

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1069

Chapter 288, Laws of 1993

53rd Legislature
1993 Regular Session

SEIZURE AND FORFEITURE OF PROPERTY INVOLVED IN A FELONY

EFFECTIVE DATE: 7/25/93

Passed by the House April 24, 1993
Yeas 96 Nays 0

BRIAN EBERSOLE
**Speaker of the
House of Representatives**

Passed by the Senate April 24, 1993
Yeas 41 Nays 1

JOEL PRITCHARD
President of the Senate

Approved May 12, 1993

MIKE LOWRY
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1069** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
Chief Clerk

FILED

May 12, 1993 - 10:13 a.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1069

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1993 Regular Session

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; adding new sections to
2 chapter 7.68 RCW; and adding a new chapter to 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 superior court conviction of the

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

3 A forfeiture of property encumbered by a bona fide security
4 interest is subject to the interest of the secured party if at the time
5 the security interest was created, the secured party neither had
6 knowledge of nor consented to the commission of the felony.

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

11 (a) The seizure is incident to an arrest or a search under a search
12 warrant;

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

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

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

21 (3) In the event of seizure pursuant to this section, proceedings
22 for forfeiture shall be deemed commenced by the seizure. The law
23 enforcement agency under whose authority the seizure was made shall
24 cause notice to be served within fifteen days following the seizure on
25 the owner of the property seized and the person in charge thereof and
26 any person having any known right or interest therein, including any
27 community property interest, of the seizure and intended forfeiture of
28 the seized property. The notice of seizure may be served by any method
29 authorized by law or court rule including but not limited to service by
30 certified mail with return receipt requested. Service by mail shall be
31 deemed complete upon mailing within the fifteen day period following
32 the seizure. Notice of seizure in the case of property subject to a
33 security interest that has been perfected by filing a financing
34 statement in accordance with chapter 62A.9 RCW, or a certificate of
35 title shall be made by service upon the secured party or the secured
36 party's assignee at the address shown on the financing statement or the
37 certificate of title.

38 (4) If no person notifies the seizing law enforcement agency in
39 writing of the person's claim of ownership or right to possession of

1 items specified in subsection (1) of this section within forty-five
2 days of the seizure, the item seized shall be deemed forfeited.

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

34 (6) When property is forfeited under this chapter, after satisfying
35 any court-ordered victim restitution, the seizing law enforcement
36 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 criminal law;

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

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 public safety and education
7 account.

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.** The legislature finds compelling state
31 interests in compensating the victims of crime and in preventing
32 criminals from profiting from their crimes. Sections 4 through 7 of
33 this act are intended to advance both of these interests.

34 NEW SECTION. **Sec. 4.** The following are subject to seizure and
35 forfeiture and no property right exists in them:

36 (1) All tangible or intangible property, including any right or
37 interest in such property, acquired by a person convicted of a crime

1 for which there is a victim of the crime and to the extent the
2 acquisition is the direct or indirect result of the convicted person
3 having committed the crime. Such property includes but is not limited
4 to the convicted person's remuneration for, or contract interest in,
5 any reenactment or depiction or account of the crime in a movie, book,
6 magazine, newspaper or other publication, audio recording, radio or
7 television presentation, live entertainment of any kind, or any
8 expression of the convicted person's thoughts, feelings, opinions, or
9 emotions regarding the crime.

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

12 NEW SECTION. **Sec. 5.** (1) Any property subject to seizure and
13 forfeiture under section 4 of this act may be seized by the prosecuting
14 attorney of the county in which the convicted person was convicted upon
15 process issued by any superior court having jurisdiction over the
16 property.

17 (2) Proceedings for forfeiture are commenced by a seizure. Seizure
18 of real property shall include the filing of a lis pendens by the
19 seizing agency. Real property seized under this section shall not be
20 transferred or otherwise conveyed until ninety days after seizure or
21 until a judgment of forfeiture is entered, whichever is later, except
22 that such real property seized may be transferred or conveyed to any
23 person or entity who acquires title by foreclosure or deed in lieu of
24 foreclosure of a security interest.

25 (3) The prosecuting attorney who seized the property shall cause
26 notice to be served within fifteen days following the seizure on the
27 owner of the property seized and the person in charge thereof and any
28 person having any known right or interest therein, including any
29 community property interest, of the seizure and intended forfeiture of
30 the seized property. Service of notice of seizure of real property
31 shall be made according to the rules of civil procedure. However, the
32 state may not obtain a default judgment with respect to real property
33 against a party who is served by substituted service absent an
34 affidavit stating that a good faith effort has been made to ascertain
35 if the defaulted party is incarcerated within the state, and that there
36 is no present basis to believe that the party is incarcerated within
37 the state. The notice of seizure in other cases may be served by any
38 method authorized by law or court rule including but not limited to

1 service by certified mail with return receipt requested. Service by
2 mail shall be deemed complete upon mailing within the fifteen-day
3 period following the seizure. Notice of seizure in the case of
4 property subject to a security interest that has been perfected by
5 filing a financing statement in accordance with chapter 62A.9 RCW, or
6 a certificate of title, shall be made by service upon the secured party
7 or the secured party's assignee at the address shown on the financing
8 statement or the certificate of title.

9 (4) If no person notifies the seizing prosecuting attorney in
10 writing of the person's claim of ownership or right to possession of
11 the property within forty-five days for personal property or ninety
12 days for real property, the property seized shall be deemed forfeited.

13 (5) If any person notifies the seizing prosecuting attorney in
14 writing of the person's claim of ownership or right to possession of
15 the property within forty-five days for personal property or ninety
16 days for real property, the person or persons shall be afforded a
17 reasonable opportunity to be heard as to the claim or right. The
18 prosecuting attorney shall file the case into a court of competent
19 jurisdiction. In a court hearing between two or more claimants to the
20 article or articles involved, the prevailing party shall be entitled to
21 a judgment for costs and reasonable attorneys' fees. In cases
22 involving personal property, the burden of producing evidence shall be
23 by a preponderance and upon the person claiming to be the lawful owner
24 or the person claiming to have the lawful right to possession of the
25 property. In cases involving real property, the burden of producing
26 evidence shall be by a preponderance and upon the prosecuting attorney.
27 The seizing prosecuting attorney shall promptly return the property to
28 the claimant upon a determination by the prosecuting attorney or court
29 that the claimant is the present lawful owner or is lawfully entitled
30 to possession of the property.

31 (6) Upon the entry of an order of forfeiture of real property, the
32 court shall forward a copy of the order to the county auditor of the
33 county in which the property is located. Orders for the forfeiture of
34 real property shall be entered by the superior court, subject to court
35 rules.

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

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

5 NEW SECTION. **Sec. 6.** (1) The proceeds of any forfeiture action
6 brought under section 5 of this act shall be distributed as follows:

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

11 (b) Second, to the reasonable legal expenses of bringing the
12 action;

13 (c) Third, to the crime victims' compensation fund under RCW
14 7.68.090.

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

18 NEW SECTION. **Sec. 7.** (1) Any action taken by or on behalf of a
19 convicted person including but not limited to executing a power of
20 attorney or creating a corporation for the purpose of defeating the
21 provisions of sections 3 through 6 of this act is null and void as
22 against the public policy of this state.

23 (2) Sections 3 through 6 of this act are supplemental and do not
24 limit rights or remedies otherwise available to the victims of crimes
25 and do not limit actions otherwise available against persons convicted
26 of crimes.

27 NEW SECTION. **Sec. 8.** (1) Sections 1 and 2 of this act shall
28 constitute a new chapter in Title 10 RCW.

29 (2) Sections 3 through 7 of this act are each added to chapter 7.68
30 RCW.

Passed the House April 24, 1993.

Passed the Senate April 24, 1993.

Approved by the Governor May 12, 1993.

Filed in Office of Secretary of State May 12, 1993.