

2 SHB 1616 - S COMM AMD

3 By Committee on Law & Justice

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5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. Sec. 1. This chapter does not apply to property
8 subject to forfeiture under chapter 66.32 RCW, RCW 69.50.505, 9.41.098,
9 9.46.230, 9A.82.100, 7.48.090, or 77.12.101."

10 "NEW SECTION. Sec. 2. (1) The following are subject to seizure
11 and forfeiture and no property right exists in them: All personal
12 property, including, but not limited to, any item, object, tool,
13 substance, device, weapon, machine, vehicle of any kind, money,
14 security, or negotiable instrument, which has been or is actually
15 employed as an instrumentality in the commission of, or in aiding or
16 abetting in the commission of any felony, or which was furnished or is
17 intended to be furnished by any person in the commission of, as a
18 result of, or as compensation for the commission of, any felony, or
19 which was acquired in whole or in part with proceeds traceable to the
20 commission of a felony.

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

1 (b) No property is subject to forfeiture under this section if it
2 is established by the owner thereof that the felony was committed
3 without the owner's knowledge or without the owner's consent;

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

8 (2) Personal property subject to forfeiture under this chapter may
9 be seized by any law enforcement officer of this state upon process
10 issued by any superior court having jurisdiction over the property.
11 Seizure of personal property without process may be made if the law
12 enforcement officer has probable cause to believe that the property was
13 used in the commission of a felony. A law enforcement officer making
14 a seizure without process under this section shall apply to the
15 superior court for a warrant of arrest for the property within forty-
16 eight hours of the seizure. If a warrant of arrest is not issued
17 within forty-eight hours, then the property shall be returned to its
18 owner.

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

1 (4) If no 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 seizure, the item seized shall be deemed forfeited.

5 (5) If any person notifies the seizing law enforcement agency in
6 writing of the person's claim of ownership or right to possession of
7 items specified in subsection (1) of this section within forty-five
8 days of the seizure, the person or persons shall be afforded a
9 reasonable opportunity to be heard as to the claim or right. A hearing
10 shall be granted to the claimant within one hundred twenty days of the
11 date of seizure. The hearing shall be before the chief law enforcement
12 officer of the seizing agency or the chief law enforcement officer's
13 designee, except that any person asserting a claim or right may remove
14 the matter to a court of competent jurisdiction. The claimant shall be
15 notified of his or her right to remove the matter to a court of
16 competent jurisdiction and shall be notified that no right of de novo
17 appeal exists from a decision by the chief law enforcement officer.
18 The court to which the matter is to be removed shall be the district
19 court when the aggregate value of the personal property is within the
20 jurisdictional limit of the district court. In a court hearing between
21 two or more claimants to the article or articles involved, the
22 prevailing party may apply to the court for an award for costs and
23 reasonable attorneys' fees. The initial burden of producing evidence
24 shall be upon the person claiming to be the lawful owner to show a
25 legitimate ownership interest or right of possession to the property
26 and to establish that the felony was committed without the owner's
27 knowledge or consent. The burden of proof shall then be on the law
28 enforcement agency to establish that the property was used in the
29 commission of a crime or constituted proceeds from the commission of a
30 felony. The burden shall then be upon the law enforcement agency to

1 establish that the claimant did have knowledge of the felony or did
2 consent to commission of the felony. The seizing law enforcement
3 agency shall promptly return the article or articles to the claimant
4 upon a determination by the trier of fact that the claimant is the
5 present lawful owner or is lawfully entitled to possession. All towing
6 and storage costs for property returned to an innocent owner shall be
7 paid for by the seizing law enforcement agency.

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

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

13 (b) Sell that which is not required to be destroyed by law and
14 which is not harmful to the public. The proceeds and all moneys
15 forfeited under this chapter shall be used for payment of all proper
16 expenses of the investigation leading to the seizure, including any
17 money delivered to the subject of the investigation by the law
18 enforcement agency, and of the proceedings for forfeiture and sale,
19 including expenses of seizure, maintenance of custody, advertising,
20 actual costs of the prosecuting or city attorney, and court costs.
21 Money remaining after the payment of all expenses shall be paid into
22 the state treasury."

23 "NEW SECTION. **Sec. 3.** Sections 1 and 2 of this act shall
24 constitute a new chapter in Title 10 RCW."

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4 On page 1, line 1 of the title, after "property;" strike the
5 remainder of the title and insert "and adding a new chapter to Title 10
6 RCW."