
HOUSE BILL 1215

State of Washington 58th Legislature 2003 Regular Session

By Representatives O'Brien, Sullivan, Ahern, Hunt, Crouse, McMahan, Berkey, Conway and Chase

Read first time 01/21/2003. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to penalties for acts of fraud committed against
2 elderly persons; amending RCW 9A.60.010 and 19.86.010; adding a new
3 section to chapter 9A.60 RCW; adding new sections to chapter 19.86 RCW;
4 and prescribing penalties.

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

6 **Sec. 1.** RCW 9A.60.010 and 1999 c 143 s 38 are each amended to read
7 as follows:

8 The following definitions and the definitions of RCW 9A.56.010 are
9 applicable in this chapter unless the context otherwise requires:

10 (1) "Written instrument" means: (a) Any paper, document, or other
11 instrument containing written or printed matter or its equivalent; or
12 (b) any access device, token, stamp, seal, badge, trademark, or other
13 evidence or symbol of value, right, privilege, or identification;

14 (2) "Complete written instrument" means one which is fully drawn
15 with respect to every essential feature thereof;

16 (3) "Incomplete written instrument" means one which contains some
17 matter by way of content or authentication but which requires
18 additional matter in order to render it a complete written instrument;

1 (4) To "falsely make" a written instrument means to make or draw a
2 complete or incomplete written instrument which purports to be
3 authentic, but which is not authentic either because the ostensible
4 maker is fictitious or because, if real, he did not authorize the
5 making or drawing thereof;

6 (5) To "falsely complete" a written instrument means to transform
7 an incomplete written instrument into a complete one by adding or
8 inserting matter, without the authority of anyone entitled to grant it;

9 (6) To "falsely alter" a written instrument means to change,
10 without authorization by anyone entitled to grant it, a written
11 instrument, whether complete or incomplete, by means of erasure,
12 obliteration, deletion, insertion of new matter, transposition of
13 matter, or in any other manner;

14 (7) "Forged instrument" means a written instrument which has been
15 falsely made, completed, or altered;

16 (8) "Elderly person" means a person sixty years of age or older.

17 NEW SECTION. Sec. 2. A new section is added to chapter 9A.60 RCW
18 to read as follows:

19 (1) When any person is found guilty of having committed an offense
20 against an elderly person under this chapter, the court shall assess a
21 penalty. The assessment shall be in addition to any other penalty or
22 fine imposed by law and shall be in the amount of up to ten thousand
23 dollars for a felony offense and up to five thousand dollars for a
24 nonfelony offense.

25 (2) Money collected under subsection (1) of this section shall be
26 paid by the clerk of the court to the county treasurer who shall
27 monthly transmit the money to the state treasurer for deposit as
28 follows:

29 (a) Fifty percent of the money shall be deposited in the violence
30 reduction and drug enforcement account under RCW 69.50.520; and

31 (b) Fifty percent of the money shall be deposited in the public
32 safety and education account under RCW 43.08.250, to be used solely for
33 the crime victims' compensation program.

34 **Sec. 3.** RCW 19.86.010 and 1961 c 216 s 1 are each amended to read
35 as follows:

36 As used in this chapter:

1 (1) "Person" shall include, where applicable, natural persons,
2 corporations, trusts, unincorporated associations and partnerships.

3 (2) "Trade" and "commerce" shall include the sale of assets or
4 services, and any commerce directly or indirectly affecting the people
5 of the state of Washington.

6 (3) "Assets" shall include any property, tangible or intangible,
7 real, personal, or mixed, and wherever situate, and any other thing of
8 value.

9 (4) "Elderly person" means a person sixty years of age or older.

10 NEW SECTION. Sec. 4. A new section is added to chapter 19.86 RCW
11 to read as follows:

12 A person who violates or causes another to violate a provision of
13 this chapter shall pay to the general fund a civil penalty of not more
14 than ten thousand dollars for each violation if the violation was
15 committed against an elderly person. A violation of a provision of
16 this chapter constitutes a separate violation with respect to each
17 elderly person involved.

18 NEW SECTION. Sec. 5. A new section is added to chapter 19.86 RCW
19 to read as follows:

20 (1) Proceeds traceable to or derived from specified unlawful
21 activity or a violation of this chapter are subject to seizure and
22 forfeiture if the violation was committed against an elderly person.
23 The attorney general or county prosecuting attorney may file a civil
24 action for the forfeiture of proceeds. Unless otherwise provided for
25 under this section, no property rights exist in these proceeds. All
26 right, title, and interest in the proceeds vests in the governmental
27 entity of which the seizing law enforcement agency is a part upon
28 commission of the act or omission giving rise to forfeiture under this
29 section.

30 (2) Real or personal property subject to forfeiture under this
31 chapter may be seized by any law enforcement officer of this state upon
32 process issued by a superior court that has jurisdiction over the
33 property. An agency seizing real property shall file a lis pendens
34 concerning the property. Real property seized under this section shall
35 not be transferred or otherwise conveyed until ninety days after
36 seizure or until a judgment of forfeiture is entered, whichever is

1 later. Real property seized under this section may be transferred or
2 conveyed to a person or entity who acquires title by foreclosure or
3 deed in lieu of foreclosure of a security interest. Seizure of
4 personal property without process may be made if:

5 (a) The seizure is incident to an arrest or a search under a search
6 warrant; or

7 (b) The property subject to seizure has been the subject of a prior
8 judgment in favor of the state in a criminal injunction or forfeiture
9 proceeding based upon this chapter.

10 (3) A seizure under subsection (2) of this section commences
11 proceedings for forfeiture. The law enforcement agency under whose
12 authority the seizure was made shall cause notice of the seizure and
13 intended forfeiture of the seized proceeds to be served within fifteen
14 days after the seizure on the owner of the property seized and the
15 person in charge thereof and any person who has a known right or
16 interest therein, including a community property interest. Service of
17 notice of seizure of real property shall be made according to the rules
18 of civil procedure. However, the state may not obtain a default
19 judgment with respect to real property against a party who is served by
20 substituted service absent an affidavit stating that a good faith
21 effort has been made to ascertain if the defaulted party is
22 incarcerated within the state, and that there is no present basis to
23 believe that the party is incarcerated within the state. The notice of
24 seizure in other cases may be served by any method authorized by law or
25 court rule including but not limited to service by certified mail with
26 return receipt requested. Service by mail is complete upon mailing
27 within the fifteen-day period after the seizure.

28 (4) If no person notifies the seizing law enforcement agency in
29 writing of the person's claim of ownership or right to possession of
30 the property within forty-five days of the seizure in the case of
31 personal property and ninety days in the case of real property, the
32 property seized shall be deemed forfeited. The community property
33 interest in real property of a person whose spouse committed a
34 violation giving rise to seizure of the real property may not be
35 forfeited if the person did not participate in the violation.

36 (5) If a person notifies the seizing law enforcement agency in
37 writing of the person's claim of ownership or right to possession of
38 property within forty-five days of the seizure in the case of personal

1 property and ninety days in the case of real property, the person or
2 persons shall be afforded a reasonable opportunity to be heard as to
3 the claim or right. The provisions of RCW 69.50.505(e) shall apply to
4 any such hearing. The seizing law enforcement agency shall promptly
5 return property to the claimant upon the direction of the
6 administrative law judge or court.

7 (6) Disposition of forfeited property shall be made in the manner
8 provided for in RCW 69.50.505 (h), (i), and (n).

9 (7) Forfeited property and net proceeds not required to be paid to
10 the state treasurer shall be retained by the seizing law enforcement
11 agency exclusively for the expansion and improvement of consumer
12 protection-related law enforcement activity. Money retained under this
13 section may not be used to supplant preexisting fund sources.

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