
ENGROSSED SUBSTITUTE SENATE BILL 6252

State of Washington

62nd Legislature

2012 Regular Session

By Senate Judiciary (originally sponsored by Senators Kline, Zarelli, Kohl-Welles, Shin, Conway, Eide, Chase, Delvin, Litzow, Stevens, Fraser, Pflug, Regala, Nelson, Keiser, and Roach)

READ FIRST TIME 02/01/12.

1 AN ACT Relating to commercial sexual abuse of a minor, promoting
2 commercial sexual abuse of a minor, and promoting prostitution in the
3 first degree; and amending RCW 9A.82.010 and 9A.82.100.

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

5 **Sec. 1.** RCW 9A.82.010 and 2008 c 108 s 24 are each amended to read
6 as follows:

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

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

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

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

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

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

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

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

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

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

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

20 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

21 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

22 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

23 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060,
24 9A.56.080, and 9A.56.083;

25 (f) Unlawful sale of subscription television services, as defined
26 in RCW 9A.56.230;

27 (g) Theft of telecommunication services or unlawful manufacture of
28 a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;

29 (h) Child selling or child buying, as defined in RCW 9A.64.030;

30 (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and
31 9A.68.050;

32 (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;

33 (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;

34 (l) Unlawful production of payment instruments, unlawful possession
35 of payment instruments, unlawful possession of a personal
36 identification device, unlawful possession of fictitious
37 identification, or unlawful possession of instruments of financial
38 fraud, as defined in RCW 9A.56.320;

1 (m) Extortionate extension of credit, as defined in RCW 9A.82.020;
2 (n) Advancing money for use in an extortionate extension of credit,
3 as defined in RCW 9A.82.030;
4 (o) Collection of an extortionate extension of credit, as defined
5 in RCW 9A.82.040;
6 (p) Collection of an unlawful debt, as defined in RCW 9A.82.045;
7 (q) Delivery or manufacture of controlled substances or possession
8 with intent to deliver or manufacture controlled substances under
9 chapter 69.50 RCW;
10 (r) Trafficking in stolen property, as defined in RCW 9A.82.050;
11 (s) Leading organized crime, as defined in RCW 9A.82.060;
12 (t) Money laundering, as defined in RCW 9A.83.020;
13 (u) Obstructing criminal investigations or prosecutions in
14 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,
15 9A.76.070, or 9A.76.180;
16 (v) Fraud in the purchase or sale of securities, as defined in RCW
17 21.20.010;
18 (w) Promoting pornography, as defined in RCW 9.68.140;
19 (x) Sexual exploitation of children, as defined in RCW 9.68A.040,
20 9.68A.050, and 9.68A.060;
21 (y) Promoting prostitution, as defined in RCW 9A.88.070 and
22 9A.88.080;
23 (z) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
24 (aa) Assault, as defined in RCW 9A.36.011 and 9A.36.021;
25 (bb) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;
26 (cc) A pattern of equity skimming, as defined in RCW 61.34.020;
27 (dd) Commercial telephone solicitation in violation of RCW
28 19.158.040(1);
29 (ee) Trafficking in insurance claims, as defined in RCW 48.30A.015;
30 (ff) Unlawful practice of law, as defined in RCW 2.48.180;
31 (gg) Commercial bribery, as defined in RCW 9A.68.060;
32 (hh) Health care false claims, as defined in RCW 48.80.030;
33 (ii) Unlicensed practice of a profession or business, as defined in
34 RCW 18.130.190(7);
35 (jj) Improperly obtaining financial information, as defined in RCW
36 9.35.010;
37 (kk) Identity theft, as defined in RCW 9.35.020;

1 (ll) Unlawful shipment of cigarettes in violation of RCW
2 70.155.105(6) (a) or (b);
3 (mm) Unlawful shipment of cigarettes in violation of RCW
4 82.24.110(2);
5 (nn) Unauthorized sale or procurement of telephone records in
6 violation of RCW 9.26A.140;
7 (oo) Theft with the intent to resell, as defined in RCW 9A.56.340;
8 (pp) Organized retail theft, as defined in RCW 9A.56.350; (~~o~~)
9 (qq) Mortgage fraud, as defined in RCW 19.144.080;
10 (rr) Commercial sexual abuse of a minor, as defined in RCW
11 9.68A.100; or
12 (ss) Promoting commercial sexual abuse of a minor, as defined in
13 RCW 9.68A.101.
14 (5) "Dealer in property" means a person who buys and sells property
15 as a business.
16 (6) "Debtor" means a person to whom an extension of credit is made
17 or a person who guarantees the repayment of an extension of credit or
18 in any manner undertakes to indemnify the creditor against loss
19 resulting from the failure of a person to whom an extension is made to
20 repay the same.
21 (7) "Documentary material" means any book, paper, document,
22 writing, drawing, graph, chart, photograph, phonograph record, magnetic
23 tape, computer printout, other data compilation from which information
24 can be obtained or from which information can be translated into usable
25 form, or other tangible item.
26 (8) "Enterprise" includes any individual, sole proprietorship,
27 partnership, corporation, business trust, or other profit or nonprofit
28 legal entity, and includes any union, association, or group of
29 individuals associated in fact although not a legal entity, and both
30 illicit and licit enterprises and governmental and nongovernmental
31 entities.
32 (9) "Extortionate extension of credit" means an extension of credit
33 with respect to which it is the understanding of the creditor and the
34 debtor at the time the extension is made that delay in making repayment
35 or failure to make repayment could result in the use of violence or
36 other criminal means to cause harm to the person, reputation, or
37 property of any person.

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

4 (11) "Financial institution" means any bank, trust company, savings
5 and loan association, savings bank, mutual savings bank, credit union,
6 or loan company under the jurisdiction of the state or an agency of the
7 United States.

8 (12) "Pattern of criminal profiteering activity" means engaging in
9 at least three acts of criminal profiteering, one of which occurred
10 after July 1, 1985, and the last of which occurred within five years,
11 excluding any period of imprisonment, after the commission of the
12 earliest act of criminal profiteering. In order to constitute a
13 pattern, the three acts must have the same or similar intent, results,
14 accomplices, principals, victims, or methods of commission, or be
15 otherwise interrelated by distinguishing characteristics including a
16 nexus to the same enterprise, and must not be isolated events.
17 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by
18 any person other than the attorney general or county prosecuting
19 attorney in which one or more acts of fraud in the purchase or sale of
20 securities are asserted as acts of criminal profiteering activity, it
21 is a condition to civil liability under RCW 9A.82.100 that the
22 defendant has been convicted in a criminal proceeding of fraud in the
23 purchase or sale of securities under RCW 21.20.400 or under the laws of
24 another state or of the United States requiring the same elements of
25 proof, but such conviction need not relate to any act or acts asserted
26 as acts of criminal profiteering activity in such civil action under
27 RCW 9A.82.100.

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

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

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

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

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

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

7 (19) "Traffic" means to sell, transfer, distribute, dispense, or
8 otherwise dispose of stolen property to another person, or to buy,
9 receive, possess, or obtain control of stolen property, with intent to
10 sell, transfer, distribute, dispense, or otherwise dispose of the
11 property to another person.

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

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

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

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

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

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

22 (ii) A trustee of any testamentary trust;

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

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

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

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

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

32 (ii) Chapter 9.46 RCW relating to gambling;

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

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

1 **Sec. 2.** RCW 9A.82.100 and 2003 c 267 s 6 are each amended to read
2 as follows:

3 (1)(a) A person who sustains injury to his or her person, business,
4 or property by an act of criminal profiteering that is part of a
5 pattern of criminal profiteering activity, or by an offense defined in
6 RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or by a violation of
7 RCW 9A.82.060 or 9A.82.080 may file an action in superior court for the
8 recovery of damages and the costs of the suit, including reasonable
9 investigative and attorney's fees.

10 (b) The attorney general or county prosecuting attorney may file an
11 action: (i) On behalf of those persons injured or, respectively, on
12 behalf of the state or county if the entity has sustained damages, or
13 (ii) to prevent, restrain, or remedy a pattern of criminal profiteering
14 activity, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101,
15 or 9A.88.070, or a violation of RCW 9A.82.060 or 9A.82.080.

16 (c) An action for damages filed by or on behalf of an injured
17 person, the state, or the county shall be for the recovery of damages
18 and the costs of the suit, including reasonable investigative and
19 attorney's fees.

20 (d) In an action filed to prevent, restrain, or remedy a pattern of
21 criminal profiteering activity, or an offense defined in RCW 9A.40.100,
22 9.68A.100, 9.68A.101, or 9A.88.070, or a violation of RCW 9A.82.060 or
23 9A.82.080, the court, upon proof of the violation, may impose a civil
24 penalty not exceeding two hundred fifty thousand dollars, in addition
25 to awarding the cost of the suit, including reasonable investigative
26 and attorney's fees.

27 (2) The superior court has jurisdiction to prevent, restrain, and
28 remedy a pattern of criminal profiteering, or an offense defined in RCW
29 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or a violation of RCW
30 9A.82.060 or 9A.82.080 after making provision for the rights of all
31 innocent persons affected by the violation and after hearing or trial,
32 as appropriate, by issuing appropriate orders.

33 (3) Prior to a determination of liability, orders issued under
34 subsection (2) of this section may include, but are not limited to,
35 entering restraining orders or prohibitions or taking such other
36 actions, including the acceptance of satisfactory performance bonds, in
37 connection with any property or other interest subject to damages,
38 forfeiture, or other restraints pursuant to this section as the court

1 deems proper. The orders may also include attachment, receivership, or
2 injunctive relief in regard to personal or real property pursuant to
3 Title 7 RCW. In shaping the reach or scope of receivership,
4 attachment, or injunctive relief, the superior court shall provide for
5 the protection of bona fide interests in property, including community
6 property, of persons who were not involved in the violation of this
7 chapter, except to the extent that such interests or property were
8 acquired or used in such a way as to be subject to forfeiture under RCW
9 9A.82.100(4)(f).

10 (4) Following a determination of liability, orders may include, but
11 are not limited to:

12 (a) Ordering any person to divest himself or herself of any
13 interest, direct or indirect, in any enterprise.

14 (b) Imposing reasonable restrictions on the future activities or
15 investments of any person, including prohibiting any person from
16 engaging in the same type of endeavor as the enterprise engaged in, the
17 activities of which affect the laws of this state, to the extent the
18 Constitutions of the United States and this state permit.

19 (c) Ordering dissolution or reorganization of any enterprise.

20 (d) Ordering the payment of actual damages sustained to those
21 persons injured by a violation of RCW 9A.82.060 or 9A.82.080, or an
22 offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070,
23 or an act of criminal profiteering that is part of a pattern of
24 criminal profiteering, and in the court's discretion, increasing the
25 payment to an amount not exceeding three times the actual damages
26 sustained.

27 (e) Ordering the payment of all costs and expenses of the
28 prosecution and investigation of a pattern of criminal profiteering, or
29 an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or
30 9A.88.070, activity or a violation of RCW 9A.82.060 or 9A.82.080, civil
31 and criminal, incurred by the state or county, including any costs of
32 defense provided at public expense, as appropriate to the state general
33 fund or the antiprofitteering revolving fund of the county.

34 (f) Ordering forfeiture first as restitution to any person damaged
35 by an act of criminal profiteering that is part of a pattern of
36 criminal profiteering, or by an offense defined in RCW 9A.40.100, then
37 to the state general fund or antiprofitteering revolving fund of the

1 county, as appropriate, to the extent not already ordered to be paid in
2 other damages, of the following:

3 (i) Any property or other interest acquired or maintained in
4 violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment
5 of funds, and any appreciation or income attributable to the
6 investment, from a violation of RCW 9A.82.060 or 9A.82.080.

7 (ii) Any property, contractual right, or claim against property
8 used to influence any enterprise that a person has established,
9 operated, controlled, conducted, or participated in the conduct of, in
10 violation of RCW 9A.82.060 or 9A.82.080.

11 (iii) All proceeds traceable to or derived from an offense included
12 in the pattern of criminal profiteering activity, or an offense defined
13 in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys,
14 negotiable instruments, securities, and other things of value
15 significantly used or intended to be used significantly to facilitate
16 commission of the offense.

17 (g) Ordering payment to the state general fund or antiprofitereering
18 revolving fund of the county, as appropriate, of an amount equal to the
19 gain a person has acquired or maintained through an offense included in
20 the definition of criminal profiteering.

21 (5) In addition to or in lieu of an action under this section, the
22 attorney general or county prosecuting attorney may file an action for
23 forfeiture to the state general fund or antiprofitereering revolving fund
24 of the county, as appropriate, to the extent not already ordered paid
25 pursuant to this section, of the following:

26 (a) Any interest acquired or maintained by a person in violation of
27 RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds
28 obtained from a violation of RCW 9A.82.060 or 9A.82.080 and any
29 appreciation or income attributable to the investment.

30 (b) Any property, contractual right, or claim against property used
31 to influence any enterprise that a person has established, operated,
32 controlled, conducted, or participated in the conduct of, in violation
33 of RCW 9A.82.060 or 9A.82.080.

34 (c) All proceeds traceable to or derived from an offense included
35 in the pattern of criminal profiteering activity, or an offense defined
36 in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys,
37 negotiable instruments, securities, and other things of value

1 significantly used or intended to be used significantly to facilitate
2 the commission of the offense.

3 (6) A defendant convicted in any criminal proceeding is precluded
4 in any civil proceeding from denying the essential allegations of the
5 criminal offense proven in the criminal trial in which the defendant
6 was convicted. For the purposes of this subsection, a conviction shall
7 be deemed to have occurred upon a verdict, finding, or plea of guilty,
8 notwithstanding the fact that appellate review of the conviction and
9 sentence has been or may be sought. If a subsequent reversal of the
10 conviction occurs, any judgment that was based upon that conviction may
11 be reopened upon motion of the defendant.

12 (7) The initiation of civil proceedings under this section shall be
13 commenced within three years after discovery of the pattern of criminal
14 profiteering activity or after the pattern should reasonably have been
15 discovered or, in the case of an offense that is defined in RCW
16 9A.40.100, within three years after the final disposition of any
17 criminal charges relating to the offense, whichever is later.

18 (8) The attorney general or county prosecuting attorney may, in a
19 civil action brought pursuant to this section, file with the clerk of
20 the superior court a certificate stating that the case is of special
21 public importance. A copy of that certificate shall be furnished
22 immediately by the clerk to the presiding chief judge of the superior
23 court in which the action is pending and, upon receipt of the copy, the
24 judge shall immediately designate a judge to hear and determine the
25 action. The judge so designated shall promptly assign the action for
26 hearing, participate in the hearings and determination, and cause the
27 action to be expedited.

28 (9) The standard of proof in actions brought pursuant to this
29 section is the preponderance of the evidence test.

30 (10) A person other than the attorney general or county prosecuting
31 attorney who files an action under this section shall serve notice and
32 one copy of the pleading on the attorney general within thirty days
33 after the action is filed with the superior court. The notice shall
34 identify the action, the person, and the person's attorney. Service of
35 the notice does not limit or otherwise affect the right of the state to
36 maintain an action under this section or intervene in a pending action
37 nor does it authorize the person to name the state or the attorney
38 general as a party to the action.

1 (11) Except in cases filed by a county prosecuting attorney, the
2 attorney general may, upon timely application, intervene in any civil
3 action or proceeding brought under this section if the attorney general
4 certifies that in the attorney general's opinion the action is of
5 special public importance. Upon intervention, the attorney general may
6 assert any available claim and is entitled to the same relief as if the
7 attorney general had instituted a separate action.

8 (12) In addition to the attorney general's right to intervene as a
9 party in any action under this section, the attorney general may appear
10 as amicus curiae in any proceeding in which a claim under this section
11 has been asserted or in which a court is interpreting RCW 9A.82.010,
12 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.

13 (13) A private civil action under this section does not limit any
14 other civil or criminal action under this chapter or any other
15 provision. Private civil remedies provided under this section are
16 supplemental and not mutually exclusive.

17 (14) Upon motion by the defendant, the court may authorize the sale
18 or transfer of assets subject to an order or lien authorized by this
19 chapter for the purpose of paying actual attorney's fees and costs of
20 defense. The motion shall specify the assets for which sale or
21 transfer is sought and shall be accompanied by the defendant's sworn
22 statement that the defendant has no other assets available for such
23 purposes. No order authorizing such sale or transfer may be entered
24 unless the court finds that the assets involved are not subject to
25 possible forfeiture under RCW 9A.82.100(4)(f). Prior to disposition of
26 the motion, the court shall notify the state of the assets sought to be
27 sold or transferred and shall hear argument on the issue of whether the
28 assets are subject to forfeiture under RCW 9A.82.100(4)(f). Such a
29 motion may be made from time to time and shall be heard by the court on
30 an expedited basis.

31 (15) In an action brought under subsection (1)(a) and (b)(i) of
32 this section, either party has the right to a jury trial.

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