

RCW 7.40.230 Injunctions—Fraud in obtaining telecommunications service. (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.110, 9.26A.115, or 9.26A.090, the prosecuting attorney, a telecommunications company, or any person harmed by an alleged violation of RCW 9.26A.110, 9.26A.115, or 9.26A.090 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 RCW 9.26A.110, 9.26A.115, or 9.26A.090.

(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.110, 9.26A.115, 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.110, 9.26A.115, 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.110, 9.26A.115, 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.110, 9.26A.115, 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 the 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.110 or 9.26A.115, 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.110 or 9.26A.115.

(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.110 or 9.26A.115 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. [2003 c 53 § 5; 1990 c 11 § 4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.