

**SHB 1175** - S AMD TO CFC COMM AMD (S2765.1) **357**  
By Senators Stevens, Hargrove

ADOPTED 04/17/2003

1 On page 25, after line 16 of the amendment, insert the following:

2 "Sec. 5. RCW 9A.82.090 and 2001 c 222 s 13 are each amended to  
3 read as follows:

4 During the pendency of any criminal case charging a violation of  
5 RCW 9A.82.060 or (~~a violation of RCW~~) 9A.82.080, or an offense  
6 defined in section 1 of this act, the superior court may, in addition  
7 to its other powers, issue an order pursuant to RCW 9A.82.100 (2) or  
8 (3). Upon conviction of a person for a violation of RCW 9A.82.060 or  
9 (~~a violation of RCW~~) 9A.82.080, or an offense defined in section 1 of  
10 this act, the superior court may, in addition to its other powers of  
11 disposition, issue an order pursuant to RCW 9A.82.100.

12 **Sec. 6.** RCW 9A.82.100 and 2001 c 222 s 14 are each amended to read  
13 as follows:

14 (1)(a) A person who sustains injury to his or her person, business,  
15 or property by an act of criminal profiteering that is part of a  
16 pattern of criminal profiteering activity, or by an offense defined in  
17 section 1 of this act, or by a violation of RCW 9A.82.060 or 9A.82.080  
18 may file an action in superior court for the recovery of damages and  
19 the costs of the suit, including reasonable investigative and  
20 attorney's fees.

21 (b) The attorney general or county prosecuting attorney may file an  
22 action: (i) On behalf of those persons injured or, respectively, on  
23 behalf of the state or county if the entity has sustained damages, or  
24 (ii) to prevent, restrain, or remedy a pattern of criminal profiteering  
25 activity, or an offense defined in section 1 of this act, or a  
26 violation of RCW 9A.82.060 or 9A.82.080.

27 (c) An action for damages filed by or on behalf of an injured  
28 person, the state, or the county shall be for the recovery of damages  
29 and the costs of the suit, including reasonable investigative and  
30 attorney's fees.

1 (d) In an action filed to prevent, restrain, or remedy a pattern of  
2 criminal profiteering activity, or an offense defined in section 1 of  
3 this act, or a violation of RCW 9A.82.060 or 9A.82.080, the court, upon  
4 proof of the violation, may impose a civil penalty not exceeding two  
5 hundred fifty thousand dollars, in addition to awarding the cost of the  
6 suit, including reasonable investigative and attorney's fees.

7 (2) The superior court has jurisdiction to prevent, restrain, and  
8 remedy a pattern of criminal profiteering, or an offense defined in  
9 section 1 of this act, or a violation of RCW 9A.82.060 or 9A.82.080  
10 after making provision for the rights of all innocent persons affected  
11 by the violation and after hearing or trial, as appropriate, by issuing  
12 appropriate orders.

13 (3) Prior to a determination of liability, orders issued under  
14 subsection (2) of this section may include, but are not limited to,  
15 entering restraining orders or prohibitions or taking such other  
16 actions, including the acceptance of satisfactory performance bonds, in  
17 connection with any property or other interest subject to damages,  
18 forfeiture, or other restraints pursuant to this section as the court  
19 deems proper. The orders may also include attachment, receivership, or  
20 injunctive relief in regard to personal or real property pursuant to  
21 Title 7 RCW. In shaping the reach or scope of receivership,  
22 attachment, or injunctive relief, the superior court shall provide for  
23 the protection of bona fide interests in property, including community  
24 property, of persons who were not involved in the violation of this  
25 chapter, except to the extent that such interests or property were  
26 acquired or used in such a way as to be subject to forfeiture under RCW  
27 9A.82.100(4)(f).

28 (4) Following a determination of liability, orders may include, but  
29 are not limited to:

30 (a) Ordering any person to divest himself or herself of any  
31 interest, direct or indirect, in any enterprise.

32 (b) Imposing reasonable restrictions on the future activities or  
33 investments of any person, including prohibiting any person from  
34 engaging in the same type of endeavor as the enterprise engaged in, the  
35 activities of which affect the laws of this state, to the extent the  
36 Constitutions of the United States and this state permit.

37 (c) Ordering dissolution or reorganization of any enterprise.

1 (d) Ordering the payment of actual damages sustained to those  
2 persons injured by a violation of RCW 9A.82.060 or 9A.82.080, or an  
3 offense defined in section 1 of this act, or an act of criminal  
4 profiteering that is part of a pattern of criminal profiteering, and in  
5 the court's discretion, increasing the payment to an amount not  
6 exceeding three times the actual damages sustained.

7 (e) Ordering the payment of all costs and expenses of the  
8 prosecution and investigation of a pattern of criminal profiteering, or  
9 an offense defined in section 1 of this act, activity or a violation of  
10 RCW 9A.82.060 or 9A.82.080, civil and criminal, incurred by the state  
11 or county, including any costs of defense provided at public expense,  
12 as appropriate to the state general fund or the antiprofitteering  
13 revolving fund of the county.

14 (f) Ordering forfeiture first as restitution to any person damaged  
15 by an act of criminal profiteering that is part of a pattern of  
16 criminal profiteering, or by an offense defined in section 1 of this  
17 act, then to the state general fund or antiprofitteering revolving fund  
18 of the county, as appropriate, to the extent not already ordered to be  
19 paid in other damages, of the following:

20 (i) Any property or other interest acquired or maintained in  
21 violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment  
22 of funds, and any appreciation or income attributable to the  
23 investment, from a violation of RCW 9A.82.060 or 9A.82.080.

24 (ii) Any property, contractual right, or claim against property  
25 used to influence any enterprise that a person has established,  
26 operated, controlled, conducted, or participated in the conduct of, in  
27 violation of RCW 9A.82.060 or 9A.82.080.

28 (iii) All proceeds traceable to or derived from an offense included  
29 in the pattern of criminal profiteering activity, or an offense defined  
30 in section 1 of this act, and all moneys, negotiable instruments,  
31 securities, and other things of value significantly used or intended to  
32 be used significantly to facilitate commission of the offense.

33 (g) Ordering payment to the state general fund or antiprofitteering  
34 revolving fund of the county, as appropriate, of an amount equal to the  
35 gain a person has acquired or maintained through an offense included in  
36 the definition of criminal profiteering.

1 (5) In addition to or in lieu of an action under this section, the  
2 attorney general or county prosecuting attorney may file an action for  
3 forfeiture to the state general fund or antiprofitereing revolving fund  
4 of the county, as appropriate, to the extent not already ordered paid  
5 pursuant to this section, of the following:

6 (a) Any interest acquired or maintained by a person in violation of  
7 RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds  
8 obtained from a violation of RCW 9A.82.060 or 9A.82.080 and any  
9 appreciation or income attributable to the investment.

10 (b) Any property, contractual right, or claim against property used  
11 to influence any enterprise that a person has established, operated,  
12 controlled, conducted, or participated in the conduct of, in violation  
13 of RCW 9A.82.060 or 9A.82.080.

14 (c) All proceeds traceable to or derived from an offense included  
15 in the pattern of criminal profiteering activity, or an offense defined  
16 in section 1 of this act, and all moneys, negotiable instruments,  
17 securities, and other things of value significantly used or intended to  
18 be used significantly to facilitate the commission of the offense.

19 (6) A defendant convicted in any criminal proceeding is precluded  
20 in any civil proceeding from denying the essential allegations of the  
21 criminal offense proven in the criminal trial in which the defendant  
22 was convicted. For the purposes of this subsection, a conviction shall  
23 be deemed to have occurred upon a verdict, finding, or plea of guilty,  
24 notwithstanding the fact that appellate review of the conviction and  
25 sentence has been or may be sought. If a subsequent reversal of the  
26 conviction occurs, any judgment that was based upon that conviction may  
27 be reopened upon motion of the defendant.

28 (7) The initiation of civil proceedings under this section shall be  
29 commenced within three years after discovery of the pattern of criminal  
30 profiteering activity or after the pattern should reasonably have been  
31 discovered or, in the case of an offense that is defined in section 1  
32 of this act, within three years after the final disposition of any  
33 criminal charges relating to the offense, whichever is later.

34 (8) The attorney general or county prosecuting attorney may, in a  
35 civil action brought pursuant to this section, file with the clerk of  
36 the superior court a certificate stating that the case is of special  
37 public importance. A copy of that certificate shall be furnished

1 immediately by the clerk to the presiding chief judge of the superior  
2 court in which the action is pending and, upon receipt of the copy, the  
3 judge shall immediately designate a judge to hear and determine the  
4 action. The judge so designated shall promptly assign the action for  
5 hearing, participate in the hearings and determination, and cause the  
6 action to be expedited.

7 (9) The standard of proof in actions brought pursuant to this  
8 section is the preponderance of the evidence test.

9 (10) A person other than the attorney general or county prosecuting  
10 attorney who files an action under this section shall serve notice and  
11 one copy of the pleading on the attorney general within thirty days  
12 after the action is filed with the superior court. The notice shall  
13 identify the action, the person, and the person's attorney. Service of  
14 the notice does not limit or otherwise affect the right of the state to  
15 maintain an action under this section or intervene in a pending action  
16 nor does it authorize the person to name the state or the attorney  
17 general as a party to the action.

18 (11) Except in cases filed by a county prosecuting attorney, the  
19 attorney general may, upon timely application, intervene in any civil  
20 action or proceeding brought under this section if the attorney general  
21 certifies that in the attorney general's opinion the action is of  
22 special public importance. Upon intervention, the attorney general may  
23 assert any available claim and is entitled to the same relief as if the  
24 attorney general had instituted a separate action.

25 (12) In addition to the attorney general's right to intervene as a  
26 party in any action under this section, the attorney general may appear  
27 as amicus curiae in any proceeding in which a claim under this section  
28 has been asserted or in which a court is interpreting RCW 9A.82.010,  
29 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.

30 (13) A private civil action under this section does not limit any  
31 other civil or criminal action under this chapter or any other  
32 provision. Private civil remedies provided under this section are  
33 supplemental and not mutually exclusive.

34 (14) Upon motion by the defendant, the court may authorize the sale  
35 or transfer of assets subject to an order or lien authorized by this  
36 chapter for the purpose of paying actual attorney's fees and costs of  
37 defense. The motion shall specify the assets for which sale or

1 transfer is sought and shall be accompanied by the defendant's sworn  
2 statement that the defendant has no other assets available for such  
3 purposes. No order authorizing such sale or transfer may be entered  
4 unless the court finds that the assets involved are not subject to  
5 possible forfeiture under RCW 9A.82.100(4)(f). Prior to disposition of  
6 the motion, the court shall notify the state of the assets sought to be  
7 sold or transferred and shall hear argument on the issue of whether the  
8 assets are subject to forfeiture under RCW 9A.82.100(4)(f). Such a  
9 motion may be made from time to time and shall be heard by the court on  
10 an expedited basis.

11 (15) In an action brought under subsection (1)(a) and (b)(i) of  
12 this section, either party has the right to a jury trial.

13 **Sec. 7.** RCW 9A.82.120 and 2001 c 222 s 16 are each amended to read  
14 as follows:

15 (1) The state, upon filing a criminal action under RCW 9A.82.060 or  
16 9A.82.080 or for an offense defined in section 1 of this act, or a  
17 civil action under RCW 9A.82.100, may file in accordance with this  
18 section a criminal profiteering lien. A filing fee or other charge is  
19 not required for filing a criminal profiteering lien.

20 (2) A criminal profiteering lien shall be signed by the attorney  
21 general or the county prosecuting attorney representing the state in  
22 the action and shall set forth the following information:

23 (a) The name of the defendant whose property or other interests are  
24 to be subject to the lien;

25 (b) In the discretion of the attorney general or county prosecuting  
26 attorney filing the lien, any aliases or fictitious names of the  
27 defendant named in the lien;

28 (c) If known to the attorney general or county prosecuting attorney  
29 filing the lien, the present residence or principal place of business  
30 of the person named in the lien;

31 (d) A reference to the proceeding pursuant to which the lien is  
32 filed, including the name of the court, the title of the action, and  
33 the court's file number for the proceeding;

34 (e) The name and address of the attorney representing the state in  
35 the proceeding pursuant to which the lien is filed;

1 (f) A statement that the notice is being filed pursuant to this  
2 section;

3 (g) The amount that the state claims in the action or, with respect  
4 to property or other interests that the state has requested forfeiture  
5 to the state or county, a description of the property or interests  
6 sought to be paid or forfeited;

7 (h) If known to the attorney general or county prosecuting attorney  
8 filing the lien, a description of property that is subject to  
9 forfeiture to the state or property in which the defendant has an  
10 interest that is available to satisfy a judgment entered in favor of  
11 the state; and

12 (i) Such other information as the attorney general or county  
13 prosecuting attorney filing the lien deems appropriate.

14 (3) The attorney general or the county prosecuting attorney filing  
15 the lien may amend a lien filed under this section at any time by  
16 filing an amended criminal profiteering lien in accordance with this  
17 section that identifies the prior lien amended.

18 (4) The attorney general or the county prosecuting attorney filing  
19 the lien shall, as soon as practical after filing a criminal  
20 profiteering lien, furnish to any person named in the lien a notice of  
21 the filing of the lien. Failure to furnish notice under this  
22 subsection does not invalidate or otherwise affect a criminal  
23 profiteering lien filed in accordance with this section.

24 (5)(a) A criminal profiteering lien is perfected against interests  
25 in personal property in the same manner as a security interest in like  
26 property pursuant to RCW (~~62A.9-302, 62A.9-303, 62A.9-304, 62A.9-305,~~  
27 ~~and 62A.9-306~~) 62A.9A-301 through 62A.9A-316 or as otherwise required  
28 to perfect a security interest in like property under applicable law.  
29 In the case of perfection by filing, the state shall file, in lieu of  
30 a financing statement in the form prescribed by RCW (~~62A.9-402~~)  
31 62A.9A-502, a notice of lien in substantially the following form:

32 NOTICE OF LIEN

33 Pursuant to RCW 9A.82.120, the state of Washington  
34 claims a criminal profiteering lien on all real and personal  
35 property of:

36 Name: .....

1 Address: .....  
2 .....  
3 State of Washington  
4 .....  
5 By (authorized signature)

6 On receipt of such a notice from the state, a filing officer shall,  
7 without payment of filing fee, file and index the notice as if it were  
8 a financing statement naming the state as secured party and the  
9 defendant as debtor.

10 (b) A criminal profiteering lien is perfected against interests in  
11 real property by filing the lien in the office where a mortgage on the  
12 real estate would be filed or recorded. The filing officer shall file  
13 and index the criminal profiteering lien, without payment of a filing  
14 fee, in the same manner as a mortgage.

15 (6) The filing of a criminal profiteering lien in accordance with  
16 this section creates a lien in favor of the state in:

17 (a) Any interest of the defendant, in real property situated in the  
18 county in which the lien is filed, then maintained, or thereafter  
19 acquired in the name of the defendant identified in the lien;

20 (b) Any interest of the defendant, in personal property situated in  
21 this state, then maintained or thereafter acquired in the name of the  
22 defendant identified in the lien; and

23 (c) Any property identified in the lien to the extent of the  
24 defendant's interest therein.

25 (7) The lien created in favor of the state in accordance with this  
26 section, when filed or otherwise perfected as provided in subsection  
27 (5) of this section, has, with respect to any of the property described  
28 in subsection (6) of this section, the same priority determined  
29 pursuant to the laws of this state as a mortgage or security interest  
30 given for value (but not a purchase money security interest) and  
31 perfected in the same manner with respect to such property; except that  
32 any lien perfected pursuant to Title 60 RCW by any person who, in the  
33 ordinary course of his or her business, furnishes labor, services, or  
34 materials, or rents, leases, or otherwise supplies equipment, without  
35 knowledge of the criminal profiteering lien, is superior to the  
36 criminal profiteering lien.



1 (8) Upon entry of judgment in favor of the state, the state may  
2 proceed to execute thereon as in the case of any other judgment, except  
3 that in order to preserve the state's lien priority as provided in this  
4 section the state shall, in addition to such other notice as is  
5 required by law, give at least thirty days' notice of the execution to  
6 any person possessing at the time the notice is given, an interest  
7 recorded subsequent to the date the state's lien was perfected.

8 (9) Upon the entry of a final judgment in favor of the state  
9 providing for forfeiture of property to the state, the title of the  
10 state to the property:

11 (a) In the case of real property or a beneficial interest in real  
12 property, relates back to the date of filing the criminal profiteering  
13 lien or, if no criminal profiteering lien is filed, then to the date of  
14 recording of the final judgment or the abstract thereof; or

15 (b) In the case of personal property or a beneficial interest in  
16 personal property, relates back to the date the personal property was  
17 seized by the state, or the date of filing of a criminal profiteering  
18 lien in accordance with this section, whichever is earlier, but if the  
19 property was not seized and no criminal profiteering lien was filed  
20 then to the date the final judgment was filed with the department of  
21 licensing and, if the personal property is an aircraft, with the  
22 federal aviation administration.

23 (10) This section does not limit the right of the state to obtain  
24 any order or injunction, receivership, writ, attachment, garnishment,  
25 or other remedy authorized under RCW 9A.82.100 or appropriate to  
26 protect the interests of the state or available under other applicable  
27 law.

28 (11) In a civil or criminal action under this chapter, the superior  
29 court shall provide for the protection of bona fide interests in  
30 property, including community property, subject to liens of persons who  
31 were not involved in the violation of this chapter, except to the  
32 extent that such interests or property were acquired or used in such a  
33 way as to be subject to forfeiture pursuant to RCW 9A.82.100(4)(f)."

34 Renumber the remaining sections consecutively.

**SHB 1175** - S AMD TO CFC COMM AMD (S2765.1) **357**  
By Senators Stevens, Hargrove

**ADOPTED 04/17/2003**

1        On page 25, line 21 of the title amendment, after "9.94A.535"  
2        insert ", 9A.82.090, 9A.82.100, and 9A.82.120"

**--- END ---**