

2 SHB 2501 - S AMD  
3 By Senators Nelson and A. Smith

4 ADOPTED 3/11/92

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 69.50.505 and 1990 c 248 s 2 and 1990 c 213 s 12 are  
8 each reenacted and amended to read as follows:

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

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

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

20 (3) All property which is used, or intended for use, as a container  
21 for property described in paragraphs (1) or (2);

22 (4) All conveyances, including aircraft, vehicles, or vessels,  
23 which are used, or intended for use, in any manner to facilitate the  
24 sale, delivery, or receipt of property described in paragraphs (1) or  
25 (2), except that:

26 (i) No conveyance used by any person as a common carrier in the  
27 transaction of business as a common carrier is subject to forfeiture  
28 under this section unless it appears that the owner or other person in

1 charge of the conveyance is a consenting party or privy to a violation  
2 of this chapter or chapter 69.41 or 69.52 RCW;

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

6 (iii) No conveyance is subject to forfeiture under this section if  
7 used in the receipt of only an amount of marijuana for which possession  
8 constitutes a misdemeanor under RCW 69.50.401(e);

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

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

18 (5) All books, records, and research products and materials,  
19 including formulas, microfilm, tapes, and data which are used, or  
20 intended for use, in violation of this chapter or chapter 69.41 or  
21 69.52 RCW;

22 (6) All drug paraphernalia;

23 (7) All moneys, negotiable instruments, securities, or other  
24 tangible or intangible property of value furnished or intended to be  
25 furnished by any person in exchange for a controlled substance in  
26 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible  
27 or intangible personal property, proceeds, or assets acquired in whole  
28 or in part with proceeds traceable to an exchange or series of  
29 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,  
30 and all moneys, negotiable instruments, and securities used or intended

1 to be used to facilitate any violation of this chapter or chapter 69.41  
2 or 69.52 RCW: PROVIDED, That a forfeiture of money, negotiable  
3 instruments, securities, or other tangible or intangible property  
4 encumbered by a bona fide security interest is subject to the interest  
5 of the secured party if, at the time the security interest was created,  
6 the secured party neither had knowledge of nor consented to the act or  
7 omission: PROVIDED FURTHER, That no personal property may be forfeited  
8 under this paragraph, to the extent of the interest of an owner, by  
9 reason of any act or omission which that owner establishes was  
10 committed or omitted without the owner's knowledge or consent; and

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

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

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

27 (iii) The possession of marijuana shall not result in the  
28 forfeiture of real property unless the marijuana is possessed for  
29 commercial purposes, the amount possessed is five or more plants or one  
30 pound or more of marijuana, and a substantial nexus exists between the

1 possession of marijuana and the real property. In such a case, the  
2 intent of the offender shall be determined by the preponderance of the  
3 evidence, including the offender's prior criminal history, the amount  
4 of marijuana possessed by the offender, the sophistication of the  
5 activity or equipment used by the offender, and other evidence which  
6 demonstrates the offender's intent to engage in commercial activity;

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

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

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

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

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

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

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

10 (c) In the event of seizure pursuant to subsection (b), proceedings  
11 for forfeiture shall be deemed commenced by the seizure. The law  
12 enforcement agency under whose authority the seizure was made shall  
13 cause notice to be served within fifteen days following the seizure on  
14 the owner of the property seized and the person in charge thereof and  
15 any person having any known right or interest therein, including any  
16 community property interest, of the seizure and intended forfeiture of  
17 the seized property. Service of notice of seizure of real property  
18 shall be made according to the rules of civil procedure. However, the  
19 state may not obtain a default judgment with respect to real property  
20 against a party who is served by substituted service absent an  
21 affidavit stating that a good faith effort has been made to ascertain  
22 if the defaulted party is incarcerated within the state, and that there  
23 is no present basis to believe that the party is incarcerated within  
24 the 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 shall be deemed complete upon mailing within the fifteen day  
28 period following the seizure.

29 (d) If no person notifies the seizing law enforcement agency in  
30 writing of the person's claim of ownership or right to possession of

1 items specified in subsection (a)(4), (a)(7), or (a)(8) of this section  
2 within forty-five days of the seizure in the case of personal property  
3 and ninety days in the case of real property, the item seized shall be  
4 deemed forfeited. The community property interest in real property of  
5 a person whose spouse committed a violation giving rise to seizure of  
6 the real property may not be forfeited if the person did not  
7 participate in the violation.

8 (e) If any person notifies the seizing law enforcement agency in  
9 writing of the person's claim of ownership or right to possession of  
10 items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6),  
11 (a)(7), or (a)(8) of this section within forty-five days of the seizure  
12 in the case of personal property and ninety days in the case of real  
13 property, the person or persons shall be afforded a reasonable  
14 opportunity to be heard as to the claim or right. The hearing shall be  
15 before the chief law enforcement officer of the seizing agency or the  
16 chief law enforcement officer's designee, except where the seizing  
17 agency is a state agency as defined in RCW 34.12.020(4), the hearing  
18 shall be before the chief law enforcement officer of the seizing agency  
19 or an administrative law judge appointed under chapter 34.12 RCW,  
20 except that any person asserting a claim or right may remove the matter  
21 to a court of competent jurisdiction if the aggregate value of the  
22 article or articles involved is more than five hundred dollars. The  
23 court to which the matter is to be removed shall be the district court  
24 when ~~((such))~~ the aggregate value ~~((is ten thousand dollars or less))~~  
25 of personal property is within the jurisdictional limit set forth in  
26 RCW 3.66.020. A hearing before the seizing agency and any appeal  
27 therefrom shall be under Title 34 RCW. In a court hearing between two  
28 or more claimants to the article or articles involved, the prevailing  
29 party shall be entitled to a judgment for costs and reasonable  
30 attorney's fees. In cases involving personal property, the burden of

1 producing evidence shall be upon the person claiming to be the lawful  
2 owner or the person claiming to have the lawful right to possession of  
3 the property. In cases involving real property, the burden of  
4 producing evidence shall be upon the law enforcement agency. The  
5 burden of proof that the seized real property is subject to forfeiture  
6 shall be upon the law enforcement agency. The seizing law enforcement  
7 agency shall promptly return the article or articles to the claimant  
8 upon a determination by the administrative law judge or court that the  
9 claimant is the present lawful owner or is lawfully entitled to  
10 possession thereof of items specified in subsection (a)(2), (a)(3),  
11 (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this section.

12 (f) When property is forfeited under this chapter the board or  
13 seizing law enforcement agency may:

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

17 (2) ~~((i))~~ Sell that which is not required to be destroyed by law  
18 and which is not harmful to the public ~~((.~~ ~~The proceeds and all moneys~~  
19 ~~forfeited under this title shall be used for payment of all proper~~  
20 ~~expenses of the investigation leading to the seizure, including any~~  
21 ~~money delivered to the subject of the investigation by the law~~  
22 ~~enforcement agency, and of the proceedings for forfeiture and sale,~~  
23 ~~including expenses of seizure, maintenance of custody, advertising,~~  
24 ~~actual costs of the prosecuting or city attorney, and court costs.~~  
25 ~~Money remaining after the payment of all expenses shall be distributed~~  
26 ~~as follows:~~

27 ~~(A) Twenty five percent of the money derived from the forfeiture of~~  
28 ~~real property and seventy five percent of the money derived from the~~  
29 ~~forfeiture of personal property shall be deposited in the general fund~~  
30 ~~of the state, county, and/or city of the seizing law enforcement agency~~

1 and shall be used exclusively for the expansion or improvement of law  
2 enforcement services. These services may include the creation of  
3 reward funds for the purpose of rewarding informants who supply  
4 information leading to the arrest, prosecution and conviction of  
5 persons who violate laws relating to controlled substances. Such  
6 moneys shall not supplant preexisting funding sources;

7 (B) Twenty five percent of money derived from the forfeiture of  
8 real property and twenty five percent of money derived from the  
9 forfeiture of personal property shall be remitted to the state  
10 treasurer for deposit in the public safety and education account  
11 established in RCW 43.08.250;

12 (C) Until July 1, 1995, fifty percent of money derived from the  
13 forfeiture of real property shall be remitted to the state treasurer  
14 for deposit in the drug enforcement and education account under RCW  
15 69.50.520, on and after July 1, 1995, the fifty percent of the money  
16 shall be remitted in the same manner as the twenty five percent of the  
17 money remitted under (2)(i)(A) of this subsection; and

18 (D) If an investigation involves a seizure of moneys and proceeds  
19 having an aggregate value of less than five thousand dollars, the  
20 moneys and proceeds may be deposited in total in the general fund of  
21 the governmental unit of the seizing law enforcement agency and shall  
22 be appropriated exclusively for the expansion of narcotics enforcement  
23 services. Such moneys shall not supplant preexisting funding sources.

24 (ii) Money deposited according to this section must be deposited  
25 within ninety days of the date of final disposition of either the  
26 administrative seizure or the judicial seizure));

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



1 (4) Forward it to the drug enforcement administration for  
2 disposition.

3 (g)(1) When property is forfeited, the seizing agency shall keep a  
4 record indicating the identity of the prior owner, if known, a  
5 description of the property, the disposition of the property, the value  
6 of the property at the time of seizure, and the amount of proceeds  
7 realized from disposition of the property.

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

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

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

17 (h)(1) By January 31st of each year, each seizing agency shall  
18 remit to the state treasurer an amount equal to ten percent of the net  
19 proceeds of any property forfeited during the preceding calendar year.  
20 Money remitted shall be deposited in the drug enforcement and education  
21 account under RCW 69.50.520.

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

29 (3) The value of sold forfeited property is the sale price. The  
30 value of retained forfeited property is the fair market value of the

1 property at the time of seizure, determined when possible by reference  
2 to an applicable commonly used index, such as the index used by the  
3 department of licensing for valuation of motor vehicles. A seizing  
4 agency may use, but need not use, an independent qualified appraiser to  
5 determine the value of retained property. If an appraiser is used, the  
6 value of the property appraised is net of the cost of the appraisal.  
7 The value of destroyed property and retained firearms or illegal  
8 property is zero.

9 (i) Forfeited property and net proceeds not required to be paid to  
10 the state treasurer shall be retained by the seizing law enforcement  
11 agency exclusively for the expansion and improvement of controlled  
12 substances related law enforcement activity. Money retained under this  
13 section may not be used to supplant pre-existing funding sources.

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

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

26 ((i)) (l) The failure, upon demand by a board inspector or law  
27 enforcement officer, of the person in occupancy or in control of land  
28 or premises upon which the species of plants are growing or being  
29 stored to produce an appropriate registration or proof that he is the

1 holder thereof constitutes authority for the seizure and forfeiture of  
2 the plants.

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

10 (n) A landlord may assert a claim against proceeds from the sale of  
11 assets seized and forfeited under subsection (f)(2) of this section,  
12 only if:

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

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

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

25 (ii) Only if the governmental entity denies or fails to respond to  
26 the landlord's claim within sixty days of the date of filing, may the  
27 landlord collect damages under this subsection by filing within thirty  
28 days of denial or the expiration of the sixty-day period, whichever  
29 occurs first, a claim with the seizing law enforcement agency. The  
30 seizing law enforcement agency must notify the landlord of the status

1 of the claim by the end of the thirty-day period. Nothing in this  
2 section requires the claim to be paid by the end of the sixty-day or  
3 thirty-day period.

4 (3) For any claim filed under (2) of this subsection, the law  
5 enforcement agency shall pay the claim unless the agency provides  
6 substantial proof that the landlord either:

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

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

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

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

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

17 (3) The proceeds from the sale of the specific tenant's property  
18 seized and forfeited under subsection (f)(2) of this section; and

19 (4) The proceeds available after the seizing law enforcement agency  
20 satisfies any bona fide security interest in the tenant's property and  
21 costs related to sale of the tenant's property as provided by  
22 subsection (h)(2) of this section.

23 (p) Subsections (n) and (o) of this section do not limit any other  
24 rights a landlord may have against a tenant to collect for damages.  
25 However, if a law enforcement agency satisfies a landlord's claim under  
26 subsection (n) of this section, the rights the landlord has against the  
27 tenant for damages directly caused by a law enforcement officer under  
28 the terms of the landlord and tenant's contract are subrogated to the  
29 law enforcement agency."

1        "NEW SECTION.   **Sec. 2.**        1992 c ... (2SSB 5318) s 5 is hereby  
2 repealed."

3    **SHB 2501** - S AMD  
4        By Senators Nelson and A. Smith

ADOPTED 3/11/92

6        On page 1, line 1 of the title, after "property;" strike the  
7 remainder of the title and insert "reenacting and amending RCW  
8 69.50.505; and repealing 1992 c ... (2SSB 5318) s 5."