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**SUBSTITUTE HOUSE BILL 1069**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Ludwig, Mielke, Riley, Mastin, Bray, Orr, Vance, H. Myers, Lisk, R. Johnson, Grant, Basich, Edmondson, Schmidt, Campbell, Van Luven, Rayburn, Foreman, Ballasiotes, Long, Kremen, Brough, Brumsickle, Horn, Forner, Karahalios, Chandler, Wood, Cooke, Roland and Silver)

Read first time 02/12/93.

1 AN ACT Relating to seizure of property; and adding a new chapter to  
2 Title 10 RCW.

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

4 NEW SECTION. **Sec. 1.** This chapter does not apply to property  
5 subject to forfeiture under chapter 66.32 RCW, RCW 69.50.505, 9.41.098,  
6 9.46.230, 9A.82.100, 9A.83.030, 7.48.090, or 77.12.101.

7 NEW SECTION. **Sec. 2.** (1) The following are subject to seizure and  
8 forfeiture and no property right exists in them: All personal  
9 property, including, but not limited to, any item, object, tool,  
10 substance, device, weapon, machine, vehicle of any kind, money,  
11 security, or negotiable instrument, which has been or was actually  
12 employed as an instrumentality in the commission of, or in aiding or  
13 abetting in the commission of any felony, or which was furnished or was  
14 intended to be furnished by any person in the commission of, as a  
15 result of, or as compensation for the commission of, any felony, or  
16 which was acquired in whole or in part with proceeds traceable to the  
17 commission of a felony. No property may be forfeited under this  
18 section until after there has been a conviction of the owner of the

1 property for the felony in connection with which the property was  
2 employed, furnished, or acquired.

3 (a) No conveyance 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 it appears that the owner or other person in  
6 charge of the conveyance is a consenting party or privy to the  
7 commission of a felony;

8 (b) No property is subject to forfeiture under this section if it  
9 is established by the owner thereof that the felony was committed  
10 without the owner's knowledge or consent;

11 (c) A forfeiture of property encumbered by a bona fide security  
12 interest is subject to the interest of the secured party if at the time  
13 the security interest was created, the secured party neither had  
14 knowledge of nor consented to the commission of the felony.

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

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

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

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

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

30 (3) In the event of seizure pursuant to this section, proceedings  
31 for forfeiture shall be deemed commenced by the seizure. The law  
32 enforcement agency under whose authority the seizure was made shall  
33 cause notice to be served within fifteen days following the seizure on  
34 the owner of the property seized and the person in charge thereof and  
35 any person having any known right or interest therein, including any  
36 community property interest, of the seizure and intended forfeiture of  
37 the seized property. The notice of seizure may be served by any method  
38 authorized by law or court rule including but not limited to service by  
39 certified mail with return receipt requested. Service by mail shall be

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

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

7 (5) If any person notifies the seizing law enforcement agency in  
8 writing of the person's claim of ownership or right to possession of  
9 items specified in subsection (1) of this section within forty-five  
10 days of the seizure, the person or persons shall be afforded a  
11 reasonable opportunity to be heard as to the claim or right. The  
12 hearing shall be before the chief law enforcement officer of the  
13 seizing agency or the chief law enforcement officer's designee, except  
14 that any person asserting a claim or right may remove the matter to a  
15 court of competent jurisdiction if the aggregate value of the article  
16 or articles involved is more than five hundred dollars. The court to  
17 which the matter is to be removed shall be the district court when the  
18 aggregate value of the personal property is within the jurisdictional  
19 limit of the district court. In a court hearing between two or more  
20 claimants to the article or articles involved, the prevailing party  
21 shall be entitled to a judgment for costs and reasonable attorney's  
22 fees. The burden of producing evidence shall be upon the person  
23 claiming to be the lawful owner or the person claiming to have the  
24 lawful right to possession of the property. The seizing law  
25 enforcement agency shall promptly return the article or articles to the  
26 claimant upon a determination by the trier of fact that the claimant is  
27 the present lawful owner or is lawfully entitled to possession.

28 (6) When property is forfeited under this chapter, the seizing law  
29 enforcement agency may:

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

33 (b) Sell that which is not required to be destroyed by law and  
34 which is not harmful to the public. The proceeds and all moneys  
35 forfeited under this chapter shall be used for payment of all proper  
36 expenses of the investigation leading to the seizure, including any  
37 money delivered to the subject of the investigation by the law  
38 enforcement agency, and of the proceedings for forfeiture and sale,

1 including expenses of seizure, maintenance of custody, advertising,  
2 actual costs of the prosecuting or city attorney, and court costs.

3 (7) By January 31st of each year, each seizing agency shall remit  
4 to the state treasurer an amount equal to ten percent of the net  
5 proceeds of any property forfeited during the preceding calendar year.  
6 Money remitted shall be deposited in the drug enforcement and education  
7 account under RCW 69.50.520.

8 (a) 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, after  
12 deducting the cost of sale, including reasonable fees or commissions  
13 paid to independent selling agents.

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

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

30 NEW SECTION. **Sec. 3.** Sections 1 and 2 of this act shall  
31 constitute a new chapter in Title 10 RCW.

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