

SSB 6776 - S AMD 35

By Senators Finkbeiner, Poulsen

ADOPTED 02/08/2006

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 9.26A RCW
4 to read as follows:

5 (1) A person is guilty of the unauthorized sale or procurement of
6 telephone records if the person:

7 (a) Intentionally sells the telephone record of any resident of
8 this state without the authorization of the customer to whom the record
9 pertains;

10 (b) By fraudulent, deceptive, or false means obtains the telephone
11 record of any resident of this state to whom the record pertains;

12 (c) Knowingly purchases the telephone record of any resident of
13 this state without the authorization of the customer to whom the record
14 pertains; or

15 (d) Knowingly receives the telephone record of any resident of this
16 state without the authorization of the customer to whom the record
17 pertains.

18 (2) This section does not apply to:

19 (a) Any action by a government agency, or any officer, employee, or
20 agent of such agency, to obtain telephone records in connection with
21 the performance of the official duties of the agency;

22 (b) A telecommunications company that obtains, uses, discloses, or
23 permits access to any telephone record, either directly or indirectly
24 through its agents, that is:

25 (i) With the lawful consent of the customer or subscriber;

26 (ii) Authorized by law;

27 (iii) Necessarily incident to the rendition of the service or to
28 the protection of the rights or property of the provider of that
29 service, or to protect users of those services and other carriers from

1 fraudulent, abusive, or unlawful use of, or subscription to, such
2 services; or

3 (iv) In connection with the sale or transfer of all or part of its
4 business, or the purchase or acquisition of a portion or all of a
5 business, or the migration of a customer from one carrier to another.

6 (3) A violation of subsection (1)(a), (b), or (c) of this section
7 is a class C felony. A violation of subsection (1)(d) of this section
8 is a gross misdemeanor.

9 (4) A person who violates this section is subject to legal action
10 for injunctive relief and either actual damages, including mental pain
11 and suffering, or liquidated damages of five thousand dollars per
12 violation, whichever is greater. Reasonable attorneys' fees and other
13 costs of litigation are also recoverable.

14 (5) The definitions in this subsection apply throughout this
15 section unless the context clearly requires otherwise.

16 (a) "Telecommunications company" has the meaning provided in RCW
17 9.26A.100 and includes "radio communications service companies" as
18 defined in RCW 80.04.010.

19 (b) "Telephone record" means information retained by a
20 telecommunications company that relates to the telephone number dialed
21 by the customer or the incoming number or call directed to a customer,
22 or other data related to such calls typically contained on a customer
23 telephone bill such as the time the call started and ended, the
24 duration of the call, the time of day the call was made, and any
25 charges applied. "Telephone record" does not include any information
26 collected and retained by customers using caller identification or
27 other similar technologies.

28 (c) "Procure" means to obtain by any means, whether electronically,
29 in writing, or in oral form, with or without consideration.

30 **Sec. 2.** RCW 9A.82.010 and 2003 c 119 s 6, 2003 c 113 s 3, and 2003
31 c 53 s 85 are each reenacted and amended to read as follows:

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

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

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

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

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

7 (b) "Beneficial interest" does not include the interest of a
8 stockholder in a corporation or the interest of a partner in a general
9 partnership or limited partnership.

10 (c) A beneficial interest is considered to be located where the
11 real property owned by the trustee is located.

12 (2) "Control" means the possession of a sufficient interest to
13 permit substantial direction over the affairs of an enterprise.

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

17 (4) "Criminal profiteering" means any act, including any
18 anticipatory or completed offense, committed for financial gain, that
19 is chargeable or indictable under the laws of the state in which the
20 act occurred and, if the act occurred in a state other than this state,
21 would be chargeable or indictable under the laws of this state had the
22 act occurred in this state and punishable as a felony and by
23 imprisonment for more than one year, regardless of whether the act is
24 charged or indicted, as any of the following:

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

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

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

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

29 (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060,
30 9A.56.080, and 9A.56.083;

31 (f) Unlawful sale of subscription television services, as defined
32 in RCW 9A.56.230;

33 (g) Theft of telecommunication services or unlawful manufacture of
34 a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;

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

36 (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and
37 9A.68.050;

38 (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;

1 (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
2 (l) Unlawful production of payment instruments, unlawful possession
3 of payment instruments, unlawful possession of a personal
4 identification device, unlawful possession of fictitious
5 identification, or unlawful possession of instruments of financial
6 fraud, as defined in RCW 9A.56.320;
7 (m) Extortionate extension of credit, as defined in RCW 9A.82.020;
8 (n) Advancing money for use in an extortionate extension of credit,
9 as defined in RCW 9A.82.030;
10 (o) Collection of an extortionate extension of credit, as defined
11 in RCW 9A.82.040;
12 (p) Collection of an unlawful debt, as defined in RCW 9A.82.045;
13 (q) Delivery or manufacture of controlled substances or possession
14 with intent to deliver or manufacture controlled substances under
15 chapter 69.50 RCW;
16 (r) Trafficking in stolen property, as defined in RCW 9A.82.050;
17 (s) Leading organized crime, as defined in RCW 9A.82.060;
18 (t) Money laundering, as defined in RCW 9A.83.020;
19 (u) Obstructing criminal investigations or prosecutions in
20 violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130,
21 9A.76.070, or 9A.76.180;
22 (v) Fraud in the purchase or sale of securities, as defined in RCW
23 21.20.010;
24 (w) Promoting pornography, as defined in RCW 9.68.140;
25 (x) Sexual exploitation of children, as defined in RCW 9.68A.040,
26 9.68A.050, and 9.68A.060;
27 (y) Promoting prostitution, as defined in RCW 9A.88.070 and
28 9A.88.080;
29 (z) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
30 (aa) Assault, as defined in RCW 9A.36.011 and 9A.36.021;
31 (bb) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;
32 (cc) A pattern of equity skimming, as defined in RCW 61.34.020;
33 (dd) Commercial telephone solicitation in violation of RCW
34 19.158.040(1);
35 (ee) Trafficking in insurance claims, as defined in RCW 48.30A.015;
36 (ff) Unlawful practice of law, as defined in RCW 2.48.180;
37 (gg) Commercial bribery, as defined in RCW 9A.68.060;
38 (hh) Health care false claims, as defined in RCW 48.80.030;

1 (ii) Unlicensed practice of a profession or business, as defined in
2 RCW 18.130.190(7);

3 (jj) Improperly obtaining financial information, as defined in RCW
4 9.35.010;

5 (kk) Identity theft, as defined in RCW 9.35.020;

6 (ll) Unlawful shipment of cigarettes in violation of RCW
7 70.155.105(6) (a) or (b); (~~(e)~~)

8 (mm) Unlawful shipment of cigarettes in violation of RCW
9 82.24.110(2); or

10 (nn) Unauthorized sale or procurement of telephone records in
11 violation of section 1 of this act.

12 (5) "Dealer in property" means a person who buys and sells property
13 as a business.

14 (6) "Debtor" means a person to whom an extension of credit is made
15 or a person who guarantees the repayment of an extension of credit or
16 in any manner undertakes to indemnify the creditor against loss
17 resulting from the failure of a person to whom an extension is made to
18 repay the same.

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

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

30 (9) "Extortionate extension of credit" means an extension of credit
31 with respect to which it is the understanding of the creditor and the
32 debtor at the time the extension is made that delay in making repayment
33 or failure to make repayment could result in the use of violence or
34 other criminal means to cause harm to the person, reputation, or
35 property of any person.

36 (10) "Extortionate means" means the use, or an express or implicit
37 threat of use, of violence or other criminal means to cause harm to the
38 person, reputation, or property of any person.

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

5 (12) "Pattern of criminal profiteering activity" means engaging in
6 at least three acts of criminal profiteering, one of which occurred
7 after July 1, 1985, and the last of which occurred within five years,
8 excluding any period of imprisonment, after the commission of the
9 earliest act of criminal profiteering. In order to constitute a
10 pattern, the three acts must have the same or similar intent, results,
11 accomplices, principals, victims, or methods of commission, or be
12 otherwise interrelated by distinguishing characteristics including a
13 nexus to the same enterprise, and must not be isolated events.
14 However, in any civil proceedings brought pursuant to RCW 9A.82.100 by
15 any person other than the attorney general or county prosecuting
16 attorney in which one or more acts of fraud in the purchase or sale of
17 securities are asserted as acts of criminal profiteering activity, it
18 is a condition to civil liability under RCW 9A.82.100 that the
19 defendant has been convicted in a criminal proceeding of fraud in the
20 purchase or sale of securities under RCW 21.20.400 or under the laws of
21 another state or of the United States requiring the same elements of
22 proof, but such conviction need not relate to any act or acts asserted
23 as acts of criminal profiteering activity in such civil action under
24 RCW 9A.82.100.

25 (13) "Real property" means any real property or interest in real
26 property, including but not limited to a land sale contract, lease, or
27 mortgage of real property.

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

30 (15) "Repayment of an extension of credit" means the repayment,
31 satisfaction, or discharge in whole or in part of a debt or claim,
32 acknowledged or disputed, valid or invalid, resulting from or in
33 connection with that extension of credit.

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

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

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

5 (19) "Traffic" means to sell, transfer, distribute, dispense, or
6 otherwise dispose of stolen property to another person, or to buy,
7 receive, possess, or obtain control of stolen property, with intent to
8 sell, transfer, distribute, dispense, or otherwise dispose of the
9 property to another person.

10 (20)(a) "Trustee" means:

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

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

16 (iii) A successor trustee to a person who is a trustee under (a)(i)
17 or (ii) of this subsection.

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

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

20 (ii) A trustee of any testamentary trust;

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

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

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

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

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

30 (ii) Chapter 9.46 RCW relating to gambling;

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

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

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1 On page 1, line 2 of the title, after "records;" strike the
2 remainder of the title and insert "reenacting and amending RCW
3 9A.82.010; adding a new section to chapter 9.26A RCW; and prescribing
4 penalties."

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