
HOUSE BILL 1520

State of Washington

64th Legislature

2015 Regular Session

By Representatives Taylor, Scott, Griffey, Shea, G. Hunt, Young, and Magendanz

Read first time 01/22/15. Referred to Committee on Judiciary.

1 AN ACT Relating to requiring a finding of guilt prior to the
2 forfeiture of private property; and amending RCW 9.46.231, 9.68A.120,
3 9A.88.150, 10.105.010, 9A.83.030, 19.290.230, 46.61.5058, 69.50.505,
4 70.74.400, 82.24.130, 82.26.230, 82.26.240, 82.32.670, and 82.38.360.

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

6 **Sec. 1.** RCW 9.46.231 and 2008 c 6 s 629 are each amended to read
7 as follows:

8 (1) The following are subject to seizure and forfeiture and no
9 property right exists in them:

10 (a) All gambling devices as defined in this chapter;

11 (b) All furnishings, fixtures, equipment, and stock, including
12 without limitation furnishings and fixtures adaptable to nongambling
13 uses and equipment and stock for printing, recording, computing,
14 transporting, or safekeeping, used in connection with professional
15 gambling or maintaining a gambling premises;

16 (c) All conveyances, including aircraft, vehicles, or vessels,
17 that are used, or intended for use, in any manner to facilitate the
18 sale, delivery, receipt, or operation of any gambling device, or the
19 promotion or operation of a professional gambling activity, except
20 that:

1 (i) A conveyance used by any person as a common carrier in the
2 transaction of business as a common carrier is not subject to
3 forfeiture under this section unless it appears that the owner or
4 other person in charge of the conveyance is a consenting party or
5 privy to a violation of this chapter;

6 (ii) A conveyance is not subject to forfeiture under this section
7 by reason of any act or omission established by the owner thereof to
8 have been committed or omitted without the owner's knowledge or
9 consent;

10 (iii) A forfeiture of a conveyance encumbered by a bona fide
11 security interest is subject to the interest of the secured party if
12 the secured party neither had knowledge of nor consented to the act
13 or omission; and

14 (iv) If the owner of a conveyance has been arrested under this
15 chapter the conveyance in which the person is arrested may not be
16 subject to forfeiture unless it is seized or process is issued for
17 its seizure within ten days of the owner's arrest;

18 (d) All books, records, and research products and materials,
19 including formulas, microfilm, tapes, and electronic data that are
20 used, or intended for use, in violation of this chapter;

21 (e) All moneys, negotiable instruments, securities, or other
22 tangible or intangible property of value at stake or displayed in or
23 in connection with professional gambling activity or furnished or
24 intended to be furnished by any person to facilitate the promotion or
25 operation of a professional gambling activity;

26 (f) All tangible or intangible personal property, proceeds, or
27 assets acquired in whole or in part with proceeds directly traceable
28 to professional gambling activity and all moneys, negotiable
29 instruments, and securities used or intended to be used to facilitate
30 any violation of this chapter. A forfeiture of money, negotiable
31 instruments, securities, or other tangible or intangible property
32 encumbered by a bona fide security interest is subject to the
33 interest of the secured party if, at the time the security interest
34 was created, the secured party neither had knowledge of nor consented
35 to the act or omission. Personal property may not be forfeited under
36 this subsection (1)(f), to the extent of the interest of an owner, by
37 reason of any act or omission that that owner establishes was
38 committed or omitted without the owner's knowledge or consent; and

1 (g) All real property, including any right, title, and interest
2 in the whole of any lot or tract of land, and any appurtenances or
3 improvements that:

4 (i) Have been used with the knowledge of the owner for the
5 manufacturing, processing, delivery, importing, or exporting of any
6 illegal gambling equipment, or operation of a professional gambling
7 activity that would constitute a felony violation of this chapter; or

8 (ii) Have been acquired in whole or in part with proceeds
9 directly traceable to a professional gambling activity, if the
10 activity is not less than a class C felony.

11 Real property forfeited under this chapter that is encumbered by
12 a bona fide security interest remains subject to the interest of the
13 secured party if the secured party, at the time the security interest
14 was created, neither had knowledge of nor consented to the act or
15 omission. Property may not be forfeited under this subsection, to the
16 extent of the interest of an owner, by reason of any act or omission
17 committed or omitted without the owner's knowledge or consent.

18 (2)(a) A law enforcement officer of this state may seize real or
19 personal property subject to forfeiture under this chapter upon
20 process issued by any superior court having jurisdiction over the
21 property. Seizure of real property includes the filing of a lis
22 pendens by the seizing agency. Real property seized under this
23 section may not be transferred or otherwise conveyed until ninety
24 days after seizure or until a judgment of forfeiture is entered,
25 whichever is later, but real property seized under this section may
26 be transferred or conveyed to any person or entity who acquires title
27 by foreclosure or deed in lieu of foreclosure of a bona fide security
28 interest.

29 (b) Seizure of personal property without process may be made if:

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

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

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

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

4 (3) In the event of seizure under subsection (2) of this section,
5 proceedings for forfeiture are deemed commenced by the seizure. No
6 court may enter a final order of forfeiture of personal or real
7 property until after the court has found the following: (a) The owner
8 of the personal or real property to be forfeited is guilty of
9 committing a felony offense, and (b) the personal or real property to
10 be forfeited was directly (i) involved in, (ii) connected with, (iii)
11 traceable to, or (iv) derived from the commission of the felony
12 offense for which the owner of the property was found guilty. The law
13 enforcement agency under whose authority the seizure was made shall
14 cause notice to be served within fifteen days following the seizure
15 on the owner of the property seized and the person in charge thereof
16 and any person having any known right or interest therein, including
17 any community property interest, of the seizure and intended
18 forfeiture of the seized property. Service of notice of seizure of
19 real property must be made according to the rules of civil procedure.
20 However, the state may not obtain a default judgment with respect to
21 real property against a party who is served by substituted service
22 absent an affidavit stating that a good faith effort has been made to
23 ascertain if the defaulted party is incarcerated within the state,
24 and that there is no present basis to believe that the party is
25 incarcerated within the state. Notice of seizure in the case of
26 property subject to a security interest that has been perfected by
27 filing a financing statement in accordance with chapter 62A.9A RCW,
28 or a certificate of title, must be made by service upon the secured
29 party or the secured party's assignee at the address shown on the
30 financing statement or the certificate of title. The notice of
31 seizure in other cases may be served by any method authorized by law
32 or court rule including but not limited to service by certified mail
33 with return receipt requested. Service by mail is deemed complete
34 upon mailing within the fifteen-day period following the seizure.

35 (4) If no person notifies the seizing law enforcement agency in
36 writing of the person's claim of ownership or right to possession of
37 items specified in subsection (1) of this section within forty-five
38 days of the seizure in the case of personal property and ninety days
39 in the case of real property, the item seized is deemed forfeited.
40 The community property interest in real property of a person whose

1 spouse or domestic partner committed a violation giving rise to
2 seizure of the real property may not be forfeited if the person did
3 not participate in the violation.

4 (5) If any person notifies the seizing law enforcement agency in
5 writing of the person's claim of ownership or right to possession of
6 items specified in subsection (1) of this section within forty-five
7 days of the seizure in the case of personal property and ninety days
8 in the case of real property, the person or persons must be afforded
9 a reasonable opportunity to be heard as to the claim or right. The
10 hearing must be before the chief law enforcement officer of the
11 seizing agency or the chief law enforcement officer's designee,
12 except if the seizing agency is a state agency as defined in RCW
13 34.12.020(4), the hearing must be before the chief law enforcement
14 officer of the seizing agency or an administrative law judge
15 appointed under chapter 34.12 RCW, except that any person asserting a
16 claim or right may remove the matter to a court of competent
17 jurisdiction. Removal of any matter involving personal property may
18 only be accomplished according to the rules of civil procedure. The
19 person seeking removal of the matter must serve process against the
20 state, county, political subdivision, or municipality that operates
21 the seizing agency, and any other party of interest, in accordance
22 with RCW 4.28.080 or 4.92.020, within forty-five days after the
23 person seeking removal has notified the seizing law enforcement
24 agency of the person's claim of ownership or right to possession. The
25 court to which the matter is to be removed must be the district court
26 if the aggregate value of personal property is within the
27 jurisdictional limit set forth in RCW 3.66.020. A hearing before the
28 seizing agency and any appeal therefrom must be under Title 34 RCW.
29 In a court hearing between two or more claimants to the article or
30 articles involved, the prevailing party is entitled to a judgment for
31 costs and reasonable attorneys' fees. In cases involving personal
32 property, the burden of producing evidence is upon the person
33 claiming to be the lawful owner or the person claiming to have the
34 lawful right to possession of the property. In cases involving
35 property seized under subsection (1)(a) of this section, the only
36 issues to be determined by the tribunal are whether the item seized
37 is a gambling device, and whether the device is an antique device as
38 defined by RCW 9.46.235. In cases involving real property, the burden
39 of producing evidence is upon the law enforcement agency. The burden
40 of proof that the seized real property is subject to forfeiture is

1 upon the law enforcement agency. The seizing law enforcement agency
2 shall promptly return the article or articles to the claimant upon a
3 final determination by the administrative law judge or court that the
4 claimant is the present lawful owner or is lawfully entitled to
5 possession thereof of items specified in subsection (1) of this
6 section.

7 (6) If property is forfeited under this chapter the seizing law
8 enforcement agency may:

9 (a) Retain it for official use or upon application by any law
10 enforcement agency of this state release the property to the agency
11 for training or use in enforcing this chapter;

12 (b) Sell that which is not required to be destroyed by law and
13 which is not harmful to the public; or

14 (c) Destroy any articles that may not be lawfully possessed
15 within the state of Washington, or that have a fair market value of
16 less than one hundred dollars.

17 (7)(a) If property is forfeited, the seizing agency shall keep a
18 record indicating the identity of the prior owner, if known, a
19 description of the property, the disposition of the property, the
20 value of the property at the time of seizure, and the amount of
21 proceeds realized from disposition of the property. The net proceeds
22 of forfeited property is the value of the forfeitable interest in the
23 property after deducting the cost of satisfying any bona fide
24 security interest to which the property is subject at the time of
25 seizure, and in the case of sold property, after deducting the cost
26 of sale, including reasonable fees or commissions paid to independent
27 selling agents.

28 (b) Each seizing agency shall retain records of forfeited
29 property for at least seven years.

30 (8) The seizing law enforcement agency shall retain forfeited
31 property and net proceeds exclusively for the expansion and
32 improvement of gambling-related law enforcement activity. Money
33 retained under this section may not be used to supplant preexisting
34 funding sources.

35 (9) Gambling devices that are possessed, transferred, sold, or
36 offered for sale in violation of this chapter are contraband and must
37 be seized and summarily forfeited to the state. Gambling equipment
38 that is seized or comes into the possession of a law enforcement
39 agency, the owners of which are unknown, are contraband and must be
40 summarily forfeited to the state.

1 (10) Upon the entry of an order of forfeiture of real property,
2 the court shall forward a copy of the order to the assessor of the
3 county in which the property is located. The superior court shall
4 enter orders for the forfeiture of real property, subject to court
5 rules. The seizing agency shall file such an order in the county
6 auditor's records in the county in which the real property is
7 located.

8 (11)(a) A landlord may assert a claim against proceeds from the
9 sale of assets seized and forfeited under subsection (6)(b) of this
10 section, only if:

11 (i) A law enforcement officer, while acting in his or her
12 official capacity, directly caused damage to the complaining
13 landlord's property while executing a search of a tenant's residence;
14 and

15 (ii) The landlord has applied any funds remaining in the tenant's
16 deposit, to which the landlord has a right under chapter 59.18 RCW,
17 to cover the damage directly caused by a law enforcement officer
18 before asserting a claim under this section.

19 (A) Only if the funds applied under (a)(ii) of this subsection
20 are insufficient to satisfy the damage directly caused by a law
21 enforcement officer, may the landlord seek compensation for the
22 damage by filing a claim against the governmental entity under whose
23 authority the law enforcement agency operates within thirty days
24 after the search; and

25 (B) Only if the governmental entity denies or fails to respond to
26 the landlord's claim within sixty days of the date of filing, may the
27 landlord collect damages under this subsection by filing within
28 thirty days of denial or the expiration of the sixty-day period,
29 whichever occurs first, a claim with the seizing law enforcement
30 agency. The seizing law enforcement agency shall notify the landlord
31 of the status of the claim by the end of the thirty-day period. This
32 section does not require the claim to be paid by the end of the
33 sixty-day or thirty-day period.

34 (b) For any claim filed under (a)(ii) of this subsection, the law
35 enforcement agency shall pay the claim unless the agency provides
36 substantial proof that the landlord either:

37 (i) Knew or consented to actions of the tenant in violation of
38 this chapter; or

1 (ii) Failed to respond to a notification of the illegal activity,
2 provided by a law enforcement agency within seven days of receipt of
3 notification of the illegal activity.

4 (12) The landlord's claim for damages under subsection (11) of
5 this section may not include a claim for loss of business and is
6 limited to:

7 (a) Damage to tangible property and clean-up costs;

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

10 (c) The proceeds from the sale of the specific tenant's property
11 seized and forfeited under subsection (6)(b) of this section; and

12 (d) The proceeds available after the seizing law enforcement
13 agency satisfies any bona fide security interest in the tenant's
14 property and costs related to sale of the tenant's property as
15 provided by subsection (7)(a) of this section.

16 (13) Subsections (11) and (12) of this section do not limit any
17 other rights a landlord may have against a tenant to collect for
18 damages. However, if a law enforcement agency satisfies a landlord's
19 claim under subsection (11) of this section, the rights the landlord
20 has against the tenant for damages directly caused by a law
21 enforcement officer under the terms of the landlord and tenant's
22 contract are subrogated to the law enforcement agency.

23 (14) Liability is not imposed by this section upon any authorized
24 state, county, or municipal officer, including a commission special
25 agent, in the lawful performance of his or her duties.

26 **Sec. 2.** RCW 9.68A.120 and 2014 c 188 s 3 are each amended to
27 read as follows:

28 The following are subject to seizure and forfeiture:

29 (1) All visual or printed matter that depicts a minor engaged in
30 sexually explicit conduct.

31 (2) All raw materials, equipment, and other tangible personal
32 property of any kind used or intended to be used to manufacture or
33 process any visual or printed matter that depicts a minor engaged in
34 sexually explicit conduct, and all conveyances, including aircraft,
35 vehicles, or vessels that are used or intended for use to transport,
36 or in any manner to facilitate the transportation of, visual or
37 printed matter in violation of RCW 9.68A.050 or 9.68A.060, but:

38 (a) No conveyance used by any person as a common carrier in the
39 transaction of business as a common carrier is subject to forfeiture

1 under this section unless it appears that the owner or other person
2 in charge of the conveyance is a consenting party or privy to a
3 violation of this chapter;

4 (b) No property is subject to forfeiture under this section by
5 reason of any act or omission established by the owner of the
6 property to have been committed or omitted without the owner's
7 knowledge or consent;

8 (c) A forfeiture of property encumbered by a bona fide security
9 interest is subject to the interest of the secured party if the
10 secured party neither had knowledge of nor consented to the act or
11 omission; and

12 (d) When the owner of a conveyance has been arrested under this
13 chapter the conveyance may not be subject to forfeiture unless it is
14 seized or process is issued for its seizure within ten days of the
15 owner's arrest.

16 (3) All personal property, moneys, negotiable instruments,
17 securities, or other tangible or intangible property furnished or
18 intended to be furnished by any person in exchange for visual or
19 printed matter depicting a minor engaged in sexually explicit
20 conduct, or constituting proceeds directly traceable to any violation
21 of this chapter.

22 (4) Property subject to forfeiture under this chapter may be
23 seized by any law enforcement officer of this state upon process
24 issued by any superior court having jurisdiction over the property.
25 Seizure without process may be made if:

26 (a) The seizure is incident to an arrest or a search under a
27 search warrant or an inspection under an administrative inspection
28 warrant;

29 (b) The property subject to seizure has been the subject of a
30 prior judgment in favor of the state in a criminal injunction or
31 forfeiture proceeding based upon this chapter;

32 (c) A law enforcement officer has probable cause to believe that
33 the property is directly or indirectly dangerous to health or safety;
34 or

35 (d) The law enforcement officer has probable cause to believe
36 that the property was used or is intended to be used in violation of
37 this chapter.

38 (5) In the event of seizure under subsection (4) of this section,
39 proceedings for forfeiture shall be deemed commenced by the seizure.
40 No court may enter a final order of forfeiture of personal or real

1 property until after the court has found the following: (a) The owner
2 of the personal or real property to be forfeited is guilty of
3 committing a felony offense, and (b) the personal or real property to
4 be forfeited was directly (i) involved in, (ii) connected with, (iii)
5 traceable to, or (iv) derived from the commission of the felony
6 offense for which the owner of the property was found guilty. The law
7 enforcement agency under whose authority the seizure was made shall
8 cause notice to be served within fifteen days following the seizure
9 on the owner of the property seized and the person in charge thereof
10 and any person having any known right or interest therein, of the
11 seizure and intended forfeiture of the seized property. The notice
12 may be served by any method authorized by law or court rule including
13 but not limited to service by certified mail with return receipt
14 requested. Service by mail shall be deemed complete upon mailing
15 within the fifteen day period following the seizure.

16 (6) If no person notifies the seizing law enforcement agency in
17 writing of the person's claim of ownership or right to possession of
18 seized items within forty-five days of the seizure, the item seized
19 shall be deemed forfeited.

20 (7) If any person notifies the seizing law enforcement agency in
21 writing of the person's claim of ownership or right to possession of
22 seized items within forty-five days of the seizure, the person or
23 persons shall be afforded a reasonable opportunity to be heard as to
24 the claim or right. The hearing shall be before an administrative law
25 judge appointed under chapter 34.12 RCW, except that any person
26 asserting a claim or right may remove the matter to a court of
27 competent jurisdiction if the aggregate value of the article or
28 articles involved is more than five hundred dollars. The hearing
29 before an administrative law judge and any appeal therefrom shall be
30 under Title 34 RCW. In a court hearing between two or more claimants
31 to the article or articles involved, the prevailing party shall be
32 entitled to a judgment for costs and reasonable attorney's fees. The
33 burden of producing evidence shall be upon the person claiming to be
34 the lawful owner or the person claiming to have the lawful right to
35 possession of the seized items. The seizing law enforcement agency
36 shall promptly return the article or articles to the claimant upon a
37 determination by the administrative law judge or court that the
38 claimant is lawfully entitled to possession thereof of the seized
39 items.

1 (8) If property is sought to be forfeited on the ground that it
2 constitutes proceeds directly traceable to a violation of this
3 chapter, the seizing law enforcement agency must prove by a
4 preponderance of the evidence that the property constitutes proceeds
5 directly traceable to a violation of this chapter.

6 (9) When property is forfeited under this chapter the seizing law
7 enforcement agency may:

8 (a) Retain it for official use or upon application by any law
9 enforcement agency of this state release the property to that agency
10 for the exclusive use of enforcing this chapter or chapter 9A.88 RCW;

11 (b) Sell that which is not required to be destroyed by law and
12 which is not harmful to the public; or

13 (c) Request the appropriate sheriff or director of public safety
14 to take custody of the property and remove it for disposition in
15 accordance with law.

16 (10)(a) By January 31st of each year, each seizing agency shall
17 remit to the state treasurer an amount equal to ten percent of the
18 net proceeds of any property forfeited during the preceding calendar
19 year. Money remitted shall be deposited in the prostitution
20 prevention and intervention account under RCW 43.63A.740.

21 (b) The net proceeds of forfeited property is the value of the
22 forfeitable interest in the property after deducting the cost of
23 satisfying any bona fide security interest to which the property is
24 subject at the time of seizure; and in the case of sold property,
25 after deducting the cost of sale, including reasonable fees or
26 commissions paid to an independent selling agency.

27 (c) The value of sold forfeited property is the sale price. The
28 value of retained forfeited property is the fair market value of the
29 property at the time of seizure determined when possible by reference
30 to an applicable commonly used index. A seizing agency may use, but
31 need not use, an independent qualified appraiser to determine the
32 value of retained property. If an appraiser is used, the value of the
33 property appraised is net of the cost of the appraisal. The value of
34 destroyed property and retained firearms or illegal property is zero.

35 (11) Forfeited property and net proceeds not required to be paid
36 to the state treasurer under this chapter shall be used for payment
37 of all proper expenses of the investigation leading to the seizure,
38 including any money delivered to the subject of the investigation by
39 the law enforcement agency, and of the proceedings for forfeiture and
40 sale, including expenses of seizure, maintenance of custody,

1 advertising, actual costs of the prosecuting or city attorney, and
2 court costs. Money remaining after payment of these expenses shall be
3 retained by the seizing law enforcement agency for the exclusive use
4 of enforcing the provisions of this chapter or chapter 9A.88 RCW.

5 **Sec. 3.** RCW 9A.88.150 and 2014 c 188 s 4 are each amended to
6 read as follows:

7 (1) The following are subject to seizure and forfeiture and no
8 property right exists in them:

9 (a) Any property or other interest acquired or maintained in
10 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070 to the extent of
11 the investment of funds, and any appreciation or income attributable
12 to the investment, from a violation of RCW 9.68A.100, 9.68A.101, or
13 9A.88.070;

14 (b) All conveyances, including aircraft, vehicles, or vessels,
15 which are used, or intended for use, in any manner to facilitate a
16 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, except that:

17 (i) No conveyance used by any person as a common carrier in the
18 transaction of business as a common carrier is subject to forfeiture
19 under this section unless it appears that the owner or other person
20 in charge of the conveyance is a consenting party or privy to a
21 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

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

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

30 (iv) When the owner of a conveyance has been arrested for a
31 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, the conveyance
32 in which the person is arrested may not be subject to forfeiture
33 unless it is seized or process is issued for its seizure within ten
34 days of the owner's arrest;

35 (c) Any property, contractual right, or claim against property
36 used to influence any enterprise that a person has established,
37 operated, controlled, conducted, or participated in the conduct of,
38 in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

1 (d) All proceeds directly traceable to or directly derived from
2 an offense defined in RCW 9.68A.100, 9.68A.101, or 9A.88.070 and all
3 moneys, negotiable instruments, securities, and other things of value
4 significantly used or intended to be used significantly to facilitate
5 commission of the offense;

6 (e) All books, records, and research products and materials,
7 including formulas, microfilm, tapes, and data which are used, or
8 intended for use, in violation of RCW 9.68A.100, 9.68A.101, or
9 9A.88.070;

10 (f) All moneys, negotiable instruments, securities, or other
11 tangible or intangible property of value furnished or intended to be
12 furnished by any person in exchange for a violation of RCW 9.68A.100,
13 9.68A.101, or 9A.88.070, all tangible or intangible personal
14 property, proceeds, or assets acquired in whole or in part with
15 proceeds directly traceable to an exchange or series of exchanges in
16 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys,
17 negotiable instruments, and securities used or intended to be used to
18 facilitate any violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070. A
19 forfeiture of money, negotiable instruments, securities, or other
20 tangible or intangible property encumbered by a bona fide security
21 interest is subject to the interest of the secured party if, at the
22 time the security interest was created, the secured party neither had
23 knowledge of nor consented to the act or omission. No personal
24 property may be forfeited under this subsection (1)(f), to the extent
25 of the interest of an owner, by reason of any act or omission, which
26 that owner establishes was committed or omitted without the owner's
27 knowledge or consent; and

28 (g) All real property, including any right, title, and interest
29 in the whole of any lot or tract of land, and any appurtenances or
30 improvements which are being used with the knowledge of the owner for
31 a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, or which have
32 been acquired in whole or in part with proceeds directly traceable to
33 an exchange or series of exchanges in violation of RCW 9.68A.100,
34 9.68A.101, or 9A.88.070, if a substantial nexus exists between the
35 violation and the real property. However:

36 (i) No property may be forfeited pursuant to this subsection
37 (1)(g), to the extent of the interest of an owner, by reason of any
38 act or omission committed or omitted without the owner's knowledge or
39 consent;

1 (ii) A forfeiture of real property encumbered by a bona fide
2 security interest is subject to the interest of the secured party if
3 the secured party, at the time the security interest was created,
4 neither had knowledge of nor consented to the act or omission.

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

17 (a) The seizure is incident to an arrest or a search under a
18 search warrant;

19 (b) The property subject to seizure has been the subject of a
20 prior judgment in favor of the state in a criminal injunction or
21 forfeiture proceeding; or

22 (c) The law enforcement officer has probable cause to believe
23 that the property was used or is intended to be used in violation of
24 RCW 9.68A.100, 9.68A.101, or 9A.88.070.

25 (3) In the event of seizure pursuant to subsection (2) of this
26 section, proceedings for forfeiture shall be deemed commenced by the
27 seizure. No court may enter a final order of forfeiture of personal
28 or real property until after the court has found the following: (a)
29 The owner of the personal or real property to be forfeited is guilty
30 of committing a felony offense, and (b) the personal or real property
31 to be forfeited was directly (i) involved in, (ii) connected with,
32 (iii) traceable to, or (iv) derived from the commission of the felony
33 offense for which the owner of the property was found guilty. The law
34 enforcement agency under whose authority the seizure was made shall
35 cause notice to be served within fifteen days following the seizure
36 on the owner of the property seized and the person in charge thereof
37 and any person having any known right or interest therein, including
38 any community property interest, of the seizure and intended
39 forfeiture of the seized property. Service of notice of seizure of
40 real property shall be made according to the rules of civil

1 procedure. However, the state may not obtain a default judgment with
2 respect to real property against a party who is served by substituted
3 service absent an affidavit stating that a good faith effort has been
4 made to ascertain if the defaulted party is incarcerated within the
5 state, and that there is no present basis to believe that the party
6 is incarcerated within the state. Notice of seizure in the case of
7 property subject to a security interest that has been perfected by
8 filing a financing statement, or a certificate of title, shall be
9 made by service upon the secured party or the secured party's
10 assignee at the address shown on the financing statement or the
11 certificate of title. The notice of seizure in other cases may be
12 served by any method authorized by law or court rule including, but
13 not limited to, service by certified mail with return receipt
14 requested. Service by mail shall be deemed complete upon mailing
15 within the fifteen day period following the seizure.

16 (4) If no person notifies the seizing law enforcement agency in
17 writing of the person's claim of ownership or right to possession of
18 items specified in subsection (1) of this section within forty-five
19 days of the service of notice from the seizing agency in the case of
20 personal property and ninety days in the case of real property, the
21 item seized shall be deemed forfeited. The community property
22 interest in real property of a person whose spouse or domestic
23 partner committed a violation giving rise to seizure of the real
24 property may not be forfeited if the person did not participate in
25 the violation.

26 (5) If any person notifies the seizing law enforcement agency in
27 writing of the person's claim of ownership or right to possession of
28 items specified in subsection (1) of this section within forty-five
29 days of the service of notice from the seizing agency in the case of
30 personal property and ninety days in the case of real property, the
31 person or persons shall be afforded a reasonable opportunity to be
32 heard as to the claim or right. The notice of claim may be served by
33 any method authorized by law or court rule including, but not limited
34 to, service by first-class mail. Service by mail shall be deemed
35 complete upon mailing within the forty-five day period following
36 service of the notice of seizure in the case of personal property and
37 within the ninety day period following service of the notice of
38 seizure in the case of real property. The hearing shall be before the
39 chief law enforcement officer of the seizing agency or the chief law
40 enforcement officer's designee, except where the seizing agency is a

1 state agency as defined in RCW 34.12.020(4), the hearing shall be
2 before the chief law enforcement officer of the seizing agency or an
3 administrative law judge appointed under chapter 34.12 RCW, except
4 that any person asserting a claim or right may remove the matter to a
5 court of competent jurisdiction. Removal of any matter involving
6 personal property may only be accomplished according to the rules of
7 civil procedure. The person seeking removal of the matter must serve
8 process against the state, county, political subdivision, or
9 municipality that operates the seizing agency, and any other party of
10 interest, in accordance with RCW 4.28.080 or 4.92.020, within
11 forty-five days after the person seeking removal has notified the
12 seizing law enforcement agency of the person's claim of ownership or
13 right to possession. The court to which the matter is to be removed
14 shall be the district court when the aggregate value of personal
15 property is within the jurisdictional limit set forth in RCW
16 3.66.020. A hearing before the seizing agency and any appeal
17 therefrom shall be under Title 34 RCW. In all cases, the burden of
18 proof is upon the law enforcement agency to establish, by a
19 preponderance of the evidence, that the property is subject to
20 forfeiture.

21 The seizing law enforcement agency shall promptly return the
22 article or articles to the claimant upon a determination by the
23 administrative law judge or court that the claimant is the present
24 lawful owner or is lawfully entitled to possession thereof of items
25 specified in subsection (1) of this section.

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

32 (7) When property is forfeited under this chapter, the seizing
33 law enforcement agency may:

34 (a) Retain it for official use or upon application by any law
35 enforcement agency of this state release the property to that agency
36 for the exclusive use of enforcing this chapter or chapter 9.68A RCW;

37 (b) Sell that which is not required to be destroyed by law and
38 which is not harmful to the public; or

1 (c) 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.

4 (8)(a) When property is forfeited, the seizing agency shall keep
5 a record indicating the identity of the prior owner, if known, a
6 description of the property, the disposition of the property, the
7 value of the property at the time of seizure, and the amount of
8 proceeds realized from disposition of the property.

9 (b) Each seizing agency shall retain records of forfeited
10 property for at least seven years.

11 (c) Each seizing agency shall file a report including a copy of
12 the records of forfeited property with the state treasurer each
13 calendar quarter.

14 (d) The quarterly report need not include a record of forfeited
15 property that is still being held for use as evidence during the
16 investigation or prosecution of a case or during the appeal from a
17 conviction.

18 (9)(a) By January 31st of each year, each seizing agency shall
19 remit to the state treasurer an amount equal to ten percent of the
20 net proceeds of any property forfeited during the preceding calendar
21 year. Money remitted shall be deposited in the prostitution
22 prevention and intervention account under RCW 43.63A.740.

23 (b) The net proceeds of forfeited property is the value of the
24 forfeitable interest in the property after deducting the cost of
25 satisfying any bona fide security interest to which the property is
26 subject at the time of seizure; and in the case of sold property,
27 after deducting the cost of sale, including reasonable fees or
28 commissions paid to independent selling agents, and the cost of any
29 valid landlord's claim for damages under subsection (12) of this
30 section.

31 (c) The value of sold forfeited property is the sale price. The
32 value of destroyed property and retained firearms or illegal property
33 is zero.

34 (10) Net proceeds not required to be paid to the state treasurer
35 shall be used for payment of all proper expenses of the investigation
36 leading to the seizure, including any money delivered to the subject
37 of the investigation by the law enforcement agency, and of the
38 proceedings for forfeiture and sale, including expenses of seizure,
39 maintenance of custody, advertising, actual costs of the prosecuting
40 or city attorney, and court costs. Money remaining after payment of

1 these expenses shall be retained by the seizing law enforcement
2 agency for the exclusive use of enforcing the provisions of this
3 chapter or chapter 9.68A RCW.

4 (11) Upon the entry of an order of forfeiture of real property,
5 the court shall forward a copy of the order to the assessor of the
6 county in which the property is located. Orders for the forfeiture of
7 real property shall be entered by the superior court, subject to
8 court rules. Such an order shall be filed by the seizing agency in
9 the county auditor's records in the county in which the real property
10 is located.

11 (12) A landlord may assert a claim against proceeds from the sale
12 of assets seized and forfeited under subsection (9) of this section,
13 only if:

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

17 (b) The landlord has applied any funds remaining in the tenant's
18 deposit, to which the landlord has a right under chapter 59.18 RCW,
19 to cover the damage directly caused by a law enforcement officer
20 prior to asserting a claim under the provisions of this section:

21 (i) Only if the funds applied under (b) of this subsection are
22 insufficient to satisfy the damage directly caused by a law
23 enforcement officer, may the landlord seek compensation for the
24 damage by filing a claim against the governmental entity under whose
25 authority the law enforcement agency operates within thirty days
26 after the search;

27 (ii) Only if the governmental entity denies or fails to respond
28 to the landlord's claim within sixty days of the date of filing, may
29 the landlord collect damages under this subsection by filing within
30 thirty days of denial or the expiration of the sixty day period,
31 whichever occurs first, a claim with the seizing law enforcement
32 agency. The seizing law enforcement agency must notify the landlord
33 of the status of the claim by the end of the thirty day period.
34 Nothing in this section requires the claim to be paid by the end of
35 the sixty day or thirty day period; and

36 (c) For any claim filed under (b) of this subsection, the law
37 enforcement agency shall pay the claim unless the agency provides
38 substantial proof that the landlord either:

39 (i) Knew or consented to actions of the tenant in violation of
40 RCW 9.68A.100, 9.68A.101, or 9A.88.070; or

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

4 (13) The landlord's claim for damages under subsection (12) of
5 this section may not include a claim for loss of business and is
6 limited to:

7 (a) Damage to tangible property and clean-up costs;

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

10 (c) The proceeds from the sale of the specific tenant's property
11 seized and forfeited under subsection (9) of this section; and

12 (d) The proceeds available after the seizing law enforcement
13 agency satisfies any bona fide security interest in the tenant's
14 property and costs related to sale of the tenant's property as
15 provided by subsection (12) of this section.

16 (14) Subsections (12) and (13) of this section do not limit any
17 other rights a landlord may have against a tenant to collect for
18 damages. However, if a law enforcement agency satisfies a landlord's
19 claim under subsection (12) of this section, the rights the landlord
20 has against the tenant for damages directly caused by a law
21 enforcement officer under the terms of the landlord and tenant's
22 contract are subrogated to the law enforcement agency.

23 **Sec. 4.** RCW 10.105.010 and 2009 c 479 s 15 are each amended to
24 read as follows:

25 (1) The following are subject to seizure and forfeiture and no
26 property right exists in them: All personal property, including, but
27 not limited to, any item, object, tool, substance, device, weapon,
28 machine, vehicle of any kind, money, security, or negotiable
29 instrument, which has been or was actually employed as an
30 instrumentality in the commission of, or in aiding or abetting in the
31 commission of any felony, or which was furnished or was intended to
32 be furnished by any person in the commission of, as a result of, or
33 as compensation for the commission of, any felony, or which was
34 acquired in whole or in part with proceeds directly traceable to the
35 commission of a felony. No property may be forfeited under this
36 section until after there has been a superior court conviction of the
37 owner of the property for the felony in connection with which the
38 property was employed, furnished, or acquired.

1 A forfeiture of property encumbered by a bona fide security
2 interest is subject to the interest of the secured party if at the
3 time the security interest was created, the secured party neither had
4 knowledge of nor consented to the commission of the felony.

5 (2) Personal property subject to forfeiture under this chapter
6 may be seized by any law enforcement officer of this state upon
7 process issued by any superior court having jurisdiction over the
8 property. Seizure of personal property without process may be made
9 if:

10 (a) The seizure is incident to an arrest or a search under a
11 search warrant;

12 (b) The property subject to seizure has been the subject of a
13 prior judgment in favor of the state in a criminal injunction or
14 forfeiture proceeding;

15 (c) A law enforcement officer has probable cause to believe that
16 the property is directly dangerous to health or safety; or

17 (d) The law enforcement officer has probable cause to believe
18 that the property was used or is intended to be used in the
19 commission of a felony.

20 (3) In the event of seizure pursuant to this section, proceedings
21 for forfeiture shall be deemed commenced by the seizure. No court may
22 enter a final order of forfeiture of personal or real property until
23 after the court has found the following: (a) The owner of the
24 personal or real property to be forfeited is guilty of committing a
25 felony offense, and (b) the personal or real property to be forfeited
26 was directly (i) involved in, (ii) connected with, (iii) traceable
27 to, or (iv) derived from the commission of the felony offense for
28 which the owner of the property was found guilty. The law enforcement
29 agency under whose authority the seizure was made shall cause notice
30 to be served within fifteen days following the seizure on the owner
31 of the property seized and the person in charge thereof and any
32 person having any known right or interest therein, including any
33 community property interest, of the seizure and intended forfeiture
34 of the seized property. The notice of seizure may be served by any
35 method authorized by law or court rule including but not limited to
36 service by certified mail with return receipt requested. Service by
37 mail shall be deemed complete upon mailing within the fifteen day
38 period following the seizure. Notice of seizure in the case of
39 property subject to a security interest that has been perfected by
40 filing a financing statement in accordance with chapter 62A.9A RCW,

1 or a certificate of title shall be made by service upon the secured
2 party or the secured party's assignee at the address shown on the
3 financing statement or the certificate of title.

4 (4) If no person notifies the seizing law enforcement agency in
5 writing of the person's claim of ownership or right to possession of
6 items specified in subsection (1) of this section within forty-five
7 days of the seizure, the item seized shall be deemed forfeited.

8 (5) If a person notifies the seizing law enforcement agency in
9 writing of the person's claim of ownership or right to possession of
10 the seized property within forty-five days of the seizure, the law
11 enforcement agency shall give the person or persons a reasonable
12 opportunity to be heard as to the claim or right. The hearing shall
13 be before the chief law enforcement officer of the seizing agency or
14 the chief law enforcement officer's designee, except where the
15 seizing agency is a state agency as defined in RCW 34.12.020(4), the
16 hearing shall be before the chief law enforcement officer of the
17 seizing agency or an administrative law judge appointed under chapter
18 34.12 RCW, except that any person asserting a claim or right may
19 remove the matter to a court of competent jurisdiction. Removal may
20 only be accomplished according to the rules of civil procedure. The
21 person seeking removal of the matter must serve process against the
22 state, county, political subdivision, or municipality that operates
23 the seizing agency, and any other party of interest, in accordance
24 with RCW 4.28.080 or 4.92.020, within forty-five days after the
25 person seeking removal has notified the seizing law enforcement
26 agency of the person's claim of ownership or right to possession. The
27 court to which the matter is to be removed shall be the district
28 court when the aggregate value of the property is within the
29 jurisdictional limit set forth in RCW 3.66.020. A hearing before the
30 seizing agency and any appeal therefrom shall be under Title 34 RCW.
31 In a court hearing between two or more claimants to the property
32 involved, the prevailing party shall be entitled to a judgment for
33 costs and reasonable attorney's fees. The burden of producing
34 evidence shall be upon the person claiming to be the lawful owner or
35 the person claiming to have the lawful right to possession of the
36 property. The seizing law enforcement agency shall promptly return
37 the property to the claimant upon a determination by the
38 administrative law judge or court that the claimant is the present
39 lawful owner or is lawfully entitled to possession of the property.

1 (6) When property is forfeited under this chapter, after
2 satisfying any court-ordered victim restitution, the seizing law
3 enforcement agency may:

4 (a) Retain it for official use or upon application by any law
5 enforcement agency of this state release such property to such agency
6 for the exclusive use of enforcing the criminal law;

7 (b) Sell that which is not required to be destroyed by law and
8 which is not harmful to the public.

9 (7) By January 31st of each year, each seizing agency shall remit
10 to the state treasurer an amount equal to ten percent of the net
11 proceeds of any property forfeited during the preceding calendar
12 year. Money remitted shall be deposited in the state general fund.

13 (a) The net proceeds of forfeited property is the value of the
14 forfeitable interest in the property after deducting the cost of
15 satisfying any bona fide security interest to which the property is
16 subject at the time of seizure; and in the case of sold property,
17 after deducting the cost of sale, including reasonable fees or
18 commissions paid to independent selling agents.

19 (b) 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
22 reference to an applicable commonly used index, such as the index
23 used by the department of licensing for valuation of motor vehicles.
24 A seizing agency may use, but need not use, an independent qualified
25 appraiser to determine the value of retained property. If an
26 appraiser is used, the value of the property appraised is net of the
27 cost of the appraisal. The value of destroyed property and retained
28 firearms or illegal property is zero.

29 (c) Retained property and net proceeds not required to be paid to
30 the state treasurer, or otherwise required to be spent under this
31 section, shall be retained by the seizing law enforcement agency
32 exclusively for the expansion and improvement of law enforcement
33 activity. Money retained under this section may not be used to
34 supplant preexisting funding sources.

35 **Sec. 5.** RCW 9A.83.030 and 2008 c 6 s 630 are each amended to
36 read as follows:

37 (1) Proceeds directly traceable to or directly derived from
38 specified unlawful activity or a violation of RCW 9A.83.020 are
39 subject to seizure and forfeiture. The attorney general or county

1 prosecuting attorney may file a civil action for the forfeiture of
2 proceeds. Unless otherwise provided for under this section, no
3 property rights exist in these proceeds. All right, title, and
4 interest in the proceeds shall vest in the governmental entity of
5 which the seizing law enforcement agency is a part upon commission of
6 the act or omission giving rise to forfeiture under this section.

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

18 (a) The seizure is incident to an arrest or a search under a
19 search warrant or an inspection under an administrative inspection
20 warrant issued pursuant to RCW 69.50.502; or

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

24 (3) A seizure under subsection (2) of this section commences
25 proceedings for forfeiture. No court may enter a final order of
26 forfeiture of personal or real property until after the court has
27 found the following: (a) The owner of the personal or real property
28 to be forfeited is guilty of committing a felony offense, and (b) the
29 personal or real property to be forfeited was directly (i) involved
30 in, (ii) connected with, (iii) traceable to, or (iv) derived from the
31 commission of the felony offense for which the owner of the property
32 was found guilty. The law enforcement agency under whose authority
33 the seizure was made shall cause notice of the seizure and intended
34 forfeiture of the seized proceeds to be served within fifteen days
35 after the seizure on the owner of the property seized and the person
36 in charge thereof and any person who has a known right or interest
37 therein, including a community property interest. Service of notice
38 of seizure of real property shall be made according to the rules of
39 civil procedure. However, the state may not obtain a default judgment
40 with respect to real property against a party who is served by

1 substituted service absent an affidavit stating that a good faith
2 effort has been made to ascertain if the defaulted party is
3 incarcerated within the state, and that there is no present basis to
4 believe that the party is incarcerated within the state. The notice
5 of seizure in other cases may be served by any method authorized by
6 law or court rule including but not limited to service by certified
7 mail with return receipt requested. Service by mail is complete upon
8 mailing within the fifteen-day period after the seizure.

9 (4) If no person notifies the seizing law enforcement agency in
10 writing of the person's claim of ownership or right to possession of
11 the property within forty-five days of the seizure in the case of
12 personal property and ninety days in the case of real property, the
13 property seized shall be deemed forfeited. The community property
14 interest in real property of a person whose spouse or domestic
15 partner committed a violation giving rise to seizure of the real
16 property may not be forfeited if the person did not participate in
17 the violation.

18 (5) If a person notifies the seizing law enforcement agency in
19 writing of the person's claim of ownership or right to possession of
20 property within forty-five days of the seizure in the case of
21 personal property and ninety days in the case of real property, the
22 person or persons shall be afforded a reasonable opportunity to be
23 heard as to the claim or right. The provisions of RCW 69.50.505(5)
24 shall apply to any such hearing. The seizing law enforcement agency
25 shall promptly return property to the claimant upon the direction of
26 the administrative law judge or court.

27 (6) Disposition of forfeited property shall be made in the manner
28 provided for in RCW 69.50.505 (8) through (10) and (14).

29 **Sec. 6.** RCW 19.290.230 and 2013 c 322 s 27 are each amended to
30 read as follows:

31 (1) The following personal property is subject to seizure and
32 forfeiture and no property right exists in them: All personal
33 property including, but not limited to, any item, object, tool,
34 substance, device, weapon, machine, vehicle of any kind, money,
35 security, or negotiable instrument, which the seizing agency proves
36 by a preponderance of the evidence was used or intended to be used by
37 its owner or the person in charge to knowingly or intentionally
38 facilitate the commission of, or to knowingly or intentionally abet
39 the commission of, a crime involving theft, trafficking, or unlawful

1 possession of commercial metal property, or which the seizing agency
2 proves by a preponderance of the evidence was knowingly or
3 intentionally furnished or was intended to be furnished by any person
4 in the commission of, as a result of, or as compensation for the
5 commission of, a crime involving theft, trafficking, or the unlawful
6 possession of commercial metal property, or which the property owner
7 acquired in whole or in part with proceeds directly traceable to a
8 knowing or intentional commission of a crime involving the theft,
9 trafficking, or unlawful possession of commercial metal property
10 provided that such activity is not less than a class C felony; except
11 that:

12 (a) No vehicle used by any person as a common carrier in the
13 transaction of business as a common carrier is subject to forfeiture
14 under this section unless the seizing agency proves by a
15 preponderance of the evidence that the owner or other person in
16 charge of the vehicle is a consenting party or is privy to any crime
17 involving theft, trafficking, or the unlawful possession of
18 commercial metal property;

19 (b) A forfeiture of property encumbered by a bona fide security
20 interest is subject to the interest of the secured party if the
21 secured party neither had actual or constructive knowledge of nor
22 consented to the commission of any crime involving the theft,
23 trafficking, or unlawful possession of commercial metal property; and

24 (c) A property owner's property is not subject to seizure if an
25 employee or agent of that property owner uses the property owner's
26 property to knowingly or intentionally facilitate the commission of,
27 or to knowingly or intentionally aid and abet the commission of, a
28 crime involving theft, trafficking, or unlawful possession of
29 commercial metal property, in violation of that property owner's
30 instructions or policies against such activity, and without the
31 property owner's knowledge or consent.

32 (2) The following real property is subject to seizure and
33 forfeiture and no property right exists in them: All real property,
34 including any right, title, and interest in the whole of any lot or
35 tract of land, and any appurtenances or improvements, that the
36 seizing agency proves by a preponderance of the evidence are being
37 used with the knowledge of the owner for the intentional commission
38 of any crime involving the theft, trafficking, or unlawful possession
39 of commercial metal property, or which have been acquired in whole or
40 in part with proceeds directly traceable to the commission of any

1 crime involving the trafficking, theft, or unlawful possession of
2 commercial metal, if such activity is not less than a class C felony
3 and a substantial nexus exists between the commission of the
4 violation or crime and the real property. However:

5 (a) No property may be forfeited pursuant to this subsection (2),
6 to the extent of the interest of an owner, by reason of any act or
7 omission committed or omitted without the owner's actual or
8 constructive knowledge; and further, a property owner's real property
9 is not subject to seizure if an employee or agent of that property
10 owner uses the property owner's real property to knowingly or
11 intentionally facilitate the commission of, or to knowingly or
12 intentionally aid and abet the commission of, a crime involving
13 theft, trafficking, or unlawful possession of commercial metal
14 property, in violation of that property owner's instructions or
15 policies against such activity, and without the property owner's
16 knowledge or consent; and

17 (b) A forfeiture of real property encumbered by a bona fide
18 security interest is subject to the interest of the secured party if
19 the secured party, neither had actual or constructive knowledge, nor
20 consented to the act or omission.

21 (3) Property subject to forfeiture under this chapter may be
22 seized by any law enforcement officer of this state upon process
23 issued by any superior court having jurisdiction over the property.
24 Seizure of real property shall include the filing of a lis pendens by
25 the seizing agency. Real property seized under this section shall not
26 be transferred or otherwise conveyed until ninety days after seizure
27 or until a judgment of forfeiture is entered, whichever is later:
28 PROVIDED, That real property seized under this section may be
29 transferred or conveyed to any person or entity who acquires title by
30 foreclosure or deed in lieu of foreclosure of a security interest.
31 Seizure of personal property without process may be made if:

32 (a) The seizure is incident to an arrest or a search under a
33 search warrant; or

34 (b) The property subject to seizure has been the subject of a
35 prior judgment in favor of the state in a criminal injunction or
36 forfeiture proceeding.

37 (4) In the event of seizure pursuant to this section, proceedings
38 for forfeiture shall be deemed commenced by the seizure. No court may
39 enter a final order of forfeiture of personal or real property until
40 after the court has found the following: (a) The owner of the

1 personal or real property to be forfeited is guilty of committing a
2 felony offense, and (b) the personal or real property to be forfeited
3 was directly (i) involved in, (ii) connected with, (iii) traceable
4 to, or (iv) derived from the commission of the felony offense for
5 which the owner of the property was found guilty. The law enforcement
6 agency under whose authority the seizure was made shall cause notice
7 to be served within fifteen days following the seizure on the owner
8 of the property seized and the person in charge thereof and any
9 person having any known right or interest therein, including any
10 community property interest, of the seizure and intended forfeiture
11 of the seized property. Service of notice of seizure of real property
12 shall be made according to the rules of civil procedure. However, the
13 state may not obtain a default judgment with respect to real property
14 against a party who is served by substituted service absent an
15 affidavit stating that a good faith effort has been made to ascertain
16 if the defaulted party is incarcerated within the state, and that
17 there is no present basis to believe that the party is incarcerated
18 within the state. The notice of seizure of personal property may be
19 served by any method authorized by law or court rule including but
20 not limited to service by certified mail with return receipt
21 requested. Service by mail shall be deemed complete upon mailing
22 within the fifteen-day period following the seizure. Notice of
23 seizure in the case of property subject to a security interest that
24 has been perfected by filing a financing statement in accordance with
25 chapter 62A.9A RCW, or a certificate of title shall be made by
26 service upon the secured party or the secured party's assignee at the
27 address shown on the financing statement or the certificate of title.

28 (5) If no person notifies the seizing law enforcement agency in
29 writing of the person's claim of ownership or right to possession of
30 items specified in subsection (1) of this section within forty-five
31 days of the seizure in the case of personal property and ninety days
32 in the case of real property, the item seized shall be deemed
33 forfeited. The community property interest in real property of a
34 person whose spouse or domestic partner committed a violation giving
35 rise to seizure of the real property may not be forfeited if the
36 person did not participate in the violation.

37 (6) If a person notifies the seizing law enforcement agency in
38 writing of the person's claim of ownership or right to possession of
39 the seized property within forty-five days of the seizure in the case
40 of personal property and ninety days in the case of real property,

1 the law enforcement agency shall give the person or persons a
2 reasonable opportunity to be heard as to the claim or right. The
3 hearing shall be before the chief law enforcement officer of the
4 seizing agency or the chief law enforcement officer's designee,
5 except where the seizing agency is a state agency as defined in RCW
6 34.12.020(4), the hearing shall be before the chief law enforcement
7 officer of the seizing agency or an administrative law judge
8 appointed under chapter 34.12 RCW, except that any person asserting a
9 claim or right may remove the matter to a court of competent
10 jurisdiction. Removal may only be accomplished according to the rules
11 of civil procedure. The person seeking removal of the matter must
12 serve process against the state, county, political subdivision, or
13 municipality that operates the seizing agency, and any other party of
14 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-
15 five days after the person seeking removal has notified the seizing
16 law enforcement agency of the person's claim of ownership or right to
17 possession. The court to which the matter is to be removed shall be
18 the district court when the aggregate value of the property is within
19 the jurisdictional limit set forth in RCW 3.66.020. A hearing before
20 the seizing agency and any appeal therefrom shall be under Title 34
21 RCW. In a court hearing between two or more claimants to the property
22 involved, the prevailing party shall be entitled to a judgment for
23 costs and reasonable attorneys' fees. The burden of producing
24 evidence shall be upon the person claiming to be the lawful owner or
25 the person claiming to have the lawful right to possession of the
26 property.

27 (7) At the hearing, the seizing agency has the burden of proof to
28 establish by a preponderance of the evidence that seized property is
29 subject to forfeiture, and that the use or intended use of the seized
30 property in connection with a crime pursuant to this section occurred
31 with the owner's actual or constructive knowledge or consent. The
32 person claiming to be the lawful owner or the person claiming to have
33 the lawful right to possession of the property has the burden of
34 proof to establish by a preponderance of the evidence that the person
35 owns or has a right to possess the seized property. The possession of
36 bare legal title is not sufficient to establish ownership of seized
37 property if the seizing agency proves by a preponderance of the
38 evidence that the person claiming ownership or right to possession is
39 a nominal owner and did not actually own or exert a controlling
40 interest in the property.

1 The seizing law enforcement agency shall promptly return the
2 property to the claimant upon a determination by the administrative
3 law judge or court that the claimant is the present lawful owner or
4 is lawfully entitled to possession of the property.

5 (8) When property is forfeited under this chapter, after
6 satisfying any court-ordered victim restitution, the seizing law
7 enforcement agency may:

8 (a) Retain it for official use or, upon application by any law
9 enforcement agency of this state, release such property to such
10 agency; or

11 (b) Sell that which is not required to be destroyed by law and
12 which is not harmful to the public.

13 (9)(a) Within one hundred twenty days after the entry of an order
14 of forfeiture, each seizing agency shall remit to, if known, the
15 victim of the crime involving the seized property, an amount equal to
16 fifty percent of the net proceeds of any property forfeited.

17 (b) Retained property and net proceeds not required to be paid to
18 victims shall be retained by the seizing law enforcement agency
19 exclusively for the expansion and improvement of law enforcement
20 activity. Money retained under this section may not be used to
21 supplant preexisting funding sources.

22 (c) The net proceeds of forfeited property is the value of the
23 forfeitable interest in the property after deducting the cost of
24 satisfying any bona fide security interest to which the property is
25 subject at the time of seizure; and in the case of sold property,
26 after deducting the cost of sale, including reasonable fees or
27 commissions paid to independent selling agents, and the cost of any
28 valid landlord's claim for damages.

29 (d) The value of sold forfeited property is the sale price. The
30 value of retained forfeited property is the fair market value of the
31 property at the time of seizure, determined when possible by
32 reference to an applicable commonly used index, such as the index
33 used by the department of licensing for valuation of motor vehicles.
34 A seizing agency may use, but need not use, an independent qualified
35 appraiser to determine the value of retained property. If an
36 appraiser is used, the value of the property appraised is net of the
37 cost of the appraisal. The value of destroyed property and retained
38 firearms or illegal property is zero.

39 (10) Upon the entry of an order of forfeiture of real property,
40 the court shall forward a copy of the order to the assessor of the

1 county in which the property is located. Orders for the forfeiture of
2 real property shall be entered by the superior court, subject to
3 court rules. Such an order shall be filed by the seizing agency in
4 the county auditor's records in the county in which the real property
5 is located.

6 **Sec. 7.** RCW 46.61.5058 and 2013 2nd sp.s. c 35 s 18 are each
7 amended to read as follows:

8 (1) Upon the arrest of a person or upon the filing of a
9 complaint, citation, or information in a court of competent
10 jurisdiction, based upon probable cause to believe that a person has
11 violated RCW 46.20.740, 46.61.502, or 46.61.504 or any similar
12 municipal ordinance, if such person has a prior offense within seven
13 years as defined in RCW 46.61.5055, and where the person has been
14 provided written notice that any transfer, sale, or encumbrance of
15 such person's interest in the vehicle over which that person was
16 actually driving or had physical control when the violation occurred,
17 is unlawful pending either acquittal, dismissal, sixty days after
18 conviction, or other termination of the charge, such person shall be
19 prohibited from encumbering, selling, or transferring his or her
20 interest in such vehicle, except as otherwise provided in (a), (b),
21 and (c) of this subsection, until either acquittal, dismissal, sixty
22 days after conviction, or other termination of the charge. The
23 prohibition against transfer of title shall not be stayed pending the
24 determination of an appeal from the conviction.

25 (a) A vehicle encumbered by a bona fide security interest may be
26 transferred to the secured party or to a person designated by the
27 secured party;

28 (b) A leased or rented vehicle may be transferred to the lessor,
29 rental agency, or to a person designated by the lessor or rental
30 agency; and

31 (c) A vehicle may be transferred to a third party or a vehicle
32 dealer who is a bona fide purchaser or may be subject to a bona fide
33 security interest in the vehicle unless it is established that (i) in
34 the case of a purchase by a third party or vehicle dealer, such party
35 or dealer had actual notice that the vehicle was subject to the
36 prohibition prior to the purchase, or (ii) in the case of a security
37 interest, the holder of the security interest had actual notice that
38 the vehicle was subject to the prohibition prior to the encumbrance
39 of title.

1 (2) On conviction for a violation of either RCW 46.20.740,
2 46.61.502, or 46.61.504 or any similar municipal ordinance where the
3 person convicted has a prior offense within seven years as defined in
4 RCW 46.61.5055, the motor vehicle the person was driving or over
5 which the person had actual physical control at the time of the
6 offense, if the person has a financial interest in the vehicle, the
7 court shall consider at sentencing whether the vehicle shall be
8 seized and forfeited pursuant to this section if a seizure or
9 forfeiture has not yet occurred.

10 (3) A vehicle subject to forfeiture under this chapter may be
11 seized by a law enforcement officer of this state upon process issued
12 by a court of competent jurisdiction. Seizure of a vehicle may be
13 made without process if the vehicle subject to seizure has been the
14 subject of a prior judgment in favor of the state in a forfeiture
15 proceeding based upon this section.

16 (4) Seizure under subsection (3) of this section
17 (~~automatically~~) commences proceedings for forfeiture. No court may
18 enter a final order of forfeiture of personal or real property until
19 after the court has found the following: (a) The owner of the
20 personal or real property to be forfeited is guilty of committing a
21 felony offense, and (b) the personal or real property to be forfeited
22 was directly (i) involved in, (ii) connected with, (iii) traceable
23 to, or (iv) derived from the commission of the felony offense for
24 which the owner of the property was found guilty. The law enforcement
25 agency under whose authority the seizure was made shall cause notice
26 of the seizure and intended forfeiture of the seized vehicle to be
27 served within fifteen days after the seizure on the owner of the
28 vehicle seized, on the person in charge of the vehicle, and on any
29 person having a known right or interest in the vehicle, including a
30 community property interest. The notice of seizure may be served by
31 any method authorized by law or court rule, including but not limited
32 to service by certified mail with return receipt requested. Service
33 by mail is complete upon mailing within the fifteen-day period after
34 the seizure. Notice of seizure in the case of property subject to a
35 security interest that has been perfected on a certificate of title
36 shall be made by service upon the secured party or the secured
37 party's assignee at the address shown on the financing statement or
38 the certificate of title.

39 (5) If no person notifies the seizing law enforcement agency in
40 writing of the person's claim of ownership or right to possession of

1 the seized vehicle within forty-five days of the seizure, the vehicle
2 is deemed forfeited.

3 (6) If a person notifies the seizing law enforcement agency in
4 writing of the person's claim of ownership or right to possession of
5 the seized vehicle within forty-five days of the seizure, the law
6 enforcement agency shall give the person or persons a reasonable
7 opportunity to be heard as to the claim or right. The hearing shall
8 be before the chief law enforcement officer of the seizing agency or
9 the chief law enforcement officer's designee, except where the
10 seizing agency is a state agency as defined in RCW 34.12.020, the
11 hearing shall be before the chief law enforcement officer of the
12 seizing agency or an administrative law judge appointed under chapter
13 34.12 RCW, except that any person asserting a claim or right may
14 remove the matter to a court of competent jurisdiction. Removal may
15 only be accomplished according to the rules of civil procedure. The
16 person seeking removal of the matter must serve process against the
17 state, county, political subdivision, or municipality that operates
18 the seizing agency, and any other party of interest, in accordance
19 with RCW 4.28.080 or 4.92.020, within forty-five days after the
20 person seeking removal has notified the seizing law enforcement
21 agency of the person's claim of ownership or right to possession. The
22 court to which the matter is to be removed shall be the district
23 court when the aggregate value of the vehicle is within the
24 jurisdictional limit set forth in RCW 3.66.020. A hearing before the
25 seizing agency and any appeal therefrom shall be under Title 34 RCW.
26 In a court hearing between two or more claimants to the vehicle
27 involved, the prevailing party shall be entitled to a judgment for
28 costs and reasonable attorneys' fees. The burden of producing
29 evidence shall be upon the person claiming to be the legal owner or
30 the person claiming to have the lawful right to possession of the
31 vehicle. The seizing law enforcement agency shall promptly return the
32 vehicle to the claimant upon a determination by the administrative
33 law judge or court that the claimant is the present legal owner under
34 this title or is lawfully entitled to possession of the vehicle.

35 (7) When a vehicle is forfeited under this chapter the seizing
36 law enforcement agency may sell the vehicle, retain it for official
37 use, or upon application by a law enforcement agency of this state
38 release the vehicle to that agency for the exclusive use of enforcing
39 this title; provided, however, that the agency shall first satisfy

1 any bona fide security interest to which the vehicle is subject under
2 subsection (1)(a) or (c) of this section.

3 (8) When a vehicle is forfeited, the seizing agency shall keep a
4 record indicating the identity of the prior owner, if known, a
5 description of the vehicle, the disposition of the vehicle, the value
6 of the vehicle at the time of seizure, and the amount of proceeds
7 realized from disposition of the vehicle.

8 (9) Each seizing agency shall retain records of forfeited
9 vehicles for at least seven years.

10 (10) Each seizing agency shall file a report including a copy of
11 the records of forfeited vehicles with the state treasurer each
12 calendar quarter.

13 (11) The quarterly report need not include a record of a
14 forfeited vehicle that is still being held for use as evidence during
15 the investigation or prosecution of a case or during the appeal from
16 a conviction.

17 (12) By January 31st of each year, each seizing agency shall
18 remit to the state treasurer an amount equal to ten percent of the
19 net proceeds of vehicles forfeited during the preceding calendar
20 year. Money remitted shall be deposited in the state general fund.

21 (13) The net proceeds of a forfeited vehicle is the value of the
22 forfeitable interest in the vehicle after deducting the cost of
23 satisfying a bona fide security interest to which the vehicle is
24 subject at the time of seizure; and in the case of a sold vehicle,
25 after deducting the cost of sale, including reasonable fees or
26 commissions paid to independent selling agents.

27 (14) The value of a sold forfeited vehicle is the sale price. The
28 value of a retained forfeited vehicle is the fair market value of the
29 vehicle at the time of seizure, determined when possible by reference
30 to an applicable commonly used index, such as the index used by the
31 department of licensing. A seizing agency may, but need not, use an
32 independent qualified appraiser to determine the value of retained
33 vehicles. If an appraiser is used, the value of the vehicle appraised
34 is net of the cost of the appraisal.

35 **Sec. 8.** RCW 69.50.505 and 2013 c 3 s 25 are each amended to read
36 as follows:

37 (1) The following are subject to seizure and forfeiture and no
38 property right exists in them:

1 (a) 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,
4 as defined in RCW 64.44.010, used or intended to be used in the
5 manufacture of controlled substances;

6 (b) 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 (c) All property which is used, or intended for use, as a
11 container for property described in (a) or (b) of this subsection;

12 (d) 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 (a) or (b) of
15 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
19 in charge of the conveyance is a consenting party or privy to a
20 violation 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
23 have been committed or omitted without the owner's knowledge or
24 consent;

25 (iii) No conveyance is subject to forfeiture under this section
26 if used in the receipt of only an amount of marijuana for which
27 possession constitutes a misdemeanor under RCW 69.50.4014;

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

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

37 (e) All books, records, and research products and materials,
38 including formulas, microfilm, tapes, and data which are used, or
39 intended for use, in violation of this chapter or chapter 69.41 or
40 69.52 RCW;

1 (f) All drug paraphernalia(~~21~~) other than paraphernalia
2 possessed, sold, or used solely to facilitate marijuana-related
3 activities that are not violations of this chapter;

4 (g) All moneys, negotiable instruments, securities, or other
5 tangible or intangible property of value furnished or intended to be
6 furnished by any person in exchange for a controlled substance in
7 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible
8 or intangible personal property, proceeds, or assets acquired in
9 whole or in part with proceeds directly traceable to an exchange or
10 series of exchanges in violation of this chapter or chapter 69.41 or
11 69.52 RCW, and all moneys, negotiable instruments, and securities
12 used or intended to be used to facilitate any violation of this
13 chapter or chapter 69.41 or 69.52 RCW. A forfeiture of money,
14 negotiable instruments, securities, or other tangible or intangible
15 property encumbered by a bona fide security interest is subject to
16 the interest of the secured party if, at the time the security
17 interest was created, the secured party neither had knowledge of nor
18 consented to the act or omission. No personal property may be
19 forfeited under this subsection (1)(g), to the extent of the interest
20 of an owner, by reason of any act or omission which that owner
21 establishes was committed or omitted without the owner's knowledge or
22 consent; and

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

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

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

1 (iii) The possession of marijuana shall not result in the
2 forfeiture of real property unless the marijuana is possessed for
3 commercial purposes that are unlawful under Washington state law, the
4 amount possessed is five or more plants or one pound or more of
5 marijuana, and a substantial nexus exists between the possession of
6 marijuana and the real property. In such a case, the intent of the
7 offender shall be determined by the preponderance of the evidence,
8 including the offender's prior criminal history, the amount of
9 marijuana possessed by the offender, the sophistication of the
10 activity or equipment used by the offender, whether the offender was
11 licensed to produce, process, or sell marijuana, or was an employee
12 of a licensed producer, processor, or retailer, and other evidence
13 which demonstrates the offender's intent to engage in unlawful
14 commercial activity;

15 (iv) The unlawful sale of marijuana or a legend drug shall not
16 result in the forfeiture of real property unless the sale was forty
17 grams or more in the case of marijuana or one hundred dollars or more
18 in the case of a legend drug, and a substantial nexus exists between
19 the unlawful sale and the real property; and

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

24 (2) Real or personal property subject to forfeiture under this
25 chapter may be seized by any ((board)) commission inspector or law
26 enforcement officer of this state upon process issued by any superior
27 court having jurisdiction over the property. Seizure of real property
28 shall include the filing of a lis pendens by the seizing agency. Real
29 property seized under this section shall not be transferred or
30 otherwise conveyed until ninety days after seizure or until a
31 judgment of forfeiture is entered, whichever is later: PROVIDED, That
32 real property seized under this section may be transferred or
33 conveyed to any person or entity who acquires title by foreclosure or
34 deed in lieu of foreclosure of a security interest. Seizure of
35 personal property without process may be made if:

36 (a) The seizure is incident to an arrest or a search under a
37 search warrant or an inspection under an administrative inspection
38 warrant;

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

4 (c) A (~~board~~) commission inspector or law enforcement officer
5 has probable cause to believe that the property is directly or
6 indirectly dangerous to health or safety; or

7 (d) The (~~board~~) commission inspector or law enforcement officer
8 has probable cause to believe that the property was used or is
9 intended to be used in violation of this chapter.

10 (3) In the event of seizure pursuant to subsection (2) of this
11 section, proceedings for forfeiture shall be deemed commenced by the
12 seizure. No court may enter a final order of forfeiture of personal
13 or real property until after the court has found the following: (a)
14 The owner of the personal or real property to be forfeited is guilty
15 of committing a felony offense, and (b) the personal or real property
16 to be forfeited was directly (i) involved in, (ii) connected with,
17 (iii) traceable to, or (iv) derived from the commission of the felony
18 offense for which the owner of the property was found guilty. The law
19 enforcement agency under whose authority the seizure was made shall
20 cause notice to be served within fifteen days following the seizure
21 on the owner of the property seized and the person in charge thereof
22 and any person having any known right or interest therein, including
23 any community property interest, of the seizure and intended
24 forfeiture of the seized property. Service of notice of seizure of
25 real property shall be made according to the rules of civil
26 procedure. However, the state may not obtain a default judgment with
27 respect to real property against a party who is served by substituted
28 service absent an affidavit stating that a good faith effort has been
29 made to ascertain if the defaulted party is incarcerated within the
30 state, and that there is no present basis to believe that the party
31 is incarcerated within the state. Notice of seizure in the case of
32 property subject to a security interest that has been perfected by
33 filing a financing statement in accordance with chapter 62A.9A RCW,
34 or a certificate of title, shall be made by service upon the secured
35 party or the secured party's assignee at the address shown on the
36 financing statement or the certificate of title. The notice of
37 seizure in other cases may be served by any method authorized by law
38 or court rule including but not limited to service by certified mail
39 with return receipt requested. Service by mail shall be deemed

1 complete upon mailing within the fifteen day period following the
2 seizure.

3 (4) If no person notifies the seizing law enforcement agency in
4 writing of the person's claim of ownership or right to possession of
5 items specified in subsection (1)(d), (g), or (h) of this section
6 within forty-five days of the service of notice from the seizing
7 agency in the case of personal property and ninety days in the case
8 of real property, the item seized shall be deemed forfeited. The
9 community property interest in real property of a person whose spouse
10 or domestic partner committed a violation giving rise to seizure of
11 the real property may not be forfeited if the person did not
12 participate in the violation.

13 (5) If any 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 (1)(b), (c), (d), (e), (f), (g), or (h)
16 of this section within forty-five days of the service of notice from
17 the seizing agency in the case of personal property and ninety days
18 in the case of real property, the person or persons shall be afforded
19 a reasonable opportunity to be heard as to the claim or right. The
20 notice of claim may be served by any method authorized by law or
21 court rule including, but not limited to, service by first-class
22 mail. Service by mail shall be deemed complete upon mailing within
23 the forty-five day period following service of the notice of seizure
24 in the case of personal property and within the ninety-day period
25 following service of the notice of seizure in the case of real
26 property. The hearing shall be before the chief law enforcement
27 officer of the seizing agency or the chief law enforcement officer's
28 designee, except where the seizing agency is a state agency as
29 defined in RCW 34.12.020(4), the hearing shall be before the chief
30 law enforcement officer of the seizing agency or an administrative
31 law judge appointed under chapter 34.12 RCW, except that any person
32 asserting a claim or right may remove the matter to a court of
33 competent jurisdiction. Removal of any matter involving personal
34 property may only be accomplished according to the rules of civil
35 procedure. The person seeking removal of the matter must serve
36 process against the state, county, political subdivision, or
37 municipality that operates the seizing agency, and any other party of
38 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-
39 five days after the person seeking removal has notified the seizing
40 law enforcement agency of the person's claim of ownership or right to

1 possession. The court to which the matter is to be removed shall be
2 the district court when the aggregate value of personal property is
3 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
4 before the seizing agency and any appeal therefrom shall be under
5 Title 34 RCW. In all cases, the burden of proof is upon the law
6 enforcement agency to establish, by a preponderance of the evidence,
7 that the property is subject to forfeiture.

8 The seizing law enforcement agency shall promptly return the
9 article or articles to the claimant upon a determination by the
10 administrative law judge or court that the claimant is the present
11 lawful owner or is lawfully entitled to possession thereof of items
12 specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of
13 this section.

14 (6) In any proceeding to forfeit property under this title, where
15 the claimant substantially prevails, the claimant is entitled to
16 reasonable attorneys' fees reasonably incurred by the claimant. In
17 addition, in a court hearing between two or more claimants to the
18 article or articles involved, the prevailing party is entitled to a
19 judgment for costs and reasonable attorneys' fees.

20 (7) When property is forfeited under this chapter the (~~board~~)
21 commission or seizing law enforcement agency may:

22 (a) Retain it for official use or upon application by any law
23 enforcement agency of this state release such property to such agency
24 for the exclusive use of enforcing the provisions of this chapter;

25 (b) Sell that which is not required to be destroyed by law and
26 which is not harmful to the public;

27 (c) Request the appropriate sheriff or director of public safety
28 to take custody of the property and remove it for disposition in
29 accordance with law; or

30 (d) Forward it to the drug enforcement administration for
31 disposition.

32 (8)(a) When property is forfeited, the seizing agency shall keep
33 a record indicating the identity of the prior owner, if known, a
34 description of the property, the disposition of the property, the
35 value of the property at the time of seizure, and the amount of
36 proceeds realized from disposition of the property.

37 (b) Each seizing agency shall retain records of forfeited
38 property for at least seven years.

1 (c) Each seizing agency shall file a report including a copy of
2 the records of forfeited property with the state treasurer each
3 calendar quarter.

4 (d) The quarterly report need not include a record of forfeited
5 property that is still being held for use as evidence during the
6 investigation or prosecution of a case or during the appeal from a
7 conviction.

8 (9)(a) By January 31st of each year, each seizing agency shall
9 remit to the state treasurer an amount equal to ten percent of the
10 net proceeds of any property forfeited during the preceding calendar
11 year. Money remitted shall be deposited in the state general fund.

12 (b) The net proceeds of forfeited property is the value of the
13 forfeitable interest in the property after deducting the cost of
14 satisfying any bona fide security interest to which the property is
15 subject at the time of seizure; and in the case of sold property,
16 after deducting the cost of sale, including reasonable fees or
17 commissions paid to independent selling agents, and the cost of any
18 valid landlord's claim for damages under subsection (15) of this
19 section.

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

30 (10) Forfeited property and net proceeds not required to be paid
31 to the state treasurer shall be retained by the seizing law
32 enforcement agency exclusively for the expansion and improvement of
33 controlled substances related law enforcement activity. Money
34 retained under this section may not be used to supplant preexisting
35 funding sources.

36 (11) Controlled substances listed in Schedule I, II, III, IV, and
37 V that are possessed, transferred, sold, or offered for sale in
38 violation of this chapter are contraband and shall be seized and
39 summarily forfeited to the state. Controlled substances listed in
40 Schedule I, II, III, IV, and V, which are seized or come into the

1 possession of the ((~~board~~)) commission, the owners of which are
2 unknown, are contraband and shall be summarily forfeited to the
3 ((~~board~~)) commission.

4 (12) Species of plants from which controlled substances in
5 Schedules I and II may be derived which have been planted or
6 cultivated in violation of this chapter, or of which the owners or
7 cultivators are unknown, or which are wild growths, may be seized and
8 summarily forfeited to the ((~~board~~)) commission.

9 (13) The failure, upon demand by a ((~~board~~)) commission inspector
10 or law enforcement officer, of the person in occupancy or in control
11 of land or premises upon which the species of plants are growing or
12 being stored to produce an appropriate registration or proof that he
13 or she is the holder thereof constitutes authority for the seizure
14 and forfeiture of the plants.

15 (14) Upon the entry of an order of forfeiture of real property,
16 the court shall forward a copy of the order to the assessor of the
17 county in which the property is located. Orders for the forfeiture of
18 real property shall be entered by the superior court, subject to
19 court rules. Such an order shall be filed by the seizing agency in
20 the county auditor's records in the county in which the real property
21 is located.

22 (15)(a) A landlord may assert a claim against proceeds from the
23 sale of assets seized and forfeited under subsection (7)(b) of this
24 section, only if:

25 (i) A law enforcement officer, while acting in his or her
26 official capacity, directly caused damage to the complaining
27 landlord's property while executing a search of a tenant's residence;
28 and

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

33 (A) Only if the funds applied under (a)(ii) of this subsection
34 are insufficient to satisfy the damage directly caused by a law
35 enforcement officer, may the landlord seek compensation for the
36 damage by filing a claim against the governmental entity under whose
37 authority the law enforcement agency operates within thirty days
38 after the search;

39 (B) Only if the governmental entity denies or fails to respond to
40 the landlord's claim within sixty days of the date of filing, may the

1 landlord collect damages under this subsection by filing within
2 thirty days of denial or the expiration of the sixty-day period,
3 whichever occurs first, a claim with the seizing law enforcement
4 agency. The seizing law enforcement agency must notify the landlord
5 of the status of the claim by the end of the thirty-day period.
6 Nothing in this section requires the claim to be paid by the end of
7 the sixty-day or thirty-day period.

8 (b) For any claim filed under (a)(ii) of this subsection, the law
9 enforcement agency shall pay the claim unless the agency provides
10 substantial proof that the landlord either:

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

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

16 (16) The landlord's claim for damages under subsection (15) of
17 this section may not include a claim for loss of business and is
18 limited to:

19 (a) Damage to tangible property and clean-up costs;

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

22 (c) The proceeds from the sale of the specific tenant's property
23 seized and forfeited under subsection (7)(b) of this section; and

24 (d) The proceeds available after the seizing law enforcement
25 agency satisfies any bona fide security interest in the tenant's
26 property and costs related to sale of the tenant's property as
27 provided by subsection (9)(b) of this section.

28 (17) Subsections (15) and (16) of this section do not limit any
29 other rights a landlord may have against a tenant to collect for
30 damages. However, if a law enforcement agency satisfies a landlord's
31 claim under subsection (15) of this section, the rights the landlord
32 has against the tenant for damages directly caused by a law
33 enforcement officer under the terms of the landlord and tenant's
34 contract are subrogated to the law enforcement agency.

35 **Sec. 9.** RCW 70.74.400 and 2002 c 370 s 3 are each amended to
36 read as follows:

37 (1) Explosives, improvised devices, and components of explosives
38 and improvised devices that are possessed, manufactured, delivered,
39 imported, exported, stored, sold, purchased, transported, abandoned,

1 detonated, or used, or intended to be used, in violation of a
2 provision of this chapter are subject to seizure and forfeiture by a
3 law enforcement agency and no property right exists in them.

4 (2) The law enforcement agency making the seizure shall notify
5 the Washington state department of labor and industries of the
6 seizure.

7 (3) Seizure of explosives, improvised devices, and components of
8 explosives and improvised devices under subsection (1) of this
9 section may be made if:

10 (a) The seizure is incident to arrest or a search under a search
11 warrant;

12 (b) The explosives, improvised devices, or components have been
13 the subject of a prior judgment in favor of the state in an
14 injunction or forfeiture proceeding based upon this chapter;

15 (c) A law enforcement officer has probable cause to believe that
16 the explosives, improvised devices, or components are directly or
17 indirectly dangerous to health or safety; or

18 (d) The law enforcement officer has probable cause to believe
19 that the explosives, improvised devices, or components were used or
20 were intended to be used in violation of this chapter.

21 (4) A law enforcement agency shall destroy explosives seized
22 under this chapter when it is necessary to protect the public safety
23 and welfare. When destruction is not necessary to protect the public
24 safety and welfare, and the explosives are not being held for
25 evidence, a seizure pursuant to this section commences proceedings
26 for forfeiture. No court may enter a final order of forfeiture of
27 personal or real property until after the court has found the
28 following: (a) The owner of the personal or real property to be
29 forfeited is guilty of committing a felony offense, and (b) the
30 personal or real property to be forfeited was directly (i) involved
31 in, (ii) connected with, (iii) traceable to, or (iv) derived from the
32 commission of the felony offense for which the owner of the property
33 was found guilty.

34 (5) The law enforcement agency under whose authority the seizure
35 was made shall issue a written notice of the seizure and commencement
36 of the forfeiture proceedings to the person from whom the explosives
37 were seized, to any known owner of the explosives, and to any person
38 who has a known interest in the explosives. The notice shall be
39 issued within fifteen days of the seizure. The notice of seizure and
40 commencement of the forfeiture proceedings shall be served in the

1 same manner as provided in RCW 4.28.080 for service of a summons. The
2 law enforcement agency shall provide a form by which the person or
3 persons may request a hearing before the law enforcement agency to
4 contest the seizure.

5 (6) If no person notifies the seizing law enforcement agency in
6 writing of the person's claim of ownership or right to possession of
7 the explosives, improvised devices, or components within thirty days
8 of the date the notice was issued, the seized explosives, devices, or
9 components shall be deemed forfeited.

10 (7) If, within thirty days of the issuance of the notice, any
11 person notifies the seizing law enforcement agency in writing of the
12 person's claim of ownership or right to possession of items seized,
13 the person or persons shall be afforded a reasonable opportunity to
14 be heard as to the claim or right. The hearing shall be before the
15 chief law enforcement or the officer's designee of the seizing
16 agency, except that the person asserting the claim or right may
17 remove the matter to a court of competent jurisdiction if the
18 aggregate value of the items seized is more than five hundred
19 dollars. The hearing and any appeal shall be conducted according to
20 chapter 34.05 RCW. The seizing law enforcement agency shall bear the
21 burden of proving that the person (a) has no lawful right of
22 ownership or possession and (b) that the items seized were possessed,
23 manufactured, stored, sold, purchased, transported, abandoned,
24 detonated, or used in violation of a provision of this chapter with
25 the person's knowledge or consent.

26 (8) The seizing law enforcement agency shall promptly return the
27 items seized to the claimant upon a determination that the claimant
28 is entitled to possession of the items seized.

29 (9) If the items seized are forfeited under this statute, the
30 seizing agency shall dispose of the explosives by summary
31 destruction. However, when explosives are destroyed either to protect
32 public safety or because the explosives were forfeited, the person
33 from whom the explosives were seized loses all rights of action
34 against the law enforcement agency or its employees acting within the
35 scope of their employment, or other governmental entity or employee
36 involved with the seizure and destruction of explosives.

37 (10) This section is not intended to change the seizure and
38 forfeiture powers, enforcement, and penalties available to the
39 department of labor and industries pursuant to chapter 49.17 RCW as
40 provided in RCW 70.74.390.

1 **Sec. 10.** RCW 82.24.130 and 2012 2nd sp.s. c 4 s 8 are each
2 amended to read as follows:

3 (1) The following are subject to seizure and forfeiture:

4 (a) Subject to RCW 82.24.250, any articles taxed in this chapter
5 that are found at any point within this state, which articles are
6 held, owned, or possessed by any person, and that do not have the
7 stamps affixed to the packages or containers; any container or
8 package of cigarettes possessed or held for sale that does not comply
9 with this chapter; and any container or package of cigarettes that is
10 manufactured, sold, or possessed in violation of RCW 82.24.570.

11 (b) All conveyances, including aircraft, vehicles, or vessels,
12 which are used, or intended for use, to transport, or in any manner
13 to facilitate the transportation, for the purpose of sale or receipt
14 of property described in (a) of this subsection, except:

15 (i) A conveyance used by any person as a common or contract
16 carrier having in actual possession invoices or delivery tickets
17 showing the true name and address of the consignor or seller, the
18 true name of the consignee or purchaser, and the quantity and brands
19 of the cigarettes transported, unless it appears that the owner or
20 other person in charge of the conveyance is a consenting party or
21 privy to a violation of this chapter;

22 (ii) A conveyance subject to forfeiture under this section by
23 reason of any act or omission of which the owner thereof establishes
24 to have been committed or omitted without his or her knowledge or
25 consent;

26 (iii) A conveyance encumbered by a bona fide security interest if
27 the secured party neither had knowledge of nor consented to the act
28 or omission.

29 (c) Any vending machine or commercial cigarette-making machine
30 used for the purpose of violating the provisions of this chapter.

31 (d) Any cigarettes that are stamped, sold, imported, or offered
32 or possessed for sale in this state in violation of RCW
33 70.158.030(3). For the purposes of this subsection (1)(d),
34 "cigarettes" has the meaning as provided in RCW 70.158.020(3).

35 (2)(a) Property subject to forfeiture under this chapter may be
36 seized by any agent of the department authorized to collect taxes,
37 any enforcement officer of the board, or law enforcement officer of
38 this state upon process issued by any superior court or district
39 court having jurisdiction over the property. No court may enter a
40 final order of forfeiture of personal or real property until after

1 the court has found the following: (i) The owner of the personal or
2 real property to be forfeited is guilty of committing a felony
3 offense, and (ii) the personal or real property to be forfeited was
4 directly (A) involved in, (B) connected with, (C) traceable to, or
5 (D) derived from the commission of the felony offense for which the
6 owner of the property was found guilty.

7 (b) Seizure without process may be made if:

8 ~~((a))~~ (i) The seizure is incident to an arrest or a search
9 under a search warrant or an inspection under an administrative
10 inspection warrant; or

11 ~~((b))~~ (ii) The department, the board, or the law enforcement
12 officer has probable cause to believe that the property was used or
13 is intended to be used in violation of this chapter and exigent
14 circumstances exist making procurement of a search warrant
15 impracticable.

16 (3) Notwithstanding the foregoing provisions of this section,
17 articles taxed in this chapter which are in the possession of a
18 wholesaler, licensed under Washington state law, for a period of time
19 necessary to affix the stamps after receipt of the articles, are not
20 considered contraband unless they are manufactured, sold, or
21 possessed in violation of RCW 82.24.570.

22 **Sec. 11.** RCW 82.26.230 and 2005 c 180 s 20 are each amended to
23 read as follows:

24 (1) Any tobacco products in the possession of a person selling
25 tobacco products in this state acting as a distributor or retailer
26 and who is not licensed as required under RCW 82.26.190, or a person
27 who is selling tobacco products in violation of RCW 82.26.220(6), may
28 be seized without a warrant by any agent of the department, agent of
29 the board, or law enforcement officer of this state. Any tobacco
30 products seized under this subsection shall be deemed forfeited.

31 (2) Any tobacco products in the possession of a person who is not
32 a licensed distributor or retailer and who transports tobacco
33 products for sale without having provided notice to the board
34 required under RCW 82.26.140, or without invoices or delivery tickets
35 showing the true name and address of the consignor or seller, the
36 true name and address of the consignee or purchaser, and the quantity
37 and brands of tobacco products being transported may be seized and
38 are subject to forfeiture.

1 (3) All conveyances, including aircraft, vehicles, or vessels
2 that are used, or intended for use to transport, or in any manner to
3 facilitate the transportation, for the purpose of sale or receipt of
4 tobacco products under subsection (2) of this section, may be seized
5 and are subject to forfeiture except:

6 (a) A conveyance used by any person as a common or contract
7 carrier having in actual possession invoices or delivery tickets
8 showing the true name and address of the consignor or seller, the
9 true name of the consignee or purchaser, and the quantity and brands
10 of the tobacco products transported, unless it appears that the owner
11 or other person in charge of the conveyance is a consenting party or
12 privy to a violation of this chapter;

13 (b) A conveyance subject to forfeiture under this section by
14 reason of any act or omission of which the owner establishes to have
15 been committed or omitted without his or her knowledge or consent; or

16 (c) A conveyance encumbered by a bona fide security interest if
17 the secured party neither had knowledge of nor consented to the act
18 or omission.

19 (4)(a) Property subject to forfeiture under subsections (2) and
20 (3) of this section may be seized by any agent of the department, the
21 board, or law enforcement officer of this state upon process issued
22 by any superior court or district court having jurisdiction over the
23 property. No court may enter a final order of forfeiture of personal
24 or real property until after the court has found the following: (i)
25 The owner of the personal or real property to be forfeited is guilty
26 of committing a felony offense, and (ii) the personal or real
27 property to be forfeited was directly (A) involved in, (B) connected
28 with, (C) traceable to, or (D) derived from the commission of the
29 felony offense for which the owner of the property was found guilty.

30 (b) Seizure without process may be made if:

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

34 ((+b)) (ii) The department, board, or law enforcement officer
35 has probable cause to believe that the property was used or is
36 intended to be used in violation of this chapter and exigent
37 circumstances exist making procurement of a search warrant
38 impracticable.

39 (5) This section shall not be construed to require the seizure of
40 tobacco products if the department's agent, board's agent, or law

1 enforcement officer reasonably believes that the tobacco products are
2 possessed for personal consumption by the person in possession of the
3 tobacco products.

4 (6) Any tobacco products seized by a law enforcement officer
5 shall be turned over to the board as soon as practicable.

6 **Sec. 12.** RCW 82.26.240 and 2005 c 180 s 21 are each amended to
7 read as follows:

8 (1) In all cases of seizure of any tobacco products made subject
9 to forfeiture under this chapter, the department or board shall
10 proceed as provided in RCW 82.24.135. No court may enter a final
11 order of forfeiture of personal or real property until after the
12 court has found the following: (a) The owner of the personal or real
13 property to be forfeited is guilty of committing a felony offense,
14 and (b) the personal or real property to be forfeited was directly
15 (i) involved in, (ii) connected with, (iii) traceable to, or (iv)
16 derived from the commission of the felony offense for which the owner
17 of the property was found guilty.

18 (2) When tobacco products are forfeited under this chapter, the
19 department or board may:

20 (a) Retain the property for official use or upon application by
21 any law enforcement agency of this state, another state, or the
22 District of Columbia, or of the United States for the exclusive use
23 of enforcing this chapter or the laws of any other state or the
24 District of Columbia or of the United States; or

25 (b) Sell the tobacco products at public auction to the highest
26 bidder after due advertisement. Before delivering any of the goods to
27 the successful bidder, the department or board shall require the
28 purchaser to pay the proper amount of any tax due. The proceeds of
29 the sale shall be first applied to the payment of all proper expenses
30 of any investigation leading to the seizure and of the proceedings
31 for forfeiture and sale, including expenses of seizure, maintenance
32 of custody, advertising, and court costs. The balance of the proceeds
33 and all money shall be deposited in the general fund of the state.
34 Proper expenses of investigation include costs incurred by any law
35 enforcement agency or any federal, state, or local agency.

36 (3) The department or the board may return any property seized
37 under the provisions of this chapter when it is shown that there was
38 no intention to violate the provisions of this chapter. When any
39 property is returned under this section, the department or the board

1 may return the property to the parties from whom they were seized if
2 and when such parties have paid the proper amount of tax due under
3 this chapter.

4 **Sec. 13.** RCW 82.32.670 and 2013 c 309 s 3 are each amended to
5 read as follows:

6 (1)(a) Automated sales suppression devices, phantom-ware,
7 electronic cash registers or point of sale systems used with
8 automated sales suppression devices or phantom-ware, and any property
9 constituting proceeds directly traceable to any violation of RCW
10 82.32.290(4) are considered contraband and are subject to seizure and
11 forfeiture.

12 (b) Property subject to forfeiture under (a) of this subsection
13 (1) may be seized by any agent of the department authorized to assess
14 or collect taxes, or law enforcement officer of this state, upon
15 process issued by any superior court or district court having
16 jurisdiction over the property. No court may enter a final order of
17 forfeiture of personal or real property until after the court has
18 found the following: (i) The owner of the personal or real property
19 to be forfeited is guilty of committing a felony offense, and (ii)
20 the personal or real property to be forfeited was directly (A)
21 involved in, (B) connected with, (C) traceable to, or (D) derived
22 from the commission of the felony offense for which the owner of the
23 property was found guilty. Seizure without process may be made if:

24 ((+i)) (I) The seizure is incident to an arrest or a search
25 under a search warrant; or

26 ((+ii)) (II) The department or the law enforcement officer has
27 probable cause to believe that the property was used or is intended
28 to be used in violation of RCW 82.32.290(4) and exigent circumstances
29 exist making procurement of a search warrant impracticable.

30 (2) Forfeiture authorized by this section is deemed to have
31 commenced by the seizure. Notice of seizure must be given to the
32 department if the seizure is made by a law enforcement officer
33 without the presence of any agent of the department. The department
34 must cause notice of the seizure and intended forfeiture to be served
35 on the owner of the property seized, if known, and on any other
36 person known by the department to have a right or interest in the
37 seized property. Such service must be made within fifteen days
38 following the seizure or the department's receipt of notification of
39 the seizure. The notice may be served by any method authorized by law

1 or court rule, by certified mail with return receipt requested, or
2 electronically in accordance with RCW 82.32.135. Service by certified
3 mail or electronic means is deemed complete upon mailing the notice,
4 electronically sending the notice, or electronically notifying the
5 person or persons entitled to the notice that the notice is available
6 to be accessed by the person or persons, within the fifteen-day
7 period following the seizure or the department's receipt of
8 notification of the seizure.

9 (3) If no person notifies the department in writing of the
10 person's claim of lawful ownership or right to lawful possession of
11 the item or items seized within thirty days of the date of service of
12 the notice of seizure and intended forfeiture, the item or items
13 seized are deemed forfeited.

14 (4)(a) If any person notifies the department, in writing, of the
15 person's claim of lawful ownership or lawful right to possession of
16 the item or items seized within thirty days of the date of service of
17 the notice of seizure and intended forfeiture, the person or persons
18 must be afforded a reasonable opportunity to be heard as to the
19 claim. The hearing must be before the director or the director's
20 designee. A hearing and any administrative or judicial review is
21 governed by chapter 34.05 RCW. The burden of proof by a preponderance
22 of the evidence is upon the person claiming to be the lawful owner or
23 the person claiming to have the lawful right to possession of the
24 item or items seized.

25 (b) The department must return the item or items to the claimant
26 as soon as possible upon a determination that the claimant is the
27 present lawful owner or is lawfully entitled to possession of the
28 item or items seized.

29 (5) When property is sought to be forfeited on the ground that it
30 constitutes proceeds directly traceable to a violation of RCW
31 82.32.290(4), the department must prove by a preponderance of the
32 evidence that the property constitutes proceeds directly traceable to
33 a violation of RCW 82.32.290(4).

34 (6)(a) When property forfeited under this section, other than
35 proceeds directly traceable to a violation of RCW 82.32.290(4), is no
36 longer required for evidentiary purposes, the department may:

37 (i) Destroy or have the property destroyed;

38 (ii) Retain the property for training or other official purposes;

39 or

1 (iii) Loan or give the property to any law enforcement or tax
2 administration agency of any state, political subdivision or
3 municipal corporation of a state, or the United States for training
4 or other official purposes. For purposes of this subsection
5 (6)(a)(iii), "state" has the same meaning as in RCW 82.04.462.

6 (b) When proceeds directly traceable to a violation of RCW
7 82.32.290(4) forfeited under this section are no longer required for
8 evidentiary purposes, they must be deposited into the general fund.

9 (7) The definitions in this subsection apply to this section:

10 (a) "Automated sales suppression device" means a software program
11 that falsifies the electronic records of electronic cash registers or
12 other point of sale systems, including transaction data and
13 transaction reports. The term includes the software program, any
14 device that carries the software program, or an internet link to the
15 software program.

16 (b) "Electronic cash register" means a device that keeps a
17 register or supporting documents through the means of an electronic
18 device or computer system designed to record transaction data for the
19 purpose of computing, compiling, or processing sales transaction data
20 in whatever manner.

21 (c) "Phantom-ware" means a programming option that is hidden,
22 preinstalled, or installed-at-a-later-time in the operating system of
23 an electronic cash register or other point of sale device, or
24 hardwired into the electronic cash register or other point of sale
25 device, and that can be used to create a virtual second till or may
26 eliminate or manipulate transaction reports that may or may not be
27 preserved in digital formats to represent the true or manipulated
28 record of transactions in the electronic cash register or other point
29 of sale device.

30 (d) "Transaction data" means information about sales
31 transactions, including items purchased by a customer, the price for
32 each item, a taxability determination for each item, a segregated tax
33 amount for each of the taxed items, the amount of cash or credit
34 tendered, the net amount returned to the customer in change, the date
35 and time of the purchase, the name, address, and identification
36 number of the vendor, and the receipt or invoice number of the
37 transaction.

38 (e) "Transaction reports" means a report that includes
39 information associated with sales transactions, taxes collected,
40 media totals, and discount voids at an electronic cash register that

1 can be printed on cash register tape at the end of a day or shift, or
2 a report documenting every action at an electronic cash register or
3 other point of sale device and that is stored electronically.

4 **Sec. 14.** RCW 82.38.360 and 2013 c 225 s 132 are each amended to
5 read as follows:

6 (1) The following are subject to seizure and forfeiture:

7 (a) Fuel imported into this state by a person not licensed in
8 this state in accordance with this chapter to import fuel;

9 (b) Fuel blended or manufactured by a person not licensed in this
10 state in accordance with this chapter to blend or manufacture fuel;

11 (c) All conveyances used, or intended for use, to transport, or
12 in any manner to facilitate the transportation, for the purpose of
13 sale or receipt of property described in (a) and (b) of this
14 subsection, except where the owner of the conveyance neither had
15 knowledge of nor consented to the transportation of the fuel by an
16 unlicensed importer, blender, or manufacturer of fuel.

17 (2) Before seizing a common carrier conveyance, contract carrier
18 conveyance, or a conveyance secured by a bona fide security interest
19 where the secured party neither had knowledge of or consented to the
20 unlawful act or omission, the state patrol or the department of
21 licensing must give the common carrier, contract carrier, or secured
22 party, or their representatives within twenty-four hours, a notice in
23 writing served by mail or other means to cease transporting fuel for
24 any person not licensed to import, blend, or manufacture fuel in this
25 state.

26 (3)(a) Property subject to forfeiture under this chapter may be
27 seized by the state patrol upon process issued by a superior court or
28 district court having jurisdiction over the property. No court may
29 enter a final order of forfeiture of personal or real property until
30 after the court has found the following: (i) The owner of the
31 personal or real property to be forfeited is guilty of committing a
32 felony offense, and (ii) the personal or real property to be
33 forfeited was directly (A) involved in, (B) connected with, (C)
34 traceable to, or (D) derived from the commission of the felony
35 offense for which the owner of the property was found guilty.

36 (b) Seizure without process may be made if:

37 ((a)) (i) The seizure is incident to an arrest or a search
38 under a search warrant or an administrative inspection; or

1 (~~(b)~~) (ii) The state patrol has probable cause to believe the
2 property was used or is intended to be used in violation of this
3 chapter and exigent circumstances exist making procurement of a
4 search warrant impracticable.

--- END ---