
HOUSE BILL 2847

State of Washington 61st Legislature 2010 Regular Session

By Representatives Alexander and Haler

Read first time 01/15/10. Referred to Committee on Judiciary.

1 AN ACT Relating to the confiscation of funds for individuals
2 convicted of a crime; and adding new sections to chapter 9.94A RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** During the pendency of any criminal case
5 charging a felony offense defined in this chapter, the superior court
6 may, in addition to its other powers, issue an order pursuant to
7 section 2 of this act. Upon conviction of a person for a violation of
8 this chapter, the superior court may, in addition to its other powers
9 of disposition, issue an order pursuant to section 2 of this act.

10 NEW SECTION. **Sec. 2.** (1) The superior court has jurisdiction to
11 prevent, restrain, and remedy a felony offense after making provision
12 for the rights of all innocent persons affected by the violation and
13 after hearing or trial, as appropriate, by issuing appropriate orders.

14 (2) Prior to a determination of liability, orders issued under
15 subsection (1) of this section may include, but are not limited to,
16 entering restraining orders or prohibitions or taking such other
17 actions, including the acceptance of satisfactory performance bonds, in
18 connection with any property or other interest subject to damages,

1 forfeiture, or other restraints pursuant to this section as the court
2 deems proper. The orders may also include attachment, receivership, or
3 injunctive relief in regard to personal or real property pursuant to
4 Title 7 RCW. In shaping the reach or scope of receivership,
5 attachment, or injunctive relief, the superior court shall provide for
6 the protection of bona fide interests in property, including community
7 property, of persons who were not involved in the violation of this
8 chapter, except to the extent that such interests or property were
9 acquired or used in such a way as to be subject to forfeiture under
10 subsection (3)(f) of this section.

11 (3) Following a determination of liability, orders may include, but
12 are not limited to:

13 (a) Ordering any person to divest himself or herself of any
14 interest, direct or indirect, in any enterprise;

15 (b) Imposing reasonable restrictions on the future activities or
16 investments of any person, including prohibiting any person from
17 engaging in the same type of endeavor as the enterprise engaged in, the
18 activities of which affect the laws of this state, to the extent the
19 Constitutions of the United States and this state permit;

20 (c) Ordering dissolution or reorganization of any enterprise;

21 (d) Ordering the payment of actual damages sustained to those
22 persons injured by the felony offense committed;

23 (e) Ordering the payment of all costs and expenses of incarceration
24 relating to the felony offense of conviction, incurred by the state or
25 county as appropriate to the state general fund or the county;

26 (f) Ordering forfeiture first as restitution to any person damaged
27 by the felony act, then to the state general fund and the county, as
28 appropriate, to the extent not already ordered to be paid in other
29 damages, of the following:

30 (i) Any property or other interest acquired or maintained as part
31 of the felony offense committed;

32 (ii) Any property, contractual right, or claim against property
33 used to influence any enterprise that a person has established,
34 operated, controlled, conducted, or participated in the conduct of the
35 felony offense committed;

36 (iii) All proceeds traceable to or derived from the felony offense
37 committed, and all moneys, negotiable instruments, securities, and

1 other things of value significantly used or intended to be used
2 significantly to facilitate commission of the felony offense.

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

8 (a) Any interest acquired or maintained by the convicted person;

9 (b) Any interest, property, contractual right, or claim against
10 property used that the person has established, operated, controlled,
11 conducted, or participated in the conduct of the felony offense;

12 (c) All proceeds traceable to or derived from the felony offense
13 and all moneys, negotiable instruments, securities, and other things of
14 value significantly used or intended to be used significantly to
15 facilitate the commission of the offense.

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

25 (6) The initiation of civil proceedings under this section shall be
26 commenced within three years after discovery of the felony offense or
27 within three years after the final disposition of any criminal charges
28 relating to the felony offense, whichever is later.

29 (7) The attorney general or county prosecuting attorney may, in a
30 civil action brought pursuant to this section, file with the clerk of
31 the superior court a certificate stating that the case is of special
32 public importance. A copy of that certificate shall be furnished
33 immediately by the clerk to the presiding chief judge of the superior
34 court in which the action is pending and, upon receipt of the copy, the
35 judge shall immediately designate a judge to hear and determine the
36 action. The judge so designated shall promptly assign the action for
37 hearing, participate in the hearings and determination, and cause the
38 action to be expedited.

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

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

12 (10) Except in cases filed by a county prosecuting attorney, the
13 attorney general may, upon timely application, intervene in any civil
14 action or proceeding brought under this section if the attorney general
15 certifies that in the attorney general's opinion the action is of
16 special public importance. Upon intervention, the attorney general may
17 assert any available claim and is entitled to the same relief as if the
18 attorney general had instituted a separate action.

19 (11) In addition to the attorney general's right to intervene as a
20 party in any action under this section, the attorney general may appear
21 as amicus curiae in any proceeding in which a claim under this section
22 has been asserted or in which a court is interpreting this chapter or
23 this section.

24 (12) A private civil action under this section does not limit any
25 other civil or criminal action under this chapter or any other
26 provision. Private civil remedies provided under this section are
27 supplemental and not mutually exclusive.

28 NEW SECTION. **Sec. 3.** Sections 1 and 2 of this act are each added
29 to chapter 9.94A RCW.

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