
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2718

State of Washington

65th Legislature

2018 Regular Session

By House Appropriations (originally sponsored by Representatives Shea and Goodman)

READ FIRST TIME 02/06/18.

1 AN ACT Relating to seizure and forfeiture procedures and
2 reporting; amending RCW 9.68A.120, 9A.88.150, 9A.83.030, 10.105.010,
3 19.290.230, 46.61.5058, 70.74.400, 77.15.070, 69.50.505, and
4 38.42.020; adding a new chapter to Title 7 RCW; creating a new
5 section; prescribing penalties; and providing effective dates.

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

7 NEW SECTION. **Sec. 1.** (1) Except with respect to contraband
8 items, which shall be seized and summarily forfeited, proceedings for
9 forfeiture are deemed commenced by the seizure. The agency under
10 whose authority the seizure was made shall cause notice to be served
11 within fifteen days following the seizure on the owner of the
12 property seized and the person in charge thereof and any person
13 having any known right or interest therein, including any community
14 property interest, of the seizure and intended forfeiture of the
15 seized property. Service of notice of seizure of real property must
16 be made according to the rules of civil procedure. However, a default
17 judgment with respect to real property may not be obtained against a
18 party who is served by substituted service absent an affidavit
19 stating that a good faith effort has been made to ascertain if the
20 defaulted party is incarcerated within the state, and that there is
21 no present basis to believe that the party is incarcerated within the

1 state. Notice of seizure in the case of property subject to a
2 security interest that has been perfected by filing a financing
3 statement in accordance with chapter 62A.9A RCW, or a certificate of
4 title, must be made by service upon the secured party or the secured
5 party's assignee at the address shown on the financing statement or
6 the certificate of title. The notice of seizure in other cases may be
7 served by any method authorized by law or court rule including, but
8 not limited to, service by certified mail with return receipt
9 requested. Service by mail is deemed complete upon mailing within the
10 fifteen-day period following the seizure.

11 (2) If no person notifies the seizing agency in writing of the
12 person's claim of ownership or right to possession of an item seized
13 within sixty days of the service of notice from the seizing agency in
14 the case of personal property and one hundred twenty days in the case
15 of real property, the item seized is deemed forfeited. The community
16 property interest in real property of a person whose spouse or
17 domestic partner committed a violation giving rise to seizure of the
18 real property may not be forfeited if the person did not participate
19 in the violation.

20 (3) If any person notifies the seizing agency in writing of the
21 person's claim of ownership or right to possession of an item seized
22 within sixty days of the service of notice from the seizing agency in
23 the case of personal property and one hundred twenty days in the case
24 of real property, the person or persons must be afforded a reasonable
25 opportunity to be heard as to the claim or right. The notice of claim
26 may be served by any method authorized by law or court rule
27 including, but not limited to, service by first-class mail. Service
28 by mail is deemed complete upon mailing within the sixty day period
29 following service of the notice of seizure in the case of personal
30 property and within the one hundred twenty day period following
31 service of the notice of seizure in the case of real property.

32 (4) The hearing must be before a hearing officer who is not in
33 the direct chain of command of the chief law enforcement officer of
34 the seizing agency, except that where the seizing agency is a state
35 agency as defined in RCW 34.12.020(4), the hearing must be before a
36 hearing officer who is not in the direct chain of command of the
37 chief law enforcement officer of the seizing agency or an
38 administrative law judge appointed under chapter 34.12 RCW. Such a
39 hearing and any appeal therefrom must be under Title 34 RCW.

1 (5) Any person asserting a claim or right may remove the matter
2 to a court of competent jurisdiction. Removal of any matter involving
3 personal property may only be accomplished according to the rules of
4 civil procedure. The person seeking removal of the matter must serve
5 process against the state, county, political subdivision, or
6 municipality that operates the seizing agency, and any other party of
7 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-
8 five days after the person seeking removal has notified the seizing
9 agency of the person's claim of ownership or right to possession. The
10 court to which the matter is to be removed must be the district court
11 when the aggregate value of personal property is within the
12 jurisdictional limit set forth in RCW 3.66.020.

13 (6)(a) Whether the matter is heard under Title 34 RCW pursuant to
14 subsection (4) of this section or removed to court pursuant to
15 subsection (5) of this section, the burden of proof is upon the
16 seizing agency to establish, by a preponderance of the evidence, that
17 the property is subject to forfeiture.

18 (b) No personal property may be forfeited to the extent of the
19 interest of an owner, by reason of any act or omission committed or
20 omitted without the owner's knowledge or consent;

21 (c) No real property may be forfeited to the extent of the
22 interest of an owner, by reason of any act or omission committed or
23 omitted without the owner's knowledge or consent.

24 (d) A forfeiture of real property encumbered by a bona fide
25 security interest is subject to the interest of the secured party if
26 the secured party, at the time the security interest was created,
27 neither had knowledge of nor consented to the act or omission.

28 (7) The seizing agency shall promptly return seized items, in the
29 same or substantially similar condition as when they were seized, to
30 the claimant upon a determination by the administrative law judge or
31 court that the claimant is the present lawful owner or is lawfully
32 entitled to possession thereof.

33 (8) In any proceeding to forfeit property under this chapter,
34 where the claimant substantially prevails, the claimant is entitled
35 to reasonable attorneys' fees reasonably incurred by the claimant.

36 (9) The protections afforded by the service members' civil relief
37 act, chapter 38.42 RCW, are applicable to proceedings under this
38 chapter.

1 NEW SECTION. **Sec. 2.** (1) Upon the entry of an order of
2 forfeiture of real property, the court shall forward a copy of the
3 order to the assessor of the county in which the property is located.
4 Orders for the forfeiture of real property shall be entered by the
5 superior court, subject to court rules. Such an order shall be filed
6 by the seizing agency in the county auditor's records in the county
7 in which the real property is located.

8 (2)(a) A landlord may assert a claim against proceeds from the
9 sale of assets seized and forfeited only if:

10 (i) An employee, agent, or officer of the seizing agency, while
11 acting in his or her official capacity, directly caused damage to the
12 complaining landlord's property while executing a search of a
13 tenant's residence; and

14 (ii) The landlord has applied any funds remaining in the tenant's
15 deposit, to which the landlord has a right under chapter 59.18 RCW,
16 to cover the damage directly caused by the employee, agent, or
17 officer of the seizing agency prior to asserting a claim under the
18 provisions of this section;

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

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

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

36 (i) Knew or consented to actions of the tenant in violation of
37 this chapter or the chapter pursuant to which the seizure was made;
38 or

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

4 (3) The landlord's claim for damages under subsection (2) of this
5 section may not include a claim for loss of business and is limited
6 to:

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

8 (b) The lesser of the cost of repair or fair market value of the
9 damage directly caused by the employee, agent, or officer of the
10 seizing agency;

11 (c) The proceeds from the sale of the specific tenant's property
12 seized and forfeited; and

13 (d) The proceeds available after the seizing law enforcement
14 agency satisfies any bona fide security interest in the tenant's
15 property and costs related to sale of the tenant's property.

16 (4) Subsections (2) and (3) of this section do not limit any
17 other rights a landlord may have against a tenant to collect for
18 damages. However, if a seizing agency satisfies a landlord's claim
19 under subsection (2) of this section, the rights the landlord has
20 against the tenant for damages directly caused by an employee, agent,
21 or officer of the seizing agency under the terms of the landlord and
22 tenant's contract are subrogated to the seizing agency.

23 NEW SECTION. **Sec. 3.** When property is forfeited under this
24 chapter, the seizing agency may, after satisfying any court-ordered
25 restitution:

26 (1) Retain it for official use or upon application by any law
27 enforcement agency of this state release such property to such agency
28 to be used in enforcement;

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

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

34 (4) Forward it to an appropriate entity, such as the drug
35 enforcement administration, for disposition; or

36 (5) Take any other action allowed by statute.

37 NEW SECTION. **Sec. 4.** (1) This section is applicable to all
38 seizures by seizing agencies, regardless of whether the seizure is:

1 (a) Pursuant to this chapter;
2 (b) Pursuant to any other section in the Revised Code of
3 Washington that authorizes seizure; or
4 (c) Conducted in collaboration with a federal agency under
5 federal law.

6 (2) For purposes of this section, "seizing agency" means any
7 police force, multijurisdictional task force, fire department, or
8 other municipal, county, or state agency that has authority under
9 state law or collaborates with a federal agency under federal law to
10 seize property.

11 (3)(a) The seizing agency must keep a record, about property
12 seized and forfeited under state law and any agreement with any
13 federal agency, of each forfeiture indicating:

14 (i) The name of the seizing agency;
15 (ii) Date of seizure;
16 (iii) Type of property seized;
17 (iv) Description of the property including make, model, year, and
18 serial number;
19 (v) Street address or description of the location where the
20 seizure occurred;
21 (vi) Whether the seizure was adopted by the federal government,
22 part of a joint task force with the federal government, or other
23 arrangement with the federal government;
24 (vii) Crime for which the suspect was charged;
25 (viii) Whether the suspect was convicted of a crime;
26 (ix) Whether the forfeiture was contested by a suspect, innocent
27 owner claimant, joint owner, or other property owner;
28 (x) Disposition of the property through the forfeiture process,
29 such as returned to suspect, returned to a joint owner or third-party
30 owner, sold, destroyed, or retained by a law enforcement agency;
31 (xi) Date of disposition of the property;
32 (xii) Whether the forfeiture was resolved by way of a default,
33 contested hearing or agreed disposition or settlement;
34 (xiii) Value of the property forfeited; and
35 (xiv) The net proceeds retained by the law enforcement agency
36 that seized the property.

37 (b) Annually, on a date specified by the state treasurer, the
38 seizing agency shall file a report, that includes all of the records
39 in (a) of this subsection, to the state treasurer. The state
40 treasurer must establish and maintain a searchable public web site

1 that includes all of the records in (a) of this subsection. The
2 annual report need not include a record of forfeited property that is
3 still being held for use as evidence during the investigation or
4 prosecution of a case or during the appeal from a conviction. The
5 commander of a multijurisdictional task force may appoint one agency
6 to report its seizures. If an agency has made no seizures during the
7 previous year, a null report must be filed by the agency specifying
8 that it did not engage in seizures or forfeitures during the
9 reporting period.

10 (c) By March 1st each year, the seizing agency shall file with
11 the state treasurer a report that summarizes the agency's
12 expenditures from the sum of the net proceeds of all seized and
13 forfeited property during the previous calendar year. The report must
14 be posted and made available on the web site created in this
15 subsection (3). The report must use the following categories to
16 summarize expenditures and values:

- 17 (i) Abuse, crime, and gang prevention programs;
- 18 (ii) Witness protection, informant fees, and controlled buys;
- 19 (iii) Salaries, overtime, and benefits;
- 20 (iv) Professional outside services, including auditing, court
21 reporting, expert witnesses, outside attorneys' fees, and membership
22 fees paid to trade associations;
- 23 (v) Travel, meals, entertainment, conferences, training, and
24 continuing education seminars;
- 25 (vi) Capital expenditures including vehicles, firearms,
26 equipment, computers, and furniture;
- 27 (vii) Other expenditures of forfeiture proceeds; and
- 28 (viii) The total value of forfeited property held by the agency
29 at the end of the reporting period.

30 (4) One hundred twenty days after the close of each fiscal year,
31 the state treasurer shall submit to the speaker of the house of
32 representatives, president of the senate, attorney general, and
33 governor a written report summarizing forfeiture activity in the
34 state for the preceding fiscal year; the type, approximate value, and
35 disposition of the property seized; and the amount of any proceeds
36 received or expended at the state and local levels. The report must
37 provide a categorized accounting of all proceeds expended. Summary
38 data on seizures, forfeitures, and expenditures of forfeiture
39 proceeds must be disaggregated by agency. The aggregate report must
40 be made available on the state treasurer's web site.

1 (5) The state treasurer may include in the aggregate report
2 required by subsection (4) of this section recommendations to improve
3 statutes, rules, and policies to facilitate seizure, forfeiture, and
4 expenditure processes and reporting that are fair to crime victims,
5 innocent property owners, secured interest holders, citizens, law
6 enforcement, and taxpayers.

7 (6) If a seizing agency fails to file a report within thirty days
8 after it is due, without good cause as determined by the state
9 treasurer, the state treasurer shall provide a written warning to the
10 seizing agency. If a seizing agency fails to file the report within
11 thirty days after it is due for a second time, the agency is subject
12 to a civil penalty payable to the state general fund of five hundred
13 dollars or the equivalent of one-quarter of the forfeiture proceeds
14 received by the agency during the reporting period, whichever is
15 greater. In addition, the state treasurer must make no expenditures
16 from the forfeiture fund for the benefit of the agency until the
17 report is filed.

18 (7) The state treasurer may recover its costs under this chapter
19 by charging a fee to seizing agencies filing a report. The agency may
20 use forfeiture proceeds to pay the costs of compiling and reporting
21 data under this chapter, and to pay any fees imposed by the state
22 treasurer.

23 (8) The data and reports compiled and prepared under this chapter
24 are public information under chapter 42.56 RCW.

25 NEW SECTION. **Sec. 5.** (1)(a) By January 31st of each year, each
26 seizing agency shall remit to the state treasurer an amount equal to
27 ten percent of the net proceeds of any property forfeited during the
28 preceding calendar year. Money remitted shall be deposited in the
29 state general fund unless otherwise provided in statute.

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

37 (c) 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

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

8 (2) Forfeited property and net proceeds not required to be paid
9 to the state treasurer shall be retained by the seizing agency
10 exclusively for the expansion and improvement of related enforcement
11 activities. Money retained under this section may not be used to
12 supplant preexisting funding sources.

13 NEW SECTION. **Sec. 6.** The state treasurer may adopt rules
14 necessary to implement this chapter.

15 **Sec. 7.** RCW 9.68A.120 and 2014 c 188 s 3 are each amended to
16 read as follows:

17 The following are subject to seizure and forfeiture:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~(6) If no 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 item seized~~
4 ~~shall be deemed forfeited.~~

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

25 ~~(8) If property is sought to be forfeited on the ground that it~~
26 ~~constitutes proceeds traceable to a violation of this chapter, the~~
27 ~~seizing law enforcement agency must prove by a preponderance of the~~
28 ~~evidence that the property constitutes proceeds traceable to a~~
29 ~~violation of this chapter.~~

30 ~~(9) When property is forfeited under this chapter the seizing law~~
31 ~~enforcement agency may:~~

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

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

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

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

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

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

20 ~~(11) Forfeited property and net proceeds not required to be paid~~
21 ~~to the state treasurer under this chapter shall be used for payment~~
22 ~~of all proper expenses of the investigation leading to the seizure,~~
23 ~~including any money delivered to the subject of the investigation by~~
24 ~~the law enforcement agency, and of the proceedings for forfeiture and~~
25 ~~sale, including expenses of seizure, maintenance of custody,~~
26 ~~advertising, actual costs of the prosecuting or city attorney, and~~
27 ~~court costs. Money remaining after payment of these expenses shall be~~
28 ~~retained by the seizing law enforcement agency for the exclusive use~~
29 ~~of enforcing the provisions of this chapter or chapter 9A.88 RCW.)~~
30 are governed by chapter 7.--- RCW (the new chapter created in section
31 17 of this act).

32 **Sec. 8.** RCW 9A.88.150 and 2014 c 188 s 4 are each amended to
33 read as follows:

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

36 (a) Any property or other interest acquired or maintained in
37 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070 to the extent of
38 the investment of funds, and any appreciation or income attributable

1 to the investment, from a violation of RCW 9.68A.100, 9.68A.101, or
2 9A.88.070;

3 (b) All conveyances, including aircraft, vehicles, or vessels,
4 which are used, or intended for use, in any manner to facilitate a
5 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, except that:

6 (i) No conveyance used by any person as a common carrier in the
7 transaction of business as a common carrier is subject to forfeiture
8 under this section unless it appears that the owner or other person
9 in charge of the conveyance is a consenting party or privy to a
10 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

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

15 (iii) A forfeiture of a conveyance encumbered by a bona fide
16 security interest is subject to the interest of the secured party if
17 the secured party neither had knowledge of nor consented to the act
18 or omission; and

19 (iv) When the owner of a conveyance has been arrested for a
20 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, the conveyance
21 in which the person is arrested may not be subject to forfeiture
22 unless it is seized or process is issued for its seizure within ten
23 days of the owner's arrest;

24 (c) Any property, contractual right, or claim against property
25 used to influence any enterprise that a person has established,
26 operated, controlled, conducted, or participated in the conduct of,
27 in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

28 (d) All proceeds traceable to or derived from an offense defined
29 in RCW 9.68A.100, 9.68A.101, or 9A.88.070 and all moneys, negotiable
30 instruments, securities, and other things of value significantly used
31 or intended to be used significantly to facilitate commission of the
32 offense;

33 (e) All books, records, and research products and materials,
34 including formulas, microfilm, tapes, and data which are used, or
35 intended for use, in violation of RCW 9.68A.100, 9.68A.101, or
36 9A.88.070;

37 (f) All moneys, negotiable instruments, securities, or other
38 tangible or intangible property of value furnished or intended to be
39 furnished by any person in exchange for a violation of RCW 9.68A.100,
40 9.68A.101, or 9A.88.070, all tangible or intangible personal

1 property, proceeds, or assets acquired in whole or in part with
2 proceeds traceable to an exchange or series of exchanges in violation
3 of RCW 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable
4 instruments, and securities used or intended to be used to facilitate
5 any violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070. A forfeiture
6 of money, negotiable instruments, securities, or other tangible or
7 intangible property encumbered by a bona fide security interest is
8 subject to the interest of the secured party if, at the time the
9 security interest was created, the secured party neither had
10 knowledge of nor consented to the act or omission. No personal
11 property may be forfeited under this subsection (1)(f), to the extent
12 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 (g) All real property, including any right, title, and interest
16 in 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 a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, or which have
19 been acquired in whole or in part with proceeds traceable to an
20 exchange or series of exchanges in violation of RCW 9.68A.100,
21 9.68A.101, or 9A.88.070, if a substantial nexus exists between the
22 violation and the real property. However:

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

27 (ii) A forfeiture of real property encumbered by a bona fide
28 security interest is subject to the interest of the secured party if
29 the secured party, at the time the security interest was created,
30 neither had knowledge of nor consented to the act or omission.

31 (2) Real or personal property subject to forfeiture under this
32 section may be seized by any law enforcement officer of this state
33 upon process issued by any superior court having jurisdiction over
34 the property. Seizure of real property shall include the filing of a
35 lis pendens by the seizing agency. Real property seized under this
36 section shall not be transferred or otherwise conveyed until ninety
37 days after seizure or until a judgment of forfeiture is entered,
38 whichever is later: PROVIDED, That real property seized under this
39 section may be transferred or conveyed to any person or entity who
40 acquires title by foreclosure or deed in lieu of foreclosure of a

1 security interest. Seizure of personal property without process may
2 be made if:

3 (a) The seizure is incident to an arrest or a search under a
4 search warrant;

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

8 (c) The law enforcement officer has probable cause to believe
9 that the property was used or is intended to be used in violation of
10 RCW 9.68A.100, 9.68A.101, or 9A.88.070.

11 (3) In the event of seizure pursuant to subsection (2) of this
12 section, proceedings for forfeiture (~~shall be deemed commenced by~~
13 ~~the seizure. The law enforcement agency under whose authority the~~
14 ~~seizure was made shall cause notice to be served within fifteen days~~
15 ~~following the seizure on the owner of the property seized and the~~
16 ~~person in charge thereof and any person having any known right or~~
17 ~~interest therein, including any community property interest, of the~~
18 ~~seizure and intended forfeiture of the seized property. Service of~~
19 ~~notice of seizure of real property shall be made according to the~~
20 ~~rules of civil procedure. However, the state may not obtain a default~~
21 ~~judgment with respect to real property against a party who is served~~
22 ~~by substituted service absent an affidavit stating that a good faith~~
23 ~~effort has been made to ascertain if the defaulted party is~~
24 ~~incarcerated within the state, and that there is no present basis to~~
25 ~~believe that the party is incarcerated within the state. Notice of~~
26 ~~seizure in the case of property subject to a security interest that~~
27 ~~has been perfected by filing a financing statement, or a certificate~~
28 ~~of title, shall be made by service upon the secured party or the~~
29 ~~secured party's assignee at the address shown on the financing~~
30 ~~statement or the certificate of title. The notice of seizure in other~~
31 ~~cases may be served by any method authorized by law or court rule~~
32 ~~including, but not limited to, service by certified mail with return~~
33 ~~receipt requested. Service by mail shall be deemed complete upon~~
34 ~~mailing within the fifteen day period following the seizure.~~

35 (4) ~~If no person notifies the seizing law enforcement agency in~~
36 ~~writing of the person's claim of ownership or right to possession of~~
37 ~~items specified in subsection (1) of this section within forty five~~
38 ~~days of the service of notice from the seizing agency in the case of~~
39 ~~personal property and ninety days in the case of real property, the~~
40 ~~item seized shall be deemed forfeited. The community property~~

1 interest in real property of a person whose spouse or domestic
2 partner committed a violation giving rise to seizure of the real
3 property may not be forfeited if the person did not participate in
4 the violation.

5 (5) If any 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 service of notice from the seizing agency in the case of
9 personal property and ninety days in the case of real property, the
10 person or persons shall be afforded a reasonable opportunity to be
11 heard as to the claim or right. The notice of claim may be served by
12 any method authorized by law or court rule including, but not limited
13 to, service by first class mail. Service by mail shall be deemed
14 complete upon mailing within the forty five day period following
15 service of the notice of seizure in the case of personal property and
16 within the ninety day period following service of the notice of
17 seizure in the case of real property. The hearing shall be before the
18 chief law enforcement officer of the seizing agency or the chief law
19 enforcement officer's designee, except where the seizing agency is a
20 state agency as defined in RCW 34.12.020(4), the hearing shall be
21 before the chief law enforcement officer of the seizing agency or an
22 administrative law judge appointed under chapter 34.12 RCW, except
23 that any person asserting a claim or right may remove the matter to a
24 court of competent jurisdiction. Removal of any matter involving
25 personal property may only be accomplished according to the rules of
26 civil procedure. The person seeking removal of the matter must serve
27 process against the state, county, political subdivision, or
28 municipality that operates the seizing agency, and any other party of
29 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty
30 five days after the person seeking removal has notified the seizing
31 law enforcement agency of the person's claim of ownership or right to
32 possession. The court to which the matter is to be removed shall be
33 the district court when the aggregate value of personal property is
34 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
35 before the seizing agency and any appeal therefrom shall be under
36 Title 34 RCW. In all cases, the burden of proof is upon the law
37 enforcement agency to establish, by a preponderance of the evidence,
38 that the property is subject to forfeiture.

39 The seizing law enforcement agency shall promptly return the
40 article or articles to the claimant upon a determination by the

1 ~~administrative law judge or court that the claimant is the present~~
2 ~~lawful owner or is lawfully entitled to possession thereof of items~~
3 ~~specified in subsection (1) of this section.~~

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

10 ~~(7) When property is forfeited under this chapter, the seizing~~
11 ~~law enforcement agency may:~~

12 ~~(a) Retain it for official use or upon application by any law~~
13 ~~enforcement agency of this state release the property to that agency~~
14 ~~for the exclusive use of enforcing this chapter or chapter 9.68A RCW;~~

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

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

20 ~~(8)(a) When property is forfeited, the seizing agency shall keep~~
21 ~~a record indicating the identity of the prior owner, if known, a~~
22 ~~description of the property, the disposition of the property, the~~
23 ~~value of the property at the time of seizure, and the amount of~~
24 ~~proceeds realized from disposition of the property.~~

25 ~~(b) Each seizing agency shall retain records of forfeited~~
26 ~~property for at least seven years.~~

27 ~~(c) Each seizing agency shall file a report including a copy of~~
28 ~~the records of forfeited property with the state treasurer each~~
29 ~~calendar quarter.~~

30 ~~(d) The quarterly report need not include a record of forfeited~~
31 ~~property that is still being held for use as evidence during the~~
32 ~~investigation or prosecution of a case or during the appeal from a~~
33 ~~conviction.~~

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

39 ~~(b) The net proceeds of forfeited property is the value of the~~
40 ~~forfeitable interest in the property after deducting the cost of~~

1 satisfying any bona fide security interest to which the property is
2 subject at the time of seizure; and in the case of sold property,
3 after deducting the cost of sale, including reasonable fees or
4 commissions paid to independent selling agents, and the cost of any
5 valid landlord's claim for damages under subsection (12) of this
6 section.

7 (c) The value of sold forfeited property is the sale price. The
8 value of destroyed property and retained firearms or illegal property
9 is zero.

10 (10) Net proceeds not required to be paid to the state treasurer
11 shall be used for payment of all proper expenses of the investigation
12 leading to the seizure, including any money delivered to the subject
13 of the investigation by the law enforcement agency, and of the
14 proceedings for forfeiture and sale, including expenses of seizure,
15 maintenance of custody, advertising, actual costs of the prosecuting
16 or city attorney, and court costs. Money remaining after payment of
17 these expenses shall be retained by the seizing law enforcement
18 agency for the exclusive use of enforcing the provisions of this
19 chapter or chapter 9.68A RCW.

20 (11) Upon the entry of an order of forfeiture of real property,
21 the court shall forward a copy of the order to the assessor of the
22 county in which the property is located. Orders for the forfeiture of
23 real property shall be entered by the superior court, subject to
24 court rules. Such an order shall be filed by the seizing agency in
25 the county auditor's records in the county in which the real property
26 is located.

27 (12) A landlord may assert a claim against proceeds from the sale
28 of assets seized and forfeited under subsection (9) of this section,
29 only if:

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

33 (b) The landlord has applied any funds remaining in the tenant's
34 deposit, to which the landlord has a right under chapter 59.18 RCW,
35 to cover the damage directly caused by a law enforcement officer
36 prior to asserting a claim under the provisions of this section:

37 (i) Only if the funds applied under (b) of this subsection are
38 insufficient to satisfy the damage directly caused by a law
39 enforcement officer, may the landlord seek compensation for the
40 damage by filing a claim against the governmental entity under whose

1 authority the law enforcement agency operates within thirty days
2 after the search;

3 (ii) Only if the governmental entity denies or fails to respond
4 to the landlord's claim within sixty days of the date of filing, may
5 the landlord collect damages under this subsection by filing within
6 thirty days of denial or the expiration of the sixty day period,
7 whichever occurs first, a claim with the seizing law enforcement
8 agency. The seizing law enforcement agency must notify the landlord
9 of the status of the claim by the end of the thirty day period.
10 Nothing in this section requires the claim to be paid by the end of
11 the sixty day or thirty day period; and

12 (c) For any claim filed under (b) of this subsection, the law
13 enforcement agency shall pay the claim unless the agency provides
14 substantial proof that the landlord either:

15 (i) Knew or consented to actions of the tenant in violation of
16 RCW 9.68A.100, 9.68A.101, or 9A.88.070; or

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

20 (13) The landlord's claim for damages under subsection (12) of
21 this section may not include a claim for loss of business and is
22 limited to:

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

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

26 (c) The proceeds from the sale of the specific tenant's property
27 seized and forfeited under subsection (9) of this section; and

28 (d) The proceeds available after the seizing law enforcement
29 agency satisfies any bona fide security interest in the tenant's
30 property and costs related to sale of the tenant's property as
31 provided by subsection (12) of this section.

32 (14) Subsections (12) and (13) of this section do not limit any
33 other rights a landlord may have against a tenant to collect for
34 damages. However, if a law enforcement agency satisfies a landlord's
35 claim under subsection (12) of this section, the rights the landlord
36 has against the tenant for damages directly caused by a law
37 enforcement officer under the terms of the landlord and tenant's
38 contract are subrogated to the law enforcement agency.) are governed
39 by chapter 7.--- RCW (the new chapter created in section 17 of this
40 act).

1 **Sec. 9.** RCW 9A.83.030 and 2008 c 6 s 630 are each amended to
2 read as follows:

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

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

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

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

29 (3) A seizure under subsection (2) of this section commences
30 proceedings for forfeiture pursuant to chapter 7.--- RCW (the new
31 chapter created in section 17 of this act). ~~((The law enforcement~~
32 ~~agency under whose authority the seizure was made shall cause notice~~
33 ~~of the seizure and intended forfeiture of the seized proceeds to be~~
34 ~~served within fifteen days after the seizure on the owner of the~~
35 ~~property seized and the person in charge thereof and any person who~~
36 ~~has a known right or interest therein, including a community property~~
37 ~~interest. Service of notice of seizure of real property shall be made~~
38 ~~according to the rules of civil procedure. However, the state may not~~
39 ~~obtain a default judgment with respect to real property against a~~
40 ~~party who is served by substituted service absent an affidavit~~

1 ~~stating that a good faith effort has been made to ascertain if the~~
2 ~~defaulted party is incarcerated within the state, and that there is~~
3 ~~no present basis to believe that the party is incarcerated within the~~
4 ~~state. The notice of seizure in other cases may be served by any~~
5 ~~method authorized by law or court rule including but not limited to~~
6 ~~service by certified mail with return receipt requested. Service by~~
7 ~~mail is complete upon mailing within the fifteen day period after the~~
8 ~~seizure.~~

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

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

27 ~~(6) Disposition of forfeited property shall be made in the manner~~
28 ~~provided for in RCW 69.50.505 (8) through (10) and (14).))~~

29 **Sec. 10.** RCW 10.105.010 and 2009 c 479 s 15 are each amended to
30 read as follows:

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

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

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

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

15 (a) The seizure is incident to an arrest or a search under a
16 search warrant;

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

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

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

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

1 service upon the secured party or the secured party's assignee at the
2 address shown on the financing statement or the certificate of title.

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

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

1 ~~(6) When property is forfeited under this chapter, after~~
2 ~~satisfying any court-ordered victim restitution, the seizing law~~
3 ~~enforcement 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) By January 31st of each year, each seizing agency shall remit~~
10 ~~to the state treasurer an amount equal to ten percent of the net~~
11 ~~proceeds of any property forfeited during the preceding calendar~~
12 ~~year. Money remitted shall be deposited in the state general fund.~~

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

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

29 ~~(c) Retained property and net proceeds not required to be paid to~~
30 ~~the state treasurer, or otherwise required to be spent under this~~
31 ~~section, shall be retained by the seizing law enforcement agency~~
32 ~~exclusively for the expansion and improvement of law enforcement~~
33 ~~activity. Money retained under this section may not be used to~~
34 ~~supplant preexisting funding sources.)) are governed by chapter 7.---~~
35 ~~RCW (the new chapter created in section 17 of this act).~~

36 (4) When property is seized under this chapter and forfeited
37 pursuant to the new chapter created in section 17 of this act, the
38 seizing agency must first satisfy any court-ordered victim
39 restitution before retaining, using, selling, or taking other action

1 with respect to the property as permitted under section 4 of this
2 act.

3 **Sec. 11.** RCW 19.290.230 and 2013 c 322 s 27 are each amended to
4 read as follows:

5 (1) The following personal property is subject to seizure and
6 forfeiture and no property right exists in them: All personal
7 property including, but not limited to, any item, object, tool,
8 substance, device, weapon, machine, vehicle of any kind, money,
9 security, or negotiable instrument, which the seizing agency proves
10 by a preponderance of the evidence was used or intended to be used by
11 its owner or the person in charge to knowingly or intentionally
12 facilitate the commission of, or to knowingly or intentionally abet
13 the commission of, a crime involving theft, trafficking, or unlawful
14 possession of commercial metal property, or which the seizing agency
15 proves by a preponderance of the evidence was knowingly or
16 intentionally furnished or was intended to be furnished by any person
17 in the commission of, as a result of, or as compensation for the
18 commission of, a crime involving theft, trafficking, or the unlawful
19 possession of commercial metal property, or which the property owner
20 acquired in whole or in part with proceeds traceable to a knowing or
21 intentional commission of a crime involving the theft, trafficking,
22 or unlawful possession of commercial metal property provided that
23 such activity is not less than a class C felony; except that:

24 (a) No vehicle used by any person as a common carrier in the
25 transaction of business as a common carrier is subject to forfeiture
26 under this section unless the seizing agency proves by a
27 preponderance of the evidence that the owner or other person in
28 charge of the vehicle is a consenting party or is privy to any crime
29 involving theft, trafficking, or the unlawful possession of
30 commercial metal property;

31 (b) A forfeiture of property encumbered by a bona fide security
32 interest is subject to the interest of the secured party if the
33 secured party neither had actual or constructive knowledge of nor
34 consented to the commission of any crime involving the theft,
35 trafficking, or unlawful possession of commercial metal property; and

36 (c) A property owner's property is not subject to seizure if an
37 employee or agent of that property owner uses the property owner's
38 property to knowingly or intentionally facilitate the commission of,
39 or to knowingly or intentionally aid and abet the commission of, a

1 crime involving theft, trafficking, or unlawful possession of
2 commercial metal property, in violation of that property owner's
3 instructions or policies against such activity, and without the
4 property owner's knowledge or consent.

5 (2) The following real property is subject to seizure and
6 forfeiture and no property right exists in them: All real property,
7 including any right, title, and interest in the whole of any lot or
8 tract of land, and any appurtenances or improvements, that the
9 seizing agency proves by a preponderance of the evidence are being
10 used with the knowledge of the owner for the intentional commission
11 of any crime involving the theft, trafficking, or unlawful possession
12 of commercial metal property, or which have been acquired in whole or
13 in part with proceeds traceable to the commission of any crime
14 involving the trafficking, theft, or unlawful possession of
15 commercial metal, if such activity is not less than a class C felony
16 and a substantial nexus exists between the commission of the
17 violation or crime and the real property. However:

18 (a) No property may be forfeited pursuant to this subsection (2),
19 to the extent of the interest of an owner, by reason of any act or
20 omission committed or omitted without the owner's actual or
21 constructive knowledge; and further, a property owner's real property
22 is not subject to seizure if an employee or agent of that property
23 owner uses the property owner's real property to knowingly or
24 intentionally facilitate the commission of, or to knowingly or
25 intentionally aid and abet the commission of, a crime involving
26 theft, trafficking, or unlawful possession of commercial metal
27 property, in violation of that property owner's instructions or
28 policies against such activity, and without the property owner's
29 knowledge or consent; and

30 (b) A forfeiture of real property encumbered by a bona fide
31 security interest is subject to the interest of the secured party if
32 the secured party, neither had actual or constructive knowledge, nor
33 consented to the act or omission.

34 (3) Property subject to forfeiture under this chapter may be
35 seized by any law enforcement officer of this state upon process
36 issued by any superior court having jurisdiction over the property.
37 Seizure of real property shall include the filing of a lis pendens by
38 the seizing agency. Real property seized under this section shall not
39 be transferred or otherwise conveyed until ninety days after seizure
40 or until a judgment of forfeiture is entered, whichever is later:

1 PROVIDED, That real property seized under this section may be
2 transferred or conveyed to any person or entity who acquires title by
3 foreclosure or deed in lieu of foreclosure of a security interest.
4 Seizure of personal property without process may be made if:

5 (a) The seizure is incident to an arrest or a search under a
6 search warrant; or

7 (b) The property subject to seizure has been the subject of a
8 prior judgment in favor of the state in a criminal injunction or
9 forfeiture proceeding.

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

36 (5) ~~If no person notifies the seizing law enforcement agency in~~
37 ~~writing of the person's claim of ownership or right to possession of~~
38 ~~items specified in subsection (1) of this section within forty five~~
39 ~~days of the seizure in the case of personal property and ninety days~~
40 ~~in the case of real property, the item seized shall be deemed~~

1 forfeited. The community property interest in real property of a
2 person whose spouse or domestic partner committed a violation giving
3 rise to seizure of the real property may not be forfeited if the
4 person did not participate in the violation.

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

35 (7) At the hearing, the seizing agency has the burden of proof to
36 establish by a preponderance of the evidence that seized property is
37 subject to forfeiture, and that the use or intended use of the seized
38 property in connection with a crime pursuant to this section occurred
39 with the owner's actual or constructive knowledge or consent. The
40 person claiming to be the lawful owner or the person claiming to have

1 the lawful right to possession of the property has the burden of
2 proof to establish by a preponderance of the evidence that the person
3 owns or has a right to possess the seized property. The possession of
4 bare legal title is not sufficient to establish ownership of seized
5 property if the seizing agency proves by a preponderance of the
6 evidence that the person claiming ownership or right to possession is
7 a nominal owner and did not actually own or exert a controlling
8 interest in the property.

9 The seizing law enforcement agency shall promptly return the
10 property to the claimant upon a determination by the administrative
11 law judge or court that the claimant is the present lawful owner or
12 is lawfully entitled to possession of the property.

13 (8) When property is forfeited under this chapter, after
14 satisfying any court ordered victim restitution, the seizing law
15 enforcement agency may:

16 (a) Retain it for official use or, upon application by any law
17 enforcement agency of this state, release such property to such
18 agency; or

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

21 (9)(a) Within one hundred twenty days after the entry of an order
22 of forfeiture, each seizing agency shall remit to, if known, the
23 victim of the crime involving the seized property, an amount equal to
24 fifty percent of the net proceeds of any property forfeited.

25 (b) Retained property and net proceeds not required to be paid to
26 victims shall be retained by the seizing law enforcement agency
27 exclusively for the expansion and improvement of law enforcement
28 activity. Money retained under this section may not be used to
29 supplant preexisting funding sources.

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

37 (d) 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
40 reference to an applicable commonly used index, such as the index

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

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

14 (5)(a) When property is seized under this chapter and forfeited
15 pursuant to the new chapter created in section 17 of this act, the
16 seizing agency must first satisfy any court-ordered victim
17 restitution before retaining, using, selling, or taking other action
18 with respect to the property as permitted under section 4 of this
19 act.

20 (b) Within one hundred twenty days after the entry of an order of
21 forfeiture, each seizing agency shall remit to, if known, the victim
22 of the crime involving the seized property, an amount equal to fifty
23 percent of the net proceeds of any property forfeited.

24 **Sec. 12.** RCW 46.61.5058 and 2013 2nd sp.s. c 35 s 18 are each
25 amended to read as follows:

26 (1) Upon the arrest of a person or upon the filing of a
27 complaint, citation, or information in a court of competent
28 jurisdiction, based upon probable cause to believe that a person has
29 violated RCW 46.20.740, 46.61.502, or 46.61.504 or any similar
30 municipal ordinance, if such person has a prior offense within seven
31 years as defined in RCW 46.61.5055, and where the person has been
32 provided written notice that any transfer, sale, or encumbrance of
33 such person's interest in the vehicle over which that person was
34 actually driving or had physical control when the violation occurred,
35 is unlawful pending either acquittal, dismissal, sixty days after
36 conviction, or other termination of the charge, such person shall be
37 prohibited from encumbering, selling, or transferring his or her
38 interest in such vehicle, except as otherwise provided in (a), (b),
39 and (c) of this subsection, until either acquittal, dismissal, sixty

1 days after conviction, or other termination of the charge. The
2 prohibition against transfer of title shall not be stayed pending the
3 determination of an appeal from the conviction.

4 (a) A vehicle encumbered by a bona fide security interest may be
5 transferred to the secured party or to a person designated by the
6 secured party;

7 (b) A leased or rented vehicle may be transferred to the lessor,
8 rental agency, or to a person designated by the lessor or rental
9 agency; and

10 (c) A vehicle may be transferred to a third party or a vehicle
11 dealer who is a bona fide purchaser or may be subject to a bona fide
12 security interest in the vehicle unless it is established that (i) in
13 the case of a purchase by a third party or vehicle dealer, such party
14 or dealer had actual notice that the vehicle was subject to the
15 prohibition prior to the purchase, or (ii) in the case of a security
16 interest, the holder of the security interest had actual notice that
17 the vehicle was subject to the prohibition prior to the encumbrance
18 of title.

19 (2) On conviction for a violation of either RCW 46.20.740,
20 46.61.502, or 46.61.504 or any similar municipal ordinance where the
21 person convicted has a prior offense within seven years as defined in
22 RCW 46.61.5055, the motor vehicle the person was driving or over
23 which the person had actual physical control at the time of the
24 offense, if the person has a financial interest in the vehicle, the
25 court shall consider at sentencing whether the vehicle shall be
26 seized and forfeited pursuant to this section if a seizure or
27 forfeiture has not yet occurred.

28 (3) A vehicle subject to forfeiture under this chapter may be
29 seized by a law enforcement officer of this state upon process issued
30 by a court of competent jurisdiction. Seizure of a vehicle may be
31 made without process if the vehicle subject to seizure has been the
32 subject of a prior judgment in favor of the state in a forfeiture
33 proceeding based upon this section.

34 (4) Seizure under subsection (3) of this section automatically
35 commences proceedings for forfeiture, which proceedings are governed
36 by chapter 7.--- RCW (the new chapter created in section 17 of this
37 act). (~~The law enforcement agency under whose authority the seizure~~
38 ~~was made shall cause notice of the seizure and intended forfeiture of~~
39 ~~the seized vehicle to be served within fifteen days after the seizure~~
40 ~~on the owner of the vehicle seized, on the person in charge of the~~

1 vehicle, and on any person having a known right or interest in the
2 vehicle, including a community property interest. The notice of
3 seizure may be served by any method authorized by law or court rule,
4 including but not limited to service by certified mail with return
5 receipt requested. Service by mail is complete upon mailing within
6 the fifteen-day period after the seizure. Notice of seizure in the
7 case of property subject to a security interest that has been
8 perfected on a certificate of title shall be made by service upon the
9 secured party or the secured party's assignee at the address shown on
10 the financing statement or the certificate of title.

11 (5) If no person notifies the seizing law enforcement agency in
12 writing of the person's claim of ownership or right to possession of
13 the seized vehicle within forty-five days of the seizure, the vehicle
14 is deemed forfeited.

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

1 ~~evidence shall be upon the person claiming to be the legal owner or~~
2 ~~the person claiming to have the lawful right to possession of the~~
3 ~~vehicle. The seizing law enforcement agency shall promptly return the~~
4 ~~vehicle to the claimant upon a determination by the administrative~~
5 ~~law judge or court that the claimant is the present legal owner under~~
6 ~~this title or is lawfully entitled to possession of the vehicle.~~

7 ~~(7))~~ (5) When a vehicle is forfeited under this chapter the
8 seizing law enforcement agency may sell the vehicle, retain it for
9 official use, or upon application by a law enforcement agency of this
10 state release the vehicle to that agency for the exclusive use of
11 enforcing this title; provided, however, that the agency shall first
12 satisfy any bona fide security interest to which the vehicle is
13 subject under subsection (1)(a) or (c) of this section.

14 ~~((8))~~ (6) When a vehicle is forfeited, the seizing agency shall
15 keep a record indicating the identity of the prior owner, if known, a
16 description of the vehicle, the disposition of the vehicle, the value
17 of the vehicle at the time of seizure, and the amount of proceeds
18 realized from disposition of the vehicle.

19 ~~((9))~~ (7) Each seizing agency shall retain records of forfeited
20 vehicles for at least seven years.

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

24 ~~(11)~~ The quarterly report need not include a record of a
25 forfeited vehicle that is still being held for use as evidence during
26 the investigation or prosecution of a case or during the appeal from
27 a conviction.

28 ~~(12)~~ By January 31st of each year, each seizing agency shall
29 remit to the state treasurer an amount equal to ten percent of the
30 net proceeds of vehicles forfeited during the preceding calendar
31 year. Money remitted shall be deposited in the state general fund.

32 ~~(13)~~ The net proceeds of a forfeited vehicle is the value of the
33 forfeitable interest in the vehicle after deducting the cost of
34 satisfying a bona fide security interest to which the vehicle is
35 subject at the time of seizure; and in the case of a sold vehicle,
36 after deducting the cost of sale, including reasonable fees or
37 commissions paid to independent selling agents.

38 ~~(14)~~ The value of a sold forfeited vehicle is the sale price. The
39 value of a retained forfeited vehicle is the fair market value of the
40 vehicle 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. A seizing agency may, but need not, use an~~
3 ~~independent qualified appraiser to determine the value of retained~~
4 ~~vehicles. If an appraiser is used, the value of the vehicle appraised~~
5 ~~is net of the cost of the appraisal.))~~

6 **Sec. 13.** RCW 70.74.400 and 2002 c 370 s 3 are each amended to
7 read as follows:

8 (1) Explosives, improvised devices, and components of explosives
9 and improvised devices that are possessed, manufactured, delivered,
10 imported, exported, stored, sold, purchased, transported, abandoned,
11 detonated, or used, or intended to be used, in violation of a
12 provision of this chapter are subject to seizure and forfeiture by a
13 law enforcement agency and no property right exists in them.

14 (2) The law enforcement agency making the seizure shall notify
15 the Washington state department of labor and industries of the
16 seizure.

17 (3) Seizure of explosives, improvised devices, and components of
18 explosives and improvised devices under subsection (1) of this
19 section may be made if:

20 (a) The seizure is incident to arrest or a search under a search
21 warrant;

22 (b) The explosives, improvised devices, or components have been
23 the subject of a prior judgment in favor of the state in an
24 injunction or forfeiture proceeding based upon this chapter;

25 (c) A law enforcement officer has probable cause to believe that
26 the explosives, improvised devices, or components are directly or
27 indirectly dangerous to health or safety; or

28 (d) The law enforcement officer has probable cause to believe
29 that the explosives, improvised devices, or components were used or
30 were intended to be used in violation of this chapter.

31 (4) A law enforcement agency shall destroy explosives seized
32 under this chapter when it is necessary to protect the public safety
33 and welfare. When destruction is not necessary to protect the public
34 safety and welfare, and the explosives are not being held for
35 evidence, a seizure pursuant to this section commences proceedings
36 for forfeiture, which proceedings are governed by chapter 7.--- RCW
37 (the new chapter created in section 17 of this act).

38 ~~(5) ((The law enforcement agency under whose authority the~~
39 ~~seizure was made shall issue a written notice of the seizure and~~

1 commencement of the forfeiture proceedings to the person from whom
2 the explosives were seized, to any known owner of the explosives, and
3 to any person who has a known interest in the explosives. The notice
4 shall be issued within fifteen days of the seizure. The notice of
5 seizure and commencement of the forfeiture proceedings shall be
6 served in the same manner as provided in RCW 4.28.080 for service of
7 a summons. The law enforcement agency shall provide a form by which
8 the person or persons may request a hearing before the law
9 enforcement agency to contest the seizure.

10 (6) If no person notifies the seizing law enforcement agency in
11 writing of the person's claim of ownership or right to possession of
12 the explosives, improvised devices, or components within thirty days
13 of the date the notice was issued, the seized explosives, devices, or
14 components shall be deemed forfeited.

15 (7) If, within thirty days of the issuance of the notice, any
16 person notifies the seizing law enforcement agency in writing of the
17 person's claim of ownership or right to possession of items seized,
18 the person or persons shall be afforded a reasonable opportunity to
19 be heard as to the claim or right. The hearing shall be before the
20 chief law enforcement or the officer's designee of the seizing
21 agency, except that the person asserting the claim or right may
22 remove the matter to a court of competent jurisdiction if the
23 aggregate value of the items seized is more than five hundred
24 dollars. The hearing and any appeal shall be conducted according to
25 chapter 34.05 RCW. The seizing law enforcement agency shall bear the
26 burden of proving that the person (a) has no lawful right of
27 ownership or possession and (b) that the items seized were possessed,
28 manufactured, stored, sold, purchased, transported, abandoned,
29 detonated, or used in violation of a provision of this chapter with
30 the person's knowledge or consent.

31 (8) The seizing law enforcement agency shall promptly return the
32 items seized to the claimant upon a determination that the claimant
33 is entitled to possession of the items seized.

34 (9)) If the items seized are forfeited under this statute, the
35 seizing agency shall dispose of the explosives by summary
36 destruction. However, when explosives are destroyed either to protect
37 public safety or because the explosives were forfeited, the person
38 from whom the explosives were seized loses all rights of action
39 against the law enforcement agency or its employees acting within the

1 scope of their employment, or other governmental entity or employee
2 involved with the seizure and destruction of explosives.

3 ~~((10))~~ (6) This section is not intended to change the seizure
4 and forfeiture powers, enforcement, and penalties available to the
5 department of labor and industries pursuant to chapter 49.17 RCW as
6 provided in RCW 70.74.390.

7 **Sec. 14.** RCW 77.15.070 and 2005 c 406 s 2 are each amended to
8 read as follows:

9 (1) Fish and wildlife officers and ex officio fish and wildlife
10 officers may seize without warrant boats, airplanes, vehicles,
11 motorized implements, conveyances, gear, appliances, or other
12 articles they have probable cause to believe have been held with
13 intent to violate or used in violation of this title or rule of the
14 commission or director. However, fish and wildlife officers or ex
15 officio fish and wildlife officers may not seize any item or article,
16 other than for evidence, if under the circumstances, it is reasonable
17 to conclude that the violation was inadvertent. The property seized
18 is subject to forfeiture to the state under this section regardless
19 of ownership. Property seized may be recovered by its owner by
20 depositing with the department or into court a cash bond or
21 equivalent security equal to the value of the seized property but not
22 more than one hundred thousand dollars. Such cash bond or security is
23 subject to forfeiture in lieu of the property. Forfeiture of property
24 seized under this section is a civil forfeiture against property and
25 is intended to be a remedial civil sanction.

26 (2) In the event of a seizure of property under this section,
27 jurisdiction to begin the forfeiture proceedings shall commence upon
28 seizure, and shall be governed by chapter 7.--- RCW (the new chapter
29 created in section 17 of this act). ~~((Within fifteen days following~~
30 ~~the seizure, the seizing authority shall serve a written notice of~~
31 ~~intent to forfeit property on the owner of the property seized and on~~
32 ~~any person having any known right or interest in the property seized.~~
33 ~~Notice may be served by any method authorized by law or court rule,~~
34 ~~including service by certified mail with return receipt requested.~~
35 ~~Service by mail is deemed complete upon mailing within the fifteen-~~
36 ~~day period following the seizure.~~

37 ~~(3) Persons claiming a right of ownership or right to possession~~
38 ~~of property are entitled to a hearing to contest forfeiture. Such a~~
39 ~~claim shall specify the claim of ownership or possession and shall be~~

1 made in writing and served on the director within forty five days of
2 the seizure. If the seizing authority has complied with notice
3 requirements and there is no claim made within forty five days, then
4 the property shall be forfeited to the state.

5 (4) If any person timely serves the director with a claim to
6 property, the person shall be afforded an opportunity to be heard as
7 to the person's claim or right. The hearing shall be before the
8 director or director's designee, or before an administrative law
9 judge appointed under chapter 34.12 RCW, except that a person
10 asserting a claim or right may remove the matter to a court of
11 competent jurisdiction if the aggregate value of the property seized
12 is more than five thousand dollars. The department may settle a
13 person's claim of ownership prior to the administrative hearing.

14 (5) The hearing to contest forfeiture and any subsequent appeal
15 shall be as provided for in chapter 34.05 RCW, the administrative
16 procedure act. The seizing authority has the burden to demonstrate
17 that it had reason to believe the property was held with intent to
18 violate or was used in violation of this title or rule of the
19 commission or director. The person contesting forfeiture has the
20 burden of production and proof by a preponderance of evidence that
21 the person owns or has a right to possess the property and:

22 (a) That the property was not held with intent to violate or used
23 in violation of this title; or

24 (b) If the property is a boat, airplane, or vehicle, that the
25 illegal use or planned illegal use of the boat, airplane, or vehicle
26 occurred without the owner's knowledge or consent, and that the owner
27 acted reasonably to prevent illegal uses of such boat, airplane, or
28 vehicle.

29 (6) A forfeiture of a conveyance encumbered by a perfected
30 security interest is subject to the interest of the secured party if
31 the secured party neither had knowledge of nor consented to the act
32 or omission. No security interest in seized property may be perfected
33 after seizure.

34 (7)) (3) If seized property is forfeited under this section the
35 department may retain it for official use unless the property is
36 required to be destroyed, or upon application by any law enforcement
37 agency of the state, release such property to the agency for the use
38 of enforcing this title, or sell such property, and deposit the
39 proceeds to the fish and wildlife enforcement reward account created
40 in RCW 77.15.425.

1 **Sec. 15.** RCW 69.50.505 and 2013 c 3 s 25 are each amended to
2 read as follows:

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

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

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

14 (c) All property which is used, or intended for use, as a
15 container for property described in (a) or (b) of this subsection;

16 (d) All conveyances, including aircraft, vehicles, or vessels,
17 which are used, or intended for use, in any manner to facilitate the
18 sale, delivery, or receipt of property described in (a) or (b) of
19 this subsection, except that:

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

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

29 (iii) No conveyance is subject to forfeiture under this section
30 if used in the receipt of only an amount of marijuana for which
31 possession constitutes a misdemeanor under RCW 69.50.4014;

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

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

1 (e) All books, records, and research products and materials,
2 including formulas, microfilm, tapes, and data which are used, or
3 intended for use, in violation of this chapter or chapter 69.41 or
4 69.52 RCW;

5 (f) All drug paraphernalia ((21)) other than paraphernalia
6 possessed, sold, or used solely to facilitate marijuana-related
7 activities that are not violations of this chapter;

8 (g) All moneys, negotiable instruments, securities, or other
9 tangible or intangible property of value furnished or intended to be
10 furnished by any person in exchange for a controlled substance in
11 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible
12 or intangible personal property, proceeds, or assets acquired in
13 whole or in part with proceeds traceable to an exchange or series of
14 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,
15 and all moneys, negotiable instruments, and securities used or
16 intended to be used to facilitate any violation of this chapter or
17 chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable
18 instruments, securities, or other tangible or intangible property
19 encumbered by a bona fide security interest is subject to the
20 interest of the secured party if, at the time the security interest
21 was created, the secured party neither had knowledge of nor consented
22 to the act or omission. No personal property may be forfeited under
23 this subsection (1)(g), to the extent of the interest of an owner, by
24 reason of any act or omission ((which that owner establishes was))
25 committed or omitted without the owner's knowledge or consent; and

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

36 (i) No property may be forfeited pursuant to this subsection
37 (1)(h), to the extent of the interest of an owner, by reason of any
38 act or omission committed or omitted without the owner's knowledge or
39 consent;

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

4 (iii) The possession of marijuana shall not result in the
5 forfeiture of real property unless the marijuana is possessed for
6 commercial purposes that are unlawful under Washington state law, the
7 amount possessed is five or more plants or one pound or more of
8 marijuana, and a substantial nexus exists between the possession of
9 marijuana and the real property. In such a case, the intent of the
10 offender shall be determined by the preponderance of the evidence,
11 including the offender's prior criminal history, the amount of
12 marijuana possessed by the offender, the sophistication of the
13 activity or equipment used by the offender, whether the offender was
14 licensed to produce, process, or sell marijuana, or was an employee
15 of a licensed producer, processor, or retailer, and other evidence
16 which demonstrates the offender's intent to engage in unlawful
17 commercial activity;

18 (iv) The unlawful sale of marijuana or a legend drug shall not
19 result in the forfeiture of real property unless the sale was forty
20 grams or more in the case of marijuana or one hundred dollars or more
21 in the case of a legend drug, and a substantial nexus exists between
22 the unlawful sale and the real property; and

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

27 (2) Real or personal property subject to forfeiture under this
28 chapter may be seized by any (~~board~~) commission inspector or law
29 enforcement officer of this state upon process issued by any superior
30 court having jurisdiction over the property. Seizure of real property
31 shall include the filing of a lis pendens by the seizing agency. Real
32 property seized under this section shall not be transferred or
33 otherwise conveyed until ninety days after seizure or until a
34 judgment of forfeiture is entered, whichever is later: PROVIDED, That
35 real property seized under this section may be transferred or
36 conveyed to any person or entity who acquires title by foreclosure or
37 deed in lieu of foreclosure of a security interest. Seizure of
38 personal property without process may be made if:

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

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

7 (c) A ((~~board~~)) commission inspector or law enforcement officer
8 has probable cause to believe that the property is directly or
9 indirectly dangerous to health or safety; or

10 (d) The ((~~board~~)) commission inspector or law enforcement officer
11 has probable cause to believe that the property was used or is
12 intended to be used in violation of this chapter.

13 (3) In the event of seizure pursuant to subsection (2) of this
14 section, proceedings for forfeiture shall be deemed commenced by the
15 seizure. The law enforcement agency under whose authority the seizure
16 was made shall cause notice to be served within fifteen days
17 following the seizure on the owner of the property seized and the
18 person in charge thereof and any person having any known right or
19 interest therein, including any community property interest, of the
20 seizure and intended forfeiture of the seized property. Service of
21 notice of seizure of real property shall be made according to the
22 rules of civil procedure. However, the state may not obtain a default
23 judgment with respect to real property against a party who is served
24 by substituted service absent an affidavit stating that a good faith
25 effort has been made to ascertain if the defaulted party is
26 incarcerated within the state, and that there is no present basis to
27 believe that the party is incarcerated within the state. Notice of
28 seizure in the case of property subject to a security interest that
29 has been perfected by filing a financing statement in accordance with
30 chapter 62A.9A RCW, or a certificate of title, shall be made by
31 service upon the secured party or the secured party's assignee at the
32 address shown on the financing statement or the certificate of title.
33 The notice of seizure in other cases may be served by any method
34 authorized by law or court rule including but not limited to service
35 by certified mail with return receipt requested. Service by mail
36 shall be deemed complete upon mailing within the fifteen day period
37 following the seizure.

38 (4) If no person notifies the seizing law enforcement agency in
39 writing of the person's claim of ownership or right to possession of
40 items specified in subsection (1)(d), (g), or (h) of this section

1 within (~~forty-five~~) sixty days of the service of notice from the
2 seizing agency in the case of personal property and (~~ninety~~) one
3 hundred twenty days in the case of real property, the item seized
4 shall be deemed forfeited. The community property interest in real
5 property of a person whose spouse or domestic partner committed a
6 violation giving rise to seizure of the real property may not be
7 forfeited if the person did not participate in the violation.

8 (5) If any person notifies the seizing law enforcement agency in
9 writing of the person's claim of ownership or right to possession of
10 items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h)
11 of this section within (~~forty-five~~) sixty days of the service of
12 notice from the seizing agency in the case of personal property and
13 (~~ninety~~) one hundred twenty days in the case of real property, the
14 person or persons shall be afforded a reasonable opportunity to be
15 heard as to the claim or right. The notice of claim may be served by
16 any method authorized by law or court rule including, but not limited
17 to, service by first-class mail. Service by mail shall be deemed
18 complete upon mailing within the (~~forty-five~~) sixty day period
19 following service of the notice of seizure in the case of personal
20 property and within the (~~ninety-day~~) one hundred twenty day period
21 following service of the notice of seizure in the case of real
22 property. The hearing shall be before the chief law enforcement
23 officer of the seizing agency or the chief law enforcement officer's
24 designee, except where the seizing agency is a state agency as
25 defined in RCW 34.12.020(4), the hearing shall be before the chief
26 law enforcement officer of the seizing agency or an administrative
27 law judge appointed under chapter 34.12 RCW, except that any person
28 asserting a claim or right may remove the matter to a court of
29 competent jurisdiction. Removal of any matter involving personal
30 property may only be accomplished according to the rules of civil
31 procedure. The person seeking removal of the matter must serve
32 process against the state, county, political subdivision, or
33 municipality that operates the seizing agency, and any other party of
34 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-
35 five days after the person seeking removal has notified the seizing
36 law enforcement agency of the person's claim of ownership or right to
37 possession. The court to which the matter is to be removed shall be
38 the district court when the aggregate value of personal property is
39 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
40 before the seizing agency and any appeal therefrom shall be under

1 Title 34 RCW. In all cases, the burden of proof is upon the law
2 enforcement agency to establish, by a preponderance of the evidence,
3 that the property is subject to forfeiture.

4 The seizing law enforcement agency shall promptly return the
5 article or articles to the claimant, in the same or substantially
6 similar condition as when seized, upon a determination by the
7 administrative law judge or court that the claimant is the present
8 lawful owner or is lawfully entitled to possession thereof of items
9 specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of
10 this section.

11 (6) In any proceeding to forfeit property under this title, where
12 the claimant substantially prevails, the claimant is entitled to
13 reasonable attorneys' fees reasonably incurred by the claimant. (~~In~~
14 ~~addition, in a court hearing between two or more claimants to the~~
15 ~~article or articles involved, the prevailing party is entitled to a~~
16 ~~judgment for costs and reasonable attorneys' fees.))~~

17 (7) When property is forfeited under this chapter the ((~~board~~))
18 commission or seizing law enforcement agency may:

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

22 (b) Sell that which is not required to be destroyed by law and
23 which is not harmful to the public;

24 (c) Request the appropriate sheriff or director of public safety
25 to take custody of the property and remove it for disposition in
26 accordance with law; or

27 (d) Forward it to the drug enforcement administration for
28 disposition.

29 (8) (~~(a) When property is forfeited, the seizing agency shall~~
30 ~~keep a record indicating the identity of the prior owner, if known, a~~
31 ~~description of the property, the disposition of the property, the~~
32 ~~value of the property at the time of seizure, and the amount of~~
33 ~~proceeds realized from disposition of the property.~~

34 ~~(b) Each seizing agency shall retain records of forfeited~~
35 ~~property for at least seven years.~~

36 ~~(c) Each seizing agency shall file a report including a copy of~~
37 ~~the records of forfeited property with the state treasurer each~~
38 ~~calendar quarter.~~

39 ~~(d) The quarterly report need not include a record of forfeited~~
40 ~~property that is still being held for use as evidence during the~~

1 ~~investigation or prosecution of a case or during the appeal from a~~
2 ~~conviction.)~~ Seizing agencies are subject to the requirements of
3 section 4 of this act.

4 (9)(a) By January 31st of each year, each seizing agency shall
5 remit to the state treasurer an amount equal to ten percent of the
6 net proceeds of any property forfeited during the preceding calendar
7 year. Money remitted shall be deposited in the state general fund.

8 (b) The net proceeds of forfeited property is the value of the
9 forfeitable interest in the property after deducting the cost of
10 satisfying any bona fide security interest to which the property is
11 subject at the time of seizure; and in the case of sold property,
12 after deducting the cost of sale, including reasonable fees or
13 commissions paid to independent selling agents, and the cost of any
14 valid landlord's claim for damages under subsection (15) of this
15 section.

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

26 (10) Forfeited property and net proceeds not required to be paid
27 to the state treasurer shall be retained by the seizing law
28 enforcement agency exclusively for the expansion and improvement of
29 controlled substances related law enforcement activity. Money
30 retained under this section may not be used to supplant preexisting
31 funding sources.

32 (11) Controlled substances listed in Schedule I, II, III, IV, and
33 V that are possessed, transferred, sold, or offered for sale in
34 violation of this chapter are contraband and shall be seized and
35 summarily forfeited to the state. Controlled substances listed in
36 Schedule I, II, III, IV, and V, which are seized or come into the
37 possession of the ~~((board))~~ commission, the owners of which are
38 unknown, are contraband and shall be summarily forfeited to the
39 ~~((board))~~ commission.

1 (12) Species of plants from which controlled substances in
2 Schedules I and II may be derived which have been planted or
3 cultivated in violation of this chapter, or of which the owners or
4 cultivators are unknown, or which are wild growths, may be seized and
5 summarily forfeited to the ((~~board~~)) commission.

6 (13) The failure, upon demand by a ((~~board~~)) commission inspector
7 or law enforcement officer, of the person in occupancy or in control
8 of land or premises upon which the species of plants are growing or
9 being stored to produce an appropriate registration or proof that he
10 or she is the holder thereof constitutes authority for the seizure
11 and forfeiture of the plants.

12 (14) Upon the entry of an order of forfeiture of real property,
13 the court shall forward a copy of the order to the assessor of the
14 county in which the property is located. Orders for the forfeiture of
15 real property shall be entered by the superior court, subject to
16 court rules. Such an order shall be filed by the seizing agency in
17 the county auditor's records in the county in which the real property
18 is located.

19 (15)(a) A landlord may assert a claim against proceeds from the
20 sale of assets seized and forfeited under subsection (7)(b) of this
21 section, only if:

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

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

30 (A) Only if the funds applied under (a)(ii) of this subsection
31 are insufficient to satisfy the damage directly caused by a law
32 enforcement officer, may the landlord seek compensation for the
33 damage by filing a claim against the governmental entity under whose
34 authority the law enforcement agency operates within thirty days
35 after the search;

36 (B) Only if the governmental entity denies or fails to respond to
37 the landlord's claim within sixty days of the date of filing, may the
38 landlord collect damages under this subsection by filing within
39 thirty days of denial or the expiration of the sixty-day period,
40 whichever occurs first, a claim with the seizing law enforcement

1 agency. The seizing law enforcement agency must notify the landlord
2 of the status of the claim by the end of the thirty-day period.
3 Nothing in this section requires the claim to be paid by the end of
4 the sixty-day or thirty-day period.

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

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

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

13 (16) The landlord's claim for damages under subsection (15) of
14 this section may not include a claim for loss of business and is
15 limited to:

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

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

19 (c) The proceeds from the sale of the specific tenant's property
20 seized and forfeited under subsection (7)(b) of this section; and

21 (d) The proceeds available after the seizing law enforcement
22 agency satisfies any bona fide security interest in the tenant's
23 property and costs related to sale of the tenant's property as
24 provided by subsection (9)(b) of this section.

25 (17) Subsections (15) and (16) of this section do not limit any
26 other rights a landlord may have against a tenant to collect for
27 damages. However, if a law enforcement agency satisfies a landlord's
28 claim under subsection (15) of this section, the rights the landlord
29 has against the tenant for damages directly caused by a law
30 enforcement officer under the terms of the landlord and tenant's
31 contract are subrogated to the law enforcement agency.

32 (18) The protections afforded by the service members' civil
33 relief act, chapter 38.42 RCW, are applicable to proceedings under
34 this section.

35 **Sec. 16.** RCW 38.42.020 and 2014 c 65 s 2 are each amended to
36 read as follows:

37 (1) Any service member who is ordered to report for military
38 service and his or her dependents are entitled to the rights and
39 protections of this chapter during the period beginning on the date

1 on which the service member receives the order and ending one hundred
2 eighty days after termination of or release from military service.

3 (2) This chapter applies to any judicial or administrative
4 proceeding commenced in any court or agency in Washington state in
5 which a service member or his or her dependent is a party. This
6 chapter applies to civil asset forfeiture proceedings. This chapter
7 does not apply to criminal proceedings.

8 (3) This chapter shall be construed liberally so as to provide
9 fairness and do substantial justice to service members and their
10 dependents.

11 NEW SECTION. **Sec. 17.** Sections 1 through 6 of this act
12 constitute a new chapter in Title 7 RCW.

13 NEW SECTION. **Sec. 18.** This act applies to seizures occurring on
14 or after the effective date of this section.

15 NEW SECTION. **Sec. 19.** Except for section 6 of this act, this
16 act takes effect January 1, 2019.

17 NEW SECTION. **Sec. 20.** Section 6 of this act takes effect July
18 1, 2018.

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