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**SUBSTITUTE SENATE BILL 5036**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senator Roach)

Read first time 02/07/95.

1 AN ACT Relating to forfeiture of property; and amending RCW  
2 9.41.098, 9.46.231, 9.68A.120, 9A.82.100, 9A.83.030, 10.105.010,  
3 46.61.5058, and 69.50.505.

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

5 **Sec. 1.** RCW 9.41.098 and 1996 c 295 s 10 are each amended to read  
6 as follows:

7 (1) The superior courts and the courts of limited jurisdiction of  
8 the state may order forfeiture of a firearm which is proven to be:

9 (a) Found concealed on a person not authorized by RCW 9.41.060 or  
10 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute  
11 defense to forfeiture if the person possessed a valid Washington  
12 concealed pistol license within the preceding two years and has not  
13 become ineligible for a concealed pistol license in the interim.  
14 Before the firearm may be returned, the person must pay the past due  
15 renewal fee and the current renewal fee;

16 (b) Commercially sold to any person without an application as  
17 required by RCW 9.41.090;

18 (c) In the possession of a person prohibited from possessing the  
19 firearm under RCW 9.41.040 or 9.41.045;

1 (d) In the possession or under the control of a person at the time  
2 the person committed or was arrested for committing a felony or  
3 committing a nonfelony crime in which a firearm was used or displayed;

4 (e) In the possession of a person who is in any place in which a  
5 concealed pistol license is required, and who is under the influence of  
6 any drug or under the influence of intoxicating liquor, as defined in  
7 chapter 46.61 RCW;

8 (f) In the possession of a person free on bail or personal  
9 recognizance pending trial, appeal, or sentencing for a felony or for  
10 a nonfelony crime in which a firearm was used or displayed, except that  
11 violations of Title 77 RCW shall not result in forfeiture under this  
12 section;

13 (g) In the possession of a person found to have been mentally  
14 incompetent while in possession of a firearm when apprehended or who is  
15 thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

16 (h) Used or displayed by a person in the violation of a proper  
17 written order of a court of general jurisdiction; or

18 (i) Used in the commission of a felony or of a nonfelony crime in  
19 which a firearm was used or displayed.

20 (2) Upon order of forfeiture, the court in its discretion may order  
21 destruction of any forfeited firearm. A court may temporarily retain  
22 forfeited firearms needed for evidence.

23 (a) Except as provided in (b), (c), and (d) of this subsection,  
24 firearms that are: (i) Judicially forfeited and no longer needed for  
25 evidence; or (ii) forfeited due to a failure to make a claim under RCW  
26 63.32.010 or 63.40.010; may be disposed of in any manner determined by  
27 the local legislative authority. Any proceeds of an auction or trade  
28 may be retained by the legislative authority. This subsection (2)(a)  
29 applies only to firearms that come into the possession of the law  
30 enforcement agency after June 30, 1993.

31 By midnight, June 30, 1993, every law enforcement agency shall  
32 prepare an inventory, under oath, of every firearm that has been  
33 judicially forfeited, has been seized and may be subject to judicial  
34 forfeiture, or that has been, or may be, forfeited due to a failure to  
35 make a claim under RCW 63.32.010 or 63.40.010.

36 (b) Except as provided in (c) of this subsection, of the  
37 inventoried firearms a law enforcement agency shall destroy illegal  
38 firearms, may retain a maximum of ten percent of legal forfeited  
39 firearms for agency use, and shall either:

1 (i) Comply with the provisions for the auction of firearms in RCW  
2 9.41.098 that were in effect immediately preceding May 7, 1993; or

3 (ii) Trade, auction, or arrange for the auction of, rifles and  
4 shotguns. In addition, the law enforcement agency shall either trade,  
5 auction, or arrange for the auction of, short firearms, or shall pay a  
6 fee of twenty-five dollars to the state treasurer for every short  
7 firearm neither auctioned nor traded, to a maximum of fifty thousand  
8 dollars. The fees shall be accompanied by an inventory, under oath, of  
9 every short firearm listed in the inventory required by (a) of this  
10 subsection, that has been neither traded nor auctioned. The state  
11 treasurer shall credit the fees to the firearms range account  
12 established in RCW 77.12.720. All trades or auctions of firearms under  
13 this subsection shall be to licensed dealers. Proceeds of any auction  
14 less costs, including actual costs of storage and sale, shall be  
15 forwarded to the firearms range account established in RCW 77.12.720.

16 (c) Antique firearms and firearms recognized as curios, relics, and  
17 firearms of particular historical significance by the United States  
18 treasury department bureau of alcohol, tobacco, and firearms are exempt  
19 from destruction and shall be disposed of by auction or trade to  
20 licensed dealers.

21 (d) Firearms in the possession of the Washington state patrol on or  
22 after May 7, 1993, that are judicially forfeited and no longer needed  
23 for evidence, or forfeited due to a failure to make a claim under RCW  
24 63.35.020, must be disposed of as follows: (i) Firearms illegal for  
25 any person to possess must be destroyed; (ii) the Washington state  
26 patrol may retain a maximum of ten percent of legal firearms for agency  
27 use; and (iii) all other legal firearms must be auctioned or traded to  
28 licensed dealers. The Washington state patrol may retain any proceeds  
29 of an auction or trade.

30 (3)(a) A law enforcement officer and his or her spouse, or any  
31 other person acting for or on behalf of or in concert with the law  
32 enforcement officer, may not purchase by auction or any other means,  
33 any firearm seized by or forfeited to the jurisdiction in which the law  
34 enforcement officer is employed if the seizure or forfeiture occurred  
35 as a result of an investigation or arrest in which the officer  
36 participated.

37 (b) Any person violating this subsection shall return all  
38 wrongfully purchased items to the jurisdiction from which the item or  
39 items were purchased. The purchaser is also liable for all cost of the

1 sale associated with any returned item, together with interest  
2 calculated at the statutory rate.

3 (4) The court shall order the firearm returned to the owner upon a  
4 showing that there is no probable cause to believe a violation of  
5 subsection (1) of this section existed or the firearm was stolen from  
6 the owner or the owner neither had knowledge of nor consented to the  
7 act or omission involving the firearm which resulted in its forfeiture.

8 ~~((+4))~~ (5) A law enforcement officer of the state or of any county  
9 or municipality may confiscate a firearm found to be in the possession  
10 of a person under circumstances specified in subsection (1) of this  
11 section. After confiscation, the firearm shall not be surrendered  
12 except: (a) To the prosecuting attorney for use in subsequent legal  
13 proceedings; (b) for disposition according to an order of a court  
14 having jurisdiction as provided in subsection (1) of this section; or  
15 (c) to the owner if the proceedings are dismissed or as directed in  
16 subsection ~~((+3))~~ (4) of this section.

17 **Sec. 2.** RCW 9.46.231 and 1994 c 218 s 7 are each amended to read  
18 as follows:

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

21 (a) All gambling devices as defined in this chapter;

22 (b) All furnishings, fixtures, equipment, and stock, including  
23 without limitation furnishings and fixtures adaptable to nongambling  
24 uses and equipment and stock for printing, recording, computing,  
25 transporting, or safekeeping, used in connection with professional  
26 gambling or maintaining a gambling premises;

27 (c) All conveyances, including aircraft, vehicles, or vessels, that  
28 are used, or intended for use, in any manner to facilitate the sale,  
29 delivery, receipt, or operation of any gambling device, or the  
30 promotion or operation of a professional gambling activity, except  
31 that:

32 (i) A conveyance used by any person as a common carrier in the  
33 transaction of business as a common carrier is not subject to  
34 forfeiture under this section unless it appears that the owner or other  
35 person in charge of the conveyance is a consenting party or privy to a  
36 violation of this chapter;

37 (ii) A conveyance is not subject to forfeiture under this section  
38 by reason of any act or omission established by the owner thereof to

1 have been committed or omitted without the owner's knowledge or  
2 consent;

3 (iii) A forfeiture of a conveyance encumbered by a bona fide  
4 security interest is subject to the interest of the secured party if  
5 the secured party neither had knowledge of nor consented to the act or  
6 omission; and

7 (iv) If the owner of a conveyance has been arrested under this  
8 chapter the conveyance in which the person is arrested may not be  
9 subject to forfeiture unless it is seized or process is issued for its  
10 seizure within ten days of the owner's arrest;

11 (d) All books, records, and research products and materials,  
12 including formulas, microfilm, tapes, and electronic data that are  
13 used, or intended for use, in violation of this chapter;

14 (e) All moneys, negotiable instruments, securities, or other  
15 tangible or intangible property of value at stake or displayed in or in  
16 connection with professional gambling activity or furnished or intended  
17 to be furnished by any person to facilitate the promotion or operation  
18 of a professional gambling activity;

19 (f) All tangible or intangible personal property, proceeds, or  
20 assets acquired in whole or in part with proceeds traceable to  
21 professional gambling activity and all moneys, negotiable instruments,  
22 and securities used or intended to be used to facilitate any violation  
23 of this chapter. A forfeiture of money, negotiable instruments,  
24 securities, or other tangible or intangible property encumbered by a  
25 bona fide security interest is subject to the interest of the secured  
26 party if, at the time the security interest was created, the secured  
27 party neither had knowledge of nor consented to the act or omission.  
28 Personal property may not be forfeited under this subsection (1)(f), to  
29 the extent of the interest of an owner, by reason of any act or  
30 omission that that owner establishes was committed or omitted without  
31 the owner's knowledge or consent; and

32 (g) All real property, including any right, title, and interest in  
33 the whole of any lot or tract of land, and any appurtenances or  
34 improvements that:

35 (i) Have been used with the knowledge of the owner for the  
36 manufacturing, processing, delivery, importing, or exporting of any  
37 illegal gambling equipment, or operation of a professional gambling  
38 activity that would constitute a felony violation of this chapter; or

1 (ii) Have been acquired in whole or in part with proceeds traceable  
2 to a professional gambling activity, if the activity is not less than  
3 a class C felony.

4 Real property forfeited under this chapter that is encumbered by a  
5 bona fide security interest remains subject to the interest of the  
6 secured party if the secured party, at the time the security interest  
7 was created, neither had knowledge of nor consented to the act or  
8 omission. Property may not be forfeited under this subsection, to the  
9 extent of the interest of an owner, by reason of any act or omission  
10 committed or omitted without the owner's knowledge or consent.

11 (2)(a) A law enforcement officer of this state may seize real or  
12 personal property subject to forfeiture under this chapter upon process  
13 issued by any superior court having jurisdiction over the property.  
14 Seizure of real property includes the filing of a lis pendens by the  
15 seizing agency. Real property seized under this section may not be  
16 transferred or otherwise conveyed until ninety days after seizure or  
17 until a judgment of forfeiture is entered, whichever is later, but real  
18 property seized under this section may be transferred or conveyed to  
19 any person or entity who acquires title by foreclosure or deed in lieu  
20 of foreclosure of a bona fide security interest.

21 (b) Seizure of personal property without process may be made if:

22 (i) The seizure is incident to an arrest or a search under a search  
23 warrant or an inspection under an administrative inspection warrant;

24 (ii) The property subject to seizure has been the subject of a  
25 prior judgment in favor of the state in a criminal injunction or  
26 forfeiture proceeding based upon this chapter;

27 (iii) A law enforcement officer has probable cause to believe that  
28 the property is directly or indirectly dangerous to health or safety;  
29 or

30 (iv) The law enforcement officer has probable cause to believe that  
31 the property was used or is intended to be used in violation of this  
32 chapter.

33 (3) In the event of seizure under subsection (2) of this section,  
34 proceedings for forfeiture are deemed commenced by the seizure. The  
35 law enforcement agency under whose authority the seizure was made shall  
36 cause notice to be served within fifteen days following the seizure on  
37 the owner of the property seized and the person in charge thereof and  
38 any person having any known right or interest therein, including any  
39 community property interest, of the seizure and intended forfeiture of

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

18 (4) If no person notifies the seizing law enforcement agency in  
19 writing of the person's claim of ownership or right to possession of  
20 items specified in subsection (1)(c), (e), (f), or (g) of this section  
21 within forty-five days of the seizure in the case of personal property  
22 and ninety days in the case of real property, the item seized is deemed  
23 forfeited. The community property interest in real property of a  
24 person whose spouse committed a violation giving rise to seizure of the  
25 real property may not be forfeited if the person did not participate in  
26 the violation.

27 (5) If any person notifies the seizing law enforcement agency in  
28 writing of the person's claim of ownership or right to possession of  
29 items specified in subsection (1)(b), (c), (d), (e), (f), or (g) of  
30 this section within forty-five days of the seizure in the case of  
31 personal property and ninety days in the case of real property, the  
32 person or persons must be afforded a reasonable opportunity to be heard  
33 as to the claim or right. The hearing must be before the chief law  
34 enforcement officer of the seizing agency or the chief law enforcement  
35 officer's designee, except if the seizing agency is a state agency as  
36 defined in RCW 34.12.020(4), the hearing must be before the chief law  
37 enforcement officer of the seizing agency or an administrative law  
38 judge appointed under chapter 34.12 RCW, except that any person  
39 asserting a claim or right may remove the matter to a court of

1 competent jurisdiction. Removal of any matter involving personal  
2 property may only be accomplished according to the rules of civil  
3 procedure. The person seeking removal of the matter must serve process  
4 against the state, county, political subdivision, or municipality that  
5 operates the seizing agency, and any other party of interest, in  
6 accordance with RCW 4.28.080 or 4.92.020, within forty-five days after  
7 the person seeking removal has notified the seizing law enforcement  
8 agency of the person's claim of ownership or right to possession. The  
9 court to which the matter is to be removed must be the district court  
10 if the aggregate value of personal property is within the  
11 jurisdictional limit set forth in RCW 3.66.020. A hearing before the  
12 seizing agency and any appeal therefrom must be under Title 34 RCW. In  
13 a court hearing between two or more claimants to the article or  
14 articles involved, the prevailing party is entitled to a judgment for  
15 costs and reasonable attorneys' fees. In cases involving personal  
16 property, the burden of producing evidence is upon the person claiming  
17 to be the lawful owner or the person claiming to have the lawful right  
18 to possession of the property. In cases involving real property, the  
19 burden of producing evidence is upon the law enforcement agency. The  
20 burden of proof that the seized real property is subject to forfeiture  
21 is upon the law enforcement agency. The seizing law enforcement agency  
22 shall promptly return the article or articles to the claimant upon a  
23 final determination by the administrative law judge or court that the  
24 claimant is the present lawful owner or is lawfully entitled to  
25 possession thereof of items specified in subsection (1)(b), (c), (d),  
26 (e), (f), or (g) of this section.

27 (6) If property is forfeited under this chapter the seizing law  
28 enforcement agency may:

29 (a) Retain it for official use or upon application by any law  
30 enforcement agency of this state release the property to the agency for  
31 training or use in enforcing this chapter;

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

34 (c) Destroy any articles that may not be lawfully possessed within  
35 the state of Washington, or that have a fair market value of less than  
36 one hundred dollars.

37 (7)(a) A law enforcement officer and his or her spouse, or any  
38 other person acting for or on behalf of or in concert with the law  
39 enforcement officer, may not purchase by auction or any other means,



1 any real or personal property seized by or forfeited to the  
2 jurisdiction in which the law enforcement officer is employed if the  
3 seizure or forfeiture occurred as a result of an investigation or  
4 arrest in which the officer participated.

5 (b) Any person violating this subsection shall return all  
6 wrongfully purchased items to the jurisdiction from which the item or  
7 items were purchased. The purchaser is also liable for all cost of the  
8 sale associated with any returned item, together with interest  
9 calculated at the statutory rate.

10 (8)(a) If property is forfeited, the seizing agency shall keep a  
11 record indicating the identity of the prior owner, if known, a  
12 description of the property, the disposition of the property, the value  
13 of the property at the time of seizure, and the amount of proceeds  
14 realized from disposition of the property. The net proceeds of  
15 forfeited property is the value of the forfeitable interest in the  
16 property after deducting the cost of satisfying any bona fide security  
17 interest to which the property is subject at the time of seizure, and  
18 in the case of sold property, after deducting the cost of sale,  
19 including reasonable fees or commissions paid to independent selling  
20 agents.

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

23 (c) Each seizing agency shall file a report including a copy of the  
24 records of forfeited property with the state treasurer the calendar  
25 quarter after the end of the fiscal year.

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

30 ~~((+8+))~~ (9) The seizing law enforcement agency shall retain  
31 forfeited property and net proceeds exclusively for the expansion and  
32 improvement of gambling-related law enforcement activity. Money  
33 retained under this section may not be used to supplant preexisting  
34 funding sources.

35 ~~((+9+))~~ (10) Gambling devices that are possessed, transferred,  
36 sold, or offered for sale in violation of this chapter are contraband  
37 and must be seized and summarily forfeited to the state. Gambling  
38 equipment that is seized or comes into the possession of a law

1 enforcement agency, the owners of which are unknown, are contraband and  
2 must be summarily forfeited to the state.

3 ~~((10))~~ (11) Upon the entry of an order of forfeiture of real  
4 property, the court shall forward a copy of the order to the assessor  
5 of the county in which the property is located. The superior court  
6 shall enter orders for the forfeiture of real property, subject to  
7 court rules. The seizing agency shall file such an order in the county  
8 auditor's records in the county in which the real property is located.

9 ~~((11))~~ (12)(a) A landlord may assert a claim against proceeds  
10 from the sale of assets seized and forfeited under subsection (6)(b) of  
11 this section, only if:

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

15 (ii) The landlord has applied any funds remaining in the tenant's  
16 deposit, to which the landlord has a right under chapter 59.18 RCW, to  
17 cover the damage directly caused by a law enforcement officer before  
18 asserting a claim under this section.

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

24 (B) Only if the governmental entity denies or fails to respond to  
25 the landlord's claim within sixty days of the date of filing, may the  
26 landlord collect damages under this subsection by filing within thirty  
27 days of denial or the expiration of the sixty-day period, whichever  
28 occurs first, a claim with the seizing law enforcement agency. The  
29 seizing law enforcement agency shall notify the landlord of the status  
30 of the claim by the end of the thirty-day period. This section does  
31 not require the claim to be paid by the end of the sixty-day or thirty-  
32 day period.

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

36 (i) Knew or consented to actions of the tenant in violation of this  
37 chapter; or

1 (ii) Failed to respond to a notification of the illegal activity,  
2 provided by a law enforcement agency within seven days of receipt of  
3 notification of the illegal activity.

4 (~~(12)~~) (13) The landlord's claim for damages under subsection  
5 (~~(11)~~) (12) of this section may not include a claim for loss of  
6 business and is limited to:

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

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

10 (c) The proceeds from the sale of the specific tenant's property  
11 seized and forfeited under subsection (6)(b) of this section; and

12 (d) The proceeds available after the seizing law enforcement agency  
13 satisfies any bona fide security interest in the tenant's property and  
14 costs related to sale of the tenant's property as provided by  
15 subsection (~~(7)~~) (8)(a) of this section.

16 (~~(13)~~) (14) Subsections (~~(11)~~) (12) and (~~(12)~~) (13) of this  
17 section do not limit any other rights a landlord may have against a  
18 tenant to collect for damages. However, if a law enforcement agency  
19 satisfies a landlord's claim under subsection (~~(11)~~) (12) of this  
20 section, the rights the landlord has against the tenant for damages  
21 directly caused by a law enforcement officer under the terms of the  
22 landlord and tenant's contract are subrogated to the law enforcement  
23 agency.

24 **Sec. 3.** RCW 9.68A.120 and 1984 c 262 s 11 are each amended to read  
25 as follows:

26 (1) The following are subject to seizure and forfeiture:

27 (~~(1)~~) (a) All visual or printed matter that depicts a minor  
28 engaged in sexually explicit conduct.

29 (~~(2)~~) (b) All raw materials, equipment, and other tangible  
30 personal property of any kind used or intended to be used to  
31 manufacture or process any visual or printed matter that depicts a  
32 minor engaged in sexually explicit conduct, and all conveyances,  
33 including aircraft, vehicles, or vessels that are used or intended for  
34 use to transport, or in any manner to facilitate the transportation of,  
35 visual or printed matter in violation of RCW 9.68A.050 or 9.68A.060,  
36 but:

37 (~~(a)~~) (i) No conveyance used by any person as a common carrier in  
38 the transaction of business as a common carrier is subject to

1 forfeiture under this section unless it appears that the owner or other  
2 person in charge of the conveyance is a consenting party or privy to a  
3 violation of this chapter;

4 ~~((b))~~ (ii) No property is subject to forfeiture under this  
5 section by reason of any act or omission established by the owner of  
6 the property to have been committed or omitted without the owner's  
7 knowledge or consent;

8 ~~((e))~~ (iii) A forfeiture of property encumbered by a bona fide  
9 security interest is subject to the interest of the secured party if  
10 the secured party neither had knowledge of nor consented to the act or  
11 omission; and

12 ~~((d))~~ (iv) When the owner of a conveyance has been arrested under  
13 this chapter the conveyance may not be subject to forfeiture unless it  
14 is seized or process is issued for its seizure within ten days of the  
15 owner's arrest.

16 ~~((3))~~ (c) All personal property, moneys, negotiable instruments,  
17 securities, or other tangible or intangible property furnished or  
18 intended to be furnished by any person in exchange for visual or  
19 printed matter depicting a minor engaged in sexually explicit conduct,  
20 or constituting proceeds traceable to any violation of this chapter.

21 ~~((4))~~ (2) Property subject to forfeiture under this chapter may  
22 be seized by any law enforcement officer of this state upon process  
23 issued by any superior court having jurisdiction over the property.  
24 Seizure without process may be made if:

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

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

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

33 (d) The law enforcement officer has probable cause to believe that  
34 the property was used or is intended to be used in violation of this  
35 chapter.

36 ~~((5))~~ (3) In the event of seizure under subsection ~~((4))~~ (2) of  
37 this section, proceedings for forfeiture shall be deemed commenced by  
38 the seizure. The law enforcement agency under whose authority the  
39 seizure 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, of the seizure and intended forfeiture of the seized  
4 property. The notice may be served by any method authorized by law or  
5 court rule including but not limited to service by certified mail with  
6 return receipt requested. Service by mail shall be deemed complete  
7 upon mailing within the fifteen day period following the seizure.

8 ~~((+6))~~ (4) If no person notifies the seizing law enforcement  
9 agency in writing of the person's claim of ownership or right to  
10 possession of seized items within forty-five days of the seizure, the  
11 item seized shall be deemed forfeited.

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

32 ~~((+8))~~ (6) If property is sought to be forfeited on the ground  
33 that it constitutes proceeds traceable to a violation of this chapter,  
34 the seizing law enforcement agency must prove by a preponderance of the  
35 evidence that the property constitutes proceeds traceable to a  
36 violation of this chapter.

37 ~~((+9))~~ (7) When property is forfeited under this chapter the  
38 seizing law enforcement agency may:

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

4 (b) Sell that which is not required to be destroyed by law and  
5 which is not harmful to the public. The proceeds and all moneys  
6 forfeited under this chapter shall be used for payment of all proper  
7 expenses of the investigation leading to the seizure, including any  
8 money delivered to the subject of the investigation by the law  
9 enforcement agency, and of the proceedings for forfeiture and sale,  
10 including expenses of seizure, maintenance of custody, advertising,  
11 actual costs of the prosecuting or city attorney, and court costs.  
12 Fifty percent of the money remaining after payment of these expenses  
13 shall be deposited in the criminal justice training account established  
14 under RCW 43.101.210 which shall be appropriated by law to the  
15 Washington state criminal justice training commission and fifty percent  
16 shall be deposited in the general fund of the state, county, or city of  
17 the seizing law enforcement agency; or

18 (c) Request the appropriate sheriff or director of public safety to  
19 take custody of the property and remove it for disposition in  
20 accordance with law.

21 (8)(a) A law enforcement officer and his or her spouse, or any  
22 other person acting for or on behalf of or in concert with the law  
23 enforcement officer, may not purchase by auction or any other means,  
24 any personal property seized by or forfeited to the jurisdiction in  
25 which the law enforcement officer is employed if the seizure or  
26 forfeiture occurred as a result of an investigation or arrest in which  
27 the officer participated.

28 (b) Any person violating this subsection shall return all  
29 wrongfully purchased items to the jurisdiction from which the item or  
30 items were purchased. The purchaser is also liable for all cost of the  
31 sale associated with any returned item, together with interest  
32 calculated at the statutory rate.

33 **Sec. 4.** RCW 9A.82.100 and 1989 c 271 s 111 are each amended to  
34 read as follows:

35 (1)(a) A person who sustains injury to his or her person, business,  
36 or property by an act of criminal profiteering that is part of a  
37 pattern of criminal profiteering activity or by a violation of RCW  
38 9A.82.060 or 9A.82.080 may file an action in superior court for the

1 recovery of damages and the costs of the suit, including reasonable  
2 investigative and attorney's fees.

3 (b) The attorney general or county prosecuting attorney may file an  
4 action: (i) On behalf of those persons injured or, respectively, on  
5 behalf of the state or county if the entity has sustained damages, or  
6 (ii) to prevent, restrain, or remedy a pattern of criminal profiteering  
7 activity or a violation of RCW 9A.82.060 or 9A.82.080.

8 (c) An action for damages filed by or on behalf of an injured  
9 person, the state, or the county shall be for the recovery of damages  
10 and the costs of the suit, including reasonable investigative and  
11 attorney's fees.

12 (d) In an action filed to prevent, restrain, or remedy a pattern of  
13 criminal profiteering activity or a violation of RCW 9A.82.060 or  
14 9A.82.080, the court, upon proof of the violation, may impose a civil  
15 penalty not exceeding two hundred fifty thousand dollars, in addition  
16 to awarding the cost of the suit, including reasonable investigative  
17 and attorney's fees.

18 (2) The superior court has jurisdiction to prevent, restrain, and  
19 remedy a pattern of criminal profiteering or a violation of RCW  
20 9A.82.060 or 9A.82.080 after making provision for the rights of all  
21 innocent persons affected by the violation and after hearing or trial,  
22 as appropriate, by issuing appropriate orders.

23 (3) Prior to a determination of liability, orders issued under  
24 subsection (2) of this section may include, but are not limited to,  
25 entering restraining orders or prohibitions or taking such other  
26 actions, including the acceptance of satisfactory performance bonds, in  
27 connection with any property or other interest subject to damages,  
28 forfeiture, or other restraints pursuant to this section as the court  
29 deems proper. The orders may also include attachment, receivership, or  
30 injunctive relief in regard to personal or real property pursuant to  
31 Title 7 RCW. In shaping the reach or scope of receivership,  
32 attachment, or injunctive relief, the superior court shall provide for  
33 the protection of bona fide interests in property, including community  
34 property, of persons who were not involved in the violation of this  
35 chapter, except to the extent that such interests or property were  
36 acquired or used in such a way as to be subject to forfeiture under RCW  
37 9A.82.100(4)(f).

38 (4) Following a determination of liability, orders may include, but  
39 are not limited to:

1 (a) Ordering any person to divest himself or herself of any  
2 interest, direct or indirect, in any enterprise.

3 (b) Imposing reasonable restrictions on the future activities or  
4 investments of any person, including prohibiting any person from  
5 engaging in the same type of endeavor as the enterprise engaged in, the  
6 activities of which affect the laws of this state, to the extent the  
7 Constitutions of the United States and this state permit.

8 (c) Ordering dissolution or reorganization of any enterprise.

9 (d) Ordering the payment of actual damages sustained to those  
10 persons injured by a violation of RCW 9A.82.060 or 9A.82.080 or an act  
11 of criminal profiteering that is part of a pattern of criminal  
12 profiteering, and in the court's discretion, increasing the payment to  
13 an amount not exceeding three times the actual damages sustained.

14 (e) Ordering the payment of all costs and expenses of the  
15 prosecution and investigation of a pattern of criminal profiteering  
16 activity or a violation of RCW 9A.82.060 or 9A.82.080, civil and  
17 criminal, incurred by the state or county, including any costs of  
18 defense provided at public expense, as appropriate to the state general  
19 fund or the antiprofitteering revolving fund of the county.

20 (f) Ordering forfeiture first as restitution to any person damaged  
21 by an act of criminal profiteering that is part of a pattern of  
22 criminal profiteering then to the state general fund or  
23 antiprofitteering revolving fund of the county, as appropriate, to the  
24 extent not already ordered to be paid in other damages, of the  
25 following:

26 (i) Any property or other interest acquired or maintained in  
27 violation of RCW 9A.82.060 or 9A.82.080 to the extent of the investment  
28 of funds, and any appreciation or income attributable to the  
29 investment, from a violation of RCW 9A.82.060 or 9A.82.080.

30 (ii) Any property, contractual right, or claim against property  
31 used to influence any enterprise that a person has established,  
32 operated, controlled, conducted, or participated in the conduct of, in  
33 violation of RCW 9A.82.060 or 9A.82.080.

34 (iii) All proceeds traceable to or derived from an offense included  
35 in the pattern of criminal profiteering activity and all moneys,  
36 negotiable instruments, securities, and other things of value  
37 significantly used or intended to be used significantly to facilitate  
38 commission of the offense.



1 (g) Ordering payment to the state general fund or antiprofitteering  
2 revolving fund of the county, as appropriate, of an amount equal to the  
3 gain a person has acquired or maintained through an offense included in  
4 the definition of criminal profiteering.

5 (5) In addition to or in lieu of an action under this section, the  
6 attorney general or county prosecuting attorney may file an action for  
7 forfeiture to the state general fund or antiprofitteering revolving fund  
8 of the county, as appropriate, to the extent not already ordered paid  
9 pursuant to this section, of the following:

10 (a) Any interest acquired or maintained by a person in violation of  
11 RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds  
12 obtained from a violation of RCW 9A.82.060 or 9A.82.080 and any  
13 appreciation or income attributable to the investment.

14 (b) Any property, contractual right, or claim against property used  
15 to influence any enterprise that a person has established, operated,  
16 controlled, conducted, or participated in the conduct of, in violation  
17 of RCW 9A.82.060 or 9A.82.080.

18 (c) All proceeds traceable to or derived from an offense included  
19 in the pattern of criminal profiteering activity and all moneys,  
20 negotiable instruments, securities, and other things of value  
21 significantly used or intended to be used significantly to facilitate  
22 the commission of the offense.

23 (6) A defendant convicted in any criminal proceeding is precluded  
24 in any civil proceeding from denying the essential allegations of the  
25 criminal offense proven in the criminal trial in which the defendant  
26 was convicted. For the purposes of this subsection, a conviction shall  
27 be deemed to have occurred upon a verdict, finding, or plea of guilty,  
28 notwithstanding the fact that appellate review of the conviction and  
29 sentence has been or may be sought. If a subsequent reversal of the  
30 conviction occurs, any judgment that was based upon that conviction may  
31 be reopened upon motion of the defendant.

32 (7) The initiation of civil proceedings under this section shall be  
33 commenced within three years after discovery of the pattern of criminal  
34 profiteering activity or after the pattern should reasonably have been  
35 discovered.

36 (8) The attorney general or county prosecuting attorney may, in a  
37 civil action brought pursuant to this section, file with the clerk of  
38 the superior court a certificate stating that the case is of special  
39 public importance. A copy of that certificate shall be furnished

1 immediately by the clerk to the presiding chief judge of the superior  
2 court in which the action is pending and, upon receipt of the copy, the  
3 judge shall immediately designate a judge to hear and determine the  
4 action. The judge so designated shall promptly assign the action for  
5 hearing, participate in the hearings and determination, and cause the  
6 action to be expedited.

7 (9) The standard of proof in actions brought pursuant to this  
8 section is the preponderance of the evidence test.

9 (10) A person other than the attorney general or county prosecuting  
10 attorney who files an action under this section shall serve notice and  
11 one copy of the pleading on the attorney general within thirty days  
12 after the action is filed with the superior court. The notice shall  
13 identify the action, the person, and the person's attorney. Service of  
14 the notice does not limit or otherwise affect the right of the state to  
15 maintain an action under this section or intervene in a pending action  
16 nor does it authorize the person to name the state or the attorney  
17 general as a party to the action.

18 (11) Except in cases filed by a county prosecuting attorney, the  
19 attorney general may, upon timely application, intervene in any civil  
20 action or proceeding brought under this section if the attorney general  
21 certifies that in the attorney general's opinion the action is of  
22 special public importance. Upon intervention, the attorney general may  
23 assert any available claim and is entitled to the same relief as if the  
24 attorney general had instituted a separate action.

25 (12) In addition to the attorney general's right to intervene as a  
26 party in any action under this section, the attorney general may appear  
27 as amicus curiae in any proceeding in which a claim under this section  
28 has been asserted or in which a court is interpreting RCW 9A.82.010,  
29 9A.82.080, 9A.82.090, 9A.82.110, or 9A.82.120, or this section.

30 (13) A private civil action under this section does not limit any  
31 other civil or criminal action under this chapter or any other  
32 provision. Private civil remedies provided under this section are  
33 supplemental and not mutually exclusive.

34 (14) Upon motion by the defendant, the court may authorize the sale  
35 or transfer of assets subject to an order or lien authorized by this  
36 chapter for the purpose of paying actual attorney's fees and costs of  
37 defense. The motion shall specify the assets for which sale or  
38 transfer is sought and shall be accompanied by the defendant's sworn  
39 statement that the defendant has no other assets available for such

1 purposes. No order authorizing such sale or transfer may be entered  
2 unless the court finds that the assets involved are not subject to  
3 possible forfeiture under RCW 9A.82.100(4)(f). Prior to disposition of  
4 the motion, the court shall notify the state of the assets sought to be  
5 sold or transferred and shall hear argument on the issue of whether the  
6 assets are subject to forfeiture under RCW 9A.82.100(4)(f). Such a  
7 motion may be made from time to time and shall be heard by the court on  
8 an expedited basis.

9 (15)(a) A law enforcement officer and his or her spouse, or any  
10 other person acting for or on behalf of or in concert with the law  
11 enforcement officer, may not purchase by auction or any other means,  
12 any real or personal property seized by or forfeited to the  
13 jurisdiction in which the law enforcement officer is employed if the  
14 seizure or forfeiture occurred as a result of an investigation or  
15 arrest in which the officer participated.

16 (b) Any person violating this subsection shall return all  
17 wrongfully purchased items to the jurisdiction from which the item or  
18 items were purchased. The purchaser is also liable for all cost of the  
19 sale associated with any returned item, together with interest  
20 calculated at the statutory rate.

21 (16) In an action brought under subsection (1)(a) and (b)(i) of  
22 this section, either party has the right to a jury trial.

23 **Sec. 5.** RCW 9A.83.030 and 1992 c 210 s 3 are each amended to read  
24 as follows:

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

34 (2) Real or personal property subject to forfeiture under this  
35 chapter may be seized by any law enforcement officer of this state upon  
36 process issued by a superior court that has jurisdiction over the  
37 property. Any agency seizing real property shall file a lis pendens  
38 concerning the property. Real property seized under this section shall

1 not be transferred or otherwise conveyed until ninety days after  
2 seizure or until a judgment of forfeiture is entered, whichever is  
3 later. Real property seized under this section may be transferred or  
4 conveyed to any person or entity who acquires title by foreclosure or  
5 deed in lieu of foreclosure of a security interest. Seizure of  
6 personal property without process may be made if:

7 (a) The seizure is incident to an arrest or a search under a search  
8 warrant or an inspection under an administrative inspection warrant  
9 issued pursuant to RCW 69.50.502; or

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

13 (3) A seizure under subsection (2) of this section commences  
14 proceedings for forfeiture. The law enforcement agency under whose  
15 authority the seizure was made shall cause notice of the seizure and  
16 intended forfeiture of the seized proceeds to be served within fifteen  
17 days after the seizure on the owner of the property seized and the  
18 person in charge thereof and any person who has a known right or  
19 interest therein, including a community property interest. Service of  
20 notice of seizure of real property shall be made according to the rules  
21 of civil procedure. However, the state may not obtain a default  
22 judgment with respect to real property against a party who is served by  
23 substituted service absent an affidavit stating that a good faith  
24 effort has been made to ascertain if the defaulted party is  
25 incarcerated within the state, and that there is no present basis to  
26 believe that the party is incarcerated within the state. The notice of  
27 seizure in other cases may be served by any method authorized by law or  
28 court rule including but not limited to service by certified mail with  
29 return receipt requested. Service by mail is complete upon mailing  
30 within the fifteen-day period after 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 the property within forty-five days of the seizure in the case of  
34 personal property and ninety days in the case of real property, the  
35 property seized shall be deemed forfeited. The community property  
36 interest in real property of a person whose spouse committed a  
37 violation giving rise to seizure of the real property may not be  
38 forfeited if the person did not participate in the violation.

1 (5) If a person notifies the seizing law enforcement agency in  
2 writing of the person's claim of ownership or right to possession of  
3 property within forty-five days of the seizure in the case of personal  
4 property and ninety days in the case of real property, the person or  
5 persons shall be afforded a reasonable opportunity to be heard as to  
6 the claim or right. The provisions of RCW 69.50.505(e) shall apply to  
7 any such hearing. The seizing law enforcement agency shall promptly  
8 return property to the claimant upon the direction of the  
9 administrative law judge or court.

10 (6) Disposition of forfeited property shall be made in the manner  
11 provided for in RCW 69.50.505(g) through (i) and (m).

12 (7)(a) A law enforcement officer and his or her spouse, or any  
13 other person acting for or on behalf of or in concert with the law  
14 enforcement officer, may not purchase by auction or any other means,  
15 any real or personal property seized by or forfeited to the  
16 jurisdiction in which the law enforcement officer is employed if the  
17 seizure or forfeiture occurred as a result of an investigation or  
18 arrest in which the officer participated.

19 (b) Any person violating this subsection shall return all  
20 wrongfully purchased items to the jurisdiction from which the item or  
21 items were purchased. The purchaser is also liable for all cost of the  
22 sale associated with any returned item, together with interest  
23 calculated at the statutory rate.

24 **Sec. 6.** RCW 10.105.010 and 1993 c 288 s 2 are each amended to read  
25 as follows:

26 (1) The following are subject to seizure and forfeiture and no  
27 property right exists in them: All personal property, including, but  
28 not limited to, any item, object, tool, substance, device, weapon,  
29 machine, vehicle of any kind, money, security, or negotiable  
30 instrument, which has been or was actually employed as an  
31 instrumentality in the commission of, or in aiding or abetting in the  
32 commission of any felony, or which was furnished or was intended to be  
33 furnished by any person in the commission of, as a result of, or as  
34 compensation for the commission of, any felony, or which was acquired  
35 in whole or in part with proceeds traceable to the commission of a  
36 felony. No property may be forfeited under this section until after  
37 there has been a superior court conviction of the owner of the property

1 for the felony in connection with which the property was employed,  
2 furnished, or acquired.

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

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

11 (a) The seizure is incident to an arrest or a search under a search  
12 warrant;

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

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

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

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

38 (4) If no person notifies the seizing law enforcement agency in  
39 writing of the person's claim of ownership or right to possession of

1 items specified in subsection (1) of this section within forty-five  
2 days of the seizure, the item seized shall be deemed forfeited.

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

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

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

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

3 (7)(a) A law enforcement officer and his or her spouse, or any  
4 other person acting for or on behalf of or in concert with the law  
5 enforcement officer, may not purchase by auction or any other means,  
6 any personal property seized by or forfeited to the jurisdiction in  
7 which the law enforcement officer is employed if the seizure or  
8 forfeiture occurred as a result of an investigation or arrest in which  
9 the officer participated.

10 (b) Any person violating this subsection shall return all  
11 wrongfully purchased items to the jurisdiction from which the item or  
12 items were purchased. The purchaser is also liable for all cost of the  
13 sale associated with any returned item, together with interest  
14 calculated at the statutory rate.

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

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

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

36 (c) Retained property and net proceeds not required to be paid to  
37 the state treasurer, or otherwise required to be spent under this  
38 section, shall be retained by the seizing law enforcement agency  
39 exclusively for the expansion and improvement of law enforcement



1 activity. Money retained under this section may not be used to  
2 supplant preexisting funding sources.

3 **Sec. 7.** RCW 46.61.5058 and 1995 c 332 s 6 are each amended to read  
4 as follows:

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

21 (a) A vehicle encumbered by a bona fide security interest may be  
22 transferred to the secured party or to a person designated by the  
23 secured party;

24 (b) A leased or rented vehicle may be transferred to the lessor,  
25 rental agency, or to a person designated by the lessor or rental  
26 agency; and

27 (c) A vehicle may be transferred to a third party or a vehicle  
28 dealer who is a bona fide purchaser or may be subject to a bona fide  
29 security interest in the vehicle unless it is established that (i) in  
30 the case of a purchase by a third party or vehicle dealer, such party  
31 or dealer had actual notice that the vehicle was subject to the  
32 prohibition prior to the purchase, or (ii) in the case of a security  
33 interest, the holder of the security interest had actual notice that  
34 the vehicle was subject to the prohibition prior to the encumbrance of  
35 title.

36 (2) On conviction for a violation of either RCW 46.61.502 or  
37 46.61.504 or any similar municipal ordinance where the person convicted  
38 has a prior offense within five years as defined in RCW 46.61.5055, the

1 motor vehicle the person was driving or over which the person had  
2 actual physical control at the time of the offense, if the person has  
3 a financial interest in the vehicle, is subject to seizure and  
4 forfeiture pursuant to this section.

5 (3) A vehicle subject to forfeiture under this chapter may be  
6 seized by a law enforcement officer of this state upon process issued  
7 by a court of competent jurisdiction. Seizure of a vehicle may be made  
8 without process if the vehicle subject to seizure has been the subject  
9 of a prior judgment in favor of the state in a forfeiture proceeding  
10 based upon this section.

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

26 (5) 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 the seized vehicle within forty-five days of the seizure, the vehicle  
29 is deemed forfeited.

30 (6) 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 vehicle 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, the hearing shall  
38 be before the chief law enforcement officer of the seizing agency or an  
39 administrative law judge appointed under chapter 34.12 RCW, except that

1 any person asserting a claim or right may remove the matter to a court  
2 of competent jurisdiction. Removal may only be accomplished according  
3 to the rules of civil procedure. The person seeking removal of the  
4 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 vehicle 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 vehicle involved, the prevailing party shall be entitled to a judgment  
15 for costs and reasonable attorneys' fees. The burden of producing  
16 evidence shall be upon the person claiming to be the legal owner or the  
17 person claiming to have the lawful right to possession of the vehicle.  
18 The seizing law enforcement agency shall promptly return the vehicle to  
19 the claimant upon a determination by the administrative law judge or  
20 court that the claimant is the present legal owner under Title 46 RCW  
21 or is lawfully entitled to possession of the vehicle.

22 (7) When a vehicle is forfeited under this chapter the seizing law  
23 enforcement agency may sell the vehicle, retain it for official use, or  
24 upon application by a law enforcement agency of this state release the  
25 vehicle to that agency for the exclusive use of enforcing this title;  
26 provided, however, that the agency shall first satisfy any bona fide  
27 security interest to which the vehicle is subject under subsection  
28 (1)(a) or (c) of this section.

29 (8)(a) A law enforcement officer and his or her spouse, or any  
30 other person acting for or on behalf of or in concert with the law  
31 enforcement officer, may not purchase by auction or any other means,  
32 any vehicle seized by or forfeited to the jurisdiction in which the law  
33 enforcement officer is employed if the seizure or forfeiture occurred  
34 as a result of an investigation or arrest in which the officer  
35 participated.

36 (b) Any person violating this subsection shall return all  
37 wrongfully purchased items to the jurisdiction from which the item or  
38 items were purchased. The purchaser is also liable for all cost of the

1 sale associated with any returned item, together with interest  
2 calculated at the statutory rate.

3 (9) When a vehicle is forfeited, the seizing agency shall keep a  
4 record indicating the identity of the prior owner, if known, a  
5 description of the vehicle, the disposition of the vehicle, the value  
6 of the vehicle at the time of seizure, and the amount of proceeds  
7 realized from disposition of the vehicle.

8 ~~((+9))~~ (10) Each seizing agency shall retain records of forfeited  
9 vehicles for at least seven years.

10 ~~((+10))~~ (11) Each seizing agency shall file a report including a  
11 copy of the records of forfeited vehicles with the state treasurer each  
12 calendar quarter.

13 ~~((+11))~~ (12) The quarterly report need not include a record of a  
14 forfeited vehicle that is still being held for use as evidence during  
15 the investigation or prosecution of a case or during the appeal from a  
16 conviction.

17 ~~((+12))~~ (13) By January 31st of each year, each seizing agency  
18 shall remit to the state treasurer an amount equal to ten percent of  
19 the net proceeds of vehicles forfeited during the preceding calendar  
20 year. Money remitted shall be deposited in the public safety and  
21 education account.

22 ~~((+13))~~ (14) The net proceeds of a forfeited vehicle is the value  
23 of the forfeitable interest in the vehicle after deducting the cost of  
24 satisfying a bona fide security interest to which the vehicle is  
25 subject at the time of seizure; and in the case of a sold vehicle,  
26 after deducting the cost of sale, including reasonable fees or  
27 commissions paid to independent selling agents.

28 ~~((+14))~~ (15) The value of a sold forfeited vehicle is the sale  
29 price. The value of a retained forfeited vehicle is the fair market  
30 value of the vehicle at the time of seizure, determined when possible  
31 by reference to an applicable commonly used index, such as the index  
32 used by the department of licensing. A seizing agency may, but need  
33 not, use an independent qualified appraiser to determine the value of  
34 retained vehicles. If an appraiser is used, the value of the vehicle  
35 appraised is net of the cost of the appraisal.

36 **Sec. 8.** RCW 69.50.505 and 1993 c 487 s 1 are each amended to read  
37 as follows:

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

3 (1) All controlled substances which have been manufactured,  
4 distributed, dispensed, acquired, or possessed in violation of this  
5 chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as  
6 defined in RCW 64.44.010, used or intended to be used in the  
7 manufacture of controlled substances;

8 (2) All raw materials, products, and equipment of any kind which  
9 are used, or intended for use, in manufacturing, compounding,  
10 processing, delivering, importing, or exporting any controlled  
11 substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

12 (3) All property which is used, or intended for use, as a container  
13 for property described in paragraphs (1) or (2);

14 (4) All conveyances, including aircraft, vehicles, or vessels,  
15 which are used, or intended for use, in any manner to facilitate the  
16 sale, delivery, or receipt of property described in paragraphs (1) or  
17 (2), except that:

18 (i) No conveyance 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 it appears that the owner or other person in  
21 charge of the conveyance is a consenting party or privy to a violation  
22 of this chapter or chapter 69.41 or 69.52 RCW;

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

26 (iii) No conveyance is subject to forfeiture under this section if  
27 used in the receipt of only an amount of marijuana for which possession  
28 constitutes a misdemeanor under RCW 69.50.401(e);

29 (iv) A forfeiture of a conveyance encumbered by a bona fide  
30 security interest is subject to the interest of the secured party if  
31 the secured party neither had knowledge of nor consented to the act or  
32 omission; and

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

38 (5) All books, records, and research products and materials,  
39 including formulas, microfilm, tapes, and data which are used, or

1 intended for use, in violation of this chapter or chapter 69.41 or  
2 69.52 RCW;

3 (6) All drug paraphernalia;

4 (7) All moneys, negotiable instruments, securities, or other  
5 tangible or intangible property of value furnished or intended to be  
6 furnished by any person in exchange for a controlled substance in  
7 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible  
8 or intangible personal property, proceeds, or assets acquired in whole  
9 or in part with proceeds traceable to an exchange or series of  
10 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,  
11 and all moneys, negotiable instruments, and securities used or intended  
12 to be used to facilitate any violation of this chapter or chapter 69.41  
13 or 69.52 RCW. A forfeiture of money, negotiable instruments,  
14 securities, or other tangible or intangible property encumbered by a  
15 bona fide security interest is subject to the interest of the secured  
16 party if, at the time the security interest was created, the secured  
17 party neither had knowledge of nor consented to the act or omission.  
18 No personal property may be forfeited under this paragraph, to the  
19 extent of the interest of an owner, by reason of any act or omission  
20 which that owner establishes was committed or omitted without the  
21 owner's knowledge or consent; and

22 (8) All real property, including any right, title, and interest in  
23 the whole of any lot or tract of land, and any appurtenances or  
24 improvements which are being used with the knowledge of the owner for  
25 the manufacturing, compounding, processing, delivery, importing, or  
26 exporting of any controlled substance, or which have been acquired in  
27 whole or in part with proceeds traceable to an exchange or series of  
28 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,  
29 if such activity is not less than a class C felony and a substantial  
30 nexus exists between the commercial production or sale of the  
31 controlled substance and the real property. However:

32 (i) No property may be forfeited pursuant to this subsection, to  
33 the extent of the interest of an owner, by reason of any act or  
34 omission committed or omitted without the owner's knowledge or consent;

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

38 (iii) The possession of marijuana shall not result in the  
39 forfeiture of real property unless the marijuana is possessed for

1 commercial purposes, the amount possessed is five or more plants or one  
2 pound or more of marijuana, and a substantial nexus exists between the  
3 possession of marijuana and the real property. In such a case, the  
4 intent of the offender shall be determined by the preponderance of the  
5 evidence, including the offender's prior criminal history, the amount  
6 of marijuana possessed by the offender, the sophistication of the  
7 activity or equipment used by the offender, and other evidence which  
8 demonstrates the offender's intent to engage in commercial activity;

9 (iv) The unlawful sale of marijuana or a legend drug shall not  
10 result in the forfeiture of real property unless the sale was forty  
11 grams or more in the case of marijuana or one hundred dollars or more  
12 in the case of a legend drug, and a substantial nexus exists between  
13 the unlawful sale and the real property; and

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

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

30 (1) The seizure is incident to an arrest or a search under a search  
31 warrant or an inspection under an administrative inspection warrant;

32 (2) The property subject to seizure has been the subject of a prior  
33 judgment in favor of the state in a criminal injunction or forfeiture  
34 proceeding based upon this chapter;

35 (3) A board inspector or law enforcement officer has probable cause  
36 to believe that the property is directly or indirectly dangerous to  
37 health or safety; or

1 (4) The board inspector or law enforcement officer has probable  
2 cause to believe that the property was used or is intended to be used  
3 in violation of this chapter.

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

28 (d) If no person notifies the seizing law enforcement agency in  
29 writing of the person's claim of ownership or right to possession of  
30 items specified in subsection (a)(4), (a)(7), or (a)(8) of this section  
31 within forty-five days of the seizure in the case of personal property  
32 and ninety days in the case of real property, the item seized shall be  
33 deemed forfeited. The community property interest in real property of  
34 a person whose spouse committed a violation giving rise to seizure of  
35 the real property may not be forfeited if the person did not  
36 participate in the violation.

37 (e) If any person notifies the seizing law enforcement agency in  
38 writing of the person's claim of ownership or right to possession of  
39 items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6),



1 (a)(7), or (a)(8) of this section within forty-five days of the seizure  
2 in the case of personal property and ninety days in the case of real  
3 property, the person or persons shall be afforded a reasonable  
4 opportunity to be heard as to the claim or right. The hearing shall be  
5 before the chief law enforcement officer of the seizing agency or the  
6 chief law enforcement officer's designee, except where the seizing  
7 agency is a state agency as defined in RCW 34.12.020(4), the hearing  
8 shall be before the chief law enforcement officer of the seizing agency  
9 or an administrative law judge appointed under chapter 34.12 RCW,  
10 except that any person asserting a claim or right may remove the matter  
11 to a court of competent jurisdiction. Removal of any matter involving  
12 personal property may only be accomplished according to the rules of  
13 civil procedure. The person seeking removal of the matter must serve  
14 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 law  
18 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 personal property is  
21 within the jurisdictional limit set forth in RCW 3.66.020. A hearing  
22 before the seizing agency and any appeal therefrom shall be under Title  
23 34 RCW. In a court hearing between two or more claimants to the  
24 article or articles involved, the prevailing party shall be entitled to  
25 a judgment for costs and reasonable attorney's fees. In cases  
26 involving personal property, the burden of producing evidence shall be  
27 upon the person claiming to be the lawful owner or the person claiming  
28 to have the lawful right to possession of the property. In cases  
29 involving real property, the burden of producing evidence shall be upon  
30 the law enforcement agency. The burden of proof that the seized real  
31 property is subject to forfeiture shall be upon the law enforcement  
32 agency. The seizing law enforcement agency shall promptly return the  
33 article or articles to the claimant upon a determination by the  
34 administrative law judge or court that the claimant is the present  
35 lawful owner or is lawfully entitled to possession thereof of items  
36 specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7),  
37 or (a)(8) of this section.

38 (f) When property is forfeited under this chapter the board or  
39 seizing law enforcement agency may:

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

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

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

9 (4) Forward it to the drug enforcement administration for  
10 disposition.

11 (g)(1) A law enforcement officer and his or her spouse, or any  
12 other person acting for or on behalf of or in concert with the law  
13 enforcement officer, may not purchase by auction or any other means,  
14 any real or personal property seized by or forfeited to the  
15 jurisdiction in which the law enforcement officer is employed if the  
16 seizure or forfeiture occurred as a result of an investigation or  
17 arrest in which the officer participated.

18 (2) Any person violating this subsection shall return all  
19 wrongfully purchased items to the jurisdiction from which the item or  
20 items were purchased. The purchaser is also liable for all cost of the  
21 sale associated with any returned item, together with interest  
22 calculated at the statutory rate.

23 (h)(1) When property is forfeited, the seizing agency shall keep a  
24 record indicating the identity of the prior owner, if known, a  
25 description of the property, the disposition of the property, the value  
26 of the property at the time of seizure, and the amount of proceeds  
27 realized from disposition of the property.

28 (2) Each seizing agency shall retain records of forfeited property  
29 for at least seven years.

30 (3) Each seizing agency shall file a report including a copy of the  
31 records of forfeited property with the state treasurer each calendar  
32 quarter.

33 (4) The quarterly report need not include a record of forfeited  
34 property that is still being held for use as evidence during the  
35 investigation or prosecution of a case or during the appeal from a  
36 conviction.

37 ~~((h))~~ (i)(1) By January 31st of each year, each seizing agency  
38 shall remit to the state treasurer an amount equal to ten percent of  
39 the net proceeds of any property forfeited during the preceding

1 calendar year. Money remitted shall be deposited in the violence  
2 reduction and drug enforcement (~~(and education)~~) account under RCW  
3 69.50.520.

4 (2) The net proceeds of forfeited property is the value of the  
5 forfeitable interest in the property after deducting the cost of  
6 satisfying any bona fide security interest to which the property is  
7 subject at the time of seizure; and in the case of sold property, after  
8 deducting the cost of sale, including reasonable fees or commissions  
9 paid to independent selling agents, and the cost of any valid  
10 landlord's claim for damages under subsection (~~(n)~~) (o) of this  
11 section.

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

22 (~~(i)~~) (j) Forfeited property and net proceeds not required to be  
23 paid to the state treasurer shall be retained by the seizing law  
24 enforcement agency exclusively for the expansion and improvement of  
25 controlled substances related law enforcement activity. Money retained  
26 under this section may not be used to supplant preexisting funding  
27 sources.

28 (~~(j)~~) (k) Controlled substances listed in Schedule I, II, III,  
29 IV, and V that are possessed, transferred, sold, or offered for sale in  
30 violation of this chapter are contraband and shall be seized and  
31 summarily forfeited to the state. Controlled substances listed in  
32 Schedule I, II, III, IV, and V, which are seized or come into the  
33 possession of the board, the owners of which are unknown, are  
34 contraband and shall be summarily forfeited to the board.

35 (~~(k)~~) (l) Species of plants from which controlled substances in  
36 Schedules I and II may be derived which have been planted or cultivated  
37 in violation of this chapter, or of which the owners or cultivators are  
38 unknown, or which are wild growths, may be seized and summarily  
39 forfeited to the board.

1       (~~(l)~~) (m) The failure, upon demand by a board inspector or law  
2 enforcement officer, of the person in occupancy or in control of land  
3 or premises upon which the species of plants are growing or being  
4 stored to produce an appropriate registration or proof that he is the  
5 holder thereof constitutes authority for the seizure and forfeiture of  
6 the plants.

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

14       (~~(n)~~) (o) A landlord may assert a claim against proceeds from the  
15 sale of assets seized and forfeited under subsection (f)(2) of this  
16 section, only if:

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

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

24       (i) Only if the funds applied under (2) of this subsection are  
25 insufficient to satisfy the damage directly caused by a law enforcement  
26 officer, may the landlord seek compensation for the damage by filing a  
27 claim against the governmental entity under whose authority the law  
28 enforcement agency operates within thirty days after the search;

29       (ii) Only if the governmental entity denies or fails to respond to  
30 the landlord's claim within sixty days of the date of filing, may the  
31 landlord collect damages under this subsection by filing within thirty  
32 days of denial or the expiration of the sixty-day period, whichever  
33 occurs first, a claim with the seizing law enforcement agency. The  
34 seizing law enforcement agency must notify the landlord of the status  
35 of the claim by the end of the thirty-day period. Nothing in this  
36 section requires the claim to be paid by the end of the sixty-day or  
37 thirty-day period.

1 (3) For any claim filed under (2) of this subsection, the law  
2 enforcement agency shall pay the claim unless the agency provides  
3 substantial proof that the landlord either:

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

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

9 ~~((+o+))~~ (p) The landlord's claim for damages under subsection  
10 ~~((+n+))~~ (o) of this section may not include a claim for loss of  
11 business and is limited to:

12 (1) Damage to tangible property and clean-up costs;

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

15 (3) The proceeds from the sale of the specific tenant's property  
16 seized and forfeited under subsection (f)(2) of this section; and

17 (4) The proceeds available after the seizing law enforcement agency  
18 satisfies any bona fide security interest in the tenant's property and  
19 costs related to sale of the tenant's property as provided by  
20 subsection ~~((+h+))~~ (i)(2) of this section.

21 ~~((+p+))~~ (q) Subsections ~~((+n+))~~ (o) and ~~((+o+))~~ (p) of this section  
22 do not limit any other rights a landlord may have against a tenant to  
23 collect for damages. However, if a law enforcement agency satisfies a  
24 landlord's claim under subsection ~~((+n+))~~ (o) of this section, the  
25 rights the landlord has against the tenant for damages directly caused  
26 by a law enforcement officer under the terms of the landlord and  
27 tenant's contract are subrogated to the law enforcement agency.

--- END ---