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SENATE BILL 5009

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State of Washington

65th Legislature

2017 Regular Session

By Senator Ericksen

Prefiled 12/15/16.

1 AN ACT Relating to offenses involving economic disruption;  
2 amending RCW 9.94A.753; adding a new section to chapter 9A.84 RCW;  
3 creating new sections; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes and fully  
6 supports the ability of individuals to exercise their rights of free  
7 speech, press, and peaceful assembly, and to engage in other  
8 constitutionally protected activities. The legislature finds,  
9 however, that there is no right to harm another person or prevent  
10 another person from exercising his or her rights.

11 NEW SECTION. **Sec. 2.** A new section is added to chapter 9A.84  
12 RCW to read as follows:

13 (1) The prosecuting attorney may file a special allegation when  
14 sufficient evidence exists to show that the accused or an accomplice  
15 committed the offense to cause an economic disruption.

16 (2) In a criminal case in which there has been a special  
17 allegation and the accused has been convicted of the underlying  
18 crime, the court shall make a finding of fact prior to sentencing  
19 whether the person committed the offense to cause an economic  
20 disruption. If the court finds by a preponderance of the evidence

1 that the person committed a criminal offense to cause an economic  
2 disruption, the following additional times shall be added to the  
3 sentence for crime of conviction:

4 (a) For a misdemeanor offense, sixty days;

5 (b) For a gross misdemeanor, six months;

6 (c) For any felony offense, twelve months.

7 (3) For purposes of this section, attempting to or causing an  
8 economic disruption means a crime intended to:

9 (a) Influence the policy of a government by intimidation or  
10 coercion; and

11 (b) Obstruct, hinder, or delay the passage of any train, truck,  
12 car, ship, boat, aircraft, or other vehicle or vessel engaged in the  
13 carriage, hauling, transport, shipment, or delivery of goods, cargo,  
14 freight, or other item, in commerce; or

15 (c) Interferes with, tampers with, damages, or obstructs any  
16 pipeline facility, bulk oil terminal, marine terminal, tank car,  
17 waterborne vessel or barge, or power plant.

18 (4) Notwithstanding any other provision of law, all terms of  
19 confinement under this section are mandatory, shall be served in  
20 total confinement, and shall run consecutively to all other  
21 sentencing provisions.

22 (5) A person is an accomplice of another person in the commission  
23 of the crime if, with knowledge that it will promote or facilitate  
24 the commission of the crime, he or she: (a) Solicits, commands,  
25 encourages, or requests the other person to commit the crime; or (b)  
26 aids or agrees to aid the other person in planning or committing the  
27 crime.

28 (6) This offense does not include activity that is reasonably  
29 construed as persons engaged in lawful activity including: Law  
30 enforcement activity; construction; repair; maintenance; utility  
31 work; a lawful strike or picketing; peaceful protest; other  
32 authorized or properly permitted conduct; or persons investigating or  
33 reporting criminal conduct or illegal activity to proper authorities.

34 **Sec. 3.** RCW 9.94A.753 and 2016 c 86 s 5 are each amended to read  
35 as follows:

36 This section applies to offenses committed after July 1, 1985.

37 (1) When restitution is ordered, the court shall determine the  
38 amount of restitution due at the sentencing hearing or within one  
39 hundred eighty days except as provided in subsection (7) of this

1 section. The court may continue the hearing beyond the one hundred  
2 eighty days for good cause. The court shall then set a minimum  
3 monthly payment that the offender is required to make towards the  
4 restitution that is ordered. The court should take into consideration  
5 the total amount of the restitution owed, the offender's present,  
6 past, and future ability to pay, as well as any assets that the  
7 offender may have.

8 (2) During the period of supervision, the community corrections  
9 officer may examine the offender to determine if there has been a  
10 change in circumstances that warrants an amendment of the monthly  
11 payment schedule. The community corrections officer may recommend a  
12 change to the schedule of payment and shall inform the court of the  
13 recommended change and the reasons for the change. The sentencing  
14 court may then reset the monthly minimum payments based on the report  
15 from the community corrections officer of the change in  
16 circumstances.

17 (3) Except as provided in subsection (6) of this section,  
18 restitution ordered by a court pursuant to a criminal conviction  
19 shall be based on easily ascertainable damages for injury to or loss  
20 of property, actual expenses incurred for treatment for injury to  
21 persons, and lost wages resulting from injury. Restitution shall not  
22 include reimbursement for damages for mental anguish, pain and  
23 suffering, or other intangible losses, but may include the costs of  
24 counseling reasonably related to the offense. Except as provided in  
25 subsection (11) of this section, the amount of restitution shall not  
26 exceed double the amount of the offender's gain or the victim's loss  
27 from the commission of the crime.

28 (4) For the purposes of this section, for an offense committed  
29 prior to July 1, 2000, the offender shall remain under the court's  
30 jurisdiction for a term of ten years following the offender's release  
31 from total confinement or ten years subsequent to the entry of the  
32 judgment and sentence, whichever period ends later. Prior to the  
33 expiration of the initial ten-year period, the superior court may  
34 extend jurisdiction under the criminal judgment an additional ten  
35 years for payment of restitution. For an offense committed on or  
36 after July 1, 2000, the offender shall remain under the court's  
37 jurisdiction until the obligation is completely satisfied, regardless  
38 of the statutory maximum for the crime. The portion of the sentence  
39 concerning restitution may be modified as to amount, terms, and  
40 conditions during any period of time the offender remains under the

1 court's jurisdiction, regardless of the expiration of the offender's  
2 term of community supervision and regardless of the statutory maximum  
3 sentence for the crime. The court may not reduce the total amount of  
4 restitution ordered because the offender may lack the ability to pay  
5 the total amount. The offender's compliance with the restitution  
6 shall be supervised by the department only during any period which  
7 the department is authorized to supervise the offender in the  
8 community under RCW 9.94A.728, 9.94A.501, or in which the offender is  
9 in confinement in a state correctional institution or a correctional  
10 facility pursuant to a transfer agreement with the department, and  
11 the department shall supervise the offender's compliance during any  
12 such period. The department is responsible for supervision of the  
13 offender only during confinement and authorized supervision and not  
14 during any subsequent period in which the offender remains under the  
15 court's jurisdiction. The county clerk is authorized to collect  
16 unpaid restitution at any time the offender remains under the  
17 jurisdiction of the court for purposes of his or her legal financial  
18 obligations.

19 (5) Restitution shall be ordered whenever the offender is  
20 convicted of an offense which results in injury to any person or  
21 damage to or loss of property or as provided in subsection (6) or  
22 (11) of this section unless extraordinary circumstances exist which  
23 make restitution inappropriate in the court's judgment and the court  
24 sets forth such circumstances in the record. In addition, restitution  
25 shall be ordered to pay for an injury, loss, or damage if the  
26 offender pleads guilty to a lesser offense or fewer offenses and  
27 agrees with the prosecutor's recommendation that the offender be  
28 required to pay restitution to a victim of an offense or offenses  
29 which are not prosecuted pursuant to a plea agreement.

30 (6) Restitution for the crime of rape of a child in the first,  
31 second, or third degree, in which the victim becomes pregnant, shall  
32 include: (a) All of the victim's medical expenses that are associated  
33 with the rape and resulting pregnancy; and (b) child support for any  
34 child born as a result of the rape if child support is ordered  
35 pursuant to a civil superior court or administrative order for  
36 support for that child. The clerk must forward any restitution  
37 payments made on behalf of the victim's child to the Washington state  
38 child support registry under chapter 26.23 RCW. Identifying  
39 information about the victim and child shall not be included in the  
40 order. The offender shall receive a credit against any obligation

1 owing under the administrative or superior court order for support of  
2 the victim's child. For the purposes of this subsection, the offender  
3 shall remain under the court's jurisdiction until the offender has  
4 satisfied support obligations under the superior court or  
5 administrative order for the period provided in RCW 4.16.020 or a  
6 maximum term of twenty-five years following the offender's release  
7 from total confinement or twenty-five years subsequent to the entry  
8 of the judgment and sentence, whichever period is longer. The court  
9 may not reduce the total amount of restitution ordered because the  
10 offender may lack the ability to pay the total amount. The department  
11 shall supervise the offender's compliance with the restitution  
12 ordered under this subsection.

13 (7) Regardless of the provisions of subsections (1) through (6)  
14 of this section, the court shall order restitution in all cases where  
15 the victim is entitled to benefits under the crime victims'  
16 compensation act, chapter 7.68 RCW. If the court does not order  
17 restitution and the victim of the crime has been determined to be  
18 entitled to benefits under the crime victims' compensation act, the  
19 department of labor and industries, as administrator of the crime  
20 victims' compensation program, may petition the court within one year  
21 of entry of the judgment and sentence for entry of a restitution  
22 order. Upon receipt of a petition from the department of labor and  
23 industries, the court shall hold a restitution hearing and shall  
24 enter a restitution order.

25 (8) In addition to any sentence that may be imposed, an offender  
26 who has been found guilty of an offense involving fraud or other  
27 deceptive practice or an organization which has been found guilty of  
28 any such offense may be ordered by the sentencing court to give  
29 notice of the conviction to the class of persons or to the sector of  
30 the public affected by the conviction or financially interested in  
31 the subject matter of the offense by mail, by advertising in  
32 designated areas or through designated media, or by other appropriate  
33 means.

34 (9) This section does not limit civil remedies or defenses  
35 available to the victim, survivors of the victim, or offender  
36 including support enforcement remedies for support ordered under  
37 subsection (6) of this section for a child born as a result of a rape  
38 of a child victim. The court shall identify in the judgment and  
39 sentence the victim or victims entitled to restitution and what  
40 amount is due each victim. The state or victim may enforce the court-

1 ordered restitution in the same manner as a judgment in a civil  
2 action. Restitution collected through civil enforcement must be paid  
3 through the registry of the court and must be distributed  
4 proportionately according to each victim's loss when there is more  
5 than one victim.

6 (10) If a person has caused a victim to lose money or property  
7 through the filing of a vehicle report of sale in which the  
8 designated buyer had no knowledge of the vehicle transfer or the  
9 fraudulent filing of the report of sale, upon conviction or when the  
10 offender pleads guilty and agrees with the prosecutor's  
11 recommendation that the offender be required to pay restitution to a  
12 victim, the court may order the defendant to pay an amount, fixed by  
13 the court, not to exceed double the amount of the defendant's gain or  
14 victim's loss from the filing of the vehicle report of sale in which  
15 the designated buyer had no knowledge of the vehicle transfer or the  
16 fraudulent filing of the report of sale. Such an amount may be used  
17 to provide restitution to the victim at the order of the court. It is  
18 the duty of the prosecuting attorney to investigate the alternative  
19 of restitution, and to recommend it to the court, when the  
20 prosecuting attorney believes that restitution is appropriate and  
21 feasible. If the court orders restitution, the court must make a  
22 finding as to the amount of the victim's loss due to the filing of  
23 the report of sale in which the designated buyer had no knowledge of  
24 the vehicle transfer or the fraudulent filing of the report of sale,  
25 and if the record does not contain sufficient evidence to support  
26 such finding, the court may conduct a hearing upon the issue. For  
27 purposes of this section, "loss" refers to the amount of money or the  
28 value of property or services lost.

29 (11) Restitution may be ordered if a person is convicted of or  
30 pleads guilty to a criminal offense in which there has been a special  
31 allegation that the person committed the offense to cause an economic  
32 disruption. The amount of restitution ordered under this subsection  
33 may not exceed triple the amount of the offender's gain or the  
34 victim's loss from the commission of the crime.

35 NEW SECTION. Sec. 4. This act may be known and cited as the  
36 preventing economic disruption act.

37 NEW SECTION. Sec. 5. If any provision of this act or its  
38 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

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