

2 **SHB 1069** - CONF REPT - H2669.1
3 By Conference Committee

4 ADOPTED 4/24/93

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 forty-five
29 days of the seizure, the item seized shall be deemed forfeited.

30 (5) If a person notifies the seizing law enforcement agency in
31 writing of the person's claim of ownership or right to possession of
32 the seized property within forty-five days of the seizure, the law
33 enforcement agency shall give the person or persons a reasonable
34 opportunity to be heard as to the claim or right. The hearing shall be
35 before the chief law enforcement officer of the seizing agency or the
36 chief law enforcement officer's designee, except where the seizing
37 agency is a state agency as defined in RCW 34.12.020(4), the hearing
38 shall be before the chief law enforcement officer of the seizing agency
39 or an administrative law judge appointed under chapter 34.12 RCW,

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

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

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

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

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

35 (a) The net proceeds of forfeited property is the value of the
36 forfeitable interest in the property after deducting the cost of
37 satisfying any bona fide security interest to which the property is
38 subject at the time of seizure; and in the case of sold property, after

1 deducting the cost of sale, including reasonable fees or commissions
2 paid to independent selling agents.

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

13 (c) Retained property and net proceeds not required to be paid to
14 the state treasurer, or otherwise required to be spent under this
15 section, shall be retained by the seizing law enforcement agency
16 exclusively for the expansion and improvement of law enforcement
17 activity. Money retained under this section may not be used to
18 supplant preexisting funding sources.

19 NEW SECTION. **Sec. 3.** The legislature finds compelling state
20 interests in compensating the victims of crime and in preventing
21 criminals from profiting from their crimes. Sections 4 through 7 of
22 this act are intended to advance both of these interests.

23 NEW SECTION. **Sec. 4.** The following are subject to seizure and
24 forfeiture and no property right exists in them:

25 (1) All tangible or intangible property, including any right or
26 interest in such property, acquired by a person convicted of a crime
27 for which there is a victim of the crime and to the extent the
28 acquisition is the direct or indirect result of the convicted person
29 having committed the crime. Such property includes but is not limited
30 to the convicted person's remuneration for, or contract interest in,
31 any reenactment or depiction or account of the crime in a movie, book,
32 magazine, newspaper or other publication, audio recording, radio or
33 television presentation, live entertainment of any kind, or any
34 expression of the convicted person's thoughts, feelings, opinions, or
35 emotions regarding the crime.

36 (2) Any property acquired through the traceable proceeds of
37 property described in subsection (1) of this section.

1 NEW SECTION. **Sec. 5.** (1) Any property subject to seizure and
2 forfeiture under section 4 of this act may be seized by the prosecuting
3 attorney of the county in which the convicted person was convicted upon
4 process issued by any superior court having jurisdiction over the
5 property.

6 (2) Proceedings for forfeiture are commenced by a seizure. Seizure
7 of real property shall include the filing of a lis pendens by the
8 seizing agency. Real property seized under this section shall not be
9 transferred or otherwise conveyed until ninety days after seizure or
10 until a judgment of forfeiture is entered, whichever is later, except
11 that such real property seized may be transferred or conveyed to any
12 person or entity who acquires title by foreclosure or deed in lieu of
13 foreclosure of a security interest.

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

36 (4) If no person notifies the seizing prosecuting attorney in
37 writing of the person's claim of ownership or right to possession of
38 the property within forty-five days for personal property or ninety
39 days for real property, the property seized shall be deemed forfeited.

1 (5) If any person notifies the seizing prosecuting attorney in
2 writing of the person's claim of ownership or right to possession of
3 the property within forty-five days for personal property or ninety
4 days for real property, the person or persons shall be afforded a
5 reasonable opportunity to be heard as to the claim or right. The
6 prosecuting attorney shall file the case into a court of competent
7 jurisdiction. In a court hearing between two or more claimants to the
8 article or articles involved, the prevailing party shall be entitled to
9 a judgment for costs and reasonable attorneys' fees. In cases
10 involving personal property, the burden of producing evidence shall be
11 by a preponderance and upon the person claiming to be the lawful owner
12 or the person claiming to have the lawful right to possession of the
13 property. In cases involving real property, the burden of producing
14 evidence shall be by a preponderance and upon the prosecuting attorney.
15 The seizing prosecuting attorney shall promptly return the property to
16 the claimant upon a determination by the prosecuting attorney or court
17 that the claimant is the present lawful owner or is lawfully entitled
18 to possession of the property.

19 (6) Upon the entry of an order of forfeiture of real property, the
20 court shall forward a copy of the order to the county auditor of the
21 county in which the property is located. Orders for the forfeiture of
22 real property shall be entered by the superior court, subject to court
23 rules.

24 (7) A forfeiture action under this section may be brought at any
25 time from the date of conviction until the expiration of the statutory
26 maximum period of incarceration that could have been imposed for the
27 crime involved.

28 (8) A forfeiture of property encumbered by a bona fide security
29 interest is subject to the interest of the secured party if at the time
30 the security interest was created, the secured party did not know that
31 the property was subject to seizure and forfeiture.

32 NEW SECTION. **Sec. 6.** (1) The proceeds of any forfeiture action
33 brought under section 5 of this act shall be distributed as follows:

34 (a) First, to the victim or to the plaintiff in a wrongful death
35 action brought as a result of the victim's death, to satisfy any money
36 judgment against the convicted person, or to satisfy any restitution
37 ordered as part of the convicted person's sentence;

1 (b) Second, to the reasonable legal expenses of bringing the
2 action;

3 (c) Third, to the crime victims' compensation fund under RCW
4 7.68.090.

5 (2) A court may establish such escrow accounts or other
6 arrangements as it deems necessary and appropriate in order to
7 distribute proceeds in accordance with this section.

8 NEW SECTION. **Sec. 7.** (1) Any action taken by or on behalf of a
9 convicted person including but not limited to executing a power of
10 attorney or creating a corporation for the purpose of defeating the
11 provisions of sections 3 through 6 of this act is null and void as
12 against the public policy of this state.

13 (2) Sections 3 through 6 of this act are supplemental and do not
14 limit rights or remedies otherwise available to the victims of crimes
15 and do not limit actions otherwise available against persons convicted
16 of crimes.

17 NEW SECTION. **Sec. 8.** (1) Sections 1 and 2 of this act shall
18 constitute a new chapter in Title 10 RCW.

19 (2) Sections 3 through 7 of this act are each added to chapter 7.68
20 RCW."

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23 ADOPTED 4/24/93

24 On page 1, line 1 of the title, after "victims;" strike the
25 remainder of the title and insert "adding new sections to chapter 7.68
26 RCW; and adding a new chapter to Title 10 RCW."

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