

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1557

54th Legislature
1995 Regular Session

Passed by the House April 19, 1995
Yeas 93 Nays 2

Speaker of the
House of Representatives

Passed by the Senate April 10, 1995
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1557** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

Secretary of State
State of Washington

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1557

AS AMENDED BY THE SENATE

Passed Legislature - 1995 Regular Session

State of Washington 54th Legislature 1995 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives L. Thomas, Dellwo, Mielke, Wolfe, G. Fisher, Blanton and Poulsen; by request of Insurance Commissioner and Attorney General)

Read first time 03/06/95.

1 AN ACT Relating to insurance fraud; amending RCW 48.01.030,
2 48.18.460, 48.30.210, 48.30.220, 48.50.010, 48.50.020, 48.50.030,
3 48.50.040, 48.50.075, 48.80.020, 2.48.180, 9.12.010, 9A.72.010,
4 9A.72.030, 9A.76.020, 9A.82.010, and 18.130.190; reenacting and
5 amending RCW 9.94A.320; adding a new section to chapter 42.17 RCW;
6 adding a new section to chapter 9A.68 RCW; adding a new section to
7 chapter 9A.76 RCW; adding a new chapter to Title 48 RCW; creating a new
8 section; repealing RCW 9.91.090, 9A.82.903, 48.50.060, 48.50.080, and
9 49.44.070; prescribing penalties; providing an effective date; and
10 declaring an emergency.

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

12 NEW SECTION. **Sec. 1.** The legislature finds that the business of
13 insurance is one affected by the public interest, requiring that all
14 persons be actuated by good faith, abstain from deception, and practice
15 honesty and equity in all insurance matters. The payment of kickbacks,
16 bribes, or rebates for referrals to service providers, as has been
17 occurring with increasing regularity in this state, results in inflated
18 or fraudulent insurance claims, results in greater insurance costs for
19 all citizens, and is contrary to the public interest. In particular,

1 the process whereby "cappers" buy and sell insurance claims without the
2 controls of professional licensing and discipline creates a fertile
3 ground for illegal activity and has, in this state, resulted in frauds
4 committed against injured claimants, insurance companies, and the
5 public. Operations that engage in this practice have some or all of
6 the following characteristics: Cappers, acting under an agreement or
7 understanding that they will receive a pecuniary benefit, refer
8 claimants with real or imaginary claims, injuries, or property damage
9 to service providers. This sets off a chain of events that corrupts
10 both the provision of services and casualty or property insurance for
11 all citizens. This chain of events includes false claims for services
12 through the use of false estimates of repair; false prescriptions of
13 care or rehabilitative therapy; services that either do not occur or
14 are provided by persons unqualified to provide the services; submission
15 of false claims; submission of and demands for fraudulent costs, lost
16 wages, pain and suffering, and the like; and other devices meant to
17 result in false claims under casualty or property insurance policies or
18 contracts, whether insured or self-insured, and either directly or
19 through subrogation.

20 The legislature finds that combatting these practices requires laws
21 carefully fashioned to identify practices that mimic customary business
22 practices. The legislature does not intend this law to be used against
23 medical and other business referral practices that are otherwise legal,
24 customary, and unrelated to the furtherance of some or all of the
25 corrupt practices identified in this chapter.

26 NEW SECTION. **Sec. 2.** The definitions set forth in this section
27 apply throughout this chapter unless the context clearly indicates
28 otherwise.

29 (1) "Casualty or property insurance" includes both the insurance
30 under which a claim is filed and insurance that receives a claim
31 through subrogation, and means insurance as defined in RCW 48.11.040
32 and 48.11.070 and includes self-insurance arrangements.

33 (2) "Claimant" means a person who has or is believed by an actor to
34 have an insurance claim.

35 (3) "Group-buying arrangement" means an arrangement made by a
36 membership organization having one hundred or more members in which the
37 organization asks for or receives valuable consideration in exchange
38 for referring its members to a service provider; the consideration

1 asked for or received will be or is used to benefit the entire
2 organization, not just one or more individuals in positions of power or
3 influence in the organization; and reasonable efforts are made to
4 disclose to affected members of the organization the nature of the
5 referral relationship, including the nature, extent, amount, and use of
6 the consideration.

7 (4) "Health care services" means a service provided to a claimant
8 for treatment of physical or mental illness or injury arising in whole
9 or substantial part from trauma.

10 (5) "Insurance claim" means a claim for payment, benefits, or
11 damages under a contract, plan, or policy of casualty or property
12 insurance.

13 (6) "Legal provider" means an active member in good standing of the
14 Washington state bar association, and any other person authorized by
15 the Washington state supreme court to engage in full or limited
16 practice of law.

17 (7) "Service provider" means a person who directly or indirectly
18 provides, advertises, or otherwise claims to provide services.

19 (8) "Services" means health care services, motor vehicle body or
20 other motor vehicle repair, and preparing, processing, presenting, or
21 negotiating an insurance claim.

22 (9) "Trauma" means a physical injury or wound caused by external
23 force or violence.

24 NEW SECTION. **Sec. 3.** (1) It is unlawful for a person:

25 (a) Knowing that the payment is for the referral of a claimant to
26 a service provider, either to accept payment from a service provider
27 or, being a service provider, to pay another; or

28 (b) To provide or claim or represent to have provided services to
29 a claimant, knowing the claimant was referred in violation of (a) of
30 this subsection.

31 (2) It is unlawful for a service provider to engage in a regular
32 practice of waiving, rebating, giving, paying, or offering to waive,
33 rebate, give, or pay all or any part of a claimant's casualty or
34 property insurance deductible.

35 NEW SECTION. **Sec. 4.** In a proceeding under this chapter, it is a
36 defense if proven by the defendant by a preponderance of the evidence
37 that, at the time of the offense:

1 (1) The conduct alleged was authorized by the Rules of Professional
2 Conduct or the Admission to Practice Rules for lawyers as adopted by
3 the state supreme court, Washington business and professions licensing
4 statutes, or rules adopted by the secretary of health or the director
5 of licensing;

6 (2) The payment was an incidental nonmonetary gift or gratuity, or
7 was purely social in nature;

8 (3) The conduct alleged was an exercise of a group-buying
9 arrangement;

10 (4) The conduct alleged was a legal provider paying a service
11 provider's bills from the proceeds of an insurance claim that included
12 the bills;

13 (5) The conduct alleged was a legal provider paying for services of
14 an expert witness, including reports, consultation, and testimony; or

15 (6) The conduct alleged was a service provider's purchase of
16 advertising from an unrelated business that provides referrals from
17 advertising for groups of ten or more service providers that are not
18 related to the advertising business and not related to each other.

19 NEW SECTION. **Sec. 5.** A violation of section 3 of this act
20 constitutes trafficking in insurance claims. A single violation is a
21 gross misdemeanor. Each subsequent violation, whether alleged in the
22 same or in subsequent prosecutions, is a class C felony.

23 NEW SECTION. **Sec. 6.** Independent of authority granted to the
24 attorney general, the prosecuting attorney may petition the superior
25 court for an injunction against a person who has violated this chapter.
26 Remedies in an injunctive action brought by a prosecuting attorney are
27 limited to an order enjoining, restraining, or preventing the doing of
28 any act or practice that constitutes a violation of this chapter and
29 imposing a civil penalty of up to five thousand dollars for each
30 violation. The prevailing party in the action may, in the discretion
31 of the court, recover its reasonable investigative costs and the costs
32 of the action including a reasonable attorney's fee. The degree of
33 proof required in an action brought under this section is a
34 preponderance of the evidence. An action under this section must be
35 brought within three years after the violation of this chapter
36 occurred.

1 NEW SECTION. **Sec. 7.** Whenever a service provider or a person
2 licensed by the state in a business or profession is convicted,
3 enjoined, or found liable for damages or a civil penalty or other
4 equitable relief under section 6 of this act, the attorney general or
5 the prosecuting attorney shall provide written notification of the
6 judgment to the appropriate regulatory or disciplinary body or agency.

7 NEW SECTION. **Sec. 8.** A violation of this chapter is cause for
8 discipline and constitutes unprofessional conduct that could result in
9 any regulatory penalty provided by law, including refusal, revocation,
10 or suspension of a business or professional license, or right or
11 admission to practice. Conduct that constitutes a violation of this
12 chapter is unprofessional conduct in violation of RCW 18.130.180.

13 NEW SECTION. **Sec. 9.** Each insurer licensed to write direct
14 insurance in this state shall institute and maintain an insurance
15 antifraud plan. An insurer licensed on the effective date of this act
16 shall file its antifraud plan with the insurance commissioner no later
17 than December 31, 1995. An insurer licensed after the effective date
18 of this act shall file its antifraud plan within six months of
19 licensure. An insurer shall file any change to the antifraud plan with
20 the insurance commissioner within thirty days after the plan has been
21 modified.

22 NEW SECTION. **Sec. 10.** An insurer's antifraud plan must establish
23 specific procedures to:

24 (1) Prevent insurance fraud, including internal fraud involving
25 employees or company representatives, fraud resulting from
26 misrepresentation on applications for insurance coverage, and claims
27 fraud;

28 (2) Review claims in order to detect evidence of possible insurance
29 fraud and to investigate claims where fraud is suspected;

30 (3) Report fraud to appropriate law enforcement agencies and
31 cooperate with those agencies in their prosecution of fraud cases;

32 (4) Undertake civil actions against persons who have engaged in
33 fraudulent activities;

34 (5) Train company employees and agents in the detection and
35 prevention of fraud.

1 NEW SECTION. **Sec. 11.** If after review of an insurer's antifraud
2 plan, the commissioner finds that the plan does not comply with section
3 10 of this act, the commissioner may disapprove the antifraud plan.
4 Notice of disapproval must include a statement of the specific reasons
5 for disapproval. The insurer shall refile a plan disapproved by the
6 commissioner within sixty days of the date of the notice of
7 disapproval. The commissioner may audit insurers to ensure compliance
8 with antifraud plans.

9 NEW SECTION. **Sec. 12.** Each insurer shall annually provide to the
10 insurance commissioner a summary report on actions taken under its
11 antifraud plan to prevent and combat insurance fraud. The report must
12 also include, but not be limited to, measures taken to protect and
13 ensure the integrity of electronic data-processing-generated data and
14 manually compiled data, statistical data on the amount of resources
15 committed to combating fraud, and the amount of fraud identified and
16 recovered during the reporting period. The antifraud plans and summary
17 of the insurer's antifraud activities are not public records and are
18 exempt from chapter 42.17 RCW, are proprietary, are not subject to
19 public examination, and are not discoverable or admissible in civil
20 litigation.

21 NEW SECTION. **Sec. 13.** An insurer that fails to file a timely
22 antifraud plan or who does not make a good faith attempt to file an
23 antifraud plan that complies with section 10 of this act, is subject to
24 the penalty provisions of RCW 48.01.080, but no penalty may be imposed
25 for the first filing made by an insurer under this chapter. An insurer
26 that fails to follow the antifraud plan is subject to a civil penalty
27 not to exceed ten thousand dollars for each violation, at the
28 discretion of the commissioner after consideration of all relevant
29 factors, including the willfulness of the violation.

30 NEW SECTION. **Sec. 14.** It is the duty of all peace officers, law
31 enforcement officers, and law enforcement agencies within this state to
32 investigate, enforce, and prosecute all violations of this chapter.

33 NEW SECTION. **Sec. 15.** A new section is added to chapter 42.17 RCW
34 to read as follows:

1 Information provided under sections 9 through 12 of this act are
2 exempt from disclosure under this chapter.

3 **Sec. 16.** RCW 48.01.030 and 1947 c 79 s .01.03 are each amended to
4 read as follows:

5 The business of insurance is one affected by the public interest,
6 requiring that all persons be actuated by good faith, abstain from
7 deception, and practice honesty and equity in all insurance matters.
8 Upon the insurer, the insured, their providers, and their
9 representatives rests the duty of preserving inviolate the integrity of
10 insurance.

11 **Sec. 17.** RCW 48.18.460 and 1949 c 190 s 26 are each amended to
12 read as follows:

13 An insurer shall furnish, upon (~~written~~) request of any person
14 claiming to have a loss under any insurance contract, forms of proof of
15 loss for completion by such person. But such insurer shall not, by
16 reason of the requirement so to furnish forms, have any responsibility
17 for or with reference to the completion of such proof or the manner of
18 any such completion or attempted completion. If a person makes a claim
19 under a policy of insurance, the insurer may require that the person be
20 examined under an oath administered by a person authorized by state or
21 federal law to administer oaths.

22 **Sec. 18.** RCW 48.30.210 and 1990 1st ex.s. c 3 s 10 are each
23 amended to read as follows:

24 (~~Any agent, solicitor, broker, examining physician or other~~) A
25 person who knowingly makes a false or (~~fraudulent~~) misleading
26 statement or (~~representation~~) impersonation, or who willfully fails
27 to reveal a material fact, in or relative to an application for
28 insurance (~~in~~) to an insurer (~~transacting insurance under the~~
29 ~~provisions of this code, shall be~~), is guilty of a gross misdemeanor,
30 and the license of any such (~~agent, solicitor, or broker who makes~~
31 ~~such a statement or representation~~) person may be revoked.

32 **Sec. 19.** RCW 48.30.220 and 1965 ex.s. c 70 s 25 are each amended
33 to read as follows:

34 Any person, who, with intent to defraud or prejudice the insurer
35 thereof, (~~wilfully~~) burns or in any manner injures, destroys,

1 secretes, abandons, or disposes of any property which is insured at the
2 time against loss or damage by fire, theft, ~~((or))~~ embezzlement, or
3 ~~((by))~~ any other casualty, whether the same be the property of or in
4 the possession of such person or any other person, under ~~((such))~~
5 circumstances not making the offense arson in the first degree, is
6 guilty of a class C felony.

7 **Sec. 20.** RCW 48.50.010 and 1979 ex.s. c 80 s 1 are each amended to
8 read as follows:

9 This chapter shall be known and may be cited as the ~~((Arson))~~
10 Insurance Fraud Reporting Immunity Act.

11 **Sec. 21.** RCW 48.50.020 and 1986 c 266 s 77 are each amended to
12 read as follows:

13 As used in this chapter the following terms have the meanings
14 indicated unless the context clearly requires otherwise.

15 (1) "Authorized agency" means a public agency or its official
16 representative having legal authority to investigate criminal activity
17 or the cause of a fire ~~((and))~~ or to initiate criminal proceedings ~~((or~~
18 ~~further investigations if the cause was not accidental))~~, including the
19 following persons and agencies:

20 (a) The ~~((director))~~ department of community, trade, and economic
21 development and the director of fire protection;

22 (b) The prosecuting attorney of the county where the ~~((fire))~~
23 criminal activity occurred;

24 (c) State, county, and local law enforcement agencies;

25 (d) The state attorney general ~~((, when engaged in a prosecution~~
26 ~~which is or may be connected with the fire))~~;

27 ~~((d))~~ (e) The Federal Bureau of Investigation, or any other
28 federal law enforcement agency; ~~((and~~

29 ~~e))~~ (f) The United States attorney's office ~~((when authorized or~~
30 ~~charged with investigation or prosecution concerning the fire))~~; and

31 (g) The office of the insurance commissioner.

32 (2) "Insurer" means any insurer, as defined in RCW 48.01.050 ~~((,~~
33 ~~which insures against loss by fire, and includes insurers under the~~
34 ~~Washington F.A.I.R. plan))~~ and any self-insurer.

35 (3) "Relevant information" means information having any tendency to
36 make the existence of any fact that is of consequence to the
37 investigation or determination of criminal activity or the cause of any

1 fire more probable or less probable than it would be without the
2 information.

3 **Sec. 22.** RCW 48.50.030 and 1979 ex.s. c 80 s 3 are each amended to
4 read as follows:

5 (1) Any authorized agency may request, in writing, that an insurer
6 release to the agency any or all relevant information or evidence which
7 the insurer may have in its possession relating to ~~((a particular fire
8 loss))~~ criminal activity, if such information or evidence is deemed
9 important by the agency in its discretion.

10 (2) An insurer who has reason to believe that a person participated
11 or is participating in criminal activity relating to a contract of
12 insurance may report relevant information to an authorized agency.

13 (3) The information ~~((requested))~~ provided to an authorized agency
14 under this section may include, without limitation:

15 (a) Pertinent insurance policy information relating to a ~~((fire
16 loss))~~ claim under investigation and any application for such a policy;

17 (b) Policy premium payment records which are available;

18 (c) History of previous claims ~~((made by the insured))~~ in which the
19 person was involved; and

20 (d) Material relating to the investigation of the loss, including
21 statements of any person, proof of loss, and any other evidence found
22 in the investigation.

23 ~~((2) An))~~ (4) The insurer receiving a request under subsection (1)
24 of this section shall furnish all relevant information requested to the
25 agency within a reasonable time, orally or in writing~~((, all relevant
26 information requested)).~~

27 **Sec. 23.** RCW 48.50.040 and 1986 c 266 s 91 are each amended to
28 read as follows:

29 (1) When an insurer has reason to believe that a fire loss reported
30 to the insurer may be of other than accidental cause, the insurer shall
31 notify the ~~((director))~~ department of community, trade, and economic
32 development, through the director of fire protection, in the manner
33 prescribed under RCW 48.05.320 concerning the circumstances of the fire
34 loss, including any and all relevant material developed from the
35 insurer's inquiry into the fire loss.

36 (2) Notification of the ~~((director))~~ department of community,
37 trade, and economic development, through the director of fire

1 protection, under subsection (1) of this section does not relieve the
2 insurer of the duty to respond to a request for information from any
3 other authorized agency and does not bar an insurer from other
4 reporting under RCW 48.50.030(2).

5 **Sec. 24.** RCW 48.50.075 and 1981 c 320 s 2 are each amended to read
6 as follows:

7 In denying a claim (~~((resulting from a fire))~~), an insurer who relies
8 upon a written opinion from an authorized agency specifically
9 enumerated in (~~((a) through (e) of))~~ RCW 48.50.020(1) (a) through (g)
10 that (~~(the fire was caused by arson))~~ criminal activity that is related
11 to that claim is being investigated, or a crime has been charged, and
12 that the (~~(insured was responsible for the fire, shall not be))~~
13 claimant is a target of the investigation or has been charged with a
14 crime, is not liable for bad faith or other noncontractual theory of
15 damages as a result of this reliance.

16 Immunity under this section shall exist only so long as the
17 incident for which the (~~(insured))~~ claimant may be responsible is under
18 active investigation or prosecution, or the authorized agency states
19 its position that the claim includes or is a result of (~~(arson for))~~
20 criminal activity in which the (~~(insured))~~ claimant was (~~(responsible))~~
21 a participant.

22 **Sec. 25.** RCW 48.80.020 and 1986 c 243 s 2 are each amended to read
23 as follows:

24 Unless the context clearly requires otherwise, the definitions in
25 this section apply throughout this chapter.

26 (1) "Claim" means any attempt to cause a health care payer to make
27 a health care payment.

28 (2) "Deceptive" means presenting a claim to a health care payer
29 that contains a statement of fact or fails to reveal a material fact,
30 leading the health care payer to believe that the represented or
31 suggested state of affairs is other than it actually is. For the
32 purposes of this chapter, the determination of what constitutes a
33 material fact is a question of law to be resolved by the court.

34 (3) "False" means wholly or partially untrue or deceptive.

35 (4) "Health care payment" means a payment for health care services
36 or the right under a contract, certificate, or policy of insurance to

1 have a payment made by a health care payer for a specified health care
2 service.

3 (5) "Health care payer" means any insurance company authorized to
4 provide health insurance in this state, any health care service
5 contractor authorized under chapter 48.44 RCW, any health maintenance
6 organization authorized under chapter 48.46 RCW, any legal entity which
7 is self-insured and providing health care benefits to its employees,
8 ~~((or))~~ and any insurer or other person responsible for paying for
9 health care services.

10 (6) "Person" means an individual, corporation, partnership,
11 association, or other legal entity.

12 (7) "Provider" means any person lawfully licensed or authorized to
13 render any health service.

14 **Sec. 26.** RCW 2.48.180 and 1989 c 117 s 13 are each amended to read
15 as follows:

16 ~~((Any person who, not being an active member of the state bar, or
17 who after he has been disbarred or while suspended from membership in
18 the state bar, as by this chapter provided, shall))~~

19 (1) As used in this section:

20 (a) "Legal provider" means an active member in good standing of the
21 state bar, and any other person authorized by the Washington state
22 supreme court to engage in full or limited practice of law;

23 (b) "Nonlawyer" means a person to whom the Washington supreme court
24 has granted a limited authorization to practice law but who practices
25 law outside that authorization, and a person who is not an active
26 member in good standing of the state bar, including persons who are
27 disbarred or suspended from membership;

28 (c) "Ownership interest" means the right to control the affairs of
29 a business, or the right to share in the profits of a business, and
30 includes a loan to the business when the interest on the loan is based
31 upon the income of the business or the loan carries more than a
32 commercially reasonable rate of interest.

33 (2) The following constitutes unlawful practice of law:

34 (a) A nonlawyer practices law, or holds himself or herself out as
35 entitled to practice law~~((, shall, except as provided in RCW~~
36 ~~19.154.100, be guilty of a misdemeanor: PROVIDED, HOWEVER, Nothing~~
37 ~~herein contained shall be held to in any way affect the power of the~~
38 ~~courts to grant injunctive relief or to punish as for contempt))~~;

1 (b) A legal provider holds an investment or ownership interest in
2 a business primarily engaged in the practice of law, knowing that a
3 nonlawyer holds an investment or ownership interest in the business;

4 (c) A nonlawyer knowingly holds an investment or ownership interest
5 in a business primarily engaged in the practice of law;

6 (d) A legal provider works for a business that is primarily engaged
7 in the practice of law, knowing that a nonlawyer holds an investment or
8 ownership interest in the business; or

9 (e) A nonlawyer shares legal fees with a legal provider.

10 (3) Unlawful practice of law is a crime. A single violation of
11 this section is a gross misdemeanor. Each subsequent violation,
12 whether alleged in the same or in subsequent prosecutions, is a class
13 C felony.

14 (4) Nothing contained in this section affects the power of the
15 courts to grant injunctive or other equitable relief or to punish as
16 for contempt.

17 (5) Whenever a legal provider or a person licensed by the state in
18 a business or profession is convicted, enjoined, or found liable for
19 damages or a civil penalty or other equitable relief under this
20 section, the plaintiff's attorney shall provide written notification of
21 the judgment to the appropriate regulatory or disciplinary body or
22 agency.

23 (6) A violation of this section is cause for discipline and
24 constitutes unprofessional conduct that could result in any regulatory
25 penalty provided by law, including refusal, revocation, or suspension
26 of a business or professional license, or right or admission to
27 practice. Conduct that constitutes a violation of this section is
28 unprofessional conduct in violation of RCW 18.130.180.

29 (7) In a proceeding under this section it is a defense if proven by
30 the defendant by a preponderance of the evidence that, at the time of
31 the offense, the conduct alleged was authorized by the Rules of
32 Professional Conduct or the Admission to Practice Rules, or Washington
33 business and professions licensing statutes or rules.

34 (8) Independent of authority granted to the attorney general, the
35 prosecuting attorney may petition the superior court for an injunction
36 against a person who has violated this chapter. Remedies in an
37 injunctive action brought by a prosecuting attorney are limited to an
38 order enjoining, restraining, or preventing the doing of any act or
39 practice that constitutes a violation of this chapter and imposing a

1 civil penalty of up to five thousand dollars for each violation. The
2 prevailing party in the action may, in the discretion of the court,
3 recover its reasonable investigative costs and the costs of the action
4 including a reasonable attorney's fee. The degree of proof required in
5 an action brought under this subsection is a preponderance of the
6 evidence. An action under this subsection must be brought within three
7 years after the violation of this chapter occurred.

8 **Sec. 27.** RCW 9.12.010 and 1915 c 165 s 1 are each amended to read
9 as follows:

10 Every person who (~~shall~~) brings on his or her own behalf, or
11 instigates, incites, or encourages another to bring, any false suit at
12 law or in equity in any court of this state, with intent thereby to
13 distress or harass a defendant (~~therein; and every person, being an~~
14 ~~attorney or counselor at law, who shall personally, or through the~~
15 ~~agency of another, solicit employment as such attorney, in any suit~~
16 ~~pending or prospective, or, with intent to obtain such employment~~
17 ~~shall, directly or indirectly, loan any money or give or promise to~~
18 ~~give any money, property or other consideration to the person from whom~~
19 ~~such employment is sought; and every person who shall~~) in the suit, or
20 who serves or sends any paper or document purporting to be or
21 resembling a judicial process, that is not in fact a judicial process
22 (~~shall be~~), is guilty of a misdemeanor; and in case the person
23 offending is an attorney, he or she may, in addition thereto be
24 disbarred from practicing law within this state.

25 **Sec. 28.** RCW 9.94A.320 and 1994 sp.s. c 7 s 510, 1994 c 275 s 20,
26 and 1994 c 53 s 2 are each reenacted and amended to read as follows:

27 TABLE 2

28 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

29	XV	Aggravated Murder 1 (RCW 10.95.020)
30	XIV	Murder 1 (RCW 9A.32.030)
31		Homicide by abuse (RCW 9A.32.055)
32	XIII	Murder 2 (RCW 9A.32.050)

1 XII Assault 1 (RCW 9A.36.011)
2 Assault of a Child 1 (RCW 9A.36.120)
3 XI Rape 1 (RCW 9A.44.040)
4 Rape of a Child 1 (RCW 9A.44.073)
5 X Kidnapping 1 (RCW 9A.40.020)
6 Rape 2 (RCW 9A.44.050)
7 Rape of a Child 2 (RCW 9A.44.076)
8 Child Molestation 1 (RCW 9A.44.083)
9 Damaging building, etc., by explosion with
10 threat to human being (RCW
11 70.74.280(1))
12 Over 18 and deliver heroin or narcotic
13 from Schedule I or II to someone
14 under 18 (RCW 69.50.406)
15 Leading Organized Crime (RCW
16 9A.82.060(1)(a))
17 IX Assault of a Child 2 (RCW 9A.36.130)
18 Robbery 1 (RCW 9A.56.200)
19 Manslaughter 1 (RCW 9A.32.060)
20 Explosive devices prohibited (RCW
21 70.74.180)
22 Indecent Liberties (with forcible
23 compulsion) (RCW 9A.44.100(1)(a))
24 Endangering life and property by
25 explosives with threat to human being
26 (RCW 70.74.270)
27 Over 18 and deliver narcotic from Schedule
28 III, IV, or V or a nonnarcotic from
29 Schedule I-V to someone under 18 and
30 3 years junior (RCW 69.50.406)
31 Controlled Substance Homicide (RCW
32 69.50.415)
33 Sexual Exploitation (RCW 9.68A.040)
34 Inciting Criminal Profiteering (RCW
35 9A.82.060(1)(b))

1 Vehicular Homicide, by being under the
2 influence of intoxicating liquor or
3 any drug (RCW 46.61.520)

4 VIII Arson 1 (RCW 9A.48.020)
5 Promoting Prostitution 1 (RCW 9A.88.070)
6 Selling for profit (controlled or
7 counterfeit) any controlled substance
8 (RCW 69.50.410)
9 Manufacture, deliver, or possess with
10 intent to deliver heroin or cocaine
11 (RCW 69.50.401(a)(1)(i))
12 Manufacture, deliver, or possess with
13 intent to deliver methamphetamine
14 (RCW 69.50.401(a)(1)(ii))
15 Vehicular Homicide, by the operation of
16 any vehicle in a reckless manner (RCW
17 46.61.520)

18 VII Burglary 1 (RCW 9A.52.020)
19 Vehicular Homicide, by disregard for the
20 safety of others (RCW 46.61.520)
21 Introducing Contraband 1 (RCW 9A.76.140)
22 Indecent Liberties (without forcible
23 compulsion) (RCW 9A.44.100(1) (b) and
24 (c))
25 Child Molestation 2 (RCW 9A.44.086)
26 Dealing in depictions of minor engaged in
27 sexually explicit conduct (RCW
28 9.68A.050)
29 Sending, bringing into state depictions of
30 minor engaged in sexually explicit
31 conduct (RCW 9.68A.060)
32 Involving a minor in drug dealing (RCW
33 69.50.401(f))

34 VI Bribery (RCW 9A.68.010)
35 Manslaughter 2 (RCW 9A.32.070)
36 Rape of a Child 3 (RCW 9A.44.079)
37 Intimidating a Juror/Witness (RCW
38 9A.72.110, 9A.72.130)

1 Damaging building, etc., by explosion with
2 no threat to human being (RCW
3 70.74.280(2))
4 Endangering life and property by
5 explosives with no threat to human
6 being (RCW 70.74.270)
7 Incest 1 (RCW 9A.64.020(1))
8 Manufacture, deliver, or possess with
9 intent to deliver narcotics from
10 Schedule I or II (except heroin or
11 cocaine) (RCW 69.50.401(a)(1)(i))
12 Intimidating a Judge (RCW 9A.72.160)
13 Bail Jumping with Murder 1 (RCW
14 9A.76.170(2)(a))

15 V Criminal Mistreatment 1 (RCW 9A.42.020)
16 Theft of a Firearm (RCW 9A.56.300)
17 Reckless Endangerment 1 (RCW 9A.36.045)
18 Rape 3 (RCW 9A.44.060)
19 Sexual Misconduct with a Minor 1 (RCW
20 9A.44.093)
21 Child Molestation 3 (RCW 9A.44.089)
22 Kidnapping 2 (RCW 9A.40.030)
23 Extortion 1 (RCW 9A.56.120)
24 Incest 2 (RCW 9A.64.020(2))
25 Perjury 1 (RCW 9A.72.020)
26 Extortionate Extension of Credit (RCW
27 9A.82.020)
28 Advancing money or property for
29 extortionate extension of credit (RCW
30 9A.82.030)
31 Extortionate Means to Collect Extensions
32 of Credit (RCW 9A.82.040)
33 Rendering Criminal Assistance 1 (RCW
34 9A.76.070)
35 Bail Jumping with class A Felony (RCW
36 9A.76.170(2)(b))
37 Sexually Violating Human Remains (RCW
38 9A.44.105)

1 Delivery of imitation controlled substance
2 by person eighteen or over to person
3 under eighteen (RCW 69.52.030(2))

4 IV Residential Burglary (RCW 9A.52.025)
5 Theft of Livestock 1 (RCW 9A.56.080)
6 Robbery 2 (RCW 9A.56.210)
7 Assault 2 (RCW 9A.36.021)
8 Escape 1 (RCW 9A.76.110)
9 Arson 2 (RCW 9A.48.030)

10 Commercial Bribery (section 29 of this
11 act)

12 Bribing a Witness/Bribe Received by
13 Witness (RCW 9A.72.090, 9A.72.100)
14 Malicious Harassment (RCW 9A.36.080)
15 Threats to Bomb (RCW 9.61.160)
16 Willful Failure to Return from Furlough
17 (RCW 72.66.060)
18 Hit and Run « Injury Accident (RCW
19 46.52.020(4))
20 Vehicular Assault (RCW 46.61.522)
21 Manufacture, deliver, or possess with
22 intent to deliver narcotics from
23 Schedule III, IV, or V or
24 nonnarcotics from Schedule I-V
25 (except marijuana or
26 methamphetamines) (RCW
27 69.50.401(a)(1)(ii) through (iv))
28 Influencing Outcome of Sporting Event (RCW
29 9A.82.070)
30 Use of Proceeds of Criminal Profiteering
31 (RCW 9A.82.080 (1) and (2))
32 Knowingly Trafficking in Stolen Property
33 (RCW 9A.82.050(2))

34 III Criminal Mistreatment 2 (RCW 9A.42.030)
35 Extortion 2 (RCW 9A.56.130)
36 Unlawful Imprisonment (RCW 9A.40.040)
37 Assault 3 (RCW 9A.36.031)
38 Assault of a Child 3 (RCW 9A.36.140)

1 Custodial Assault (RCW 9A.36.100)
2 Unlawful possession of firearm or pistol
3 by felon (RCW 9.41.040)
4 Harassment (RCW 9A.46.020)
5 Promoting Prostitution 2 (RCW 9A.88.080)
6 Willful Failure to Return from Work
7 Release (RCW 72.65.070)
8 Burglary 2 (RCW 9A.52.030)
9 Introducing Contraband 2 (RCW 9A.76.150)
10 Communication with a Minor for Immoral
11 Purposes (RCW 9.68A.090)
12 Patronizing a Juvenile Prostitute (RCW
13 9.68A.100)
14 Escape 2 (RCW 9A.76.120)
15 Perjury 2 (RCW 9A.72.030)
16 Bail Jumping with class B or C Felony (RCW
17 9A.76.170(2)(c))
18 Intimidating a Public Servant (RCW
19 9A.76.180)
20 Tampering with a Witness (RCW 9A.72.120)
21 Manufacture, deliver, or possess with
22 intent to deliver marijuana (RCW
23 69.50.401(a)(1)(ii))
24 Delivery of a material in lieu of a
25 controlled substance (RCW
26 69.50.401(c))
27 Manufacture, distribute, or possess with
28 intent to distribute an imitation
29 controlled substance (RCW
30 69.52.030(1))
31 Recklessly Trafficking in Stolen Property
32 (RCW 9A.82.050(1))
33 Theft of livestock 2 (RCW 9A.56.080)
34 Securities Act violation (RCW 21.20.400)

1 II Unlawful Practice of Law (RCW 2.48.180)
2 Malicious Mischief 1 (RCW 9A.48.070)
3 Possession of Stolen Property 1 (RCW
4 9A.56.150)
5 Theft 1 (RCW 9A.56.030)
6 Trafficking in Insurance Claims (section 3
7 of this act)
8 Unlicensed Practice of a Profession or
9 Business (RCW 18.130.190(7))
10 Health Care False Claims (RCW 48.80.030)
11 Possession of controlled substance that is
12 either heroin or narcotics from
13 Schedule I or II (RCW 69.50.401(d))
14 Possession of phencyclidine (PCP) (RCW
15 69.50.401(d))
16 Create, deliver, or possess a counterfeit
17 controlled substance (RCW
18 69.50.401(b))
19 Computer Trespass 1 (RCW 9A.52.110)
20 Escape from Community Custody (RCW
21 72.09.310)

22 I Theft 2 (RCW 9A.56.040)
23 Possession of Stolen Property 2 (RCW
24 9A.56.160)
25 Forgery (RCW 9A.60.020)
26 Taking Motor Vehicle Without Permission
27 (RCW 9A.56.070)
28 Vehicle Prowl 1 (RCW 9A.52.095)
29 Attempting to Elude a Pursuing Police
30 Vehicle (RCW 46.61.024)
31 Malicious Mischief 2 (RCW 9A.48.080)
32 Reckless Burning 1 (RCW 9A.48.040)
33 Unlawful Issuance of Checks or Drafts (RCW
34 9A.56.060)
35 Unlawful Use of Food Stamps (RCW 9.91.140
36 (2) and (3))
37 False Verification for Welfare (RCW
38 74.08.055)
39 Forged Prescription (RCW 69.41.020)

1 Forged Prescription for a Controlled
2 Substance (RCW 69.50.403)
3 Possess Controlled Substance that is a
4 Narcotic from Schedule III, IV, or V
5 or Non-narcotic from Schedule I-V
6 (except phencyclidine) (RCW
7 69.50.401(d))

8 NEW SECTION. **Sec. 29.** A new section is added to chapter 9A.68 RCW
9 to read as follows:

10 (1) For purposes of this section:

11 (a) "Claimant" means a person who has or is believed by an actor to
12 have an insurance claim.

13 (b) "Service provider" means a person who directly or indirectly
14 provides, advertises, or otherwise claims to provide services.

15 (c) "Services" means health care services, motor vehicle body or
16 other motor vehicle repair, and preparing, processing, presenting, or
17 negotiating an insurance claim.

18 (d) "Trusted person" means:

19 (i) An agent, employee, or partner of another;

20 (ii) An administrator, executor, conservator, guardian, receiver,
21 or trustee of a person or an estate, or any other person acting in a
22 fiduciary capacity;

23 (iii) An accountant, appraiser, attorney, physician, or other
24 professional adviser;

25 (iv) An officer or director of a corporation, or any other person
26 who participates in the affairs of a corporation, partnership, or
27 unincorporated association; or

28 (v) An arbitrator, mediator, or other purportedly disinterested
29 adjudicator or referee.

30 (2) A person is guilty of commercial bribery if:

31 (a) He or she offers, confers, or agrees to confer a pecuniary
32 benefit directly or indirectly upon a trusted person under a request,
33 agreement, or understanding that the trusted person will violate a duty
34 of fidelity or trust arising from his or her position as a trusted
35 person;

36 (b) Being a trusted person, he or she requests, accepts, or agrees
37 to accept a pecuniary benefit for himself, herself, or another under a
38 request, agreement, or understanding that he or she will violate a duty

1 of fidelity or trust arising from his or her position as a trusted
2 person; or

3 (c) Being an employee or agent of an insurer, he or she requests,
4 accepts, or agrees to accept a pecuniary benefit for himself or
5 herself, or a person other than the insurer, under a request,
6 agreement, or understanding that he or she will or a threat that he or
7 she will not refer or induce claimants to have services performed by a
8 service provider.

9 (3) It is not a defense to a prosecution under this section that
10 the person sought to be influenced was not qualified to act in the
11 desired way, whether because the person had not yet assumed his or her
12 position, lacked authority, or for any other reason.

13 (4) Commercial bribery is a class B felony.

14 **Sec. 30.** RCW 9A.72.010 and 1981 c 187 s 1 are each amended to read
15 as follows:

16 The following definitions are applicable in this chapter unless the
17 context otherwise requires:

18 (1) "Materially false statement" means any false statement oral or
19 written, regardless of its admissibility under the rules of evidence,
20 which could have affected the course or outcome of the proceeding;
21 whether a false statement is material shall be determined by the court
22 as a matter of law;

23 (2) "Oath" includes an affirmation and every other mode authorized
24 by law of attesting to the truth of that which is stated; in this
25 chapter, written statements shall be treated as if made under oath if:

26 (a) The statement was made on or pursuant to instructions on an
27 official form bearing notice, authorized by law, to the effect that
28 false statements made therein are punishable;

29 (b) The statement recites that it was made under oath, the
30 declarant was aware of such recitation at the time he or she made the
31 statement, intended that the statement should be represented as a sworn
32 statement, and the statement was in fact so represented by its delivery
33 or utterance with the signed jurat of an officer authorized to
34 administer oaths appended thereto; or

35 (c) It is a statement, declaration, verification, or certificate,
36 made within or outside the state of Washington, which is certified or
37 declared to be true under penalty of perjury as provided in RCW
38 9A.72.085.

1 (3) An oath is "required or authorized by law" when the use of the
2 oath is specifically provided for by statute or regulatory provision or
3 when the oath is administered by a person authorized by state or
4 federal law to administer oaths;

5 (4) "Official proceeding" means a proceeding heard before any
6 legislative, judicial, administrative, or other government agency or
7 official authorized to hear evidence under oath, including any referee,
8 hearing examiner, commissioner, notary, or other person taking
9 testimony or depositions;

10 (5) "Juror" means any person who is a member of any jury, including
11 a grand jury, impaneled by any court of this state or by any public
12 servant authorized by law to impanel a jury; the term juror also
13 includes any person who has been drawn or summoned to attend as a
14 prospective juror;

15 (6) "Testimony" includes oral or written statements, documents, or
16 any other material that may be offered by a witness in an official
17 proceeding.

18 **Sec. 31.** RCW 9A.72.030 and 1975 1st ex.s. c 260 s 9A.72.030 are
19 each amended to read as follows:

20 (1) A person is guilty of perjury in the second degree if, in an
21 examination under oath under the terms of a contract of insurance, or
22 with intent to mislead a public servant in the performance of his or
23 her duty, he or she makes a materially false statement, which he or she
24 knows to be false under an oath required or authorized by law.

25 (2) Perjury in the second degree is a class C felony.

26 NEW SECTION. **Sec. 32.** A new section is added to chapter 9A.76 RCW
27 to read as follows:

28 A person who knowingly makes a false or misleading material
29 statement to a public servant is guilty of a gross misdemeanor.
30 "Material statement" means a written or oral statement reasonably
31 likely to be relied upon by a public servant in the discharge of his or
32 her official powers or duties.

33 **Sec. 33.** RCW 9A.76.020 and 1994 c 196 s 1 are each amended to read
34 as follows:

35 (1) A person is guilty of obstructing a law enforcement officer if
36 the person((÷

1 ~~(a) Willfully makes a false or misleading statement to a law~~
2 ~~enforcement officer who has detained the person during the course of a~~
3 ~~lawful investigation or lawful arrest; or~~

4 (b)) willfully hinders, delays, or obstructs any law enforcement
5 officer in the discharge of his or her official powers or duties.

6 (2) "Law enforcement officer" means any general authority, limited
7 authority, or specially commissioned Washington peace officer or
8 federal peace officer as those terms are defined in RCW 10.93.020, and
9 other public officers who are responsible for enforcement of fire,
10 building, zoning, and life and safety codes.

11 (3) Obstructing a law enforcement officer is a gross misdemeanor.

12 **Sec. 34.** RCW 9A.82.010 and 1994 c 218 s 17 are each amended to
13 read as follows:

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

16 (1) "Creditor" means a person making an extension of credit or a
17 person claiming by, under, or through a person making an extension of
18 credit.

19 (2) "Debtor" means a person to whom an extension of credit is made
20 or a person who guarantees the repayment of an extension of credit or
21 in any manner undertakes to indemnify the creditor against loss
22 resulting from the failure of a person to whom an extension is made to
23 repay the same.

24 (3) "Extortionate extension of credit" means an extension of credit
25 with respect to which it is the understanding of the creditor and the
26 debtor at the time the extension is made that delay in making repayment
27 or failure to make repayment could result in the use of violence or
28 other criminal means to cause harm to the person, reputation, or
29 property of any person.

30 (4) "Extortionate means" means the use, or an express or implicit
31 threat of use, of violence or other criminal means to cause harm to the
32 person, reputation, or property of any person.

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

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

1 (7) "Repayment of an extension of credit" means the repayment,
2 satisfaction, or discharge in whole or in part of a debt or claim,
3 acknowledged or disputed, valid or invalid, resulting from or in
4 connection with that extension of credit.

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

7 (9) "Stolen property" means property that has been obtained by
8 theft, robbery, or extortion.

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

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

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

22 (13) "Financial institution" means any bank, trust company, savings
23 and loan association, savings bank, mutual savings bank, credit union,
24 or loan company under the jurisdiction of the state or an agency of the
25 United States.

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

- 34 (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;
- 35 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;
- 36 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;
- 37 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;
- 38 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and
39 9A.56.080;

1 (f) Child selling or child buying, as defined in RCW 9A.64.030;
2 (g) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and
3 9A.68.050;
4 (h) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
5 (i) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
6 (j) Extortionate extension of credit, as defined in RCW 9A.82.020;
7 (k) Advancing money for use in an extortionate extension of credit,
8 as defined in RCW 9A.82.030;
9 (l) Collection of an extortionate extension of credit, as defined
10 in RCW 9A.82.040;
11 (m) Collection of an unlawful debt, as defined in RCW 9A.82.045;
12 (n) Delivery or manufacture of controlled substances or possession
13 with intent to deliver or manufacture controlled substances under
14 chapter 69.50 RCW;
15 (o) Trafficking in stolen property, as defined in RCW 9A.82.050;
16 (p) Leading organized crime, as defined in RCW 9A.82.060;
17 (q) Money laundering, as defined in RCW 9A.83.020;
18 (r) Obstructing criminal investigations or prosecutions in
19 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,
20 9A.76.070, or 9A.76.180;
21 (s) Fraud in the purchase or sale of securities, as defined in RCW
22 21.20.010;
23 (t) Promoting pornography, as defined in RCW 9.68.140;
24 (u) Sexual exploitation of children, as defined in RCW 9.68A.040,
25 9.68A.050, and 9.68A.060;
26 (v) Promoting prostitution, as defined in RCW 9A.88.070 and
27 9A.88.080;
28 (w) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
29 (x) Assault, as defined in RCW 9A.36.011 and 9A.36.021;
30 (y) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;
31 (z) A pattern of equity skimming, as defined in RCW 61.34.020;
32 ((~~or~~))
33 (aa) Commercial telephone solicitation in violation of RCW
34 19.158.040(1);
35 (bb) Trafficking in insurance claims, as defined in section 3 of
36 this act;
37 (cc) Unlawful practice of law, as defined in RCW 2.48.180;
38 (dd) Commercial bribery, as defined in section 29 of this act;
39 (ee) Health care false claims, as defined in RCW 48.80.030; or

1 (ff) Unlicensed practice of a profession or business, as defined in
2 RCW 18.130.190(7).

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

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

25 (17) "Documentary material" means any book, paper, document,
26 writing, drawing, graph, chart, photograph, phonograph record, magnetic
27 tape, computer printout, other data compilation from which information
28 can be obtained or from which information can be translated into usable
29 form, or other tangible item.

30 (18) "Unlawful debt" means any money or other thing of value
31 constituting principal or interest of a debt that is legally
32 unenforceable in the state in full or in part because the debt was
33 incurred or contracted:

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

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

36 (ii) Chapter 9.46 RCW relating to gambling;

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

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

4 (19)(a) "Beneficial interest" means:

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

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

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

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

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

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

22 (21)(a) "Trustee" means:

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

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

28 (iii) A successor trustee to a person who is a trustee under
29 subsection (21)(a) (i) or (ii) of this section.

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

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

32 (ii) A trustee of any testamentary trust;

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

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

36 **Sec. 35.** RCW 18.130.190 and 1993 c 367 s 19 are each amended to
37 read as follows:

1 (1) The secretary shall investigate complaints concerning practice
2 by unlicensed persons of a profession or business for which a license
3 is required by the chapters specified in RCW 18.130.040. In the
4 investigation of the complaints, the secretary shall have the same
5 authority as provided the secretary under RCW 18.130.050.

6 (2) The secretary may issue a notice of intention to issue a cease
7 and desist order to any person whom the secretary has reason to believe
8 is engaged in the unlicensed practice of a profession or business for
9 which a license is required by the chapters specified in RCW
10 18.130.040. The person to whom such notice is issued may request an
11 adjudicative proceeding to contest the charges. The request for
12 hearing must be filed within twenty days after service of the notice of
13 intention to issue a cease and desist order. The failure to request a
14 hearing constitutes a default, whereupon the secretary may enter a
15 permanent cease and desist order, which may include a civil fine. All
16 proceedings shall be conducted in accordance with chapter 34.05 RCW.

17 (3) If the secretary makes a final determination that a person has
18 engaged or is engaging in unlicensed practice, the secretary may issue
19 a cease and desist order. In addition, the secretary may impose a
20 civil fine in an amount not exceeding one thousand dollars for each day
21 upon which the person engaged in unlicensed practice of a business or
22 profession for which a license is required by one or more of the
23 chapters specified in RCW 18.130.040. The proceeds of such fines shall
24 be deposited to the health professions account.

25 (4) If the secretary makes a written finding of fact that the
26 public interest will be irreparably harmed by delay in issuing an
27 order, the secretary may issue a temporary cease and desist order. The
28 person receiving a temporary cease and desist order shall be provided
29 an opportunity for a prompt hearing. The temporary cease and desist
30 order shall remain in effect until further order of the secretary. The
31 failure to request a prompt or regularly scheduled hearing constitutes
32 a default, whereupon the secretary may enter a permanent cease and
33 desist order, which may include a civil fine.

34 (5) Neither the issuance of a cease and desist order nor payment of
35 a civil fine shall relieve the person so practicing or operating a
36 business without a license from criminal prosecution therefor, but the
37 remedy of a cease and desist order or civil fine shall be in addition
38 to any criminal liability. The cease and desist order is conclusive
39 proof of unlicensed practice and may be enforced under RCW 7.21.060.

1 This method of enforcement of the cease and desist order or civil fine
2 may be used in addition to, or as an alternative to, any provisions for
3 enforcement of agency orders set out in chapter 34.05 RCW.

4 (6) The attorney general, a county prosecuting attorney, the
5 secretary, a board, or any person may in accordance with the laws of
6 this state governing injunctions, maintain an action in the name of
7 this state to enjoin any person practicing a profession or business for
8 which a license is required by the chapters specified in RCW 18.130.040
9 without a license from engaging in such practice or operating such
10 business until the required license is secured. However, the
11 injunction shall not relieve the person so practicing or operating a
12 business without a license from criminal prosecution therefor, but the
13 remedy by injunction shall be in addition to any criminal liability.

14 (7) Unlicensed practice of a profession or operating a business for
15 which a license is required by the chapters specified in RCW
16 18.130.040, unless otherwise exempted by law, constitutes a gross
17 misdemeanor for a single violation. Each subsequent violation, whether
18 alleged in the same or in subsequent prosecutions, is a class C felony.
19 All fees, fines, forfeitures, and penalties collected or assessed by a
20 court because of a violation of this section shall be remitted to the
21 health professions account.

22 NEW SECTION. **Sec. 36.** The Washington State Bar Association is
23 requested to submit to the appropriate committees of the state senate
24 and house of representatives by November 1995, a report on the
25 recommendations of its task force on nonlawyer practice, including any
26 recommendations for legislation or proposed court rules.

27 NEW SECTION. **Sec. 37.** The following acts or parts of acts are
28 each repealed:

29 (1) RCW 9.91.090 and 1992 c 7 s 17, 1981 c 203 s 4, & 1909 c 249 s
30 384;

31 (2) RCW 9A.82.903 and 1985 c 455 s 22;

32 (3) RCW 48.50.060 and 1979 ex.s. c 80 s 6;

33 (4) RCW 48.50.080 and 1979 ex.s. c 80 s 8; and

34 (5) RCW 49.44.070 and 1909 c 249 s 427.

35 NEW SECTION. **Sec. 38.** Sections 1 through 14 of this act
36 constitute a new chapter in Title 48 RCW.

1 NEW SECTION. **Sec. 39.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and shall take
4 effect July 1, 1995.

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