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HOUSE BILL 1616

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State of Washington                      52nd Legislature                      1991 Regular Session

By Representatives Ludwig, Riley, Paris, Heavey, Prince, R. Johnson, Mielke, Orr, Bray, Ferguson, Vance, Winsley, Van Luven, Haugen, Kremen, Scott, Rayburn, Miller, Roland, Chandler, Moyer and Sheldon.

Read first time February 4, 1991. Referred to Committee on Judiciary.

1            AN ACT Relating to seizure of property; and adding a new chapter to  
2 Title 10 RCW.

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

4            NEW SECTION.    **Sec. 1.**            This chapter does not apply to property  
5 subject to forfeiture under chapter 66.32 RCW, RCW 69.50.505, 9.41.098,  
6 9.46.230, 9A.82.100, 7.48.090, or 77.12.101.

7            NEW SECTION.    **Sec. 2.**            (1) The following are subject to seizure  
8 and forfeiture and no property right exists in them: All personal  
9 property, including, but not limited to, any item, object, tool,  
10 substance, device, weapon, machine, vehicle of any kind, money,  
11 security, or negotiable instrument, which has been or is actually  
12 employed as an instrumentality in the commission of, or in aiding or  
13 abetting in the commission of any felony, or which was furnished or is  
14 intended to be furnished by any person in the commission of, as a

1 result of, or as compensation for the commission of, any felony, or  
2 which was acquired in whole or in part with proceeds traceable to the  
3 commission of a felony.

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

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

12 (c) A forfeiture of property encumbered by a bona fide security  
13 interest is subject to the interest of the secured party if the secured  
14 party neither had knowledge of nor consented to the commission of the  
15 felony.

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

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

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

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

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

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

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

17           (5) If any person notifies the seizing law enforcement agency in  
18 writing of the person's claim of ownership or right to possession of  
19 items specified in subsection (1) of this section within forty-five  
20 days of the seizure, the person or persons shall be afforded a  
21 reasonable opportunity to be heard as to the claim or right. The  
22 hearing shall be before the chief law enforcement officer of the  
23 seizing agency or the chief law enforcement officer's designee, except  
24 that any person asserting a claim or right may remove the matter to a  
25 court of competent jurisdiction if the aggregate value of the article  
26 or articles involved is more than five hundred dollars. The court to  
27 which the matter is to be removed shall be the district court when the  
28 aggregate value of the personal property is within the jurisdictional  
29 limit of the district court. In a court hearing between two or more  
30 claimants to the article or articles involved, the prevailing party

1 shall be entitled to a judgment for costs and reasonable attorney's  
2 fees. The burden of producing evidence shall be upon the person  
3 claiming to be the lawful owner or the person claiming to have the  
4 lawful right to possession of the property. The seizing law  
5 enforcement agency shall promptly return the article or articles to the  
6 claimant upon a determination by the trier of fact that the claimant is  
7 the present lawful owner or is lawfully entitled to possession.

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 retained by  
22 the seizing law enforcement agency.

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