraft (RCW
14 79A.60.060)
15 Bribing a Witness/Bribe Received by
16 Witness (RCW 9A.72.090,
17 9A.72.100)
18 Cheating 1 (RCW 9.46.1961)
19 Commercial Bribery (RCW 9A.68.060)
20 Counterfeiting (RCW 9.16.035(4))
21 Endangerment with a Controlled
22 Substance (RCW 9A.42.100)
23 Escape 1 (RCW 9A.76.110)
24 Hit and Run--Injury (RCW
25 46.52.020(4)(b))
26 Hit and Run with Vessel--Injury
27 Accident (RCW 79A.60.200(3))
28 Identity Theft 1 (RCW 9.35.020(2))
29 Indecent Exposure to Person Under
30 Age Fourteen (subsequent sex
31 offense) (RCW 9A.88.010)
32 Influencing Outcome of Sporting Event
33 (RCW 9A.82.070)
34 Malicious Harassment (RCW
35 9A.36.080)
36 Residential Burglary (RCW
37 9A.52.025)

1 Robbery 2 (RCW 9A.56.210)
2 Theft of Livestock 1 (RCW 9A.56.080)
3 Threats to Bomb (RCW 9.61.160)
4 Trafficking in Stolen Property 1 (RCW
5 9A.82.050)
6 Unlawful factoring of a credit card or
7 payment card transaction (RCW
8 9A.56.290(4)(b))
9 Unlawful transaction of health
10 coverage as a health care service
11 contractor (RCW 48.44.016(3))
12 Unlawful transaction of health
13 coverage as a health maintenance
14 organization (RCW 48.46.033(3))
15 Unlawful transaction of insurance
16 business (RCW 48.15.023(3))
17 Unlicensed practice as an insurance
18 professional (RCW 48.17.063(3))
19 Use of Proceeds of Criminal
20 Profiteering (RCW 9A.82.080 (1)
21 and (2))
22 Vehicular Assault, by being under the
23 influence of intoxicating liquor or
24 any drug, or by the operation or
25 driving of a vehicle in a reckless
26 manner (RCW 46.61.522)
27 Willful Failure to Return from
28 Furlough (RCW 72.66.060)
29 III Animal Cruelty 1 (Sexual Conduct or
30 Contact) (RCW 16.52.205(3))
31 Assault 3 (Except Assault 3 of a Peace
32 Officer With a Projectile Stun
33 Gun) (RCW 9A.36.031 except
34 subsection (1)(h))
35 Assault of a Child 3 (RCW 9A.36.140)
36 Bail Jumping with class B or C Felony
37 (RCW 9A.76.170(3)(c))

1 Burglary 2 (RCW 9A.52.030)
2 Commercial Sexual Abuse of a Minor
3 (RCW 9.68A.100)
4 Communication with a Minor for
5 Immoral Purposes (RCW
6 9.68A.090)
7 Criminal Gang Intimidation (RCW
8 9A.46.120)
9 Custodial Assault (RCW 9A.36.100)
10 Cyberstalking (subsequent conviction
11 or threat of death) (RCW
12 9.61.260(3))
13 Escape 2 (RCW 9A.76.120)
14 Extortion 2 (RCW 9A.56.130)
15 Harassment (RCW 9A.46.020)
16 Intimidating a Public Servant (RCW
17 9A.76.180)
18 Introducing Contraband 2 (RCW
19 9A.76.150)
20 Malicious Injury to Railroad Property
21 (RCW 81.60.070)
22 Mortgage Fraud (section 9 of this act)
23 Negligently Causing Substantial Bodily
24 Harm By Use of a Signal
25 Preemption Device (RCW
26 46.37.674)
27 Organized Retail Theft 1 (RCW
28 9A.56.350(2))
29 Perjury 2 (RCW 9A.72.030)
30 Possession of Incendiary Device (RCW
31 9.40.120)
32 Possession of Machine Gun or Short-
33 Barreled Shotgun or Rifle (RCW
34 9.41.190)
35 Promoting Prostitution 2 (RCW
36 9A.88.080)

1 Retail Theft with Extenuating
2 Circumstances 1 (RCW
3 9A.56.360(2))
4 Securities Act violation (RCW
5 21.20.400)
6 Tampering with a Witness (RCW
7 9A.72.120)
8 Telephone Harassment (subsequent
9 conviction or threat of death)
10 (RCW 9.61.230(2))
11 Theft of Livestock 2 (RCW 9A.56.083)
12 Theft with the Intent to Resell 1 (RCW
13 9A.56.340(2))
14 Trafficking in Stolen Property 2 (RCW
15 9A.82.055)
16 Unlawful Imprisonment (RCW
17 9A.40.040)
18 Unlawful possession of firearm in the
19 second degree (RCW 9.41.040(2))
20 Vehicular Assault, by the operation or
21 driving of a vehicle with disregard
22 for the safety of others (RCW
23 46.61.522)
24 Willful Failure to Return from Work
25 Release (RCW 72.65.070)
26 II Computer Trespass 1 (RCW
27 9A.52.110)
28 Counterfeiting (RCW 9.16.035(3))
29 Escape from Community Custody
30 (RCW 72.09.310)
31 Failure to Register as a Sex Offender
32 (second or subsequent offense)
33 (RCW 9A.44.130(~~(10)~~)(11)(a))
34 Health Care False Claims (RCW
35 48.80.030)
36 Identity Theft 2 (RCW 9.35.020(3))

1 Improperly Obtaining Financial
2 Information (RCW 9.35.010)
3 Malicious Mischief 1 (RCW
4 9A.48.070)
5 Organized Retail Theft 2 (RCW
6 9A.56.350(3))
7 Possession of Stolen Property 1 (RCW
8 9A.56.150)
9 Possession of a Stolen Vehicle (RCW
10 9A.56.068)
11 Retail Theft with Extenuating
12 Circumstances 2 (RCW
13 9A.56.360(3))
14 Theft 1 (RCW 9A.56.030)
15 Theft of a Motor Vehicle (RCW
16 9A.56.065)
17 Theft of Rental, Leased, or Lease-
18 purchased Property (valued at one
19 thousand five hundred dollars or
20 more) (RCW 9A.56.096(5)(a))
21 Theft with the Intent to Resell 2 (RCW
22 9A.56.340(3))
23 Trafficking in Insurance Claims (RCW
24 48.30A.015)
25 Unlawful factoring of a credit card or
26 payment card transaction (RCW
27 9A.56.290(4)(a))
28 Unlawful Practice of Law (RCW
29 2.48.180)
30 Unlicensed Practice of a Profession or
31 Business (RCW 18.130.190(7))
32 Voyeurism (RCW 9A.44.115)
33 I Attempting to Elude a Pursuing Police
34 Vehicle (RCW 46.61.024)
35 False Verification for Welfare (RCW
36 74.08.055)
37 Forgery (RCW 9A.60.020)

1 Fraudulent Creation or Revocation of a
2 Mental Health Advance Directive
3 (RCW 9A.60.060)
4 Malicious Mischief 2 (RCW
5 9A.48.080)
6 Mineral Trespass (RCW 78.44.330)
7 Possession of Stolen Property 2 (RCW
8 9A.56.160)
9 Reckless Burning 1 (RCW 9A.48.040)
10 Taking Motor Vehicle Without
11 Permission 2 (RCW 9A.56.075)
12 Theft 2 (RCW 9A.56.040)
13 Theft of Rental, Leased, or Lease-
14 purchased Property (valued at two
15 hundred fifty dollars or more but
16 less than one thousand five
17 hundred dollars) (RCW
18 9A.56.096(5)(b))
19 Transaction of insurance business
20 beyond the scope of licensure
21 (RCW 48.17.063(4))
22 Unlawful Issuance of Checks or Drafts
23 (RCW 9A.56.060)
24 Unlawful Possession of Fictitious
25 Identification (RCW 9A.56.320)
26 Unlawful Possession of Instruments of
27 Financial Fraud (RCW 9A.56.320)
28 Unlawful Possession of Payment
29 Instruments (RCW 9A.56.320)
30 Unlawful Possession of a Personal
31 Identification Device (RCW
32 9A.56.320)
33 Unlawful Production of Payment
34 Instruments (RCW 9A.56.320)
35 Unlawful Trafficking in Food Stamps
36 (RCW 9.91.142)

Unlawful Use of Food Stamps (RCW
9.91.144)
Vehicle Prowl 1 (RCW 9A.52.095)

Sec. 24. RCW 9A.82.010 and 2006 c 277 s 5 and 2006 c 193 s 2 are each reenacted and amended to read as follows:

Unless the context requires the contrary, the definitions in this section apply throughout this chapter.

(1)(a) "Beneficial interest" means:

(i) The interest of a person as a beneficiary under a trust established under Title 11 RCW in which the trustee for the trust holds legal or record title to real property;

(ii) The interest of a person as a beneficiary under any other trust arrangement under which a trustee holds legal or record title to real property for the benefit of the beneficiary; or

(iii) The interest of a person under any other form of express fiduciary arrangement under which one person holds legal or record title to real property for the benefit of the other person.

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in a general partnership or limited partnership.

(c) A beneficial interest is considered to be located where the real property owned by the trustee is located.

(2) "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

(3) "Creditor" means a person making an extension of credit or a person claiming by, under, or through a person making an extension of credit.

(4) "Criminal profiteering" means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

(a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

1 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;
2 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;
3 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;
4 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060,
5 9A.56.080, and 9A.56.083;
6 (f) Unlawful sale of subscription television services, as defined
7 in RCW 9A.56.230;
8 (g) Theft of telecommunication services or unlawful manufacture of
9 a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;
10 (h) Child selling or child buying, as defined in RCW 9A.64.030;
11 (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and
12 9A.68.050;
13 (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
14 (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
15 (l) Unlawful production of payment instruments, unlawful possession
16 of payment instruments, unlawful possession of a personal
17 identification device, unlawful possession of fictitious
18 identification, or unlawful possession of instruments of financial
19 fraud, as defined in RCW 9A.56.320;
20 (m) Extortionate extension of credit, as defined in RCW 9A.82.020;
21 (n) Advancing money for use in an extortionate extension of credit,
22 as defined in RCW 9A.82.030;
23 (o) Collection of an extortionate extension of credit, as defined
24 in RCW 9A.82.040;
25 (p) Collection of an unlawful debt, as defined in RCW 9A.82.045;
26 (q) Delivery or manufacture of controlled substances or possession
27 with intent to deliver or manufacture controlled substances under
28 chapter 69.50 RCW;
29 (r) Trafficking in stolen property, as defined in RCW 9A.82.050;
30 (s) Leading organized crime, as defined in RCW 9A.82.060;
31 (t) Money laundering, as defined in RCW 9A.83.020;
32 (u) Obstructing criminal investigations or prosecutions in
33 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,
34 9A.76.070, or 9A.76.180;
35 (v) Fraud in the purchase or sale of securities, as defined in RCW
36 21.20.010;
37 (w) Promoting pornography, as defined in RCW 9.68.140;

1 (x) Sexual exploitation of children, as defined in RCW 9.68A.040,
2 9.68A.050, and 9.68A.060;

3 (y) Promoting prostitution, as defined in RCW 9A.88.070 and
4 9A.88.080;

5 (z) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

6 (aa) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

7 (bb) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;

8 (cc) A pattern of equity skimming, as defined in RCW 61.34.020;

9 (dd) Commercial telephone solicitation in violation of RCW
10 19.158.040(1);

11 (ee) Trafficking in insurance claims, as defined in RCW 48.30A.015;

12 (ff) Unlawful practice of law, as defined in RCW 2.48.180;

13 (gg) Commercial bribery, as defined in RCW 9A.68.060;

14 (hh) Health care false claims, as defined in RCW 48.80.030;

15 (ii) Unlicensed practice of a profession or business, as defined in
16 RCW 18.130.190(7);

17 (jj) Improperly obtaining financial information, as defined in RCW
18 9.35.010;

19 (kk) Identity theft, as defined in RCW 9.35.020;

20 (ll) Unlawful shipment of cigarettes in violation of RCW
21 70.155.105(6) (a) or (b);

22 (mm) Unlawful shipment of cigarettes in violation of RCW
23 82.24.110(2);

24 (nn) Unauthorized sale or procurement of telephone records in
25 violation of RCW 9.26A.140;

26 (oo) Theft with the intent to resell, as defined in RCW 9A.56.340;

27 (~~oe~~)

28 (pp) Organized retail theft, as defined in RCW 9A.56.350; or
29 (qq) Mortgage fraud, as defined in section 9 of this act.

30 (5) "Dealer in property" means a person who buys and sells property
31 as a business.

32 (6) "Debtor" means a person to whom an extension of credit is made
33 or a person who guarantees the repayment of an extension of credit or
34 in any manner undertakes to indemnify the creditor against loss
35 resulting from the failure of a person to whom an extension is made to
36 repay the same.

37 (7) "Documentary material" means any book, paper, document,
38 writing, drawing, graph, chart, photograph, phonograph record, magnetic

1 tape, computer printout, other data compilation from which information
2 can be obtained or from which information can be translated into usable
3 form, or other tangible item.

4 (8) "Enterprise" includes any individual, sole proprietorship,
5 partnership, corporation, business trust, or other profit or nonprofit
6 legal entity, and includes any union, association, or group of
7 individuals associated in fact although not a legal entity, and both
8 illicit and licit enterprises and governmental and nongovernmental
9 entities.

10 (9) "Extortionate extension of credit" means an extension of credit
11 with respect to which it is the understanding of the creditor and the
12 debtor at the time the extension is made that delay in making repayment
13 or failure to make repayment could result in the use of violence or
14 other criminal means to cause harm to the person, reputation, or
15 property of any person.

16 (10) "Extortionate means" means the use, or an express or implicit
17 threat of use, of violence or other criminal means to cause harm to the
18 person, reputation, or property of any person.

19 (11) "Financial institution" means any bank, trust company, savings
20 and loan association, savings bank, mutual savings bank, credit union,
21 or loan company under the jurisdiction of the state or an agency of the
22 United States.

23 (12) "Pattern of criminal profiteering activity" means engaging in
24 at least three acts of criminal profiteering, one of which occurred
25 after July 1, 1985, and the last of which occurred within five years,
26 excluding any period of imprisonment, after the commission of the
27 earliest act of criminal profiteering. In order to constitute a
28 pattern, the three acts must have the same or similar intent, results,
29 accomplices, principals, victims, or methods of commission, or be
30 otherwise interrelated by distinguishing characteristics including a
31 nexus to the same enterprise, and must not be isolated events.
32 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by
33 any person other than the attorney general or county prosecuting
34 attorney in which one or more acts of fraud in the purchase or sale of
35 securities are asserted as acts of criminal profiteering activity, it
36 is a condition to civil liability under RCW 9A.82.100 that the
37 defendant has been convicted in a criminal proceeding of fraud in the
38 purchase or sale of securities under RCW 21.20.400 or under the laws of

1 another state or of the United States requiring the same elements of
2 proof, but such conviction need not relate to any act or acts asserted
3 as acts of criminal profiteering activity in such civil action under
4 RCW 9A.82.100.

5 (13) "Real property" means any real property or interest in real
6 property, including but not limited to a land sale contract, lease, or
7 mortgage of real property.

8 (14) "Records" means any book, paper, writing, record, computer
9 program, or other material.

10 (15) "Repayment of an extension of credit" means the repayment,
11 satisfaction, or discharge in whole or in part of a debt or claim,
12 acknowledged or disputed, valid or invalid, resulting from or in
13 connection with that extension of credit.

14 (16) "Stolen property" means property that has been obtained by
15 theft, robbery, or extortion.

16 (17) "To collect an extension of credit" means to induce in any way
17 a person to make repayment thereof.

18 (18) "To extend credit" means to make or renew a loan or to enter
19 into an agreement, tacit or express, whereby the repayment or
20 satisfaction of a debt or claim, whether acknowledged or disputed,
21 valid or invalid, and however arising, may or shall be deferred.

22 (19) "Traffic" means to sell, transfer, distribute, dispense, or
23 otherwise dispose of stolen property to another person, or to buy,
24 receive, possess, or obtain control of stolen property, with intent to
25 sell, transfer, distribute, dispense, or otherwise dispose of the
26 property to another person.

27 (20)(a) "Trustee" means:

28 (i) A person acting as a trustee under a trust established under
29 Title 11 RCW in which the trustee holds legal or record title to real
30 property;

31 (ii) A person who holds legal or record title to real property in
32 which another person has a beneficial interest; or

33 (iii) A successor trustee to a person who is a trustee under (a)(i)
34 or (ii) of this subsection.

35 (b) "Trustee" does not mean a person appointed or acting as:

36 (i) A personal representative under Title 11 RCW;

37 (ii) A trustee of any testamentary trust;

1 (iii) A trustee of any indenture of trust under which a bond is
2 issued; or

3 (iv) A trustee under a deed of trust.

4 (21) "Unlawful debt" means any money or other thing of value
5 constituting principal or interest of a debt that is legally
6 unenforceable in the state in full or in part because the debt was
7 incurred or contracted:

8 (a) In violation of any one of the following:

9 (i) Chapter 67.16 RCW relating to horse racing;

10 (ii) Chapter 9.46 RCW relating to gambling;

11 (b) In a gambling activity in violation of federal law; or

12 (c) In connection with the business of lending money or a thing of
13 value at a rate that is at least twice the permitted rate under the
14 applicable state or federal law relating to usury.

15 NEW SECTION. **Sec. 25.** Sections 1 through 13 of this act
16 constitute a new chapter in Title 19 RCW.

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