

E2SHB 2718 - S COMM AMD

By Committee on Law & Justice

1 Strike everything after the enacting clause and insert the
2 following:

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

28 (2) If no person notifies the seizing agency in writing of the
29 person's claim of ownership or right to possession of an item seized
30 within sixty days of the service of notice from the seizing agency in
31 the case of personal property and one hundred twenty days in the case
32 of real property, the item seized is deemed forfeited. The community

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

5 (3) If any person notifies the seizing agency in writing of the
6 person's claim of ownership or right to possession of an item seized
7 within sixty days of the service of notice from the seizing agency in
8 the case of personal property and one hundred twenty days in the case
9 of real property, the person or persons must be afforded a reasonable
10 opportunity to be heard as to the claim or right. The notice of claim
11 may be served by any method authorized by law or court rule
12 including, but not limited to, service by first-class mail. Service
13 by mail is deemed complete upon mailing within the sixty day period
14 following service of the notice of seizure in the case of personal
15 property and within the one hundred twenty day period following
16 service of the notice of seizure in the case of real property.

17 (4) The hearing must be before a hearing officer who is not in
18 the direct chain of command of the chief law enforcement officer of
19 the seizing agency, except that where the seizing agency is a state
20 agency as defined in RCW 34.12.020(4), the hearing must be before a
21 hearing officer who is not in the direct chain of command of the
22 chief law enforcement officer of the seizing agency or an
23 administrative law judge appointed under chapter 34.12 RCW. Such a
24 hearing and any appeal therefrom must be under Title 34 RCW.

25 (5) Any person asserting a claim or right may remove the matter
26 to a court of competent jurisdiction. Removal of any matter involving
27 personal property may only be accomplished according to the rules of
28 civil procedure. The person seeking removal of the matter must serve
29 process against the state, county, political subdivision, or
30 municipality that operates the seizing agency, and any other party of
31 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-
32 five days after the person seeking removal has notified the seizing
33 agency of the person's claim of ownership or right to possession. The
34 court to which the matter is to be removed must be the district court
35 when the aggregate value of personal property is within the
36 jurisdictional limit set forth in RCW 3.66.020.

37 (6)(a) Whether the matter is heard under Title 34 RCW pursuant to
38 subsection (4) of this section or removed to court pursuant to
39 subsection (5) of this section, the burden of proof is upon the

1 seizing agency to establish, by a preponderance of the evidence, that
2 the property is subject to forfeiture.

3 (b) No personal property may be forfeited to the extent of the
4 interest of an owner, by reason of any act or omission committed or
5 omitted without the owner's knowledge or consent;

6 (c) No real property may be forfeited to the extent of the
7 interest of an owner, by reason of any act or omission committed or
8 omitted without the owner's knowledge or consent.

9 (d) A forfeiture of real property encumbered by a bona fide
10 security interest is subject to the interest of the secured party if
11 the secured party, at the time the security interest was created,
12 neither had knowledge of nor consented to the act or omission.

13 (7) The seizing agency shall promptly return seized items, in the
14 same or substantially similar condition as when they were seized, to
15 the claimant upon a determination by the administrative law judge or
16 court that the claimant is the present lawful owner or is lawfully
17 entitled to possession thereof.

18 (8) In any proceeding to forfeit property under this chapter,
19 where the claimant substantially prevails, the claimant is entitled
20 to reasonable attorneys' fees reasonably incurred by the claimant.

21 (9) The protections afforded by the service members' civil relief
22 act, chapter 38.42 RCW, are applicable to proceedings under this
23 chapter.

24 NEW SECTION. **Sec. 2.** (1) Upon the entry of an order of
25 forfeiture of real property, the court shall forward a copy of the
26 order to the assessor of the county in which the property is located.
27 Orders for the forfeiture of real property shall be entered by the
28 superior court, subject to court rules. Such an order shall be filed
29 by the seizing agency in the county auditor's records in the county
30 in which the real property is located.

31 (2)(a) A landlord may assert a claim against proceeds from the
32 sale of assets seized and forfeited only if:

33 (i) An employee, agent, or officer of the seizing agency, while
34 acting in his or her official capacity, directly caused damage to the
35 complaining landlord's property while executing a search of a
36 tenant's residence; and

37 (ii) The landlord has applied any funds remaining in the tenant's
38 deposit, to which the landlord has a right under chapter 59.18 RCW,
39 to cover the damage directly caused by the employee, agent, or

1 officer of the seizing agency prior to asserting a claim under the
2 provisions of this section;

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

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

17 (b) For any claim filed under (a)(ii) of this subsection, the
18 seizing 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
21 this chapter or the chapter pursuant to which the seizure was made;
22 or

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

26 (3) The landlord's claim for damages under subsection (2) of this
27 section may not include a claim for loss of business and is limited
28 to:

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

30 (b) The lesser of the cost of repair or fair market value of the
31 damage directly caused by the employee, agent, or officer of the
32 seizing agency;

33 (c) The proceeds from the sale of the specific tenant's property
34 seized and forfeited; and

35 (d) The proceeds available after the seizing law enforcement
36 agency satisfies any bona fide security interest in the tenant's
37 property and costs related to sale of the tenant's property.

38 (4) Subsections (2) and (3) of this section do not limit any
39 other rights a landlord may have against a tenant to collect for
40 damages. However, if a seizing agency satisfies a landlord's claim

1 under subsection (2) of this section, the rights the landlord has
2 against the tenant for damages directly caused by an employee, agent,
3 or officer of the seizing agency under the terms of the landlord and
4 tenant's contract are subrogated to the seizing agency.

5 NEW SECTION. **Sec. 3.** When property is forfeited under this
6 chapter, the seizing agency may, after satisfying any court-ordered
7 restitution:

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

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

13 (3) 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 (4) Forward it to an appropriate entity, such as the drug
17 enforcement administration, for disposition; or

18 (5) Take any other action allowed by statute.

19 NEW SECTION. **Sec. 4.** (1) This section is applicable to all
20 seizures by seizing agencies, regardless of whether the seizure is:

21 (a) Pursuant to this chapter;

22 (b) Pursuant to any other section in the Revised Code of
23 Washington that authorizes seizure; or

24 (c) Conducted in collaboration with a federal agency under
25 federal law.

26 (2) For purposes of this section, "seizing agency" means any
27 police force, multijurisdictional task force, fire department, or
28 other municipal, county, or state agency that has authority under
29 state law or collaborates with a federal agency under federal law to
30 seize property.

31 (3)(a) The seizing agency must keep a record, about property
32 seized and forfeited under state law and any agreement with any
33 federal agency, of each forfeiture indicating:

34 (i) The name of the seizing agency;

35 (ii) Date of seizure;

36 (iii) Type of property seized;

37 (iv) Description of the property including make, model, year, and
38 serial number;

1 (v) Street address or description of the location where the
2 seizure occurred;

3 (vi) Whether the seizure was adopted by the federal government,
4 part of a joint task force with the federal government, or other
5 arrangement with the federal government;

6 (vii) Crime for which the suspect was charged;

7 (viii) Whether the suspect was convicted of a crime;

8 (ix) Whether the forfeiture was contested by a suspect, innocent
9 owner claimant, joint owner, or other property owner;

10 (x) Disposition of the property through the forfeiture process,
11 such as returned to suspect, returned to a joint owner or third-party
12 owner, sold, destroyed, or retained by a law enforcement agency;

13 (xi) Date of disposition of the property;

14 (xii) Whether the forfeiture was resolved by way of a default,
15 contested hearing or agreed disposition or settlement;

16 (xiii) Value of the property forfeited; and

17 (xiv) The net proceeds retained by the law enforcement agency
18 that seized the property.

19 (b) Annually, on a date specified by the state treasurer, the
20 seizing agency shall file a report, that includes all of the records
21 in (a) of this subsection, to the state treasurer. The state
22 treasurer must establish and maintain a searchable public web site
23 that includes all of the records in (a) of this subsection. The
24 annual report need not include a record of forfeited property that is
25 still being held for use as evidence during the investigation or
26 prosecution of a case or during the appeal from a conviction. The
27 commander of a multijurisdictional task force may appoint one agency
28 to report its seizures. If an agency has made no seizures during the
29 previous year, a null report must be filed by the agency specifying
30 that it did not engage in seizures or forfeitures during the
31 reporting period.

32 (c) By March 1st each year, the seizing agency shall file with
33 the state treasurer a report that summarizes the agency's
34 expenditures from the sum of the net proceeds of all seized and
35 forfeited property during the previous calendar year. The report must
36 be posted and made available on the web site created in this
37 subsection (3). The report must use the following categories to
38 summarize expenditures and values:

39 (i) Abuse, crime, and gang prevention programs;

40 (ii) Witness protection, informant fees, and controlled buys;

- 1 (iii) Salaries, overtime, and benefits;
- 2 (iv) Professional outside services, including auditing, court
3 reporting, expert witnesses, outside attorneys' fees, and membership
4 fees paid to trade associations;
- 5 (v) Travel, meals, entertainment, conferences, training, and
6 continuing education seminars;
- 7 (vi) Capital expenditures including vehicles, firearms,
8 equipment, computers, and furniture;
- 9 (vii) Other expenditures of forfeiture proceeds; and
- 10 (viii) The total value of forfeited property held by the agency
11 at the end of the reporting period.

12 (4) One hundred twenty days after the close of each fiscal year,
13 the state treasurer shall submit to the speaker of the house of
14 representatives, president of the senate, attorney general, and
15 governor a written report summarizing forfeiture activity in the
16 state for the preceding fiscal year; the type, approximate value, and
17 disposition of the property seized; and the amount of any proceeds
18 received or expended at the state and local levels. The report must
19 provide a categorized accounting of all proceeds expended. Summary
20 data on seizures, forfeitures, and expenditures of forfeiture
21 proceeds must be disaggregated by agency. The aggregate report must
22 be made available on the state treasurer's web site.

23 (5) The state treasurer may include in the aggregate report
24 required by subsection (4) of this section recommendations to improve
25 statutes, rules, and policies to facilitate seizure, forfeiture, and
26 expenditure processes and reporting that are fair to crime victims,
27 innocent property owners, secured interest holders, citizens, law
28 enforcement, and taxpayers.

29 (6) If a seizing agency fails to file a report within thirty days
30 after it is due, without good cause as determined by the state
31 treasurer, the state treasurer shall provide a written warning to the
32 seizing agency. If a seizing agency fails to file the report within
33 thirty days after it is due for a second time, the agency is subject
34 to a civil penalty payable to the state general fund of five hundred
35 dollars or the equivalent of one-quarter of the forfeiture proceeds
36 received by the agency during the reporting period, whichever is
37 greater. In addition, the state treasurer must make no expenditures
38 from the forfeiture fund for the benefit of the agency until the
39 report is filed.

1 (7) The data and reports compiled and prepared under this chapter
2 are public information under chapter 42.56 RCW.

3 NEW SECTION. **Sec. 5.** (1)(a) By January 31st of each year, each
4 seizing agency shall remit to the state treasurer an amount equal to
5 ten percent of the net proceeds of any property forfeited during the
6 preceding calendar year. Money remitted shall be deposited in the
7 state general fund unless otherwise provided in statute.

8 (b) The net proceeds of forfeited property is the value of the
9 forfeitable interest in the property after deducting the cost of
10 satisfying any bona fide security interest to which the property is
11 subject at the time of seizure; and in the case of sold property,
12 after deducting the cost of sale, including reasonable fees or
13 commissions paid to independent selling agents, and the cost of any
14 valid landlord's claim for damages under section 2 of this act.

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

25 (2) Forfeited property and net proceeds not required to be paid
26 to the state treasurer shall be retained by the seizing agency
27 exclusively for the expansion and improvement of related enforcement
28 activities. Money retained under this section may not be used to
29 supplant preexisting funding sources.

30 NEW SECTION. **Sec. 6.** The state treasurer may adopt rules
31 necessary to implement this chapter.

32 **Sec. 7.** RCW 9.68A.120 and 2014 c 188 s 3 are each amended to
33 read as follows:

34 The following are subject to seizure and forfeiture:

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

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

8 (a) No conveyance used by any person as a common carrier in the
9 transaction of business as a common carrier is subject to forfeiture
10 under this section unless it appears that the owner or other person
11 in charge of the conveyance is a consenting party or privy to a
12 violation of this chapter;

13 (b) No property is subject to forfeiture under this section by
14 reason of any act or omission (~~established by the owner of the~~
15 ~~property to have been~~) committed or omitted without the owner's
16 knowledge or consent;

17 (c) A forfeiture of property encumbered by a bona fide security
18 interest is subject to the interest of the secured party if the
19 secured party neither had knowledge of nor consented to the act or
20 omission; and

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

25 (3) All personal property, moneys, negotiable instruments,
26 securities, or other tangible or intangible property furnished or
27 intended to be furnished by any person in exchange for visual or
28 printed matter depicting a minor engaged in sexually explicit
29 conduct, or constituting proceeds traceable to any violation of this
30 chapter.

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

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

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

1 (c) A law enforcement officer has probable cause to believe that
2 the property is directly or indirectly dangerous to health or safety;
3 or

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

7 (5) In the event of seizure under subsection (4) of this section,
8 proceedings for forfeiture (~~shall be deemed commenced by the~~
9 ~~seizure. The law enforcement agency under whose authority the seizure~~
10 ~~was made shall cause notice to be served within fifteen days~~
11 ~~following the seizure on the owner of the property seized and the~~
12 ~~person in charge thereof and any person having any known right or~~
13 ~~interest therein, of the seizure and intended forfeiture of the~~
14 ~~seized property. The notice may be served by any method authorized by~~
15 ~~law or court rule including but not limited to service by certified~~
16 ~~mail with return receipt requested. Service by mail shall be deemed~~
17 ~~complete upon mailing within the fifteen day period following the~~
18 ~~seizure.~~

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

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

1 claimant is lawfully entitled to possession thereof of the seized
2 items.

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

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

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

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

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

18 (10)(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 an independent selling agency.

29 (c) 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 reference
32 to an applicable commonly used index. A seizing agency may use, but
33 need not use, an independent qualified appraiser to determine the
34 value of retained property. If an appraiser is used, the value of the
35 property appraised is net of the cost of the appraisal. The value of
36 destroyed property and retained firearms or illegal property is zero.

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

1 ~~the law enforcement agency, and of the proceedings for forfeiture and~~
2 ~~sale, including expenses of seizure, maintenance of custody,~~
3 ~~advertising, actual costs of the prosecuting or city attorney, and~~
4 ~~court costs. Money remaining after payment of these expenses shall be~~
5 ~~retained by the seizing law enforcement agency for the exclusive use~~
6 ~~of enforcing the provisions of this chapter or chapter 9A.88 RCW.)~~
7 are governed by chapter 7.--- RCW (the new chapter created in section
8 17 of this act).

9 **Sec. 8.** RCW 9A.88.150 and 2014 c 188 s 4 are each amended to
10 read as follows:

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

13 (a) Any property or other interest acquired or maintained in
14 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070 to the extent of
15 the investment of funds, and any appreciation or income attributable
16 to the investment, from a violation of RCW 9.68A.100, 9.68A.101, or
17 9A.88.070;

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

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

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

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

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

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

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

10 (e) All books, records, and research products and materials,
11 including formulas, microfilm, tapes, and data which are used, or
12 intended for use, in violation of RCW 9.68A.100, 9.68A.101, or
13 9A.88.070;

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

32 (g) All real property, including any right, title, and interest
33 in the whole of any lot or tract of land, and any appurtenances or
34 improvements which are being used with the knowledge of the owner for
35 a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, or which have
36 been acquired in whole or in part with proceeds traceable to an
37 exchange or series of exchanges in violation of RCW 9.68A.100,
38 9.68A.101, or 9A.88.070, if a substantial nexus exists between the
39 violation and the real property. However:

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

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

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

21 (a) The seizure is incident to an arrest or a search under a
22 search warrant;

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

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

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

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

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

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

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

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

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

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

38 (8)(a) When property is forfeited, the seizing agency shall keep
39 a record indicating the identity of the prior owner, if known, a
40 description of the property, the disposition of the property, the

1 value of the property at the time of seizure, and the amount of
2 proceeds realized from disposition of the property.

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

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

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

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

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

25 (c) The value of sold forfeited property is the sale price. The
26 value of destroyed property and retained firearms or illegal property
27 is zero.

28 (10) Net proceeds not required to be paid to the state treasurer
29 shall be used for payment of all proper expenses of the investigation
30 leading to the seizure, including any money delivered to the subject
31 of the investigation by the law enforcement agency, and of the
32 proceedings for forfeiture and sale, including expenses of seizure,
33 maintenance of custody, advertising, actual costs of the prosecuting
34 or city attorney, and court costs. Money remaining after payment of
35 these expenses shall be retained by the seizing law enforcement
36 agency for the exclusive use of enforcing the provisions of this
37 chapter or chapter 9.68A RCW.

38 (11) Upon the entry of an order of forfeiture of real property,
39 the court shall forward a copy of the order to the assessor of the
40 county in which the property is located. Orders for the forfeiture of

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

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

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

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

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

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

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

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

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

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

1 ~~(a) Damage to tangible property and clean-up costs;~~
2 ~~(b) The lesser of the cost of repair or fair market value of the~~
3 ~~damage directly caused by a law enforcement officer;~~
4 ~~(c) The proceeds from the sale of the specific tenant's property~~
5 ~~seized and forfeited under subsection (9) of this section; and~~
6 ~~(d) The proceeds available after the seizing law enforcement~~
7 ~~agency satisfies any bona fide security interest in the tenant's~~
8 ~~property and costs related to sale of the tenant's property as~~
9 ~~provided by subsection (12) of this section.~~

10 ~~(14) Subsections (12) and (13) of this section do not limit any~~
11 ~~other rights a landlord may have against a tenant to collect for~~
12 ~~damages. However, if a law enforcement agency satisfies a landlord's~~
13 ~~claim under subsection (12) of this section, the rights the landlord~~
14 ~~has against the tenant for damages directly caused by a law~~
15 ~~enforcement officer under the terms of the landlord and tenant's~~
16 ~~contract are subrogated to the law enforcement agency.)) are governed~~
17 ~~by chapter 7.--- RCW (the new chapter created in section 17 of this~~
18 ~~act).~~

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

21 (1) Proceeds traceable to or derived from specified unlawful
22 activity or a violation of RCW 9A.83.020 are subject to seizure and
23 forfeiture. The attorney general or county prosecuting attorney may
24 file a civil action for the forfeiture of proceeds. Unless otherwise
25 provided for under this section, no property rights exist in these
26 proceeds. All right, title, and interest in the proceeds shall vest
27 in the governmental entity of which the seizing law enforcement
28 agency is a part upon commission of the act or omission giving rise
29 to forfeiture under this section.

30 (2) Real or personal property subject to forfeiture under this
31 chapter may be seized by any law enforcement officer of this state
32 upon process issued by a superior court that has jurisdiction over
33 the property. Any agency seizing real property shall file a lis
34 pendens concerning the property. Real property seized under this
35 section shall not be transferred or otherwise conveyed until ninety
36 days after seizure or until a judgment of forfeiture is entered,
37 whichever is later. Real property seized under this section may be
38 transferred or conveyed to any person or entity who acquires title by

1 foreclosure or deed in lieu of foreclosure of a security interest.
2 Seizure of personal property without process may be made if:

3 (a) The seizure is incident to an arrest or a search under a
4 search warrant or an inspection under an administrative inspection
5 warrant issued pursuant to RCW 69.50.502; or

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

9 (3) A seizure under subsection (2) of this section commences
10 proceedings for forfeiture pursuant to chapter 7.--- RCW (the new
11 chapter created in section 17 of this act). (~~The law enforcement~~
12 ~~agency under whose authority the seizure was made shall cause notice~~
13 ~~of the seizure and intended forfeiture of the seized proceeds to be~~
14 ~~served within fifteen days after the seizure on the owner of the~~
15 ~~property seized and the person in charge thereof and any person who~~
16 ~~has a known right or interest therein, including a community property~~
17 ~~interest. Service of notice of seizure of real property shall be made~~
18 ~~according to the rules of civil procedure. However, the state may not~~
19 ~~obtain a default judgment with respect to real property against a~~
20 ~~party who is served by substituted service absent an affidavit~~
21 ~~stating that a good faith effort has been made to ascertain if the~~
22 ~~defaulted party is incarcerated within the state, and that there is~~
23 ~~no present basis to believe that the party is incarcerated within the~~
24 ~~state. The notice of seizure in other cases may be served by any~~
25 ~~method authorized by law or court rule including but not limited to~~
26 ~~service by certified mail with return receipt requested. Service by~~
27 ~~mail is complete upon mailing within the fifteen day period after the~~
28 ~~seizure.~~

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

38 (5) ~~If a person notifies the seizing law enforcement agency in~~
39 ~~writing of the person's claim of ownership or right to possession of~~
40 ~~property within forty five days of the seizure in the case of~~

1 ~~personal property and ninety days in the case of real property, the~~
2 ~~person or persons shall be afforded a reasonable opportunity to be~~
3 ~~heard as to the claim or right. The provisions of RCW 69.50.505(5)~~
4 ~~shall apply to any such hearing. The seizing law enforcement agency~~
5 ~~shall promptly return property to the claimant upon the direction of~~
6 ~~the administrative law judge or court.~~

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

9 **Sec. 10.** RCW 10.105.010 and 2009 c 479 s 15 are each amended to
10 read as follows:

11 (1) The following are subject to seizure and forfeiture and no
12 property right exists in them: All personal property, including, but
13 not limited to, any item, object, tool, substance, device, weapon,
14 machine, vehicle of any kind, money, security, or negotiable
15 instrument, which has been or was actually employed as an
16 instrumentality in the commission of, or in aiding or abetting in the
17 commission of any felony, or which was furnished or was intended to
18 be furnished by any person in the commission of, as a result of, or
19 as compensation for the commission of, any felony, or which was
20 acquired in whole or in part with proceeds traceable to the
21 commission of a felony. No property may be forfeited under this
22 section until after there has been a superior court conviction of the
23 owner of the property for the felony in connection with which the
24 property was employed, furnished, or acquired.

25 A forfeiture of property encumbered by a bona fide security
26 interest is subject to the interest of the secured party if at the
27 time the security interest was created, the secured party neither had
28 knowledge of nor consented to the commission of the felony.

29 (2) Personal property subject to forfeiture under this chapter
30 may be seized by any law enforcement officer of this state upon
31 process issued by any superior court having jurisdiction over the
32 property. Seizure of personal property without process may be made
33 if:

34 (a) The seizure is incident to an arrest or a search under a
35 search warrant;

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

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

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

6 (3) In the event of seizure pursuant to this section, proceedings
7 for forfeiture (~~shall be deemed commenced by the seizure. The law~~
8 ~~enforcement agency under whose authority the seizure was made shall~~
9 ~~cause notice to be served within fifteen days following the seizure~~
10 ~~on the owner of the property seized and the person in charge thereof~~
11 ~~and any person having any known right or interest therein, including~~
12 ~~any community property interest, of the seizure and intended~~
13 ~~forfeiture of the seized property. The notice of seizure may be~~
14 ~~served by any method authorized by law or court rule including but~~
15 ~~not limited to service by certified mail with return receipt~~
16 ~~requested. Service by mail shall be deemed complete upon mailing~~
17 ~~within the fifteen day period following the seizure. Notice of~~
18 ~~seizure in the case of property subject to a security interest that~~
19 ~~has been perfected by filing a financing statement in accordance with~~
20 ~~chapter 62A.9A RCW, or a certificate of title shall be made by~~
21 ~~service upon the secured party or the secured party's assignee at the~~
22 ~~address shown on the financing statement or the certificate of title.~~

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

27 ~~(5) If a person notifies the seizing law enforcement agency in~~
28 ~~writing of the person's claim of ownership or right to possession of~~
29 ~~the seized property within forty five days of the seizure, the law~~
30 ~~enforcement agency shall give the person or persons a reasonable~~
31 ~~opportunity to be heard as to the claim or right. The hearing shall~~
32 ~~be before the chief law enforcement officer of the seizing agency or~~
33 ~~the chief law enforcement officer's designee, except where the~~
34 ~~seizing agency is a state agency as defined in RCW 34.12.020(4), the~~
35 ~~hearing shall be before the chief law enforcement officer of the~~
36 ~~seizing agency or an administrative law judge appointed under chapter~~
37 ~~34.12 RCW, except that any person asserting a claim or right may~~
38 ~~remove the matter to a court of competent jurisdiction. Removal may~~
39 ~~only be accomplished according to the rules of civil procedure. The~~
40 ~~person seeking removal of the matter must serve process against the~~

1 state, county, political subdivision, or municipality that operates
2 the seizing agency, and any other party of interest, in accordance
3 with RCW 4.28.080 or 4.92.020, within forty five days after the
4 person seeking removal has notified the seizing law enforcement
5 agency of the person's claim of ownership or right to possession. The
6 court to which the matter is to be removed shall be the district
7 court when the aggregate value of the property is within the
8 jurisdictional limit set forth in RCW 3.66.020. A hearing before the
9 seizing agency and any appeal therefrom shall be under Title 34 RCW.
10 In a court hearing between two or more claimants to the property
11 involved, the prevailing party shall be entitled to a judgment for
12 costs and reasonable attorney's fees. The burden of producing
13 evidence shall be upon the person claiming to be the lawful owner or
14 the person claiming to have the lawful right to possession of the
15 property. The seizing law enforcement agency shall promptly return
16 the property to the claimant upon a determination by the
17 administrative law judge or court that the claimant is the present
18 lawful owner or is lawfully entitled to possession of the property.

19 (6) When property is forfeited under this chapter, after
20 satisfying any court ordered victim restitution, the seizing law
21 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 criminal law;

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

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

31 (a) The net proceeds of forfeited property is the value of the
32 forfeitable interest in the property after deducting the cost of
33 satisfying any bona fide security interest to which the property is
34 subject at the time of seizure; and in the case of sold property,
35 after deducting the cost of sale, including reasonable fees or
36 commissions paid to independent selling agents.

37 (b) The value of sold forfeited property is the sale price. The
38 value of retained forfeited property is the fair market value of the
39 property at the time of seizure, determined when possible by
40 reference to an applicable commonly used index, such as the index

1 ~~used by the department of licensing for valuation of motor vehicles.~~
2 ~~A seizing agency may use, but need not use, an independent qualified~~
3 ~~appraiser to determine the value of retained property. If an~~
4 ~~appraiser is used, the value of the property appraised is net of the~~
5 ~~cost of the appraisal. The value of destroyed property and retained~~
6 ~~firearms or illegal property is zero.~~

7 ~~(c) Retained property and net proceeds not required to be paid to~~
8 ~~the state treasurer, or otherwise required to be spent under this~~
9 ~~section, shall be retained by the seizing law enforcement agency~~
10 ~~exclusively for the expansion and improvement of law enforcement~~
11 ~~activity. Money retained under this section may not be used to~~
12 ~~supplant preexisting funding sources.)) are governed by chapter 7.---~~
13 ~~RCW (the new chapter created in section 17 of this act).~~

14 (4) When property is seized under this chapter and forfeited
15 pursuant to the new chapter created in section 17 of this act, the
16 seizing agency must first satisfy any court-ordered victim
17 restitution before retaining, using, selling, or taking other action
18 with respect to the property as permitted under section 4 of this
19 act.

20 **Sec. 11.** RCW 19.290.230 and 2013 c 322 s 27 are each amended to
21 read as follows:

22 (1) The following personal property is subject to seizure and
23 forfeiture and no property right exists in them: All personal
24 property including, but not limited to, any item, object, tool,
25 substance, device, weapon, machine, vehicle of any kind, money,
26 security, or negotiable instrument, which the seizing agency proves
27 by a preponderance of the evidence was used or intended to be used by
28 its owner or the person in charge to knowingly or intentionally
29 facilitate the commission of, or to knowingly or intentionally abet
30 the commission of, a crime involving theft, trafficking, or unlawful
31 possession of commercial metal property, or which the seizing agency
32 proves by a preponderance of the evidence was knowingly or
33 intentionally furnished or was intended to be furnished by any person
34 in the commission of, as a result of, or as compensation for the
35 commission of, a crime involving theft, trafficking, or the unlawful
36 possession of commercial metal property, or which the property owner
37 acquired in whole or in part with proceeds traceable to a knowing or
38 intentional commission of a crime involving the theft, trafficking,

1 or unlawful possession of commercial metal property provided that
2 such activity is not less than a class C felony; except that:

3 (a) No vehicle used by any person as a common carrier in the
4 transaction of business as a common carrier is subject to forfeiture
5 under this section unless the seizing agency proves by a
6 preponderance of the evidence that the owner or other person in
7 charge of the vehicle is a consenting party or is privy to any crime
8 involving theft, trafficking, or the unlawful possession of
9 commercial metal property;

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

15 (c) A property owner's property is not subject to seizure if an
16 employee or agent of that property owner uses the property owner's
17 property to knowingly or intentionally facilitate the commission of,
18 or to knowingly or intentionally aid and abet the commission of, a
19 crime involving theft, trafficking, or unlawful possession of
20 commercial metal property, in violation of that property owner's
21 instructions or policies against such activity, and without the
22 property owner's knowledge or consent.

23 (2) The following real property is subject to seizure and
24 forfeiture and no property right exists in them: All real property,
25 including any right, title, and interest in the whole of any lot or
26 tract of land, and any appurtenances or improvements, that the
27 seizing agency proves by a preponderance of the evidence are being
28 used with the knowledge of the owner for the intentional commission
29 of any crime involving the theft, trafficking, or unlawful possession
30 of commercial metal property, or which have been acquired in whole or
31 in part with proceeds traceable to the commission of any crime
32 involving the trafficking, theft, or unlawful possession of
33 commercial metal, if such activity is not less than a class C felony
34 and a substantial nexus exists between the commission of the
35 violation or crime and the real property. However:

36 (a) No property may be forfeited pursuant to this subsection (2),
37 to the extent of the interest of an owner, by reason of any act or
38 omission committed or omitted without the owner's actual or
39 constructive knowledge; and further, a property owner's real property
40 is not subject to seizure if an employee or agent of that property

1 owner uses the property owner's real property to knowingly or
2 intentionally facilitate the commission of, or to knowingly or
3 intentionally aid and abet the commission of, a crime involving
4 theft, trafficking, or unlawful possession of commercial metal
5 property, in violation of that property owner's instructions or
6 policies against such activity, and without the property owner's
7 knowledge or consent; and

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

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

23 (a) The seizure is incident to an arrest or a search under a
24 search warrant; or

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

28 (4) In the event of seizure pursuant to this section, proceedings
29 for forfeiture (~~(shall be)~~) are deemed commenced by the seizure and
30 governed by chapter 7.--- RCW (the new chapter created in section 17
31 of this act). (~~The law enforcement agency under whose authority the~~
32 ~~seizure was made shall cause notice to be served within fifteen days~~
33 ~~following the seizure on the owner of the property seized and the~~
34 ~~person in charge thereof and any person having any known right or~~
35 ~~interest therein, including any community property interest, of the~~
36 ~~seizure and intended forfeiture of the seized property. Service of~~
37 ~~notice of seizure of real property shall be made according to the~~
38 ~~rules of civil procedure. However, the state may not obtain a default~~
39 ~~judgment with respect to real property against a party who is served~~
40 ~~by substituted service absent an affidavit stating that a good faith~~

1 effort has been made to ascertain if the defaulted party is
2 incarcerated within the state, and that there is no present basis to
3 believe that the party is incarcerated within the state. The notice
4 of seizure of personal property may be served by any method
5 authorized by law or court rule including but not limited to service
6 by certified mail with return receipt requested. Service by mail
7 shall be deemed complete upon mailing within the fifteen day period
8 following the seizure. Notice of seizure in the case of property
9 subject to a security interest that has been perfected by filing a
10 financing statement in accordance with chapter 62A.9A RCW, or a
11 certificate of title shall be made by service upon the secured party
12 or the secured party's assignee at the address shown on the financing
13 statement or the certificate of title.

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

23 (6) If a person notifies the seizing law enforcement agency in
24 writing of the person's claim of ownership or right to possession of
25 the seized property within forty five days of the seizure in the case
26 of personal property and ninety days in the case of real property,
27 the law enforcement agency shall give the person or persons a
28 reasonable opportunity to be heard as to the claim or right. The
29 hearing shall be before the chief law enforcement officer of the
30 seizing agency or the chief law enforcement officer's designee,
31 except where the seizing agency is a state agency as defined in RCW
32 34.12.020(4), the hearing shall be before the chief law enforcement
33 officer of the seizing agency or an administrative law judge
34 appointed under chapter 34.12 RCW, except that any person asserting a
35 claim or right may remove the matter to a court of competent
36 jurisdiction. Removal may only be accomplished according to the rules
37 of civil procedure. The person seeking removal of the matter must
38 serve process against the state, county, political subdivision, or
39 municipality that operates the seizing agency, and any other party of
40 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-

1 ~~five days after the person seeking removal has notified the seizing~~
2 ~~law enforcement agency of the person's claim of ownership or right to~~
3 ~~possession. The court to which the matter is to be removed shall be~~
4 ~~the district court when the aggregate value of the property is within~~
5 ~~the jurisdictional limit set forth in RCW 3.66.020. A hearing before~~
6 ~~the seizing agency and any appeal therefrom shall be under Title 34~~
7 ~~RCW. In a court hearing between two or more claimants to the property~~
8 ~~involved, the prevailing party shall be entitled to a judgment for~~
9 ~~costs and reasonable attorneys' fees. The burden of producing~~
10 ~~evidence shall be upon the person claiming to be the lawful owner or~~
11 ~~the person claiming to have the lawful right to possession of the~~
12 ~~property.~~

13 ~~(7) At the hearing, the seizing agency has the burden of proof to~~
14 ~~establish by a preponderance of the evidence that seized property is~~
15 ~~subject to forfeiture, and that the use or intended use of the seized~~
16 ~~property in connection with a crime pursuant to this section occurred~~
17 ~~with the owner's actual or constructive knowledge or consent. The~~
18 ~~person claiming to be the lawful owner or the person claiming to have~~
19 ~~the lawful right to possession of the property has the burden of~~
20 ~~proof to establish by a preponderance of the evidence that the person~~
21 ~~owns or has a right to possess the seized property. The possession of~~
22 ~~bare legal title is not sufficient to establish ownership of seized~~
23 ~~property if the seizing agency proves by a preponderance of the~~
24 ~~evidence that the person claiming ownership or right to possession is~~
25 ~~a nominal owner and did not actually own or exert a controlling~~
26 ~~interest in the property.~~

27 ~~The seizing law enforcement agency shall promptly return the~~
28 ~~property to the claimant upon a determination by the administrative~~
29 ~~law judge or court that the claimant is the present lawful owner or~~
30 ~~is lawfully entitled to possession of the property.~~

31 ~~(8) When property is forfeited under this chapter, after~~
32 ~~satisfying any court ordered victim restitution, the seizing law~~
33 ~~enforcement agency may:~~

34 ~~(a) Retain it for official use or, upon application by any law~~
35 ~~enforcement agency of this state, release such property to such~~
36 ~~agency; or~~

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

39 ~~(9)(a) Within one hundred twenty days after the entry of an order~~
40 ~~of forfeiture, each seizing agency shall remit to, if known, the~~

1 victim of the crime involving the seized property, an amount equal to
2 fifty percent of the net proceeds of any property forfeited.

3 (b) Retained property and net proceeds not required to be paid to
4 victims shall be retained by the seizing law enforcement agency
5 exclusively for the expansion and improvement of law enforcement
6 activity. Money retained under this section may not be used to
7 supplant preexisting funding sources.

8 (c) The net proceeds of forfeited property is the value of the
9 forfeitable interest in the property after deducting the cost of
10 satisfying any bona fide security interest to which the property is
11 subject at the time of seizure; and in the case of sold property,
12 after deducting the cost of sale, including reasonable fees or
13 commissions paid to independent selling agents, and the cost of any
14 valid landlord's claim for damages.

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

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

32 (5)(a) When property is seized under this chapter and forfeited
33 pursuant to the new chapter created in section 17 of this act, the
34 seizing agency must first satisfy any court-ordered victim
35 restitution before retaining, using, selling, or taking other action
36 with respect to the property as permitted under section 4 of this
37 act.

38 (b) Within one hundred twenty days after the entry of an order of
39 forfeiture, each seizing agency shall remit to, if known, the victim

1 of the crime involving the seized property, an amount equal to fifty
2 percent of the net proceeds of any property forfeited.

3 **Sec. 12.** RCW 46.61.5058 and 2013 2nd sp.s. c 35 s 18 are each
4 amended to read as follows:

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

22 (a) A vehicle encumbered by a bona fide security interest may be
23 transferred to the secured party or to a person designated by the
24 secured party;

25 (b) A leased or rented vehicle may be transferred to the lessor,
26 rental agency, or to a person designated by the lessor or rental
27 agency; and

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

37 (2) On conviction for a violation of either RCW 46.20.740,
38 46.61.502, or 46.61.504 or any similar municipal ordinance where the
39 person convicted has a prior offense within seven years as defined in

1 RCW 46.61.5055, the motor vehicle the person was driving or over
2 which the person had actual physical control at the time of the
3 offense, if the person has a financial interest in the vehicle, the
4 court shall consider at sentencing whether the vehicle shall be
5 seized and forfeited pursuant to this section if a seizure or
6 forfeiture has not yet occurred.

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

13 (4) Seizure under subsection (3) of this section automatically
14 commences proceedings for forfeiture, which proceedings are governed
15 by chapter 7.--- RCW (the new chapter created in section 17 of this
16 act). ~~((The law enforcement agency under whose authority the seizure~~
17 ~~was made shall cause notice of the seizure and intended forfeiture of~~
18 ~~the seized vehicle to be served within fifteen days after the seizure~~
19 ~~on the owner of the vehicle seized, on the person in charge of the~~
20 ~~vehicle, and on any person having a known right or interest in the~~
21 ~~vehicle, including a community property interest. The notice of~~
22 ~~seizure may be served by any method authorized by law or court rule,~~
23 ~~including but not limited to service by certified mail with return~~
24 ~~receipt requested. Service by mail is complete upon mailing within~~
25 ~~the fifteen-day period after the seizure. Notice of seizure in the~~
26 ~~case of property subject to a security interest that has been~~
27 ~~perfected on a certificate of title shall be made by service upon the~~
28 ~~secured party or the secured party's assignee at the address shown on~~
29 ~~the financing statement or the certificate of title.~~

30 ~~(5) If no person notifies the seizing law enforcement agency in~~
31 ~~writing of the person's claim of ownership or right to possession of~~
32 ~~the seized vehicle within forty five days of the seizure, the vehicle~~
33 ~~is deemed forfeited.~~

34 ~~(6) If a person notifies the seizing law enforcement agency in~~
35 ~~writing of the person's claim of ownership or right to possession of~~
36 ~~the seized vehicle within forty five days of the seizure, the law~~
37 ~~enforcement agency shall give the person or persons a reasonable~~
38 ~~opportunity to be heard as to the claim or right. The hearing shall~~
39 ~~be before the chief law enforcement officer of the seizing agency or~~
40 ~~the chief law enforcement officer's designee, except where the~~

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

26 ~~(7))~~ (5) When a vehicle is forfeited under this chapter the
27 seizing law enforcement agency may sell the vehicle, retain it for
28 official use, or upon application by a law enforcement agency of this
29 state release the vehicle to that agency for the exclusive use of
30 enforcing this title; provided, however, that the agency shall first
31 satisfy any bona fide security interest to which the vehicle is
32 subject under subsection (1)(a) or (c) of this section.

33 ~~((8))~~ (6) When a vehicle is forfeited, the seizing agency shall
34 keep a record indicating the identity of the prior owner, if known, a
35 description of the vehicle, the disposition of the vehicle, the value
36 of the vehicle at the time of seizure, and the amount of proceeds
37 realized from disposition of the vehicle.

38 ~~((9))~~ (7) Each seizing agency shall retain records of forfeited
39 vehicles for at least seven years.

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

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

8 ~~(12) 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 vehicles forfeited during the preceding calendar~~
11 ~~year. Money remitted shall be deposited in the state general fund.~~

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

18 ~~(14) The value of a sold forfeited vehicle is the sale price. The~~
19 ~~value of a retained forfeited vehicle is the fair market value of the~~
20 ~~vehicle at the time of seizure, determined when possible by reference~~
21 ~~to an applicable commonly used index, such as the index used by the~~
22 ~~department of licensing. A seizing agency may, but need not, use an~~
23 ~~independent qualified appraiser to determine the value of retained~~
24 ~~vehicles. If an appraiser is used, the value of the vehicle appraised~~
25 ~~is net of the cost of the appraisal.))~~

26 **Sec. 13.** RCW 70.74.400 and 2002 c 370 s 3 are each amended to
27 read as follows:

28 (1) Explosives, improvised devices, and components of explosives
29 and improvised devices that are possessed, manufactured, delivered,
30 imported, exported, stored, sold, purchased, transported, abandoned,
31 detonated, or used, or intended to be used, in violation of a
32 provision of this chapter are subject to seizure and forfeiture by a
33 law enforcement agency and no property right exists in them.

34 (2) The law enforcement agency making the seizure shall notify
35 the Washington state department of labor and industries of the
36 seizure.

37 (3) Seizure of explosives, improvised devices, and components of
38 explosives and improvised devices under subsection (1) of this
39 section may be made if:

1 (a) The seizure is incident to arrest or a search under a search
2 warrant;

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

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

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

12 (4) A law enforcement agency shall destroy explosives seized
13 under this chapter when it is necessary to protect the public safety
14 and welfare. When destruction is not necessary to protect the public
15 safety and welfare, and the explosives are not being held for
16 evidence, a seizure pursuant to this section commences proceedings
17 for forfeiture, which proceedings are governed by chapter 7.--- RCW
18 (the new chapter created in section 17 of this act).

19 ~~(5) ((The law enforcement agency under whose authority the~~
20 ~~seizure was made shall issue a written notice of the seizure and~~
21 ~~commencement of the forfeiture proceedings to the person from whom~~
22 ~~the explosives were seized, to any known owner of the explosives, and~~
23 ~~to any person who has a known interest in the explosives. The notice~~
24 ~~shall be issued within fifteen days of the seizure. The notice of~~
25 ~~seizure and commencement of the forfeiture proceedings shall be~~
26 ~~served in the same manner as provided in RCW 4.28.080 for service of~~
27 ~~a summons. The law enforcement agency shall provide a form by which~~
28 ~~the person or persons may request a hearing before the law~~
29 ~~enforcement agency to contest the seizure.~~

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

35 ~~(7) If, within thirty days of the issuance of the notice, any~~
36 ~~person notifies the seizing law enforcement agency in writing of the~~
37 ~~person's claim of ownership or right to possession of items seized,~~
38 ~~the person or persons shall be afforded a reasonable opportunity to~~
39 ~~be heard as to the claim or right. The hearing shall be before the~~
40 ~~chief law enforcement or the officer's designee of the seizing~~

1 agency, except that the person asserting the claim or right may
2 remove the matter to a court of competent jurisdiction if the
3 aggregate value of the items seized is more than five hundred
4 dollars. The hearing and any appeal shall be conducted according to
5 chapter 34.05 RCW. The seizing law enforcement agency shall bear the
6 burden of proving that the person (a) has no lawful right of
7 ownership or possession and (b) that the items seized were possessed,
8 manufactured, stored, sold, purchased, transported, abandoned,
9 detonated, or used in violation of a provision of this chapter with
10 the person's knowledge or consent.

11 ~~(8) The seizing law enforcement agency shall promptly return the~~
12 ~~items seized to the claimant upon a determination that the claimant~~
13 ~~is entitled to possession of the items seized.~~

14 (9)) If the items seized are forfeited under this statute, the
15 seizing agency shall dispose of the explosives by summary
16 destruction. However, when explosives are destroyed either to protect
17 public safety or because the explosives were forfeited, the person
18 from whom the explosives were seized loses all rights of action
19 against the law enforcement agency or its employees acting within the
20 scope of their employment, or other governmental entity or employee
21 involved with the seizure and destruction of explosives.

22 ((+10)) (6) This section is not intended to change the seizure
23 and forfeiture powers, enforcement, and penalties available to the
24 department of labor and industries pursuant to chapter 49.17 RCW as
25 provided in RCW 70.74.390.

26 **Sec. 14.** RCW 77.15.070 and 2005 c 406 s 2 are each amended to
27 read as follows:

28 (1) Fish and wildlife officers and ex officio fish and wildlife
29 officers may seize without warrant boats, airplanes, vehicles,
30 motorized implements, conveyances, gear, appliances, or other
31 articles they have probable cause to believe have been held with
32 intent to violate or used in violation of this title or rule of the
33 commission or director. However, fish and wildlife officers or ex
34 officio fish and wildlife officers may not seize any item or article,
35 other than for evidence, if under the circumstances, it is reasonable
36 to conclude that the violation was inadvertent. The property seized
37 is subject to forfeiture to the state under this section regardless
38 of ownership. Property seized may be recovered by its owner by
39 depositing with the department or into court a cash bond or

1 equivalent security equal to the value of the seized property but not
2 more than one hundred thousand dollars. Such cash bond or security is
3 subject to forfeiture in lieu of the property. Forfeiture of property
4 seized under this section is a civil forfeiture against property and
5 is intended to be a remedial civil sanction.

6 (2) In the event of a seizure of property under this section,
7 jurisdiction to begin the forfeiture proceedings shall commence upon
8 seizure, and shall be governed by chapter 7.--- RCW (the new chapter
9 created in section 17 of this act). ~~((Within fifteen days following~~
10 ~~the seizure, the seizing authority shall serve a written notice of~~
11 ~~intent to forfeit property on the owner of the property seized and on~~
12 ~~any person having any known right or interest in the property seized.~~
13 ~~Notice may be served by any method authorized by law or court rule,~~
14 ~~including service by certified mail with return receipt requested.~~
15 ~~Service by mail is deemed complete upon mailing within the fifteen-~~
16 ~~day period following the seizure.~~

17 ~~(3) Persons claiming a right of ownership or right to possession~~
18 ~~of property are entitled to a hearing to contest forfeiture. Such a~~
19 ~~claim shall specify the claim of ownership or possession and shall be~~
20 ~~made in writing and served on the director within forty five days of~~
21 ~~the seizure. If the seizing authority has complied with notice~~
22 ~~requirements and there is no claim made within forty five days, then~~
23 ~~the property shall be forfeited to the state.~~

24 ~~(4) If any person timely serves the director with a claim to~~
25 ~~property, the person shall be afforded an opportunity to be heard as~~
26 ~~to the person's claim or right. The hearing shall be before the~~
27 ~~director or director's designee, or before an administrative law~~
28 ~~judge appointed under chapter 34.12 RCW, except that a person~~
29 ~~asserting a claim or right may remove the matter to a court of~~
30 ~~competent jurisdiction if the aggregate value of the property seized~~
31 ~~is more than five thousand dollars. The department may settle a~~
32 ~~person's claim of ownership prior to the administrative hearing.~~

33 ~~(5) The hearing to contest forfeiture and any subsequent appeal~~
34 ~~shall be as provided for in chapter 34.05 RCW, the administrative~~
35 ~~procedure act. The seizing authority has the burden to demonstrate~~
36 ~~that it had reason to believe the property was held with intent to~~
37 ~~violate or was used in violation of this title or rule of the~~
38 ~~commission or director. The person contesting forfeiture has the~~
39 ~~burden of production and proof by a preponderance of evidence that~~
40 ~~the person owns or has a right to possess the property and:~~

1 ~~(a) That the property was not held with intent to violate or used~~
2 ~~in violation of this title; or~~

3 ~~(b) If the property is a boat, airplane, or vehicle, that the~~
4 ~~illegal use or planned illegal use of the boat, airplane, or vehicle~~
5 ~~occurred without the owner's knowledge or consent, and that the owner~~
6 ~~acted reasonably to prevent illegal uses of such boat, airplane, or~~
7 ~~vehicle.~~

8 ~~(6) A forfeiture of a conveyance encumbered by a perfected~~
9 ~~security interest is subject to the interest of the secured party if~~
10 ~~the secured party neither had knowledge of nor consented to the act~~
11 ~~or omission. No security interest in seized property may be perfected~~
12 ~~after seizure.~~

13 ~~(7))~~ (3) If seized property is forfeited under this section the
14 department may retain it for official use unless the property is
15 required to be destroyed, or upon application by any law enforcement
16 agency of the state, release such property to the agency for the use
17 of enforcing this title, or sell such property, and deposit the
18 proceeds to the fish and wildlife enforcement reward account created
19 in RCW 77.15.425.

20 **Sec. 15.** RCW 69.50.505 and 2013 c 3 s 25 are each amended to
21 read as follows:

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

24 (a) All controlled substances which have been manufactured,
25 distributed, dispensed, acquired, or possessed in violation of this
26 chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals,
27 as defined in RCW 64.44.010, used or intended to be used in the
28 manufacture of controlled substances;

29 (b) All raw materials, products, and equipment of any kind which
30 are used, or intended for use, in manufacturing, compounding,
31 processing, delivering, importing, or exporting any controlled
32 substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

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

35 (d) All conveyances, including aircraft, vehicles, or vessels,
36 which are used, or intended for use, in any manner to facilitate the
37 sale, delivery, or receipt of property described in (a) or (b) of
38 this subsection, except that:

1 (i) No conveyance used by any person as a common carrier in the
2 transaction of business as a common carrier is subject to forfeiture
3 under this section unless it appears that the owner or other person
4 in charge of the conveyance is a consenting party or privy to a
5 violation of this chapter or chapter 69.41 or 69.52 RCW;

6 (ii) No conveyance is subject to forfeiture under this section by
7 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) No conveyance is subject to forfeiture under this section
11 if used in the receipt of only an amount of marijuana for which
12 possession constitutes a misdemeanor under RCW 69.50.4014;

13 (iv) A forfeiture of a conveyance encumbered by a bona fide
14 security interest is subject to the interest of the secured party if
15 the secured party neither had knowledge of nor consented to the act
16 or omission; and

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

22 (e) All books, records, and research products and materials,
23 including formulas, microfilm, tapes, and data which are used, or
24 intended for use, in violation of this chapter or chapter 69.41 or
25 69.52 RCW;

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

29 (g) All moneys, negotiable instruments, securities, or other
30 tangible or intangible property of value furnished or intended to be
31 furnished by any person in exchange for a controlled substance in
32 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible
33 or intangible personal property, proceeds, or assets acquired in
34 whole or in part with proceeds traceable to an exchange or series of
35 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,
36 and all moneys, negotiable instruments, and securities used or
37 intended to be used to facilitate any violation of this chapter or
38 chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable
39 instruments, securities, or other tangible or intangible property
40 encumbered by a bona fide security interest is subject to the

1 interest of the secured party if, at the time the security interest
2 was created, the secured party neither had knowledge of nor consented
3 to the act or omission. No personal property may be forfeited under
4 this subsection (1)(g), to the extent of the interest of an owner, by
5 reason of any act or omission (~~(which that owner establishes was)~~)
6 committed or omitted without the owner's knowledge or consent; and

7 (h) All real property, including any right, title, and interest
8 in the whole of any lot or tract of land, and any appurtenances or
9 improvements which are being used with the knowledge of the owner for
10 the manufacturing, compounding, processing, delivery, importing, or
11 exporting of any controlled substance, or which have been acquired in
12 whole or in part with proceeds traceable to an exchange or series of
13 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,
14 if such activity is not less than a class C felony and a substantial
15 nexus exists between the commercial production or sale of the
16 controlled substance and the real property. However:

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

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

24 (iii) The possession of marijuana shall not result in the
25 forfeiture of real property unless the marijuana is possessed for
26 commercial purposes that are unlawful under Washington state law, the
27 amount possessed is five or more plants or one pound or more of
28 marijuana, and a substantial nexus exists between the possession of
29 marijuana and the real property. In such a case, the intent of the
30 offender shall be determined by the preponderance of the evidence,
31 including the offender's prior criminal history, the amount of
32 marijuana possessed by the offender, the sophistication of the
33 activity or equipment used by the offender, whether the offender was
34 licensed to produce, process, or sell marijuana, or was an employee
35 of a licensed producer, processor, or retailer, and other evidence
36 which demonstrates the offender's intent to engage in unlawful
37 commercial activity;

38 (iv) The unlawful sale of marijuana or a legend drug shall not
39 result in the forfeiture of real property unless the sale was forty
40 grams or more in the case of marijuana or one hundred dollars or more

1 in the case of a legend drug, and a substantial nexus exists between
2 the unlawful sale and the real property; and

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

19 (a) The seizure is incident to an arrest or a search under a
20 search warrant or an inspection under an administrative inspection
21 warrant;

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

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

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

31 (3) In the event of seizure pursuant to subsection (2) of this
32 section, proceedings for forfeiture shall be deemed commenced by the
33 seizure. The law enforcement agency under whose authority the seizure
34 was made shall cause notice to be served within fifteen days
35 following the seizure on the owner of the property seized and the
36 person in charge thereof and any person having any known right or
37 interest therein, including any community property interest, of the
38 seizure and intended forfeiture of the seized property. Service of
39 notice of seizure of real property shall be made according to the
40 rules of civil procedure. However, the state may not obtain a default

1 judgment with respect to real property against a party who is served
2 by substituted service absent an affidavit stating that a good faith
3 effort has been made to ascertain if the defaulted party is
4 incarcerated within the state, and that there is no present basis to
5 believe that the party is incarcerated within the state. Notice of
6 seizure in the case of property subject to a security interest that
7 has been perfected by filing a financing statement in accordance with
8 chapter 62A.9A RCW, or a certificate of title, shall be made by
9 service upon the secured party or the secured party's assignee at the
10 address shown on the financing statement or the certificate of title.
11 The notice of seizure in other cases may be served by any method
12 authorized by law or court rule including but not limited to service
13 by certified mail with return receipt requested. Service by mail
14 shall be deemed complete upon mailing within the fifteen day period
15 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)(d), (g), or (h) of this section
19 within (~~(forty-five)~~) sixty days of the service of notice from the
20 seizing agency in the case of personal property and (~~(ninety)~~) one
21 hundred twenty days in the case of real property, the item seized
22 shall be deemed forfeited. The community property interest in real
23 property of a person whose spouse or domestic partner committed a
24 violation giving rise to seizure of the real property may not be
25 forfeited if the person did not participate in 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)(b), (c), (d), (e), (f), (g), or (h)
29 of this section within (~~(forty-five)~~) sixty days of the service of
30 notice from the seizing agency in the case of personal property and
31 (~~(ninety)~~) one hundred twenty days in the case of real property, the
32 person or persons shall be afforded a reasonable opportunity to be
33 heard as to the claim or right. The notice of claim may be served by
34 any method authorized by law or court rule including, but not limited
35 to, service by first-class mail. Service by mail shall be deemed
36 complete upon mailing within the (~~(forty-five)~~) sixty day period
37 following service of the notice of seizure in the case of personal
38 property and within the (~~(ninety-day)~~) one hundred twenty day period
39 following service of the notice of seizure in the case of real
40 property. The hearing shall be before the chief law enforcement

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

22 The seizing law enforcement agency shall promptly return the
23 article or articles to the claimant, in the same or substantially
24 similar condition as when seized, upon a determination by the
25 administrative law judge or court that the claimant is the present
26 lawful owner or is lawfully entitled to possession thereof of items
27 specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of
28 this section.

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

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

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

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

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

6 (d) Forward it to the drug enforcement administration for
7 disposition.

8 ~~(8)((a) When property is forfeited, the seizing agency shall
9 keep a record indicating the identity of the prior owner, if known, a
10 description of the property, the disposition of the property, the
11 value of the property at the time of seizure, and the amount of
12 proceeds realized from disposition of the property.~~

13 ~~(b) Each seizing agency shall retain records of forfeited
14 property for at least seven years.~~

15 ~~(c) Each seizing agency shall file a report including a copy of
16 the records of forfeited property with the state treasurer each
17 calendar quarter.~~

18 ~~(d) The quarterly report need not include a record of forfeited
19 property that is still being held for use as evidence during the
20 investigation or prosecution of a case or during the appeal from a
21 conviction.)~~ Seizing agencies are subject to the requirements of
22 section 4 of this act.

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

27 (b) The net proceeds of forfeited property is the value of the
28 forfeitable interest in the property after deducting the cost of
29 satisfying any bona fide security interest to which the property is
30 subject at the time of seizure; and in the case of sold property,
31 after deducting the cost of sale, including reasonable fees or
32 commissions paid to independent selling agents, and the cost of any
33 valid landlord's claim for damages under subsection (15) of this
34 section.

35 (c) The value of sold forfeited property is the sale price. The
36 value of retained forfeited property is the fair market value of the
37 property at the time of seizure, determined when possible by
38 reference to an applicable commonly used index, such as the index
39 used by the department of licensing for valuation of motor vehicles.
40 A seizing agency may use, but need not use, an independent qualified

1 appraiser to determine the value of retained property. If an
2 appraiser is used, the value of the property appraised is net of the
3 cost of the appraisal. The value of destroyed property and retained
4 firearms or illegal property is zero.

5 (10) Forfeited property and net proceeds not required to be paid
6 to the state treasurer shall be retained by the seizing law
7 enforcement agency exclusively for the expansion and improvement of
8 controlled substances related law enforcement activity. Money
9 retained under this section may not be used to supplant preexisting
10 funding sources.

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

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

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

30 (14) Upon the entry of an order of forfeiture of real property,
31 the court shall forward a copy of the order to the assessor of the
32 county in which the property is located. Orders for the forfeiture of
33 real property shall be entered by the superior court, subject to
34 court rules. Such an order shall be filed by the seizing agency in
35 the county auditor's records in the county in which the real property
36 is located.

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (17) Subsections (15) and (16) of this section do not limit any
6 other rights a landlord may have against a tenant to collect for
7 damages. However, if a law enforcement agency satisfies a landlord's
8 claim under subsection (15) of this section, the rights the landlord
9 has against the tenant for damages directly caused by a law
10 enforcement officer under the terms of the landlord and tenant's
11 contract are subrogated to the law enforcement agency.

12 (18) The protections afforded by the service members' civil
13 relief act, chapter 38.42 RCW, are applicable to proceedings under
14 this section.

15 **Sec. 16.** RCW 38.42.020 and 2014 c 65 s 2 are each amended to
16 read as follows:

17 (1) Any service member who is ordered to report for military
18 service and his or her dependents are entitled to the rights and
19 protections of this chapter during the period beginning on the date
20 on which the service member receives the order and ending one hundred
21 eighty days after termination of or release from military service.

22 (2) This chapter applies to any judicial or administrative
23 proceeding commenced in any court or agency in Washington state in
24 which a service member or his or her dependent is a party. This
25 chapter applies to civil asset forfeiture proceedings. This chapter
26 does not apply to criminal proceedings.

27 (3) This chapter shall be construed liberally so as to provide
28 fairness and do substantial justice to service members and their
29 dependents.

30 NEW SECTION. **Sec. 17.** Sections 1 through 6 of this act
31 constitute a new chapter in Title 7 RCW.

32 NEW SECTION. **Sec. 18.** This act applies to seizures occurring on
33 or after the effective date of this section.

34 NEW SECTION. **Sec. 19.** Except for section 6 of this act, this
35 act takes effect January 1, 2019.

1 NEW SECTION. **Sec. 20.** Section 6 of this act takes effect July
2 1, 2018."

E2SHB 2718 - S COMM AMD
By Committee on Law & Justice

3 On page 1, line 2 of the title, after "reporting;" strike the
4 remainder of the title and insert "amending RCW 9.68A.120, 9A.88.150,
5 9A.83.030, 10.105.010, 19.290.230, 46.61.5058, 70.74.400, 77.15.070,
6 69.50.505, and 38.42.020; adding a new chapter to Title 7 RCW;
7 creating a new section; prescribing penalties; and providing
8 effective dates."

--- END ---