
SUBSTITUTE HOUSE BILL 2718

State of Washington

65th Legislature

2018 Regular Session

By House Judiciary (originally sponsored by Representatives Shea and Goodman)

1 AN ACT Relating to seizure and forfeiture procedures and
2 reporting; amending RCW 9.68A.120, 9A.88.150, 9A.83.030, 10.105.010,
3 19.290.230, 46.61.5058, 70.74.400, 77.15.070, 69.50.505, and
4 38.42.020; adding a new chapter to Title 7 RCW; creating a new
5 section; prescribing penalties; and providing effective dates.

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

7 NEW SECTION. **Sec. 1.** (1) Except with respect to contraband
8 items, which shall be seized and summarily forfeited, proceedings for
9 forfeiture are deemed commenced by the seizure. The agency under
10 whose authority the seizure was made shall cause notice to be served
11 within fifteen days following the seizure on the owner of the
12 property seized and the person in charge thereof and any person
13 having any known right or interest therein, including any community
14 property interest, of the seizure and intended forfeiture of the
15 seized property. Service of notice of seizure of real property must
16 be made according to the rules of civil procedure. However, a default
17 judgment with respect to real property may not be obtained against a
18 party who is served by substituted service absent an affidavit
19 stating that a good faith effort has been made to ascertain if the
20 defaulted party is incarcerated within the state, and that there is
21 no present basis to believe that the party is incarcerated within the

1 state. Notice of seizure in the case of property subject to a
2 security interest that has been perfected by filing a financing
3 statement in accordance with chapter 62A.9A RCW, or a certificate of
4 title, must be made by service upon the secured party or the secured
5 party's assignee at the address shown on the financing statement or
6 the certificate of title. The notice of seizure in other cases may be
7 served by any method authorized by law or court rule including, but
8 not limited to, service by certified mail with return receipt
9 requested. Service by mail is deemed complete upon mailing within the
10 fifteen-day period following the seizure.

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

20 (3) If any person notifies the seizing agency in writing of the
21 person's claim of ownership or right to possession of an item seized
22 within forty-five days of the service of notice from the seizing
23 agency in the case of personal property and ninety days in the case
24 of real property, the person or persons must be afforded a reasonable
25 opportunity to be heard as to the claim or right. The notice of claim
26 may be served by any method authorized by law or court rule
27 including, but not limited to, service by first-class mail. Service
28 by mail is deemed complete upon mailing within the forty-five day
29 period following service of the notice of seizure in the case of
30 personal property and within the ninety-day period following service
31 of the notice of seizure in the case of real property.

32 (4) The hearing must be before the chief law enforcement officer
33 of the seizing agency or the chief law enforcement officer's
34 designee, except that where the seizing agency is a state agency as
35 defined in RCW 34.12.020(4), the hearing must be before the chief law
36 enforcement officer of the seizing agency or an administrative law
37 judge appointed under chapter 34.12 RCW. Such a hearing and any
38 appeal therefrom must be under Title 34 RCW.

39 (5) Any person asserting a claim or right may remove the matter
40 to a court of competent jurisdiction. Removal of any matter involving

1 personal property may only be accomplished according to the rules of
2 civil procedure. The person seeking removal of the matter must serve
3 process against the state, county, political subdivision, or
4 municipality that operates the seizing agency, and any other party of
5 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-
6 five days after the person seeking removal has notified the seizing
7 agency of the person's claim of ownership or right to possession. The
8 court to which the matter is to be removed must be the district court
9 when the aggregate value of personal property is within the
10 jurisdictional limit set forth in RCW 3.66.020.

11 (6)(a) Whether the matter is heard under Title 34 RCW pursuant to
12 subsection (4) of this section or removed to court pursuant to
13 subsection (5) of this section, the burden of proof is upon the
14 seizing agency to establish, by a preponderance of the evidence, that
15 the property is subject to forfeiture.

16 (b) No personal property may be forfeited to the extent of the
17 interest of an owner, by reason of any act or omission committed or
18 omitted without the owner's knowledge or consent;

19 (c) No real property may be forfeited to the extent of the
20 interest of an owner, by reason of any act or omission committed or
21 omitted without the owner's knowledge or consent.

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

26 (7) The seizing agency shall promptly return seized items, in the
27 same or substantially similar condition as when they were seized, to
28 the claimant upon a determination by the administrative law judge or
29 court that the claimant is the present lawful owner or is lawfully
30 entitled to possession thereof.

31 (8) In any proceeding to forfeit property under this chapter,
32 where the claimant substantially prevails, the claimant is entitled
33 to reasonable attorneys' fees reasonably incurred by the claimant.

34 (9) The protections afforded by the service members' civil relief
35 act, chapter 38.42 RCW, are applicable to proceedings under this
36 chapter.

37 NEW SECTION. **Sec. 2.** (1) Upon the entry of an order of
38 forfeiture of real property, the court shall forward a copy of the
39 order to the assessor of the county in which the property is located.

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

5 (2)(a) A landlord may assert a claim against proceeds from the
6 sale of assets seized and forfeited only if:

7 (i) An employee, agent, or officer of the seizing agency, while
8 acting in his or her official capacity, directly caused damage to the
9 complaining landlord's property while executing a search of a
10 tenant's residence; and

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

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

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

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

33 (i) Knew or consented to actions of the tenant in violation of
34 this chapter or the chapter pursuant to which the seizure was made;
35 or

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

1 (3) The landlord's claim for damages under subsection (2) of this
2 section may not include a claim for loss of business and is limited
3 to:

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

5 (b) The lesser of the cost of repair or fair market value of the
6 damage directly caused by the employee, agent, or officer of the
7 seizing agency;

8 (c) The proceeds from the sale of the specific tenant's property
9 seized and forfeited; and

10 (d) The proceeds available after the seizing law enforcement
11 agency satisfies any bona fide security interest in the tenant's
12 property and costs related to sale of the tenant's property.

13 (4) Subsections (2) and (3) of this section do not limit any
14 other rights a landlord may have against a tenant to collect for
15 damages. However, if a seizing agency satisfies a landlord's claim
16 under subsection (2) of this section, the rights the landlord has
17 against the tenant for damages directly caused by an employee, agent,
18 or officer of the seizing agency under the terms of the landlord and
19 tenant's contract are subrogated to the seizing agency.

20 NEW SECTION. **Sec. 3.** When property is forfeited under this
21 chapter, the seizing agency may:

22 (1) Retain it for official use or upon application by any law
23 enforcement agency of this state release such property to such agency
24 to be used in enforcement;

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

27 (3) 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;

30 (4) Forward it to an appropriate entity, such as the drug
31 enforcement administration, for disposition; or

32 (5) Take any other action allowed by statute.

33 NEW SECTION. **Sec. 4.** (1) This section is applicable to all
34 seizures by seizing agencies, regardless of whether the seizure is:

35 (a) Pursuant to this chapter;

36 (b) Pursuant to any other section in the Revised Code of
37 Washington that authorizes seizure; or

1 (c) Conducted in collaboration with a federal agency under
2 federal law.

3 (2) For purposes of this section, "seizing agency" means any
4 police force, multijurisdictional task force, fire department, or
5 other municipal, county, or state agency that has authority under
6 state law or collaborates with a federal agency under federal law to
7 seize property.

8 (3)(a) The seizing agency must keep a record, about property
9 seized and forfeited under state law and any agreement with any
10 federal agency, of each forfeiture indicating:

11 (i) The name of the seizing agency;

12 (ii) Date of seizure;

13 (iii) Type of property seized;

14 (iv) Description of the property including make, model, year, and
15 serial number;

16 (v) Street address or description of the location where the
17 seizure occurred;

18 (vi) Whether the seizure was adopted by the federal government,
19 part of a joint task force with the federal government, or other
20 arrangement with the federal government;

21 (vii) Crime for which the suspect was charged;

22 (viii) Whether the suspect was convicted of a crime;

23 (ix) Whether the forfeiture was contested by a suspect, innocent
24 owner claimant, joint owner, or other property owner;

25 (x) Disposition of the property through the forfeiture process,
26 such as returned to suspect, returned to a joint owner or third-party
27 owner, sold, destroyed, or retained by a law enforcement agency;

28 (xi) Date of disposition of the property;

29 (xii) Basis for disposition of property in (a)(x) of this
30 subsection, such as suspect found not guilty, plea agreement, or
31 criminal forfeiture or civil forfeiture;

32 (xiii) Value of the property forfeited; and

33 (xiv) The net proceeds retained by the law enforcement agency
34 that seized the property.

35 (b) Annually, on a date specified by the state treasurer, the
36 seizing agency shall file a report, that includes all of the records
37 in (a) of this subsection, to the state treasurer. The state
38 treasurer must establish and maintain a searchable public web site
39 that includes all of the records in (a) of this subsection. The
40 annual report need not include a record of forfeited property that is

1 still being held for use as evidence during the investigation or
2 prosecution of a case or during the appeal from a conviction. The
3 commander of a multijurisdictional task force may appoint one agency
4 to report its seizures. If an agency has made no seizures during the
5 previous year, a null report must be filed by the agency specifying
6 that it did not engage in seizures or forfeitures during the
7 reporting period.

8 (c) By March 1st each year, the seizing agency shall file with
9 the state treasurer a report that summarizes the agency's
10 expenditures from the sum of the net proceeds of all seized and
11 forfeited property during the previous calendar year. The report must
12 be posted and made available on the web site created in this
13 subsection (3). The report must use the following categories to
14 summarize expenditures and values:

- 15 (i) Abuse, crime, and gang prevention programs;
- 16 (ii) Witness protection, informant fees, and controlled buys;
- 17 (iii) Salaries, overtime, and benefits;
- 18 (iv) Professional outside services, including auditing, court
19 reporting, expert witnesses, outside attorneys' fees, and membership
20 fees paid to trade associations;
- 21 (v) Travel, meals, entertainment, conferences, training, and
22 continuing education seminars;
- 23 (vi) Other operating expenses including office supplies, postage,
24 and printing;
- 25 (vii) Capital expenditures including vehicles, firearms,
26 equipment, computers, and furniture;
- 27 (viii) Other expenditures of forfeiture proceeds; and
- 28 (ix) The total value of forfeited property held by the agency at
29 the end of the reporting period.

30 (4) One hundred twenty days after the close of each fiscal year,
31 the state treasurer shall submit to the speaker of the house of
32 representatives, president of the senate, attorney general, and
33 governor a written report summarizing forfeiture activity in the
34 state for the preceding fiscal year; the type, approximate value, and
35 disposition of the property seized; and the amount of any proceeds
36 received or expended at the state and local levels. The report must
37 provide a categorized accounting of all proceeds expended. Summary
38 data on seizures, forfeitures, and expenditures of forfeiture
39 proceeds must be disaggregated by agency. The aggregate report must
40 be made available on the state treasurer's web site.

1 (5) The state treasurer may include in the aggregate report
2 required by subsection (4) of this section recommendations to improve
3 statutes, rules, and policies to facilitate seizure, forfeiture, and
4 expenditure processes and reporting that are fair to crime victims,
5 innocent property owners, secured interest holders, citizens, law
6 enforcement, and taxpayers.

7 (6) If a seizing agency fails to file a report within thirty days
8 after it is due, without good cause as determined by the state
9 treasurer, the agency is subject to a civil penalty payable to the
10 state general fund of five hundred dollars or the equivalent of one-
11 quarter of the forfeiture proceeds received by the agency during the
12 reporting period, whichever is greater. In addition, the state
13 treasurer must make no expenditures from the forfeiture fund for the
14 benefit of the agency until the report is filed.

15 (7) The state treasurer may recover its costs under this chapter
16 by charging a fee to seizing agencies filing a report. The agency may
17 use forfeiture proceeds to pay the costs of compiling and reporting
18 data under this chapter, and to pay any fees imposed by the state
19 treasurer.

20 (8) The data and reports compiled and prepared under this chapter
21 are public information under chapter 42.56 RCW.

22 NEW SECTION. **Sec. 5.** (1)(a) By January 31st of each year, each
23 seizing agency shall remit to the state treasurer an amount equal to
24 ten percent of the net proceeds of any property forfeited during the
25 preceding calendar year. Money remitted shall be deposited in the
26 state general fund unless otherwise provided in statute.

27 (b) The net proceeds of forfeited property is the value of the
28 forfeitable interest in the property after deducting the cost of
29 satisfying any bona fide security interest to which the property is
30 subject at the time of seizure; and in the case of sold property,
31 after deducting the cost of sale, including reasonable fees or
32 commissions paid to independent selling agents, and the cost of any
33 valid landlord's claim for damages under section 2 of this act.

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

1 appraiser to determine the value of retained property. If an
2 appraiser is used, the value of the property appraised is net of the
3 cost of the appraisal. The value of destroyed property and retained
4 firearms or illegal property is zero.

5 (2) Forfeited property and net proceeds not required to be paid
6 to the state treasurer shall be retained by the seizing agency
7 exclusively for the expansion and improvement of related enforcement
8 activities. Money retained under this section may not be used to
9 supplant preexisting funding sources.

10 NEW SECTION. **Sec. 6.** The state treasurer may adopt rules
11 necessary to implement this chapter.

12 **Sec. 7.** RCW 9.68A.120 and 2014 c 188 s 3 are each amended to
13 read as follows:

14 The following are subject to seizure and forfeiture:

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

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

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

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

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

37 (d) When the owner of a conveyance has been arrested under this
38 chapter the conveyance may not be subject to forfeiture unless it is

1 seized or process is issued for its seizure within ten days of the
2 owner's arrest.

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

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

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

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

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

22 (d) 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 this chapter.

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

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

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

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

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

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

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

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

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

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

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

15 ~~(11) Forfeited property and net proceeds not required to be paid~~
16 ~~to the state treasurer under this chapter shall be used for payment~~
17 ~~of all proper expenses of the investigation leading to the seizure,~~
18 ~~including any money delivered to the subject of the investigation by~~
19 ~~the law enforcement agency, and of the proceedings for forfeiture and~~
20 ~~sale, including expenses of seizure, maintenance of custody,~~
21 ~~advertising, actual costs of the prosecuting or city attorney, and~~
22 ~~court costs. Money remaining after payment of these expenses shall be~~
23 ~~retained by the seizing law enforcement agency for the exclusive use~~
24 ~~of enforcing the provisions of this chapter or chapter 9A.88 RCW.))~~
25 are governed by chapter 7.--- RCW (the new chapter created in section
26 17 of this act).

27 **Sec. 8.** RCW 9A.88.150 and 2014 c 188 s 4 are each amended to
28 read as follows:

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

31 (a) Any property or other interest acquired or maintained in
32 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070 to the extent of
33 the investment of funds, and any appreciation or income attributable
34 to the investment, from a violation of RCW 9.68A.100, 9.68A.101, or
35 9A.88.070;

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

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

6 (ii) No conveyance is subject to forfeiture under this section by
7 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) When the owner of a conveyance has been arrested for a
15 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, the conveyance
16 in which the person is arrested may not be subject to forfeiture
17 unless it is seized or process is issued for its seizure within ten
18 days of the owner's arrest;

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

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

28 (e) All books, records, and research products and materials,
29 including formulas, microfilm, tapes, and data which are used, or
30 intended for use, in violation of RCW 9.68A.100, 9.68A.101, or
31 9A.88.070;

32 (f) All moneys, negotiable instruments, securities, or other
33 tangible or intangible property of value furnished or intended to be
34 furnished by any person in exchange for a violation of RCW 9.68A.100,
35 9.68A.101, or 9A.88.070, all tangible or intangible personal
36 property, proceeds, or assets acquired in whole or in part with
37 proceeds traceable to an exchange or series of exchanges in violation
38 of RCW 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable
39 instruments, and securities used or intended to be used to facilitate
40 any violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070. A forfeiture

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

10 (g) All real property, including any right, title, and interest
11 in the whole of any lot or tract of land, and any appurtenances or
12 improvements which are being used with the knowledge of the owner for
13 a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, or which have
14 been acquired in whole or in part with proceeds traceable to an
15 exchange or series of exchanges in violation of RCW 9.68A.100,
16 9.68A.101, or 9A.88.070, if a substantial nexus exists between the
17 violation and the real property. However:

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

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

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

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

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

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

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

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

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

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

7 ~~(7) When property is forfeited under this chapter, the seizing~~
8 ~~law 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 that agency~~
11 ~~for the exclusive use of enforcing this chapter or chapter 9.68A RCW;~~

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

17 ~~(8)(a) When property is forfeited, the seizing agency shall keep~~
18 ~~a 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.~~

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

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

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

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

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

~~commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection (12) of this section.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 ~~(14) Subsections (12) and (13) of this section do not limit any~~
31 ~~other rights a landlord may have against a tenant to collect for~~
32 ~~damages. However, if a law enforcement agency satisfies a landlord's~~
33 ~~claim under subsection (12) of this section, the rights the landlord~~
34 ~~has against the tenant for damages directly caused by a law~~
35 ~~enforcement officer under the terms of the landlord and tenant's~~
36 ~~contract are subrogated to the law enforcement agency.)) are governed~~
37 ~~by chapter 7.--- RCW (the new chapter created in section 17 of this~~
38 ~~act).~~

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

3 (1) Proceeds traceable to or derived from specified unlawful
4 activity or a violation of RCW 9A.83.020 are subject to seizure and
5 forfeiture. The attorney general or county prosecuting attorney may
6 file a civil action for the forfeiture of proceeds. Unless otherwise
7 provided for under this section, no property rights exist in these
8 proceeds. All right, title, and interest in the proceeds shall vest
9 in the governmental entity of which the seizing law enforcement
10 agency is a part upon commission of the act or omission giving rise
11 to forfeiture under this section.

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

23 (a) The seizure is incident to an arrest or a search under a
24 search warrant or an inspection under an administrative inspection
25 warrant issued pursuant to RCW 69.50.502; or

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

29 (3) A seizure under subsection (2) of this section commences
30 proceedings for forfeiture pursuant to chapter 7.--- RCW (the new
31 chapter created in section 17 of this act). (~~The law enforcement~~
32 ~~agency under whose authority the seizure was made shall cause notice~~
33 ~~of the seizure and intended forfeiture of the seized proceeds to be~~
34 ~~served within fifteen days after the seizure on the owner of the~~
35 ~~property seized and the person in charge thereof and any person who~~
36 ~~has a known right or interest therein, including a community property~~
37 ~~interest. Service of notice of seizure of real property shall be made~~
38 ~~according to the rules of civil procedure. However, the state may not~~
39 ~~obtain a default judgment with respect to real property against a~~
40 ~~party who is served by substituted service absent an affidavit~~

1 ~~stating that a good faith effort has been made to ascertain if the~~
2 ~~defaulted party is incarcerated within the state, and that there is~~
3 ~~no present basis to believe that the party is incarcerated within the~~
4 ~~state. The notice of seizure in other cases may be served by any~~
5 ~~method authorized by law or court rule including but not limited to~~
6 ~~service by certified mail with return receipt requested. Service by~~
7 ~~mail is complete upon mailing within the fifteen day period after the~~
8 ~~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. 10.** RCW 10.105.010 and 2009 c 479 s 15 are each amended to
30 read as follows:

31 (1) The following are subject to seizure and forfeiture and no
32 property right exists in them: All personal property, including, but
33 not limited to, any item, object, tool, substance, device, weapon,
34 machine, vehicle of any kind, money, security, or negotiable
35 instrument, which has been or was actually employed as an
36 instrumentality in the commission of, or in aiding or abetting in the
37 commission of any felony, or which was furnished or was intended to
38 be furnished by any person in the commission of, as a result of, or
39 as compensation for the commission of, any felony, or which was

1 acquired in whole or in part with proceeds traceable to the
2 commission of a felony. No property may be forfeited under this
3 section until after there has been a superior court conviction of the
4 owner of the property for the felony in connection with which the
5 property was employed, furnished, or acquired.

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

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

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

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

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

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

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

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

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

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

36 **Sec. 11.** RCW 19.290.230 and 2013 c 322 s 27 are each amended to
37 read as follows:

38 (1) The following personal property is subject to seizure and
39 forfeiture and no property right exists in them: All personal

1 property including, but not limited to, any item, object, tool,
2 substance, device, weapon, machine, vehicle of any kind, money,
3 security, or negotiable instrument, which the seizing agency proves
4 by a preponderance of the evidence was used or intended to be used by
5 its owner or the person in charge to knowingly or intentionally
6 facilitate the commission of, or to knowingly or intentionally abet
7 the commission of, a crime involving theft, trafficking, or unlawful
8 possession of commercial metal property, or which the seizing agency
9 proves by a preponderance of the evidence was knowingly or
10 intentionally furnished or was intended to be furnished by any person
11 in the commission of, as a result of, or as compensation for the
12 commission of, a crime involving theft, trafficking, or the unlawful
13 possession of commercial metal property, or which the property owner
14 acquired in whole or in part with proceeds traceable to a knowing or
15 intentional commission of a crime involving the theft, trafficking,
16 or unlawful possession of commercial metal property provided that
17 such activity is not less than a class C felony; except that:

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

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

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

38 (2) The following real property is subject to seizure and
39 forfeiture and no property right exists in them: All real property,
40 including any right, title, and interest in the whole of any lot or

1 tract of land, and any appurtenances or improvements, that the
2 seizing agency proves by a preponderance of the evidence are being
3 used with the knowledge of the owner for the intentional commission
4 of any crime involving the theft, trafficking, or unlawful possession
5 of commercial metal property, or which have been acquired in whole or
6 in part with proceeds traceable to the commission of any crime
7 involving the trafficking, theft, or unlawful possession of
8 commercial metal, if such activity is not less than a class C felony
9 and a substantial nexus exists between the commission of the
10 violation or crime and the real property. However:

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

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

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

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

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.

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

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

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

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

~~a nominal owner and did not actually own or exert a controlling interest in the property.~~

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

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

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

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

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

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

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

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

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

8 **Sec. 12.** RCW 46.61.5058 and 2013 2nd sp.s. c 35 s 18 are each
9 amended to read as follows:

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

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

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

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

1 the vehicle was subject to the prohibition prior to the encumbrance
2 of title.

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

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

18 (4) Seizure under subsection (3) of this section automatically
19 commences proceedings for forfeiture, which proceedings are governed
20 by chapter 7.--- RCW (the new chapter created in section 17 of this
21 act). ~~((The law enforcement agency under whose authority the seizure~~
22 ~~was made shall cause notice of the seizure and intended forfeiture of~~
23 ~~the seized vehicle to be served within fifteen days after the seizure~~
24 ~~on the owner of the vehicle seized, on the person in charge of the~~
25 ~~vehicle, and on any person having a known right or interest in the~~
26 ~~vehicle, including a community property interest. The notice of~~
27 ~~seizure may be served by any method authorized by law or court rule,~~
28 ~~including but not limited to service by certified mail with return~~
29 ~~receipt requested. Service by mail is complete upon mailing within~~
30 ~~the fifteen-day period after the seizure. Notice of seizure in the~~
31 ~~case of property subject to a security interest that has been~~
32 ~~perfected on a certificate of title shall be made by service upon the~~
33 ~~secured party or the secured party's assignee at the address shown on~~
34 ~~the financing statement or the certificate of title.~~

35 ~~(5) 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 ~~the seized vehicle within forty-five days of the seizure, the vehicle~~
38 ~~is deemed forfeited.~~

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

31 ~~(7))~~ (5) When a vehicle is forfeited under this chapter the
32 seizing law enforcement agency may sell the vehicle, retain it for
33 official use, or upon application by a law enforcement agency of this
34 state release the vehicle to that agency for the exclusive use of
35 enforcing this title; provided, however, that the agency shall first
36 satisfy any bona fide security interest to which the vehicle is
37 subject under subsection (1)(a) or (c) of this section.

38 ~~((8))~~ (6) When a vehicle is forfeited, the seizing agency shall
39 keep a record indicating the identity of the prior owner, if known, a
40 description of the vehicle, the disposition of the vehicle, the value

1 of the vehicle at the time of seizure, and the amount of proceeds
2 realized from disposition of the vehicle.

3 ~~((+9))~~ (7) Each seizing agency shall retain records of forfeited
4 vehicles for at least seven years.

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

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

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

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

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

30 **Sec. 13.** RCW 70.74.400 and 2002 c 370 s 3 are each amended to
31 read as follows:

32 (1) Explosives, improvised devices, and components of explosives
33 and improvised devices that are possessed, manufactured, delivered,
34 imported, exported, stored, sold, purchased, transported, abandoned,
35 detonated, or used, or intended to be used, in violation of a
36 provision of this chapter are subject to seizure and forfeiture by a
37 law enforcement agency and no property right exists in them.

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

4 (3) Seizure of explosives, improvised devices, and components of
5 explosives and improvised devices under subsection (1) of this
6 section may be made if:

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

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

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

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

18 (4) A law enforcement agency shall destroy explosives seized
19 under this chapter when it is necessary to protect the public safety
20 and welfare. When destruction is not necessary to protect the public
21 safety and welfare, and the explosives are not being held for
22 evidence, a seizure pursuant to this section commences proceedings
23 for forfeiture, which proceedings are governed by chapter 7.--- RCW
24 (the new chapter created in section 17 of this act).

25 ~~((The law enforcement agency under whose authority the~~
26 ~~seizure was made shall issue a written notice of the seizure and~~
27 ~~commencement of the forfeiture proceedings to the person from whom~~
28 ~~the explosives were seized, to any known owner of the explosives, and~~
29 ~~to any person who has a known interest in the explosives. The notice~~
30 ~~shall be issued within fifteen days of the seizure. The notice of~~
31 ~~seizure and commencement of the forfeiture proceedings shall be~~
32 ~~served in the same manner as provided in RCW 4.28.080 for service of~~
33 ~~a summons. The law enforcement agency shall provide a form by which~~
34 ~~the person or persons may request a hearing before the law~~
35 ~~enforcement agency to contest the seizure.~~

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

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

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

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

~~((10))~~ (6) This section is not intended to change the seizure and forfeiture powers, enforcement, and penalties available to the department of labor and industries pursuant to chapter 49.17 RCW as provided in RCW 70.74.390.

Sec. 14. RCW 77.15.070 and 2005 c 406 s 2 are each amended to read as follows:

(1) Fish and wildlife officers and ex officio fish and wildlife officers may seize without warrant boats, airplanes, vehicles, motorized implements, conveyances, gear, appliances, or other articles they have probable cause to believe have been held with intent to violate or used in violation of this title or rule of the commission or director. However, fish and wildlife officers or ex

1 officio fish and wildlife officers may not seize any item or article,
2 other than for evidence, if under the circumstances, it is reasonable
3 to conclude that the violation was inadvertent. The property seized
4 is subject to forfeiture to the state under this section regardless
5 of ownership. Property seized may be recovered by its owner by
6 depositing with the department or into court a cash bond or
7 equivalent security equal to the value of the seized property but not
8 more than one hundred thousand dollars. Such cash bond or security is
9 subject to forfeiture in lieu of the property. Forfeiture of property
10 seized under this section is a civil forfeiture against property and
11 is intended to be a remedial civil sanction.

12 (2) In the event of a seizure of property under this section,
13 jurisdiction to begin the forfeiture proceedings shall commence upon
14 seizure, and shall be governed by chapter 7.--- RCW (the new chapter
15 created in section 17 of this act). ~~((Within fifteen days following~~
16 ~~the seizure, the seizing authority shall serve a written notice of~~
17 ~~intent to forfeit property on the owner of the property seized and on~~
18 ~~any person having any known right or interest in the property seized.~~
19 ~~Notice may be served by any method authorized by law or court rule,~~
20 ~~including service by certified mail with return receipt requested.~~
21 ~~Service by mail is deemed complete upon mailing within the fifteen-~~
22 ~~day period following the seizure.~~

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

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

39 ~~(5) The hearing to contest forfeiture and any subsequent appeal~~
40 ~~shall be as provided for in chapter 34.05 RCW, the administrative~~

1 ~~procedure act. The seizing authority has the burden to demonstrate~~
2 ~~that it had reason to believe the property was held with intent to~~
3 ~~violate or was used in violation of this title or rule of the~~
4 ~~commission or director. The person contesting forfeiture has the~~
5 ~~burden of production and proof by a preponderance of evidence that~~
6 ~~the person owns or has a right to possess the property and:~~

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

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

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

19 ~~(7))~~ (3) If seized property is forfeited under this section the
20 department may retain it for official use unless the property is
21 required to be destroyed, or upon application by any law enforcement
22 agency of the state, release such property to the agency for the use
23 of enforcing this title, or sell such property, and deposit the
24 proceeds to the fish and wildlife enforcement reward account created
25 in RCW 77.15.425.

26 **Sec. 15.** RCW 69.50.505 and 2013 c 3 s 25 are each amended to
27 read as follows:

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

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

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

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

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

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

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

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

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

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

28 (e) All books, records, and research products and materials,
29 including formulas, microfilm, tapes, and data which are used, or
30 intended for use, in violation of this chapter or chapter 69.41 or
31 69.52 RCW;

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

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

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

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

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

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

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

1 of a licensed producer, processor, or retailer, and other evidence
2 which demonstrates the offender's intent to engage in unlawful
3 commercial activity;

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

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

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

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

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

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

34 (d) The ((board)) commission inspector 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 ~~(d) The quarterly report need not include a record of forfeited~~
24 ~~property that is still being held for use as evidence during the~~
25 ~~investigation or prosecution of a case or during the appeal from a~~
26 ~~conviction.)) Seizing agencies are subject to the requirements of~~
27 ~~section 4 of this act.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) The protections afforded by the service members' civil relief act, chapter 38.42 RCW, are applicable to proceedings under this section.

Sec. 16. RCW 38.42.020 and 2014 c 65 s 2 are each amended to read as follows:

(1) Any service member who is ordered to report for military service and his or her dependents are entitled to the rights and protections of this chapter during the period beginning on the date on which the service member receives the order and ending one hundred eighty days after termination of or release from military service.

(2) This chapter applies to any judicial or administrative proceeding commenced in any court or agency in Washington state in which a service member or his or her dependent is a party. This chapter applies to civil asset forfeiture proceedings. This chapter does not apply to criminal proceedings.

(3) This chapter shall be construed liberally so as to provide fairness and do substantial justice to service members and their dependents.

NEW SECTION. **Sec. 17.** Sections 1 through 6 of this act constitute a new chapter in Title 7 RCW.

NEW SECTION. **Sec. 18.** This act applies to seizures occurring on or after the effective date of this section.

1 NEW SECTION. **Sec. 19.** Except for section 6 of this act, this
2 act takes effect January 1, 2019.

3 NEW SECTION. **Sec. 20.** Section 6 of this act takes effect July
4 1, 2018.

--- END ---