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**HOUSE BILL 2136**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Taylor, Shea, Griffey, and Holy

AN ACT Relating to disposition of property subject to forfeiture; amending RCW 7.40.230, 7.48.090, 7.68.330, 9.41.098, 9.41.098, 9.46.231, 9.68A.120, 9A.56.240, 9A.82.100, 9A.82.110, 9A.88.150, 10.105.010, 19.290.230, 46.61.5058, 69.50.505, 70.77.440, 77.15.070, 82.24.145, 82.26.240, 82.32.670, and 82.38.370; providing effective dates; and providing an expiration date.

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

**Sec.**  RCW 7.40.230 and 2003 c 53 s 5 are each amended to read as follows:

(1) Whenever it appears that any person is engaged in or about to engage in any act that constitutes or will constitute a violation of RCW 9.26A.110, 9.26A.115, or 9.26A.090, the prosecuting attorney, a telecommunications company, or any person harmed by an alleged violation of RCW 9.26A.110, 9.26A.115, or 9.26A.090 may initiate a civil proceeding in superior court to enjoin such violation, and may petition the court to issue an order for the discontinuance of the specific telephone service being used in violation of RCW 9.26A.110, 9.26A.115, or 9.26A.090.

(2) An action under this section shall be brought in the county in which the unlawful act or acts are alleged to have taken place, and shall be commenced by the filing of a verified complaint, or shall be accompanied by an affidavit.

(3) If it is shown to the satisfaction of the court, either by verified complaint or affidavit, that a person is engaged in or about to engage in any act that constitutes a violation of RCW 9.26A.110, 9.26A.115, or 9.26A.090, the court may issue a temporary restraining order to abate and prevent the continuance or recurrence of the act. The court may direct the sheriff to seize and retain until further order of the court any device that is being used in violation of RCW 9.26A.110, 9.26A.115, or 9.26A.090. All property seized pursuant to the order of the court shall remain in the custody of the court.

(4) The court may issue a permanent injunction to restrain, abate or prevent the continuance or recurrence of the violation of RCW 9.26A.110, 9.26A.115, or 9.26A.090. The court may grant declaratory relief, mandatory orders, or any other relief deemed necessary to accomplish the purposes of the injunction. The court may retain jurisdiction of the case for the purpose of enforcing its orders.

(5) If it is shown to the satisfaction of the court, either by verified complaint or affidavit, that a person is engaged in or is about to engage in any act that constitutes a violation of RCW 9.26A.110, 9.26A.115, or 9.26A.090, the court may issue an order which shall be promptly served upon the person in whose name the telecommunications device is listed, requiring the party, within a reasonable time, to be fixed by the court, from the time of service of the petition on the party, to show cause before the judge why telephone service should not promptly be discontinued. At the hearing the burden of proof shall be on the complainant.

(6) Upon a finding by the court that the telecommunications device is being used or has been used in violation of RCW 9.26A.110 or 9.26A.115, the court may issue an order requiring the telephone company which is rendering service over the device to disconnect such service. Upon receipt of such order, which shall be served upon an officer of the telephone company by the sheriff or deputy of the county in which the telecommunications device is installed, the telephone company shall proceed promptly to disconnect and remove such device and discontinue all telephone service until further order of the court, provided that the telephone company may do so without breach of the peace or trespass.

(7) The telecommunications company that petitions the court for the removal of any telecommunications device under this section shall be a necessary party to any proceeding or action arising out of or under RCW 9.26A.110 or 9.26A.115.

(8) No telephone company shall be liable for any damages, penalty, or forfeiture, whether civil or criminal, for any legal act performed in compliance with any order issued by the court.

(9) Property seized pursuant to the direction of the court that the court has determined to have been used in violation of RCW 9.26A.110 or 9.26A.115 shall be forfeited after notice and hearing. The court may remit or mitigate the forfeiture upon terms and conditions as the court deems reasonable if it finds that such forfeiture was incurred without gross negligence or without any intent of the petitioner to violate the law, or it finds the existence of such mitigating circumstances as to justify the remission or the mitigation of the forfeiture. In determining whether to remit or mitigate forfeiture, the court shall consider losses that may have been suffered by victims as the result of the use of the forfeited property.

(10) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to one hundred percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the education legacy trust account under RCW 83.100.230 for common schools. The value of forfeited property and net proceeds shall be determined in accordance with RCW 69.50.505(9).

**Sec.**  RCW 7.48.090 and 1979 c 1 s 18 are each amended to read as follows:

(1) Lewd matter is contraband, and there are no property rights therein. All personal property declared to be a moral nuisance in RCW 7.48.052 and 7.48.054 and all moneys and other consideration declared to be a moral nuisance under RCW 7.48.056 are the subject of forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited, or otherwise used. Such moneys may be traced to and shall be recoverable from persons who, under RCW 7.48.064, have knowledge of the nuisance at the time such moneys are received by them.

(2) Upon judgment against the defendants in legal proceedings brought pursuant to RCW 7.48.050 through 7.48.100 as now or hereafter amended, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a public nuisance under this section. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to ((~~the general funds of the city and county governments wherein such matter is sold or exhibited, to be shared equally,~~)) and deposited in the education legacy trust account under RCW 83.100.230 for common schools as a forfeiture of the fruits of an unlawful enterprise and as partial restitution for damages done to the public welfare, public health, and public morals.

(3) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to one hundred percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the education legacy trust account under RCW 83.100.230 for common schools. The value of forfeited property and net proceeds shall be determined in accordance with RCW 69.50.505(9).

(4) Where the action is brought pursuant to RCW 7.48.050 through 7.48.100 as now or hereafter amended, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to the following:

((~~(1)~~)) (a) Investigative costs;

((~~(2)~~)) (b) Court costs;

((~~(3)~~)) (c) Reasonable attorney's fees arising out of the preparation for and trial of the cause, appeals therefrom, and other costs allowed on appeal;

((~~(4)~~)) (d) Printing costs of trial and appellate briefs, and all other papers filed in such proceedings.

**Sec.**  RCW 7.68.330 and 1993 c 288 s 6 are each amended to read as follows:

(1) The proceeds of any forfeiture action brought under RCW 7.68.320 shall be distributed as follows:

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

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

(c) Third, to the ((~~crime victims' compensation fund under RCW 7.68.090~~)) education legacy trust account under RCW 83.100.230 for common schools.

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

**Sec.**  RCW 9.41.098 and 2003 c 39 s 5 are each amended to read as follows:

(1) The superior courts and the courts of limited jurisdiction of the state may order forfeiture of a firearm which is proven to be:

(a) Found concealed on a person not authorized by RCW 9.41.060 or 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute defense to forfeiture if the person possessed a valid Washington concealed pistol license within the preceding two years and has not become ineligible for a concealed pistol license in the interim. Before the firearm may be returned, the person must pay the past due renewal fee and the current renewal fee;

(b) Commercially sold to any person without an application as required by RCW 9.41.090;

(c) In the possession of a person prohibited from possessing the firearm under RCW 9.41.040 or 9.41.045;

(d) In the possession or under the control of a person at the time the person committed or was arrested for committing a felony or committing a nonfelony crime in which a firearm was used or displayed;

(e) In the possession of a person who is in any place in which a concealed pistol license is required, and who is under the influence of any drug or under the influence of intoxicating liquor, as defined in chapter 46.61 RCW;

(f) In the possession of a person free on bail or personal recognizance pending trial, appeal, or sentencing for a felony or for a nonfelony crime in which a firearm was used or displayed, except that violations of Title 77 RCW shall not result in forfeiture under this section;

(g) In the possession of a person found to have been mentally incompetent while in possession of a firearm when apprehended or who is thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

(h) Used or displayed by a person in the violation of a proper written order of a court of general jurisdiction; or

(i) Used in the commission of a felony or of a nonfelony crime in which a firearm was used or displayed.

(2) Upon order of forfeiture, the court in its discretion may order destruction of any forfeited firearm. A court may temporarily retain forfeited firearms needed for evidence.

(a) Except as provided in (b), (c), and (d) of this subsection, firearms that are: (i) Judicially forfeited and no longer needed for evidence; or (ii) forfeited due to a failure to make a claim under RCW 63.32.010 or 63.40.010; may be disposed of in any manner determined by the local legislative authority. Any proceeds of an auction or trade ((~~may be retained by the legislative authority~~)) shall be deposited in the education legacy trust account under RCW 83.100.230 for common schools. This subsection (2)(a) applies only to firearms that come into the possession of the law enforcement agency after June 30, 1993.

By midnight, June 30, 1993, every law enforcement agency shall prepare an inventory, under oath, of every firearm that has been judicially forfeited, has been seized and may be subject to judicial forfeiture, or that has been, or may be, forfeited due to a failure to make a claim under RCW 63.32.010 or 63.40.010.

(b) Except as provided in (c) of this subsection, of the inventoried firearms a law enforcement agency shall destroy illegal firearms, may retain a maximum of ten percent of legal forfeited firearms for agency use, and shall either:

(i) Comply with the provisions for the auction of firearms in RCW 9.41.098 that were in effect immediately preceding May 7, 1993; or

(ii) Trade, auction, or arrange for the auction of, rifles and shotguns. In addition, the law enforcement agency shall either trade, auction, or arrange for the auction of, short firearms, or shall pay a fee of twenty-five dollars to the state treasurer for every short firearm neither auctioned nor traded, to a maximum of fifty thousand dollars. The fees shall be accompanied by an inventory, under oath, of every short firearm listed in the inventory required by (a) of this subsection, that has been neither traded nor auctioned. The state treasurer shall credit the fees to the firearms range account established in RCW 79A.25.210. All trades or auctions of firearms under this subsection shall be to licensed dealers. Proceeds of any auction less costs, including actual costs of storage and sale, shall be forwarded to the firearms range account established in RCW 79A.25.210.

(c) Antique firearms and firearms recognized as curios, relics, and firearms of particular historical significance by the United States treasury department bureau of alcohol, tobacco, ((~~and~~)) firearms and explosives are exempt from destruction and shall be disposed of by auction or trade to licensed dealers.

(d) Firearms in the possession of the Washington state patrol on or after May 7, 1993, that are judicially forfeited and no longer needed for evidence, or forfeited due to a failure to make a claim under RCW 63.35.020, must be disposed of as follows: (i) Firearms illegal for any person to possess must be destroyed; (ii) the Washington state patrol may retain a maximum of ten percent of legal firearms for agency use; and (iii) all other legal firearms must be auctioned or traded to licensed dealers. ((~~The Washington state patrol may retain any proceeds of an auction or trade~~)) By January 31st of each year, the Washington state patrol shall remit to the state treasurer an amount equal to one hundred percent of the net proceeds of any firearm forfeited during the preceding calendar year. Money remitted shall be deposited in the education legacy trust account under RCW 83.100.230 for common schools. The value of forfeited property and net proceeds shall be determined in accordance with RCW 69.50.505(9).

(3) The court shall order the firearm returned to the owner upon a showing that there is no probable cause to believe a violation of subsection (1) of this section existed or the firearm was stolen from the owner or the owner neither had knowledge of nor consented to the act or omission involving the firearm which resulted in its forfeiture.

(4) A law enforcement officer of the state or of any county or municipality may confiscate a firearm found to be in the possession of a person under circumstances specified in subsection (1) of this section. After confiscation, the firearm shall not be surrendered except: (a) To the prosecuting attorney for use in subsequent legal proceedings; (b) for disposition according to an order of a court having jurisdiction as provided in subsection (1) of this section; or (c) to the owner if the proceedings are dismissed or as directed in subsection (3) of this section.

**Sec.**  RCW 9.41.098 and 2016 sp.s. c 29 s 281 are each amended to read as follows:

(1) The superior courts and the courts of limited jurisdiction of the state may order forfeiture of a firearm which is proven to be:

(a) Found concealed on a person not authorized by RCW 9.41.060 or 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute defense to forfeiture if the person possessed a valid Washington concealed pistol license within the preceding two years and has not become ineligible for a concealed pistol license in the interim. Before the firearm may be returned, the person must pay the past due renewal fee and the current renewal fee;

(b) Commercially sold to any person without an application as required by RCW 9.41.090;

(c) In the possession of a person prohibited from possessing the firearm under RCW 9.41.040 or 9.41.045;

(d) In the possession or under the control of a person at the time the person committed or was arrested for committing a felony or committing a nonfelony crime in which a firearm was used or displayed;

(e) In the possession of a person who is in any place in which a concealed pistol license is required, and who is under the influence of any drug or under the influence of intoxicating liquor, as defined in chapter 46.61 RCW;

(f) In the possession of a person free on bail or personal recognizance pending trial, appeal, or sentencing for a felony or for a nonfelony crime in which a firearm was used or displayed, except that violations of Title 77 RCW shall not result in forfeiture under this section;

(g) In the possession of a person found to have been mentally incompetent while in possession of a firearm when apprehended or who is thereafter committed pursuant to chapter 10.77 RCW or committed for mental health treatment under chapter 71.05 RCW;

(h) Used or displayed by a person in the violation of a proper written order of a court of general jurisdiction; or

(i) Used in the commission of a felony or of a nonfelony crime in which a firearm was used or displayed.

(2) Upon order of forfeiture, the court in its discretion may order destruction of any forfeited firearm. A court may temporarily retain forfeited firearms needed for evidence.

(a) Except as provided in (b), (c), and (d) of this subsection, firearms that are: (i) Judicially forfeited and no longer needed for evidence; or (ii) forfeited due to a failure to make a claim under RCW 63.32.010 or 63.40.010; may be disposed of in any manner determined by the local legislative authority. Any proceeds of an auction or trade ((~~may be retained by the legislative authority~~)) shall be deposited in the education legacy trust account under RCW 83.100.230 for common schools. This subsection (2)(a) applies only to firearms that come into the possession of the law enforcement agency after June 30, 1993.

By midnight, June 30, 1993, every law enforcement agency shall prepare an inventory, under oath, of every firearm that has been judicially forfeited, has been seized and may be subject to judicial forfeiture, or that has been, or may be, forfeited due to a failure to make a claim under RCW 63.32.010 or 63.40.010.

(b) Except as provided in (c) of this subsection, of the inventoried firearms a law enforcement agency shall destroy illegal firearms, may retain a maximum of ten percent of legal forfeited firearms for agency use, and shall either:

(i) Comply with the provisions for the auction of firearms in ((~~RCW 9.41.098~~)) this section that were in effect immediately preceding May 7, 1993; or

(ii) Trade, auction, or arrange for the auction of, rifles and shotguns. In addition, the law enforcement agency shall either trade, auction, or arrange for the auction of, short firearms, or shall pay a fee of twenty-five dollars to the state treasurer for every short firearm neither auctioned nor traded, to a maximum of fifty thousand dollars. The fees shall be accompanied by an inventory, under oath, of every short firearm listed in the inventory required by (a) of this subsection, that has been neither traded nor auctioned. The state treasurer shall credit the fees to the firearms range account established in RCW 79A.25.210. All trades or auctions of firearms under this subsection shall be to licensed dealers. Proceeds of any auction less costs, including actual costs of storage and sale, shall be forwarded to the firearms range account established in RCW 79A.25.210.

(c) Antique firearms and firearms recognized as curios, relics, and firearms of particular historical significance by the United States treasury department bureau of alcohol, tobacco, firearms, and explosives are exempt from destruction and shall be disposed of by auction or trade to licensed dealers.

(d) Firearms in the possession of the Washington state patrol on or after May 7, 1993, that are judicially forfeited and no longer needed for evidence, or forfeited due to a failure to make a claim under RCW 63.35.020, must be disposed of as follows: (i) Firearms illegal for any person to possess must be destroyed; (ii) the Washington state patrol may retain a maximum of ten percent of legal firearms for agency use; and (iii) all other legal firearms must be auctioned or traded to licensed dealers. ((~~The Washington state patrol may retain any proceeds of an auction or trade~~)) By January 31st of each year, the Washington state patrol shall remit to the state treasurer an amount equal to one hundred percent of the net proceeds of any firearm forfeited during the preceding calendar year. Money remitted shall be deposited in the education legacy trust account under RCW 83.100.230 for common schools. The value of forfeited property and net proceeds shall be determined in accordance with RCW 69.50.505(9).

(3) The court shall order the firearm returned to the owner upon a showing that there is no probable cause to believe a violation of subsection (1) of this section existed or the firearm was stolen from the owner or the owner neither had knowledge of nor consented to the act or omission involving the firearm which resulted in its forfeiture.

(4) A law enforcement officer of the state or of any county or municipality may confiscate a firearm found to be in the possession of a person under circumstances specified in subsection (1) of this section. After confiscation, the firearm shall not be surrendered except: (a) To the prosecuting attorney for use in subsequent legal proceedings; (b) for disposition according to an order of a court having jurisdiction as provided in subsection (1) of this section; or (c) to the owner if the proceedings are dismissed or as directed in subsection (3) of this section.

**Sec.**  RCW 9.46.231 and 2008 c 6 s 629 are each amended to read as follows:

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

(a) All gambling devices as defined in this chapter;

(b) All furnishings, fixtures, equipment, and stock, including without limitation furnishings and fixtures adaptable to nongambling uses and equipment and stock for printing, recording, computing, transporting, or safekeeping, used in connection with professional gambling or maintaining a gambling premises;

(c) All conveyances, including aircraft, vehicles, or vessels, that are used, or intended for use, in any manner to facilitate the sale, delivery, receipt, or operation of any gambling device, or the promotion or operation of a professional gambling activity, except that:

(i) A conveyance used by any person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(ii) A conveyance is not subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

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

(iv) If the owner of a conveyance has been arrested under this chapter the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(d) All books, records, and research products and materials, including formulas, microfilm, tapes, and electronic data that are used, or intended for use, in violation of this chapter;

(e) All moneys, negotiable instruments, securities, or other tangible or intangible property of value at stake or displayed in or in connection with professional gambling activity or furnished or intended to be furnished by any person to facilitate the promotion or operation of a professional gambling activity;

(f) All tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to professional gambling activity and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. Personal property may not be forfeited under this subsection (1)(f), to the extent of the interest of an owner, by reason of any act or omission that that owner establishes was committed or omitted without the owner's knowledge or consent; and

(g) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements that:

(i) Have been used with the knowledge of the owner for the manufacturing, processing, delivery, importing, or exporting of any illegal gambling equipment, or operation of a professional gambling activity that would constitute a felony violation of this chapter; or

(ii) Have been acquired in whole or in part with proceeds traceable to a professional gambling activity, if the activity is not less than a class C felony.

Real property forfeited under this chapter that is encumbered by a bona fide security interest remains subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission. Property may not be forfeited under this subsection, to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent.

(2)(a) A law enforcement officer of this state may seize real or personal property subject to forfeiture under this chapter upon process issued by any superior court having jurisdiction over the property. Seizure of real property includes the filing of a lis pendens by the seizing agency. Real property seized under this section may not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later, but real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a bona fide security interest.

(b) Seizure of personal property without process may be made if:

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

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

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

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

(3) In the event of seizure under subsection (2) of this section, proceedings for forfeiture are deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property must be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, must be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail is deemed complete upon mailing within the fifteen-day period following the seizure.

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

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons must be afforded a reasonable opportunity to be heard as to the claim or right. The hearing must be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except if the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing must be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed must be the district court if the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom must be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees. In cases involving personal property, the burden of producing evidence is upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property. In cases involving property seized under subsection (1)(a) of this section, the only issues to be determined by the tribunal are whether the item seized is a gambling device, and whether the device is an antique device as defined by RCW 9.46.235. In cases involving real property, the burden of producing evidence is upon the law enforcement agency. The burden of proof that the seized real property is subject to forfeiture is upon the law enforcement agency. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a final determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1) of this section.

(6) If property is forfeited under this chapter the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release the property to the agency for training or use in enforcing this chapter;

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

(c) Destroy any articles that may not be lawfully possessed within the state of Washington, or that have a fair market value of less than one hundred dollars.

(7)(a) If property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property. The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure, and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents.

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

(c) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to one hundred percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the education legacy trust account under RCW 83.100.230 for common schools. The value of forfeited property and net proceeds shall be determined in accordance with RCW 69.50.505(9).

(8) The seizing law enforcement agency shall retain forfeited property ((~~and net proceeds~~)) exclusively for the expansion and improvement of gambling-related law enforcement activity. ((~~Money~~)) Forfeited property retained under this section may not be used to supplant preexisting funding sources.

(9) Gambling devices that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and must be seized and summarily forfeited to the state. Gambling equipment that is seized or comes into the possession of a law enforcement agency, the owners of which are unknown, are contraband and must be summarily forfeited to the state.

(10) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. The superior court shall enter orders for the forfeiture of real property, subject to court rules. The seizing agency shall file such an order in the county auditor's records in the county in which the real property is located.

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

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

(ii) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer before asserting a claim under this section.

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

(B) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency shall notify the landlord of the status of the claim by the end of the thirty-day period. This section does not require the claim to be paid by the end of the sixty-day or thirty-day period.

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

(i) Knew or consented to actions of the tenant in violation of this chapter; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency within seven days of receipt of notification of the illegal activity.

(12) The landlord's claim for damages under subsection (11) of this section may not include a claim for loss of business and is limited to:

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

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

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (6)(b) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (7)(a) of this section.

(13) Subsections (11) and (12) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (11) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.

(14) Liability is not imposed by this section upon any authorized state, county, or municipal officer, including a commission special agent, in the lawful performance of his or her duties.

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

The following are subject to seizure and forfeiture:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10)(a) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ((~~ten~~)) one hundred percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the ((~~prostitution prevention and intervention~~)) education legacy trust account under RCW ((~~43.63A.740~~)) 83.100.230 for common schools.

(b) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to an independent selling agency.

(c) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure determined when possible by reference to an applicable commonly used index. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(11) Forfeited property ((~~and net proceeds not required to be paid to the state treasurer under this chapter shall be used for payment of all proper expenses of the investigation leading to the seizure, including any money delivered to the subject of the investigation by the law enforcement agency, and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, actual costs of the prosecuting or city attorney, and court costs. Money remaining after payment of these expenses~~)) retained shall be ((~~retained~~)) used by the seizing law enforcement agency for the exclusive use of enforcing the provisions of this chapter or chapter 9A.88 RCW.

**Sec.**  RCW 9A.56.240 and 1985 c 430 s 3 are each amended to read as follows:

(1) Upon conviction of theft or unlawful sale of cable television services and upon motion and hearing, the court shall order the forfeiture of any decoder, descrambler, or other device used in committing the violation of RCW 9A.56.220 or 9A.56.230 as contraband and dispose of it at the court's discretion.

(2) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to one hundred percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the education legacy trust account under RCW 83.100.230 for common schools. The value of forfeited property and net proceeds shall be determined in accordance with RCW 69.50.505(9).

**Sec.**  RCW 9A.82.100 and 2012 c 139 s 2 are each amended to read as follows:

(1)(a) A person who sustains injury to his or her person, business, or property by an act of criminal profiteering that is part of a pattern of criminal profiteering activity, or by an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or by a violation of RCW 9A.82.060 or 9A.82.080 may file an action in superior court for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

(b) The attorney general or county prosecuting attorney may file an action: (i) On behalf of those persons injured or, respectively, on behalf of the state or county if the entity has sustained damages, or (ii) to prevent, restrain, or remedy a pattern of criminal profiteering activity, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or a violation of RCW 9A.82.060 or 9A.82.080.

(c) An action for damages filed by or on behalf of an injured person, the state, or the county shall be for the recovery of damages and the costs of the suit, including reasonable investigative and attorney's fees.

(d) In an action filed to prevent, restrain, or remedy a pattern of criminal profiteering activity, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or a violation of RCW 9A.82.060 or 9A.82.080, the court, upon proof of the violation, may impose a civil penalty not exceeding two hundred fifty thousand dollars, in addition to awarding the cost of the suit, including reasonable investigative and attorney's fees.

(2) The superior court has jurisdiction to prevent, restrain, and remedy a pattern of criminal profiteering, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or a violation of RCW 9A.82.060 or 9A.82.080 after making provision for the rights of all innocent persons affected by the violation and after hearing or trial, as appropriate, by issuing appropriate orders.

(3) Prior to a determination of liability, orders issued under subsection (2) of this section may include, but are not limited to, entering restraining orders or prohibitions or taking such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to damages, forfeiture, or other restraints pursuant to this section as the court deems proper. The orders may also include attachment, receivership, or injunctive relief in regard to personal or real property pursuant to Title 7 RCW. In shaping the reach or scope of receivership, attachment, or injunctive relief, the superior court shall provide for the protection of bona fide interests in property, including community property, of persons who were not involved in the violation of this chapter, except to the extent that such interests or property were acquired or used in such a way as to be subject to forfeiture under RCW 9A.82.100(4)(f).

(4) Following a determination of liability, orders may include, but are not limited to:

(a) Ordering any person to divest himself or herself of any interest, direct or indirect, in any enterprise.

(b) Imposing reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect the laws of this state, to the extent the Constitutions of the United States and this state permit.

(c) Ordering dissolution or reorganization of any enterprise.

(d) Ordering the payment of actual damages sustained to those persons injured by a violation of RCW 9A.82.060 or 9A.82.080, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, or an act of criminal profiteering that is part of a pattern of criminal profiteering, and in the court's discretion, increasing the payment to an amount not exceeding three times the actual damages sustained.

(e) Ordering the payment of all costs and expenses of the prosecution and investigation of a pattern of criminal profiteering, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, activity or a violation of RCW 9A.82.060 or 9A.82.080, civil and criminal, incurred by the state or county, including any costs of defense provided at public expense, as appropriate to the state general fund or the antiprofiteering revolving fund of the county.

(f) Ordering forfeiture first as restitution to any person damaged by an act of criminal profiteering that is part of a pattern of criminal profiteering, or by an offense defined in RCW 9A.40.100, then to the state general fund or antiprofiteering revolving fund of the county, as appropriate, to the extent not already ordered to be paid in other damages, of the following:

(i) Any property or other interest acquired or maintained in violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds, and any appreciation or income attributable to the investment, from a violation of RCW 9A.82.060 or 9A.82.080.

(ii) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9A.82.060 or 9A.82.080.

(iii) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate commission of the offense.

(g) Ordering payment to the state general fund or antiprofiteering revolving fund of the county, as appropriate, of an amount equal to the gain a person has acquired or maintained through an offense included in the definition of criminal profiteering.

(5) In addition to or in lieu of an action under this section, the attorney general or county prosecuting attorney may file an action for forfeiture to the ((~~state general fund or antiprofiteering revolving fund of the county~~)) education legacy trust account under RCW 83.100.230 for common schools, as appropriate, to the extent not already ordered paid pursuant to this section, of the following:

(a) Any interest acquired or maintained by a person in violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds obtained from a violation of RCW 9A.82.060 or 9A.82.080 and any appreciation or income attributable to the investment.

(b) Any property, contractual right, or claim against property used to influence any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of, in violation of RCW 9A.82.060 or 9A.82.080.

(c) All proceeds traceable to or derived from an offense included in the pattern of criminal profiteering activity, or an offense defined in RCW 9A.40.100, 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable instruments, securities, and other things of value significantly used or intended to be used significantly to facilitate the commission of the offense.

(6) A defendant convicted in any criminal proceeding is precluded in any civil proceeding from denying the essential allegations of the criminal offense proven in the criminal trial in which the defendant was convicted. For the purposes of this subsection, a conviction shall be deemed to have occurred upon a verdict, finding, or plea of guilty, notwithstanding the fact that appellate review of the conviction and sentence has been or may be sought. If a subsequent reversal of the conviction occurs, any judgment that was based upon that conviction may be reopened upon motion of the defendant.

(7) The initiation of civil proceedings under this section shall be commenced within three years after discovery of the pattern of criminal profiteering activity or after the pattern should reasonably have been discovered or, in the case of an offense that is defined in RCW 9A.40.100, within three years after the final disposition of any criminal charges relating to the offense, whichever is later.

(8) The attorney general or county prosecuting attorney may, in a civil action brought pursuant to this section, file with the clerk of the superior court a certificate stating that the case is of special public importance. A copy of that certificate shall be furnished immediately by the clerk to the presiding chief judge of the superior court in which the action is pending and, upon receipt of the copy, the judge shall immediately designate a judge to hear and determine the action. The judge so designated shall promptly assign the action for hearing, participate in the hearings and determination, and cause the action to be expedited.

(9) The standard of proof in actions brought pursuant to this section is the preponderance of the evidence test.

(10) A person other than the attorney general or county prosecuting attorney who files an action under this section shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the superior court. The notice shall identify the action, the person, and the person's attorney. Service of the notice does not limit or otherwise affect the right of the state to maintain an action under this section or intervene in a pending action nor does it authorize the person to name the state or the attorney general as a party to the action.

(11) Except in cases filed by a county prosecuting attorney, the attorney general may, upon timely application, intervene in any civil action or proceeding brought under this section if the attorney general certifies that in the attorney general's opinion the action is of special public importance. Upon intervention, the attorney general may assert any available claim and is entitled to the same relief as if the attorney general had instituted a separate action.

(12) In addition to the attorney general's right to intervene as a party in any action under this section, the attorney general may appear as amicus curiae in any proceeding in which a claim under this section has been asserted or in which a court is interpreting RCW 9A.82.010, 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.

(13) A private civil action under this section does not limit any other civil or criminal action under this chapter or any other provision. Private civil remedies provided under this section are supplemental and not mutually exclusive.

(14) Upon motion by the defendant, the court may authorize the sale or transfer of assets subject to an order or lien authorized by this chapter for the purpose of paying actual attorney's fees and costs of defense. The motion shall specify the assets for which sale or transfer is sought and shall be accompanied by the defendant's sworn statement that the defendant has no other assets available for such purposes. No order authorizing such sale or transfer may be entered unless the court finds that the assets involved are not subject to possible forfeiture under RCW 9A.82.100(4)(f). Prior to disposition of the motion, the court shall notify the state of the assets sought to be sold or transferred and shall hear argument on the issue of whether the assets are subject to forfeiture under RCW 9A.82.100(4)(f). Such a motion may be made from time to time and shall be heard by the court on an expedited basis.

(15) In an action brought under subsection (1)(a) and (b)(i) of this section, either party has the right to a jury trial.

**Sec.**  RCW 9A.82.110 and 2010 c 122 s 4 are each amended to read as follows:

(1) In an action brought by the attorney general on behalf of the state under RCW 9A.82.100(1)(b)(i) in which the state prevails, any payments ordered in excess of the actual damages sustained shall be deposited in the crime victims' compensation account provided in RCW 7.68.045.

(2)(a) The county legislative authority may establish an antiprofiteering revolving fund to be administered by the county prosecuting attorney under the conditions and for the purposes provided by this subsection. Disbursements from the fund shall be on authorization of the county prosecuting attorney. No appropriation is required for disbursements.

(b) Any prosecution and investigation costs, including attorney's fees, recovered for the state by the county prosecuting attorney as a result of enforcement of civil and criminal statutes pertaining to any offense included in the definition of criminal profiteering, whether by final judgment, settlement, or otherwise, shall be deposited, as directed by a court of competent jurisdiction, in the fund established by this subsection. In an action brought by a prosecuting attorney on behalf of the county under RCW 9A.82.100(1)(b)(i) in which the county prevails, any payments ordered in excess of the actual damages sustained shall be deposited in the crime victims' compensation account provided in RCW 7.68.045.

(c) The county legislative authority may prescribe a maximum level of moneys in the antiprofiteering revolving fund. Moneys exceeding the prescribed maximum shall be transferred to the county current expense fund.

(d) The moneys in the fund shall be used by the county prosecuting attorney for the investigation and prosecution of any offense, within the jurisdiction of the county prosecuting attorney, included in the definition of criminal profiteering, including civil enforcement.

(e) If a county has not established an antiprofiteering revolving fund, any payments ((~~or forfeitures~~)) ordered to the county under this chapter shall be deposited to the county current expense fund. By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to one hundred percent of the net proceeds of any property forfeited under this chapter during the preceding calendar year. Money remitted shall be deposited in the education legacy trust account under RCW 83.100.230 for common schools. The value of forfeited property and net proceeds shall be determined in accordance with RCW 69.50.505(9).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including, but not limited to, service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

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

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty‑five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The notice of claim may be served by any method authorized by law or court rule including, but not limited to, service by first‑class mail. Service by mail shall be deemed complete upon mailing within the forty‑five day period following service of the notice of seizure in the case of personal property and within the ninety day period following service of the notice of seizure in the case of real property. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty‑five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1) of this section.

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

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

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

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

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

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

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

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

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

(9)(a) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ((~~ten~~)) one hundred percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the ((~~prostitution prevention and intervention~~)) education legacy trust account under RCW ((~~43.63A.740~~)) 83.100.230 for common schools.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (9) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (12) of this section.

(14) Subsections (12) and (13) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (12) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.

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

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

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

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

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

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

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

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

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

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

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

(6) When property is forfeited under this chapter, after satisfying any court-ordered victim restitution, the seizing law enforcement agency may:

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

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

(7) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ((~~ten~~)) one hundred percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the ((~~state general fund~~)) education legacy trust account under RCW 83.100.230 for common schools.

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

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

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

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

(1) The following personal property is subject to seizure and forfeiture and no property right exists in them: All personal property including, but not limited to, any item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, security, or negotiable instrument, which the seizing agency proves by a preponderance of the evidence was used or intended to be used by its owner or the person in charge to knowingly or intentionally facilitate the commission of, or to knowingly or intentionally abet the commission of, a crime involving theft, trafficking, or unlawful possession of commercial metal property, or which the seizing agency proves by a preponderance of the evidence was knowingly or intentionally furnished or was intended to be furnished by any person in the commission of, as a result of, or as compensation for the commission of, a crime involving theft, trafficking, or the unlawful possession of commercial metal property, or which the property owner acquired in whole or in part with proceeds traceable to a knowing or intentional commission of a crime involving the theft, trafficking, or unlawful possession of commercial metal property provided that such activity is not less than a class C felony; except that:

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

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

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

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

(a) No property may be forfeited pursuant to this subsection (2), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's actual or constructive knowledge; and further, a property owner's real property is not subject to seizure if an employee or agent of that property owner uses the property owner's real property to knowingly or intentionally facilitate the commission of, or to knowingly or intentionally aid and abet the commission of, a crime involving theft, trafficking, or unlawful possession of commercial metal property, in violation of that property owner's instructions or policies against such activity, and without the property owner's knowledge or consent; and

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

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

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

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

(4) In the event of seizure pursuant to this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. The notice of seizure of personal property may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen-day period following the seizure. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title.

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

(6) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized property within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the law enforcement agency shall give the person or persons a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of the property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the property involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property.

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

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

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

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

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

(9)(a) Within one hundred twenty days after the entry of an order of forfeiture, each seizing agency shall remit to, if known, the victim of the crime involving the seized property, an amount equal to fifty percent of the net proceeds of any property forfeited.

(b) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to one hundred percent of the net proceeds of any property forfeited during the preceding calendar year not required to be paid to victims. Money remitted shall be deposited in the education legacy trust account under RCW 83.100.230 for common schools.

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

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

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

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

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

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

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

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

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

(2) On conviction for a violation of either RCW 46.20.740, 46.61.502, or 46.61.504 or any similar municipal ordinance where the person convicted has a prior offense within seven years as defined in RCW 46.61.5055, the motor vehicle the person was driving or over which the person had actual physical control at the time of the offense, if the person has a financial interest in the vehicle, the court shall consider at sentencing whether the vehicle shall be seized and forfeited pursuant to this section if a seizure or forfeiture has not yet occurred.

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

(4) Seizure under subsection (3) of this section automatically commences proceedings for forfeiture. The law enforcement agency under whose authority the seizure was made shall cause notice of the seizure and intended forfeiture of the seized vehicle to be served within fifteen days after the seizure on the owner of the vehicle seized, on the person in charge of the vehicle, and on any person having a known right or interest in the vehicle, including a community property interest. The notice of seizure may be served by any method authorized by law or court rule, including but not limited to service by certified mail with return receipt requested. Service by mail is complete upon mailing within the fifteen-day period after the seizure. Notice of seizure in the case of property subject to a security interest that has been perfected on a certificate of title shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title.

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

(6) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized vehicle within forty-five days of the seizure, the law enforcement agency shall give the person or persons a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020, the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of the vehicle is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the vehicle involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to be the legal owner or the person claiming to have the lawful right to possession of the vehicle. The seizing law enforcement agency shall promptly return the vehicle to the claimant upon a determination by the administrative law judge or court that the claimant is the present legal owner under this title or is lawfully entitled to possession of the vehicle.

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

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

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

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

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

(12) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ((~~ten~~)) one hundred percent of the net proceeds of vehicles forfeited during the preceding calendar year. Money remitted shall be deposited in the ((~~state general fund~~)) education legacy trust account under RCW 83.100.230 for common schools.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1)(g), to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

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

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

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

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

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

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

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

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

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

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

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

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

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

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The notice of claim may be served by any method authorized by law or court rule including, but not limited to, service by first-class mail. Service by mail shall be deemed complete upon mailing within the forty-five day period following service of the notice of seizure in the case of personal property and within the ninety-day period following service of the notice of seizure in the case of real property. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section.

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

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

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

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

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

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

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

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

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

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

(9)(a) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ((~~ten~~)) one hundred percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the ((~~state general fund~~)) education legacy trust account under RCW 83.100.230 for common schools.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Sec.**  RCW 70.77.440 and 2002 c 370 s 38 are each amended to read as follows:

(1) In the event of seizure under RCW 70.77.435, proceedings for forfeiture shall be deemed commenced by the seizure. The chief of the Washington state patrol or a designee, through the director of fire protection or the agency conducting the seizure, under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the fireworks seized and the person in charge thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen-day period following the seizure.

(2) If no person notifies the chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, in writing of the person's claim of lawful ownership or right to lawful possession of seized fireworks within thirty days of the seizure, the seized fireworks shall be deemed forfeited.

(3) If any person notifies the chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, in writing of the person's claim of lawful ownership or possession of the fireworks within thirty days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the seized fireworks is more than five hundred dollars. The hearing before an administrative law judge and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to have the lawful right to possession of the seized fireworks. The chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, shall promptly return the fireworks to the claimant upon a determination by the administrative law judge or court that the claimant is lawfully entitled to possession of the fireworks.

(4) When fireworks are forfeited under this chapter the chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, may:

(a) Dispose of the fireworks by summary destruction at any time subsequent to thirty days from such seizure or ten days from the final termination of proceedings under this section, whichever is later; or

(b) Sell the forfeited fireworks and chemicals used to make fireworks, that are legal for use and possession under this chapter, to wholesalers or manufacturers, authorized to possess and use such fireworks or chemicals under a license issued by the chief of the Washington state patrol, through the director of fire protection. Sale shall be by public auction after publishing a notice of the date, place, and time of the auction in a newspaper of general circulation in the county in which the auction is to be held, at least three days before the date of the auction. The proceeds of the sale of the seized fireworks under this section may be retained by the agency conducting the seizure and used to offset the costs of seizure and/or storage costs of the seized fireworks. The remaining proceeds, if any, shall be deposited in the ((~~fire services trust fund and shall be used as follows: At least fifty percent is for a statewide public education campaign developed by the chief of the Washington state patrol, through the director of fire protection, and the licensed fireworks industry emphasizing the safe and responsible use of legal fireworks; and the remainder is for statewide efforts to enforce this chapter~~)) education legacy trust account under RCW 83.100.230 for common schools.

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

(1) Fish and wildlife officers and ex officio fish and wildlife officers may seize without warrant boats, airplanes, vehicles, motorized implements, conveyances, gear, appliances, or other articles they have probable cause to believe have been held with intent to violate or used in violation of this title or rule of the commission or director. However, fish and wildlife officers or ex officio fish and wildlife officers may not seize any item or article, other than for evidence, if under the circumstances, it is reasonable to conclude that the violation was inadvertent. The property seized is subject to forfeiture to the state under this section regardless of ownership. Property seized may be recovered by its owner by depositing with the department or into court a cash bond or equivalent security equal to the value of the seized property but not more than one hundred thousand dollars. Such cash bond or security is subject to forfeiture in lieu of the property. Forfeiture of property seized under this section is a civil forfeiture against property and is intended to be a remedial civil sanction.

(2) In the event of a seizure of property under this section, jurisdiction to begin the forfeiture proceedings shall commence upon seizure. Within fifteen days following the seizure, the seizing authority shall serve a written notice of intent to forfeit property on the owner of the property seized and on any person having any known right or interest in the property seized. Notice may be served by any method authorized by law or court rule, including service by certified mail with return receipt requested. Service by mail is deemed complete upon mailing within the fifteen-day period following the seizure.

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

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

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

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

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

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

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

(8) By January 31st of each year, the department shall remit to the state treasurer an amount equal to one hundred percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the education legacy trust account under RCW 83.100.230 for common schools. The value of forfeited property and net proceeds shall be determined in accordance with RCW 69.50.505(9).

**Sec.**  RCW 82.24.145 and 2003 c 25 s 10 are each amended to read as follows:

When property is forfeited under this chapter the department may:

(1) Retain the property or any part thereof for official use or upon application by any law enforcement agency of this state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing the provisions of this chapter or the laws of any other state or the District of Columbia or of the United States.

(2) Sell the property at public auction to the highest bidder after due advertisement, but the department before delivering any of the goods so seized shall require the person to whom the property is sold to affix the proper amount of stamps. The proceeds of the sale and all moneys forfeited under this chapter shall be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. ((~~The balance of the proceeds and all moneys shall be deposited in the general fund of the state.~~)) Proper expenses of investigation includes costs incurred by any law enforcement agency or any federal, state, or local agency.

(3) By January 31st of each year, the department shall remit to the state treasurer an amount equal to one hundred percent of the net proceeds of any property forfeited during the preceding calendar year, minus any amounts applied to the expenses described in subsection (2) of this section. Money remitted shall be deposited in the education legacy trust account under RCW 83.100.230 for common schools. The value of forfeited property and net proceeds shall be determined in accordance with RCW 69.50.505(9).

(4) Notwithstanding the provisions of subsections (1) and (2) of this section, cigarettes seized for a violation of RCW 82.24.035 or 70.158.030(3) shall be destroyed. For the purposes of this subsection ((~~(3)~~)) (4) "cigarettes" has the same meaning as provided in RCW 70.158.020(3).

**Sec.**  RCW 82.26.240 and 2005 c 180 s 21 are each amended to read as follows:

(1) In all cases of seizure of any tobacco products made subject to forfeiture under this chapter, the department or board shall proceed as provided in RCW 82.24.135.

(2) When tobacco products are forfeited under this chapter, the department or board may:

(a) Retain the property for official use or upon application by any law enforcement agency of this state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing this chapter or the laws of any other state or the District of Columbia or of the United States; or

(b) Sell the tobacco products at public auction to the highest bidder after due advertisement. Before delivering any of the goods to the successful bidder, the department or board shall require the purchaser to pay the proper amount of any tax due. The proceeds of the sale shall be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. ((~~The balance of the proceeds and all money shall be deposited in the general fund of the state.~~)) Proper expenses of investigation include costs incurred by any law enforcement agency or any federal, state, or local agency.

(3) By January 31st of each year, the department or board shall remit to the state treasurer an amount equal to one hundred percent of the net proceeds of any property forfeited during the preceding calendar year, minus any amounts applied to the expenses described in subsection (2)(b) of this section. Money remitted shall be deposited in the education legacy trust account under RCW 83.100.230 for common schools. The value of forfeited property and net proceeds shall be determined in accordance with RCW 69.50.505(9).

(4) The department or the board may return any property seized under the provisions of this chapter when it is shown that there was no intention to violate the provisions of this chapter. When any property is returned under this section, the department or the board may return the property to the parties from whom they were seized if and when such parties have paid the proper amount of tax due under this chapter.

**Sec.**  RCW 82.32.670 and 2013 c 309 s 3 are each amended to read as follows:

(1)(a) Automated sales suppression devices, phantom‑ware, electronic cash registers or point of sale systems used with automated sales suppression devices or phantom‑ware, and any property constituting proceeds traceable to any violation of RCW 82.32.290(4) are considered contraband and are subject to seizure and forfeiture.

(b) Property subject to forfeiture under (a) of this subsection (1) may be seized by any agent of the department authorized to assess or collect taxes, or law enforcement officer of this state, upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

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

(ii) The department or the law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of RCW 82.32.290(4) and exigent circumstances exist making procurement of a search warrant impracticable.

(2) Forfeiture authorized by this section is deemed to have commenced by the seizure. Notice of seizure must be given to the department if the seizure is made by a law enforcement officer without the presence of any agent of the department. The department must cause notice of the seizure and intended forfeiture to be served on the owner of the property seized, if known, and on any other person known by the department to have a right or interest in the seized property. Such service must be made within fifteen days following the seizure or the department's receipt of notification of the seizure. The notice may be served by any method authorized by law or court rule, by certified mail with return receipt requested, or electronically in accordance with RCW 82.32.135. Service by certified mail or electronic means is deemed complete upon mailing the notice, electronically sending the notice, or electronically notifying the person or persons entitled to the notice that the notice is available to be accessed by the person or persons, within the fifteen‑day period following the seizure or the department's receipt of notification of the seizure.

(3) If no person notifies the department in writing of the person's claim of lawful ownership or right to lawful possession of the item or items seized within thirty days of the date of service of the notice of seizure and intended forfeiture, the item or items seized are deemed forfeited.

(4)(a) If any person notifies the department, in writing, of the person's claim of lawful ownership or lawful right to possession of the item or items seized within thirty days of the date of service of the notice of seizure and intended forfeiture, the person or persons must be afforded a reasonable opportunity to be heard as to the claim. The hearing must be before the director or the director's designee. A hearing and any administrative or judicial review is governed by chapter 34.05 RCW. The burden of proof by a preponderance of the evidence is upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the item or items seized.

(b) The department must return the item or items to the claimant as soon as possible upon a determination that the claimant is the present lawful owner or is lawfully entitled to possession of the item or items seized.

(5) When property is sought to be forfeited on the ground that it constitutes proceeds traceable to a violation of RCW 82.32.290(4), the department must prove by a preponderance of the evidence that the property constitutes proceeds traceable to a violation of RCW 82.32.290(4).

(6)(a) When property forfeited under this section, other than proceeds traceable to a violation of RCW 82.32.290(4), is no longer required for evidentiary purposes, the department may:

(i) Destroy or have the property destroyed;

(ii) Retain the property for training or other official purposes; or

(iii) Loan or give the property to any law enforcement or tax administration agency of any state, political subdivision or municipal corporation of a state, or the United States for training or other official purposes. For purposes of this subsection (6)(a)(iii), "state" has the same meaning as in RCW 82.04.462.

(b) When proceeds traceable to a violation of RCW 82.32.290(4) forfeited under this section are no longer required for evidentiary purposes, they must be deposited into the ((~~general fund~~)) education legacy trust account under RCW 83.100.230 for common schools. By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to one hundred percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the education legacy trust account under RCW 83.100.230 for common schools. The value of forfeited property and net proceeds shall be determined in accordance with RCW 69.50.505(9).

(7) The definitions in this subsection apply to this section:

(a) "Automated sales suppression device" means a software program that falsifies the electronic records of electronic cash registers or other point of sale systems, including transaction data and transaction reports. The term includes the software program, any device that carries the software program, or an internet link to the software program.

(b) "Electronic cash register" means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing sales transaction data in whatever manner.

(c) "Phantom‑ware" means a programming option that is hidden, preinstalled, or installed‑at‑a‑later‑time in the operating system of an electronic cash register or other point of sale device, or hardwired into the electronic cash register or other point of sale device, and that can be used to create a virtual second till or may eliminate or manipulate transaction reports that may or may not be preserved in digital formats to represent the true or manipulated record of transactions in the electronic cash register or other point of sale device.

(d) "Transaction data" means information about sales transactions, including items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase, the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction.

(e) "Transaction reports" means a report that includes information associated with sales transactions, taxes collected, media totals, and discount voids at an electronic cash register that can be printed on cash register tape at the end of a day or shift, or a report documenting every action at an electronic cash register or other point of sale device and that is stored electronically.

**Sec.**  RCW 82.38.370 and 2013 c 225 s 134 are each amended to read as follows:

((~~When property is forfeited under this chapter~~)) By January 31st of each year, the state patrol or the department ((~~may use the proceeds of the sale and all moneys forfeited for the payment~~)) shall remit to the state treasurer an amount equal to one hundred percent of the net proceeds of any property forfeited during the preceding calendar year, minus the cost of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. Proper expenses of investigation include costs incurred by a law enforcement agency or a federal, state, or local agency. Money remitted shall be deposited in the education legacy trust account under RCW 83.100.230 for common schools. The value of forfeited property and net proceeds shall be determined in accordance with RCW 69.50.505(9).

NEW SECTION. **Sec.**  Except for section 5 of this act, this act takes effect August 1, 2017.

NEW SECTION. **Sec.**  Section 4 of this act expires April 1, 2018.

NEW SECTION. **Sec.**  Section 5 of this act takes effect April 1, 2018.

**--- END ---**