

SSB 6252 - S AMD 38

By Senators Eide, Kline, Pflug

ADOPTED 02/08/2012

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 9A.82.010 and 2008 c 108 s 24 are each amended to
4 read as follows:

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

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

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

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

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

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

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

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

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

27 (4) "Criminal profiteering" means any act, including any
28 anticipatory or completed offense, committed for financial gain, that
29 is chargeable or indictable under the laws of the state in which the
30 act occurred and, if the act occurred in a state other than this state,

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

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

1 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,
2 9A.76.070, or 9A.76.180;
3 (v) Fraud in the purchase or sale of securities, as defined in RCW
4 21.20.010;
5 (w) Promoting pornography, as defined in RCW 9.68.140;
6 (x) Sexual exploitation of children, as defined in RCW 9.68A.040,
7 9.68A.050, and 9.68A.060;
8 (y) Promoting prostitution, as defined in RCW 9A.88.070 and
9 9A.88.080;
10 (z) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
11 (aa) Assault, as defined in RCW 9A.36.011 and 9A.36.021;
12 (bb) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;
13 (cc) A pattern of equity skimming, as defined in RCW 61.34.020;
14 (dd) Commercial telephone solicitation in violation of RCW
15 19.158.040(1);
16 (ee) Trafficking in insurance claims, as defined in RCW 48.30A.015;
17 (ff) Unlawful practice of law, as defined in RCW 2.48.180;
18 (gg) Commercial bribery, as defined in RCW 9A.68.060;
19 (hh) Health care false claims, as defined in RCW 48.80.030;
20 (ii) Unlicensed practice of a profession or business, as defined in
21 RCW 18.130.190(7);
22 (jj) Improperly obtaining financial information, as defined in RCW
23 9.35.010;
24 (kk) Identity theft, as defined in RCW 9.35.020;
25 (ll) Unlawful shipment of cigarettes in violation of RCW
26 70.155.105(6) (a) or (b);
27 (mm) Unlawful shipment of cigarettes in violation of RCW
28 82.24.110(2);
29 (nn) Unauthorized sale or procurement of telephone records in
30 violation of RCW 9.26A.140;
31 (oo) Theft with the intent to resell, as defined in RCW 9A.56.340;
32 (pp) Organized retail theft, as defined in RCW 9A.56.350; (~~or~~)
33 (qq) Mortgage fraud, as defined in RCW 19.144.080;
34 (rr) Commercial sexual abuse of a minor, as defined in RCW
35 9.68A.100; or
36 (ss) Promoting commercial sexual abuse of a minor, as defined in
37 RCW 9.68A.101.

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

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

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

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

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

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

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

32 (12) "Pattern of criminal profiteering activity" means engaging in
33 at least three acts of criminal profiteering, one of which occurred
34 after July 1, 1985, and the last of which occurred within five years,
35 excluding any period of imprisonment, after the commission of the
36 earliest act of criminal profiteering. In order to constitute a
37 pattern, the three acts must have the same or similar intent, results,
38 accomplices, principals, victims, or methods of commission, or be

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

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

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

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

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

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

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

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

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

37 (i) A person acting as a trustee under a trust established under

1 Title 11 RCW in which the trustee holds legal or record title to real
2 property;

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

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

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

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

9 (ii) A trustee of any testamentary trust;

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

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

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

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

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

19 (ii) Chapter 9.46 RCW relating to gambling;

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

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

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

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

33 (b) The attorney general or county prosecuting attorney may file an
34 action: (i) On behalf of those persons injured or, respectively, on
35 behalf of the state or county if the entity has sustained damages, or
36 (ii) to prevent, restrain, or remedy a pattern of criminal profiteering

1 activity, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101,
2 or 9A.88.070, or a violation of RCW 9A.82.060 or 9A.82.080.

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

7 (d) In an action filed to prevent, restrain, or remedy a pattern of
8 criminal profiteering activity, or an offense defined in RCW 9A.40.100,
9 9.68A.100, 9.68A.101, or 9A.88.070, or a violation of RCW 9A.82.060 or
10 9A.82.080, the court, upon proof of the violation, may impose a civil
11 penalty not exceeding two hundred fifty thousand dollars, in addition
12 to awarding the cost of the suit, including reasonable investigative
13 and attorney's fees.

14 (2) The superior court has jurisdiction to prevent, restrain, and
15 remedy a pattern of criminal profiteering, or an offense defined in RCW
16 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or a violation of RCW
17 9A.82.060 or 9A.82.080 after making provision for the rights of all
18 innocent persons affected by the violation and after hearing or trial,
19 as appropriate, by issuing appropriate orders.

20 (3) Prior to a determination of liability, orders issued under
21 subsection (2) of this section may include, but are not limited to,
22 entering restraining orders or prohibitions or taking such other
23 actions, including the acceptance of satisfactory performance bonds, in
24 connection with any property or other interest subject to damages,
25 forfeiture, or other restraints pursuant to this section as the court
26 deems proper. The orders may also include attachment, receivership, or
27 injunctive relief in regard to personal or real property pursuant to
28 Title 7 RCW. In shaping the reach or scope of receivership,
29 attachment, or injunctive relief, the superior court shall provide for
30 the protection of bona fide interests in property, including community
31 property, of persons who were not involved in the violation of this
32 chapter, except to the extent that such interests or property were
33 acquired or used in such a way as to be subject to forfeiture under RCW
34 9A.82.100(4)(f).

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

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

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

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

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

14 (e) Ordering the payment of all costs and expenses of the
15 prosecution and investigation of a pattern of criminal profiteering, or
16 an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or
17 9A.88.070, activity or a violation of RCW 9A.82.060 or 9A.82.080, civil
18 and criminal, incurred by the state or county, including any costs of
19 defense provided at public expense, as appropriate to the state general
20 fund or the antiprofitteering revolving fund of the county.

21 (f) Ordering forfeiture first as restitution to any person damaged
22 by an act of criminal profiteering that is part of a pattern of
23 criminal profiteering, or by an offense defined in RCW 9A.40.100, then
24 to the state general fund or antiprofitteering revolving fund of the
25 county, as appropriate, to the extent not already ordered to be paid in
26 other damages, of the following:

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

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

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

1 negotiable instruments, securities, and other things of value
2 significantly used or intended to be used significantly to facilitate
3 commission of the offense.

4 (g) Ordering payment to the state general fund or antiprofitteering
5 revolving fund of the county, as appropriate, of an amount equal to the
6 gain a person has acquired or maintained through an offense included in
7 the definition of criminal profiteering.

8 (5) In addition to or in lieu of an action under this section, the
9 attorney general or county prosecuting attorney may file an action for
10 forfeiture to the state general fund or antiprofitteering revolving fund
11 of the county, as appropriate, to the extent not already ordered paid
12 pursuant to this section, of the following:

13 (a) Any interest acquired or maintained by a person in violation of
14 RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds
15 obtained from a violation of RCW 9A.82.060 or 9A.82.080 and any
16 appreciation or income attributable to the investment.

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

21 (c) All proceeds traceable to or derived from an offense included
22 in the pattern of criminal profiteering activity, or an offense defined
23 in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys,
24 negotiable instruments, securities, and other things of value
25 significantly used or intended to be used significantly to facilitate
26 the commission of the offense.

27 (6) A defendant convicted in any criminal proceeding is precluded
28 in any civil proceeding from denying the essential allegations of the
29 criminal offense proven in the criminal trial in which the defendant
30 was convicted. For the purposes of this subsection, a conviction shall
31 be deemed to have occurred upon a verdict, finding, or plea of guilty,
32 notwithstanding the fact that appellate review of the conviction and
33 sentence has been or may be sought. If a subsequent reversal of the
34 conviction occurs, any judgment that was based upon that conviction may
35 be reopened upon motion of the defendant.

36 (7) The initiation of civil proceedings under this section shall be
37 commenced within three years after discovery of the pattern of criminal
38 profiteering activity or after the pattern should reasonably have been

1 discovered or, in the case of an offense that is defined in RCW
2 9A.40.100, within three years after the final disposition of any
3 criminal charges relating to the offense, whichever is later.

4 (8) The attorney general or county prosecuting attorney may, in a
5 civil action brought pursuant to this section, file with the clerk of
6 the superior court a certificate stating that the case is of special
7 public importance. A copy of that certificate shall be furnished
8 immediately by the clerk to the presiding chief judge of the superior
9 court in which the action is pending and, upon receipt of the copy, the
10 judge shall immediately designate a judge to hear and determine the
11 action. The judge so designated shall promptly assign the action for
12 hearing, participate in the hearings and determination, and cause the
13 action to be expedited.

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

16 (10) A person other than the attorney general or county prosecuting
17 attorney who files an action under this section shall serve notice and
18 one copy of the pleading on the attorney general within thirty days
19 after the action is filed with the superior court. The notice shall
20 identify the action, the person, and the person's attorney. Service of
21 the notice does not limit or otherwise affect the right of the state to
22 maintain an action under this section or intervene in a pending action
23 nor does it authorize the person to name the state or the attorney
24 general as a party to the action.

25 (11) Except in cases filed by a county prosecuting attorney, the
26 attorney general may, upon timely application, intervene in any civil
27 action or proceeding brought under this section if the attorney general
28 certifies that in the attorney general's opinion the action is of
29 special public importance. Upon intervention, the attorney general may
30 assert any available claim and is entitled to the same relief as if the
31 attorney general had instituted a separate action.

32 (12) In addition to the attorney general's right to intervene as a
33 party in any action under this section, the attorney general may appear
34 as amicus curiae in any proceeding in which a claim under this section
35 has been asserted or in which a court is interpreting RCW 9A.82.010,
36 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.

37 (13) A private civil action under this section does not limit any

1 other civil or criminal action under this chapter or any other
2 provision. Private civil remedies provided under this section are
3 supplemental and not mutually exclusive.

4 (14) Upon motion by the defendant, the court may authorize the sale
5 or transfer of assets subject to an order or lien authorized by this
6 chapter for the purpose of paying actual attorney's fees and costs of
7 defense. The motion shall specify the assets for which sale or
8 transfer is sought and shall be accompanied by the defendant's sworn
9 statement that the defendant has no other assets available for such
10 purposes. No order authorizing such sale or transfer may be entered
11 unless the court finds that the assets involved are not subject to
12 possible forfeiture under RCW 9A.82.100(4)(f). Prior to disposition of
13 the motion, the court shall notify the state of the assets sought to be
14 sold or transferred and shall hear argument on the issue of whether the
15 assets are subject to forfeiture under RCW 9A.82.100(4)(f). Such a
16 motion may be made from time to time and shall be heard by the court on
17 an expedited basis.

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

SSB 6252 - S AMD
By Senators Eide, Kline, Pflug

ADOPTED 02/08/2012

20 On page 1, line 3 of the title, after "degree;" strike the
21 remainder of the title and insert "and amending RCW 9A.82.010 and
22 9A.82.100."

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