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ENGROSSED SUBSTITUTE SENATE BILL 5318

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State of Washington

52nd Legislature

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By Senate Committee on Financial Institutions & Insurance (originally sponsored by Senators von Reichbauer, Pelz, Owen, Johnson, Vognild, Moore, Rasmussen, McCaslin, Matson, Sellar and West).

Read first time February 6, 1991.

1 AN ACT Relating to money laundering; amending RCW 9A.82.010; adding  
2 a new section to chapter 9A.82 RCW; and prescribing penalties.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.82 RCW  
5 to read as follows:

6 (1) As used in this section, the term:

7 (a) "Proceeds" means any interest in property of any kind,  
8 including real property, acquired through or caused by an act or  
9 omission, or derived from the act or omission, directly or indirectly,  
10 and any fruits of this interest, in whatever form;

11 (b) "Proceeds of some form of unlawful activity" means proceeds  
12 from an act that is chargeable or indictable as a felony under state or  
13 federal law, including, but not limited to those activities specified  
14 as "criminal profiteering" as defined in RCW 9A.82.010;

1 (c) "Monetary instruments" means coin or currency of the United  
2 States or of any other country, travellers' checks, personal checks,  
3 bank checks, money orders, investment securities in bearer form or  
4 otherwise in such form that title to them passes upon delivery, and  
5 negotiable instruments in bearer form or otherwise in such form that  
6 title to them passes upon delivery;

7 (d) "Acquire" means for a person to do any of the following:

8 (i) Act so as to exclude other persons from using their property  
9 except on his or her own terms;

10 (ii) Bring about or receive the transfer of any interest in  
11 property, whether to himself or to another person, or to secure  
12 performance of a service.

13 (2) It is unlawful for a person to possess, receive, acquire or  
14 maintain an interest in, transfer, transport, or conceal the existence,  
15 origin, or nature of property, funds, or monetary instruments knowing  
16 or having reason to know that they are the proceeds of some form of  
17 unlawful activity. A person who violates this subsection is guilty of  
18 money laundering in the second degree.

19 (3) It is unlawful for a person to knowingly initiate, organize,  
20 plan, finance, direct, manage, supervise, or be in the business of  
21 money laundering. A person who violates this subsection is guilty of  
22 money laundering in the first degree.

23 (4) Money laundering in the second degree is a class C felony.  
24 Money laundering in the first degree is a class B felony.

25 (5) A person who violates this section is also liable for a civil  
26 penalty of the value of the property, funds, or monetary instruments  
27 involved in the transaction or ten thousand dollars, whichever is  
28 greater.

29 (6) The proceeds of unlawful activity defined in this section shall  
30 be forfeited, and no property rights exist in those proceeds. The

1 court in imposing sentence on a person convicted of money laundering in  
2 either the first or second degree shall order that the person forfeit  
3 to the state the proceeds of unlawful activity defined in this section.  
4 The money derived from the forfeiture of the proceeds of unlawful  
5 activity shall be deposited in the general fund of the state, county,  
6 and/or city of the seizing law enforcement agency. Such moneys shall  
7 not supplant preexisting funding sources. The attorney general or  
8 county prosecutor may file a civil action for the forfeiture of  
9 proceeds of any act chargeable or indictable as money laundering. Upon  
10 the entry of an order of forfeiture of real property, the court shall  
11 forward a copy of the order to the assessor of the county in which the  
12 property is located. Orders for the forfeiture of real property shall  
13 be entered by the superior court, subject to court rules. Such an  
14 order shall be filed by the seizing agency in the county auditor's  
15 records in the county in which the real property is located. A  
16 forfeiture of the proceeds of unlawful activity encumbered by a bona  
17 fide security interest is subject to the interest of the secured party  
18 if, at the time the security interest was created, the secured party  
19 neither had knowledge of, nor consented to the act or omission.

20 (7) Any person in the trade or business of engaging in financial  
21 transactions may report any financial transaction to law enforcement  
22 agencies, regardless of the value of the property involved, if the  
23 person has reason to believe the transaction to involve proceeds of  
24 some form of unlawful activity. No person or business making a report  
25 in good faith pursuant to this section will be liable to any person or  
26 otherwise subject to retaliation for loss or damage including  
27 consequential damage caused in whole or in part by the making to,  
28 filing with, or use by, the law enforcement agency or any person or  
29 entity receiving the information from the law enforcement agency, of

1 the report or any information contained therein or obtained as a result  
2 thereof.

3 **Sec. 2.** RCW 9A.82.010 and 1989 c 20 s 17 are each amended to read  
4 as follows:

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

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

10 (2) "Debtor" means a person to whom an extension of credit is made  
11 or a person who guarantees the repayment of an extension of credit or  
12 in any manner undertakes to indemnify the creditor against loss  
13 resulting from the failure of a person to whom an extension is made to  
14 repay the same.

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

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

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

26 (6) "To extend credit" means to make or renew a loan or to enter  
27 into an agreement, tacit or express, whereby the repayment or  
28 satisfaction of a debt or claim, whether acknowledged or disputed,  
29 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

1 act occurred in this state and punishable as a felony and by  
2 imprisonment for more than one year, regardless of whether the act is  
3 charged or indicted, as any of the following:

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

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

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

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

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

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

11 (g) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and  
12 9A.68.050;

13 (h) Gambling, as defined in RCW 9.46.220 and 9.46.230;

14 (i) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;

15 (j) Extortionate extension of credit, as defined in RCW 9A.82.020;

16 (k) Advancing money for use in an extortionate extension of credit,  
17 as defined in RCW 9A.82.030;

18 (l) Collection of an extortionate extension of credit, as defined  
19 in RCW 9A.82.040;

20 (m) Collection of an unlawful debt, as defined in RCW 9A.82.045;

21 (n) Delivery or manufacture of controlled substances or possession  
22 with intent to deliver or manufacture controlled substances under  
23 chapter 69.50 RCW;

24 (o) Trafficking in stolen property, as defined in RCW 9A.82.050;

25 (p) Leading organized crime, as defined in RCW 9A.82.060;

26 (q) Money laundering, as defined in section 1 of this act;

27 (r) Obstructing criminal investigations or prosecutions in  
28 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,  
29 9A.76.070, or 9A.76.180;

1       (~~(r)~~) (s) Fraud in the purchase or sale of securities, as  
2 defined in RCW 21.20.010;

3       (~~(s)~~) (t) Promoting pornography, as defined in RCW 9.68.140;

4       (~~(t)~~) (u) Sexual exploitation of children, as defined in RCW  
5 9.68A.040, 9.68A.050, and 9.68A.060;

6       (~~(u)~~) (v) Promoting prostitution, as defined in RCW 9A.88.070 and  
7 9A.88.080;

8       (~~(v)~~) (w) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

9       (~~(w)~~) (x) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

10       (~~(x)~~) (y) A pattern of equity skimming, as defined in RCW  
11 61.34.020; or

12       (~~(y)~~) (z) Commercial telephone solicitation in violation of RCW  
13 19.158.040(1).

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

1 proof, but such conviction need not relate to any act or acts asserted  
2 as acts of criminal profiteering activity in such civil action under  
3 RCW 9A.82.100.

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

6 (17) "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 (18) "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 (19) (a) "Beneficial interest" means:

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

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

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

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

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

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

12 (21) (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  
19 subsection (21)(a) (i) or (ii) of this section.

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 (22) "Financial transaction" means a purchase, sale, loan, pledge,  
27 gift, transfer, delivery, or other disposition, and with respect to a  
28 financial institution or other business includes a deposit, withdrawal,  
29 transfer between accounts, exchange of currency, loan, extension of  
30 credit, purchase or sale of any stock, bond, certificate of deposit, or

1 other monetary instrument, or other payment, transfer, or delivery by,  
2 through, or to a financial institution, by whatever means effected.

3 (23) "Business" includes a corporation and foreign corporation as  
4 defined in RCW 23B.01.400, not-for-profit corporation, profit and not-  
5 for-profit unincorporated association, business trust, estate,  
6 partnership, or trust.