

SENATE BILL REPORT

HB 1614

As Reported By Senate Committee On:
Labor, Commerce & Financial Institutions, March 22, 2001

Title: An act relating to the crime of commercial bribery.

Brief Description: Reenacting provisions relating to the crime of commercial bribery.

Sponsors: By Representatives Lovick, Carrell and Hurst.

Brief History:

Committee Activity: Labor, Commerce & Financial Institutions: 3/22/01 [DPA].

SENATE COMMITTEE ON LABOR, COMMERCE & FINANCIAL INSTITUTIONS

Majority Report: Do pass as amended.

Signed by Senators Prentice, Chair; Deccio, Fairley, Franklin, Hochstatter, Honeyford, Rasmussen, Regala and Winsley.

Staff: Jack Brummel (786-7428)

Background: In 1995 the Legislature included several provisions related to various criminal laws in a bill entitled "An Act Relating to insurance fraud." In December of last year, Division II of the state Court of Appeals held that the inclusion of one of those provisions violated the state Constitution. That decision, *State v. Thomas*, 103 Wn. App. 800 (2000), overturned a conviction under the state's anti-profiteering law.

In 1984 the Legislature had enacted the Washington State Racketeering Act, which was to take effect July 1, 1985. The 1985 Legislature, however, substantially amended the act before it took effect. One of the changes was to rename the act the Criminal Profiteering Act. The 1985 legislation also put a 10-year sunset clause on the entire act. The sunset clause called for the act to expire on July 1, 1995, unless the Legislature enacted another bill before then to extend the life of the act.

In 1995 the Legislature repealed the sunset clause on the Criminal Profiteering Act. The repeal of the sunset clause was intended to prevent the act from expiring that July, and to extend the life of the act indefinitely. However, the repeal was done as part of E2SHB 1557 which was a bill entitled "An Act Relating to insurance fraud." E2SHB 1557 became Chapter 285, Laws of 1995.

Division II of the Washington State Court of Appeals held that this 1995 act "relating to insurance fraud," was invalid because it violated Article II, Section 19, of the state Constitution. Article II, Section 19, requires that a bill contain only one subject, and that the subject be expressed in the title of the bill. The court found that the subject of "criminal profiteering" was not related to the subject of "insurance fraud," and therefore the bill violated the single subject requirement. Likewise, the court found that the subject of criminal

profiteering was not "expressed" in the title of the bill, and therefore the bill violated the "subject-in-the-title" requirement. As a result, the attempted repeal of the sunset clause in 1995 was ineffective, and the court held that the criminal profiteering law had in fact expired on July 1, 1995.

The attempted repeal of the profiteering act's sunset clause was the subject of the court's decision in *State v. Thomas*. However, there were several other provisions in that same 1995 act that very likely could be found unconstitutional as well. Some of these provisions had to do with creating the crime of commercial bribery and repealing the crime of employee grafting. These provisions, if challenged, might also be found to be a second subject, not related to "insurance fraud," or to be a subject not expressed in the title.

The 1995 act repealed a statute on employee grafting and replaced it with a new provision on commercial bribery. Commercial bribery may be committed by offering a benefit to a person who has a duty of fidelity or trust (trusted person), or as a trusted person accepting a benefit, in exchange for the trusted person violating his or her fidelity or trust duty. Commercial bribery may also be committed by an employee or agent of an insurer who requests or accepts a benefit in exchange for not referring or inducing claimants to have services performed. Commercial bribery is a class B felony.

Summary of Amended Bill: A provision of Chapter 285, Laws of 1995, relating to commercial bribery is reenacted and ranked under the Sentencing Reform Act without changes. The employee grafting statute, Chapter 249, Laws of 1909, is re-repealed.

Amended Bill Compared to Original Bill: Technical changes are made.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: The 1995 legislation came about because of a 1994 task force on insurance fraud. This is a technical fix. The bill changes nothing about current law but keeps the tools we have to protect society.

Testimony Against: None.

Testified: PRO: Representative Lovick, prime sponsor; Tom McBride, Susan Storey, Association of Prosecuting Attorneys.