
SENATE BILL 6728

State of Washington 60th Legislature 2008 Regular Session

By Senators Berkey, Kohl-Welles, Franklin, Regala, and Keiser

Read first time 01/22/08. Referred to Committee on Financial Institutions & Insurance.

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" or "ARM" means a payment option ARM
4 or a hybrid ARM (commonly known as a 2/28 or 3/27 loan).

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

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

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

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

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

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

25 (8) "Negative amortization" means an increase in the principal
26 balance of a loan caused when the loan agreement allows the borrower to
27 make payments less than the amount needed to pay all the interest that
28 has accrued on the loan. The unpaid interest is added to the loan
29 balance and becomes part of the principal.

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 secured by residential real property located in this state upon which
35 is constructed or intended to be constructed, a single-family dwelling
36 or multiple-family dwelling of four or less units. It does not include
37 a reverse mortgage or a borrower credit transaction that is secured by
38 rental property. It does not include a bridge loan. It does not

1 include loans to individuals making or acquiring a residential mortgage
2 loan solely with his or her own funds for his or her own investment.
3 For purposes of this subsection, a "bridge loan" is any temporary loan,
4 having a maturity of one year or less, for the purpose of acquisition
5 or construction of a dwelling intended to become the borrower's
6 principal dwelling.

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

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

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

35 (2) The department shall adopt, by rule, a disclosure summary form
36 with a content and format containing simple, plain-language terms that
37 are reasonably understandable to the average person without the aid of

1 third-party resources and shall include, but not be limited to, the
2 following items: Fees and discount points on the loan; interest rates
3 of the loan; broker fees; the broker's yield spread premium as a dollar
4 amount; whether the loan contains prepayment penalties; whether the
5 loan contains a balloon payment; whether the property taxes and
6 property tax insurance are escrowed; whether the loan payments will
7 adjust at the fully indexed rates; and whether there is a price added
8 or premium charged because the loan is based on reduced documentation.

9 (3) The director may, at his or her discretion, require by rule
10 other information relating to a residential mortgage loan to be
11 included in the disclosure summary if the director determines that it
12 is necessary to protect consumers. The director may adopt rules
13 creating a standard form of disclosure summary to be used as a guide by
14 financial institutions in fulfilling the requirements of 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 mortgage lending to financial institutions.

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

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

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

29 NEW SECTION. **Sec. 6.** A financial institution may not make or
30 facilitate a residential mortgage loan that includes any provisions
31 that impose negative amortization and which are subject to the
32 interagency guidance on nontraditional mortgage product risks and the
33 statement on subprime mortgage lending.

1 NEW SECTION. **Sec. 7.** A person licensed or subject to licensing,
2 or otherwise subject to regulation pursuant to chapter 19.146 RCW, or
3 a consumer loan company licensed or subject to licensing under chapter
4 31.04 RCW may not steer, counsel, or direct any borrower to accept a
5 residential mortgage loan product with a risk grade less favorable than
6 the risk grade that the borrower would qualify for based on the
7 licensee or other regulated person's then current underwriting
8 guidelines, prudently applied, considering the information available to
9 the licensee or other regulated person, including the information
10 provided by the borrower. A licensee or other regulated person has not
11 violated this requirement if the risk grade determination applied to a
12 borrower is reasonably based on the licensee or other regulated
13 person's underwriting guidelines for the borrower's appropriate risk
14 grade category and the borrower is offered choices of residential
15 mortgage loan products within the borrower's appropriate risk grade
16 category.

17 NEW SECTION. **Sec. 8.** The department may adopt rules necessary to
18 implement this chapter, including but not limited to the authority to
19 identify which sections of this act apply to open-end credit plans.

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

23 (1)(a) Employ any scheme, device, or artifice to defraud or
24 materially mislead any borrower during the lending process; (b) defraud
25 or materially mislead any lender, defraud or materially mislead any
26 person, or engage in any unfair or deceptive practice toward any person
27 in the lending process; or (c) obtain property by fraud or material
28 misrepresentation in the lending process;

29 (2) Knowingly make any misstatement, misrepresentation, or omission
30 during the mortgage lending process knowing that it may be relied on by
31 a mortgage lender, borrower, or any other party to the mortgage lending
32 process;

33 (3) Use or facilitate the use of any misstatement,
34 misrepresentation, or omission, knowing the same to contain a
35 misstatement, misrepresentation, or omission, during the mortgage

1 lending process with the intention that it be relied on by a mortgage
2 lender, borrower, or any other party to the mortgage lending process;
3 or

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

7 NEW SECTION. **Sec. 10.** (1) Any person who knowingly violates
8 section 9 of this act or who knowingly aids or abets in the violation
9 of section 9 of this act is guilty of a class B felony punishable under
10 RCW 9A.20.021(1)(b). Mortgage fraud is a serious level III offense per
11 chapter 9.94A RCW.

12 (2) Any person who knowingly alters, destroys, shreds, mutilates,
13 or conceals a record, document, or other object, or attempts to do so,
14 with the intent to impair the investigation and prosecution of this
15 crime is guilty of a class B felony punishable under RCW
16 9A.20.021(1)(b).

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

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

22 NEW SECTION. **Sec. 11.** (1)(a) It is unlawful for a person to use
23 or invest proceeds, or any part of proceeds, knowing that the proceeds,
24 or any part of the proceeds, were derived, directly or indirectly, from
25 a pattern of mortgage fraud activity, in the acquisition of any title
26 to, or any right, interest, or equity in, real property or in the
27 establishment or operation of any enterprise.

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

29 (2)(a) It is unlawful for a person to acquire or maintain, directly
30 or indirectly, any interest in or control of any enterprise or real
31 property knowing the interest or control was obtained through a pattern
32 of mortgage fraud.

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

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

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

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

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

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

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

11 The activities of a mortgage broker affect the public interest, and
12 require that all actions of mortgage brokers, designated brokers, loan
13 originators, and other persons subject to this chapter be actuated by
14 good faith, abstain from deception, and practice honesty and equity in
15 all matters related to their profession. The duty of preserving the
16 integrity of the mortgage broker business rests upon the mortgage
17 broker, designated broker, loan originator, and other persons subject
18 to this chapter.

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

21 The legislature finds and declares that the brokering of
22 residential real estate loans substantially affects the public
23 interest, requiring that all actions in mortgage brokering be actuated
24 by good faith, and that mortgage brokers, designated brokers, loan
25 originators, and other persons subject to this chapter abstain from
26 deception, and practice honesty and equity in all matters relating to
27 their profession. The practices of mortgage brokers and loan
28 originators have had significant impact on the citizens of the state
29 and the banking and real estate industries. It is the intent of the
30 legislature to establish a state system of licensure in addition to
31 rules of practice and conduct of mortgage brokers and loan originators
32 to promote honesty and fair dealing with citizens and to preserve
33 public confidence in the lending and real estate community.

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

3 It shall be requisite to a trustee's sale:

4 (1) That the deed of trust contains a power of sale;

5 (2) That the deed of trust contains a statement that the real
6 property conveyed is not used principally for agricultural purposes;
7 provided, if the statement is false on the date the deed of trust was
8 granted or amended to include that statement, and false on the date of
9 the trustee's sale, then the deed of trust must be foreclosed
10 judicially. Real property is used for agricultural purposes if it is
11 used in an operation that produces crops, livestock, or aquatic goods;

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

15 (4) That no action commenced by the beneficiary of the deed of
16 trust is now pending to seek satisfaction of an obligation secured by
17 the deed of trust in any court by reason of the grantor's default on
18 the obligation secured: PROVIDED, That (a) the seeking of the
19 appointment of a receiver shall not constitute an action for purposes
20 of this chapter; and (b) if a receiver is appointed, the grantor shall
21 be entitled to any rents or profits derived from property subject to a
22 homestead as defined in RCW 6.13.010. If the deed of trust was granted
23 to secure a commercial loan, this subsection shall not apply to actions
24 brought to enforce any other lien or security interest granted to
25 secure the obligation secured by the deed of trust being foreclosed;

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

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

32 (7) That at least thirty days before notice of sale shall be
33 recorded, transmitted or served, written notice of default shall be
34 transmitted by the beneficiary or trustee to the borrower and grantor
35 at their last known addresses by both first class and either registered
36 or certified mail, return receipt requested, and the beneficiary or
37 trustee shall cause to be posted in a conspicuous place on the

1 premises, a copy of the notice, or personally served on the borrower
2 and grantor. This notice shall contain the following information:

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

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

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

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

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

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

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

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

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

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

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

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

5 Can you pay and stop the foreclosure process?

6 Do you dispute the failure to pay?

7 Can you sell your property to preserve your equity?

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

10 Do you qualify for any government or private homeowner assistance
11 programs?

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

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

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

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

33 TABLE 2

34 CRIMES INCLUDED WITHIN

35 EACH SERIOUSNESS LEVEL

1 XVI Aggravated Murder 1 (RCW
2 10.95.020)
3 XV Homicide by abuse (RCW 9A.32.055)
4 Malicious explosion 1 (RCW
5 70.74.280(1))
6 Murder 1 (RCW 9A.32.030)
7 XIV Murder 2 (RCW 9A.32.050)
8 Trafficking 1 (RCW 9A.40.100(1))
9 XIII Malicious explosion 2 (RCW
10 70.74.280(2))
11 Malicious placement of an explosive 1
12 (RCW 70.74.270(1))
13 XII Assault 1 (RCW 9A.36.011)
14 Assault of a Child 1 (RCW 9A.36.120)
15 Malicious placement of an imitation
16 device 1 (RCW 70.74.272(1)(a))
17 Rape 1 (RCW 9A.44.040)
18 Rape of a Child 1 (RCW 9A.44.073)
19 Trafficking 2 (RCW 9A.40.100(2))
20 XI Manslaughter 1 (RCW 9A.32.060)
21 Rape 2 (RCW 9A.44.050)
22 Rape of a Child 2 (RCW 9A.44.076)
23 X Child Molestation 1 (RCW 9A.44.083)
24 Indecent Liberties (with forcible
25 compulsion) (RCW
26 9A.44.100(1)(a))
27 Kidnapping 1 (RCW 9A.40.020)
28 Leading Organized Crime (RCW
29 9A.82.060(1)(a))
30 Malicious explosion 3 (RCW
31 70.74.280(3))
32 Sexually Violent Predator Escape
33 (RCW 9A.76.115)
34 IX Abandonment of Dependent Person 1
35 (RCW 9A.42.060)
36 Assault of a Child 2 (RCW 9A.36.130)

1 Criminal Mistreatment 1 (RCW
2 9A.42.020)
3 Explosive devices prohibited (RCW
4 70.74.180)
5 Hit and Run--Death (RCW
6 46.52.020(4)(a))
7 Homicide by Watercraft, by being
8 under the influence of intoxicating
9 liquor or any drug (RCW
10 79A.60.050)
11 Inciting Criminal Profiteering (RCW
12 9A.82.060(1)(b))
13 Malicious placement of an explosive 2
14 (RCW 70.74.270(2))
15 Robbery 1 (RCW 9A.56.200)
16 Sexual Exploitation (RCW 9.68A.040)
17 Vehicular Homicide, by being under
18 the influence of intoxicating liquor
19 or any drug (RCW 46.61.520)
20 VIII Arson 1 (RCW 9A.48.020)
21 Homicide by Watercraft, by the
22 operation of any vessel in a
23 reckless manner (RCW
24 79A.60.050)
25 Manslaughter 2 (RCW 9A.32.070)
26 Promoting Commercial Sexual Abuse
27 of a Minor (RCW 9.68A.101)
28 Promoting Prostitution 1 (RCW
29 9A.88.070)
30 Theft of Ammonia (RCW 69.55.010)
31 Vehicular Homicide, by the operation
32 of any vehicle in a reckless manner
33 (RCW 46.61.520)
34 VII Burglary 1 (RCW 9A.52.020)
35 Child Molestation 2 (RCW 9A.44.086)
36 Civil Disorder Training (RCW
37 9A.48.120)

1 Dealing in depictions of minor engaged
2 in sexually explicit conduct (RCW
3 9.68A.050)
4 Drive-by Shooting (RCW 9A.36.045)
5 Homicide by Watercraft, by disregard
6 for the safety of others (RCW
7 79A.60.050)
8 Indecent Liberties (without forcible
9 compulsion) (RCW 9A.44.100(1)
10 (b) and (c))
11 Introducing Contraband 1 (RCW
12 9A.76.140)
13 Malicious placement of an explosive 3
14 (RCW 70.74.270(3))
15 Negligently Causing Death By Use of a
16 Signal Preemption Device (RCW
17 46.37.675)
18 Sending, bringing into state depictions
19 of minor engaged in sexually
20 explicit conduct (RCW 9.68A.060)
21 Unlawful Possession of a Firearm in
22 the first degree (RCW 9.41.040(1))
23 Use of a Machine Gun in Commission
24 of a Felony (RCW 9.41.225)
25 Vehicular Homicide, by disregard for
26 the safety of others (RCW
27 46.61.520)
28 VI Bail Jumping with Murder 1 (RCW
29 9A.76.170(3)(a))
30 Bribery (RCW 9A.68.010)
31 Incest 1 (RCW 9A.64.020(1))
32 Intimidating a Judge (RCW 9A.72.160)
33 Intimidating a Juror/Witness (RCW
34 9A.72.110, 9A.72.130)
35 Malicious placement of an imitation
36 device 2 (RCW 70.74.272(1)(b))

1 Possession of Depictions of a Minor
2 Engaged in Sexually Explicit
3 Conduct (RCW 9.68A.070)
4 Rape of a Child 3 (RCW 9A.44.079)
5 Theft of a Firearm (RCW 9A.56.300)
6 Unlawful Storage of Ammonia (RCW
7 69.55.020)
8 V Abandonment of Dependent Person 2
9 (RCW 9A.42.070)
10 Advancing money or property for
11 extortionate extension of credit
12 (RCW 9A.82.030)
13 Bail Jumping with class A Felony
14 (RCW 9A.76.170(3)(b))
15 Child Molestation 3 (RCW 9A.44.089)
16 Criminal Mistreatment 2 (RCW
17 9A.42.030)
18 Custodial Sexual Misconduct 1 (RCW
19 9A.44.160)
20 Domestic Violence Court Order
21 Violation (RCW 10.99.040,
22 10.99.050, 26.09.300, 26.10.220,
23 26.26.138, 26.50.110, 26.52.070,
24 or 74.34.145)
25 Driving While Under the Influence
26 (RCW 46.61.502(6))
27 Extortion 1 (RCW 9A.56.120)
28 Extortionate Extension of Credit (RCW
29 9A.82.020)
30 Extortionate Means to Collect
31 Extensions of Credit (RCW
32 9A.82.040)
33 Incest 2 (RCW 9A.64.020(2))
34 Kidnapping 2 (RCW 9A.40.030)
35 Perjury 1 (RCW 9A.72.020)
36 Persistent prison misbehavior (RCW
37 9.94.070)

1 Physical Control of a Vehicle While
2 Under the Influence (RCW
3 46.61.504(6))
4 Possession of a Stolen Firearm (RCW
5 9A.56.310)
6 Rape 3 (RCW 9A.44.060)
7 Rendering Criminal Assistance 1
8 (RCW 9A.76.070)
9 Sexual Misconduct with a Minor 1
10 (RCW 9A.44.093)
11 Sexually Violating Human Remains
12 (RCW 9A.44.105)
13 Stalking (RCW 9A.46.110)
14 Taking Motor Vehicle Without
15 Permission 1 (RCW 9A.56.070)
16 IV Arson 2 (RCW 9A.48.030)
17 Assault 2 (RCW 9A.36.021)
18 Assault 3 (of a Peace Officer with a
19 Projectile Stun Gun) (RCW
20 9A.36.031(1)(h))
21 Assault by Watercraft (RCW
22 79A.60.060)
23 Bribing a Witness/Bribe Received by
24 Witness (RCW 9A.72.090,
25 9A.72.100)
26 Cheating 1 (RCW 9.46.1961)
27 Commercial Bribery (RCW 9A.68.060)
28 Counterfeiting (RCW 9.16.035(4))
29 Endangerment with a Controlled
30 Substance (RCW 9A.42.100)
31 Escape 1 (RCW 9A.76.110)
32 Hit and Run--Injury (RCW
33 46.52.020(4)(b))
34 Hit and Run with Vessel--Injury
35 Accident (RCW 79A.60.200(3))
36 Identity Theft 1 (RCW 9.35.020(2))

1 Indecent Exposure to Person Under
2 Age Fourteen (subsequent sex
3 offense) (RCW 9A.88.010)
4 Influencing Outcome of Sporting Event
5 (RCW 9A.82.070)
6 Malicious Harassment (RCW
7 9A.36.080)
8 Residential Burglary (RCW
9 9A.52.025)
10 Robbery 2 (RCW 9A.56.210)
11 Theft of Livestock 1 (RCW 9A.56.080)
12 Threats to Bomb (RCW 9.61.160)
13 Trafficking in Stolen Property 1 (RCW
14 9A.82.050)
15 Unlawful factoring of a credit card or
16 payment card transaction (RCW
17 9A.56.290(4)(b))
18 Unlawful transaction of health
19 coverage as a health care service
20 contractor (RCW 48.44.016(3))
21 Unlawful transaction of health
22 coverage as a health maintenance
23 organization (RCW 48.46.033(3))
24 Unlawful transaction of insurance
25 business (RCW 48.15.023(3))
26 Unlicensed practice as an insurance
27 professional (RCW 48.17.063(3))
28 Use of Proceeds of Criminal
29 Profiteering (RCW 9A.82.080 (1)
30 and (2))
31 Vehicular Assault, by being under the
32 influence of intoxicating liquor or
33 any drug, or by the operation or
34 driving of a vehicle in a reckless
35 manner (RCW 46.61.522)
36 Willful Failure to Return from
37 Furlough (RCW 72.66.060)

1 III Animal Cruelty 1 (Sexual Conduct or
2 Contact) (RCW 16.52.205(3))
3 Assault 3 (Except Assault 3 of a Peace
4 Officer With a Projectile Stun
5 Gun) (RCW 9A.36.031 except
6 subsection (1)(h))
7 Assault of a Child 3 (RCW 9A.36.140)
8 Bail Jumping with class B or C Felony
9 (RCW 9A.76.170(3)(c))
10 Burglary 2 (RCW 9A.52.030)
11 Commercial Sexual Abuse of a Minor
12 (RCW 9.68A.100)
13 Communication with a Minor for
14 Immoral Purposes (RCW
15 9.68A.090)
16 Criminal Gang Intimidation (RCW
17 9A.46.120)
18 Custodial Assault (RCW 9A.36.100)
19 Cyberstalking (subsequent conviction
20 or threat of death) (RCW
21 9.61.260(3))
22 Escape 2 (RCW 9A.76.120)
23 Extortion 2 (RCW 9A.56.130)
24 Harassment (RCW 9A.46.020)
25 Intimidating a Public Servant (RCW
26 9A.76.180)
27 Introducing Contraband 2 (RCW
28 9A.76.150)
29 Malicious Injury to Railroad Property
30 (RCW 81.60.070)
31 Mortgage Fraud (section 9 of this act)
32 Negligently Causing Substantial Bodily
33 Harm By Use of a Signal
34 Preemption Device (RCW
35 46.37.674)
36 Organized Retail Theft 1 (RCW
37 9A.56.350(2))

1 Perjury 2 (RCW 9A.72.030)
2 Possession of Incendiary Device (RCW
3 9.40.120)
4 Possession of Machine Gun or Short-
5 Barreled Shotgun or Rifle (RCW
6 9.41.190)
7 Promoting Prostitution 2 (RCW
8 9A.88.080)
9 Retail Theft with Extenuating
10 Circumstances 1 (RCW
11 9A.56.360(2))
12 Securities Act violation (RCW
13 21.20.400)
14 Tampering with a Witness (RCW
15 9A.72.120)
16 Telephone Harassment (subsequent
17 conviction or threat of death)
18 (RCW 9.61.230(2))
19 Theft of Livestock 2 (RCW 9A.56.083)
20 Theft with the Intent to Resell 1 (RCW
21 9A.56.340(2))
22 Trafficking in Stolen Property 2 (RCW
23 9A.82.055)
24 Unlawful Imprisonment (RCW
25 9A.40.040)
26 Unlawful possession of firearm in the
27 second degree (RCW 9.41.040(2))
28 Vehicular Assault, by the operation or
29 driving of a vehicle with disregard
30 for the safety of others (RCW
31 46.61.522)
32 Willful Failure to Return from Work
33 Release (RCW 72.65.070)
34 II Computer Trespass 1 (RCW
35 9A.52.110)
36 Counterfeiting (RCW 9.16.035(3))

1 Escape from Community Custody
2 (RCW 72.09.310)
3 Failure to Register as a Sex Offender
4 (second or subsequent offense)
5 (RCW 9A.44.130(~~(10)~~)(11)(a))
6 Health Care False Claims (RCW
7 48.80.030)
8 Identity Theft 2 (RCW 9.35.020(3))
9 Improperly Obtaining Financial
10 Information (RCW 9.35.010)
11 Malicious Mischief 1 (RCW
12 9A.48.070)
13 Organized Retail Theft 2 (RCW
14 9A.56.350(3))
15 Possession of Stolen Property 1 (RCW
16 9A.56.150)
17 Possession of a Stolen Vehicle (RCW
18 9A.56.068)
19 Retail Theft with Extenuating
20 Circumstances 2 (RCW
21 9A.56.360(3))
22 Theft 1 (RCW 9A.56.030)
23 Theft of a Motor Vehicle (RCW
24 9A.56.065)
25 Theft of Rental, Leased, or Lease-
26 purchased Property (valued at one
27 thousand five hundred dollars or
28 more) (RCW 9A.56.096(5)(a))
29 Theft with the Intent to Resell 2 (RCW
30 9A.56.340(3))
31 Trafficking in Insurance Claims (RCW
32 48.30A.015)
33 Unlawful factoring of a credit card or
34 payment card transaction (RCW
35 9A.56.290(4)(a))
36 Unlawful Practice of Law (RCW
37 2.48.180)

1 Unlicensed Practice of a Profession or
2 Business (RCW 18.130.190(7))
3 Voyeurism (RCW 9A.44.115)
4 I Attempting to Elude a Pursuing Police
5 Vehicle (RCW 46.61.024)
6 False Verification for Welfare (RCW
7 74.08.055)
8 Forgery (RCW 9A.60.020)
9 Fraudulent Creation or Revocation of a
10 Mental Health Advance Directive
11 (RCW 9A.60.060)
12 Malicious Mischief 2 (RCW
13 9A.48.080)
14 Mineral Trespass (RCW 78.44.330)
15 Possession of Stolen Property 2 (RCW
16 9A.56.160)
17 Reckless Burning 1 (RCW 9A.48.040)
18 Taking Motor Vehicle Without
19 Permission 2 (RCW 9A.56.075)
20 Theft 2 (RCW 9A.56.040)
21 Theft of Rental, Leased, or Lease-
22 purchased Property (valued at two
23 hundred fifty dollars or more but
24 less than one thousand five
25 hundred dollars) (RCW
26 9A.56.096(5)(b))
27 Transaction of insurance business
28 beyond the scope of licensure
29 (RCW 48.17.063(4))
30 Unlawful Issuance of Checks or Drafts
31 (RCW 9A.56.060)
32 Unlawful Possession of Fictitious
33 Identification (RCW 9A.56.320)
34 Unlawful Possession of Instruments of
35 Financial Fraud (RCW 9A.56.320)
36 Unlawful Possession of Payment
37 Instruments (RCW 9A.56.320)

1 Unlawful Possession of a Personal
2 Identification Device (RCW
3 9A.56.320)
4 Unlawful Production of Payment
5 Instruments (RCW 9A.56.320)
6 Unlawful Trafficking in Food Stamps
7 (RCW 9.91.142)
8 Unlawful Use of Food Stamps (RCW
9 9.91.144)
10 Vehicle Prowl 1 (RCW 9A.52.095)

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

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

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

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

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

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

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

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

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

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

35 (4) "Criminal profiteering" means any act, including any
36 anticipatory or completed offense, committed for financial gain, that

1 is chargeable or indictable under the laws of the state in which the
2 act occurred and, if the act occurred in a state other than this state,
3 would be chargeable or indictable under the laws of this state had the
4 act occurred in this state and punishable as a felony and by
5 imprisonment for more than one year, regardless of whether the act is
6 charged or indicted, as any of the following:

- 7 (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;
- 8 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;
- 9 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;
- 10 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;
- 11 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060,
12 9A.56.080, and 9A.56.083;
- 13 (f) Unlawful sale of subscription television services, as defined
14 in RCW 9A.56.230;
- 15 (g) Theft of telecommunication services or unlawful manufacture of
16 a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;
- 17 (h) Child selling or child buying, as defined in RCW 9A.64.030;
- 18 (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and
19 9A.68.050;
- 20 (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
- 21 (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
- 22 (l) Unlawful production of payment instruments, unlawful possession
23 of payment instruments, unlawful possession of a personal
24 identification device, unlawful possession of fictitious
25 identification, or unlawful possession of instruments of financial
26 fraud, as defined in RCW 9A.56.320;
- 27 (m) Extortionate extension of credit, as defined in RCW 9A.82.020;
- 28 (n) Advancing money for use in an extortionate extension of credit,
29 as defined in RCW 9A.82.030;
- 30 (o) Collection of an extortionate extension of credit, as defined
31 in RCW 9A.82.040;
- 32 (p) Collection of an unlawful debt, as defined in RCW 9A.82.045;
- 33 (q) Delivery or manufacture of controlled substances or possession
34 with intent to deliver or manufacture controlled substances under
35 chapter 69.50 RCW;
- 36 (r) Trafficking in stolen property, as defined in RCW 9A.82.050;
- 37 (s) Leading organized crime, as defined in RCW 9A.82.060;
- 38 (t) Money laundering, as defined in RCW 9A.83.020;

1 (u) Obstructing criminal investigations or prosecutions in
2 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,
3 9A.76.070, or 9A.76.180;

4 (v) Fraud in the purchase or sale of securities, as defined in RCW
5 21.20.010;

6 (w) Promoting pornography, as defined in RCW 9.68.140;

7 (x) Sexual exploitation of children, as defined in RCW 9.68A.040,
8 9.68A.050, and 9.68A.060;

9 (y) Promoting prostitution, as defined in RCW 9A.88.070 and
10 9A.88.080;

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

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

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

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

15 (dd) Commercial telephone solicitation in violation of RCW
16 19.158.040(1);

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

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

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

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

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

23 (jj) Improperly obtaining financial information, as defined in RCW
24 9.35.010;

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

26 (ll) Unlawful shipment of cigarettes in violation of RCW
27 70.155.105(6) (a) or (b);

28 (mm) Unlawful shipment of cigarettes in violation of RCW
29 82.24.110(2);

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

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

33 (~~oe~~)

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

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

1 (6) "Debtor" means a person to whom an extension of credit is made
2 or a person who guarantees the repayment of an extension of credit or
3 in any manner undertakes to indemnify the creditor against loss
4 resulting from the failure of a person to whom an extension is made to
5 repay the same.

6 (7) "Documentary material" means any book, paper, document,
7 writing, drawing, graph, chart, photograph, phonograph record, magnetic
8 tape, computer printout, other data compilation from which information
9 can be obtained or from which information can be translated into usable
10 form, or other tangible item.

11 (8) "Enterprise" includes any individual, sole proprietorship,
12 partnership, corporation, business trust, or other profit or nonprofit
13 legal entity, and includes any union, association, or group of
14 individuals associated in fact although not a legal entity, and both
15 illicit and licit enterprises and governmental and nongovernmental
16 entities.

17 (9) "Extortionate extension of credit" means an extension of credit
18 with respect to which it is the understanding of the creditor and the
19 debtor at the time the extension is made that delay in making repayment
20 or failure to make repayment could result in the use of violence or
21 other criminal means to cause harm to the person, reputation, or
22 property of any person.

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

26 (11) "Financial institution" means any bank, trust company, savings
27 and loan association, savings bank, mutual savings bank, credit union,
28 or loan company under the jurisdiction of the state or an agency of the
29 United States.

30 (12) "Pattern of criminal profiteering activity" means engaging in
31 at least three acts of criminal profiteering, one of which occurred
32 after July 1, 1985, and the last of which occurred within five years,
33 excluding any period of imprisonment, after the commission of the
34 earliest act of criminal profiteering. In order to constitute a
35 pattern, the three acts must have the same or similar intent, results,
36 accomplices, principals, victims, or methods of commission, or be
37 otherwise interrelated by distinguishing characteristics including a
38 nexus to the same enterprise, and must not be isolated events.

1 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by
2 any person other than the attorney general or county prosecuting
3 attorney in which one or more acts of fraud in the purchase or sale of
4 securities are asserted as acts of criminal profiteering activity, it
5 is a condition to civil liability under RCW 9A.82.100 that the
6 defendant has been convicted in a criminal proceeding of fraud in the
7 purchase or sale of securities under RCW 21.20.400 or under the laws of
8 another state or of the United States requiring the same elements of
9 proof, but such conviction need not relate to any act or acts asserted
10 as acts of criminal profiteering activity in such civil action under
11 RCW 9A.82.100.

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

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

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

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

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

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

29 (19) "Traffic" means to sell, transfer, distribute, dispense, or
30 otherwise dispose of stolen property to another person, or to buy,
31 receive, possess, or obtain control of stolen property, with intent to
32 sell, transfer, distribute, dispense, or otherwise dispose of the
33 property to another person.

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

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

1 (ii) A person who holds legal or record title to real property in
2 which another person has a beneficial interest; or
3 (iii) A successor trustee to a person who is a trustee under (a)(i)
4 or (ii) of this subsection.
5 (b) "Trustee" does not mean a person appointed or acting as:
6 (i) A personal representative under Title 11 RCW;
7 (ii) A trustee of any testamentary trust;
8 (iii) A trustee of any indenture of trust under which a bond is
9 issued; or
10 (iv) A trustee under a deed of trust.
11 (21) "Unlawful debt" means any money or other thing of value
12 constituting principal or interest of a debt that is legally
13 unenforceable in the state in full or in part because the debt was
14 incurred or contracted:
15 (a) In violation of any one of the following:
16 (i) Chapter 67.16 RCW relating to horse racing;
17 (ii) Chapter 9.46 RCW relating to gambling;
18 (b) In a gambling activity in violation of federal law; or
19 (c) In connection with the business of lending money or a thing of
20 value at a rate that is at least twice the permitted rate under the
21 applicable state or federal law relating to usury.

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

--- END ---