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**SUBSTITUTE HOUSE BILL 2761**

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**State of Washington                      59th Legislature                      2006 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Springer, Rodne, Lantz, Williams and Moeller)

READ FIRST TIME 1/31/06.

1            AN ACT Relating to money laundering; amending RCW 9A.83.030; and  
2    prescribing penalties.

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

4            **Sec. 1.** RCW 9A.83.030 and 2001 c 168 s 2 are each amended to read  
5    as follows:

6            (1) Property that is involved in a transaction or attempted  
7    transaction in violation of RCW 9A.83.020, or that is a proceed(~~s~~)  
8    traceable to or derived from specified unlawful activity or a violation  
9    of RCW 9A.83.020 (~~are~~) is subject to seizure and forfeiture. A law  
10   enforcement agency, the attorney general, or a county prosecuting  
11   attorney may file a civil action for the forfeiture of (~~proceeds~~) the  
12   property, or forfeiture may be commenced by seizure of the property as  
13   provided in subsections (2) and (3) of this section. Unless otherwise  
14   provided for under this section, no property rights exist in (~~these~~  
15   ~~proceeds~~) the property. All right, title, and interest in the  
16   (~~proceeds~~) property shall vest in the governmental entity of which  
17   the seizing or suing law enforcement agency is a part upon commission  
18   of the act or omission giving rise to forfeiture under this section.

1 (2) Real or personal property subject to forfeiture under this  
2 chapter may be seized by any law enforcement officer of this state upon  
3 process issued by a superior court that has jurisdiction over the  
4 property. Any agency seizing real property shall file a lis pendens  
5 concerning the property. Real property seized under this section shall  
6 not be transferred or otherwise conveyed until ninety days after  
7 seizure or until a judgment of forfeiture is entered, whichever is  
8 later. Real property seized under this section may be transferred or  
9 conveyed to any person or entity who acquires title by foreclosure or  
10 deed in lieu of foreclosure of a security interest. Seizure of  
11 personal property 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 issued pursuant to RCW 69.50.502; (~~(or)~~)

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

18 (c) The law enforcement officer has probable cause to believe that  
19 the property is forfeitable pursuant to this section, and an exception  
20 to the federal and state constitutional search warrant requirements  
21 would apply.

22 (3) A seizure under subsection (2) of this section commences  
23 proceedings for forfeiture. The law enforcement agency under whose  
24 authority the seizure was made shall cause notice of the seizure and  
25 intended forfeiture of the seized (~~(proceeds)~~) property to be served  
26 within fifteen days after the seizure on the owner of the property  
27 seized and the person in charge thereof and any person who has a known  
28 right or interest therein, including a community property interest.  
29 Service of notice of seizure of real property shall be made according  
30 to the rules of civil procedure. However, the state may not obtain a  
31 default judgment with respect to real property against a party who is  
32 served by substituted service absent an affidavit stating that a good  
33 faith effort has been made to ascertain if the defaulted party is  
34 incarcerated within the state, and that there is no present basis to  
35 believe that the party is incarcerated within the state. Notice of  
36 seizure in the case of property subject to a security interest that has  
37 been perfected by filing a financing statement in accordance with  
38 chapter 62A.9A RCW, or a certificate of title, shall be made by service

1 upon the secured party or the secured party's assignee at the address  
2 shown on the financing statement or the certificate of title. The  
3 notice of seizure in other cases may be served by any method authorized  
4 by law or court rule including but not limited to service by certified  
5 mail with return receipt requested. Service by mail is complete upon  
6 mailing within the fifteen-day period after the seizure.

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

15 (5) If a person notifies the seizing law enforcement agency in  
16 writing of the person's claim of ownership or right to possession of  
17 property within forty-five days of the seizure in the case of personal  
18 property and ninety days in the case of real property, the person or  
19 persons shall be afforded a reasonable opportunity to be heard as to  
20 the claim or right. The provisions of RCW 69.50.505(~~(+e)~~) (5) shall  
21 apply to any such hearing. The seizing law enforcement agency shall  
22 promptly return property to the claimant upon the direction of the  
23 administrative law judge or court. A forfeiture proceeding removed to  
24 a court of competent jurisdiction under this subsection shall be  
25 conducted under the civil rules governing that court.

26 (6)(a) With respect to a property interest owned at the time of the  
27 conduct giving rise to the forfeiture, the interest of an owner cannot  
28 be forfeited under this section by reason of any act or omission  
29 established by a preponderance of the evidence by the owner to have  
30 been committed or omitted without the owner's knowledge or consent.

31 (b) With respect to a property interest acquired after the conduct  
32 giving rise to the forfeiture has taken place, the interest of an owner  
33 cannot be forfeited under this section if the owner establishes by a  
34 preponderance of the evidence that, at the time the owner acquired the  
35 interest in the property, the owner was a bona fide purchaser or a  
36 seller of goods or services for value and did not know and was  
37 reasonably without cause to believe that the property was subject to  
38 forfeiture.

1 (c) A forfeiture of property encumbered by a security interest is  
2 subject to the interest of the secured party if the secured party  
3 proves by a preponderance of the evidence that the security interest is  
4 a bona fide security interest and the secured party, at the time the  
5 security interest was created, did not know of the acts or omissions  
6 that are the basis of the forfeiture.

7 (7) In any proceeding to forfeit property under this title, where  
8 the claimant substantially prevails, the claimant is entitled to  
9 reasonable attorneys' fees reasonably incurred by the claimant. In  
10 addition, in a court hearing between two or more claimants to the  
11 property involved, the prevailing party is entitled to a judgment for  
12 costs and reasonable attorneys' fees.

13 (8) Orders for the forfeiture of real property shall be entered by  
14 the superior court, subject to court rules. Such an order shall be  
15 filed by the seizing agency in the county auditor's records in the  
16 county in which the real property is located.

17 (9) All property forfeited shall be used first to pay restitution  
18 to any person damaged by any specified unlawful activity or violation  
19 of RCW 9A.83.020 that is the basis of the forfeiture. If there is a  
20 criminal restitution order in favor of a person entitled to restitution  
21 under this subsection, the forfeiture proceeds payable to that person  
22 shall be paid through the registry of the court that entered the  
23 criminal restitution order.

24 (10) Disposition of any remaining forfeited property shall be made  
25 in the manner provided for in RCW 69.50.505 (~~(h)~~) (8) through (~~(j)~~  
26 and ~~(n)~~) (10), except that restitution paid under subsection (9) of  
27 this section shall be deducted in determining the net proceeds of  
28 forfeited property, and property and proceeds of forfeiture retained by  
29 the seizing or suing law enforcement agency shall be used exclusively  
30 for the expansion and improvement of law enforcement activity in  
31 general.

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