

2 **SHB 1069** - S COMM AMD (S2894.1)
3 By Committee on Law & Justice

4 ADOPTED AS AMENDED by 000706 4/12/93

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, 9A.83.030, 7.48.090, or 77.12.101.

10 NEW SECTION. **Sec. 2.** (1) The following are subject to seizure and
11 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 was 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 was
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. No property may be forfeited under this
21 section until after there has been a superior court conviction of the
22 owner of the property for the felony in connection with which the
23 property was employed, furnished, or acquired.

24 A forfeiture of property encumbered by a bona fide security
25 interest is subject to the interest of the secured party if at the time
26 the security interest was created, the secured party neither had
27 knowledge of nor consented to the commission of the felony.

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

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

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

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

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

9 (3) In the event of seizure pursuant to this section, proceedings
10 for forfeiture shall be deemed commenced by the seizure. The law
11 enforcement agency under whose authority the seizure was made shall
12 cause notice to be served within fifteen days following the seizure on
13 the owner of the property seized and the person in charge thereof and
14 any person having any known right or interest therein, including any
15 community property interest, of the seizure and intended forfeiture of
16 the seized property. The notice of seizure may be served by any method
17 authorized by law or court rule including but not limited to service by
18 certified mail with return receipt requested. Service by mail shall be
19 deemed complete upon mailing within the fifteen day period following
20 the seizure. Notice of seizure in the case of property subject to a
21 security interest that has been perfected by filing a financing
22 statement in accordance with chapter 62A.9 RCW, or a certificate of
23 title shall be made by service upon the secured party to the secured
24 party's assignee at the address shown on the financing statement or the
25 certificate of title.

26 (4) If no person notifies the seizing law enforcement agency in
27 writing of the person's claim of ownership or right to possession of
28 items specified in subsection (1) of this section within ninety days of
29 the seizure, the item seized shall be deemed forfeited. A perfected
30 security interest of a secured party may be extinguished only after a
31 contested hearing or agreement by the secured party.

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) of this section within ninety days of
35 the seizure, the person or persons shall be afforded a reasonable
36 opportunity to be heard as to the claim or right. The prosecuting
37 attorney shall file the case into a court of competent jurisdiction.
38 The court to which the matter is filed shall be the district court when
39 the aggregate value of the personal property is within the

1 jurisdictional limit of the district court. In a court hearing between
2 two or more claimants to the article or articles involved, the
3 prevailing party shall be entitled to a judgment for costs and
4 reasonable attorney's fees. The burden of producing evidence shall be
5 by a preponderance and upon the person claiming to be the lawful owner
6 or the person claiming to have the lawful right to possession of the
7 property. The seizing law enforcement agency shall promptly return the
8 article or articles to the claimant upon a determination by the trier
9 of fact that the claimant is the present lawful owner or is lawfully
10 entitled to possession.

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

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

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

19 (7) By January 31st of each year, each seizing agency shall remit
20 to the state treasurer an amount equal to ten percent of the net
21 proceeds of any property forfeited during the preceding calendar year.
22 Money remitted shall be deposited in the public safety and education
23 account.

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

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

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

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

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11 ADOPTED AS AMENDED 4/9/93

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

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