SENATE BILL REPORT

ESSB 5318

AS REPORTED BY COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE, FEBRUARY 7, 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

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 with two levels of culpability:

Money laundering in the second degree (class C felony: 1-5 years) occurs when a person possesses, receives, acquires or maintains an interest in, transfers, transports, or conceals the origin, existence, or nature of property, funds, or monetary instruments knowing or having reason to know that they are the proceeds of some form of unlawful activity.

Money laundering in the first degree (class B felony: 1-10 years) occurs when a person knowingly initiates, organizes, plans, finances, directs, manages, supervises, or is in the business of money laundering.

There is a provision for a civil penalty up to the amount involved or $10,000, whichever is greater.

Money laundering is included in the list of activities which constitute criminal racketeering.

Real property is expressly included within the definition of "proceeds." A money laundering conviction is not required before the property involved can be considered "proceeds of unlawful activity."

A court in imposing sentence on a person convicted of money laundering is required to order forfeiture of the proceeds. Protections are included for security interests in property which may be subject to forfeiture. The Attorney General or county prosecutor is authorized to file a civil action for forfeiture of the proceeds of unlawful activity.

Projections are provided for businesses and their employees who report suspicious financial transactions in good faith to law enforcement agencies.

EFFECT OF PROPOSED SECOND SUBSTITUTE:

Under the proposed substitute, 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