

without a hearing. The commission may deny an application after a hearing.

A telecommunications company may also submit a petition for competitive classification under RCW 80.36.310 at the time it applies for registration. The commission may act on the registration application and the competitive classification petition at the same time.

Passed the Senate February 2, 1990.

Passed the House February 26, 1990.

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CHAPTER 11

[Substitute Senate Bill No. 6572]

TELECOMMUNICATIONS FRAUD

AN ACT Relating to fraud in obtaining telecommunications services; amending RCW 9.45.240 and 9.26A.090; adding a new section to chapter 9.26A RCW; adding a new section to Title 7 RCW; recodifying RCW 9.45.180, 9.45.190, and 9.45.240; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

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

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Access device" shall have the same meaning as that contained in RCW 9A.56.010.

(2) "Computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but does not mean an automated typewriter or typesetter, portable hand held calculator, or other similar device.

(3) "Computer trespass" shall have the same meaning as that contained in chapter 9A.52 RCW.

(4) "Credit card number" means the card number or coding appearing on a credit card or other form of authorization, including an identification card or plate issued to a person by any telecommunications provider that permits the person to whom it has been issued to obtain telecommunications service on credit. The term includes the number or description of the card or plate, even if the card or plate itself is not produced at the time the telecommunications service is obtained.

(5) "Publish" means the communication or dissemination of information to any one or more persons: (a) Orally, in person, or by telephone, radio, or television; (b) in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper or magazine article,

or book; or (c) electronically, including by the use of recordings, computer networks, bulletin boards, or other means of electronic storage and retrieval.

(6) "Telecommunications" shall have the same meaning as that contained in RCW 80.04.010 and includes telecommunications service that originates, terminates, or both originates and terminates in this state.

(7) "Telecommunications company" shall have the same meaning as that contained in RCW 80.04.010.

(8) "Telecommunications device" means any operating procedure or code, instrument, apparatus, or equipment designed or adapted for a particular use, and which is intended or can be used in violation of this chapter, and includes, but is not limited to, computer hardware, software, and programs; electronic mail system; voice mail system; private branch exchange; or any other means of facilitating telecommunications service.

(9) "Telephone company" means any local exchange company, as defined in RCW 80.04.010.

Sec. 2. Section 1, chapter 114, Laws of 1955 as last amended by section 1, chapter 252, Laws of 1981 and RCW 9.45.240 are each amended to read as follows:

(1) Every person who, with intent to evade the provisions of any order or rule of the Washington utilities and transportation commission or of any tariff, (~~(rule, or regulation lawfully filed with)~~) price list, contract, or any other filing lawfully submitted to said commission by any telephone ((or)), telegraph, or telecommunications company, or with intent to defraud, obtains telephone ((or)), telegraph, or telecommunications service from any telephone ((or)), telegraph, or telecommunications company through: (a) The use of a false or fictitious name or telephone number ((or)); (b) the unauthorized use of the name or telephone number of another((, or through)); (c) the physical or electronic installation of, rearrangement of, or tampering with any equipment, or use of a telecommunications device; (d) the commission of computer trespass; or (e) any other trick, deceit, or fraudulent device, shall be guilty of a misdemeanor. If the value of the telephone ((or)), telegraph, or telecommunications service ((which)) that any person obtains in violation of this section during a period of ninety days exceeds:

(a) Fifty dollars in the aggregate, then such person shall be guilty of a gross misdemeanor;

(b) Two hundred fifty dollars in the aggregate, then such person shall be guilty of a class C felony.

However, for any act ((which)) that constitutes a violation of both this subsection and subsection (2) of this section the provisions of subsection (2) of this section shall be exclusive.

(2) Every person who:

(a) Makes, possesses, sells, gives, or otherwise transfers to another ((an instrument, apparatus, or)) a telecommunications device with intent to use

it or with knowledge or reason to believe it is intended to be used to avoid any lawful telephone or telegraph toll charge or to conceal the existence or place of origin or destination of any telephone or telegraph message; or

(b) Sells, gives, or otherwise transfers to another plans or instructions for making or assembling ~~((an instrument, apparatus, or))~~ a telecommunications device described in subparagraph (a) of this subsection with knowledge or reason to believe that ~~((they))~~ the plans may be used to make or assemble such ~~((instrument, apparatus, or))~~ device shall be guilty of a felony.

Sec. 3. Section 1, chapter 160, Laws of 1974 ex. sess. and RCW 9.26A.090 are each amended to read as follows:

Every person who sells, rents, lends, gives, advertises for sale or rental, or publishes the credit card number ~~((or code))~~ of an existing, canceled, revoked, expired, or nonexistent telephone company credit card, or the numbering or coding ~~((which))~~ that is employed in the issuance of telephone company credit cards or access devices, with the intent that it be used or with knowledge or reason to believe that it will be used to avoid the payment of any lawful charge, shall be guilty of a gross misdemeanor. ~~((As used in this section, "publishes" means the communication or dissemination of information to any one or more persons, either orally, in person or by telephone, radio or television, or in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper or magazine article, or book:))~~

NEW SECTION. Sec. 4. A new section is added to Title 7 RCW to read as follows:

(1) Whenever it appears that any person is engaged in or about to engage in any act that constitutes or will constitute a violation of RCW 9.26A.____ (RCW 9.45.240 as recodified by this act) or 9.26A.090, the prosecuting attorney, a telecommunications company, or any person harmed by an alleged violation of section 2 or 3 of this act may initiate a civil proceeding in superior court to enjoin such violation, and may petition the court to issue an order for the discontinuance of the specific telephone service being used in violation of section 2 or 3 of this act.

(2) An action under this section shall be brought in the county in which the unlawful act or acts are alleged to have taken place, and shall be commenced by the filing of a verified complaint, or shall be accompanied by an affidavit.

(3) If it is shown to the satisfaction of the court, either by verified complaint or affidavit, that a person is engaged in or about to engage in any act that constitutes a violation of RCW 9.26A.____ (RCW 9.45.240 as recodified by this act) or 9.26A.090, the court may issue a temporary restraining order to abate and prevent the continuance or recurrence of the act. The court may direct the sheriff to seize and retain until further order of the court any device that is being used in violation of RCW 9.26A.____

(RCW 9.45.240 as recodified by this act) or 9.26A.090. All property seized pursuant to the order of the court shall remain in the custody of the court.

(4) The court may issue a permanent injunction to restrain, abate or prevent the continuance or recurrence of the violation of RCW 9.26A.____ (RCW 9.45.240 as recodified by this act) or 9.26A.090. The court may grant declaratory relief, mandatory orders, or any other relief deemed necessary to accomplish the purposes of the injunction. The court may retain jurisdiction of the case for the purpose of enforcing its orders.

(5) If it is shown to the satisfaction of the court, either by verified complaint or affidavit, that a person is engaged in or is about to engage in any act that constitutes a violation of RCW 9.26A.____ (RCW 9.45.240 as recodified by this act) or 9.26A.090, the court may issue an order which shall be promptly served upon the person in whose name the telecommunications device is listed, requiring the party, within a reasonable time, to be fixed by the court, from the time of service of the petition on said party, to show cause before the judge why telephone service should not promptly be discontinued. At the hearing the burden of proof shall be on the complainant.

(6) Upon a finding by the court that the telecommunications device is being used or has been used in violation of RCW 9.26A.____ (RCW 9.45.240 as recodified by this act), the court may issue an order requiring the telephone company which is rendering service over the device to disconnect such service. Upon receipt of such order, which shall be served upon an officer of the telephone company by the sheriff or deputy of the county in which the telecommunications device is installed, the telephone company shall proceed promptly to disconnect and remove such device and discontinue all telephone service until further order of the court, provided that the telephone company may do so without breach of the peace or trespass.

(7) The telecommunications company that petitions the court for the removal of any telecommunications device under this section shall be a necessary party to any proceeding or action arising out of or under RCW 9.26A.____ (RCW 9.45.240 as recodified by this act).

(8) No telephone company shall be liable for any damages, penalty, or forfeiture, whether civil or criminal, for any legal act performed in compliance with any order issued by the court.

(9) Property seized pursuant to the direction of the court that the court has determined to have been used in violation of RCW 9.26A.____ (RCW 9.45.240 as recodified by this act) shall be forfeited after notice and hearing. The court may remit or mitigate the forfeiture upon terms and conditions as the court deems reasonable if it finds that such forfeiture was incurred without gross negligence or without any intent of the petitioner to violate the law, or it finds the existence of such mitigating circumstances as to justify the remission or the mitigation of the forfeiture. In determining whether to remit or mitigate forfeiture, the court shall consider losses that

may have been suffered by victims as the result of the use of the forfeited property.

NEW SECTION. Sec. 5. RCW 9.45.180, 9.45.190, and 9.45.240 are each recodified as sections in chapter 9.26A RCW.

NEW SECTION. Sec. 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate February 8, 1990.

Passed the House February 26, 1990.

Approved by the Governor March 6, 1990.

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CHAPTER 12

[Substitute Senate Bill No. 6573]

ENERGY FACILITY SITE EVALUATION COUNCIL—ADMINISTRATIVE SUPPORT FOR

AN ACT Relating to the administration of the energy facility site evaluation council; amending RCW 43.21F.035, 43.21F.045, 80.50.030, and 80.50.040; creating new sections; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 3, chapter 295, Laws of 1981 and RCW 43.21F.035 are each amended to read as follows:

The Washington state energy office is hereby created as an agency of state government, responsible to the governor and the legislature for carrying out the purposes of this chapter. The director shall be appointed by the governor with the consent of the senate and shall serve at the pleasure of the governor. The salary of the director shall be determined pursuant to RCW 43.03.040. The director shall employ such personnel as are necessary to implement this chapter and chapter 80.50 RCW. The employment of personnel shall be in accordance with chapter 41.06 RCW.

Sec. 2. Section 4, chapter 295, Laws of 1981 as amended by section 29, chapter 505, Laws of 1987 and RCW 43.21F.045 are each amended to read as follows:

The energy office shall have the following duties:

(1) The office shall prepare and update contingency plans for implementation in the event of energy shortages or emergencies. The plans shall conform to chapter 43.21G RCW and shall include procedures for determining when these shortages or emergencies exist, the state officers and agencies to participate in the determination, and actions to be taken by various agencies and officers of state government in order to reduce hardship and maintain the general welfare during these emergencies. The office