

2 E2SHB 1557 - S COMM AMD

3 By Committee on Financial Institutions & Housing

4 ADOPTED 4/10/95

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds that the business of
8 insurance is one affected by the public interest, requiring that all
9 persons be actuated by good faith, abstain from deception, and practice
10 honesty and equity in all insurance matters. The payment of kickbacks,
11 bribes, or rebates for referrals to service providers, as has been
12 occurring with increasing regularity in this state, results in inflated
13 or fraudulent insurance claims, results in greater insurance costs for
14 all citizens, and is contrary to the public interest. In particular,
15 the process whereby "cappers" buy and sell insurance claims without the
16 controls of professional licensing and discipline creates a fertile
17 ground for illegal activity and has, in this state, resulted in frauds
18 committed against injured claimants, insurance companies, and the
19 public. Operations that engage in this practice have some or all of
20 the following characteristics: Cappers, acting under an agreement or
21 understanding that they will receive a pecuniary benefit, refer
22 claimants with real or imaginary claims, injuries, or property damage
23 to service providers. This sets off a chain of events that corrupts
24 both the provision of services and casualty or property insurance for
25 all citizens. This chain of events includes false claims for services
26 through the use of false estimates of repair; false prescriptions of
27 care or rehabilitative therapy; services that either do not occur or
28 are provided by persons unqualified to provide the services; submission
29 of false claims; submission of and demands for fraudulent costs, lost
30 wages, pain and suffering, and the like; and other devices meant to
31 result in false claims under casualty or property insurance policies or
32 contracts, whether insured or self-insured, and either directly or
33 through subrogation.

34 The legislature finds that combatting these practices requires laws
35 carefully fashioned to identify practices that mimic customary business
36 practices. The legislature does not intend this law to be used against

1 medical and other business referral practices that are otherwise legal,
2 customary, and unrelated to the furtherance of some or all of the
3 corrupt practices identified in this chapter.

4 NEW SECTION. **Sec. 2.** The definitions set forth in this section
5 apply throughout this chapter unless the context clearly indicates
6 otherwise.

7 (1) "Casualty or property insurance" includes both the insurance
8 under which a claim is filed and insurance that receives a claim
9 through subrogation, and means insurance as defined in RCW 48.11.040
10 and 48.11.070 and includes self-insurance arrangements.

11 (2) "Claimant" means a person who has or is believed by an actor to
12 have an insurance claim.

13 (3) "Group-buying arrangement" means an arrangement made by a
14 membership organization having one hundred or more members in which the
15 organization asks for or receives valuable consideration in exchange
16 for referring its members to a service provider; the consideration
17 asked for or received will be or is used to benefit the entire
18 organization, not just one or more individuals in positions of power or
19 influence in the organization; and reasonable efforts are made to
20 disclose to affected members of the organization the nature of the
21 referral relationship, including the nature, extent, amount, and use of
22 the consideration.

23 (4) "Health care services" means a service provided to a claimant
24 for treatment of physical or mental illness or injury arising in whole
25 or substantial part from trauma.

26 (5) "Insurance claim" means a claim for payment, benefits, or
27 damages under a contract, plan, or policy of casualty or property
28 insurance.

29 (6) "Legal provider" means an active member in good standing of the
30 Washington state bar association, and any other person authorized by
31 the Washington state supreme court to engage in full or limited
32 practice of law.

33 (7) "Service provider" means a person who directly or indirectly
34 provides, advertises, or otherwise claims to provide services.

35 (8) "Services" means health care services, motor vehicle body or
36 other motor vehicle repair, and preparing, processing, presenting, or
37 negotiating an insurance claim.

1 (9) "Trauma" means a physical injury or wound caused by external
2 force or violence.

3 NEW SECTION. **Sec. 3.** (1) It is unlawful for a person:

4 (a) Knowing that the payment is for the referral of a claimant to
5 a service provider, either to accept payment from a service provider
6 or, being a service provider, to pay another; or

7 (b) To provide or claim or represent to have provided services to
8 a claimant, knowing the claimant was referred in violation of (a) of
9 this subsection.

10 (2) It is unlawful for a service provider to engage in a regular
11 practice of waiving, rebating, giving, paying, or offering to waive,
12 rebate, give, or pay all or any part of a claimant's casualty or
13 property insurance deductible.

14 NEW SECTION. **Sec. 4.** In a proceeding under this chapter, it is a
15 defense if proven by the defendant by a preponderance of the evidence
16 that, at the time of the offense:

17 (1) The conduct alleged was authorized by the Rules of Professional
18 Conduct or the Admission to Practice Rules for lawyers as adopted by
19 the state supreme court, Washington business and professions licensing
20 statutes, or rules adopted by the secretary of health or the director
21 of licensing;

22 (2) The payment was an incidental nonmonetary gift or gratuity, or
23 was purely social in nature;

24 (3) The conduct alleged was an exercise of a group-buying
25 arrangement;

26 (4) The conduct alleged was a legal provider paying a service
27 provider's bills from the proceeds of an insurance claim that included
28 the bills;

29 (5) The conduct alleged was a legal provider paying for services of
30 an expert witness, including reports, consultation, and testimony; or

31 (6) The conduct alleged was a service provider's purchase of
32 advertising from an unrelated business that provides referrals from
33 advertising for groups of ten or more service providers that are not
34 related to the advertising business and not related to each other.

35 NEW SECTION. **Sec. 5.** A violation of section 3 of this act
36 constitutes trafficking in insurance claims. A single violation is a

1 gross misdemeanor. Each subsequent violation, whether alleged in the
2 same or in subsequent prosecutions, is a class C felony.

3 NEW SECTION. **Sec. 6.** Independent of authority granted to the
4 attorney general, the prosecuting attorney may petition the superior
5 court for an injunction against a person who has violated this chapter.
6 Remedies in an injunctive action brought by a prosecuting attorney are
7 limited to an order enjoining, restraining, or preventing the doing of
8 any act or practice that constitutes a violation of this chapter and
9 imposing a civil penalty of up to five thousand dollars for each
10 violation. The prevailing party in the action may, in the discretion
11 of the court, recover its reasonable investigative costs and the costs
12 of the action including a reasonable attorney's fee. The degree of
13 proof required in an action brought under this section is a
14 preponderance of the evidence. An action under this section must be
15 brought within three years after the violation of this chapter
16 occurred.

17 NEW SECTION. **Sec. 7.** Whenever a service provider or a person
18 licensed by the state in a business or profession is convicted,
19 enjoined, or found liable for damages or a civil penalty or other
20 equitable relief under section 6 of this act, the attorney general or
21 the prosecuting attorney shall provide written notification of the
22 judgment to the appropriate regulatory or disciplinary body or agency.

23 NEW SECTION. **Sec. 8.** A violation of this chapter is cause for
24 discipline and constitutes unprofessional conduct that could result in
25 any regulatory penalty provided by law, including refusal, revocation,
26 or suspension of a business or professional license, or right or
27 admission to practice. Conduct that constitutes a violation of this
28 chapter is unprofessional conduct in violation of RCW 18.130.180.

29 NEW SECTION. **Sec. 9.** Each insurer licensed to write direct
30 insurance in this state shall institute and maintain an insurance
31 antifraud plan. An insurer licensed on the effective date of this act
32 shall file its antifraud plan with the insurance commissioner no later
33 than December 31, 1995. An insurer licensed after the effective date
34 of this act shall file its antifraud plan within six months of
35 licensure. An insurer shall file any change to the antifraud plan with

1 the insurance commissioner within thirty days after the plan has been
2 modified.

3 NEW SECTION. **Sec. 10.** An insurer's antifraud plan must establish
4 specific procedures to:

5 (1) Prevent insurance fraud, including internal fraud involving
6 employees or company representatives, fraud resulting from
7 misrepresentation on applications for insurance coverage, and claims
8 fraud;

9 (2) Review claims in order to detect evidence of possible insurance
10 fraud and to investigate claims where fraud is suspected;

11 (3) Report fraud to appropriate law enforcement agencies and
12 cooperate with those agencies in their prosecution of fraud cases;

13 (4) Undertake civil actions against persons who have engaged in
14 fraudulent activities;

15 (5) Train company employees and agents in the detection and
16 prevention of fraud.

17 NEW SECTION. **Sec. 11.** If after review of an insurer's antifraud
18 plan, the commissioner finds that the plan does not comply with section
19 10 of this act, the commissioner may disapprove the antifraud plan.
20 Notice of disapproval must include a statement of the specific reasons
21 for disapproval. The insurer shall refile a plan disapproved by the
22 commissioner within sixty days of the date of the notice of
23 disapproval. The commissioner may audit insurers to ensure compliance
24 with antifraud plans.

25 NEW SECTION. **Sec. 12.** Each insurer shall annually provide to the
26 insurance commissioner a summary report on actions taken under its
27 antifraud plan to prevent and combat insurance fraud. The report must
28 also include, but not be limited to, measures taken to protect and
29 ensure the integrity of electronic data-processing-generated data and
30 manually compiled data, statistical data on the amount of resources
31 committed to combating fraud, and the amount of fraud identified and
32 recovered during the reporting period. The antifraud plans and summary
33 of the insurer's antifraud activities are not public records and are
34 exempt from chapter 42.17 RCW, are proprietary, are not subject to
35 public examination, and are not discoverable or admissible in civil
36 litigation.

1 NEW SECTION. **Sec. 13.** An insurer that fails to file a timely
2 antifraud plan or who does not make a good faith attempt to file an
3 antifraud plan that complies with section 10 of this act, is subject to
4 the penalty provisions of RCW 48.01.080, but no penalty may be imposed
5 for the first filing made by an insurer under this chapter. An insurer
6 that fails to follow the antifraud plan is subject to a civil penalty
7 not to exceed ten thousand dollars for each violation, at the
8 discretion of the commissioner after consideration of all relevant
9 factors, including the willfulness of the violation.

10 NEW SECTION. **Sec. 14.** It is the duty of all peace officers, law
11 enforcement officers, and law enforcement agencies within this state to
12 investigate, enforce, and prosecute all violations of this chapter.

13 NEW SECTION. **Sec. 15.** A new section is added to chapter 42.17 RCW
14 to read as follows:

15 Information provided under sections 9 through 12 of this act are
16 exempt from disclosure under this chapter.

17 **Sec. 16.** RCW 48.01.030 and 1947 c 79 s .01.03 are each amended to
18 read as follows:

19 The business of insurance is one affected by the public interest,
20 requiring that all persons be actuated by good faith, abstain from
21 deception, and practice honesty and equity in all insurance matters.
22 Upon the insurer, the insured, their providers, and their
23 representatives rests the duty of preserving inviolate the integrity of
24 insurance.

25 **Sec. 17.** RCW 48.18.460 and 1949 c 190 s 26 are each amended to
26 read as follows:

27 An insurer shall furnish, upon (~~written~~) request of any person
28 claiming to have a loss under any insurance contract, forms of proof of
29 loss for completion by such person. But such insurer shall not, by
30 reason of the requirement so to furnish forms, have any responsibility
31 for or with reference to the completion of such proof or the manner of
32 any such completion or attempted completion. If a person makes a claim
33 under a policy of insurance, the insurer may require that the person be
34 examined under an oath administered by a person authorized by state or
35 federal law to administer oaths.

1 **Sec. 18.** RCW 48.30.210 and 1990 1st ex.s. c 3 s 10 are each
2 amended to read as follows:

3 (~~Any agent, solicitor, broker, examining physician or other~~) A
4 person who knowingly makes a false or (~~fraudulent~~) misleading
5 statement or (~~representation~~) impersonation, or who willfully fails
6 to reveal a material fact, in or relative to an application for
7 insurance (~~in~~) to an insurer (~~transacting insurance under the~~
8 ~~provisions of this code, shall be~~), is guilty of a gross misdemeanor,
9 and the license of any such (~~agent, solicitor, or broker who makes~~
10 ~~such a statement or representation~~) person may be revoked.

11 **Sec. 19.** RCW 48.30.220 and 1965 ex.s. c 70 s 25 are each amended
12 to read as follows:

13 Any person, who, with intent to defraud or prejudice the insurer
14 thereof, (~~willfully~~) burns or in any manner injures, destroys,
15 secretes, abandons, or disposes of any property which is insured at the
16 time against loss or damage by fire, theft, (~~or~~) embezzlement, or
17 (~~by~~) any other casualty, whether the same be the property of or in
18 the possession of such person or any other person, under (~~such~~)
19 circumstances not making the offense arson in the first degree, is
20 guilty of a class C felony.

21 **Sec. 20.** RCW 48.50.010 and 1979 ex.s. c 80 s 1 are each amended to
22 read as follows:

23 This chapter shall be known and may be cited as the (~~Arson~~)
24 Insurance Fraud Reporting Immunity Act.

25 **Sec. 21.** RCW 48.50.020 and 1986 c 266 s 77 are each amended to
26 read as follows:

27 As used in this chapter the following terms have the meanings
28 indicated unless the context clearly requires otherwise.

29 (1) "Authorized agency" means a public agency or its official
30 representative having legal authority to investigate criminal activity
31 or the cause of a fire (~~and~~) or to initiate criminal proceedings (~~or~~
32 ~~further investigations if the cause was not accidental~~), including the
33 following persons and agencies:

34 (a) The (~~director~~) department of community, trade, and economic
35 development and the director of fire protection;

1 (b) The prosecuting attorney of the county where the ~~((fire))~~
2 criminal activity occurred;

3 (c) State, county, and local law enforcement agencies;

4 ~~(d) The state attorney general((, when engaged in a prosecution~~
5 ~~which is or may be connected with the fire))~~);

6 ~~((d))~~ (e) The Federal Bureau of Investigation, or any other
7 federal law enforcement agency; ~~((and~~

8 ~~(e))~~ (f) The United States attorney's office ~~((when authorized or~~
9 ~~charged with investigation or prosecution concerning the fire))~~; and

10 (g) The office of the insurance commissioner.

11 (2) "Insurer" means any insurer, as defined in RCW 48.01.050~~((~~
12 ~~which insures against loss by fire, and includes insurers under the~~
13 ~~Washington F.A.I.R. plan))~~ and any self-insurer.

14 (3) "Relevant information" means information having any tendency to
15 make the existence of any fact that is of consequence to the
16 investigation or determination of criminal activity or the cause of any
17 fire more probable or less probable than it would be without the
18 information.

19 **Sec. 22.** RCW 48.50.030 and 1979 ex.s. c 80 s 3 are each amended to
20 read as follows:

21 (1) Any authorized agency may request, in writing, that an insurer
22 release to the agency any or all relevant information or evidence which
23 the insurer may have in its possession relating to ~~((a particular fire~~
24 ~~loss))~~ criminal activity, if such information or evidence is deemed
25 important by the agency in its discretion.

26 (2) An insurer who has reason to believe that a person participated
27 or is participating in criminal activity relating to a contract of
28 insurance may report relevant information to an authorized agency.

29 (3) The information ~~((requested))~~ provided to an authorized agency
30 under this section may include, without limitation:

31 (a) Pertinent insurance policy information relating to a ~~((fire~~
32 ~~loss))~~ claim under investigation and any application for such a policy;

33 (b) Policy premium payment records which are available;

34 (c) History of previous claims ~~((made by the insured))~~ in which the
35 person was involved; and

36 (d) Material relating to the investigation of the loss, including
37 statements of any person, proof of loss, and any other evidence found
38 in the investigation.

1 (~~(2) An~~) (4) The insurer receiving a request under subsection (1)
2 of this section shall furnish all relevant information requested to the
3 agency within a reasonable time, orally or in writing(~~(, all relevant~~
4 ~~information requested)~~).

5 **Sec. 23.** RCW 48.50.040 and 1986 c 266 s 91 are each amended to
6 read as follows:

7 (1) When an insurer has reason to believe that a fire loss reported
8 to the insurer may be of other than accidental cause, the insurer shall
9 notify the (~~director~~) department of community, trade, and economic
10 development, through the director of fire protection, in the manner
11 prescribed under RCW 48.05.320 concerning the circumstances of the fire
12 loss, including any and all relevant material developed from the
13 insurer's inquiry into the fire loss.

14 (2) Notification of the (~~director~~) department of community,
15 trade, and economic development, through the director of fire
16 protection, under subsection (1) of this section does not relieve the
17 insurer of the duty to respond to a request for information from any
18 other authorized agency and does not bar an insurer from other
19 reporting under RCW 48.50.030(2).

20 **Sec. 24.** RCW 48.50.075 and 1981 c 320 s 2 are each amended to read
21 as follows:

22 In denying a claim (~~resulting from a fire~~), an insurer who relies
23 upon a written opinion from an authorized agency specifically
24 enumerated in (~~(a) through (e) of~~) RCW 48.50.020(1) (a) through (g)
25 that (~~the fire was caused by arson~~) criminal activity that is related
26 to that claim is being investigated, or a crime has been charged, and
27 that the (~~insured was responsible for the fire, shall not be~~)
28 claimant is a target of the investigation or has been charged with a
29 crime, is not liable for bad faith or other noncontractual theory of
30 damages as a result of this reliance.

31 Immunity under this section shall exist only so long as the
32 incident for which the (~~insured~~) claimant may be responsible is under
33 active investigation or prosecution, or the authorized agency states
34 its position that the claim includes or is a result of (~~arson for~~)
35 criminal activity in which the (~~insured~~) claimant was (~~responsible~~)
36 a participant.

1 **Sec. 25.** RCW 48.80.020 and 1986 c 243 s 2 are each amended to read
2 as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

5 (1) "Claim" means any attempt to cause a health care payer to make
6 a health care payment.

7 (2) "Deceptive" means presenting a claim to a health care payer
8 that contains a statement of fact or fails to reveal a material fact,
9 leading the health care payer to believe that the represented or
10 suggested state of affairs is other than it actually is. For the
11 purposes of this chapter, the determination of what constitutes a
12 material fact is a question of law to be resolved by the court.

13 (3) "False" means wholly or partially untrue or deceptive.

14 (4) "Health care payment" means a payment for health care services
15 or the right under a contract, certificate, or policy of insurance to
16 have a payment made by a health care payer for a specified health care
17 service.

18 (5) "Health care payer" means any insurance company authorized to
19 provide health insurance in this state, any health care service
20 contractor authorized under chapter 48.44 RCW, any health maintenance
21 organization authorized under chapter 48.46 RCW, any legal entity which
22 is self-insured and providing health care benefits to its employees,
23 ~~((or))~~ and any insurer or other person responsible for paying for
24 health care services.

25 (6) "Person" means an individual, corporation, partnership,
26 association, or other legal entity.

27 (7) "Provider" means any person lawfully licensed or authorized to
28 render any health service.

29 **Sec. 26.** RCW 2.48.180 and 1989 c 117 s 13 are each amended to read
30 as follows:

31 ~~((Any person who, not being an active member of the state bar, or
32 who after he has been disbarred or while suspended from membership in
33 the state bar, as by this chapter provided, shall))~~

34 (1) As used in this section:

35 (a) "Legal provider" means an active member in good standing of the
36 state bar, and any other person authorized by the Washington state
37 supreme court to engage in full or limited practice of law;

1 (b) "Nonlawyer" means a person to whom the Washington supreme court
2 has granted a limited authorization to practice law but who practices
3 law outside that authorization, and a person who is not an active
4 member in good standing of the state bar, including persons who are
5 disbarred or suspended from membership;

6 (c) "Ownership interest" means the right to control the affairs of
7 a business, or the right to share in the profits of a business, and
8 includes a loan to the business when the interest on the loan is based
9 upon the income of the business or the loan carries more than a
10 commercially reasonable rate of interest.

11 (2) The following constitutes unlawful practice of law:

12 (a) A nonlawyer practices law, or holds himself or herself out as
13 entitled to practice law(~~(, shall, except as provided in RCW~~
14 19.154.100, be guilty of a misdemeanor: PROVIDED, HOWEVER, Nothing
15 herein contained shall be held to in any way affect the power of the
16 courts to grant injunctive relief or to punish as for contempt));

17 (b) A legal provider holds an investment or ownership interest in
18 a business primarily engaged in the practice of law, knowing that a
19 nonlawyer holds an investment or ownership interest in the business;

20 (c) A nonlawyer knowingly holds an investment or ownership interest
21 in a business primarily engaged in the practice of law;

22 (d) A legal provider works for a business that is primarily engaged
23 in the practice of law, knowing that a nonlawyer holds an investment or
24 ownership interest in the business; or

25 (e) A nonlawyer shares legal fees with a legal provider.

26 (3) Unlawful practice of law is a crime. A single violation of
27 this section is a gross misdemeanor. Each subsequent violation,
28 whether alleged in the same or in subsequent prosecutions, is a class
29 C felony.

30 (4) Nothing contained in this section affects the power of the
31 courts to grant injunctive or other equitable relief or to punish as
32 for contempt.

33 (5) Whenever a legal provider or a person licensed by the state in
34 a business or profession is convicted, enjoined, or found liable for
35 damages or a civil penalty or other equitable relief under this
36 section, the plaintiff's attorney shall provide written notification of
37 the judgment to the appropriate regulatory or disciplinary body or
38 agency.

1 (6) A violation of this section is cause for discipline and
2 constitutes unprofessional conduct that could result in any regulatory
3 penalty provided by law, including refusal, revocation, or suspension
4 of a business or professional license, or right or admission to
5 practice. Conduct that constitutes a violation of this section is
6 unprofessional conduct in violation of RCW 18.130.180.

7 (7) In a proceeding under this section it is a defense if proven by
8 the defendant by a preponderance of the evidence that, at the time of
9 the offense, the conduct alleged was authorized by the Rules of
10 Professional Conduct or the Admission to Practice Rules, or Washington
11 business and professions licensing statutes or rules.

12 (8) Independent of authority granted to the attorney general, the
13 prosecuting attorney may petition the superior court for an injunction
14 against a person who has violated this chapter. Remedies in an
15 injunctive action brought by a prosecuting attorney are limited to an
16 order enjoining, restraining, or preventing the doing of any act or
17 practice that constitutes a violation of this chapter and imposing a
18 civil penalty of up to five thousand dollars for each violation. The
19 prevailing party in the action may, in the discretion of the court,
20 recover its reasonable investigative costs and the costs of the action
21 including a reasonable attorney's fee. The degree of proof required in
22 an action brought under this subsection is a preponderance of the
23 evidence. An action under this subsection must be brought within three
24 years after the violation of this chapter occurred.

25 **Sec. 27.** RCW 9.12.010 and 1915 c 165 s 1 are each amended to read
26 as follows:

27 Every person who ~~((shall))~~ brings on his or her own behalf, or
28 instigates, incites, or encourages another to bring, any false suit at
29 law or in equity in any court of this state, with intent thereby to
30 distress or harass a defendant ~~((therein; and every person, being an~~
31 ~~attorney or counselor at law, who shall personally, or through the~~
32 ~~agency of another, solicit employment as such attorney, in any suit~~
33 ~~pending or prospective, or, with intent to obtain such employment~~
34 ~~shall, directly or indirectly, loan any money or give or promise to~~
35 ~~give any money, property or other consideration to the person from whom~~
36 ~~such employment is sought; and every person who shall))~~ in the suit, or
37 who serves or sends any paper or document purporting to be or
38 resembling a judicial process, that is not in fact a judicial process

1 (~~shall be~~), is guilty of a misdemeanor; and in case the person
2 offending is an attorney, he or she may, in addition thereto be
3 disbarred from practicing law within this state.

4 **Sec. 28.** RCW 9.94A.320 and 1994 sp.s. c 7 s 510, 1994 c 275 s 20,
5 and 1994 c 53 s 2 are each reenacted and amended to read as follows:

6 TABLE 2

7 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

8	XV	Aggravated Murder 1 (RCW 10.95.020)
9	XIV	Murder 1 (RCW 9A.32.030)
10		Homicide by abuse (RCW 9A.32.055)
11	XIII	Murder 2 (RCW 9A.32.050)
12	XII	Assault 1 (RCW 9A.36.011)
13		Assault of a Child 1 (RCW 9A.36.120)
14	XI	Rape 1 (RCW 9A.44.040)
15		Rape of a Child 1 (RCW 9A.44.073)
16	X	Kidnapping 1 (RCW 9A.40.020)
17		Rape 2 (RCW 9A.44.050)
18		Rape of a Child 2 (RCW 9A.44.076)
19		Child Molestation 1 (RCW 9A.44.083)
20		Damaging building, etc., by explosion with
21		threat to human being (RCW
22		70.74.280(1))
23		Over 18 and deliver heroin or narcotic
24		from Schedule I or II to someone
25		under 18 (RCW 69.50.406)
26		Leading Organized Crime (RCW
27		9A.82.060(1)(a))
28	IX	Assault of a Child 2 (RCW 9A.36.130)
29		Robbery 1 (RCW 9A.56.200)
30		Manslaughter 1 (RCW 9A.32.060)
31		Explosive devices prohibited (RCW
32		70.74.180)

1 Indecent Liberties (with forcible
2 compulsion) (RCW 9A.44.100(1)(a))
3 Endangering life and property by
4 explosives with threat to human being
5 (RCW 70.74.270)
6 Over 18 and deliver narcotic from Schedule
7 III, IV, or V or a nonnarcotic from
8 Schedule I-V to someone under 18 and
9 3 years junior (RCW 69.50.406)
10 Controlled Substance Homicide (RCW
11 69.50.415)
12 Sexual Exploitation (RCW 9.68A.040)
13 Inciting Criminal Profiteering (RCW
14 9A.82.060(1)(b))
15 Vehicular Homicide, by being under the
16 influence of intoxicating liquor or
17 any drug (RCW 46.61.520)

18 VIII Arson 1 (RCW 9A.48.020)
19 Promoting Prostitution 1 (RCW 9A.88.070)
20 Selling for profit (controlled or
21 counterfeit) any controlled substance
22 (RCW 69.50.410)
23 Manufacture, deliver, or possess with
24 intent to deliver heroin or cocaine
25 (RCW 69.50.401(a)(1)(i))
26 Manufacture, deliver, or possess with
27 intent to deliver methamphetamine
28 (RCW 69.50.401(a)(1)(ii))
29 Vehicular Homicide, by the operation of
30 any vehicle in a reckless manner (RCW
31 46.61.520)

32 VII Burglary 1 (RCW 9A.52.020)
33 Vehicular Homicide, by disregard for the
34 safety of others (RCW 46.61.520)
35 Introducing Contraband 1 (RCW 9A.76.140)
36 Indecent Liberties (without forcible
37 compulsion) (RCW 9A.44.100(1) (b) and
38 (c))

1 Child Molestation 2 (RCW 9A.44.086)
 2 Dealing in depictions of minor engaged in
 3 sexually explicit conduct (RCW
 4 9.68A.050)
 5 Sending, bringing into state depictions of
 6 minor engaged in sexually explicit
 7 conduct (RCW 9.68A.060)
 8 Involving a minor in drug dealing (RCW
 9 69.50.401(f))

10 VI Bribery (RCW 9A.68.010)
 11 Manslaughter 2 (RCW 9A.32.070)
 12 Rape of a Child 3 (RCW 9A.44.079)
 13 Intimidating a Juror/Witness (RCW
 14 9A.72.110, 9A.72.130)
 15 Damaging building, etc., by explosion with
 16 no threat to human being (RCW
 17 70.74.280(2))
 18 Endangering life and property by
 19 explosives with no threat to human
 20 being (RCW 70.74.270)
 21 Incest 1 (RCW 9A.64.020(1))
 22 Manufacture, deliver, or possess with
 23 intent to deliver narcotics from
 24 Schedule I or II (except heroin or
 25 cocaine) (RCW 69.50.401(a)(1)(i))
 26 Intimidating a Judge (RCW 9A.72.160)
 27 Bail Jumping with Murder 1 (RCW
 28 9A.76.170(2)(a))

29 V Criminal Mistreatment 1 (RCW 9A.42.020)
 30 Theft of a Firearm (RCW 9A.56.300)
 31 Reckless Endangerment 1 (RCW 9A.36.045)
 32 Rape 3 (RCW 9A.44.060)
 33 Sexual Misconduct with a Minor 1 (RCW
 34 9A.44.093)
 35 Child Molestation 3 (RCW 9A.44.089)
 36 Kidnapping 2 (RCW 9A.40.030)
 37 Extortion 1 (RCW 9A.56.120)
 38 Incest 2 (RCW 9A.64.020(2))

1 Perjury 1 (RCW 9A.72.020)
2 Extortionate Extension of Credit (RCW
3 9A.82.020)
4 Advancing money or property for
5 extortionate extension of credit (RCW
6 9A.82.030)
7 Extortionate Means to Collect Extensions
8 of Credit (RCW 9A.82.040)
9 Rendering Criminal Assistance 1 (RCW
10 9A.76.070)
11 Bail Jumping with class A Felony (RCW
12 9A.76.170(2)(b))
13 Sexually Violating Human Remains (RCW
14 9A.44.105)
15 Delivery of imitation controlled substance
16 by person eighteen or over to person
17 under eighteen (RCW 69.52.030(2))

18 IV Residential Burglary (RCW 9A.52.025)
19 Theft of Livestock 1 (RCW 9A.56.080)
20 Robbery 2 (RCW 9A.56.210)
21 Assault 2 (RCW 9A.36.021)
22 Escape 1 (RCW 9A.76.110)
23 Arson 2 (RCW 9A.48.030)
24 Commercial Bribery (section 29 of this
25 act)
26 Bribing a Witness/Bribe Received by
27 Witness (RCW 9A.72.090, 9A.72.100)
28 Malicious Harassment (RCW 9A.36.080)
29 Threats to Bomb (RCW 9.61.160)
30 Willful Failure to Return from Furlough
31 (RCW 72.66.060)
32 Hit and Run « Injury Accident (RCW
33 46.52.020(4))
34 Vehicular Assault (RCW 46.61.522)

1 Manufacture, deliver, or possess with
2 intent to deliver narcotics from
3 Schedule III, IV, or V or
4 nonnarcotics from Schedule I-V
5 (except marijuana or
6 methamphetamines) (RCW
7 69.50.401(a)(1)(ii) through (iv))
8 Influencing Outcome of Sporting Event (RCW
9 9A.82.070)
10 Use of Proceeds of Criminal Profiteering
11 (RCW 9A.82.080 (1) and (2))
12 Knowingly Trafficking in Stolen Property
13 (RCW 9A.82.050(2))
14 III Criminal Mistreatment 2 (RCW 9A.42.030)
15 Extortion 2 (RCW 9A.56.130)
16 Unlawful Imprisonment (RCW 9A.40.040)
17 Assault 3 (RCW 9A.36.031)
18 Assault of a Child 3 (RCW 9A.36.140)
19 Custodial Assault (RCW 9A.36.100)
20 Unlawful possession of firearm or pistol
21 by felon (RCW 9.41.040)
22 Harassment (RCW 9A.46.020)
23 Promoting Prostitution 2 (RCW 9A.88.080)
24 Willful Failure to Return from Work
25 Release (RCW 72.65.070)
26 Burglary 2 (RCW 9A.52.030)
27 Introducing Contraband 2 (RCW 9A.76.150)
28 Communication with a Minor for Immoral
29 Purposes (RCW 9.68A.090)
30 Patronizing a Juvenile Prostitute (RCW
31 9.68A.100)
32 Escape 2 (RCW 9A.76.120)
33 Perjury 2 (RCW 9A.72.030)
34 Bail Jumping with class B or C Felony (RCW
35 9A.76.170(2)(c))
36 Intimidating a Public Servant (RCW
37 9A.76.180)
38 Tampering with a Witness (RCW 9A.72.120)

1 Manufacture, deliver, or possess with
2 intent to deliver marijuana (RCW
3 69.50.401(a)(1)(ii))
4 Delivery of a material in lieu of a
5 controlled substance (RCW
6 69.50.401(c))
7 Manufacture, distribute, or possess with
8 intent to distribute an imitation
9 controlled substance (RCW
10 69.52.030(1))
11 Recklessly Trafficking in Stolen Property
12 (RCW 9A.82.050(1))
13 Theft of livestock 2 (RCW 9A.56.080)
14 Securities Act violation (RCW 21.20.400)

15 II Unlawful Practice of Law (RCW 2.48.180)
16 Malicious Mischief 1 (RCW 9A.48.070)
17 Possession of Stolen Property 1 (RCW
18 9A.56.150)
19 Theft 1 (RCW 9A.56.030)
20 Trafficking in Insurance Claims (section 3
21 of this act)
22 Unlicensed Practice of a Profession or
23 Business (RCW 18.130.190(7))
24 Health Care False Claims (RCW 48.80.030)
25 Possession of controlled substance that is
26 either heroin or narcotics from
27 Schedule I or II (RCW 69.50.401(d))
28 Possession of phencyclidine (PCP) (RCW
29 69.50.401(d))
30 Create, deliver, or possess a counterfeit
31 controlled substance (RCW
32 69.50.401(b))
33 Computer Trespass 1 (RCW 9A.52.110)
34 Escape from Community Custody (RCW
35 72.09.310)

1 I Theft 2 (RCW 9A.56.040)
2 Possession of Stolen Property 2 (RCW
3 9A.56.160)
4 Forgery (RCW 9A.60.020)
5 Taking Motor Vehicle Without Permission
6 (RCW 9A.56.070)
7 Vehicle Prowl 1 (RCW 9A.52.095)
8 Attempting to Elude a Pursuing Police
9 Vehicle (RCW 46.61.024)
10 Malicious Mischief 2 (RCW 9A.48.080)
11 Reckless Burning 1 (RCW 9A.48.040)
12 Unlawful Issuance of Checks or Drafts (RCW
13 9A.56.060)
14 Unlawful Use of Food Stamps (RCW 9.91.140
15 (2) and (3))
16 False Verification for Welfare (RCW
17 74.08.055)
18 Forged Prescription (RCW 69.41.020)
19 Forged Prescription for a Controlled
20 Substance (RCW 69.50.403)
21 Possess Controlled Substance that is a
22 Narcotic from Schedule III, IV, or V
23 or Non-narcotic from Schedule I-V
24 (except phencyclidine) (RCW
25 69.50.401(d))

26 NEW SECTION. **Sec. 29.** A new section is added to chapter 9A.68 RCW
27 to read as follows:

28 (1) For purposes of this section:

29 (a) "Claimant" means a person who has or is believed by an actor to
30 have an insurance claim.

31 (b) "Service provider" means a person who directly or indirectly
32 provides, advertises, or otherwise claims to provide services.

33 (c) "Services" means health care services, motor vehicle body or
34 other motor vehicle repair, and preparing, processing, presenting, or
35 negotiating an insurance claim.

36 (d) "Trusted person" means:

37 (i) An agent, employee, or partner of another;

1 (ii) An administrator, executor, conservator, guardian, receiver,
2 or trustee of a person or an estate, or any other person acting in a
3 fiduciary capacity;

4 (iii) An accountant, appraiser, attorney, physician, or other
5 professional adviser;

6 (iv) An officer or director of a corporation, or any other person
7 who participates in the affairs of a corporation, partnership, or
8 unincorporated association; or

9 (v) An arbitrator, mediator, or other purportedly disinterested
10 adjudicator or referee.

11 (2) A person is guilty of commercial bribery if:

12 (a) He or she offers, confers, or agrees to confer a pecuniary
13 benefit directly or indirectly upon a trusted person under a request,
14 agreement, or understanding that the trusted person will violate a duty
15 of fidelity or trust arising from his or her position as a trusted
16 person;

17 (b) Being a trusted person, he or she requests, accepts, or agrees
18 to accept a pecuniary benefit for himself, herself, or another under a
19 request, agreement, or understanding that he or she will violate a duty
20 of fidelity or trust arising from his or her position as a trusted
21 person; or

22 (c) Being an employee or agent of an insurer, he or she requests,
23 accepts, or agrees to accept a pecuniary benefit for himself or
24 herself, or a person other than the insurer, under a request,
25 agreement, or understanding that he or she will or a threat that he or
26 she will not refer or induce claimants to have services performed by a
27 service provider.

28 (3) It is not a defense to a prosecution under this section that
29 the person sought to be influenced was not qualified to act in the
30 desired way, whether because the person had not yet assumed his or her
31 position, lacked authority, or for any other reason.

32 (4) Commercial bribery is a class B felony.

33 **Sec. 30.** RCW 9A.72.010 and 1981 c 187 s 1 are each amended to read
34 as follows:

35 The following definitions are applicable in this chapter unless the
36 context otherwise requires:

37 (1) "Materially false statement" means any false statement oral or
38 written, regardless of its admissibility under the rules of evidence,

1 which could have affected the course or outcome of the proceeding;
2 whether a false statement is material shall be determined by the court
3 as a matter of law;

4 (2) "Oath" includes an affirmation and every other mode authorized
5 by law of attesting to the truth of that which is stated; in this
6 chapter, written statements shall be treated as if made under oath if:

7 (a) The statement was made on or pursuant to instructions on an
8 official form bearing notice, authorized by law, to the effect that
9 false statements made therein are punishable;

10 (b) The statement recites that it was made under oath, the
11 declarant was aware of such recitation at the time he or she made the
12 statement, intended that the statement should be represented as a sworn
13 statement, and the statement was in fact so represented by its delivery
14 or utterance with the signed jurat of an officer authorized to
15 administer oaths appended thereto; or

16 (c) It is a statement, declaration, verification, or certificate,
17 made within or outside the state of Washington, which is certified or
18 declared to be true under penalty of perjury as provided in RCW
19 9A.72.085.

20 (3) An oath is "required or authorized by law" when the use of the
21 oath is specifically provided for by statute or regulatory provision or
22 when the oath is administered by a person authorized by state or
23 federal law to administer oaths;

24 (4) "Official proceeding" means a proceeding heard before any
25 legislative, judicial, administrative, or other government agency or
26 official authorized to hear evidence under oath, including any referee,
27 hearing examiner, commissioner, notary, or other person taking
28 testimony or depositions;

29 (5) "Juror" means any person who is a member of any jury, including
30 a grand jury, impaneled by any court of this state or by any public
31 servant authorized by law to impanel a jury; the term juror also
32 includes any person who has been drawn or summoned to attend as a
33 prospective juror;

34 (6) "Testimony" includes oral or written statements, documents, or
35 any other material that may be offered by a witness in an official
36 proceeding.

37 **Sec. 31.** RCW 9A.72.030 and 1975 1st ex.s. c 260 s 9A.72.030 are
38 each amended to read as follows:

1 (1) A person is guilty of perjury in the second degree if, in an
2 examination under oath under the terms of a contract of insurance, or
3 with intent to mislead a public servant in the performance of his or
4 her duty, he or she makes a materially false statement, which he or she
5 knows to be false under an oath required or authorized by law.

6 (2) Perjury in the second degree is a class C felony.

7 NEW SECTION. **Sec. 32.** A new section is added to chapter 9A.76 RCW
8 to read as follows:

9 A person who knowingly makes a false or misleading material
10 statement to a public servant is guilty of a gross misdemeanor.
11 "Material statement" means a written or oral statement reasonably
12 likely to be relied upon by a public servant in the discharge of his or
13 her official powers or duties.

14 **Sec. 33.** RCW 9A.76.020 and 1994 c 196 s 1 are each amended to read
15 as follows:

16 (1) A person is guilty of obstructing a law enforcement officer if
17 the person((+

18 ~~(a) Willfully makes a false or misleading statement to a law~~
19 ~~enforcement officer who has detained the person during the course of a~~
20 ~~lawful investigation or lawful arrest; or~~

21 ~~(b))~~ willfully hinders, delays, or obstructs any law enforcement
22 officer in the discharge of his or her official powers or duties.

23 (2) "Law enforcement officer" means any general authority, limited
24 authority, or specially commissioned Washington peace officer or
25 federal peace officer as those terms are defined in RCW 10.93.020, and
26 other public officers who are responsible for enforcement of fire,
27 building, zoning, and life and safety codes.

28 (3) Obstructing a law enforcement officer is a gross misdemeanor.

29 **Sec. 34.** RCW 9A.82.010 and 1994 c 218 s 17 are each amended to
30 read as follows:

31 Unless the context requires the contrary, the definitions in this
32 section apply throughout this chapter.

33 (1) "Creditor" means a person making an extension of credit or a
34 person claiming by, under, or through a person making an extension of
35 credit.

1 (2) "Debtor" means a person to whom an extension of credit is made
2 or a person who guarantees the repayment of an extension of credit or
3 in any manner undertakes to indemnify the creditor against loss
4 resulting from the failure of a person to whom an extension is made to
5 repay the same.

6 (3) "Extortionate extension of credit" means an extension of credit
7 with respect to which it is the understanding of the creditor and the
8 debtor at the time the extension is made that delay in making repayment
9 or failure to make repayment could result in the use of violence or
10 other criminal means to cause harm to the person, reputation, or
11 property of any person.

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

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

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

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

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

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

29 (10) "Traffic" means to sell, transfer, distribute, dispense, or
30 otherwise dispose of stolen property to another person, or to buy,
31 receive, possess, or obtain control of stolen property, with intent to
32 sell, transfer, distribute, dispense, or otherwise dispose of the
33 property to another person.

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

36 (12) "Enterprise" includes any individual, sole proprietorship,
37 partnership, corporation, business trust, or other profit or nonprofit
38 legal entity, and includes any union, association, or group of
39 individuals associated in fact although not a legal entity, and both

1 illicit and licit enterprises and governmental and nongovernmental
2 entities.

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

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

- 15 (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;
- 16 (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;
- 17 (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;
- 18 (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;
- 19 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, and
20 9A.56.080;
- 21 (f) Child selling or child buying, as defined in RCW 9A.64.030;
- 22 (g) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and
23 9A.68.050;
- 24 (h) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
- 25 (i) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
- 26 (j) Extortionate extension of credit, as defined in RCW 9A.82.020;
- 27 (k) Advancing money for use in an extortionate extension of credit,
28 as defined in RCW 9A.82.030;
- 29 (l) Collection of an extortionate extension of credit, as defined
30 in RCW 9A.82.040;
- 31 (m) Collection of an unlawful debt, as defined in RCW 9A.82.045;
- 32 (n) Delivery or manufacture of controlled substances or possession
33 with intent to deliver or manufacture controlled substances under
34 chapter 69.50 RCW;
- 35 (o) Trafficking in stolen property, as defined in RCW 9A.82.050;
- 36 (p) Leading organized crime, as defined in RCW 9A.82.060;
- 37 (q) Money laundering, as defined in RCW 9A.83.020;

1 (r) Obstructing criminal investigations or prosecutions in
2 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,
3 9A.76.070, or 9A.76.180;

4 (s) Fraud in the purchase or sale of securities, as defined in RCW
5 21.20.010;

6 (t) Promoting pornography, as defined in RCW 9.68.140;

7 (u) Sexual exploitation of children, as defined in RCW 9.68A.040,
8 9.68A.050, and 9.68A.060;

9 (v) Promoting prostitution, as defined in RCW 9A.88.070 and
10 9A.88.080;

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

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

13 (y) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;

14 (z) A pattern of equity skimming, as defined in RCW 61.34.020;

15 ((or))

16 (aa) Commercial telephone solicitation in violation of RCW
17 19.158.040(1);

18 (bb) Trafficking in insurance claims, as defined in section 3 of
19 this act;

20 (cc) Unlawful practice of law, as defined in RCW 2.48.180;

21 (dd) Commercial bribery, as defined in section 29 of this act;

22 (ee) Health care false claims, as defined in RCW 48.80.030; or

23 (ff) Unlicensed practice of a profession or business, as defined in
24 RCW 18.130.190(7).

25 (15) "Pattern of criminal profiteering activity" means engaging in
26 at least three acts of criminal profiteering, one of which occurred
27 after July 1, 1985, and the last of which occurred within five years,
28 excluding any period of imprisonment, after the commission of the
29 earliest act of criminal profiteering. In order to constitute a
30 pattern, the three acts must have the same or similar intent, results,
31 accomplices, principals, victims, or methods of commission, or be
32 otherwise interrelated by distinguishing characteristics including a
33 nexus to the same enterprise, and must not be isolated events.
34 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by
35 any person other than the attorney general or county prosecuting
36 attorney in which one or more acts of fraud in the purchase or sale of
37 securities are asserted as acts of criminal profiteering activity, it
38 is a condition to civil liability under RCW 9A.82.100 that the
39 defendant has been convicted in a criminal proceeding of fraud in the

1 purchase or sale of securities under RCW 21.20.400 or under the laws of
2 another state or of the United States requiring the same elements of
3 proof, but such conviction need not relate to any act or acts asserted
4 as acts of criminal profiteering activity in such civil action under
5 RCW 9A.82.100.

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

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

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

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

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

19 (ii) Chapter 9.46 RCW relating to gambling;

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

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

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

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

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

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

34 (b) "Beneficial interest" does not include the interest of a
35 stockholder in a corporation or the interest of a partner in a general
36 partnership or limited partnership.

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

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

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

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

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

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

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

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

14 (ii) A trustee of any testamentary trust;

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

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

18 **Sec. 35.** RCW 18.130.190 and 1993 c 367 s 19 are each amended to
19 read as follows:

20 (1) The secretary shall investigate complaints concerning practice
21 by unlicensed persons of a profession or business for which a license
22 is required by the chapters specified in RCW 18.130.040. In the
23 investigation of the complaints, the secretary shall have the same
24 authority as provided the secretary under RCW 18.130.050.

25 (2) The secretary may issue a notice of intention to issue a cease
26 and desist order to any person whom the secretary has reason to believe
27 is engaged in the unlicensed practice of a profession or business for
28 which a license is required by the chapters specified in RCW
29 18.130.040. The person to whom such notice is issued may request an
30 adjudicative proceeding to contest the charges. The request for
31 hearing must be filed within twenty days after service of the notice of
32 intention to issue a cease and desist order. The failure to request a
33 hearing constitutes a default, whereupon the secretary may enter a
34 permanent cease and desist order, which may include a civil fine. All
35 proceedings shall be conducted in accordance with chapter 34.05 RCW.

36 (3) If the secretary makes a final determination that a person has
37 engaged or is engaging in unlicensed practice, the secretary may issue
38 a cease and desist order. In addition, the secretary may impose a

1 civil fine in an amount not exceeding one thousand dollars for each day
2 upon which the person engaged in unlicensed practice of a business or
3 profession for which a license is required by one or more of the
4 chapters specified in RCW 18.130.040. The proceeds of such fines shall
5 be deposited to the health professions account.

6 (4) If the secretary makes a written finding of fact that the
7 public interest will be irreparably harmed by delay in issuing an
8 order, the secretary may issue a temporary cease and desist order. The
9 person receiving a temporary cease and desist order shall be provided
10 an opportunity for a prompt hearing. The temporary cease and desist
11 order shall remain in effect until further order of the secretary. The
12 failure to request a prompt or regularly scheduled hearing constitutes
13 a default, whereupon the secretary may enter a permanent cease and
14 desist order, which may include a civil fine.

15 (5) Neither the issuance of a cease and desist order nor payment of
16 a civil fine shall relieve the person so practicing or operating a
17 business without a license from criminal prosecution therefor, but the
18 remedy of a cease and desist order or civil fine shall be in addition
19 to any criminal liability. The cease and desist order is conclusive
20 proof of unlicensed practice and may be enforced under RCW 7.21.060.
21 This method of enforcement of the cease and desist order or civil fine
22 may be used in addition to, or as an alternative to, any provisions for
23 enforcement of agency orders set out in chapter 34.05 RCW.

24 (6) The attorney general, a county prosecuting attorney, the
25 secretary, a board, or any person may in accordance with the laws of
26 this state governing injunctions, maintain an action in the name of
27 this state to enjoin any person practicing a profession or business for
28 which a license is required by the chapters specified in RCW 18.130.040
29 without a license from engaging in such practice or operating such
30 business until the required license is secured. However, the
31 injunction shall not relieve the person so practicing or operating a
32 business without a license from criminal prosecution therefor, but the
33 remedy by injunction shall be in addition to any criminal liability.

34 (7) Unlicensed practice of a profession or operating a business for
35 which a license is required by the chapters specified in RCW
36 18.130.040, unless otherwise exempted by law, constitutes a gross
37 misdemeanor for a single violation. Each subsequent violation, whether
38 alleged in the same or in subsequent prosecutions, is a class C felony.
39 All fees, fines, forfeitures, and penalties collected or assessed by a

1 court because of a violation of this section shall be remitted to the
2 health professions account.

3 NEW SECTION. **Sec. 36.** The Washington State Bar Association is
4 requested to submit to the appropriate committees of the state senate
5 and house of representatives by November 1995, a report on the
6 recommendations of its task force on nonlawyer practice, including any
7 recommendations for legislation or proposed court rules.

8 NEW SECTION. **Sec. 37.** The following acts or parts of acts are
9 each repealed:

- 10 (1) RCW 9.91.090 and 1992 c 7 s 17, 1981 c 203 s 4, & 1909 c 249 s
11 384;
12 (2) RCW 9A.82.903 and 1985 c 455 s 22;
13 (3) RCW 48.50.060 and 1979 ex.s. c 80 s 6;
14 (4) RCW 48.50.080 and 1979 ex.s. c 80 s 8; and
15 (5) RCW 49.44.070 and 1909 c 249 s 427.

16 NEW SECTION. **Sec. 38.** Sections 1 through 14 of this act
17 constitute a new chapter in Title 48 RCW.

18 NEW SECTION. **Sec. 39.** This act is necessary for the immediate
19 preservation of the public peace, health, or safety, or support of the
20 state government and its existing public institutions, and shall take
21 effect July 1, 1995."

22 **E2SHB 1557** - S COMM AMD

23 By Committee on Financial Institutions & Housing

24 ADOPTED 4/10/95

25 In line 1 of the title, after "fraud;" strike the remainder of the
26 title and insert "amending RCW 48.01.030, 48.18.460, 48.30.210,
27 48.30.220, 48.50.010, 48.50.020, 48.50.030, 48.50.040, 48.50.075,
28 48.80.020, 2.48.180, 9.12.010, 9A.72.010, 9A.72.030, 9A.76.020,
29 9A.82.010, and 18.130.190; reenacting and amending RCW 9.94A.320;
30 adding a new section to chapter 42.17 RCW; adding a new section to
31 chapter 9A.68 RCW; adding a new section to chapter 9A.76 RCW; adding a
32 new chapter to Title 48 RCW; creating a new section; repealing RCW

1 9.91.090, 9A.82.903, 48.50.060, 48.50.080, and 49.44.070; prescribing
2 penalties; providing an effective date; and declaring an emergency."

--- **END** ---