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HOUSE BILL 1016

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State of Washington

65th Legislature

2017 Regular Session

By Representatives Taylor, Shea, Goodman, Condotta, Holy, Young, and McCaslin

Prefiled 12/05/16.

1       AN ACT Relating to requiring a finding of guilt prior to the  
2 forfeiture of private property; and amending RCW 9.46.231, 9.68A.120,  
3 9A.88.150, 10.105.010, 9A.83.030, 19.290.230, 46.61.5058, 69.50.505,  
4 70.74.400, 82.24.130, 82.26.230, 82.26.240, 82.32.670, and 82.38.360.

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

6       **Sec. 1.** RCW 9.46.231 and 2008 c 6 s 629 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 gambling devices as defined in this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (3) In the event of seizure under subsection (2) of this section,  
5 proceedings for forfeiture are deemed commenced by the seizure. No  
6 court may enter a final order of forfeiture of personal or real  
7 property until after the court has found the following: (a) The owner  
8 of the personal or real property to be forfeited is guilty of  
9 committing a felony offense, and (b) the personal or real property to  
10 be forfeited was directly (i) involved in, (ii) connected with, (iii)  
11 traceable to, or (iv) derived from the commission of the felony  
12 offense for which the owner of the property was found guilty. The law  
13 enforcement agency under whose authority the seizure was made shall  
14 cause notice to be served within fifteen days following the seizure  
15 on the owner of the property seized and the person in charge thereof  
16 and any person having any known right or interest therein, including  
17 any community property interest, of the seizure and intended  
18 forfeiture of the seized property. Service of notice of seizure of  
19 real property must be made according to the rules of civil procedure.  
20 However, the state may not obtain a default judgment with respect to  
21 real property against a party who is served by substituted service  
22 absent an affidavit stating that a good faith effort has been made to  
23 ascertain if the defaulted party is incarcerated within the state,  
24 and that there is no present basis to believe that the party is  
25 incarcerated within the state. Notice of seizure in the case of  
26 property subject to a security interest that has been perfected by  
27 filing a financing statement in accordance with chapter 62A.9A RCW,  
28 or a certificate of title, must be made by service upon the secured  
29 party or the secured party's assignee at the address shown on the  
30 financing statement or the certificate of title. The notice of  
31 seizure in other cases may be served by any method authorized by law  
32 or court rule including but not limited to service by certified mail  
33 with return receipt requested. Service by mail is deemed complete  
34 upon mailing within the fifteen-day period following the seizure.

35 (4) If no 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 seizure in the case of personal property and ninety days  
39 in the case of real property, the item seized is deemed forfeited.  
40 The community property interest in real property of a person whose

1 spouse or domestic partner committed a violation giving rise to  
2 seizure of the real property may not be forfeited if the person did  
3 not participate in the violation.

4 (5) If any person notifies the seizing law enforcement agency in  
5 writing of the person's claim of ownership or right to possession of  
6 items specified in subsection (1) of this section within forty-five  
7 days of the seizure in the case of personal property and ninety days  
8 in the case of real property, the person or persons must be afforded  
9 a reasonable opportunity to be heard as to the claim or right. The  
10 hearing must be before the chief law enforcement officer of the  
11 seizing agency or the chief law enforcement officer's designee,  
12 except if the seizing agency is a state agency as defined in RCW  
13 34.12.020(4), the hearing must be before the chief law enforcement  
14 officer of the seizing agency or an administrative law judge  
15 appointed under chapter 34.12 RCW, except that any person asserting a  
16 claim or right may remove the matter to a court of competent  
17 jurisdiction. Removal of any matter involving personal property may  
18 only be accomplished according to the rules of civil procedure. The  
19 person seeking removal of the matter must serve process against the  
20 state, county, political subdivision, or municipality that operates  
21 the seizing agency, and any other party of interest, in accordance  
22 with RCW 4.28.080 or 4.92.020, within forty-five days after the  
23 person seeking removal has notified the seizing law enforcement  
24 agency of the person's claim of ownership or right to possession. The  
25 court to which the matter is to be removed must be the district court  
26 if the aggregate value of personal property is within the  
27 jurisdictional limit set forth in RCW 3.66.020. A hearing before the  
28 seizing agency and any appeal therefrom must be under Title 34 RCW.  
29 In a court hearing between two or more claimants to the article or  
30 articles involved, the prevailing party is entitled to a judgment for  
31 costs and reasonable attorneys' fees. In cases involving personal  
32 property, the burden of producing evidence is upon the person  
33 claiming to be the lawful owner or the person claiming to have the  
34 lawful right to possession of the property. In cases involving  
35 property seized under subsection (1)(a) of this section, the only  
36 issues to be determined by the tribunal are whether the item seized  
37 is a gambling device, and whether the device is an antique device as  
38 defined by RCW 9.46.235. In cases involving real property, the burden  
39 of producing evidence is upon the law enforcement agency. The burden  
40 of proof that the seized real property is subject to forfeiture is

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **Sec. 2.** RCW 9.68A.120 and 2014 c 188 s 3 are each amended to  
27 read as follows:

28 The following are subject to seizure and forfeiture:

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

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

38 (a) No conveyance used by any person as a common carrier in the  
39 transaction of business as a common carrier is subject to forfeiture



1 under this section unless it appears that the owner or other person  
2 in charge of the conveyance is a consenting party or privy to a  
3 violation of this chapter;

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

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

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

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

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

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

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

32 (c) A law enforcement officer has probable cause to believe that  
33 the property is directly or indirectly dangerous to health or safety;  
34 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 violation of  
37 this chapter.

38 (5) In the event of seizure under subsection (4) of this section,  
39 proceedings for forfeiture shall be deemed commenced by the seizure.  
40 No court may enter a final order of forfeiture of personal or real

1 property until after the court has found the following: (a) The owner  
2 of the personal or real property to be forfeited is guilty of  
3 committing a felony offense, and (b) the personal or real property to  
4 be forfeited was directly (i) involved in, (ii) connected with, (iii)  
5 traceable to, or (iv) derived from the commission of the felony  
6 offense for which the owner of the property was found guilty. The law  
7 enforcement agency under whose authority the seizure was made shall  
8 cause notice to be served within fifteen days following the seizure  
9 on the owner of the property seized and the person in charge thereof  
10 and any person having any known right or interest therein, of the  
11 seizure and intended forfeiture of the seized property. The notice  
12 may be served by any method authorized by law or court rule including  
13 but not limited to service by certified mail with return receipt  
14 requested. Service by mail shall be deemed complete upon mailing  
15 within the fifteen day period following the seizure.

16 (6) 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 seized items within forty-five days of the seizure, the item seized  
19 shall be deemed forfeited.

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

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

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

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

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

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

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

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

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

35 (11) Forfeited property and net proceeds not required to be paid  
36 to the state treasurer under this chapter shall be used for payment  
37 of all proper expenses of the investigation leading to the seizure,  
38 including any money delivered to the subject of the investigation by  
39 the law enforcement agency, and of the proceedings for forfeiture and  
40 sale, including expenses of seizure, maintenance of custody,

1 advertising, actual costs of the prosecuting or city attorney, and  
2 court costs. Money remaining after payment of these expenses shall be  
3 retained by the seizing law enforcement agency for the exclusive use  
4 of enforcing the provisions of this chapter or chapter 9A.88 RCW.

5 **Sec. 3.** RCW 9A.88.150 and 2014 c 188 s 4 are each amended to  
6 read as follows:

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

9 (a) Any property or other interest acquired or maintained in  
10 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070 to the extent of  
11 the investment of funds, and any appreciation or income attributable  
12 to the investment, from a violation of RCW 9.68A.100, 9.68A.101, or  
13 9A.88.070;

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

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

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

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

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

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

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

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

10 (f) All moneys, negotiable instruments, securities, or other  
11 tangible or intangible property of value furnished or intended to be  
12 furnished by any person in exchange for a violation of RCW 9.68A.100,  
13 9.68A.101, or 9A.88.070, all tangible or intangible personal  
14 property, proceeds, or assets acquired in whole or in part with  
15 proceeds directly traceable to an exchange or series of exchanges in  
16 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys,  
17 negotiable instruments, and securities used or intended to be used to  
18 facilitate any violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070. A  
19 forfeiture of money, negotiable instruments, securities, or other  
20 tangible or intangible property encumbered by a bona fide security  
21 interest is subject to the interest of the secured party if, at the  
22 time the security interest was created, the secured party neither had  
23 knowledge of nor consented to the act or omission. No personal  
24 property may be forfeited under this subsection (1)(f), to the extent  
25 of the interest of an owner, by reason of any act or omission, which  
26 that owner establishes was committed or omitted without the owner's  
27 knowledge or consent; and

28 (g) All real property, including any right, title, and interest  
29 in the whole of any lot or tract of land, and any appurtenances or  
30 improvements which are being used with the knowledge of the owner for  
31 a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, or which have  
32 been acquired in whole or in part with proceeds directly traceable to  
33 an exchange or series of exchanges in violation of RCW 9.68A.100,  
34 9.68A.101, or 9A.88.070, if a substantial nexus exists between the  
35 violation and the real property. However:

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

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

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

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

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

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

25 (3) In the event of seizure pursuant to subsection (2) of this  
26 section, proceedings for forfeiture shall be deemed commenced by the  
27 seizure. No court may enter a final order of forfeiture of personal  
28 or real property until after the court has found the following: (a)  
29 The owner of the personal or real property to be forfeited is guilty  
30 of committing a felony offense, and (b) the personal or real property  
31 to be forfeited was directly (i) involved in, (ii) connected with,  
32 (iii) traceable to, or (iv) derived from the commission of the felony  
33 offense for which the owner of the property was found guilty. The law  
34 enforcement agency under whose authority the seizure was made shall  
35 cause notice to be served within fifteen days following the seizure  
36 on the owner of the property seized and the person in charge thereof  
37 and any person having any known right or interest therein, including  
38 any community property interest, of the seizure and intended  
39 forfeiture of the seized property. Service of notice of seizure of  
40 real property shall be made according to the rules of civil

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

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 service of notice from the seizing agency in the case of  
20 personal property and ninety days in the case of real property, the  
21 item seized shall be deemed forfeited. The community property  
22 interest in real property of a person whose spouse or domestic  
23 partner committed a violation giving rise to seizure of the real  
24 property may not be forfeited if the person did not participate in  
25 the violation.

26 (5) If any person notifies the seizing law enforcement agency in  
27 writing of the person's claim of ownership or right to possession of  
28 items specified in subsection (1) of this section within forty-five  
29 days of the service of notice from the seizing agency in the case of  
30 personal property and ninety days in the case of real property, the  
31 person or persons shall be afforded a reasonable opportunity to be  
32 heard as to the claim or right. The notice of claim may be served by  
33 any method authorized by law or court rule including, but not limited  
34 to, service by first-class mail. Service by mail shall be deemed  
35 complete upon mailing within the forty-five day period following  
36 service of the notice of seizure in the case of personal property and  
37 within the ninety day period following service of the notice of  
38 seizure in the case of real property. The hearing shall be before the  
39 chief law enforcement officer of the seizing agency or the chief law  
40 enforcement officer's designee, except where the seizing agency is a

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

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

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

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

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

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



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

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

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

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

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

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

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

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

34 (10) Net proceeds not required to be paid to the state treasurer  
35 shall be used for payment of all proper expenses of the investigation  
36 leading to the seizure, including any money delivered to the subject  
37 of the investigation by the law enforcement agency, and of the  
38 proceedings for forfeiture and sale, including expenses of seizure,  
39 maintenance of custody, advertising, actual costs of the prosecuting  
40 or city attorney, and court costs. Money remaining after payment of

1 these expenses shall be retained by the seizing law enforcement  
2 agency for the exclusive use of enforcing the provisions of this  
3 chapter or chapter 9.68A RCW.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (3) In the event of seizure pursuant to this section, proceedings  
21 for forfeiture shall be deemed commenced by the seizure. No court may  
22 enter a final order of forfeiture of personal or real property until  
23 after the court has found the following: (a) The owner of the  
24 personal or real property to be forfeited is guilty of committing a  
25 felony offense, and (b) the personal or real property to be forfeited  
26 was directly (i) involved in, (ii) connected with, (iii) traceable  
27 to, or (iv) derived from the commission of the felony offense for  
28 which the owner of the property was found guilty. The law enforcement  
29 agency under whose authority the seizure was made shall cause notice  
30 to be served within fifteen days following the seizure on the owner  
31 of the property seized and the person in charge thereof and any  
32 person having any known right or interest therein, including any  
33 community property interest, of the seizure and intended forfeiture  
34 of the seized property. The notice of seizure may be served by any  
35 method authorized by law or court rule including but not limited to  
36 service by certified mail with return receipt requested. Service by  
37 mail shall be deemed complete upon mailing within the fifteen day  
38 period following the seizure. Notice of seizure in the case of  
39 property subject to a security interest that has been perfected by  
40 filing a financing statement in accordance with chapter 62A.9A RCW,

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

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

8 (5) 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 property 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(4), 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 property 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 property  
32 involved, the prevailing party shall be entitled to a judgment for  
33 costs and reasonable attorney's fees. The burden of producing  
34 evidence shall be upon the person claiming to be the lawful owner or  
35 the person claiming to have the lawful right to possession of the  
36 property. The seizing law enforcement agency shall promptly return  
37 the property to the claimant upon a determination by the  
38 administrative law judge or court that the claimant is the present  
39 lawful owner or is lawfully entitled to possession of the property.

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

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

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

9 (7) By January 31st of each year, each seizing agency shall remit  
10 to the state treasurer an amount equal to ten percent of the net  
11 proceeds of any property forfeited during the preceding calendar  
12 year. Money remitted shall be deposited in the state general fund.

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

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

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

35 **Sec. 5.** RCW 9A.83.030 and 2008 c 6 s 630 are each amended to  
36 read as follows:

37 (1) Proceeds directly traceable to or directly derived from  
38 specified unlawful activity or a violation of RCW 9A.83.020 are  
39 subject to seizure and forfeiture. The attorney general or county

1 prosecuting attorney may file a civil action for the forfeiture of  
2 proceeds. Unless otherwise provided for under this section, no  
3 property rights exist in these proceeds. All right, title, and  
4 interest in the proceeds shall vest in the governmental entity of  
5 which the seizing law enforcement agency is a part upon commission of  
6 the act or omission giving rise to forfeiture under this section.

7 (2) Real or personal property subject to forfeiture under this  
8 chapter may be seized by any law enforcement officer of this state  
9 upon process issued by a superior court that has jurisdiction over  
10 the property. Any agency seizing real property shall file a lis  
11 pendens concerning the property. Real property seized under this  
12 section shall not be transferred or otherwise conveyed until ninety  
13 days after seizure or until a judgment of forfeiture is entered,  
14 whichever is later. Real property seized under this section may be  
15 transferred or conveyed to any person or entity who acquires title by  
16 foreclosure or deed in lieu of foreclosure of a security interest.  
17 Seizure of personal property without process may be made if:

18 (a) The seizure is incident to an arrest or a search under a  
19 search warrant or an inspection under an administrative inspection  
20 warrant issued pursuant to RCW 69.50.502; or

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

24 (3) A seizure under subsection (2) of this section commences  
25 proceedings for forfeiture. No court may enter a final order of  
26 forfeiture of personal or real property until after the court has  
27 found the following: (a) The owner of the personal or real property  
28 to be forfeited is guilty of committing a felony offense, and (b) the  
29 personal or real property to be forfeited was directly (i) involved  
30 in, (ii) connected with, (iii) traceable to, or (iv) derived from the  
31 commission of the felony offense for which the owner of the property  
32 was found guilty. The law enforcement agency under whose authority  
33 the seizure was made shall cause notice of the seizure and intended  
34 forfeiture of the seized proceeds to be served within fifteen days  
35 after the seizure on the owner of the property seized and the person  
36 in charge thereof and any person who has a known right or interest  
37 therein, including a community property interest. Service of notice  
38 of seizure of real property shall be made according to the rules of  
39 civil procedure. However, the state may not obtain a default judgment  
40 with respect to real property against a party who is served by

1 substituted service absent an affidavit stating that a good faith  
2 effort has been made to ascertain if the defaulted party is  
3 incarcerated within the state, and that there is no present basis to  
4 believe that the party is incarcerated within the state. The notice  
5 of seizure in other cases may be served by any method authorized by  
6 law or court rule including but not limited to service by certified  
7 mail with return receipt requested. Service by mail is complete upon  
8 mailing within the fifteen-day period after the seizure.

9 (4) If no person notifies the seizing law enforcement agency in  
10 writing of the person's claim of ownership or right to possession of  
11 the property within forty-five days of the seizure in the case of  
12 personal property and ninety days in the case of real property, the  
13 property seized shall be deemed forfeited. The community property  
14 interest in real property of a person whose spouse or domestic  
15 partner committed a violation giving rise to seizure of the real  
16 property may not be forfeited if the person did not participate in  
17 the violation.

18 (5) If a person notifies the seizing law enforcement agency in  
19 writing of the person's claim of ownership or right to possession of  
20 property within forty-five days of the seizure in the case of  
21 personal property and ninety days in the case of real property, the  
22 person or persons shall be afforded a reasonable opportunity to be  
23 heard as to the claim or right. The provisions of RCW 69.50.505(5)  
24 shall apply to any such hearing. The seizing law enforcement agency  
25 shall promptly return property to the claimant upon the direction of  
26 the administrative law judge or court.

27 (6) Disposition of forfeited property shall be made in the manner  
28 provided for in RCW 69.50.505 (8) through (10) and (14).

29 **Sec. 6.** RCW 19.290.230 and 2013 c 322 s 27 are each amended to  
30 read as follows:

31 (1) The following personal property is subject to seizure and  
32 forfeiture and no property right exists in them: All personal  
33 property including, but not limited to, any item, object, tool,  
34 substance, device, weapon, machine, vehicle of any kind, money,  
35 security, or negotiable instrument, which the seizing agency proves  
36 by a preponderance of the evidence was used or intended to be used by  
37 its owner or the person in charge to knowingly or intentionally  
38 facilitate the commission of, or to knowingly or intentionally abet  
39 the commission of, a crime involving theft, trafficking, or unlawful



1 possession of commercial metal property, or which the seizing agency  
2 proves by a preponderance of the evidence was knowingly or  
3 intentionally furnished or was intended to be furnished by any person  
4 in the commission of, as a result of, or as compensation for the  
5 commission of, a crime involving theft, trafficking, or the unlawful  
6 possession of commercial metal property, or which the property owner  
7 acquired in whole or in part with proceeds directly traceable to a  
8 knowing or intentional commission of a crime involving the theft,  
9 trafficking, or unlawful possession of commercial metal property  
10 provided that such activity is not less than a class C felony; except  
11 that:

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

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

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

32 (2) The following real property is subject to seizure and  
33 forfeiture and no property right exists in them: All real property,  
34 including any right, title, and interest in the whole of any lot or  
35 tract of land, and any appurtenances or improvements, that the  
36 seizing agency proves by a preponderance of the evidence are being  
37 used with the knowledge of the owner for the intentional commission  
38 of any crime involving the theft, trafficking, or unlawful possession  
39 of commercial metal property, or which have been acquired in whole or  
40 in part with proceeds directly traceable to the commission of any

1 crime involving the trafficking, theft, or unlawful possession of  
2 commercial metal, if such activity is not less than a class C felony  
3 and a substantial nexus exists between the commission of the  
4 violation or crime and the real property. However:

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

17 (b) 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, neither had actual or constructive knowledge, nor  
20 consented to the act or omission.

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

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

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

37 (4) In the event of seizure pursuant to this section, proceedings  
38 for forfeiture shall be deemed commenced by the seizure. No court may  
39 enter a final order of forfeiture of personal or real property until  
40 after the court has found the following: (a) The owner of the

1 personal or real property to be forfeited is guilty of committing a  
2 felony offense, and (b) the personal or real property to be forfeited  
3 was directly (i) involved in, (ii) connected with, (iii) traceable  
4 to, or (iv) derived from the commission of the felony offense for  
5 which the owner of the property was found guilty. The law enforcement  
6 agency under whose authority the seizure was made shall cause notice  
7 to be served within fifteen days following the seizure on the owner  
8 of the property seized and the person in charge thereof and any  
9 person having any known right or interest therein, including any  
10 community property interest, of the seizure and intended forfeiture  
11 of the seized property. Service of notice of seizure of real property  
12 shall be made according to the rules of civil procedure. However, the  
13 state may not obtain a default judgment with respect to real property  
14 against a party who is served by substituted service absent an  
15 affidavit stating that a good faith effort has been made to ascertain  
16 if the defaulted party is incarcerated within the state, and that  
17 there is no present basis to believe that the party is incarcerated  
18 within the state. The notice of seizure of personal property may be  
19 served by any method authorized by law or court rule including but  
20 not limited to service by certified mail with return receipt  
21 requested. Service by mail shall be deemed complete upon mailing  
22 within the fifteen-day period following the seizure. Notice of  
23 seizure in the case of property subject to a security interest that  
24 has been perfected by filing a financing statement in accordance with  
25 chapter 62A.9A RCW, or a certificate of title shall be made by  
26 service upon the secured party or the secured party's assignee at the  
27 address shown on the financing statement or the certificate of title.

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

37 (6) If a person notifies the seizing law enforcement agency in  
38 writing of the person's claim of ownership or right to possession of  
39 the seized property within forty-five days of the seizure in the case  
40 of personal property and ninety days in the case of real property,

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

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

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

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

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

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

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

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

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

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

39       (10) Upon the entry of an order of forfeiture of real property,  
40 the court shall forward a copy of the order to the assessor of the

1 county in which the property is located. Orders for the forfeiture of  
2 real property shall be entered by the superior court, subject to  
3 court rules. Such an order shall be filed by the seizing agency in  
4 the county auditor's records in the county in which the real property  
5 is located.

6 **Sec. 7.** RCW 46.61.5058 and 2013 2nd sp.s. c 35 s 18 are each  
7 amended to read as follows:

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

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

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

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

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

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

16       (4) Seizure under subsection (3) of this section  
17 (~~((automatically))~~) commences proceedings for forfeiture. No court may  
18 enter a final order of forfeiture of personal or real property until  
19 after the court has found the following: (a) The owner of the  
20 personal or real property to be forfeited is guilty of committing a  
21 felony offense, and (b) the personal or real property to be forfeited  
22 was directly (i) involved in, (ii) connected with, (iii) traceable  
23 to, or (iv) derived from the commission of the felony offense for  
24 which the owner of the property was found guilty. The law enforcement  
25 agency under whose authority the seizure was made shall cause notice  
26 of the seizure and intended forfeiture of the seized vehicle to be  
27 served within fifteen days after the seizure on the owner of the  
28 vehicle seized, on the person in charge of the vehicle, and on any  
29 person having a known right or interest in the vehicle, including a  
30 community property interest. The notice of seizure may be served by  
31 any method authorized by law or court rule, including but not limited  
32 to service by certified mail with return receipt requested. Service  
33 by mail is complete upon mailing within the fifteen-day period after  
34 the seizure. Notice of seizure in the case of property subject to a  
35 security interest that has been perfected on a certificate of title  
36 shall be made by service upon the secured party or the secured  
37 party's assignee at the address shown on the financing statement or  
38 the certificate of title.

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

1 the seized vehicle within forty-five days of the seizure, the vehicle  
2 is deemed forfeited.

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

35 (7) When a vehicle is forfeited under this chapter the seizing  
36 law enforcement agency may sell the vehicle, retain it for official  
37 use, or upon application by a law enforcement agency of this state  
38 release the vehicle to that agency for the exclusive use of enforcing  
39 this title; provided, however, that the agency shall first satisfy



1 any bona fide security interest to which the vehicle is subject under  
2 subsection (1)(a) or (c) of this section.

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

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

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

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

17 (12) By January 31st of each year, each seizing agency shall  
18 remit to the state treasurer an amount equal to ten percent of the  
19 net proceeds of vehicles forfeited during the preceding calendar  
20 year. Money remitted shall be deposited in the state general fund.

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

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

35 **Sec. 8.** RCW 69.50.505 and 2013 c 3 s 25 are each amended to read  
36 as follows:

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

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

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

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

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

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

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

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

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

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

37 (e) All books, records, and research products and materials,  
38 including formulas, microfilm, tapes, and data which are used, or  
39 intended for use, in violation of this chapter or chapter 69.41 or  
40 69.52 RCW;

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

4 (g) All moneys, negotiable instruments, securities, or other  
5 tangible or intangible property of value furnished or intended to be  
6 furnished by any person in exchange for a controlled substance in  
7 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible  
8 or intangible personal property, proceeds, or assets acquired in  
9 whole or in part with proceeds directly traceable to an exchange or  
10 series of exchanges in violation of this chapter or chapter 69.41 or  
11 69.52 RCW, and all moneys, negotiable instruments, and securities  
12 used or intended to be used to facilitate any violation of this  
13 chapter or chapter 69.41 or 69.52 RCW. A forfeiture of money,  
14 negotiable instruments, securities, or other tangible or intangible  
15 property encumbered by a bona fide security interest is subject to  
16 the interest of the secured party if, at the time the security  
17 interest was created, the secured party neither had knowledge of nor  
18 consented to the act or omission. No personal property may be  
19 forfeited under this subsection (1)(g), to the extent of the interest  
20 of an owner, by reason of any act or omission which that owner  
21 establishes was committed or omitted without the owner's knowledge or  
22 consent; and

23 (h) All real property, including any right, title, and interest  
24 in the whole of any lot or tract of land, and any appurtenances or  
25 improvements which are being used with the knowledge of the owner for  
26 the manufacturing, compounding, processing, delivery, importing, or  
27 exporting of any controlled substance, or which have been acquired in  
28 whole or in part with proceeds directly traceable to an exchange or  
29 series of exchanges in violation of this chapter or chapter 69.41 or  
30 69.52 RCW, if such activity is not less than a class C felony and a  
31 substantial nexus exists between the commercial production or sale of  
32 the controlled substance and the real property. However:

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

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

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

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

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

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

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

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

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

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

10 (3) In the event of seizure pursuant to subsection (2) of this  
11 section, proceedings for forfeiture shall be deemed commenced by the  
12 seizure. No court may enter a final order of forfeiture of personal  
13 or real property until after the court has found the following: (a)  
14 The owner of the personal or real property to be forfeited is guilty  
15 of committing a felony offense, and (b) the personal or real property  
16 to be forfeited was directly (i) involved in, (ii) connected with,  
17 (iii) traceable to, or (iv) derived from the commission of the felony  
18 offense for which the owner of the property was found guilty. The law  
19 enforcement agency under whose authority the seizure was made shall  
20 cause notice to be served within fifteen days following the seizure  
21 on the owner of the property seized and the person in charge thereof  
22 and any person having any known right or interest therein, including  
23 any community property interest, of the seizure and intended  
24 forfeiture of the seized property. Service of notice of seizure of  
25 real property shall be made according to the rules of civil  
26 procedure. However, the state may not obtain a default judgment with  
27 respect to real property against a party who is served by substituted  
28 service absent an affidavit stating that a good faith effort has been  
29 made to ascertain if the defaulted party is incarcerated within the  
30 state, and that there is no present basis to believe that the party  
31 is incarcerated within the state. Notice of seizure in the case of  
32 property subject to a security interest that has been perfected by  
33 filing a financing statement in accordance with chapter 62A.9A RCW,  
34 or a certificate of title, shall be made by service upon the secured  
35 party or the secured party's assignee at the address shown on the  
36 financing statement or the certificate of title. The notice of  
37 seizure in other cases may be served by any method authorized by law  
38 or court rule including but not limited to service by certified mail  
39 with return receipt requested. Service by mail shall be deemed

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

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

13 (5) If any person notifies the seizing law enforcement agency in  
14 writing of the person's claim of ownership or right to possession of  
15 items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h)  
16 of this section within forty-five days of the service of notice from  
17 the seizing agency in the case of personal property and ninety days  
18 in the case of real property, the person or persons shall be afforded  
19 a reasonable opportunity to be heard as to the claim or right. The  
20 notice of claim may be served by any method authorized by law or  
21 court rule including, but not limited to, service by first-class  
22 mail. Service by mail shall be deemed complete upon mailing within  
23 the forty-five day period following service of the notice of seizure  
24 in the case of personal property and within the ninety-day period  
25 following service of the notice of seizure in the case of real  
26 property. The hearing shall be before the chief law enforcement  
27 officer of the seizing agency or the chief law enforcement officer's  
28 designee, except where the seizing agency is a state agency as  
29 defined in RCW 34.12.020(4), the hearing shall be before the chief  
30 law enforcement officer of the seizing agency or an administrative  
31 law judge appointed under chapter 34.12 RCW, except that any person  
32 asserting a claim or right may remove the matter to a court of  
33 competent jurisdiction. Removal of any matter involving personal  
34 property may only be accomplished according to the rules of civil  
35 procedure. The person seeking removal of the matter must serve  
36 process against the state, county, political subdivision, or  
37 municipality that operates the seizing agency, and any other party of  
38 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-  
39 five days after the person seeking removal has notified the seizing  
40 law enforcement agency of the person's claim of ownership or right to

1 possession. The court to which the matter is to be removed shall be  
2 the district court when the aggregate value of personal property is  
3 within the jurisdictional limit set forth in RCW 3.66.020. A hearing  
4 before the seizing agency and any appeal therefrom shall be under  
5 Title 34 RCW. In all cases, the burden of proof is upon the law  
6 enforcement agency to establish, by a preponderance of the evidence,  
7 that the property is subject to forfeiture.

8 The seizing law enforcement agency shall promptly return the  
9 article or articles 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 thereof of items  
12 specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of  
13 this section.

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

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

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

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

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

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

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

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

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

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

8 (9)(a) By January 31st of each year, each seizing agency shall  
9 remit to the state treasurer an amount equal to ten percent of the  
10 net proceeds of any property forfeited during the preceding calendar  
11 year. Money remitted shall be deposited in the state general fund.

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

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

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

36 (11) Controlled substances listed in Schedule I, II, III, IV, and  
37 V that are possessed, transferred, sold, or offered for sale in  
38 violation of this chapter are contraband and shall be seized and  
39 summarily forfeited to the state. Controlled substances listed in  
40 Schedule I, II, III, IV, and V, which are seized or come into the



1 possession of the ((~~board~~)) commission, the owners of which are  
2 unknown, are contraband and shall be summarily forfeited to the  
3 ((~~board~~)) commission.

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

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

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

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

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

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

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

39 (B) Only if the governmental entity denies or fails to respond to  
40 the landlord's claim within sixty days of the date of filing, may the

1 landlord collect damages under this subsection by filing within  
2 thirty days of denial or the expiration of the sixty-day period,  
3 whichever occurs first, a claim with the seizing law enforcement  
4 agency. The seizing law enforcement agency must notify the landlord  
5 of the status of the claim by the end of the thirty-day period.  
6 Nothing in this section requires the claim to be paid by the end of  
7 the sixty-day or thirty-day period.

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

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

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

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

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

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

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

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

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

35 **Sec. 9.** RCW 70.74.400 and 2002 c 370 s 3 are each amended to  
36 read as follows:

37 (1) Explosives, improvised devices, and components of explosives  
38 and improvised devices that are possessed, manufactured, delivered,  
39 imported, exported, stored, sold, purchased, transported, abandoned,

1 detonated, or used, or intended to be used, in violation of a  
2 provision of this chapter are subject to seizure and forfeiture by a  
3 law enforcement agency and no property right exists in them.

4 (2) The law enforcement agency making the seizure shall notify  
5 the Washington state department of labor and industries of the  
6 seizure.

7 (3) Seizure of explosives, improvised devices, and components of  
8 explosives and improvised devices under subsection (1) of this  
9 section may be made if:

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

12 (b) The explosives, improvised devices, or components have been  
13 the subject of a prior judgment in favor of the state in an  
14 injunction or forfeiture proceeding based upon this chapter;

15 (c) A law enforcement officer has probable cause to believe that  
16 the explosives, improvised devices, or components are directly or  
17 indirectly dangerous to health or safety; or

18 (d) The law enforcement officer has probable cause to believe  
19 that the explosives, improvised devices, or components were used or  
20 were intended to be used in violation of this chapter.

21 (4) A law enforcement agency shall destroy explosives seized  
22 under this chapter when it is necessary to protect the public safety  
23 and welfare. When destruction is not necessary to protect the public  
24 safety and welfare, and the explosives are not being held for  
25 evidence, a seizure pursuant to this section commences proceedings  
26 for forfeiture. No court may enter a final order of forfeiture of  
27 personal or real property until after the court has found the  
28 following: (a) The owner of the personal or real property to be  
29 forfeited is guilty of committing a felony offense, and (b) the  
30 personal or real property to be forfeited was directly (i) involved  
31 in, (ii) connected with, (iii) traceable to, or (iv) derived from the  
32 commission of the felony offense for which the owner of the property  
33 was found guilty.

34 (5) The law enforcement agency under whose authority the seizure  
35 was made shall issue a written notice of the seizure and commencement  
36 of the forfeiture proceedings to the person from whom the explosives  
37 were seized, to any known owner of the explosives, and to any person  
38 who has a known interest in the explosives. The notice shall be  
39 issued within fifteen days of the seizure. The notice of seizure and  
40 commencement of the forfeiture proceedings shall be served in the

1 same manner as provided in RCW 4.28.080 for service of a summons. The  
2 law enforcement agency shall provide a form by which the person or  
3 persons may request a hearing before the law enforcement agency to  
4 contest the seizure.

5 (6) If no person notifies the seizing law enforcement agency in  
6 writing of the person's claim of ownership or right to possession of  
7 the explosives, improvised devices, or components within thirty days  
8 of the date the notice was issued, the seized explosives, devices, or  
9 components shall be deemed forfeited.

10 (7) If, within thirty days of the issuance of the notice, any  
11 person notifies the seizing law enforcement agency in writing of the  
12 person's claim of ownership or right to possession of items seized,  
13 the person or persons shall be afforded a reasonable opportunity to  
14 be heard as to the claim or right. The hearing shall be before the  
15 chief law enforcement or the officer's designee of the seizing  
16 agency, except that the person asserting the claim or right may  
17 remove the matter to a court of competent jurisdiction if the  
18 aggregate value of the items seized is more than five hundred  
19 dollars. The hearing and any appeal shall be conducted according to  
20 chapter 34.05 RCW. The seizing law enforcement agency shall bear the  
21 burden of proving that the person (a) has no lawful right of  
22 ownership or possession and (b) that the items seized were possessed,  
23 manufactured, stored, sold, purchased, transported, abandoned,  
24 detonated, or used in violation of a provision of this chapter with  
25 the person's knowledge or consent.

26 (8) The seizing law enforcement agency shall promptly return the  
27 items seized to the claimant upon a determination that the claimant  
28 is entitled to possession of the items seized.

29 (9) If the items seized are forfeited under this statute, the  
30 seizing agency shall dispose of the explosives by summary  
31 destruction. However, when explosives are destroyed either to protect  
32 public safety or because the explosives were forfeited, the person  
33 from whom the explosives were seized loses all rights of action  
34 against the law enforcement agency or its employees acting within the  
35 scope of their employment, or other governmental entity or employee  
36 involved with the seizure and destruction of explosives.

37 (10) This section is not intended to change the seizure and  
38 forfeiture powers, enforcement, and penalties available to the  
39 department of labor and industries pursuant to chapter 49.17 RCW as  
40 provided in RCW 70.74.390.

1       **Sec. 10.**     RCW 82.24.130 and 2012 2nd sp.s. c 4 s 8 are each  
2 amended to read as follows:

3       (1) The following are subject to seizure and forfeiture:

4       (a) Subject to RCW 82.24.250, any articles taxed in this chapter  
5 that are found at any point within this state, which articles are  
6 held, owned, or possessed by any person, and that do not have the  
7 stamps affixed to the packages or containers; any container or  
8 package of cigarettes possessed or held for sale that does not comply  
9 with this chapter; and any container or package of cigarettes that is  
10 manufactured, sold, or possessed in violation of RCW 82.24.570.

11       (b) All conveyances, including aircraft, vehicles, or vessels,  
12 which are used, or intended for use, to transport, or in any manner  
13 to facilitate the transportation, for the purpose of sale or receipt  
14 of property described in (a) of this subsection, except:

15       (i) A conveyance used by any person as a common or contract  
16 carrier having in actual possession invoices or delivery tickets  
17 showing the true name and address of the consignor or seller, the  
18 true name of the consignee or purchaser, and the quantity and brands  
19 of the cigarettes transported, unless it appears that the owner or  
20 other person in charge of the conveyance is a consenting party or  
21 privy to a violation of this chapter;

22       (ii) A conveyance subject to forfeiture under this section by  
23 reason of any act or omission of which the owner thereof establishes  
24 to have been committed or omitted without his or her knowledge or  
25 consent;

26       (iii) A conveyance encumbered by a bona fide security interest if  
27 the secured party neither had knowledge of nor consented to the act  
28 or omission.

29       (c) Any vending machine or commercial cigarette-making machine  
30 used for the purpose of violating the provisions of this chapter.

31       (d) Any cigarettes that are stamped, sold, imported, or offered  
32 or possessed for sale in this state in violation of RCW  
33 70.158.030(3). For the purposes of this subsection (1)(d),  
34 "cigarettes" has the meaning as provided in RCW 70.158.020(3).

35       (2)(a) Property subject to forfeiture under this chapter may be  
36 seized by any agent of the department authorized to collect taxes,  
37 any enforcement officer of the board, or law enforcement officer of  
38 this state upon process issued by any superior court or district  
39 court having jurisdiction over the property. No court may enter a  
40 final order of forfeiture of personal or real property until after

1 the court has found the following: (i) The owner of the personal or  
2 real property to be forfeited is guilty of committing a felony  
3 offense, and (ii) the personal or real property to be forfeited was  
4 directly (A) involved in, (B) connected with, (C) traceable to, or  
5 (D) derived from the commission of the felony offense for which the  
6 owner of the property was found guilty.

7 (b) Seizure without process may be made if:

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

11 ((+b+)) (ii) The department, the board, or the law enforcement  
12 officer has probable cause to believe that the property was used or  
13 is intended to be used in violation of this chapter and exigent  
14 circumstances exist making procurement of a search warrant  
15 impracticable.

16 (3) Notwithstanding the foregoing provisions of this section,  
17 articles taxed in this chapter which are in the possession of a  
18 wholesaler, licensed under Washington state law, for a period of time  
19 necessary to affix the stamps after receipt of the articles, are not  
20 considered contraband unless they are manufactured, sold, or  
21 possessed in violation of RCW 82.24.570.

22 **Sec. 11.** RCW 82.26.230 and 2005 c 180 s 20 are each amended to  
23 read as follows:

24 (1) Any tobacco products in the possession of a person selling  
25 tobacco products in this state acting as a distributor or retailer  
26 and who is not licensed as required under RCW 82.26.190, or a person  
27 who is selling tobacco products in violation of RCW 82.26.220(6), may  
28 be seized without a warrant by any agent of the department, agent of  
29 the board, or law enforcement officer of this state. Any tobacco  
30 products seized under this subsection shall be deemed forfeited.

31 (2) Any tobacco products in the possession of a person who is not  
32 a licensed distributor or retailer and who transports tobacco  
33 products for sale without having provided notice to the board  
34 required under RCW 82.26.140, or without invoices or delivery tickets  
35 showing the true name and address of the consignor or seller, the  
36 true name and address of the consignee or purchaser, and the quantity  
37 and brands of tobacco products being transported may be seized and  
38 are subject to forfeiture.

1 (3) All conveyances, including aircraft, vehicles, or vessels  
2 that are used, or intended for use to transport, or in any manner to  
3 facilitate the transportation, for the purpose of sale or receipt of  
4 tobacco products under subsection (2) of this section, may be seized  
5 and are subject to forfeiture except:

6 (a) A conveyance used by any person as a common or contract  
7 carrier having in actual possession invoices or delivery tickets  
8 showing the true name and address of the consignor or seller, the  
9 true name of the consignee or purchaser, and the quantity and brands  
10 of the tobacco products transported, unless it appears that the owner  
11 or other person in charge of the conveyance is a consenting party or  
12 privy to a violation of this chapter;

13 (b) A conveyance subject to forfeiture under this section by  
14 reason of any act or omission of which the owner establishes to have  
15 been committed or omitted without his or her knowledge or consent; or

16 (c) A conveyance encumbered by a bona fide security interest if  
17 the secured party neither had knowledge of nor consented to the act  
18 or omission.

19 (4)(a) Property subject to forfeiture under subsections (2) and  
20 (3) of this section may be seized by any agent of the department, the  
21 board, or law enforcement officer of this state upon process issued  
22 by any superior court or district court having jurisdiction over the  
23 property. No court may enter a final order of forfeiture of personal  
24 or real property until after the court has found the following: (i)  
25 The owner of the personal or real property to be forfeited is guilty  
26 of committing a felony offense, and (ii) the personal or real  
27 property to be forfeited was directly (A) involved in, (B) connected  
28 with, (C) traceable to, or (D) derived from the commission of the  
29 felony offense for which the owner of the property was found guilty.

30 (b) Seizure without process may be made if:

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

34 ((+b)) (ii) The department, board, or law enforcement officer  
35 has probable cause to believe that the property was used or is  
36 intended to be used in violation of this chapter and exigent  
37 circumstances exist making procurement of a search warrant  
38 impracticable.

39 (5) This section shall not be construed to require the seizure of  
40 tobacco products if the department's agent, board's agent, or law

1 enforcement officer reasonably believes that the tobacco products are  
2 possessed for personal consumption by the person in possession of the  
3 tobacco products.

4 (6) Any tobacco products seized by a law enforcement officer  
5 shall be turned over to the board as soon as practicable.

6 **Sec. 12.** RCW 82.26.240 and 2005 c 180 s 21 are each amended to  
7 read as follows:

8 (1) In all cases of seizure of any tobacco products made subject  
9 to forfeiture under this chapter, the department or board shall  
10 proceed as provided in RCW 82.24.135. No court may enter a final  
11 order of forfeiture of personal or real property until after the  
12 court has found the following: (a) The owner of the personal or real  
13 property to be forfeited is guilty of committing a felony offense,  
14 and (b) the personal or real property to be forfeited was directly  
15 (i) involved in, (ii) connected with, (iii) traceable to, or (iv)  
16 derived from the commission of the felony offense for which the owner  
17 of the property was found guilty.

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

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

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

36 (3) The department or the board may return any property seized  
37 under the provisions of this chapter when it is shown that there was  
38 no intention to violate the provisions of this chapter. When any  
39 property is returned under this section, the department or the board



1 may return the property to the parties from whom they were seized if  
2 and when such parties have paid the proper amount of tax due under  
3 this chapter.

4       **Sec. 13.** RCW 82.32.670 and 2013 c 309 s 3 are each amended to  
5 read as follows:

6       (1)(a) Automated sales suppression devices, phantom-ware,  
7 electronic cash registers or point of sale systems used with  
8 automated sales suppression devices or phantom-ware, and any property  
9 constituting proceeds directly traceable to any violation of RCW  
10 82.32.290(4) are considered contraband and are subject to seizure and  
11 forfeiture.

12       (b) Property subject to forfeiture under (a) of this subsection  
13 (1) may be seized by any agent of the department authorized to assess  
14 or collect taxes, or law enforcement officer of this state, upon  
15 process issued by any superior court or district court having  
16 jurisdiction over the property. No court may enter a final order of  
17 forfeiture of personal or real property until after the court has  
18 found the following: (i) The owner of the personal or real property  
19 to be forfeited is guilty of committing a felony offense, and (ii)  
20 the personal or real property to be forfeited was directly (A)  
21 involved in, (B) connected with, (C) traceable to, or (D) derived  
22 from the commission of the felony offense for which the owner of the  
23 property was found guilty. Seizure without process may be made if:

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

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

30       (2) Forfeiture authorized by this section is deemed to have  
31 commenced by the seizure. Notice of seizure must be given to the  
32 department if the seizure is made by a law enforcement officer  
33 without the presence of any agent of the department. The department  
34 must cause notice of the seizure and intended forfeiture to be served  
35 on the owner of the property seized, if known, and on any other  
36 person known by the department to have a right or interest in the  
37 seized property. Such service must be made within fifteen days  
38 following the seizure or the department's receipt of notification of  
39 the seizure. The notice may be served by any method authorized by law

1 or court rule, by certified mail with return receipt requested, or  
2 electronically in accordance with RCW 82.32.135. Service by certified  
3 mail or electronic means is deemed complete upon mailing the notice,  
4 electronically sending the notice, or electronically notifying the  
5 person or persons entitled to the notice that the notice is available  
6 to be accessed by the person or persons, within the fifteen-day  
7 period following the seizure or the department's receipt of  
8 notification of the seizure.

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

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

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

29 (5) When property is sought to be forfeited on the ground that it  
30 constitutes proceeds directly traceable to a violation of RCW  
31 82.32.290(4), the department must prove by a preponderance of the  
32 evidence that the property constitutes proceeds directly traceable to  
33 a violation of RCW 82.32.290(4).

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

37 (i) Destroy or have the property destroyed;

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

39 or

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

6 (b) When proceeds directly traceable to a violation of RCW  
7 82.32.290(4) forfeited under this section are no longer required for  
8 evidentiary purposes, they must be deposited into the general fund.

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

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

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

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

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

38 (e) "Transaction reports" means a report that includes  
39 information associated with sales transactions, taxes collected,  
40 media totals, and discount voids at an electronic cash register that

1 can be printed on cash register tape at the end of a day or shift, or  
2 a report documenting every action at an electronic cash register or  
3 other point of sale device and that is stored electronically.

4 **Sec. 14.** RCW 82.38.360 and 2013 c 225 s 132 are each amended to  
5 read as follows:

6 (1) The following are subject to seizure and forfeiture:

7 (a) Fuel imported into this state by a person not licensed in  
8 this state in accordance with this chapter to import fuel;

9 (b) Fuel blended or manufactured by a person not licensed in this  
10 state in accordance with this chapter to blend or manufacture fuel;

11 (c) All conveyances used, or intended for use, to transport, or  
12 in any manner to facilitate the transportation, for the purpose of  
13 sale or receipt of property described in (a) and (b) of this  
14 subsection, except where the owner of the conveyance neither had  
15 knowledge of nor consented to the transportation of the fuel by an  
16 unlicensed importer, blender, or manufacturer of fuel.

17 (2) Before seizing a common carrier conveyance, contract carrier  
18 conveyance, or a conveyance secured by a bona fide security interest  
19 where the secured party neither had knowledge of or consented to the  
20 unlawful act or omission, the state patrol or the department of  
21 licensing must give the common carrier, contract carrier, or secured  
22 party, or their representatives within twenty-four hours, a notice in  
23 writing served by mail or other means to cease transporting fuel for  
24 any person not licensed to import, blend, or manufacture fuel in this  
25 state.

26 (3)(a) Property subject to forfeiture under this chapter may be  
27 seized by the state patrol upon process issued by a superior court or  
28 district court having jurisdiction over the property. No court may  
29 enter a final order of forfeiture of personal or real property until  
30 after the court has found the following: (i) The owner of the  
31 personal or real property to be forfeited is guilty of committing a  
32 felony offense, and (ii) the personal or real property to be  
33 forfeited was directly (A) involved in, (B) connected with, (C)  
34 traceable to, or (D) derived from the commission of the felony  
35 offense for which the owner of the property was found guilty.

36 (b) Seizure without process may be made if:

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

1        (~~(b)~~) (ii) The state patrol has probable cause to believe the  
2 property was used or is intended to be used in violation of this  
3 chapter and exigent circumstances exist making procurement of a  
4 search warrant impracticable.

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