SENATE BILL REPORT

2SSB 5318

AS PASSED SENATE, FEBRUARY 18, 1992

Brief Description: Prescribing penalties for money laundering.

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

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: That Second Substitute Senate Bill No. 5318 be substituted therefor, and the second substitute bill do pass.

Signed by Senators von Reichbauer, Chairman; Erwin, Vice Chairman; McCaslin, Moore, Owen, Pelz, Rasmussen, Sellar, and West.

Staff: Benson Porter (786-7470)

Hearing Dates: January 25, 1991; February 4, 1992; February 5, 1991; February 7, 1992

HOUSE COMMITTEE ON JUDICIARY

BACKGROUND:

Money laundering can briefly be described as the process by which a person manipulates the proceeds of some form of unlawful activity in order to conceal their criminal origin and make the proceeds appear legitimate. The actual process of money laundering can take place in a wide variety of ways.

The federal government has adopted several measures designed to combat money laundering. In 1986, Congress made the act of "laundering of monetary instruments" a federal crime. Congress also has adopted the Bank Secrecy Act which, in part, requires financial institutions to file a Currency Transaction Report (CTR) for cash transactions which exceed $10,000 and to maintain certain records and procedures to ensure compliance with the act. In addition, the Internal Revenue Code requires certain businesses that accept over $10,000 in a cash transaction to file a report.

Ten states have made money laundering a crime within their state criminal codes and some states have also adopted their own reporting requirements to enhance law enforcement efforts.

SUMMARY:

A new state crime of money laundering is created. A person is guilty of money laundering if that person conducts a financial transaction involving proceeds from certain felonious activity and that person: (1) knows the property is proceeds of felonious activity, or (2) knows the transaction is designed to conceal the nature, location, source, ownership, or control of the proceeds, and acts recklessly as to whether the property is proceeds of felonious activity.

If an action is brought against an attorney who accepts a fee to represent a person in an actual criminal investigation or proceeding, an additional proof requirement is imposed. In addition to satisfying the above requirements, the prosecution must prove that the attorney intended to conceal the nature, source, or ownership of the proceeds.

Money laundering is a class B felony, which is punishable with imprisonment up to ten years and/or a penalty of $20,000. A violator of the money laundering crime is also subject to a civil penalty in the amount of the value of the proceeds in the transaction or $10,000, whichever is greater.

The Attorney General or county prosecuting attorney are authorized to file civil action for forfeiture of proceeds from a violation of the money laundering crime or proceeds traceable to a felonious activity. Provisions are set forth governing the seizure of real and personal property, notice, and use of forfeited property.

No liability is imposed upon state or local officers who are performing their lawful duties or any other person acting at the direction of such officers.

Appropriation: none

Revenue: no

Fiscal Note: none requested

TESTIMONY FOR:

Washington continues to need a state statute criminalizing money laundering to advance state prosecution of the crime.

TESTIMONY AGAINST:

The forfeiture provisions should not place the burden of proof on the claimant in situations involving personal property.

TESTIFIED: Richard J. Troberman, WACDL (con); Fred J. Caruso, Mike Grant, AG (pro); Mike Patrick, Steve Tuckev, WSCPO (pro); Tim Schellberg, WASPC (pro); Pat Sainsbury, Fraud Div., King County Pros. Attorney (pro); Trevor Sandison, WBA

HOUSE AMENDMENT(S):

The knowing avoidance of federal reporting requirements is added as a way of committing the crime of money laundering. It also allows for the conviction of a person who mistakenly believes money is being laundered based on a police "sting" operation.

The additional proof requirements for attorneys are extended to employees of financial institutions.

The predicate acts for the crime of money laundering include any class A or B felony under Washington law, any predicate offense under the criminal profiteering law, and any violation of federal law or another state's law that is punishable by more than a year in prison.

The civil penalty is equal to twice the value of the proceeds involved plus costs and fees.

Existing provisions regarding distribution of forfeited property in drug cases are replaced. Ten percent of the net proceeds derived from forfeited drug or money laundering property is to be remitted to the state's drug enforcement and education account. Seizing agencies are required to make quarterly reports of property that has been forfeited.