HOUSE BILL REPORT

2SSB 5318

As Passed House - Amended
March 5, 1992

Title: An act relating to money laundering.

Brief Description: Prescribing penalties for money laundering.

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

Brief History:
Reported by House Committee on:
Judiciary, February 28, 1992, DPA;
Passed House, March 5, 1992, 97-0.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: *Do pass as amended.* Signed by 19 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Belcher; Broback; Forner; Hargrove; Inslee; Locke; R. Meyers; Mielke; H. Myers; Riley; Scott; D. Sommers; Tate; Vance; and Wineberry.

Staff: Bill Perry (786-7123).

Background: Criminals may accumulate considerable money through illegal activities. It is sometimes difficult to use these proceeds of illegal activity without raising suspicion, at least, as to their origin.

"Money laundering" is the manipulation of such proceeds to conceal their criminal origin. Money laundering can be done in a variety of ways and can involve a number of participating, acquiescing, or innocent third parties.

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. Among other things, this act requires financial institutions to file a Currency Transaction Report for cash transactions which

exceed $10,000, to maintain certain records, and to follow certain procedures to ensure compliance with the act. In addition, the Internal Revenue Code requires certain businesses to report whenever they accept over $10,000 in a cash transaction.

Ten states have made money laundering a crime, and some states have also adopted their own reporting requirements.

Under a variety of state and federal laws, property used in connection with the commission of some crimes may be seized by administrative or law enforcement agencies. Such seized property is subject to forfeiture in civil proceedings that may or may not accompany criminal prosecution. Forfeiture vests the ownership of the property in the seizing agency. Washington State forfeiture procedures are part of crimes involving telecommunications equipment, emblems of sedition and anarchy, firearms, gambling equipment, child pornography, property of subversive groups, taking of game, liquor equipment, criminal profiteering, and controlled substances.

The state's Uniform Controlled Substances Act allows the seizure and forfeiture of both personal and real property that is used in connection with illegal drug activity. The act also allows seizure and forfeiture of any property acquired with the proceeds of illegal drug activity. When property is forfeited under this statute, it may be disposed of by the seizing agency in one of three ways, depending on circumstances set out in the law. The property may be kept by the agency, destroyed, or sold. If the property is sold or if the property seized is itself money, the proceeds of the sale or the money seized, is subject to a fairly complex set of rules regarding its distribution.

If a single forfeiture involves less than $5,000, the seizing agency may keep the entire amount. If the amount is more than that, the money is split between the state and the seizing agency. However, the amount to be split is the net of all of the seizing agency's expenses in investigation, seizure, and forfeiture.

The state's "Little RICO" law prohibits criminal profiteering. The act creates several crimes, including extortionate extension of credit, advancing money or property to be used for extortionate credit, trafficking in stolen property, use of proceeds of criminal profiteering, and leading organized crime. In addition, various private and public civil remedies are available against a person who engages in a pattern of criminal profiteering. A pattern of criminal profiteering is three or more so-called "predicate offenses" committed for financial gain, and committed within

five years of each other. The list of predicate offenses includes among others: murder, robbery, theft, bribery, gambling, extortion, securities fraud, promoting pornography, arson, assault, commercial telephone solicitation, any felony violation of the Uniform Controlled Substances Act, and criminal profiteering crimes themselves.

Among the civil remedies available under the criminal profiteering law are damages including costs and fees, divestiture, restraining orders, corporate reorganization, and forfeiture of any property used in or proceeds derived from criminal profiteering.

Summary of Bill: A new class B felony crime, money laundering, is created. A person is guilty of money laundering if he or she conducts a financial transaction involving proceeds from certain specified crimes and he or she: (1) knows the property is proceeds of a specified crime, or believes it is based on law enforcement representations; (2) that 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 a specified crime; or (3) knows the transaction is designed to avoid a federal reporting requirement. Specified crimes that act as predicates 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.

Additional proof requirements are imposed in cases involving attorneys fees or bank transactions. The prosecution must prove that the attorney or the bank intended to conceal the nature, source, or ownership of the proceeds and knew that the proceeds were from one of the specified crimes.

Money laundering also carries a civil penalty equal to twice the value of the proceeds involved plus costs and fees.

Proceeds traceable to any of the specified crimes or to money laundering are subject to civil seizure and forfeiture. The attorney general or county prosecuting attorney may bring the civil action in conjunction with or independent of any criminal prosecution. Procedures for forfeitures are provided and made applicable to both money laundering and controlled substances laws. 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.

No criminal or civil liability for money laundering may be imposed on law enforcement officers who are performing lawful duties.

Money laundering is made a predicate offense for criminal profiteering violations.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Criminals, particularly drug dealers, have gotten very sophisticated at hiding the nature of their wealth. This bill gives law enforcement a powerful new tool to combat serious offenders.

Testimony Against: None.

Witnesses: Mike Patrick, Washington State Council of Police Officers; Steve Tucker, King County Police Department; Pat Sainsbury, King County Prosecuting Attorney's Office (all in favor); and Trevor Sandison, Washington Bankers Association (in favor of bill as amended).