
HOUSE BILL 2718

State of Washington

65th Legislature

2018 Regular Session

By Representatives Shea and Goodman

Read first time 01/12/18. Referred to Committee on Judiciary.

1 AN ACT Relating to seizure and forfeiture procedures and
2 reporting; amending RCW 9.68A.120, 9A.88.150, 9A.83.030, 19.290.230,
3 46.61.5058, 70.74.400, 77.15.070, 69.50.505, and 38.42.020; adding a
4 new chapter to Title 7 RCW; creating a new section; prescribing
5 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 forty-five days of the service of notice from the seizing
14 agency in the case of personal property and ninety 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 forty-five days of the service of notice from the seizing
23 agency in the case of personal property and ninety 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 forty-five day
29 period following service of the notice of seizure in the case of
30 personal property and within the ninety-day period following service
31 of the notice of seizure in the case of real property.

32 (4) The hearing must be before the chief law enforcement officer
33 of the seizing agency or the chief law enforcement officer's
34 designee, except that where the seizing agency is a state agency as
35 defined in RCW 34.12.020(4), the hearing must be before the chief law
36 enforcement officer of the seizing agency or an administrative law
37 judge appointed under chapter 34.12 RCW. Such a hearing and any
38 appeal therefrom must be under Title 34 RCW.

39 (5) Any person asserting a claim or right may remove the matter
40 to a court of competent jurisdiction. Removal of any matter involving

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

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

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

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

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

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

31 (8) In any proceeding to forfeit property under this chapter,
32 where the claimant substantially prevails, the claimant is entitled
33 to reasonable attorneys' fees reasonably incurred by the claimant,
34 together with expenses and damages for loss of use of the property.

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

38 NEW SECTION. **Sec. 2.** (1) Upon the entry of an order of
39 forfeiture of real property, the court shall forward a copy of the

1 order to the assessor of the county in which the property is located.
2 Orders for the forfeiture of real property shall be entered by the
3 superior court, subject to court rules. Such an order shall be filed
4 by the seizing agency in the county auditor's records in the county
5 in which the real property is located.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 NEW SECTION. **Sec. 3.** When property is forfeited under this
21 chapter, the seizing agency may:

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

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

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

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

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

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

35 (a) Pursuant to this chapter;

36 (b) Pursuant to any other section in the Revised Code of
37 Washington that authorizes seizure; or

1 (c) Conducted in collaboration with a federal agency under
2 federal law.

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

8 (3) The state treasurer shall establish and maintain a case
9 tracking system and searchable public web site that includes the
10 following information about property seized and forfeited under state
11 law and under any agreement with the federal government:

12 (a) The name of the seizing agency that seized the property or,
13 if seized by a multijurisdictional task force, the name of the lead
14 agency;

15 (b) The date of the seizure;

16 (c) The type of property seized. If currency, then the amount of
17 currency, or, if property other than currency, a description of
18 property seized including make, model, year, and serial number;

19 (d) The place of seizure. The place must be identified as a home,
20 business, or traffic stop; and, if a traffic stop on an interstate or
21 state highway, the direction of the traffic flow;

22 (e) The estimated value of the seizure;

23 (f) What alleged criminal offense led to the seizure and whether
24 the offense is under state or federal law;

25 (g) What crime the suspect was charged with and whether the crime
26 is under state or federal law;

27 (h) The criminal case number and court in which any case was
28 filed;

29 (i) The outcome of the suspect's criminal case. One of the
30 following must be specified: No charge filed, charges dropped,
31 acquittal, plea agreement, jury conviction, or other;

32 (j) If forfeiture is sought under federal law, the reason for the
33 federal transfer, such as adoption or joint task force. If forfeiture
34 is sought under federal law, information for (l) through (r) of this
35 subsection (3) may not be available readily and are optional;

36 (k) The forfeiture case number and court in which the case was
37 filed, if any;

38 (l) If a property owner filed a claim or counterclaim, whether
39 the claimant is the suspect, an innocent owner, a joint owner, or a
40 third-party owner;

1 (m) The method of the final forfeiture proceeding, such as
2 criminal, civil-judicial, or civil-administrative;
3 (n) The date of any forfeiture order;
4 (o) Whether or not there was a forfeiture settlement agreement;
5 (p) Disposition of the property, such as returned to owner,
6 partially returned to owner, sold, destroyed, or retained by a law
7 enforcement agency;
8 (q) The date of property disposition;
9 (r) The value of the property forfeited; or if forfeited under
10 federal law, the amount of proceeds received from the federal
11 government;
12 (s) An estimate of total costs to the agency: (i) To store the
13 property in impound lots or evidence rooms; (ii) for law enforcement
14 personnel and prosecutors' time and expenses to litigate the
15 forfeiture case; and (iii) to sell or dispose of the forfeited
16 property;
17 (t) The amount of attorney fees awarded to property owners, if
18 any; and
19 (u) If any property was retained by a seizing agency, the purpose
20 for which it is used.
21 (4) The state treasurer shall also establish and maintain a
22 searchable public web site that includes:
23 (a) The total amount of funds expended, in each of the following
24 ten categories, which resulted from property seized, forfeited, and
25 reported in subsection (3) of this section:
26 (i) Drug abuse, crime, and gang prevention programs;
27 (ii) Victim reparations;
28 (iii) Investigation costs, including witness protection,
29 informant fees, and controlled buys;
30 (iv) Court costs and attorneys' fees;
31 (v) Salaries, overtime, and benefits, as permitted by law;
32 (vi) Professional outside services, including auditing, court
33 reporting, expert witness fees, outside attorney fees, and membership
34 fees paid to trade associations;
35 (vii) Travel, meals, entertainment, conferences, training, and
36 continuing education;
37 (viii) Other operating expenses, including office supplies,
38 postage, and printing;
39 (ix) Capital expenditures, including vehicles, firearms,
40 equipment, computers, and furniture; and

1 (x) Other expenditures of forfeiture proceeds.

2 (b) The total value of seized and forfeited property held by the
3 agency at the end of the reporting period.

4 (5) The agency that seizes property and prosecutors that litigate
5 related criminal cases and forfeiture proceedings shall update the
6 state treasurer's web site with the information required under
7 subsection (3) of this section annually. The commander of a
8 multijurisdictional task force may appoint one agency to report its
9 seizures. If an agency has made no seizures during the previous year,
10 a null report must be filed by the agency specifying that it did not
11 engage in seizures or forfeitures under this chapter during the
12 reporting period.

13 (6) A seizing agency that expends forfeiture-related proceeds
14 shall update the state treasurer's web site with the information
15 required under subsection (4) of this section within thirty days
16 after the end of each fiscal year. The commander of a
17 multijurisdictional task force may appoint one agency to report its
18 expenditures.

19 (7) One hundred twenty days after the close of each fiscal year,
20 the state treasurer shall submit to the speaker of the house of
21 representatives, president of the senate, attorney general, and
22 governor a written report summarizing forfeiture activity in the
23 state for the preceding fiscal year; the type, approximate value, and
24 disposition of the property seized; and the amount of any proceeds
25 received or expended at the state and local levels. The report must
26 provide a categorized accounting of all proceeds expended. Summary
27 data on seizures, forfeitures, and expenditures of forfeiture
28 proceeds must be disaggregated by agency. The aggregate report must
29 be made available on the state treasurer's web site.

30 (8) The state treasurer may include in the aggregate report
31 required by subsection (7) of this section recommendations to improve
32 statutes, rules, and policies to facilitate seizure, forfeiture, and
33 expenditure processes and reporting that are fair to crime victims,
34 innocent property owners, secured interest holders, citizens, law
35 enforcement, and taxpayers.

36 (9) If a seizing agency fails to file a report within thirty days
37 after it is due, without good cause as determined by the state
38 treasurer, the agency is subject to a civil penalty payable to the
39 state general fund of five hundred dollars or the equivalent of one-
40 quarter of the forfeiture proceeds received by the agency during the

1 reporting period, whichever is greater. In addition, the state
2 treasurer must make no expenditures from the forfeiture fund for the
3 benefit of the agency until the report is filed.

4 (10) The state auditor shall annually perform a financial audit
5 under generally accepted government auditing standards of records
6 related to inventory of seized property and expenditures of
7 forfeiture proceeds. A copy of the final audit report must be
8 submitted to the state treasurer no later than ninety days after the
9 end of the fiscal year and be made available to the public.

10 (11) The state treasurer may recover its costs under this chapter
11 by charging a fee to seizing agencies filing a report. The agency may
12 use forfeiture proceeds to pay the costs of compiling and reporting
13 data under this chapter, and to pay any fees imposed by the state
14 treasurer.

15 (12) The data and reports compiled and prepared under this
16 chapter are public information under chapter 42.56 RCW.

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

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

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

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

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

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

10 The following are subject to seizure and forfeiture:

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

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

20 (a) 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;

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

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

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

37 (3) All personal property, moneys, negotiable instruments,
38 securities, or other tangible or intangible property furnished or

1 intended to be furnished by any person in exchange for visual or
2 printed matter depicting a minor engaged in sexually explicit
3 conduct, or constituting proceeds traceable to any violation of this
4 chapter.

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

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

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

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

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

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

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

37 ~~(7) If any person notifies the seizing law enforcement agency in~~
38 ~~writing of the person's claim of ownership or right to possession of~~
39 ~~seized items within forty five days of the seizure, the person or~~
40 ~~persons shall be afforded a reasonable opportunity to be heard as to~~

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

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

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

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

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

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

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

37 (b) The net proceeds of forfeited property is the value of the
38 forfeitable interest in the property after deducting the cost of
39 satisfying any bona fide security interest to which the property is
40 subject at the time of seizure; and in the case of sold property,

1 after deducting the cost of sale, including reasonable fees or
2 commissions paid to an independent selling agency.

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

11 (11) Forfeited property and net proceeds not required to be paid
12 to the state treasurer under this chapter shall be used for payment
13 of all proper expenses of the investigation leading to the seizure,
14 including any money delivered to the subject of the investigation by
15 the law enforcement agency, and of the proceedings for forfeiture and
16 sale, including expenses of seizure, maintenance of custody,
17 advertising, actual costs of the prosecuting or city attorney, and
18 court costs. Money remaining after payment of these expenses shall be
19 retained by the seizing law enforcement agency for the exclusive use
20 of enforcing the provisions of this chapter or chapter 9A.88 RCW.)
21 are governed by chapter 7.--- RCW (the new chapter created in section
22 16 of this act).

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

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

27 (a) Any property or other interest acquired or maintained in
28 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070 to the extent of
29 the investment of funds, and any appreciation or income attributable
30 to the investment, from a violation of RCW 9.68A.100, 9.68A.101, or
31 9A.88.070;

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

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

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

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

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

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

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

23 (e) All books, records, and research products and materials,
24 including formulas, microfilm, tapes, and data which are used, or
25 intended for use, in violation of RCW 9.68A.100, 9.68A.101, or
26 9A.88.070;

27 (f) All moneys, negotiable instruments, securities, or other
28 tangible or intangible property of value furnished or intended to be
29 furnished by any person in exchange for a violation of RCW 9.68A.100,
30 9.68A.101, or 9A.88.070, all tangible or intangible personal
31 property, proceeds, or assets acquired in whole or in part with
32 proceeds traceable to an exchange or series of exchanges in violation
33 of RCW 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable
34 instruments, and securities used or intended to be used to facilitate
35 any violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070. A forfeiture
36 of money, negotiable instruments, securities, or other tangible or
37 intangible property encumbered by a bona fide security interest is
38 subject to the interest of the secured party if, at the time the
39 security interest was created, the secured party neither had
40 knowledge of nor consented to the act or omission. No personal

1 property may be forfeited under this subsection (1)(f), to the extent
2 of the interest of an owner, by reason of any act or omission(~~(~~
3 ~~which that owner establishes was~~)) committed or omitted without the
4 owner's knowledge or consent; and

5 (g) All real property, including any right, title, and interest
6 in the whole of any lot or tract of land, and any appurtenances or
7 improvements which are being used with the knowledge of the owner for
8 a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, or which have
9 been acquired in whole or in part with proceeds traceable to an
10 exchange or series of exchanges in violation of RCW 9.68A.100,
11 9.68A.101, or 9A.88.070, if a substantial nexus exists between the
12 violation and the real property. However:

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

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

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

33 (a) The seizure is incident to an arrest or a search under a
34 search warrant;

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

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

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

25 (4) ~~If no person notifies the seizing law enforcement agency in~~
26 ~~writing of the person's claim of ownership or right to possession of~~
27 ~~items specified in subsection (1) of this section within forty-five~~
28 ~~days of the service of notice from the seizing agency in the case of~~
29 ~~personal property and ninety days in the case of real property, the~~
30 ~~item seized shall be deemed forfeited. The community property~~
31 ~~interest in real property of a person whose spouse or domestic~~
32 ~~partner committed a violation giving rise to seizure of the real~~
33 ~~property may not be forfeited if the person did not participate in~~
34 ~~the violation.~~

35 (5) ~~If any 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 ~~person or persons shall be afforded a reasonable opportunity to be~~

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

30 The seizing law enforcement agency shall promptly return the
31 article or articles to the claimant upon a determination by the
32 administrative law judge or court that the claimant is the present
33 lawful owner or is lawfully entitled to possession thereof of items
34 specified in subsection (1) of this section.

35 (6) In any proceeding to forfeit property under this title, where
36 the claimant substantially prevails, the claimant is entitled to
37 reasonable attorneys' fees reasonably incurred by the claimant. In
38 addition, in a court hearing between two or more claimants to the
39 article or articles involved, the prevailing party is entitled to a
40 judgment for costs and reasonable attorneys' fees.

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

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

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

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

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

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

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

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

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

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 subsection (12) of this~~
37 ~~section.~~

38 ~~(c) The value of sold forfeited property is the sale price. The~~
39 ~~value of destroyed property and retained firearms or illegal property~~
40 ~~is zero.~~

1 ~~(10) Net proceeds not required to be paid to the state treasurer~~
2 ~~shall be used for payment of all proper expenses of the investigation~~
3 ~~leading to the seizure, including any money delivered to the subject~~
4 ~~of the investigation by the law enforcement agency, and of the~~
5 ~~proceedings for forfeiture and sale, including expenses of seizure,~~
6 ~~maintenance of custody, advertising, actual costs of the prosecuting~~
7 ~~or city attorney, and court costs. Money remaining after payment of~~
8 ~~these expenses shall be retained by the seizing law enforcement~~
9 ~~agency for the exclusive use of enforcing the provisions of this~~
10 ~~chapter or chapter 9.68A RCW.~~

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

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

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

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

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

34 ~~(ii) Only if the governmental entity denies or fails to respond~~
35 ~~to the landlord's claim within sixty days of the date of filing, may~~
36 ~~the landlord collect damages under this subsection by filing within~~
37 ~~thirty days of denial or the expiration of the sixty day period,~~
38 ~~whichever occurs first, a claim with the seizing law enforcement~~
39 ~~agency. The seizing law enforcement agency must notify the landlord~~
40 ~~of the status of the claim by the end of the thirty day period.~~

1 ~~Nothing in this section requires the claim to be paid by the end of~~
2 ~~the sixty day or thirty day period; and~~

3 ~~(c) For any claim filed under (b) of this subsection, the law~~
4 ~~enforcement agency shall pay the claim unless the agency provides~~
5 ~~substantial proof that the landlord either:~~

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

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

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

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

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

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

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

23 ~~(14) Subsections (12) and (13) of this section do not limit any~~
24 ~~other rights a landlord may have against a tenant to collect for~~
25 ~~damages. However, if a law enforcement agency satisfies a landlord's~~
26 ~~claim under subsection (12) of this section, the rights the landlord~~
27 ~~has against the tenant for damages directly caused by a law~~
28 ~~enforcement officer under the terms of the landlord and tenant's~~
29 ~~contract are subrogated to the law enforcement agency.)) are governed~~
30 ~~by chapter 7.--- RCW (the new chapter created in section 16 of this~~
31 ~~act).~~

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

34 (1) Proceeds traceable to or derived from specified unlawful
35 activity or a violation of RCW 9A.83.020 are subject to seizure and
36 forfeiture. The attorney general or county prosecuting attorney may
37 file a civil action for the forfeiture of proceeds. Unless otherwise
38 provided for under this section, no property rights exist in these
39 proceeds. All right, title, and interest in the proceeds shall vest

1 in the governmental entity of which the seizing law enforcement
2 agency is a part upon commission of the act or omission giving rise
3 to forfeiture under this section.

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

15 (a) The seizure is incident to an arrest or a search under a
16 search warrant or an inspection under an administrative inspection
17 warrant issued pursuant to RCW 69.50.502; or

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

21 (3) A seizure under subsection (2) of this section commences
22 proceedings for forfeiture pursuant to chapter 7.--- RCW (the new
23 chapter created in section 16 of this act). ~~((The law enforcement~~
24 ~~agency under whose authority the seizure was made shall cause notice~~
25 ~~of the seizure and intended forfeiture of the seized proceeds to be~~
26 ~~served within fifteen days after the seizure on the owner of the~~
27 ~~property seized and the person in charge thereof and any person who~~
28 ~~has a known right or interest therein, including a community property~~
29 ~~interest. Service of notice of seizure of real property shall be made~~
30 ~~according to the rules of civil procedure. However, the state may not~~
31 ~~obtain a default judgment with respect to real property against a~~
32 ~~party who is served by substituted service absent an affidavit~~
33 ~~stating that a good faith effort has been made to ascertain if the~~
34 ~~defaulted party is incarcerated within the state, and that there is~~
35 ~~no present basis to believe that the party is incarcerated within the~~
36 ~~state. The notice of seizure in other cases may be served by any~~
37 ~~method authorized by law or court rule including but not limited to~~
38 ~~service by certified mail with return receipt requested. Service by~~
39 ~~mail is complete upon mailing within the fifteen day period after the~~
40 ~~seizure.~~

1 ~~(4) 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 ~~the property within forty five days of the seizure in the case of~~
4 ~~personal property and ninety days in the case of real property, the~~
5 ~~property seized shall be deemed forfeited. The community property~~
6 ~~interest in real property of a person whose spouse or domestic~~
7 ~~partner committed a violation giving rise to seizure of the real~~
8 ~~property may not be forfeited if the person did not participate in~~
9 ~~the violation.~~

10 ~~(5) If a person notifies the seizing law enforcement agency in~~
11 ~~writing of the person's claim of ownership or right to possession of~~
12 ~~property within forty five days of the seizure in the case of~~
13 ~~personal property and ninety 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 provisions of RCW 69.50.505(5)~~
16 ~~shall apply to any such hearing. The seizing law enforcement agency~~
17 ~~shall promptly return property to the claimant upon the direction of~~
18 ~~the administrative law judge or court.~~

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

21 **Sec. 10.** RCW 19.290.230 and 2013 c 322 s 27 are each amended to
22 read as follows:

23 (1) The following personal property is subject to seizure and
24 forfeiture and no property right exists in them: All personal
25 property including, but not limited to, any item, object, tool,
26 substance, device, weapon, machine, vehicle of any kind, money,
27 security, or negotiable instrument, which the seizing agency proves
28 by a preponderance of the evidence was used or intended to be used by
29 its owner or the person in charge to knowingly or intentionally
30 facilitate the commission of, or to knowingly or intentionally abet
31 the commission of, a crime involving theft, trafficking, or unlawful
32 possession of commercial metal property, or which the seizing agency
33 proves by a preponderance of the evidence was knowingly or
34 intentionally furnished or was intended to be furnished by any person
35 in the commission of, as a result of, or as compensation for the
36 commission of, a crime involving theft, trafficking, or the unlawful
37 possession of commercial metal property, or which the property owner
38 acquired in whole or in part with proceeds traceable to a knowing or
39 intentional commission of a crime involving the theft, trafficking,

1 or unlawful possession of commercial metal property provided that
2 such activity is not less than a class C felony; except that:

3 (a) No vehicle used by any person as a common carrier in the
4 transaction of business as a common carrier is subject to forfeiture
5 under this section unless the seizing agency proves by a
6 preponderance of the evidence that the owner or other person in
7 charge of the vehicle is a consenting party or is privy to any crime
8 involving theft, trafficking, or the unlawful possession of
9 commercial metal property;

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

15 (c) A property owner's property is not subject to seizure if an
16 employee or agent of that property owner uses the property owner's
17 property to knowingly or intentionally facilitate the commission of,
18 or to knowingly or intentionally aid and abet the commission of, a
19 crime involving theft, trafficking, or unlawful possession of
20 commercial metal property, in violation of that property owner's
21 instructions or policies against such activity, and without the
22 property owner's knowledge or consent.

23 (2) The following real property is subject to seizure and
24 forfeiture and no property right exists in them: All real property,
25 including any right, title, and interest in the whole of any lot or
26 tract of land, and any appurtenances or improvements, that the
27 seizing agency proves by a preponderance of the evidence are being
28 used with the knowledge of the owner for the intentional commission
29 of any crime involving the theft, trafficking, or unlawful possession
30 of commercial metal property, or which have been acquired in whole or
31 in part with proceeds traceable to the commission of any crime
32 involving the trafficking, theft, or unlawful possession of
33 commercial metal, if such activity is not less than a class C felony
34 and a substantial nexus exists between the commission of the
35 violation or crime and the real property. However:

36 (a) No property may be forfeited pursuant to this subsection (2),
37 to the extent of the interest of an owner, by reason of any act or
38 omission committed or omitted without the owner's actual or
39 constructive knowledge; and further, a property owner's real property
40 is not subject to seizure if an employee or agent of that property

1 owner uses the property owner's real property to knowingly or
2 intentionally facilitate the commission of, or to knowingly or
3 intentionally aid and abet the commission of, a crime involving
4 theft, trafficking, or unlawful possession of commercial metal
5 property, in violation of that property owner's instructions or
6 policies against such activity, and without the property owner's
7 knowledge or consent; and

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

12 (3) Property subject to forfeiture under this chapter may be
13 seized by any law enforcement officer of this state upon process
14 issued by any superior court having jurisdiction over the property.
15 Seizure of real property shall include the filing of a lis pendens by
16 the seizing agency. Real property seized under this section shall not
17 be transferred or otherwise conveyed until ninety days after seizure
18 or until a judgment of forfeiture is entered, whichever is later:
19 PROVIDED, That 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

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

28 (4) In the event of seizure pursuant to this section, proceedings
29 for forfeiture (~~(shall be)~~) are deemed commenced by the seizure and
30 governed by chapter 7.--- RCW (the new chapter created in section 16
31 of this act). (~~(The law enforcement agency under whose authority the~~
32 ~~seizure 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, including any community property interest, of the~~
36 ~~seizure and intended forfeiture of the seized property. Service of~~
37 ~~notice of seizure of real property shall be made according to the~~
38 ~~rules of civil procedure. However, the state may not obtain a default~~
39 ~~judgment with respect to real property against a party who is served~~
40 ~~by substituted service absent an affidavit stating that a good faith~~

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

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

23 (6) If a person notifies the seizing law enforcement agency in
24 writing of the person's claim of ownership or right to possession of
25 the seized property within forty five days of the seizure in the case
26 of personal property and ninety days in the case of real property,
27 the law enforcement agency shall give the person or persons a
28 reasonable opportunity to be heard as to the claim or right. The
29 hearing shall be before the chief law enforcement officer of the
30 seizing agency or the chief law enforcement officer's designee,
31 except where the seizing agency is a state agency as defined in RCW
32 34.12.020(4), the hearing shall be before the chief law enforcement
33 officer of the seizing agency or an administrative law judge
34 appointed under chapter 34.12 RCW, except that any person asserting a
35 claim or right may remove the matter to a court of competent
36 jurisdiction. Removal may only be accomplished according to the rules
37 of civil procedure. The person seeking removal of the matter must
38 serve process against the state, county, political subdivision, or
39 municipality that operates the seizing agency, and any other party of
40 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-

1 five days after the person seeking removal has notified the seizing
2 law enforcement agency of the person's claim of ownership or right to
3 possession. The court to which the matter is to be removed shall be
4 the district court when the aggregate value of the property is within
5 the jurisdictional limit set forth in RCW 3.66.020. A hearing before
6 the seizing agency and any appeal therefrom shall be under Title 34
7 RCW. In a court hearing between two or more claimants to the property
8 involved, the prevailing party shall be entitled to a judgment for
9 costs and reasonable attorneys' fees. The burden of producing
10 evidence shall be upon the person claiming to be the lawful owner or
11 the person claiming to have the lawful right to possession of the
12 property.

13 (7) At the hearing, the seizing agency has the burden of proof to
14 establish by a preponderance of the evidence that seized property is
15 subject to forfeiture, and that the use or intended use of the seized
16 property in connection with a crime pursuant to this section occurred
17 with the owner's actual or constructive knowledge or consent. The
18 person claiming to be the lawful owner or the person claiming to have
19 the lawful right to possession of the property has the burden of
20 proof to establish by a preponderance of the evidence that the person
21 owns or has a right to possess the seized property. The possession of
22 bare legal title is not sufficient to establish ownership of seized
23 property if the seizing agency proves by a preponderance of the
24 evidence that the person claiming ownership or right to possession is
25 a nominal owner and did not actually own or exert a controlling
26 interest in the property.

27 The seizing law enforcement agency shall promptly return the
28 property to the claimant upon a determination by the administrative
29 law judge or court that the claimant is the present lawful owner or
30 is lawfully entitled to possession of the property.

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

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

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

39 (9)(a) Within one hundred twenty days after the entry of an order
40 of forfeiture, each seizing agency shall remit to, if known, the

1 ~~victim of the crime involving the seized property, an amount equal to~~
2 ~~fifty percent of the net proceeds of any property forfeited.~~

3 ~~(b) Retained property and net proceeds not required to be paid to~~
4 ~~victims shall be retained by the seizing law enforcement agency~~
5 ~~exclusively for the expansion and improvement of law enforcement~~
6 ~~activity. Money retained under this section may not be used to~~
7 ~~supplant preexisting funding sources.~~

8 ~~(c) 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.~~

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

25 ~~(10) Upon the entry of an order of forfeiture of real property,~~
26 ~~the court shall forward a copy of the order to the assessor of the~~
27 ~~county in which the property is located. Orders for the forfeiture of~~
28 ~~real property shall be entered by the superior court, subject to~~
29 ~~court rules. Such an order shall be filed by the seizing agency in~~
30 ~~the county auditor's records in the county in which the real property~~
31 ~~is located.))~~

32 **Sec. 11.** RCW 46.61.5058 and 2013 2nd sp.s. c 35 s 18 are each
33 amended to read as follows:

34 (1) Upon the arrest of a person or upon the filing of a
35 complaint, citation, or information in a court of competent
36 jurisdiction, based upon probable cause to believe that a person has
37 violated RCW 46.20.740, 46.61.502, or 46.61.504 or any similar
38 municipal ordinance, if such person has a prior offense within seven
39 years as defined in RCW 46.61.5055, and where the person has been

1 provided written notice that any transfer, sale, or encumbrance of
2 such person's interest in the vehicle over which that person was
3 actually driving or had physical control when the violation occurred,
4 is unlawful pending either acquittal, dismissal, sixty days after
5 conviction, or other termination of the charge, such person shall be
6 prohibited from encumbering, selling, or transferring his or her
7 interest in such vehicle, except as otherwise provided in (a), (b),
8 and (c) of this subsection, until either acquittal, dismissal, sixty
9 days after conviction, or other termination of the charge. The
10 prohibition against transfer of title shall not be stayed pending the
11 determination of an appeal from the conviction.

12 (a) A vehicle encumbered by a bona fide security interest may be
13 transferred to the secured party or to a person designated by the
14 secured party;

15 (b) A leased or rented vehicle may be transferred to the lessor,
16 rental agency, or to a person designated by the lessor or rental
17 agency; and

18 (c) A vehicle may be transferred to a third party or a vehicle
19 dealer who is a bona fide purchaser or may be subject to a bona fide
20 security interest in the vehicle unless it is established that (i) in
21 the case of a purchase by a third party or vehicle dealer, such party
22 or dealer had actual notice that the vehicle was subject to the
23 prohibition prior to the purchase, or (ii) in the case of a security
24 interest, the holder of the security interest had actual notice that
25 the vehicle was subject to the prohibition prior to the encumbrance
26 of title.

27 (2) On conviction for a violation of either RCW 46.20.740,
28 46.61.502, or 46.61.504 or any similar municipal ordinance where the
29 person convicted has a prior offense within seven years as defined in
30 RCW 46.61.5055, the motor vehicle the person was driving or over
31 which the person had actual physical control at the time of the
32 offense, if the person has a financial interest in the vehicle, the
33 court shall consider at sentencing whether the vehicle shall be
34 seized and forfeited pursuant to this section if a seizure or
35 forfeiture has not yet occurred.

36 (3) A vehicle subject to forfeiture under this chapter may be
37 seized by a law enforcement officer of this state upon process issued
38 by a court of competent jurisdiction. Seizure of a vehicle may be
39 made without process if the vehicle subject to seizure has been the

1 subject of a prior judgment in favor of the state in a forfeiture
2 proceeding based upon this section.

3 (4) Seizure under subsection (3) of this section automatically
4 commences proceedings for forfeiture, which proceedings are governed
5 by chapter 7.--- RCW (the new chapter created in section 16 of this
6 act). (~~The law enforcement agency under whose authority the seizure~~
7 ~~was made shall cause notice of the seizure and intended forfeiture of~~
8 ~~the seized vehicle to be served within fifteen days after the seizure~~
9 ~~on the owner of the vehicle seized, on the person in charge of the~~
10 ~~vehicle, and on any person having a known right or interest in the~~
11 ~~vehicle, including a community property interest. The notice of~~
12 ~~seizure may be served by any method authorized by law or court rule,~~
13 ~~including but not limited to service by certified mail with return~~
14 ~~receipt requested. Service by mail is complete upon mailing within~~
15 ~~the fifteen-day period after the seizure. Notice of seizure in the~~
16 ~~case of property subject to a security interest that has been~~
17 ~~perfected on a certificate of title shall be made by service upon the~~
18 ~~secured party or the secured party's assignee at the address shown on~~
19 ~~the financing statement or the certificate of title.~~

20 (5) ~~If no person notifies the seizing law enforcement agency in~~
21 ~~writing of the person's claim of ownership or right to possession of~~
22 ~~the seized vehicle within forty five days of the seizure, the vehicle~~
23 ~~is deemed forfeited.~~

24 (6) ~~If a person notifies the seizing law enforcement agency in~~
25 ~~writing of the person's claim of ownership or right to possession of~~
26 ~~the seized vehicle within forty five days of the seizure, the law~~
27 ~~enforcement agency shall give the person or persons a reasonable~~
28 ~~opportunity to be heard as to the claim or right. The hearing shall~~
29 ~~be before the chief law enforcement officer of the seizing agency or~~
30 ~~the chief law enforcement officer's designee, except where the~~
31 ~~seizing agency is a state agency as defined in RCW 34.12.020, the~~
32 ~~hearing shall be before the chief law enforcement officer of the~~
33 ~~seizing agency or an administrative law judge appointed under chapter~~
34 ~~34.12 RCW, except that any person asserting a claim or right may~~
35 ~~remove the matter to a court of competent jurisdiction. Removal may~~
36 ~~only be accomplished according to the rules of civil procedure. The~~
37 ~~person seeking removal of the matter must serve process against the~~
38 ~~state, county, political subdivision, or municipality that operates~~
39 ~~the seizing agency, and any other party of interest, in accordance~~
40 ~~with RCW 4.28.080 or 4.92.020, within forty five days after the~~

1 person seeking removal has notified the seizing law enforcement
2 agency of the person's claim of ownership or right to possession. The
3 court to which the matter is to be removed shall be the district
4 court when the aggregate value of the vehicle is within the
5 jurisdictional limit set forth in RCW 3.66.020. A hearing before the
6 seizing agency and any appeal therefrom shall be under Title 34 RCW.
7 In a court hearing between two or more claimants to the vehicle
8 involved, the prevailing party shall be entitled to a judgment for
9 costs and reasonable attorneys' fees. The burden of producing
10 evidence shall be upon the person claiming to be the legal owner or
11 the person claiming to have the lawful right to possession of the
12 vehicle. The seizing law enforcement agency shall promptly return the
13 vehicle to the claimant upon a determination by the administrative
14 law judge or court that the claimant is the present legal owner under
15 this title or is lawfully entitled to possession of the vehicle.

16 ~~(7))~~ (5) When a vehicle is forfeited under this chapter the
17 seizing law enforcement agency may sell the vehicle, retain it for
18 official use, or upon application by a law enforcement agency of this
19 state release the vehicle to that agency for the exclusive use of
20 enforcing this title; provided, however, that the agency shall first
21 satisfy any bona fide security interest to which the vehicle is
22 subject under subsection (1)(a) or (c) of this section.

23 ~~((8))~~ (6) When a vehicle is forfeited, the seizing agency shall
24 keep a record indicating the identity of the prior owner, if known, a
25 description of the vehicle, the disposition of the vehicle, the value
26 of the vehicle at the time of seizure, and the amount of proceeds
27 realized from disposition of the vehicle.

28 ~~((9))~~ (7) Each seizing agency shall retain records of forfeited
29 vehicles for at least seven years.

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

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

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

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

7 ~~(14) The value of a sold forfeited vehicle is the sale price. The~~
8 ~~value of a retained forfeited vehicle is the fair market value of the~~
9 ~~vehicle at the time of seizure, determined when possible by reference~~
10 ~~to an applicable commonly used index, such as the index used by the~~
11 ~~department of licensing. A seizing agency may, but need not, use an~~
12 ~~independent qualified appraiser to determine the value of retained~~
13 ~~vehicles. If an appraiser is used, the value of the vehicle appraised~~
14 ~~is net of the cost of the appraisal.))~~

15 **Sec. 12.** RCW 70.74.400 and 2002 c 370 s 3 are each amended to
16 read as follows:

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

23 (2) The law enforcement agency making the seizure shall notify
24 the Washington state department of labor and industries of the
25 seizure.

26 (3) Seizure of explosives, improvised devices, and components of
27 explosives and improvised devices under subsection (1) of this
28 section may be made if:

29 (a) The seizure is incident to arrest or a search under a search
30 warrant;

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

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

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

1 (4) A law enforcement agency shall destroy explosives seized
2 under this chapter when it is necessary to protect the public safety
3 and welfare. When destruction is not necessary to protect the public
4 safety and welfare, and the explosives are not being held for
5 evidence, a seizure pursuant to this section commences proceedings
6 for forfeiture, which proceedings are governed by chapter 7.--- RCW
7 (the new chapter created in section 16 of this act).

8 ~~(5) ((The law enforcement agency under whose authority the~~
9 ~~seizure was made shall issue a written notice of the seizure and~~
10 ~~commencement of the forfeiture proceedings to the person from whom~~
11 ~~the explosives were seized, to any known owner of the explosives, and~~
12 ~~to any person who has a known interest in the explosives. The notice~~
13 ~~shall be issued within fifteen days of the seizure. The notice of~~
14 ~~seizure and commencement of the forfeiture proceedings shall be~~
15 ~~served in the same manner as provided in RCW 4.28.080 for service of~~
16 ~~a summons. The law enforcement agency shall provide a form by which~~
17 ~~the person or persons may request a hearing before the law~~
18 ~~enforcement agency to contest the seizure.~~

19 ~~(6) If no person notifies the seizing law enforcement agency in~~
20 ~~writing of the person's claim of ownership or right to possession of~~
21 ~~the explosives, improvised devices, or components within thirty days~~
22 ~~of the date the notice was issued, the seized explosives, devices, or~~
23 ~~components shall be deemed forfeited.~~

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

1 ~~(8) The seizing law enforcement agency shall promptly return the~~
2 ~~items seized to the claimant upon a determination that the claimant~~
3 ~~is entitled to possession of the items seized.~~

4 (9)) If the items seized are forfeited under this statute, the
5 seizing agency shall dispose of the explosives by summary
6 destruction. However, when explosives are destroyed either to protect
7 public safety or because the explosives were forfeited, the person
8 from whom the explosives were seized loses all rights of action
9 against the law enforcement agency or its employees acting within the
10 scope of their employment, or other governmental entity or employee
11 involved with the seizure and destruction of explosives.

12 ~~((10))~~ (6) This section is not intended to change the seizure
13 and forfeiture powers, enforcement, and penalties available to the
14 department of labor and industries pursuant to chapter 49.17 RCW as
15 provided in RCW 70.74.390.

16 **Sec. 13.** RCW 77.15.070 and 2005 c 406 s 2 are each amended to
17 read as follows:

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

35 (2) In the event of a seizure of property under this section,
36 jurisdiction to begin the forfeiture proceedings shall commence upon
37 seizure, and shall be governed by chapter 7.--- RCW (the new chapter
38 created in section 16 of this act). ~~((Within fifteen days following~~
39 ~~the seizure, the seizing authority shall serve a written notice of~~

1 ~~intent to forfeit property on the owner of the property seized and on~~
2 ~~any person having any known right or interest in the property seized.~~
3 ~~Notice may be served by any method authorized by law or court rule,~~
4 ~~including service by certified mail with return receipt requested.~~
5 ~~Service by mail is deemed complete upon mailing within the fifteen-~~
6 ~~day period following the seizure.~~

7 ~~(3) Persons claiming a right of ownership or right to possession~~
8 ~~of property are entitled to a hearing to contest forfeiture. Such a~~
9 ~~claim shall specify the claim of ownership or possession and shall be~~
10 ~~made in writing and served on the director within forty five days of~~
11 ~~the seizure. If the seizing authority has complied with notice~~
12 ~~requirements and there is no claim made within forty five days, then~~
13 ~~the property shall be forfeited to the state.~~

14 ~~(4) If any person timely serves the director with a claim to~~
15 ~~property, the person shall be afforded an opportunity to be heard as~~
16 ~~to the person's claim or right. The hearing shall be before the~~
17 ~~director or director's designee, or before an administrative law~~
18 ~~judge appointed under chapter 34.12 RCW, except that a person~~
19 ~~asserting a claim or right may remove the matter to a court of~~
20 ~~competent jurisdiction if the aggregate value of the property seized~~
21 ~~is more than five thousand dollars. The department may settle a~~
22 ~~person's claim of ownership prior to the administrative hearing.~~

23 ~~(5) The hearing to contest forfeiture and any subsequent appeal~~
24 ~~shall be as provided for in chapter 34.05 RCW, the administrative~~
25 ~~procedure act. The seizing authority has the burden to demonstrate~~
26 ~~that it had reason to believe the property was held with intent to~~
27 ~~violate or was used in violation of this title or rule of the~~
28 ~~commission or director. The person contesting forfeiture has the~~
29 ~~burden of production and proof by a preponderance of evidence that~~
30 ~~the person owns or has a right to possess the property and:~~

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

33 ~~(b) If the property is a boat, airplane, or vehicle, that the~~
34 ~~illegal use or planned illegal use of the boat, airplane, or vehicle~~
35 ~~occurred without the owner's knowledge or consent, and that the owner~~
36 ~~acted reasonably to prevent illegal uses of such boat, airplane, or~~
37 ~~vehicle.~~

38 ~~(6) A forfeiture of a conveyance encumbered by a perfected~~
39 ~~security interest is subject to the interest of the secured party if~~
40 ~~the secured party neither had knowledge of nor consented to the act~~

1 ~~or omission. No security interest in seized property may be perfected~~
2 ~~after seizure.~~

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

10 **Sec. 14.** RCW 69.50.505 and 2013 c 3 s 25 are each amended to
11 read as follows:

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

14 (a) All controlled substances which have been manufactured,
15 distributed, dispensed, acquired, or possessed in violation of this
16 chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals,
17 as defined in RCW 64.44.010, used or intended to be used in the
18 manufacture of controlled substances;

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

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

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

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

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

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

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

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

13 (e) All books, records, and research products and materials,
14 including formulas, microfilm, tapes, and data which are used, or
15 intended for use, in violation of this chapter or chapter 69.41 or
16 69.52 RCW;

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

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

38 (h) All real property, including any right, title, and interest
39 in the whole of any lot or tract of land, and any appurtenances or
40 improvements which are being used with the knowledge of the owner for

1 the manufacturing, compounding, processing, delivery, importing, or
2 exporting of any controlled substance, or which have been acquired in
3 whole or in part with proceeds traceable to an exchange or series of
4 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,
5 if such activity is not less than a class C felony and a substantial
6 nexus exists between the commercial production or sale of the
7 controlled substance and the real property. However:

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

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

15 (iii) The possession of marijuana shall not result in the
16 forfeiture of real property unless the marijuana is possessed for
17 commercial purposes that are unlawful under Washington state law, the
18 amount possessed is five or more plants or one pound or more of
19 marijuana, and a substantial nexus exists between the possession of
20 marijuana and the real property. In such a case, the intent of the
21 offender shall be determined by the preponderance of the evidence,
22 including the offender's prior criminal history, the amount of
23 marijuana possessed by the offender, the sophistication of the
24 activity or equipment used by the offender, whether the offender was
25 licensed to produce, process, or sell marijuana, or was an employee
26 of a licensed producer, processor, or retailer, and other evidence
27 which demonstrates the offender's intent to engage in unlawful
28 commercial activity;

29 (iv) The unlawful sale of marijuana or a legend drug shall not
30 result in the forfeiture of real property unless the sale was forty
31 grams or more in the case of marijuana or one hundred dollars or more
32 in the case of a legend drug, and a substantial nexus exists between
33 the unlawful sale and the real property; and

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

38 (2) Real or personal property subject to forfeiture under this
39 chapter may be seized by any (~~board~~) commission inspector or law
40 enforcement officer of this state upon process issued by any superior

1 court having jurisdiction over the property. Seizure of real property
2 shall include the filing of a lis pendens by the seizing agency. Real
3 property seized under this section shall not be transferred or
4 otherwise conveyed until ninety days after seizure or until a
5 judgment of forfeiture is entered, whichever is later: PROVIDED, That
6 real property seized under this section may be transferred or
7 conveyed to any person or entity who acquires title by foreclosure or
8 deed in lieu of foreclosure of a security interest. Seizure of
9 personal property without process may be made if:

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

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

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

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

22 (3) In the event of seizure pursuant to subsection (2) of this
23 section, proceedings for forfeiture shall be deemed commenced by the
24 seizure. The law enforcement agency under whose authority the seizure
25 was made shall cause notice to be served within fifteen days
26 following the seizure on the owner of the property seized and the
27 person in charge thereof and any person having any known right or
28 interest therein, including any community property interest, of the
29 seizure and intended forfeiture of the seized property. Service of
30 notice of seizure of real property shall be made according to the
31 rules of civil procedure. However, the state may not obtain a default
32 judgment with respect to real property against a party who is served
33 by substituted service absent an affidavit stating that a good faith
34 effort has been made to ascertain if the defaulted party is
35 incarcerated within the state, and that there is no present basis to
36 believe that the party is incarcerated within the state. 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
40 service upon the secured party or the secured party's assignee at the

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

7 (4) If no person notifies the seizing law enforcement agency in
8 writing of the person's claim of ownership or right to possession of
9 items specified in subsection (1)(d), (g), or (h) of this section
10 within forty-five days of the service of notice from the seizing
11 agency in the case of personal property and ninety days in the case
12 of real property, the item seized shall be deemed forfeited. The
13 community property interest in real property of a person whose spouse
14 or domestic partner committed a violation giving rise to seizure of
15 the real property may not be forfeited if the person did not
16 participate in the violation.

17 (5) If any person notifies the seizing law enforcement agency in
18 writing of the person's claim of ownership or right to possession of
19 items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h)
20 of this section within forty-five days of the service of notice from
21 the seizing agency in the case of personal property and ninety days
22 in the case of real property, the person or persons shall be afforded
23 a reasonable opportunity to be heard as to the claim or right. The
24 notice of claim may be served by any method authorized by law or
25 court rule including, but not limited to, service by first-class
26 mail. Service by mail shall be deemed complete upon mailing within
27 the forty-five day period following service of the notice of seizure
28 in the case of personal property and within the ninety-day period
29 following service of the notice of seizure in the case of real
30 property. The hearing shall be before the chief law enforcement
31 officer of the seizing agency or the chief law enforcement officer's
32 designee, except where the seizing agency is a state agency as
33 defined in RCW 34.12.020(4), the hearing shall be before the chief
34 law enforcement officer of the seizing agency or an administrative
35 law judge appointed under chapter 34.12 RCW, except that any person
36 asserting a claim or right may remove the matter to a court of
37 competent jurisdiction. Removal of any matter involving personal
38 property may only be accomplished according to the rules of civil
39 procedure. The person seeking removal of the matter must serve
40 process against the state, county, political subdivision, or

1 municipality that operates the seizing agency, and any other party of
2 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-
3 five days after the person seeking removal has notified the seizing
4 law enforcement agency of the person's claim of ownership or right to
5 possession. The court to which the matter is to be removed shall be
6 the district court when the aggregate value of personal property is
7 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
8 before the seizing agency and any appeal therefrom shall be under
9 Title 34 RCW. In all cases, the burden of proof is upon the law
10 enforcement agency to establish, by a preponderance of the evidence,
11 that the property is subject to forfeiture.

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

19 (6) In any proceeding to forfeit property under this title, where
20 the claimant substantially prevails, the claimant is entitled to
21 reasonable attorneys' fees reasonably incurred by the claimant,
22 together with expenses and fees reasonably incurred by the claimant.
23 ~~((In addition, in a court hearing between two or more claimants to~~
24 ~~the article or articles involved, the prevailing party is entitled to~~
25 ~~a judgment for costs and reasonable attorneys' fees.))~~

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

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

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

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

36 (d) Forward it to the drug enforcement administration for
37 disposition.

38 ~~((a) When property is forfeited, the seizing agency shall~~
39 ~~keep a record indicating the identity of the prior owner, if known, a~~
40 ~~description of the property, the disposition of the property, the~~

1 value of the property at the time of seizure, and the amount of
2 proceeds realized from disposition of the property.

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

5 (c) Each seizing agency shall file a report including a copy of
6 the records of forfeited property with the state treasurer each
7 calendar quarter.

8 (d) The quarterly report need not include a record of forfeited
9 property that is still being held for use as evidence during the
10 investigation or prosecution of a case or during the appeal from a
11 conviction.) Seizing agencies are subject to the requirements of
12 section 4 of this act.

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

17 (b) The net proceeds of forfeited property is the value of the
18 forfeitable interest in the property after deducting the cost of
19 satisfying any bona fide security interest to which the property is
20 subject at the time of seizure; and in the case of sold property,
21 after deducting the cost of sale, including reasonable fees or
22 commissions paid to independent selling agents, and the cost of any
23 valid landlord's claim for damages under subsection (15) of this
24 section.

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

35 (10) Forfeited property and net proceeds not required to be paid
36 to the state treasurer shall be retained by the seizing law
37 enforcement agency exclusively for the expansion and improvement of
38 controlled substances related law enforcement activity. Money
39 retained under this section may not be used to supplant preexisting
40 funding sources.

1 (11) Controlled substances listed in Schedule I, II, III, IV, and
2 V that are possessed, transferred, sold, or offered for sale in
3 violation of this chapter are contraband and shall be seized and
4 summarily forfeited to the state. Controlled substances listed in
5 Schedule I, II, III, IV, and V, which are seized or come into the
6 possession of the ((~~board~~)) commission, the owners of which are
7 unknown, are contraband and shall be summarily forfeited to the
8 ((~~board~~)) commission.

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

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

20 (14) 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 (15)(a) A landlord may assert a claim against proceeds from the
28 sale of assets seized and forfeited under subsection (7)(b) of this
29 section, only if:

30 (i) 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 and

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

38 (A) Only if the funds applied under (a)(ii) of this subsection
39 are insufficient to satisfy the damage directly caused by a law
40 enforcement officer, may the landlord seek compensation for the

1 damage by filing a claim against the governmental entity under whose
2 authority the law enforcement agency operates within thirty days
3 after the search;

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

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

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

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

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

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

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

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

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

33 (17) Subsections (15) and (16) of this section do not limit any
34 other rights a landlord may have against a tenant to collect for
35 damages. However, if a law enforcement agency satisfies a landlord's
36 claim under subsection (15) of this section, the rights the landlord
37 has against the tenant for damages directly caused by a law
38 enforcement officer under the terms of the landlord and tenant's
39 contract are subrogated to the law enforcement agency.

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

4 **Sec. 15.** RCW 38.42.020 and 2014 c 65 s 2 are each amended to
5 read as follows:

6 (1) Any service member who is ordered to report for military
7 service and his or her dependents are entitled to the rights and
8 protections of this chapter during the period beginning on the date
9 on which the service member receives the order and ending one hundred
10 eighty days after termination of or release from military service.

11 (2) This chapter applies to any judicial or administrative
12 proceeding commenced in any court or agency in Washington state in
13 which a service member or his or her dependent is a party. This
14 chapter applies to civil asset forfeiture proceedings. This chapter
15 does not apply to criminal proceedings.

16 (3) This chapter shall be construed liberally so as to provide
17 fairness and do substantial justice to service members and their
18 dependents.

19 NEW SECTION. **Sec. 16.** Sections 1 through 6 of this act
20 constitute a new chapter in Title 7 RCW.

21 NEW SECTION. **Sec. 17.** This act applies to seizures occurring on
22 or after the effective date of this section.

23 NEW SECTION. **Sec. 18.** Except for section 6 of this act, this
24 act takes effect January 1, 2019.

25 NEW SECTION. **Sec. 19.** Section 6 of this act takes effect July
26 1, 2018.

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