

SSB 6566 - H AMD TO ELHS COMM AMD (H-5045.1/18) **1295**
By Representative Kilduff

1 On page 27, beginning on line 14 of the amendment, strike all of
2 sections 9 and 10 and insert the following:

3 "Sec. 9. RCW 9.68A.120 and 2014 c 188 s 3 are each amended to
4 read as follows:

5 The following are subject to seizure and forfeiture:

6 (1) All visual or printed matter that depicts a minor engaged in
7 sexually explicit conduct.

8 (2) All raw materials, equipment, and other tangible personal
9 property of any kind used or intended to be used to manufacture or
10 process any visual or printed matter that depicts a minor engaged in
11 sexually explicit conduct, and all conveyances, including aircraft,
12 vehicles, or vessels that are used or intended for use to transport,
13 or in any manner to facilitate the transportation of, visual or
14 printed matter in violation of RCW 9.68A.050 or 9.68A.060, but:

15 (a) No conveyance used by any person as a common carrier in the
16 transaction of business as a common carrier is subject to forfeiture
17 under this section unless it appears that the owner or other person
18 in charge of the conveyance is a consenting party or privy to a
19 violation of this chapter;

20 (b) No property is subject to forfeiture under this section by
21 reason of any act or omission established by the owner of the
22 property to have been committed or omitted without the owner's
23 knowledge or consent;

24 (c) A forfeiture of property encumbered by a bona fide security
25 interest is subject to the interest of the secured party if the
26 secured party neither had knowledge of nor consented to the act or
27 omission; and

28 (d) When the owner of a conveyance has been arrested under this
29 chapter the conveyance may not be subject to forfeiture unless it is
30 seized or process is issued for its seizure within ten days of the
31 owner's arrest.

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

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

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

14 (b) The property subject to seizure has been the subject of a
15 prior judgment in favor of the state in a criminal injunction or
16 forfeiture 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
21 that the property was used or is intended to be used in violation of
22 this chapter; or

23 (e) The property subject to seizure is any depiction of any other
24 minor engaged in an act of sexually explicit conduct in the
25 possession of a minor.

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

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

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

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

26 (9) When property is forfeited under this chapter the seizing law
27 enforcement agency may:

28 (a) Retain it for official use or upon application by any law
29 enforcement agency of this state release the property to that agency
30 for the exclusive use of enforcing this chapter or chapter 9A.88 RCW;

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

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

36 (10)(a) By January 31st of each year, each seizing agency shall
37 remit to the state treasurer an amount equal to ten percent of the
38 net proceeds of any property forfeited during the preceding calendar
39 year. Money remitted shall be deposited in the prostitution
40 prevention and intervention account under RCW 43.63A.740.

1 (b) The net proceeds of forfeited property is the value of the
2 forfeitable interest in the property after deducting the cost of
3 satisfying any bona fide security interest to which the property is
4 subject at the time of seizure; and in the case of sold property,
5 after deducting the cost of sale, including reasonable fees or
6 commissions paid to an independent selling agency.

7 (c) The value of sold forfeited property is the sale price. The
8 value of retained forfeited property is the fair market value of the
9 property at the time of seizure determined when possible by reference
10 to an applicable commonly used index. A seizing agency may use, but
11 need not use, an independent qualified appraiser to determine the
12 value of retained property. If an appraiser is used, the value of the
13 property appraised is net of the cost of the appraisal. The value of
14 destroyed property and retained firearms or illegal property is zero.

15 (11) Forfeited property and net proceeds not required to be paid
16 to the state treasurer under this chapter shall be used for payment
17 of all proper expenses of the investigation leading to the seizure,
18 including any money delivered to the subject of the investigation by
19 the law enforcement agency, and of the proceedings for forfeiture and
20 sale, including expenses of seizure, maintenance of custody,
21 advertising, actual costs of the prosecuting or city attorney, and
22 court costs. Money remaining after payment of these expenses shall be
23 retained by the seizing law enforcement agency for the exclusive use
24 of enforcing the provisions of this chapter or chapter 9A.88 RCW."

EFFECT: Replaces the requirement that courts order forfeiture of intimate images of minors or depictions of minors engaged in an act of sexually explicit conduct in the possession of other minors with the authority for law enforcement to seize without court process a depiction of any other minor engaged in an act of sexually explicit conduct in the possession of a minor. This seizure would be subject to existing requirements regarding the seizure of depictions of minors engaged in an act of sexually explicit conduct.

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