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**SUBSTITUTE SENATE BILL 6434**

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**State of Washington**

**63rd Legislature**

**2014 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators O'Ban, Kohl-Welles, Fain, Kline, Bailey, Angel, Becker, Dammeier, and Chase)

READ FIRST TIME 02/07/14.

1       AN ACT Relating to seizure and forfeiture of property for  
2 patronizing a prostitute; amending RCW 9A.88.150; and creating a new  
3 section.

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

5       NEW SECTION. **Sec. 1.** The legislature finds that human trafficking  
6 is modern day slavery, which often takes the form of forced  
7 prostitution. The potential to make significant financial gains is  
8 what motivates sex traffickers to use force, coercion, and physical  
9 violence to require victims to engage in sex acts for profit. The  
10 legislature finds that both children and adults are forced daily to  
11 sell themselves for the profit of others. It is the intent of the  
12 legislature that the buyers of sex are held responsible for their  
13 participation in this form of modern day slavery. Local governments  
14 and law enforcement agencies must have the effective tools necessary to  
15 focus on the buyers of sex in order to deter the demand for  
16 prostitution. Providing law enforcement with the ability to seize and  
17 forfeit the property of buyers who use that property to commit the  
18 crime of patronizing a prostitute will hold these individuals

1 responsible for actions that perpetuate human sex trafficking in our  
2 state.

3 **Sec. 2.** RCW 9A.88.150 and 2012 c 140 s 1 are each amended to read  
4 as follows:

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

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

12 (b) All conveyances, including aircraft, vehicles, or vessels,  
13 which are used, or intended for use, in any manner to facilitate a  
14 violation of RCW 9.68A.100, 9.68A.101, (~~(or)~~) 9A.88.070, or 9A.88.110,  
15 except that:

16 (i) No conveyance used by any person as a common carrier in the  
17 transaction of business as a common carrier is subject to forfeiture  
18 under this section unless it appears that the owner or other person in  
19 charge of the conveyance is a consenting party or privy to a violation  
20 of RCW 9.68A.100, 9.68A.101, (~~(or)~~) 9A.88.070, or 9A.88.110;

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

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

28 (iv) When the owner of a conveyance has been arrested for a  
29 violation of RCW 9.68A.100, 9.68A.101, (~~(or)~~) 9A.88.070, or 9A.88.110,  
30 the conveyance in which the person is arrested may not be subject to  
31 forfeiture unless it is seized or process is issued for its seizure  
32 within ten days of the owner's arrest;

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

1 (d) All proceeds traceable to or derived from an offense defined in  
2 RCW 9.68A.100, 9.68A.101, or 9A.88.070 and all moneys, negotiable  
3 instruments, securities, and other things of value significantly used  
4 or intended to be used significantly to facilitate commission of the  
5 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, or 9A.88.110, all tangible or intangible  
14 personal property, proceeds, or assets acquired in whole or in part  
15 with proceeds 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 in  
29 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 traceable to an  
33 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 act

1 or omission committed or omitted without the owner's knowledge or  
2 consent;

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

7 (2) Real or personal property subject to forfeiture under this  
8 section may be seized by any law enforcement officer of this state upon  
9 process issued by any superior court having jurisdiction over the  
10 property. Seizure of real property shall include the filing of a lis  
11 pendens by the seizing agency. Real property seized under this section  
12 shall not be transferred or otherwise conveyed until ninety days after  
13 seizure or until a judgment of forfeiture is entered, whichever is  
14 later: PROVIDED, That 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 search  
19 warrant;

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

23 (c) The law enforcement officer has probable cause to believe that  
24 the property was used or is intended to be used in violation of RCW  
25 9.68A.100, 9.68A.101, (~~(9A.88.070)~~) 9A.88.070, or 9A.88.110.

26 (3) In the event of seizure pursuant to subsection (2) of this  
27 section, proceedings for forfeiture shall be deemed commenced by the  
28 seizure. The law enforcement agency under whose authority the seizure  
29 was made shall cause notice to be served within fifteen days following  
30 the seizure on the owner of the property seized and the person in  
31 charge thereof and any person having any known right or interest  
32 therein, including any community property interest, of the seizure and  
33 intended forfeiture of the seized property. Service of notice of  
34 seizure of real property shall be made according to the rules of civil  
35 procedure. However, the state may not obtain a default judgment with  
36 respect to real property against a party who is served by substituted  
37 service absent an affidavit stating that a good faith effort has been  
38 made to ascertain if the defaulted party is incarcerated within the

1 state, and that there is no present basis to believe that the party is  
2 incarcerated within the state. Notice of seizure in the case of  
3 property subject to a security interest that has been perfected by  
4 filing a financing statement, or a certificate of title, shall be made  
5 by service upon the secured party or the secured party's assignee at  
6 the address shown on the financing statement or the certificate of  
7 title. The notice of seizure in other cases may be served by any  
8 method authorized by law or court rule including, but not limited to,  
9 service by certified mail with return receipt requested. Service by  
10 mail shall be deemed complete upon mailing within the fifteen day  
11 period following the seizure.

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

21 (5) If any person notifies the seizing law enforcement agency in  
22 writing of the person's claim of ownership or right to possession of  
23 items specified in subsection (1) of this section within forty-five  
24 days of the service of notice from the seizing agency in the case of  
25 personal property and ninety days in the case of real property, the  
26 person or persons shall be afforded a reasonable opportunity to be  
27 heard as to the claim or right. The notice of claim may be served by  
28 any method authorized by law or court rule including, but not limited  
29 to, service by first-class mail. Service by mail shall be deemed  
30 complete upon mailing within the forty-five day period following  
31 service of the notice of seizure in the case of personal property and  
32 within the ninety day period following service of the notice of seizure  
33 in the case of real property. The hearing shall be before the chief  
34 law enforcement officer of the seizing agency or the chief law  
35 enforcement officer's designee, except where the seizing agency is a  
36 state agency as defined in RCW 34.12.020(4), the hearing shall be  
37 before the chief law enforcement officer of the seizing agency or an  
38 administrative law judge appointed under chapter 34.12 RCW, except that

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

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

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

28 (7) When property is forfeited under this chapter, the seizing law  
29 enforcement agency shall sell the property that is not required to be  
30 destroyed by law and that is not harmful to the public.

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

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

1 (c) Each seizing agency shall file a report including a copy of the  
2 records of forfeited property with the state treasurer each calendar  
3 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 the net proceeds of any property forfeited  
10 during the preceding calendar year. Money remitted shall be deposited  
11 in the prostitution prevention and intervention account under RCW  
12 43.63A.740.

13 (b) 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, after  
17 deducting the cost of sale, including reasonable fees or commissions  
18 paid to independent selling agents, and the cost of any valid  
19 landlord's claim for damages under subsection (11) of this section.

20 (c) The value of sold forfeited property is the sale price. The  
21 value of destroyed property and retained firearms or illegal property  
22 is zero.

23 (10) Upon the entry of an order of forfeiture of real property, the  
24 court shall forward a copy of the order to the assessor of the county  
25 in which the property is located. Orders for the forfeiture of real  
26 property shall be entered by the superior court, subject to court  
27 rules. Such an order shall be filed by the seizing agency in the  
28 county auditor's records in the county in which the real property is  
29 located.

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

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

36 (b) The landlord has applied any funds remaining in the tenant's  
37 deposit, to which the landlord has a right under chapter 59.18 RCW, to

1 cover the damage directly caused by a law enforcement officer prior to  
2 asserting a claim under the provisions of this section:

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

8 (ii) Only if the governmental entity denies or fails to respond to  
9 the landlord's claim within sixty days of the date of filing, may the  
10 landlord collect damages under this subsection by filing within thirty  
11 days of denial or the expiration of the sixty day period, whichever  
12 occurs first, a claim with the seizing law enforcement agency. The  
13 seizing law enforcement agency must notify the landlord of the status  
14 of the claim by the end of the thirty day period. Nothing in this  
15 section requires the claim to be paid by the end of the sixty day or  
16 thirty day period; and

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

20 (i) Knew or consented to actions of the tenant in violation of RCW  
21 9.68A.100, 9.68A.101, (~~(9A.88.070)~~) 9A.88.070, or 9A.88.110; or

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

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

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

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

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

32 (d) The proceeds available after the seizing law enforcement agency  
33 satisfies any bona fide security interest in the tenant's property and  
34 costs related to sale of the tenant's property as provided by  
35 subsection (11) of this section.

36 (13) Subsections (11) and (12) of this section do not limit any  
37 other rights a landlord may have against a tenant to collect for  
38 damages. However, if a law enforcement agency satisfies a landlord's



1 claim under subsection (11) of this section, the rights the landlord  
2 has against the tenant for damages directly caused by a law enforcement  
3 officer under the terms of the landlord and tenant's contract are  
4 subrogated to the law enforcement agency.

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