

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5728

Chapter 162, Laws of 2022

67th Legislature
2022 Regular Session

CIVIL ASSET FORFEITURE COLLECTIONS—DEPOSIT INTO BEHAVIORAL HEALTH
LOAN REPAYMENT PROGRAM ACCOUNT

EFFECTIVE DATE: July 1, 2022

Passed by the Senate March 8, 2022
Yeas 48 Nays 1

DENNY HECK

President of the Senate

Passed by the House March 4, 2022
Yeas 94 Nays 2

Laurie Jinkins

**Speaker of the House of
Representatives**

Approved March 24, 2022 9:21 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5728** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

March 24, 2022

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5728

AS AMENDED BY THE HOUSE

Passed Legislature - 2022 Regular Session

State of Washington 67th Legislature 2022 Regular Session

By Senate Ways & Means (originally sponsored by Senators Holy, Dhingra, and Nobles; by request of State Treasurer)

READ FIRST TIME 01/26/22.

1 AN ACT Relating to the state's portion of civil asset forfeiture
2 collections; amending RCW 69.50.505, 46.61.5058, 10.105.010,
3 9.68A.120, and 9A.88.150; reenacting and amending RCW 43.79A.040; and
4 providing an effective date.

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

6 **Sec. 1.** RCW 69.50.505 and 2013 c 3 s 25 are each amended to read
7 as follows:

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

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

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

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

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

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

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

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

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

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

26 (e) All books, records, and research products and materials,
27 including formulas, microfilm, tapes, and data which are used, or
28 intended for use, in violation of this chapter or chapter 69.41 or
29 69.52 RCW;

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

33 (g) All moneys, negotiable instruments, securities, or other
34 tangible or intangible property of value furnished or intended to be
35 furnished by any person in exchange for a controlled substance in
36 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible
37 or intangible personal property, proceeds, or assets acquired in
38 whole or in part with proceeds traceable to an exchange or series of
39 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,
40 and all moneys, negotiable instruments, and securities used or

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

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

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

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

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

1 which demonstrates the offender's intent to engage in unlawful
2 commercial activity;

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

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

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

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

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

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

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

36 (3) In the event of seizure pursuant to subsection (2) of this
37 section, proceedings for forfeiture shall be deemed commenced by the
38 seizure. The law enforcement agency under whose authority the seizure
39 was made shall cause notice to be served within fifteen days
40 following the seizure on the owner of the property seized and the

1 person in charge thereof and any person having any known right or
2 interest therein, including any community property interest, of the
3 seizure and intended forfeiture of the seized property. Service of
4 notice of seizure of real property shall be made according to the
5 rules of civil procedure. However, the state may not obtain a default
6 judgment with respect to real property against a party who is served
7 by substituted service absent an affidavit stating that a good faith
8 effort has been made to ascertain if the defaulted party is
9 incarcerated within the state, and that there is no present basis to
10 believe that the party is incarcerated within the state. Notice of
11 seizure in the case of property subject to a security interest that
12 has been perfected by filing a financing statement in accordance with
13 chapter 62A.9A RCW, or a certificate of title, shall be made by
14 service upon the secured party or the secured party's assignee at the
15 address shown on the financing statement or the certificate of title.
16 The notice of seizure in other cases may be served by any method
17 authorized by law or court rule including but not limited to service
18 by certified mail with return receipt requested. Service by mail
19 shall be deemed complete upon mailing within the fifteen day period
20 following the seizure.

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

31 (5) If any person notifies the seizing law enforcement agency in
32 writing of the person's claim of ownership or right to possession of
33 items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h)
34 of this section within forty-five days of the service of notice from
35 the seizing agency in the case of personal property and ninety days
36 in the case of real property, the person or persons shall be afforded
37 a reasonable opportunity to be heard as to the claim or right. The
38 notice of claim may be served by any method authorized by law or
39 court rule including, but not limited to, service by first-class
40 mail. Service by mail shall be deemed complete upon mailing within

1 the forty-five day period following service of the notice of seizure
2 in the case of personal property and within the ninety-day period
3 following service of the notice of seizure in the case of real
4 property. The hearing shall be before the chief law enforcement
5 officer of the seizing agency or the chief law enforcement officer's
6 designee, except where the seizing agency is a state agency as
7 defined in RCW 34.12.020(4), the hearing shall be before the chief
8 law enforcement officer of the seizing agency or an administrative
9 law judge appointed under chapter 34.12 RCW, except that any person
10 asserting a claim or right may remove the matter to a court of
11 competent jurisdiction. Removal of any matter involving personal
12 property may only be accomplished according to the rules of civil
13 procedure. The person seeking removal of the matter must serve
14 process against the state, county, political subdivision, or
15 municipality that operates the seizing agency, and any other party of
16 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-
17 five days after the person seeking removal has notified the seizing
18 law enforcement agency of the person's claim of ownership or right to
19 possession. The court to which the matter is to be removed shall be
20 the district court when the aggregate value of personal property is
21 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
22 before the seizing agency and any appeal therefrom shall be under
23 Title 34 RCW. In all cases, the burden of proof is upon the law
24 enforcement agency to establish, by a preponderance of the evidence,
25 that the property is subject to forfeiture.

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

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

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

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

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

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

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

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

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

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

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

25 (9) (a) By January 31st of each year, each seizing agency shall
26 remit to the state (~~treasurer~~) an amount equal to ten percent of
27 the net proceeds of any property forfeited during the preceding
28 calendar year for deposit into the behavioral health loan repayment
29 program account created in RCW 28B.115.135 through June 30, 2027, and
30 into the state general fund thereafter. (~~Money remitted shall be~~
31 ~~deposited in the state general fund.~~)

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

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

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

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

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

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

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

1 the county auditor's records in the county in which the real property
2 is located.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (2) On conviction for a violation of either RCW 46.20.740,
14 46.61.502, or 46.61.504 or any similar municipal ordinance where the
15 person convicted has a prior offense within seven years as defined in
16 RCW 46.61.5055, the motor vehicle the person was driving or over
17 which the person had actual physical control at the time of the
18 offense, if the person has a financial interest in the vehicle, the
19 court shall consider at sentencing whether the vehicle shall be
20 seized and forfeited pursuant to this section if a seizure or
21 forfeiture has not yet occurred.

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

28 (4) Seizure under subsection (3) of this section automatically
29 commences proceedings for forfeiture. The law enforcement agency
30 under whose authority the seizure was made shall cause notice of the
31 seizure and intended forfeiture of the seized vehicle to be served
32 within fifteen days after the seizure on the owner of the vehicle
33 seized, on the person in charge of the vehicle, and on any person
34 having a known right or interest in the vehicle, including a
35 community property interest. The notice of seizure may be served by
36 any method authorized by law or court rule, including but not limited
37 to service by certified mail with return receipt requested. Service
38 by mail is complete upon mailing within the fifteen-day period after
39 the seizure. Notice of seizure in the case of property subject to a
40 security interest that has been perfected on a certificate of title

1 shall be made by service upon the secured party or the secured
2 party's assignee at the address shown on the financing statement or
3 the certificate of title.

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

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

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

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

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

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

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

22 (12) By January 31st of each year, each seizing agency shall
23 remit to the state (~~(treasurer)~~) an amount equal to ten percent of
24 the net proceeds of vehicles forfeited during the preceding calendar
25 year (~~(. Money remitted shall be deposited in the state general fund)~~)
26 for deposit into the behavioral health loan repayment program account
27 created in RCW 28B.115.135 through June 30, 2027, and into the state
28 general fund thereafter.

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

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

1 vehicles. If an appraiser is used, the value of the vehicle appraised
2 is net of the cost of the appraisal.

3 **Sec. 3.** RCW 10.105.010 and 2009 c 479 s 15 are each amended to
4 read as follows:

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

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

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

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

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

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

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

38 (3) In the event of seizure pursuant to this section, proceedings
39 for forfeiture shall be deemed commenced by the seizure. The law

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

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

20 (5) If a person notifies the seizing law enforcement agency in
21 writing of the person's claim of ownership or right to possession of
22 the seized property within forty-five days of the seizure, the law
23 enforcement agency shall give the person or persons a reasonable
24 opportunity to be heard as to the claim or right. The hearing shall
25 be before the chief law enforcement officer of the seizing agency or
26 the chief law enforcement officer's designee, except where the
27 seizing agency is a state agency as defined in RCW 34.12.020(4), the
28 hearing shall be before the chief law enforcement officer of the
29 seizing agency or an administrative law judge appointed under chapter
30 34.12 RCW, except that any person asserting a claim or right may
31 remove the matter to a court of competent jurisdiction. Removal may
32 only be accomplished according to the rules of civil procedure. The
33 person seeking removal of the matter must serve process against the
34 state, county, political subdivision, or municipality that operates
35 the seizing agency, and any other party of interest, in accordance
36 with RCW 4.28.080 or 4.92.020, within forty-five days after the
37 person seeking removal has notified the seizing law enforcement
38 agency of the person's claim of ownership or right to possession. The
39 court to which the matter is to be removed shall be the district
40 court when the aggregate value of the property is within the

1 jurisdictional limit set forth in RCW 3.66.020. A hearing before the
2 seizing agency and any appeal therefrom shall be under Title 34 RCW.
3 In a court hearing between two or more claimants to the property
4 involved, the prevailing party shall be entitled to a judgment for
5 costs and reasonable attorney's fees. The burden of producing
6 evidence shall be upon the person claiming to be the lawful owner or
7 the person claiming to have the lawful right to possession of the
8 property. The seizing law enforcement agency shall promptly return
9 the property to the claimant upon a determination by the
10 administrative law judge or court that the claimant is the present
11 lawful owner or is lawfully entitled to possession of the property.

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

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

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

20 (7) By January 31st of each year, each seizing agency shall remit
21 to the state (~~(treasurer)~~) an amount equal to ten percent of the net
22 proceeds of any property forfeited during the preceding calendar
23 year (~~(. Money remitted shall be deposited in the state general fund)~~)
24 for deposit into the behavioral health loan repayment program account
25 created in RCW 28B.115.135 through June 30, 2027, and into the state
26 general fund thereafter.

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

33 (b) The value of sold forfeited property is the sale price. The
34 value of retained forfeited property is the fair market value of the
35 property at the time of seizure, determined when possible by
36 reference to an applicable commonly used index, such as the index
37 used by the department of licensing for valuation of motor vehicles.
38 A seizing agency may use, but need not use, an independent qualified
39 appraiser to determine the value of retained property. If an
40 appraiser is used, the value of the property appraised is net of the

1 cost of the appraisal. The value of destroyed property and retained
2 firearms or illegal property is zero.

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

9 **Sec. 4.** RCW 9.68A.120 and 2014 c 188 s 3 are each amended to
10 read as follows:

11 The following are subject to seizure and forfeiture:

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

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

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

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

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

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

38 (3) All personal property, moneys, negotiable instruments,
39 securities, or other tangible or intangible property furnished or

1 intended to be furnished by any person in exchange for visual or
2 printed matter depicting a minor engaged in sexually explicit
3 conduct, or constituting proceeds traceable to any violation of this
4 chapter.

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

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

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

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

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

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

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

36 (7) If any person notifies the seizing law enforcement agency in
37 writing of the person's claim of ownership or right to possession of
38 seized items within forty-five days of the seizure, the person or
39 persons shall be afforded a reasonable opportunity to be heard as to
40 the claim or right. The hearing shall be before an administrative law

1 judge appointed under chapter 34.12 RCW, except that any person
2 asserting a claim or right may remove the matter to a court of
3 competent jurisdiction if the aggregate value of the article or
4 articles involved is more than five hundred dollars. The hearing
5 before an administrative law judge and any appeal therefrom shall be
6 under Title 34 RCW. In a court hearing between two or more claimants
7 to the article or articles involved, the prevailing party shall be
8 entitled to a judgment for costs and reasonable attorney's fees. The
9 burden of producing evidence shall be upon the person claiming to be
10 the lawful owner or the person claiming to have the lawful right to
11 possession of the seized items. The seizing law enforcement agency
12 shall promptly return the article or articles to the claimant upon a
13 determination by the administrative law judge or court that the
14 claimant is lawfully entitled to possession thereof of the seized
15 items.

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

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

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

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

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

31 (10)(a) By January 31st of each year, each seizing agency shall
32 remit to the state (~~(treasurer)~~) an amount equal to ten percent of
33 the net proceeds of any property forfeited during the preceding
34 calendar year. Money remitted shall be deposited in the prostitution
35 prevention and intervention account under RCW 43.63A.740.

36 (b) The net proceeds of forfeited property is the value of the
37 forfeitable interest in the property after deducting the cost of
38 satisfying any bona fide security interest to which the property is
39 subject at the time of seizure; and in the case of sold property,

1 after deducting the cost of sale, including reasonable fees or
2 commissions paid to an independent selling agency.

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

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

22 **Sec. 5.** RCW 9A.88.150 and 2014 c 188 s 4 are each amended to
23 read as follows:

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

26 (a) Any property or other interest acquired or maintained in
27 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070 to the extent of
28 the investment of funds, and any appreciation or income attributable
29 to the investment, from a violation of RCW 9.68A.100, 9.68A.101, or
30 9A.88.070;

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

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

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

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

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

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

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

23 (e) All books, records, and research products and materials,
24 including formulas, microfilm, tapes, and data which are used, or
25 intended for use, in violation of RCW 9.68A.100, 9.68A.101, or
26 9A.88.070;

27 (f) All moneys, negotiable instruments, securities, or other
28 tangible or intangible property of value furnished or intended to be
29 furnished by any person in exchange for a violation of RCW 9.68A.100,
30 9.68A.101, or 9A.88.070, all tangible or intangible personal
31 property, proceeds, or assets acquired in whole or in part with
32 proceeds traceable to an exchange or series of exchanges in violation
33 of RCW 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable
34 instruments, and securities used or intended to be used to facilitate
35 any violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070. A forfeiture
36 of money, negotiable instruments, securities, or other tangible or
37 intangible property encumbered by a bona fide security interest is
38 subject to the interest of the secured party if, at the time the
39 security interest was created, the secured party neither had
40 knowledge of nor consented to the act or omission. No personal

1 property may be forfeited under this subsection (1)(f), to the extent
2 of the interest of an owner, by reason of any act or omission, which
3 that owner establishes was committed or omitted without the owner's
4 knowledge or consent; and

5 (g) All real property, including any right, title, and interest
6 in the whole of any lot or tract of land, and any appurtenances or
7 improvements which are being used with the knowledge of the owner for
8 a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, or which have
9 been acquired in whole or in part with proceeds traceable to an
10 exchange or series of exchanges in violation of RCW 9.68A.100,
11 9.68A.101, or 9A.88.070, if a substantial nexus exists between the
12 violation and the real property. However:

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

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

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

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

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

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

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

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

35 (5) If any person notifies the seizing law enforcement agency in
36 writing of the person's claim of ownership or right to possession of
37 items specified in subsection (1) of this section within forty-five
38 days of the service of notice from the seizing agency in the case of
39 personal property and ninety days in the case of real property, the
40 person or persons shall be afforded a reasonable opportunity to be

1 heard as to the claim or right. The notice of claim may be served by
2 any method authorized by law or court rule including, but not limited
3 to, service by first-class mail. Service by mail shall be deemed
4 complete upon mailing within the forty-five day period following
5 service of the notice of seizure in the case of personal property and
6 within the ninety day period following service of the notice of
7 seizure in the case of real property. The hearing shall be before the
8 chief law enforcement officer of the seizing agency or the chief law
9 enforcement officer's designee, except where the seizing agency is a
10 state agency as defined in RCW 34.12.020(4), the hearing shall be
11 before the chief law enforcement officer of the seizing agency or an
12 administrative law judge appointed under chapter 34.12 RCW, except
13 that any person asserting a claim or right may remove the matter to a
14 court of competent jurisdiction. Removal of any matter involving
15 personal property may only be accomplished according to the rules of
16 civil procedure. The person seeking removal of the matter must serve
17 process against the state, county, political subdivision, or
18 municipality that operates the seizing agency, and any other party of
19 interest, in accordance with RCW 4.28.080 or 4.92.020, within
20 forty-five days after the person seeking removal has notified the
21 seizing law enforcement agency of the person's claim of ownership or
22 right to possession. The court to which the matter is to be removed
23 shall be the district court when the aggregate value of personal
24 property is within the jurisdictional limit set forth in RCW
25 3.66.020. A hearing before the seizing agency and any appeal
26 therefrom shall be under Title 34 RCW. In all cases, the burden of
27 proof is upon the law enforcement agency to establish, by a
28 preponderance of the evidence, that the property is subject to
29 forfeiture.

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

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

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

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

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

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

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

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

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

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

25 (9)(a) By January 31st of each year, each seizing agency shall
26 remit to the state (~~(treasurer)~~) an amount equal to ten percent of
27 the net proceeds of any property forfeited during the preceding
28 calendar year. Money remitted shall be deposited in the prostitution
29 prevention and intervention account under RCW 43.63A.740.

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

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

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

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

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

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

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

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

34 (ii) Only if the governmental entity denies or fails to respond
35 to the landlord's claim within sixty days of the date of filing, may
36 the landlord collect damages under this subsection by filing within
37 thirty days of denial or the expiration of the sixty day period,
38 whichever occurs first, a claim with the seizing law enforcement
39 agency. The seizing law enforcement agency must notify the landlord
40 of the status of the claim by the end of the thirty day period.

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

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

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

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

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

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

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

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

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

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

30 **Sec. 6.** RCW 43.79A.040 and 2021 c 175 s 10 and 2021 c 108 s 5
31 are each reenacted and amended to read as follows:

32 (1) Money in the treasurer's trust fund may be deposited,
33 invested, and reinvested by the state treasurer in accordance with
34 RCW 43.84.080 in the same manner and to the same extent as if the
35 money were in the state treasury, and may be commingled with moneys
36 in the state treasury for cash management and cash balance purposes.

37 (2) All income received from investment of the treasurer's trust
38 fund must be set aside in an account in the treasury trust fund to be
39 known as the investment income account.

1 (3) The investment income account may be utilized for the payment
2 of purchased banking services on behalf of treasurer's trust funds
3 including, but not limited to, depository, safekeeping, and
4 disbursement functions for the state treasurer or affected state
5 agencies. The investment income account is subject in all respects to
6 chapter 43.88 RCW, but no appropriation is required for payments to
7 financial institutions. Payments must occur prior to distribution of
8 earnings set forth in subsection (4) of this section.

9 (4)(a) Monthly, the state treasurer must distribute the earnings
10 credited to the investment income account to the state general fund
11 except under (b), (c), and (d) of this subsection.

12 (b) The following accounts and funds must receive their
13 proportionate share of earnings based upon each account's or fund's
14 average daily balance for the period: The 24/7 sobriety account, the
15 Washington promise scholarship account, the Gina Grant Bull memorial
16 legislative page scholarship account, the Rosa Franklin legislative
17 internship program scholarship (~~(account)~~) account, the Washington
18 advanced college tuition payment program account, the Washington
19 college savings program account, the accessible communities account,
20 the Washington achieving a better life experience program account,
21 the community and technical college innovation account, the
22 agricultural local fund, the American Indian scholarship endowment
23 fund, the behavioral health loan repayment program account, the
24 foster care scholarship endowment fund, the foster care endowed
25 scholarship trust fund, the contract harvesting revolving account,
26 the Washington state combined fund drive account, the commemorative
27 works account, the county enhanced 911 excise tax account, the county
28 road administration board emergency loan account, the toll collection
29 account, the developmental disabilities endowment trust fund, the
30 energy account, the fair fund, the family and medical leave insurance
31 account, the fish and wildlife federal lands revolving account, the
32 natural resources federal lands revolving account, the food animal
33 veterinarian conditional scholarship account, the forest health
34 revolving account, the fruit and vegetable inspection account, the
35 educator conditional scholarship account, the game farm alternative
36 account, the GET ready for math and science scholarship account, the
37 Washington global health technologies and product development
38 account, the grain inspection revolving fund, the Washington history
39 day account, the industrial insurance rainy day fund, the juvenile
40 accountability incentive account, the law enforcement officers' and

1 firefighters' plan 2 expense fund, the local tourism promotion
2 account, the low-income home rehabilitation revolving loan program
3 account, the multiagency permitting team account, the northeast
4 Washington wolf-livestock management account, the produce railcar
5 pool account, the public use general aviation airport loan revolving
6 account, the regional transportation investment district account, the
7 rural rehabilitation account, the Washington sexual assault kit
8 account, the stadium and exhibition center account, the youth
9 athletic facility account, the self-insurance revolving fund, the
10 children's trust fund, the Washington horse racing commission
11 Washington bred owners' bonus fund and breeder awards account, the
12 Washington horse racing commission class C purse fund account, the
13 individual development account program account, the Washington horse
14 racing commission operating account, the life sciences discovery
15 fund, the Washington state library-archives building account, the
16 reduced cigarette ignition propensity account, the center for deaf
17 and hard of hearing youth account, the school for the blind account,
18 the Millersylvania park trust fund, the public employees' and
19 retirees' insurance reserve fund, the school employees' benefits
20 board insurance reserve fund, the public employees' and retirees'
21 insurance account, the school employees' insurance account, the long-
22 term services and supports trust account, the radiation perpetual
23 maintenance fund, the Indian health improvement reinvestment account,
24 the department of licensing tuition recovery trust fund, the student
25 achievement council tuition recovery trust fund, the tuition recovery
26 trust fund, the industrial insurance premium refund account, the
27 mobile home park relocation fund, the natural resources deposit fund,
28 the Washington state health insurance pool account, the federal
29 forest revolving account, and the library operations account.

30 (c) The following accounts and funds must receive eighty percent
31 of their proportionate share of earnings based upon each account's or
32 fund's average daily balance for the period: The advance right-of-way
33 revolving fund, the advanced environmental mitigation revolving
34 account, the federal narcotics asset forfeitures account, the high
35 occupancy vehicle account, the local rail service assistance account,
36 and the miscellaneous transportation programs account.

37 (d) Any state agency that has independent authority over accounts
38 or funds not statutorily required to be held in the custody of the
39 state treasurer that deposits funds into a fund or account in the
40 custody of the state treasurer pursuant to an agreement with the

1 office of the state treasurer shall receive its proportionate share
2 of earnings based upon each account's or fund's average daily balance
3 for the period.

4 (5) In conformance with Article II, section 37 of the state
5 Constitution, no trust accounts or funds shall be allocated earnings
6 without the specific affirmative directive of this section.

7 NEW SECTION. **Sec. 7.** This act takes effect July 1, 2022.

Passed by the Senate March 8, 2022.

Passed by the House March 4, 2022.

Approved by the Governor March 24, 2022.

Filed in Office of Secretary of State March 24, 2022.

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