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SENATE BILL 5036

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State of Washington

55th Legislature

1997 Regular Session

By Senator Roach

Read first time 01/13/97. Referred to Committee on Law & Justice.

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 law enforcement officer and his or her immediate family  
31 members may not purchase, by auction or any other means, any firearm  
32 seized by or forfeited to the jurisdiction in which the law enforcement  
33 officer is employed. For the purposes of this subsection, "immediate  
34 family member" means a spouse, brother, sister, grandparent, parent,  
35 child, or grandchild.

36 (4) The court shall order the firearm returned to the owner upon a  
37 showing that there is no probable cause to believe a violation of  
38 subsection (1) of this section existed or the firearm was stolen from

1 the owner or the owner neither had knowledge of nor consented to the  
2 act or omission involving the firearm which resulted in its forfeiture.  
3 ~~((4))~~ (5) A law enforcement officer of the state or of any county  
4 or municipality may confiscate a firearm found to be in the possession  
5 of a person under circumstances specified in subsection (1) of this  
6 section. After confiscation, the firearm shall not be surrendered  
7 except: (a) To the prosecuting attorney for use in subsequent legal  
8 proceedings; (b) for disposition according to an order of a court  
9 having jurisdiction as provided in subsection (1) of this section; or  
10 (c) to the owner if the proceedings are dismissed or as directed in  
11 subsection ~~((3))~~ (4) of this section.

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

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

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

17 (b) All furnishings, fixtures, equipment, and stock, including  
18 without limitation furnishings and fixtures adaptable to nongambling  
19 uses and equipment and stock for printing, recording, computing,  
20 transporting, or safekeeping, used in connection with professional  
21 gambling or maintaining a gambling premises;

22 (c) All conveyances, including aircraft, vehicles, or vessels, that  
23 are used, or intended for use, in any manner to facilitate the sale,  
24 delivery, receipt, or operation of any gambling device, or the  
25 promotion or operation of a professional gambling activity, except  
26 that:

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

32 (ii) A conveyance is not subject to forfeiture under this section  
33 by reason of any act or omission established by the owner thereof to  
34 have been committed or omitted without the owner's knowledge or  
35 consent;

36 (iii) A forfeiture of a conveyance encumbered by a bona fide  
37 security interest is subject to the interest of the secured party if

1 the secured party neither had knowledge of nor consented to the act or  
2 omission; and

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

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

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

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

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

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

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

38 Real property forfeited under this chapter that is encumbered by a  
39 bona fide security interest remains subject to the interest of the

1 secured party if the secured party, at the time the security interest  
2 was created, neither had knowledge of nor consented to the act or  
3 omission. Property may not be forfeited under this subsection, to the  
4 extent of the interest of an owner, by reason of any act or omission  
5 committed or omitted without the owner's knowledge or consent.

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

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

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

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

22 (iii) A law enforcement officer has probable cause to believe that  
23 the property is directly or indirectly dangerous to health or safety;  
24 or

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

28 (3) In the event of seizure under subsection (2) of this section,  
29 proceedings for forfeiture are deemed commenced by the seizure. The  
30 law enforcement agency under whose authority the seizure was made shall  
31 cause notice to be served within fifteen days following the seizure on  
32 the owner of the property seized and the person in charge thereof and  
33 any person having any known right or interest therein, including any  
34 community property interest, of the seizure and intended forfeiture of  
35 the seized property. Service of notice of seizure of real property  
36 must be made according to the rules of civil procedure. However, the  
37 state may not obtain a default judgment with respect to real property  
38 against a party who is served by substituted service absent an  
39 affidavit stating that a good faith effort has been made to ascertain

1 if the defaulted party is incarcerated within the state, and that there  
2 is no present basis to believe that the party is incarcerated within  
3 the state. Notice of seizure in the case of property subject to a  
4 security interest that has been perfected by filing a financing  
5 statement in accordance with chapter 62A.9 RCW, or a certificate of  
6 title, must be made by service upon the secured party or the secured  
7 party's assignee at the address shown on the financing statement or the  
8 certificate of title. The notice of seizure in other cases may be  
9 served by any method authorized by law or court rule including but not  
10 limited to service by certified mail with return receipt requested.  
11 Service by mail is deemed complete upon mailing within the fifteen-day  
12 period following the seizure.

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

22 (5) If any person notifies the seizing law enforcement agency in  
23 writing of the person's claim of ownership or right to possession of  
24 items specified in subsection (1)(b), (c), (d), (e), (f), or (g) of  
25 this section within forty-five days of the seizure in the case of  
26 personal property and ninety days in the case of real property, the  
27 person or persons must be afforded a reasonable opportunity to be heard  
28 as to the claim or right. The hearing must be before the chief law  
29 enforcement officer of the seizing agency or the chief law enforcement  
30 officer's designee, except if the seizing agency is a state agency as  
31 defined in RCW 34.12.020(4), the hearing must be before the chief law  
32 enforcement officer of the seizing agency or an administrative law  
33 judge appointed under chapter 34.12 RCW, except that any person  
34 asserting a claim or right may remove the matter to a court of  
35 competent jurisdiction. Removal of any matter involving personal  
36 property may only be accomplished according to the rules of civil  
37 procedure. The person seeking removal of the matter must serve process  
38 against the state, county, political subdivision, or municipality that  
39 operates the seizing agency, and any other party of interest, in

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

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

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

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

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

32 (7) A law enforcement officer and his or her immediate family  
33 members may not purchase, by auction or any other means, any real or  
34 personal property seized by or forfeited to the jurisdiction in which  
35 the law enforcement officer is employed. For the purposes of this  
36 subsection, "immediate family member" means a spouse, brother, sister,  
37 grandparent, parent, child, or grandchild.

38 (8)(a) If property is forfeited, the seizing agency shall keep a  
39 record indicating the identity of the prior owner, if known, a



1 description of the property, the disposition of the property, the value  
2 of the property at the time of seizure, and the amount of proceeds  
3 realized from disposition of the property. The net proceeds of  
4 forfeited property is the value of the forfeitable interest in the  
5 property after deducting the cost of satisfying any bona fide security  
6 interest to which the property is subject at the time of seizure, and  
7 in the case of sold property, after deducting the cost of sale,  
8 including reasonable fees or commissions paid to independent selling  
9 agents.

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

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

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

19 ~~((+8+))~~ (9) The seizing law enforcement agency shall retain  
20 forfeited property and net proceeds exclusively for the expansion and  
21 improvement of gambling-related law enforcement activity. Money  
22 retained under this section may not be used to supplant preexisting  
23 funding sources.

24 ~~((+9+))~~ (10) Gambling devices that are possessed, transferred,  
25 sold, or offered for sale in violation of this chapter are contraband  
26 and must be seized and summarily forfeited to the state. Gambling  
27 equipment that is seized or comes into the possession of a law  
28 enforcement agency, the owners of which are unknown, are contraband and  
29 must be summarily forfeited to the state.

30 ~~((+10+))~~ (11) Upon the entry of an order of forfeiture of real  
31 property, the court shall forward a copy of the order to the assessor  
32 of the county in which the property is located. The superior court  
33 shall enter orders for the forfeiture of real property, subject to  
34 court rules. The seizing agency shall file such an order in the county  
35 auditor's records in the county in which the real property is located.

36 ~~((+11+))~~ (12)(a) A landlord may assert a claim against proceeds  
37 from the sale of assets seized and forfeited under subsection (6)(b) of  
38 this section, only if:

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

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

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

13 (B) Only if the governmental entity denies or fails to respond to  
14 the landlord's claim within sixty days of the date of filing, may the  
15 landlord collect damages under this subsection by filing within thirty  
16 days of denial or the expiration of the sixty-day period, whichever  
17 occurs first, a claim with the seizing law enforcement agency. The  
18 seizing law enforcement agency shall notify the landlord of the status  
19 of the claim by the end of the thirty-day period. This section does  
20 not require the claim to be paid by the end of the sixty-day or thirty-  
21 day period.

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

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

27 (ii) Failed to respond to a notification of the illegal activity,  
28 provided by a law enforcement agency within seven days of receipt of  
29 notification of the illegal activity.

30 (~~(12)~~) (13) The landlord's claim for damages under subsection  
31 (~~(11)~~) (12) of this section may not include a claim for loss of  
32 business and is limited to:

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

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

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

38 (d) The proceeds available after the seizing law enforcement agency  
39 satisfies any bona fide security interest in the tenant's property and

1 costs related to sale of the tenant's property as provided by  
2 subsection ~~((7))~~ (8)(a) of this section.

3 ~~((13))~~ (14) Subsections ~~((11))~~ (12) and ~~((12))~~ (13) of this  
4 section do not limit any other rights a landlord may have against a  
5 tenant to collect for damages. However, if a law enforcement agency  
6 satisfies a landlord's claim under subsection ~~((11))~~ (12) of this  
7 section, the rights the landlord has against the tenant for damages  
8 directly caused by a law enforcement officer under the terms of the  
9 landlord and tenant's contract are subrogated to the law enforcement  
10 agency.

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

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

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

16 ~~((2))~~ (b) All raw materials, equipment, and other tangible  
17 personal property of any kind used or intended to be used to  
18 manufacture or process any visual or printed matter that depicts a  
19 minor engaged in sexually explicit conduct, and all conveyances,  
20 including aircraft, vehicles, or vessels that are used or intended for  
21 use to transport, or in any manner to facilitate the transportation of,  
22 visual or printed matter in violation of RCW 9.68A.050 or 9.68A.060,  
23 but:

24 ~~((a))~~ (i) No conveyance used by any person as a common carrier in  
25 the transaction of business as a common carrier is subject to  
26 forfeiture under this section unless it appears that the owner or other  
27 person in charge of the conveyance is a consenting party or privy to a  
28 violation of this chapter;

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

33 ~~((c))~~ (iii) A forfeiture of property encumbered by a bona fide  
34 security interest is subject to the interest of the secured party if  
35 the secured party neither had knowledge of nor consented to the act or  
36 omission; and

37 ~~((d))~~ (iv) When the owner of a conveyance has been arrested under  
38 this chapter the conveyance may not be subject to forfeiture unless it

1 is seized or process is issued for its seizure within ten days of the  
2 owner's arrest.

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

8 ~~((+4))~~ (2) Property subject to forfeiture under this chapter may  
9 be seized by any law enforcement officer of this state upon process  
10 issued by any superior court having jurisdiction over the property.  
11 Seizure without process may be made if:

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

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

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

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

23 ~~((+5))~~ (3) In the event of seizure under subsection ~~((+4))~~ (2) of  
24 this section, proceedings for forfeiture shall be deemed commenced by  
25 the seizure. The law enforcement agency under whose authority the  
26 seizure was made shall cause notice to be served within fifteen days  
27 following the seizure on the owner of the property seized and the  
28 person in charge thereof and any person having any known right or  
29 interest therein, of the seizure and intended forfeiture of the seized  
30 property. The notice may be served by any method authorized by law or  
31 court rule including but not limited to service by certified mail with  
32 return receipt requested. Service by mail shall be deemed complete  
33 upon mailing within the fifteen day period following the seizure.

34 ~~((+6))~~ (4) If no person notifies the seizing law enforcement  
35 agency in writing of the person's claim of ownership or right to  
36 possession of seized items within forty-five days of the seizure, the  
37 item seized shall be deemed forfeited.

38 ~~((+7))~~ (5) If any person notifies the seizing law enforcement  
39 agency in writing of the person's claim of ownership or right to

1 possession of seized items within forty-five days of the seizure, the  
2 person or persons shall be afforded a reasonable opportunity to be  
3 heard as to the claim or right. The hearing shall be before an  
4 administrative law judge appointed under chapter 34.12 RCW, except that  
5 any person asserting a claim or right may remove the matter to a court  
6 of competent jurisdiction if the aggregate value of the article or  
7 articles involved is more than five hundred dollars. The hearing  
8 before an administrative law judge and any appeal therefrom shall be  
9 under Title 34 RCW. In a court hearing between two or more claimants  
10 to the article or articles involved, the prevailing party shall be  
11 entitled to a judgment for costs and reasonable attorney's fees. The  
12 burden of producing evidence shall be upon the person claiming to be  
13 the lawful owner or the person claiming to have the lawful right to  
14 possession of the seized items. The seizing law enforcement agency  
15 shall promptly return the article or articles to the claimant upon a  
16 determination by the administrative law judge or court that the  
17 claimant is lawfully entitled to possession thereof of the seized  
18 items.

19 ~~((+8+))~~ (6) If property is sought to be forfeited on the ground  
20 that it constitutes proceeds traceable to a violation of this chapter,  
21 the seizing law enforcement agency must prove by a preponderance of the  
22 evidence that the property constitutes proceeds traceable to a  
23 violation of this chapter.

24 ~~((+9+))~~ (7) When property is forfeited under this chapter the  
25 seizing law enforcement agency may:

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

29 (b) Sell that which is not required to be destroyed by law and  
30 which is not harmful to the public. The proceeds and all moneys  
31 forfeited under this chapter shall be used for payment of all proper  
32 expenses of the investigation leading to the seizure, including any  
33 money delivered to the subject of the investigation by the law  
34 enforcement agency, and of the proceedings for forfeiture and sale,  
35 including expenses of seizure, maintenance of custody, advertising,  
36 actual costs of the prosecuting or city attorney, and court costs.  
37 Fifty percent of the money remaining after payment of these expenses  
38 shall be deposited in the criminal justice training account established  
39 under RCW 43.101.210 which shall be appropriated by law to the

1 Washington state criminal justice training commission and fifty percent  
2 shall be deposited in the general fund of the state, county, or city of  
3 the seizing law enforcement agency; or

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

7 (8) A law enforcement officer and his or her immediate family  
8 members may not purchase, by auction or any other means, any personal  
9 property seized by or forfeited to the jurisdiction in which the law  
10 enforcement officer is employed. For the purposes of this subsection,  
11 "immediate family member" means a spouse, brother, sister, grandparent,  
12 parent, child, or grandchild.

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

15 (1)(a) A person who sustains injury to his or her person, business,  
16 or property by an act of criminal profiteering that is part of a  
17 pattern of criminal profiteering activity or by a violation of RCW  
18 9A.82.060 or 9A.82.080 may file an action in superior court for the  
19 recovery of damages and the costs of the suit, including reasonable  
20 investigative and attorney's fees.

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

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

30 (d) In an action filed to prevent, restrain, or remedy a pattern of  
31 criminal profiteering activity or a violation of RCW 9A.82.060 or  
32 9A.82.080, the court, upon proof of the violation, may impose a civil  
33 penalty not exceeding two hundred fifty thousand dollars, in addition  
34 to awarding the cost of the suit, including reasonable investigative  
35 and attorney's fees.

36 (2) The superior court has jurisdiction to prevent, restrain, and  
37 remedy a pattern of criminal profiteering or a violation of RCW  
38 9A.82.060 or 9A.82.080 after making provision for the rights of all

1 innocent persons affected by the violation and after hearing or trial,  
2 as appropriate, by issuing appropriate orders.

3 (3) Prior to a determination of liability, orders issued under  
4 subsection (2) of this section may include, but are not limited to,  
5 entering restraining orders or prohibitions or taking such other  
6 actions, including the acceptance of satisfactory performance bonds, in  
7 connection with any property or other interest subject to damages,  
8 forfeiture, or other restraints pursuant to this section as the court  
9 deems proper. The orders may also include attachment, receivership, or  
10 injunctive relief in regard to personal or real property pursuant to  
11 Title 7 RCW. In shaping the reach or scope of receivership,  
12 attachment, or injunctive relief, the superior court shall provide for  
13 the protection of bona fide interests in property, including community  
14 property, of persons who were not involved in the violation of this  
15 chapter, except to the extent that such interests or property were  
16 acquired or used in such a way as to be subject to forfeiture under RCW  
17 9A.82.100(4)(f).

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

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

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

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

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

33 (e) Ordering the payment of all costs and expenses of the  
34 prosecution and investigation of a pattern of criminal profiteering  
35 activity or a violation of RCW 9A.82.060 or 9A.82.080, civil and  
36 criminal, incurred by the state or county, including any costs of  
37 defense provided at public expense, as appropriate to the state general  
38 fund or the antiprofitteering revolving fund of the county.

1 (f) Ordering forfeiture first as restitution to any person damaged  
2 by an act of criminal profiteering that is part of a pattern of  
3 criminal profiteering then to the state general fund or  
4 antiprofitteering revolving fund of the county, as appropriate, to the  
5 extent not already ordered to be paid in other damages, of the  
6 following:

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

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

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

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

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

29 (a) Any interest acquired or maintained by a person in violation of  
30 RCW 9A.82.060 or 9A.82.080 to the extent of the investment of funds  
31 obtained from a violation of RCW 9A.82.060 or 9A.82.080 and any  
32 appreciation or income attributable to the investment.

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

37 (c) All proceeds traceable to or derived from an offense included  
38 in the pattern of criminal profiteering activity and all moneys,  
39 negotiable instruments, securities, and other things of value



1 significantly used or intended to be used significantly to facilitate  
2 the commission of the offense.

3 (6) A defendant convicted in any criminal proceeding is precluded  
4 in any civil proceeding from denying the essential allegations of the  
5 criminal offense proven in the criminal trial in which the defendant  
6 was convicted. For the purposes of this subsection, a conviction shall  
7 be deemed to have occurred upon a verdict, finding, or plea of guilty,  
8 notwithstanding the fact that appellate review of the conviction and  
9 sentence has been or may be sought. If a subsequent reversal of the  
10 conviction occurs, any judgment that was based upon that conviction may  
11 be reopened upon motion of the defendant.

12 (7) The initiation of civil proceedings under this section shall be  
13 commenced within three years after discovery of the pattern of criminal  
14 profiteering activity or after the pattern should reasonably have been  
15 discovered.

16 (8) The attorney general or county prosecuting attorney may, in a  
17 civil action brought pursuant to this section, file with the clerk of  
18 the superior court a certificate stating that the case is of special  
19 public importance. A copy of that certificate shall be furnished  
20 immediately by the clerk to the presiding chief judge of the superior  
21 court in which the action is pending and, upon receipt of the copy, the  
22 judge shall immediately designate a judge to hear and determine the  
23 action. The judge so designated shall promptly assign the action for  
24 hearing, participate in the hearings and determination, and cause the  
25 action to be expedited.

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

28 (10) A person other than the attorney general or county prosecuting  
29 attorney who files an action under this section shall serve notice and  
30 one copy of the pleading on the attorney general within thirty days  
31 after the action is filed with the superior court. The notice shall  
32 identify the action, the person, and the person's attorney. Service of  
33 the notice does not limit or otherwise affect the right of the state to  
34 maintain an action under this section or intervene in a pending action  
35 nor does it authorize the person to name the state or the attorney  
36 general as a party to the action.

37 (11) Except in cases filed by a county prosecuting attorney, the  
38 attorney general may, upon timely application, intervene in any civil  
39 action or proceeding brought under this section if the attorney general

1 certifies that in the attorney general's opinion the action is of  
2 special public importance. Upon intervention, the attorney general may  
3 assert any available claim and is entitled to the same relief as if the  
4 attorney general had instituted a separate action.

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

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

14 (14) Upon motion by the defendant, the court may authorize the sale  
15 or transfer of assets subject to an order or lien authorized by this  
16 chapter for the purpose of paying actual attorney's fees and costs of  
17 defense. The motion shall specify the assets for which sale or  
18 transfer is sought and shall be accompanied by the defendant's sworn  
19 statement that the defendant has no other assets available for such  
20 purposes. No order authorizing such sale or transfer may be entered  
21 unless the court finds that the assets involved are not subject to  
22 possible forfeiture under RCW 9A.82.100(4)(f). Prior to disposition of  
23 the motion, the court shall notify the state of the assets sought to be  
24 sold or transferred and shall hear argument on the issue of whether the  
25 assets are subject to forfeiture under RCW 9A.82.100(4)(f). Such a  
26 motion may be made from time to time and shall be heard by the court on  
27 an expedited basis.

28 (15) A law enforcement officer and his or her immediate family  
29 members may not purchase, by auction or any other means, any real or  
30 personal property seized by or forfeited to the jurisdiction in which  
31 the law enforcement officer is employed. For the purposes of this  
32 subsection, "immediate family member" means a spouse, brother, sister,  
33 grandparent, parent, child, or grandchild.

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

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

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

10 (2) Real or personal property subject to forfeiture under this  
11 chapter may be seized by any law enforcement officer of this state upon  
12 process issued by a superior court that has jurisdiction over the  
13 property. Any agency seizing real property shall file a lis pendens  
14 concerning the property. Real property seized under this section shall  
15 not be transferred or otherwise conveyed until ninety days after  
16 seizure or until a judgment of forfeiture is entered, whichever is  
17 later. Real property seized under this section may be transferred or  
18 conveyed to any person or entity who acquires title by foreclosure or  
19 deed in lieu of foreclosure of a security interest. Seizure of  
20 personal property without process may be made if:

21 (a) The seizure is incident to an arrest or a search under a search  
22 warrant or an inspection under an administrative inspection warrant  
23 issued pursuant to RCW 69.50.502; or

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

27 (3) A seizure under subsection (2) of this section commences  
28 proceedings for forfeiture. The law enforcement agency under whose  
29 authority the seizure was made shall cause notice of the seizure and  
30 intended forfeiture of the seized proceeds to be served within fifteen  
31 days after the seizure on the owner of the property seized and the  
32 person in charge thereof and any person who has a known right or  
33 interest therein, including a community property interest. Service of  
34 notice of seizure of real property shall be made according to the rules  
35 of civil procedure. However, the state may not obtain a default  
36 judgment with respect to real property against a party who is served by  
37 substituted service absent an affidavit stating that a good faith  
38 effort has been made to ascertain if the defaulted party is  
39 incarcerated within the state, and that there is no present basis to

1 believe that the party is incarcerated within the state. The notice of  
2 seizure in other cases may be served by any method authorized by law or  
3 court rule including but not limited to service by certified mail with  
4 return receipt requested. Service by mail is complete upon mailing  
5 within the fifteen-day period after the seizure.

6 (4) If no person notifies the seizing law enforcement agency in  
7 writing of the person's claim of ownership or right to possession of  
8 the property within forty-five days of the seizure in the case of  
9 personal property and ninety days in the case of real property, the  
10 property seized shall be deemed forfeited. The community property  
11 interest in real property of a person whose spouse committed a  
12 violation giving rise to seizure of the real property may not be  
13 forfeited if the person did not participate in the violation.

14 (5) If a person notifies the seizing law enforcement agency in  
15 writing of the person's claim of ownership or right to possession of  
16 property within forty-five days of the seizure in the case of personal  
17 property and ninety days in the case of real property, the person or  
18 persons shall be afforded a reasonable opportunity to be heard as to  
19 the claim or right. The provisions of RCW 69.50.505(e) shall apply to  
20 any such hearing. The seizing law enforcement agency shall promptly  
21 return property to the claimant upon the direction of the  
22 administrative law judge or court.

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

25 (7) A law enforcement officer and his or her immediate family  
26 members may not purchase, by auction or any other means, any real or  
27 personal property seized by or forfeited to the jurisdiction in which  
28 the law enforcement officer is employed. For the purposes of this  
29 subsection, "immediate family member" means a spouse, brother, sister,  
30 grandparent, parent, child, or grandchild.

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

33 (1) The following are subject to seizure and forfeiture and no  
34 property right exists in them: All personal property, including, but  
35 not limited to, any item, object, tool, substance, device, weapon,  
36 machine, vehicle of any kind, money, security, or negotiable  
37 instrument, which has been or was actually employed as an  
38 instrumentality in the commission of, or in aiding or abetting in the

1 commission of any felony, or which was furnished or was intended to be  
2 furnished by any person in the commission of, as a result of, or as  
3 compensation for the commission of, any felony, or which was acquired  
4 in whole or in part with proceeds traceable to the commission of a  
5 felony. No property may be forfeited under this section until after  
6 there has been a superior court conviction of the owner of the property  
7 for the felony in connection with which the property was employed,  
8 furnished, or acquired.

9 A forfeiture of property encumbered by a bona fide security  
10 interest is subject to the interest of the secured party if at the time  
11 the security interest was created, the secured party neither had  
12 knowledge of nor consented to the commission of the felony.

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

17 (a) The seizure is incident to an arrest or a search under a search  
18 warrant;

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

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

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

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

1 statement in accordance with chapter 62A.9 RCW, or a certificate of  
2 title shall be made by service upon the secured party or the secured  
3 party's assignee at the address shown on the financing statement or the  
4 certificate of title.

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

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

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

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

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

9 (7) A law enforcement officer and his or her immediate family  
10 members may not purchase, by auction or any other means, any personal  
11 property seized by or forfeited to the jurisdiction in which the law  
12 enforcement officer is employed. For the purposes of this subsection,  
13 "immediate family member" means a spouse, brother, sister, grandparent,  
14 parent, child, or grandchild.

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 law enforcement officer and his or her immediate family  
30 members may not purchase, by auction or any other means, any vehicle  
31 seized by or forfeited to the jurisdiction in which the law enforcement  
32 officer is employed. For the purposes of this subsection, "immediate  
33 family member" means a spouse, brother, sister, grandparent, parent,  
34 child, or grandchild.

35 (9) When a vehicle is forfeited, the seizing agency shall keep a  
36 record indicating the identity of the prior owner, if known, a  
37 description of the vehicle, the disposition of the vehicle, the value  
38 of the vehicle at the time of seizure, and the amount of proceeds  
39 realized from disposition of the vehicle.

1       (~~(9)~~) (10) Each seizing agency shall retain records of forfeited  
2 vehicles for at least seven years.

3       (~~(10)~~) (11) Each seizing agency shall file a report including a  
4 copy of the records of forfeited vehicles with the state treasurer each  
5 calendar quarter.

6       (~~(11)~~) (12) The quarterly report need not include a record of a  
7 forfeited vehicle that is still being held for use as evidence during  
8 the investigation or prosecution of a case or during the appeal from a  
9 conviction.

10       (~~(12)~~) (13) By January 31st of each year, each seizing agency  
11 shall remit to the state treasurer an amount equal to ten percent of  
12 the net proceeds of vehicles forfeited during the preceding calendar  
13 year. Money remitted shall be deposited in the public safety and  
14 education account.

15       (~~(13)~~) (14) The net proceeds of a forfeited vehicle is the value  
16 of the forfeitable interest in the vehicle after deducting the cost of  
17 satisfying a bona fide security interest to which the vehicle is  
18 subject at the time of seizure; and in the case of a sold vehicle,  
19 after deducting the cost of sale, including reasonable fees or  
20 commissions paid to independent selling agents.

21       (~~(14)~~) (15) The value of a sold forfeited vehicle is the sale  
22 price. The value of a retained forfeited vehicle is the fair market  
23 value of the vehicle at the time of seizure, determined when possible  
24 by reference to an applicable commonly used index, such as the index  
25 used by the department of licensing. A seizing agency may, but need  
26 not, use an independent qualified appraiser to determine the value of  
27 retained vehicles. If an appraiser is used, the value of the vehicle  
28 appraised is net of the cost of the appraisal.

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

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

33       (1) All controlled substances which have been manufactured,  
34 distributed, dispensed, acquired, or possessed in violation of this  
35 chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as  
36 defined in RCW 64.44.010, used or intended to be used in the  
37 manufacture of controlled substances;

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

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

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

11 (i) No conveyance used by any person as a common carrier in the  
12 transaction of business as a common carrier is subject to forfeiture  
13 under this section unless it appears that the owner or other person in  
14 charge of the conveyance is a consenting party or privy to a violation  
15 of this chapter or chapter 69.41 or 69.52 RCW;

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

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

22 (iv) A forfeiture of a conveyance encumbered by a bona fide  
23 security interest is subject to the interest of the secured party if  
24 the secured party neither had knowledge of nor consented to the act or  
25 omission; and

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

31 (5) All books, records, and research products and materials,  
32 including formulas, microfilm, tapes, and data which are used, or  
33 intended for use, in violation of this chapter or chapter 69.41 or  
34 69.52 RCW;

35 (6) All drug paraphernalia;

36 (7) All moneys, negotiable instruments, securities, or other  
37 tangible or intangible property of value furnished or intended to be  
38 furnished by any person in exchange for a controlled substance in  
39 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible

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

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

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

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

31 (iii) The possession of marijuana shall not result in the  
32 forfeiture of real property unless the marijuana is possessed for  
33 commercial purposes, the amount possessed is five or more plants or one  
34 pound or more of marijuana, and a substantial nexus exists between the  
35 possession of marijuana and the real property. In such a case, the  
36 intent of the offender shall be determined by the preponderance of the  
37 evidence, including the offender's prior criminal history, the amount  
38 of marijuana possessed by the offender, the sophistication of the

1 activity or equipment used by the offender, and other evidence which  
2 demonstrates the offender's intent to engage in commercial activity;

3 (iv) The unlawful sale of marijuana or a legend drug shall not  
4 result in the forfeiture of real property unless the sale was forty  
5 grams or more in the case of marijuana or one hundred dollars or more  
6 in the case of a legend drug, and a substantial nexus exists between  
7 the unlawful sale and the real property; and

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

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

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

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

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

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

35 (c) In the event of seizure pursuant to subsection (b), proceedings  
36 for forfeiture shall be deemed commenced by the seizure. The law  
37 enforcement agency under whose authority the seizure was made shall  
38 cause notice to be served within fifteen days following the seizure on  
39 the owner of the property seized and the person in charge thereof and

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

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

29 (e) If any person notifies the seizing law enforcement agency in  
30 writing of the person's claim of ownership or right to possession of  
31 items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6),  
32 (a)(7), or (a)(8) of this section within forty-five days of the seizure  
33 in the case of personal property and ninety days in the case of real  
34 property, the person or persons shall be afforded a reasonable  
35 opportunity to be heard as to the claim or right. The hearing shall be  
36 before the chief law enforcement officer of the seizing agency or the  
37 chief law enforcement officer's designee, except where the seizing  
38 agency is a state agency as defined in RCW 34.12.020(4), the hearing  
39 shall be before the chief law enforcement officer of the seizing agency

1 or an administrative law judge appointed under chapter 34.12 RCW,  
2 except that any person asserting a claim or right may remove the matter  
3 to a court of competent jurisdiction. Removal of any matter involving  
4 personal property may only be accomplished according to the rules of  
5 civil procedure. The person seeking removal of the matter must serve  
6 process against the state, county, political subdivision, or  
7 municipality that operates the seizing agency, and any other party of  
8 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-  
9 five days after the person seeking removal has notified the seizing law  
10 enforcement agency of the person's claim of ownership or right to  
11 possession. The court to which the matter is to be removed shall be  
12 the district court when the aggregate value of personal property is  
13 within the jurisdictional limit set forth in RCW 3.66.020. A hearing  
14 before the seizing agency and any appeal therefrom shall be under Title  
15 34 RCW. In a court hearing between two or more claimants to the  
16 article or articles involved, the prevailing party shall be entitled to  
17 a judgment for costs and reasonable attorney's fees. In cases  
18 involving personal property, the burden of producing evidence shall be  
19 upon the person claiming to be the lawful owner or the person claiming  
20 to have the lawful right to possession of the property. In cases  
21 involving real property, the burden of producing evidence shall be upon  
22 the law enforcement agency. The burden of proof that the seized real  
23 property is subject to forfeiture shall be upon the law enforcement  
24 agency. The seizing law enforcement agency shall promptly return the  
25 article or articles to the claimant upon a determination by the  
26 administrative law judge or court that the claimant is the present  
27 lawful owner or is lawfully entitled to possession thereof of items  
28 specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7),  
29 or (a)(8) of this section.

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

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

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

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



1 (4) Forward it to the drug enforcement administration for  
2 disposition.

3 (g) A law enforcement officer and his or her immediate family  
4 members may not purchase, by auction or any other means, any real or  
5 personal property seized by or forfeited to the jurisdiction in which  
6 the law enforcement officer is employed. For the purposes of this  
7 subsection, "immediate family member" means a spouse, brother, sister,  
8 grandparent, parent, child, or grandchild.

9 (h)(1) When property is forfeited, the seizing agency shall keep a  
10 record indicating the identity of the prior owner, if known, a  
11 description of the property, the disposition of the property, the value  
12 of the property at the time of seizure, and the amount of proceeds  
13 realized from disposition of the property.

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

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

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

23 (~~(h)~~) (i)(1) By January 31st of each year, each seizing agency  
24 shall remit to the state treasurer an amount equal to ten percent of  
25 the net proceeds of any property forfeited during the preceding  
26 calendar year. Money remitted shall be deposited in the violence  
27 reduction and drug enforcement (~~(and education)~~) account under RCW  
28 69.50.520.

29 (2) The net proceeds of forfeited property is the value of the  
30 forfeitable interest in the property after deducting the cost of  
31 satisfying any bona fide security interest to which the property is  
32 subject at the time of seizure; and in the case of sold property, after  
33 deducting the cost of sale, including reasonable fees or commissions  
34 paid to independent selling agents, and the cost of any valid  
35 landlord's claim for damages under subsection (~~(n)~~) (o) of this  
36 section.

37 (3) The value of sold forfeited property is the sale price. The  
38 value of retained forfeited property is the fair market value of the  
39 property at the time of seizure, determined when possible by reference

1 to an applicable commonly used index, such as the index used by the  
2 department of licensing for valuation of motor vehicles. A seizing  
3 agency may use, but need not use, an independent qualified appraiser to  
4 determine the value of retained property. If an appraiser is used, the  
5 value of the property appraised is net of the cost of the appraisal.  
6 The value of destroyed property and retained firearms or illegal  
7 property is zero.

8 ~~((+i))~~ (j) Forfeited property and net proceeds not required to be  
9 paid to the state treasurer shall be retained by the seizing law  
10 enforcement agency exclusively for the expansion and improvement of  
11 controlled substances related law enforcement activity. Money retained  
12 under this section may not be used to supplant preexisting funding  
13 sources.

14 ~~((+j))~~ (k) Controlled substances listed in Schedule I, II, III,  
15 IV, and V that are possessed, transferred, sold, or offered for sale in  
16 violation of this chapter are contraband and shall be seized and  
17 summarily forfeited to the state. Controlled substances listed in  
18 Schedule I, II, III, IV, and V, which are seized or come into the  
19 possession of the board, the owners of which are unknown, are  
20 contraband and shall be summarily forfeited to the board.

21 ~~((+k))~~ (l) Species of plants from which controlled substances in  
22 Schedules I and II may be derived which have been planted or cultivated  
23 in violation of this chapter, or of which the owners or cultivators are  
24 unknown, or which are wild growths, may be seized and summarily  
25 forfeited to the board.

26 ~~((+l))~~ (m) The failure, upon demand by a board inspector or law  
27 enforcement officer, of the person in occupancy or in control of land  
28 or premises upon which the species of plants are growing or being  
29 stored to produce an appropriate registration or proof that he is the  
30 holder thereof constitutes authority for the seizure and forfeiture of  
31 the plants.

32 ~~((+m))~~ (n) Upon the entry of an order of forfeiture of real  
33 property, the court shall forward a copy of the order to the assessor  
34 of the county in which the property is located. Orders for the  
35 forfeiture of real property shall be entered by the superior court,  
36 subject to court rules. Such an order shall be filed by the seizing  
37 agency in the county auditor's records in the county in which the real  
38 property is located.

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

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

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

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

16       (ii) Only if the governmental entity denies or fails to respond to  
17 the landlord's claim within sixty days of the date of filing, may the  
18 landlord collect damages under this subsection by filing within thirty  
19 days of denial or the expiration of the sixty-day period, whichever  
20 occurs first, a claim with the seizing law enforcement agency. The  
21 seizing law enforcement agency must notify the landlord of the status  
22 of the claim by the end of the thirty-day period. Nothing in this  
23 section requires the claim to be paid by the end of the sixty-day or  
24 thirty-day period.

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

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

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

33       (~~(e)~~) (p) The landlord's claim for damages under subsection  
34 (~~(n)~~) (o) of this section may not include a claim for loss of  
35 business and is limited to:

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

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

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

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

7       ~~((p))~~ (q) Subsections ~~((n))~~ (o) and ~~((o))~~ (p) of this section  
8 do not limit any other rights a landlord may have against a tenant to  
9 collect for damages. However, if a law enforcement agency satisfies a  
10 landlord's claim under subsection ~~((n))~~ (o) of this section, the  
11 rights the landlord has against the tenant for damages directly caused  
12 by a law enforcement officer under the terms of the landlord and  
13 tenant's contract are subrogated to the law enforcement agency.

--- END ---