
**Criminal Justice & Corrections
Committee**

HB 2718

Brief Description: Preventing acts of fraud against elderly persons and vulnerable adults.

Sponsors: Representatives Sullivan, Simpson, G., Kirby, Schual-Berke, Chase, Darneille, Lantz, Conway, Kenney, Morrell, Hudgins and Kagi.

Brief Summary of Bill

- Imposes a penalty assessment on persons convicted of certain crimes with elderly or vulnerable adult victims.
- Imposes fines for violations of the Consumer Protection Act with elderly or vulnerable adult victims.
- Allows civil forfeiture of property connected with certain criminal acts against elderly persons or vulnerable adults.

Hearing Date: 1/27/04

Staff: Jim Morishima (786-7191).

Background:

I. Penalty Assessments

When any person is found guilty of a crime in superior court (other than certain motor vehicle crimes), the court must impose a penalty assessment of \$500 for any case that contains a conviction for a felony or gross misdemeanor and \$250 for any case that contains one or more convictions for misdemeanors. When any person is found guilty of a crime in juvenile court, the court must impose a penalty assessment of \$100 for any case that contains a conviction for a felony or gross misdemeanor and \$75 for any case that contains one or more convictions for misdemeanors.

These penalty assessments are legal financial obligations. Upon collection, a portion of the penalty assessments is deposited in the Public Safety and Education Account. Another portion is to be used for the support of comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes.

II. The Consumer Protection Act

The Consumer Protection Act (CPA) prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. The Attorney General may bring an action to enforce the provisions of the CPA. Also, a person injured by a violation of the CPA may bring a civil action in which the person may be awarded court costs, attorney fees, and treble damages.

III. Civil Forfeiture

There are many civil forfeiture statutes covering a wide variety of topics. Most civil forfeitures occur in the context of criminal violations. For example, the Uniform Controlled Substances Act provides for the civil forfeiture of materials and products used in the manufacture and distribution of illegal drugs. Other subjects involving civil forfeiture provisions include animals, child pornography, cigarettes, drunk driving, driving with suspended license, explosives, and money laundering. Civil forfeiture statutes generally allow for notice and the opportunity to be heard for the property owner. The standard of proof in civil forfeiture proceedings can be different from the underlying crime, so it is therefore possible for a person who is not charged with a crime or found not guilty of a crime to have his or her property seized.

Summary of Bill:

I. Penalty Assessments

A superior, district, or juvenile court may impose a penalty assessment on a person who is found guilty of any of the following crimes when the victim is an elderly person or vulnerable adult:

- Identity theft in the first and second degrees;
- Theft in the first, second, and third degrees;
- Forgery;
- Obtaining a signature by deception or duress;
- Criminal impersonation in the first and second degrees;
- False certification;
- Contractor fraud; or
- A Securities Act violation.

The amount of the penalty assessment is up to \$10,000 per conviction for felonies, up to \$5,000 per conviction for gross misdemeanors, and up to \$1,000 per conviction for misdemeanors. The penalty assessments are legal financial obligations. Upon collection, they must be deposited in the Elder and Vulnerable Adult Fraud Prevention Account to be used to fund activities relating to advocating on behalf of, or preventing fraud against, elderly persons and vulnerable adults.

"Elderly person" is defined as a person 60 years of age or older. "Vulnerable adult" is defined as a person found incapacitated, a person over 18 years of age who has a developmental disability, a person admitted to a licensed long-term care facility, or a person receiving services from a licensed home health, hospice, or home care agency.

II. The Consumer Protection Act

In an action brought by the Attorney General under the CPA, the court may assess a civil fine against a person who has violated the CPA where the victim is an elderly person or a vulnerable

adult. The amount of the fine is up to \$10,000 per elderly person injured by the act giving rise to the liability. In an action brought by an injured person under the CPA, the court may assess a civil fine of up to \$10,000 against a person who has violated the CPA if the person bringing the action is an elderly person or a vulnerable adult.

The civil fines collected must be deposited into the Elder and Vulnerable Adult Fraud Prevention Account to be used to fund activities relating to advocating on behalf of, or preventing fraud against, elderly persons and vulnerable adults.

"Elderly Person" and "Vulnerable Adult" are defined in the same manner as the terms are defined for purposes of the penalty assessments.

III. Civil Forfeiture

The proceeds and instrumentalities related to the following crimes where the victim is an elderly person or a vulnerable adult are subject to civil forfeiture:

- Identity theft in the first and second degrees;
- Theft in the first, second, and third degrees;
- Forgery;
- Obtaining a signature by deception or duress;
- Criminal impersonation in the first and second degrees;
- False certification;
- Contractor fraud; or
- A Securities Act violation.

An instrumentality is not subject to forfeiture if the act giving rise to the forfeiture was committed without the owner's knowledge or consent. An instrumentality subject to a bona fide security interest is subject to the interest of the secured party if the act giving rise to the forfeiture was committed without the secured party's knowledge and consent. A vehicle being used as a common carrier is not subject to forfeiture unless the owner of the conveyance is a consenting party or privy to the act giving rise to the forfeiture.

Forfeiture proceedings are initiated by the seizure of the property in question. Such property may be seized by any law enforcement agency of the state upon process issued by the superior court having jurisdiction over the property. Seizure without process may be made if the seizure is incident to arrest, the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding, a law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety, or the law enforcement officer has probable cause to believe that the property was used or intended to be used in violation of chapter 9A.60 RCW (Fraud).

Once the forfeiture proceedings have been initiated, the seizing law enforcement agency must provide notice of the seizure to the owner, the Office of Crime Victims' Advocacy, and other persons having an interest in the property. If no person notifies the agency to the person's claim of ownership within 45 days (for personal property) and 90 days (for real property), the property is forfeited.

If a person does notify the seizing agency of a claim of ownership, the person must be given the opportunity to be heard. The hearing must be in front of the chief law enforcement officer of the seizing agency (or his or her designee) or an administrative law judge. The person may also

remove the proceeding to a court of competent jurisdiction. In such a proceeding, the law enforcement agency has the burden to prove, by a preponderance of the evidence, that the property is subject to forfeiture. If the person is determined to be the present lawful owner of, or is entitled to possession of, the property, the seizing law enforcement agency must promptly return the property. In such a case, the person is entitled to reasonable attorneys' fees.

The seizing law enforcement agency must keep a record of all forfeited property. The net proceeds of such property must be paid as restitution to any person readily ascertainable by the seizing agency at the time of the forfeiture who was damaged by the crime giving rise to the forfeiture. Ten percent of the remainder must be deposited in the Elder and Vulnerable Adult Fraud Prevention Account to be used to fund activities relating to advocating on behalf of, or preventing fraud against, elderly persons and vulnerable adults. Any remaining proceeds may be retained by the seizing law enforcement agency and: (1) used for official purposes, (2) released to another law enforcement agency for the exclusive use of preventing fraud-related crimes against elderly persons or vulnerable adults, (3) sold, or (4) removed for disposition in accordance with law.

A landlord may assert a claim against the proceeds from the sale of forfeited property if a law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence and the landlord has applied funds from the tenant's deposit to cover the damage prior to filing a claim.

"Elderly Person" and "Vulnerable Adult" are defined in the same manner as the terms are defined for purposes of the penalty assessments.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 2004.