

2 SHB 1640 - S COMM AMD

3 By Committee on Law & Justice

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

7 "NEW SECTION. **Sec. 1.** The legislature finds compelling state
8 interests in compensating the victims of crime and in preventing
9 criminals from profiting from their crimes. Sections 2 through 5 of
10 this act are intended to advance both of these interests.

11 NEW SECTION. **Sec. 2.** The following are subject to seizure and
12 forfeiture and no property right exists in them:

13 (1) All tangible or intangible property, including any right or
14 interest in such property, acquired by a person convicted of a crime
15 for which there is a victim of the crime and to the extent the
16 acquisition is the direct or indirect result of the convicted person
17 having committed the crime. Such property includes but is not limited
18 to the convicted person's remuneration for, or contract interest in,
19 any reenactment or depiction or account of the crime in a movie, book,
20 magazine, newspaper or other publication, audio recording, radio or
21 television presentation, live entertainment of any kind, or any
22 expression of the convicted person's thoughts, feelings, opinions, or
23 emotions regarding the crime.

24 (2) Any property acquired through the traceable proceeds of
25 property described in subsection (1) of this section.

26 NEW SECTION. **Sec. 3.** (1) Any property subject to seizure and
27 forfeiture under section 2 of this act may be seized by the prosecuting
28 attorney of the county in which the convicted person was convicted upon
29 process issued by any superior court having jurisdiction over the
30 property.

31 (2) Proceedings for forfeiture are commenced by a seizure. Seizure
32 of real property shall include the filing of a lis pendens by the
33 seizing agency. Real property seized under this section shall not be
34 transferred or otherwise conveyed until ninety days after seizure or

1 until a judgment of forfeiture is entered, whichever is later, except
2 that such real property seized may be transferred or conveyed to any
3 person or entity who acquires title by foreclosure or deed in lieu of
4 foreclosure of a security interest.

5 (3) The prosecuting attorney who seized the property shall cause
6 notice to be served within fifteen days following the seizure on the
7 owner of the property seized and the person in charge thereof and any
8 person having any known right or interest therein, including any
9 community property interest, of the seizure and intended forfeiture of
10 the seized property. Service of notice of seizure of real property
11 shall be made according to the rules of civil procedure. However, the
12 state may not obtain a default judgment with respect to real property
13 against a party who is served by substituted service absent an
14 affidavit stating that a good faith effort has been made to ascertain
15 if the defaulted party is incarcerated within the state, and that there
16 is no present basis to believe that the party is incarcerated within
17 the state. The notice of seizure in other cases may be served by any
18 method authorized by law or court rule including but not limited to
19 service by certified mail with return receipt requested. Service by
20 mail shall be deemed complete upon mailing within the fifteen-day
21 period following the seizure.

22 (4) If no person notifies the seizing prosecuting attorney in
23 writing of the person's claim of ownership or right to possession of
24 the property within ninety days, the property seized shall be deemed
25 forfeited. A perfected security interest of a secured party may be
26 extinguished only after a contested hearing or agreement by the secured
27 party.

28 (5) If any person notifies the seizing prosecuting attorney in
29 writing of the person's claim of ownership or right to possession of
30 the property within ninety days, the person or persons shall be
31 afforded a reasonable opportunity to be heard as to the claim or right.
32 The prosecuting attorney shall file the case into a court of competent
33 jurisdiction. In a court hearing between two or more claimants to the
34 article or articles involved, the prevailing party shall be entitled to
35 a judgment for costs and reasonable attorneys' fees. In cases
36 involving personal property, the burden of producing evidence shall be
37 by a preponderance and upon the person claiming to be the lawful owner
38 or the person claiming to have the lawful right to possession of the
39 property. In cases involving real property, the burden of producing

1 evidence shall be by a preponderance and upon the prosecuting attorney.
2 The seizing prosecuting attorney shall promptly return the property to
3 the claimant upon a determination by the prosecuting attorney or court
4 that the claimant is the present lawful owner or is lawfully entitled
5 to possession of the property.

6 (6) Upon the entry of an order of forfeiture of real property, the
7 court shall forward a copy of the order to the county auditor of the
8 county in which the property is located. Orders for the forfeiture of
9 real property shall be entered by the superior court, subject to court
10 rules.

11 (7) A forfeiture action under this section may be brought at any
12 time from the date of conviction until the expiration of the statutory
13 maximum period of incarceration that could have been imposed for the
14 crime involved.

15 (8) A forfeiture of property encumbered by a bona fide security
16 interest is subject to the interest of the secured party if at the time
17 the security interest was created, the secured party did not know that
18 the property was subject to seizure and forfeiture.

19 NEW SECTION. **Sec. 4.** (1) The proceeds of any forfeiture action
20 brought under section 3 of this act shall be distributed as follows:

21 (a) First, to the victim or to the plaintiff in a wrongful death
22 action brought as a result of the victim's death, to satisfy any money
23 judgment against the convicted person, or to satisfy any restitution
24 ordered as part of the convicted person's sentence;

25 (b) Second, to the reasonable legal expenses of bringing the
26 action;

27 (c) Third, to the crime victims' compensation fund under RCW
28 7.68.090.

29 (2) A court may establish such escrow accounts or other
30 arrangements as it deems necessary and appropriate in order to
31 distribute proceeds in accordance with this section.

32 NEW SECTION. **Sec. 5.** (1) Any action taken by or on behalf of a
33 convicted person including but not limited to executing a power of
34 attorney or creating a corporation for the purpose of defeating the
35 provisions of sections 1 through 4 of this act is null and void as
36 against the public policy of this state.

1 (2) Sections 1 through 4 of this act are supplemental and do not
2 limit rights or remedies otherwise available to the victims of crimes
3 and do not limit actions otherwise available against persons convicted
4 of crimes.

5 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act are each
6 added to chapter 7.68 RCW."

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10 On page 1, line 1 of the title, after "victims;" strike the
11 remainder of the title and insert "and adding new sections to chapter
12 7.68 RCW."

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