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SENATE BILL 6514

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State of Washington 57th Legislature

2002 Regular Session

By Senators Swecker, Oke, T. Sheldon, Hochstatter and Stevens

Read first time 01/18/2002. Referred to Committee on Judiciary.

1 AN ACT Relating to civil forfeitures of property; amending RCW  
2 69.50.505 and 9A.83.030; reenacting and amending RCW 69.50.520; and  
3 creating new sections.

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

5 NEW SECTION. **Sec. 1.** The legislature finds the current practice  
6 of asset forfeiture to be unjust and, therefore, find it necessary to  
7 reform existing property forfeiture laws. Justice requires that the  
8 most important duty of government is the preservation of all of the  
9 rights of all of its citizens. Washingtonians have had their property  
10 taken from them in civil forfeiture actions without the benefit of fair  
11 procedures designed to protect their rights. No person should have  
12 property civilly forfeited unless that person has been found guilty of  
13 a crime related to the property, and then only if the value of the  
14 property taken is substantially proportionate to the seriousness of the  
15 offense.

16 NEW SECTION. **Sec. 2.** This act may be known and cited as the  
17 innocent property owners protection act.

1       **Sec. 3.** RCW 69.50.505 and 2001 c 168 s 1 are each amended to read  
2 as follows:

3       (a) No judgment of forfeiture of property in a civil forfeiture  
4 proceeding under this section by the state or any of its political  
5 subdivisions shall be allowed or entered until and unless the owner of  
6 the property is convicted of a criminal violation of this chapter or an  
7 equivalent crime in another jurisdiction and the state demonstrates by  
8 clear and convincing evidence that the property was instrumental in  
9 committing or facilitating the crime or the property is proceeds of  
10 that crime. The value of the property forfeited under the provisions  
11 of this subsection shall be substantially proportional to the specific  
12 conduct for which the owner of the property has been convicted.

13       (b) In a civil forfeiture proceeding, if a financial institution  
14 claiming an interest in the property demonstrates that it holds an  
15 interest, its interest shall not be subject to forfeiture. In a civil  
16 forfeiture proceeding, if a person claiming an interest in the  
17 property, other than a financial institution or a defendant who has  
18 been charged with or convicted of a crime involving that property,  
19 demonstrates that the person has an interest in the property, that  
20 person's interest shall not be subject to forfeiture unless:

21       (1) The forfeiting agency proves by clear and convincing evidence  
22 that the person took the property or the interest with the intent to  
23 defeat the forfeiture; or

24       (2) A conviction under subsection (a) of this section is later  
25 obtained against the person.

26       (c) Notwithstanding the provisions of subsection (a) of this  
27 section, and subject to subsection (p) of this section, if, following  
28 notice as required in this section, no person claims an interest in the  
29 seized property or if the property is contraband, a judgment of  
30 forfeiture may be allowed and entered without a criminal conviction as  
31 provided in subsection (i) of this section.

32       (d) Nothing in this section may be construed to affect the  
33 temporary seizure of property for evidentiary, forfeiture, or  
34 protective purposes, or to alter the power of the governor to remit  
35 finances or forfeitures under Article III, section 11 of the Washington  
36 state Constitution.

37       (e) The following are subject to seizure and forfeiture ((and no  
38 property right exists in them)) in accordance with subsections (a)  
39 through (d) of this section:

1 (1) All controlled substances which have been manufactured,  
2 distributed, dispensed, acquired, or possessed in violation of this  
3 chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as  
4 defined in RCW 64.44.010, used or intended to be used in the  
5 manufacture of controlled substances;

6 (2) All raw materials, products, and equipment of any kind which  
7 are used, or intended for use, in manufacturing, compounding,  
8 processing, delivering, importing, or exporting any controlled  
9 substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

10 (3) All property which is used, or intended for use, as a container  
11 for property described in ((paragraphs)) (1) or (2) of this subsection;

12 (4) All conveyances, including aircraft, vehicles, or vessels,  
13 which are used, or intended for use, in any manner to facilitate the  
14 sale, delivery, or receipt of property described in ((paragraphs)) (1)  
15 or (2) of this subsection, except that((+)

16 (i) ~~No conveyance used by any person as a common carrier in the~~  
17 ~~transaction of business as a common carrier is subject to forfeiture~~  
18 ~~under this section unless it appears that the owner or other person in~~  
19 ~~charge of the conveyance is a consenting party or privy to a violation~~  
20 ~~of this chapter or chapter 69.41 or 69.52 RCW;~~

21 (ii) ~~No conveyance is subject to forfeiture under this section by~~  
22 ~~reason of any act or omission established by the owner thereof to have~~  
23 ~~been committed or omitted without the owner's knowledge or consent;~~

24 (iii)) no conveyance is subject to forfeiture under this section  
25 if used in the receipt of only an amount of marijuana for which  
26 possession constitutes a misdemeanor under RCW 69.50.401(e);

27 ((iv) ~~A forfeiture of a conveyance encumbered by a bona fide~~  
28 ~~security interest is subject to the interest of the secured party if~~  
29 ~~the secured party neither had knowledge of nor consented to the act or~~  
30 ~~omission; and~~

31 (v) ~~When the owner of a conveyance has been arrested under this~~  
32 ~~chapter or chapter 69.41 or 69.52 RCW the conveyance in which the~~  
33 ~~person is arrested may not be subject to forfeiture unless it is seized~~  
34 ~~or process is issued for its seizure within ten days of the owner's~~  
35 ~~arrest;))~~

36 (5) All books, records, and research products and materials,  
37 including formulas, microfilm, tapes, and data which are used, or  
38 intended for use, in violation of this chapter or chapter 69.41 or  
39 69.52 RCW;

1 (6) All drug paraphernalia;

2 (7) All moneys, negotiable instruments, securities, or other  
3 tangible or intangible property of value furnished or intended to be  
4 furnished by any person in exchange for a controlled substance in  
5 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible  
6 or intangible personal property, proceeds, or assets acquired in whole  
7 or in part with proceeds traceable to an exchange or series of  
8 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,  
9 and all moneys, negotiable instruments, and securities used or intended  
10 to be used to facilitate any violation of this chapter or chapter 69.41  
11 or 69.52 RCW(~~(. — A forfeiture of money, negotiable instruments,~~  
12 ~~securities, or other tangible or intangible property encumbered by a~~  
13 ~~bona fide security interest is subject to the interest of the secured~~  
14 ~~party if, at the time the security interest was created, the secured~~  
15 ~~party neither had knowledge of nor consented to the act or omission.~~  
16 ~~No personal property may be forfeited under this paragraph, to the~~  
17 ~~extent of the interest of an owner, by reason of any act or omission~~  
18 ~~which that owner establishes was committed or omitted without the~~  
19 ~~owner's knowledge or consent)) when a substantial nexus exists between  
20 the crime for which the owner was convicted and the money, negotiable  
21 instruments, and securities; and~~

22 (8) All real property, including any right, title, and interest in  
23 the whole of any lot or tract of land, and any appurtenances or  
24 improvements which are being used with the knowledge of the owner for  
25 the manufacturing, compounding, processing, delivery, importing, or  
26 exporting of any controlled substance, or which have been acquired in  
27 whole or in part with proceeds traceable to an exchange or series of  
28 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,  
29 if such activity is not less than a class C felony and a substantial  
30 nexus exists between the commercial production or sale of the  
31 controlled substance and the real property. However:

32 (i) (~~No property may be forfeited pursuant to this subsection, to~~  
33 ~~the extent of the interest of an owner, by reason of any act or~~  
34 ~~omission committed or omitted without the owner's knowledge or consent;~~

35 (ii)) The bona fide gift of a controlled substance, legend drug,  
36 or imitation controlled substance shall not result in the forfeiture of  
37 real property;

38 ((~~iii~~)) (ii) The possession of marijuana shall not result in the  
39 forfeiture of real property unless the marijuana is possessed for

1 commercial purposes, the amount possessed is five or more plants or one  
2 pound or more of marijuana, and a substantial nexus exists between the  
3 possession of marijuana and the real property. In such a case, the  
4 intent of the offender shall be determined by the preponderance of the  
5 evidence, including the offender's prior criminal history, the amount  
6 of marijuana possessed by the offender, the sophistication of the  
7 activity or equipment used by the offender, and other evidence which  
8 demonstrates the offender's intent to engage in commercial activity;  
9 and

10 ~~((iv))~~ (iii) The unlawful sale of marijuana or a legend drug  
11 shall not result in the forfeiture of real property unless the sale was  
12 forty grams or more in the case of marijuana or one hundred dollars or  
13 more in the case of a legend drug, and a substantial nexus exists  
14 between the unlawful sale and the real property(~~and~~

15 ~~(v) A forfeiture of real property encumbered by a bona fide~~  
16 ~~security interest is subject to the interest of the secured party if~~  
17 ~~the secured party, at the time the security interest was created,~~  
18 ~~neither had knowledge of nor consented to the act or omission)).~~

19 ~~((b))~~ (f) Real or personal property subject to forfeiture under  
20 this chapter may be seized by any board inspector or law enforcement  
21 officer of this state upon process issued by any superior court having  
22 jurisdiction over the property. Seizure of real property shall include  
23 the filing of a lis pendens by the seizing agency. Real property  
24 seized under this section shall not be transferred or otherwise  
25 conveyed ~~((until ninety days after seizure or))~~ until a judgment of  
26 forfeiture is entered(~~(, whichever is later: PROVIDED, That))~~.  
27 However, real property seized under this section may be transferred or  
28 conveyed to any person or entity who acquires title by foreclosure or  
29 deed in lieu of foreclosure of a security interest.

30 (g) Seizure of personal property without process may be made if:

31 (1) The seizure is incident to an arrest or a search under a search  
32 warrant or an inspection under an administrative inspection warrant;

33 (2) The property subject to seizure has been the subject of a prior  
34 judgment in favor of the state in a criminal injunction or forfeiture  
35 proceeding based upon this chapter; or

36 (3) A board inspector or law enforcement officer has probable cause  
37 to believe that the property is directly or indirectly dangerous to  
38 health or safety(~~or~~

1       ~~(4) The board inspector or law enforcement officer has probable~~  
2 ~~cause to believe that the property was used or is intended to be used~~  
3 ~~in violation of this chapter)).~~

4       ~~((e))~~ (h)(1) In the event of seizure pursuant to subsection  
5 ~~((b))~~ (f) or (g) of this section, proceedings for forfeiture shall be  
6 deemed commenced by the seizure. The law enforcement agency under  
7 whose authority the seizure was made shall cause notice to be served  
8 within ~~((fifteen))~~ ten days following the seizure on the owner of the  
9 property seized and the person in charge thereof and any person having  
10 any known right or interest therein, including any community property  
11 interest, of the seizure and intended forfeiture of the seized  
12 property. The notice must include a statement that the owner of the  
13 property or any person having any known right or interest in the  
14 property may request, in writing, that the seizing agency appear in a  
15 hearing before a court of competent jurisdiction to show that probable  
16 cause exists to seize the property. Service of notice of seizure of  
17 real property shall be made according to the rules of civil procedure.  
18 However, the state may not obtain a ~~((default))~~ judgment with respect  
19 to real property against a party ~~((who is served by substituted service~~  
20 ~~absent an affidavit stating that a good faith effort has been made to~~  
21 ~~ascertain if the defaulted party is incarcerated within the state, and~~  
22 ~~that there is no present basis to believe that the party is~~  
23 ~~incarcerated within the state))~~ unless the party is served personally.  
24 Notice of seizure in the case of property subject to a security  
25 interest that has been perfected by filing a financing statement in  
26 accordance with chapter 62A.9A RCW, or a certificate of title, shall be  
27 made by service upon the secured party or the secured party's assignee  
28 at the address shown on the financing statement or the certificate of  
29 title. The notice of seizure in ~~((other))~~ cases involving only  
30 personal property may be served by any method authorized by law or  
31 court rule including but not limited to service by certified mail with  
32 return receipt requested. Service by mail shall be deemed complete upon  
33 mailing within the ~~((fifteen))~~ ten-day period following the seizure.

34       ~~((d))~~ (2) Within twenty days of receiving notice of the seizure  
35 of personal property, the owner of the property or any person having  
36 any known right or interest in the property may serve upon the seizing  
37 agency a written request for a hearing before a court of competent  
38 jurisdiction to determine that probable cause exists for the seizure  
39 and detention of property pending the outcome of the forfeiture

1 proceedings. Within seventy-two hours of receiving the written request  
2 for a hearing, the seizing agency shall cause a hearing to be held  
3 before a court of competent jurisdiction. The seizing agency must show  
4 cause why the property was lawfully seized and should be held pending  
5 forfeiture proceedings. If the court finds probable cause did not  
6 exist for seizure, the property shall be immediately returned to the  
7 owner of the property or person having an interest in the property,  
8 unless the seizing agency demonstrates that the property should be held  
9 for evidentiary purposes in a pending criminal proceeding. If property  
10 is held under this subsection for evidentiary purposes, the property  
11 not forfeited shall be returned to the owner or person having an  
12 interest in the property upon adjudication of the criminal proceedings.

13 (i) If no person notifies the seizing law enforcement agency in  
14 writing of the person's claim of ownership or right to possession of  
15 items specified in subsection ~~((a))~~ (e)(4), ~~((a))~~(7), or ~~((a))~~(8)  
16 of this section within forty-five days of the seizure in the case of  
17 personal property and ninety days in the case of real property, the  
18 item seized shall be deemed forfeited. The community property interest  
19 in real property of a person whose spouse committed a violation giving  
20 rise to seizure of the real property may not be forfeited if the person  
21 ~~((did))~~ is not ((participate in the violation)) also convicted.

22 ~~((e))~~ (j)(1) If any person notifies the seizing law enforcement  
23 agency in writing of the person's claim of ownership or right to  
24 possession of items specified in subsection ~~((a))~~ (e)(2), ~~((a))~~(3),  
25 ~~((a))~~(4), ~~((a))~~(5), ~~((a))~~(6), ~~((a))~~(7), or ~~((a))~~(8) of this  
26 section within forty-five days of the seizure in the case of personal  
27 property and ninety days in the case of real property, the person or  
28 persons shall be afforded a reasonable opportunity to be heard as to  
29 the claim or right. The hearing shall be before ~~((the chief law~~  
30 ~~enforcement officer of the seizing agency or the chief law enforcement~~  
31 ~~officer's designee, except where the seizing agency is a state agency~~  
32 ~~as defined in RCW 34.12.020(4), the hearing shall be before the chief~~  
33 ~~law enforcement officer of the seizing agency or))~~ an administrative  
34 law judge appointed under chapter 34.12 RCW, except that any person  
35 asserting a claim or right may remove the matter to a court of  
36 competent jurisdiction. Removal of any matter involving personal  
37 property may only be accomplished according to the rules of civil  
38 procedure. The person seeking removal of the matter must serve process  
39 against the state, county, political subdivision, or municipality that

1 operates the seizing agency, and any other party of interest, in  
2 accordance with RCW 4.28.080 or 4.92.020, within forty-five days after  
3 the person seeking removal has notified the seizing law enforcement  
4 agency of the person's claim of ownership or right to possession. The  
5 court to which the matter is to be removed shall be the district court  
6 when the aggregate value of personal property is within the  
7 jurisdictional limit set forth in RCW 3.66.020. ~~((A hearing before the  
8 seizing agency and any appeal therefrom shall be under Title 34 RCW.))~~  
9 The hearing provided under this subsection is in addition to the  
10 probable cause hearing authorized under subsection (h) of this section.  
11 Any filing fee required for removal of any matter to a court of  
12 competent jurisdiction shall be waived.

13 (2) In all cases, the burden of proof is upon the law enforcement  
14 agency to establish, by ~~((a preponderance of the))~~ clear and convincing  
15 evidence, that the property is subject to forfeiture.

16 The seizing law enforcement agency shall promptly return the  
17 article or articles to the claimant upon a determination by the  
18 administrative law judge or court that the claimant is the present  
19 lawful owner or is lawfully entitled to possession thereof of items  
20 specified in subsection ~~((a))~~ (e)(2), ~~((a))~~ (3), ~~((a))~~ (4),  
21 ~~((a))~~ (5), ~~((a))~~ (6), ~~((a))~~ (7), or ~~((a))~~ (8) of this section.

22 ~~((f))~~ (k) In any proceeding to forfeit property under this title,  
23 where the claimant substantially prevails, the claimant is entitled to  
24 reasonable attorneys' fees reasonably incurred by the claimant. In  
25 addition, in a court hearing between two or more claimants to the  
26 article or articles involved, the prevailing party is entitled to a  
27 judgment for costs and reasonable attorneys' fees.

28 ~~((g))~~ (l) All seized property must be stored in a commercially  
29 reasonable manner until it is forfeited or returned to the claimant.  
30 For any property that is returned to the claimant, the claimant is  
31 entitled to damages, costs, and reasonable attorneys' fees for any loss  
32 or damage incurred during seizure or storage.

33 (m) When property is forfeited under this chapter the board or  
34 seizing law enforcement agency ~~((may))~~ shall:

35 (1) ~~((Retain it for official use or upon application by any law~~  
36 ~~enforcement agency of this state release such property to such agency~~  
37 ~~for the exclusive use of enforcing the provisions of this chapter;~~

38 ~~(2))~~ Sell that which is not required to be destroyed by law and  
39 which is not harmful to the public;



1       ~~((3) Request the appropriate sheriff or director of public safety~~  
2 ~~to take custody of the property and remove it for disposition in~~  
3 ~~accordance with law; or~~

4       ~~(4) Forward it to the drug enforcement administration for~~  
5 ~~disposition.~~

6       ~~(h)(1) When property is forfeited, the seizing agency shall)) (2)~~  
7 Keep a record indicating the identity of the prior owner, if known, a  
8 description of the property, the disposition of the property, the value  
9 of the property at the time of seizure, and the amount of proceeds  
10 realized from disposition of the property((-

11 ~~(2) Each seizing agency shall))i~~

12       (3) Retain records of forfeited property for at least seven  
13 years((-

14 ~~(3) Each seizing agency shall))i~~

15       (4) File a report including a copy of the records of forfeited  
16 property with the state treasurer each calendar quarter. ((+4)) The  
17 quarterly report need not include a record of forfeited property that  
18 is still being held for use as evidence during the investigation or  
19 prosecution of a case or during the appeal from a conviction((-

20 ~~(i))i~~

21       (5) Destroy any property that is harmful to the public, required to  
22 be destroyed by law, or otherwise not appropriate for sale to the  
23 public.

24       The provisions of this subsection requiring the seizing agency to  
25 keep records and file quarterly reports apply to all forfeited property  
26 the seizing agency receives under federal seizure and forfeiture laws.  
27 The seizing agency must specify from which federal agencies it receives  
28 funds. Seizing agencies that receive forfeited property under the  
29 federal seizure and forfeiture laws are required to use such forfeited  
30 property and proceeds pursuant to federal restrictions, and the  
31 reporting requirement does not require the seizing agency to remit  
32 federal funds to the state.

33       (n)(1)(i) By January 31st of each year, each seizing agency shall  
34 remit to the state treasurer an amount equal to ten percent of the net  
35 proceeds of any property forfeited during the preceding calendar year.  
36 Money remitted shall be deposited in the violence reduction and drug  
37 enforcement account under RCW 69.50.520.

38       (ii) By January 31st of the year, each seizing agency shall remit  
39 to the state treasurer an amount equal to ninety percent of the net

1 proceeds of any property forfeited during the preceding calendar year.  
2 One-half of the money remitted shall be deposited in the permanent  
3 common school fund and the remaining one-half shall be allocated to  
4 public drug treatment programs as provided by law.

5 (2) The net proceeds of forfeited property is the value of the  
6 forfeitable interest in the property after deducting: (i) The cost of  
7 satisfying any bona fide security interest to which the property is  
8 subject at the time of seizure; and in the case of sold property, after  
9 deducting the cost of sale, including reasonable fees or commissions  
10 paid to independent selling agents, and the cost of any valid  
11 landlord's claim for damages under subsection ((+o+)) (r) of this  
12 section; (ii) any foreclosed liens, security interest, and contracts in  
13 the order of their priority; and (iii) actual and reasonable expenses  
14 related to the costs of the forfeiture proceeding, including attorneys'  
15 fees, storage, maintenance, management, and disposition of the property  
16 incurred in connection with the sale of any forfeited property in an  
17 amount not to exceed twenty-five percent of the total proceeds in any  
18 single forfeiture.

19 (3) The value of sold forfeited property is the sale price. ~~((The~~  
20 ~~value of retained forfeited property is the fair market value of the~~  
21 ~~property at the time of seizure, determined when possible by reference~~  
22 ~~to an applicable commonly used index, such as the index used by the~~  
23 ~~department of licensing for valuation of motor vehicles. A seizing~~  
24 ~~agency may use, but need not use, an independent qualified appraiser to~~  
25 ~~determine the value of retained property. If an appraiser is used, the~~  
26 ~~value of the property appraised is net of the cost of the appraisal.))~~  
27 The value of destroyed ~~((property and retained firearms or))~~ illegal  
28 property is zero.

29 ~~((+j+)) (o) Forfeited property and net proceeds ((not required to~~  
30 ~~be paid to the state treasurer shall be retained by the seizing law~~  
31 ~~enforcement agency exclusively for the expansion and improvement of~~  
32 ~~controlled substances related law enforcement activity. Money retained~~  
33 ~~under this section may not be used to supplant preexisting funding~~  
34 ~~sources)), including shared property or proceeds obtained from the  
35 federal government, shall be disposed of or distributed according to  
36 the following:~~

37 (1) Any sale of forfeited property shall be conducted in a  
38 commercially reasonable manner. Property or proceeds forfeited under

1 this section shall be distributed or applied as required by subsection  
2 (n) of this section.

3 (2) The state of Washington or any of its political subdivisions  
4 shall take all necessary steps to obtain shared property or proceeds  
5 from the United States department of justice resulting from a  
6 forfeiture. Any property or proceeds received from the United States  
7 department of justice by the state of Washington or any of its  
8 political subdivisions shall be applied as provided in (1) of this  
9 subsection.

10 (3) Neither the state of Washington, its political subdivisions,  
11 nor any forfeiting agency shall transfer forfeiture proceedings to the  
12 federal government unless a state court has affirmatively found that:

13 (i) The activity giving rise to the forfeiture is interstate in  
14 nature and sufficiently complex to justify the transfer; or

15 (ii) The seized property may only be forfeited under federal law.

16 ~~((k))~~ (p) Controlled substances listed in Schedule I, II, III,  
17 IV, and V that are possessed, transferred, sold, or offered for sale in  
18 violation of this chapter are contraband and shall be seized and  
19 summarily forfeited to the state. Controlled substances listed in  
20 Schedule I, II, III, IV, and V, which are seized or come into the  
21 possession of the board, the owners of which are unknown, are  
22 contraband and shall be summarily forfeited to the board.

23 ~~((l))~~ Species of plants from which controlled substances in  
24 Schedules I and II may be derived which have been planted or cultivated  
25 in violation of this chapter, or of which the owners or cultivators are  
26 unknown, or which are wild growths, may be seized and summarily  
27 forfeited to the board.

28 ~~(m)~~ The failure, upon demand by a board inspector or law  
29 enforcement officer, of the person in occupancy or in control of land  
30 or premises upon which the species of plants are growing or being  
31 stored to produce an appropriate registration or proof that he is the  
32 holder thereof constitutes authority for the seizure and forfeiture of  
33 the plants.

34 ~~(n))~~ (q) Upon the entry of an order of forfeiture of real  
35 property, the court shall forward a copy of the order to the assessor  
36 of the county in which the property is located. Orders for the  
37 forfeiture of real property shall be entered by the superior court,  
38 subject to court rules. Such an order shall be filed by the seizing

1 agency in the county auditor's records in the county in which the real  
2 property is located.

3 ~~((+o))~~ (r) A landlord may assert a claim against proceeds from the  
4 sale of assets ~~((seized and forfeited))~~ under subsection ~~((+g)(2+))~~ (o)  
5 of this section, only if:

6 (1) A law enforcement officer, while acting in his or her official  
7 capacity, directly caused damage to the complaining landlord's property  
8 while executing a search of a tenant's residence; and

9 (2) The landlord has applied any funds remaining in the tenant's  
10 deposit, to which the landlord has a right under chapter 59.18 RCW, to  
11 cover the damage directly caused by a law enforcement officer prior to  
12 asserting a claim under the provisions of this section;

13 (i) Only if the funds applied under (2) of this subsection are  
14 insufficient to satisfy the damage directly caused by a law enforcement  
15 officer, may the landlord seek compensation for the damage by filing a  
16 claim against the governmental entity under whose authority the law  
17 enforcement agency operates within thirty days after the search;

18 (ii) Only if the governmental entity denies or fails to respond to  
19 the landlord's claim within sixty days of the date of filing, may the  
20 landlord collect damages under this subsection by filing within thirty  
21 days of denial or the expiration of the sixty-day period, whichever  
22 occurs first, a claim with the seizing law enforcement agency. The  
23 seizing law enforcement agency must notify the landlord of the status  
24 of the claim by the end of the thirty-day period. Nothing in this  
25 section requires the claim to be paid by the end of the sixty-day or  
26 thirty-day period.

27 (3) For any claim filed under (2) of this subsection, the law  
28 enforcement agency shall pay the claim unless the agency provides  
29 ~~((substantial))~~ proof by a preponderance of the evidence that the  
30 landlord either:

31 (i) Knew or consented to actions of the tenant in violation of this  
32 chapter or chapter 69.41 or 69.52 RCW; or

33 (ii) Failed to respond to a notification of the illegal activity,  
34 provided by a law enforcement agency under RCW 59.18.075, within seven  
35 days of receipt of notification of the illegal activity.

36 ~~((+p+))~~ (s) The landlord's claim for damages under subsection  
37 ~~((+o+))~~ (r) of this section may not include a claim for loss of  
38 business and is limited to:

39 (1) Damage to tangible property and clean-up costs;

1 (2) The lesser of the cost of repair or fair market value of the  
2 damage directly caused by a law enforcement officer;

3 (3) The proceeds from the sale of the specific tenant's property  
4 (~~seized and forfeited~~) under subsection (~~(g)(2)~~) (o) of this  
5 section; and

6 (4) The proceeds available after the seizing law enforcement agency  
7 satisfies any bona fide security interest in the tenant's property and  
8 costs related to sale of the tenant's property as provided by  
9 subsection (~~(i)(2)~~) (o) of this section.

10 (~~(q)~~) (t) Subsections (~~(o)~~) (r) and (~~(p)~~) (s) of this section  
11 do not limit any other rights a landlord may have against a tenant to  
12 collect for damages. However, if a law enforcement agency satisfies a  
13 landlord's claim under subsection (~~(o)~~) (r) of this section, the  
14 rights the landlord has against the tenant for damages directly caused  
15 by a law enforcement officer under the terms of the landlord and  
16 tenant's contract are subrogated to the law enforcement agency.

17 (u) For the purposes of this section:

18 (1) "Contraband" means personal property, articles, or things,  
19 including but not limited to controlled substances or drug  
20 paraphernalia and illegal firearms, that a person is prohibited by  
21 Washington statute or local ordinance from producing, obtaining, or  
22 possessing; and

23 (2) "Property" means any interest in anything of value, including  
24 the whole of any lot or tract of land and tangible and intangible  
25 personal property, including currency, instruments, or securities, or  
26 any other kind of privilege, interest, claim, or right whether due or  
27 to become due.

28 **Sec. 4.** RCW 9A.83.030 and 2001 c 168 s 2 are each amended to read  
29 as follows:

30 (1) Proceeds traceable to or derived from specified unlawful  
31 activity or a violation of RCW 9A.83.020 are subject to seizure and  
32 forfeiture. The attorney general or county prosecuting attorney may  
33 file a civil action for the forfeiture of proceeds. Unless otherwise  
34 provided for under this section, no property rights exist in these  
35 proceeds. All right, title, and interest in the proceeds shall vest in  
36 the governmental entity of which the seizing law enforcement agency is  
37 a part upon commission of the act or omission giving rise to forfeiture  
38 under this section.

1 (2) Real or personal property subject to forfeiture under this  
2 chapter may be seized by any law enforcement officer of this state upon  
3 process issued by a superior court that has jurisdiction over the  
4 property. Any agency seizing real property shall file a lis pendens  
5 concerning the property. Real property seized under this section shall  
6 not be transferred or otherwise conveyed until ninety days after  
7 seizure or until a judgment of forfeiture is entered, whichever is  
8 later. Real property seized under this section may be transferred or  
9 conveyed to any person or entity who acquires title by foreclosure or  
10 deed in lieu of foreclosure of a security interest. Seizure of  
11 personal property without process may be made if:

12 (a) The seizure is incident to an arrest or a search under a search  
13 warrant or an inspection under an administrative inspection warrant  
14 issued pursuant to RCW 69.50.502; or

15 (b) The property subject to seizure has been the subject of a prior  
16 judgment in favor of the state in a criminal injunction or forfeiture  
17 proceeding based upon this chapter.

18 (3) A seizure under subsection (2) of this section commences  
19 proceedings for forfeiture. The law enforcement agency under whose  
20 authority the seizure was made shall cause notice of the seizure and  
21 intended forfeiture of the seized proceeds to be served within fifteen  
22 days after the seizure on the owner of the property seized and the  
23 person in charge thereof and any person who has a known right or  
24 interest therein, including a community property interest. Service of  
25 notice of seizure of real property shall be made according to the rules  
26 of civil procedure. However, the state may not obtain a default  
27 judgment with respect to real property against a party who is served by  
28 substituted service absent an affidavit stating that a good faith  
29 effort has been made to ascertain if the defaulted party is  
30 incarcerated within the state, and that there is no present basis to  
31 believe that the party is incarcerated within the state. The notice of  
32 seizure in other cases may be served by any method authorized by law or  
33 court rule including but not limited to service by certified mail with  
34 return receipt requested. Service by mail is complete upon mailing  
35 within the fifteen-day period after the seizure.

36 (4) If no person notifies the seizing law enforcement agency in  
37 writing of the person's claim of ownership or right to possession of  
38 the property within forty-five days of the seizure in the case of  
39 personal property and ninety days in the case of real property, the

1 property seized shall be deemed forfeited. The community property  
2 interest in real property of a person whose spouse committed a  
3 violation giving rise to seizure of the real property may not be  
4 forfeited if the person did not participate in the violation.

5 (5) If a person notifies the seizing law enforcement agency in  
6 writing of the person's claim of ownership or right to possession of  
7 property within forty-five days of the seizure in the case of personal  
8 property and ninety days in the case of real property, the person or  
9 persons shall be afforded a reasonable opportunity to be heard as to  
10 the claim or right. The provisions of RCW 69.50.505(~~(e)~~) (j) shall  
11 apply to any such hearing. The seizing law enforcement agency shall  
12 promptly return property to the claimant upon the direction of the  
13 administrative law judge or court.

14 (6) Disposition of forfeited property shall be made in the manner  
15 provided for in RCW 69.50.505 (~~(h)~~) (m) through (~~(j)~~) (o) and  
16 (~~(n)~~) (q).

17 **Sec. 5.** RCW 69.50.520 and 2001 2nd sp.s. c 7 s 920 and 2001 c 168  
18 s 3 are each reenacted and amended to read as follows:

19 The violence reduction and drug enforcement account is created in  
20 the state treasury. All designated receipts from RCW 9.41.110(8),  
21 66.24.210(4), 66.24.290(2), 69.50.505(~~(i)~~) (n)(1), 82.08.150(5),  
22 82.24.020(2), 82.64.020, and section 420, chapter 271, Laws of 1989  
23 shall be deposited into the account. Expenditures from the account may  
24 be used only for funding services and programs under chapter 271, Laws  
25 of 1989 and chapter 7, Laws of 1994 sp. sess., including state  
26 incarceration costs. Funds from the account may also be appropriated  
27 to reimburse local governments for costs associated with implementing  
28 criminal justice legislation including chapter 338, Laws of 1997.  
29 During the 2001-2003 biennium, funds from the account may also be used  
30 for costs associated with providing grants to local governments in  
31 accordance with chapter 338, Laws of 1997, the replacement of the  
32 department of corrections' offender-based tracking system, maintenance  
33 and operating costs of the Washington association of sheriffs and  
34 police chiefs jail reporting system, and for multijurisdictional  
35 narcotics task forces. After July 1, 2003, at least seven and one-half  
36 percent of expenditures from the account shall be used for providing  
37 grants to community networks under chapter 70.190 RCW by the family  
38 policy council.

1        NEW SECTION.    **Sec. 6.**    Within four years of the effective date of  
2 this act, and every four years thereafter, the state auditor shall  
3 conduct an audit of each seizing agency filing quarterly reports with  
4 the state treasurer pursuant to RCW 69.50.505 to monitor the agency's  
5 compliance with RCW 69.50.505 (m), (n), and (o). The state auditor  
6 shall produce written findings regarding compliance and submit a report  
7 to the legislature within a reasonable time after each audit period.

8        NEW SECTION.    **Sec. 7.**    If any provision of this act or its  
9 application to any person or circumstance is held invalid, the  
10 remainder of the act or the application of the provision to other  
11 persons or circumstances is not affected.

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