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SECOND SUBSTITUTE SENATE BILL 5318

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State of Washington

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

Read first time 02/07/92.

1 AN ACT Relating to money laundering; amending RCW 9A.82.010;  
2 creating a new chapter in Title 9A RCW; and prescribing penalties.

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

4 NEW SECTION. **Sec. 1.** The definitions set forth in this  
5 section apply throughout this chapter.

6 (1) "Conducts a financial transaction" includes initiating,  
7 concluding, or participating in a financial transaction.

8 (2) "Financial transaction" means a purchase, sale, loan, pledge,  
9 gift, transfer, transmission, delivery, trade, deposit, withdrawal,  
10 payment, transfer between accounts, exchange of currency, extension of  
11 credit, or any other acquisition or disposition of property, by  
12 whatever means effected.

1 (3) "Knows the property is proceeds of specified unlawful activity"  
2 means knowing that the property is proceeds from some form, though not  
3 necessarily which form, of specified unlawful activity.

4 (4) "Proceeds" means any interest in property directly or  
5 indirectly acquired through or derived from an act or omission, and any  
6 fruits of this interest, in whatever form.

7 (5) "Property" means anything of value, whether real or personal,  
8 tangible or intangible.

9 (6) "Specified unlawful activity" means any activity that is a  
10 class B felony under Washington law, any violation of RCW 21.20.400,  
11 any violation of chapter 69.50 RCW that is punishable by imprisonment  
12 for more than one year, any violation of RCW 9A.56.130, or a crime  
13 punishable under the laws of the United States or any state by  
14 imprisonment for more than one year.

15 NEW SECTION. **Sec. 2.** (1) A person is guilty of money  
16 laundering when that person conducts or attempts to conduct a financial  
17 transaction involving the proceeds of specified unlawful activity and:

18 (a) Knows the property is proceeds of specified unlawful activity;  
19 or

20 (b) Knows the transaction is designed in whole or in part to  
21 conceal or disguise the nature, location, source, ownership, or control  
22 of the proceeds, and acts recklessly as to whether the property is  
23 proceeds of specified unlawful activity.

24 (2) In consideration of the constitutional right to counsel  
25 afforded by the Fifth and Sixth amendments to the United States  
26 Constitution and Article 1, Section 22 of the Constitution of  
27 Washington, an additional proof requirement is imposed when a case  
28 involves a licensed attorney who accepts a fee for representing a  
29 client in an actual criminal investigation or proceeding. In these

1 situations, the prosecution is required to prove that the attorney  
2 accepted proceeds of specified unlawful activity with intent to conceal  
3 or disguise the nature, location, source, ownership, or control of the  
4 proceeds, knowing the property is proceeds of specified unlawful  
5 activity. The proof required by this subsection is in addition to the  
6 requirements contained in subsection (1) of this section.

7 (3) Money laundering is a class B felony.

8 (4) A person who violates this section is also liable for a civil  
9 penalty of the value of the proceeds involved in the financial  
10 transaction or ten thousand dollars, whichever is greater.

11 (5) Proceedings under this chapter shall be in addition to any  
12 other criminal penalties, civil penalties, or forfeitures authorized  
13 under state law.

14 NEW SECTION. **Sec. 3.** (1) Proceeds traceable to or derived  
15 from specified unlawful activity or a violation of section 2 of this  
16 act are subject to seizure and forfeiture. The attorney general or  
17 county prosecuting attorney may file a civil action for the forfeiture  
18 of proceeds. Unless otherwise provided for under this section, no  
19 property rights exist in these proceeds. All right, title, and  
20 interest in the proceeds shall vest in the seizing law enforcement  
21 agency upon commission of the act or omission giving rise to forfeiture  
22 under this section.

23 (2) Real or personal property subject to forfeiture under this  
24 chapter may be seized by any law enforcement officer of this state upon  
25 process issued by a superior court that has jurisdiction over the  
26 property. Any agency seizing real property shall file a lis pendens  
27 concerning the property. Real property seized under this section shall  
28 not be transferred or otherwise conveyed until ninety days after  
29 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 any 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 an inspection under an administrative inspection 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

1 personal property and ninety days in the case of real property, the  
2 property seized shall be deemed forfeited. The community property  
3 interest in real property of a person whose spouse committed a  
4 violation giving rise to seizure of the real property may not be  
5 forfeited if the person did not participate in the violation.

6 (5) If a person notifies the seizing law enforcement agency in  
7 writing of the person's claim of ownership or right to possession of  
8 property within forty-five days of the seizure in the case of personal  
9 property and ninety days in the case of real property, the person or  
10 persons shall be afforded a reasonable opportunity to be heard as to  
11 the claim or right. The provisions of RCW 69.50.505(e) shall apply to  
12 any such hearing. The seizing law enforcement agency shall promptly  
13 return property to the claimant upon the direction of the  
14 administrative law judge or court.

15 (6) When property is forfeited under this chapter, the seizing law  
16 enforcement agency may:

17 (a) Retain it for official use or transfer it to any other law  
18 enforcement agency for official use;

19 (b) Sell it. The proceeds of sale and all moneys forfeited under  
20 this chapter shall be used for payment of all proper expenses of the  
21 investigation leading to the seizure of the property and of the  
22 proceedings for forfeiture and sale, including expenses of seizure,  
23 management of the property, advertising, court costs, and actual costs  
24 of the attorney general and prosecuting attorney. Money remaining  
25 after payment of all expenses shall be deposited in the general fund of  
26 the state, county, or city of the seizing law enforcement agency and  
27 shall be used exclusively for the expansion or improvement of law  
28 enforcement services. That money shall not supplant preexisting  
29 funding sources.

1 (7) A forfeiture of property that is encumbered by a bona fide  
2 security interest is subject to the interest of the secured party if,  
3 at the time the security interest was created, the secured party  
4 neither had actual knowledge of, nor consented to, the act or omission  
5 giving rise to the forfeiture.

6 NEW SECTION. **Sec. 4.** No liability is imposed by this chapter  
7 upon any authorized state, county, or municipal officer engaged in the  
8 lawful performance of his duties, or upon any person who reasonably  
9 believes that he is acting at the direction of such officer and that  
10 the officer is acting in the lawful performance of his duties.

11 **Sec. 5.** RCW 9A.82.010 and 1989 c 20 s 17 are each amended to read  
12 as follows:

13 Unless the context requires the contrary, the definitions in this  
14 section apply throughout this chapter.

15 (1) "Creditor" means a person making an extension of credit or a  
16 person claiming by, under, or through a person making an extension of  
17 credit.

18 (2) "Debtor" means a person to whom an extension of credit is made  
19 or a person who guarantees the repayment of an extension of credit or  
20 in any manner undertakes to indemnify the creditor against loss  
21 resulting from the failure of a person to whom an extension is made to  
22 repay the same.

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

1           (4) "Extortionate means" means the use, or an express or implicit  
2 threat of use, of violence or other criminal means to cause harm to the  
3 person, reputation, or property of any person.

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

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

10          (7) "Repayment of an extension of credit" means the repayment,  
11 satisfaction, or discharge in whole or in part of a debt or claim,  
12 acknowledged or disputed, valid or invalid, resulting from or in  
13 connection with that extension of credit.

14          (8) "Dealer in property" means a person who buys and sells property  
15 as a business.

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

18          (10) "Traffic" means to sell, transfer, distribute, dispense, or  
19 otherwise dispose of stolen property to another person, or to buy,  
20 receive, possess, or obtain control of stolen property, with intent to  
21 sell, transfer, distribute, dispense, or otherwise dispose of the  
22 property to another person.

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

25          (12) "Enterprise" includes any individual, sole proprietorship,  
26 partnership, corporation, business trust, or other profit or nonprofit  
27 legal entity, and includes any union, association, or group of  
28 individuals associated in fact although not a legal entity, and both  
29 illicit and licit enterprises and governmental and nongovernmental  
30 entities.

1 (13) "Financial institution" means any bank, trust company, savings  
2 and loan association, savings bank, mutual savings bank, credit union,  
3 or loan company under the jurisdiction of the state or an agency of the  
4 United States.

5 (14) "Criminal profiteering" means any act, including any  
6 anticipatory or completed offense, committed for financial gain, that  
7 is chargeable or indictable under the laws of the state in which the  
8 act occurred and, if the act occurred in a state other than this state,  
9 would be chargeable or indictable under the laws of this state had the  
10 act occurred in this state and punishable as a felony and by  
11 imprisonment for more than one year, regardless of whether the act is  
12 charged or indicted, as any of the following:

13 (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

14 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

15 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

16 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

17 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and  
18 9A.56.080;

19 (f) Child selling or child buying, as defined in RCW 9A.64.030;

20 (g) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and  
21 9A.68.050;

22 (h) Gambling, as defined in RCW 9.46.220 and 9.46.230;

23 (i) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;

24 (j) Extortionate extension of credit, as defined in RCW 9A.82.020;

25 (k) Advancing money for use in an extortionate extension of credit,  
26 as defined in RCW 9A.82.030;

27 (l) Collection of an extortionate extension of credit, as defined  
28 in RCW 9A.82.040;

29 (m) Collection of an unlawful debt, as defined in RCW 9A.82.045;

1 (n) Delivery or manufacture of controlled substances or possession  
2 with intent to deliver or manufacture controlled substances under  
3 chapter 69.50 RCW;

4 (o) Trafficking in stolen property, as defined in RCW 9A.82.050;

5 (p) Leading organized crime, as defined in RCW 9A.82.060;

6 (q) Money laundering, as defined in section 2 of this act;

7 (r) Obstructing criminal investigations or prosecutions in  
8 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,  
9 9A.76.070, or 9A.76.180;

10 (~~((r))~~) (s) Fraud in the purchase or sale of securities, as  
11 defined in RCW 21.20.010;

12 (~~((s))~~) (t) Promoting pornography, as defined in RCW 9.68.140;

13 (~~((t))~~) (u) Sexual exploitation of children, as defined in RCW  
14 9.68A.040, 9.68A.050, and 9.68A.060;

15 (~~((u))~~) (v) Promoting prostitution, as defined in RCW 9A.88.070 and  
16 9A.88.080;

17 (~~((v))~~) (w) Arson, as defined in RCW 9A.48.020 and 9A.48.030;

18 (~~((w))~~) (x) Assault, as defined in RCW 9A.36.011 and 9A.36.021;

19 (~~((x))~~) (y) A pattern of equity skimming, as defined in RCW  
20 61.34.020; or

21 (~~((y))~~) (z) Commercial telephone solicitation in violation of RCW  
22 19.158.040(1).

23 (15) "Pattern of criminal profiteering activity" means engaging in  
24 at least three acts of criminal profiteering, one of which occurred  
25 after July 1, 1985, and the last of which occurred within five years,  
26 excluding any period of imprisonment, after the commission of the  
27 earliest act of criminal profiteering. In order to constitute a  
28 pattern, the three acts must have the same or similar intent, results,  
29 accomplices, principals, victims, or methods of commission, or be  
30 otherwise interrelated by distinguishing characteristics including a

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

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

15 (17) "Documentary material" means any book, paper, document,  
16 writing, drawing, graph, chart, photograph, phonograph record, magnetic  
17 tape, computer printout, other data compilation from which information  
18 can be obtained or from which information can be translated into usable  
19 form, or other tangible item.

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

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

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

26 (ii) Chapter 9.46 RCW relating to gambling;

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

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

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

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

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

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

11 (b) "Beneficial interest" does not include the interest of a  
12 stockholder in a corporation or the interest of a partner in a general  
13 partnership or limited partnership.

14 (c) A beneficial interest shall be considered to be located where  
15 the real property owned by the trustee is located.

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

19 (21) (a) "Trustee" means:

20 (i) A person acting as a trustee under a trust established under  
21 Title 11 RCW in which the trustee holds legal or record title to real  
22 property;

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

25 (iii) A successor trustee to a person who is a trustee under  
26 subsection (21)(a) (i) or (ii) of this section.

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

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

29 (ii) A trustee of any testamentary trust;

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

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

4 NEW SECTION. **Sec. 6.** Sections 1 through 4 of this act  
5 constitute a new chapter in Title 9A RCW.