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HOUSE BILL 2413

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State of Washington

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By Representatives Johnson, O'Brien, Ross, Finn, Haler, Klippert, Taylor, Crouse, Angel, Kristiansen, Roach, Hinkle, Rodne, Smith, Walsh, Warnick, Nealey, Seaquist, Hope, Short, Chandler, Ericks, Campbell, Morrell, Kelley, Conway, Bailey, and Hurst

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1 AN ACT Relating to property used to facilitate a criminal street  
2 gang-related offense; and adding a new chapter to Title 7 RCW.

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

4 NEW SECTION. **Sec. 1.** Unless the context clearly requires  
5 otherwise, the definition in this section applies throughout this  
6 chapter. "Criminal street gang-related offense" has the same meaning  
7 as in RCW 9.94A.030.

8 NEW SECTION. **Sec. 2.** (1) Except as provided in subsections (2)  
9 through (5) of this section, all real and personal property is subject  
10 to seizure and forfeiture and no property right exists in them if used,  
11 or intended for use, in any manner to facilitate a criminal street  
12 gang-related offense.

13 (2)(a) No conveyances, including aircraft, vehicles, or vessels,  
14 may be forfeited under this section:

15 (i) If used by any person as a common carrier in the transaction of  
16 business as a common carrier, unless it appears that the owner or other  
17 person in charge of the conveyance is a consenting party or privy to a  
18 criminal street gang-related offense; or

1 (ii) By reason of any act or omission committed or omitted without  
2 the owner's actual or constructive knowledge or consent.

3 (b) A forfeiture of a conveyance encumbered by a bona fide security  
4 interest is subject to the interest of the secured party if the secured  
5 party neither had actual or constructive knowledge of nor consented to  
6 the act or omission.

7 (c) When the owner of a conveyance has been arrested for a criminal  
8 street gang-related offense, the conveyance in which the person is  
9 arrested may not be subject to forfeiture unless it is seized or  
10 process is issued for its seizure within ten days of the owner's  
11 arrest.

12 (3) A forfeiture of money, negotiable instruments, securities, or  
13 other tangible or intangible property encumbered by a bona fide  
14 security interest is subject to the interest of the secured party if,  
15 at the time the security interest was created, the secured party  
16 neither had actual or constructive knowledge of nor consented to the  
17 act or omission.

18 (4) No personal property may be forfeited under this section, to  
19 the extent of the interest of an owner, by reason of any act or  
20 omission which the owner establishes was committed or omitted without  
21 the owner's actual or constructive knowledge or consent.

22 (5)(a) All real property, including any right, title, and interest  
23 in the whole of any lot or tract of land, and any appurtenances or  
24 improvements that are being used with the actual or constructive  
25 knowledge of the owner for a criminal street gang-related offense may  
26 be forfeited if the offense is not less than a class C felony and a  
27 substantial nexus exists between the criminal street gang-related  
28 offense and the real property;

29 (b) No real property may be forfeited under this subsection, to the  
30 extent of the interest of an owner, by reason of any act or omission  
31 which the owner establishes was committed or omitted without the  
32 owner's actual or constructive knowledge or consent; and

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

1        NEW SECTION.    **Sec. 3.**    (1) Real or personal property subject to  
2 forfeiture under this chapter may be seized by any law enforcement  
3 officer of this state upon process issued by any superior court having  
4 jurisdiction over the property.

5        (2) When real property is seized under this chapter:

6        (a) The seizing agency shall file a lis pendens;

7        (b) The property may be transferred or conveyed to any person or  
8 entity who acquires title by foreclosure or deed in lieu of foreclosure  
9 of a security interest; and

10       (c) Except as provided in (b) of this subsection, the property must  
11 not be transferred or otherwise conveyed until ninety days after  
12 seizure or until a judgment of forfeiture is entered, whichever is  
13 later.

14       (3) The seizure of personal property without process may be made  
15 if:

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

18       (b) The property subject to the 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 section;

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

24       (d) A law enforcement officer has probable cause to believe that  
25 the property was used or is intended to be used for a criminal street  
26 gang-related activity.

27       NEW SECTION.    **Sec. 4.**    In the event of seizure under this chapter,  
28 proceedings for forfeiture are deemed commenced by the seizure.

29       NEW SECTION.    **Sec. 5.**    (1) The law enforcement agency under whose  
30 authority the seizure was made shall cause notice to be served within  
31 fifteen days following the seizure on the owner of the property seized  
32 and the person in charge thereof and any person having any known right  
33 or interest therein, including any community property interest, of the  
34 seizure and intended forfeiture of the seized property.

35       (2) Service of notice of seizure of real property must be made  
36 according to the rules of civil procedure. However, the state may not

1 obtain a default judgment with respect to real property against a party  
2 who is served by substituted service absent an affidavit stating that  
3 a good faith effort has been made to ascertain if the defaulted party  
4 is incarcerated within the state, and that there is no present basis to  
5 believe that the party is incarcerated within the state.

6 (3) Notice of seizure in the case of property subject to a security  
7 interest that has been perfected by filing a financing statement in  
8 accordance with chapter 62A.9A RCW, or a certificate of title, must be  
9 made by service upon the secured party or the secured party's assignee  
10 at the address shown on the financing statement or the certificate of  
11 title.

12 (4) The notice of seizure in other cases not covered under  
13 subsections (2) and (3) of this section may be served by any method  
14 authorized by law or court rule including, but not limited to, service  
15 by certified mail with return receipt requested. Service by mail is  
16 deemed complete upon mailing within the fifteen-day period following  
17 the seizure.

18 NEW SECTION. **Sec. 6.** (1) A person shall notify the seizing law  
19 enforcement agency in writing of the person's claim of ownership or  
20 right to possession of real or personal property seized under this  
21 chapter within:

22 (a) Forty-five days of the service of notice from the seizing  
23 agency in the case of personal property; or

24 (b) Ninety days of the service of notice from the seizing agency in  
25 the case of real property.

26 (2) If no person notifies the seizing law enforcement agency in  
27 writing of the person's claim of ownership or right to possession of  
28 real or personal property seized under this chapter within the time  
29 period required under subsection (1) of this section the item seized is  
30 deemed forfeited.

31 (3) The community property interest in real property of a person  
32 whose spouse or domestic partner committed a violation giving rise to  
33 seizure of the real property may not be forfeited if the person did not  
34 participate in the violation.

35 NEW SECTION. **Sec. 7.** (1) If any person notifies the seizing law  
36 enforcement agency in writing of the person's claim of ownership or

1 right to possession of real or personal property seized under this  
2 chapter within the time period specified under section 6(1) (a) or (b)  
3 of this act, the person or persons must be afforded a reasonable  
4 opportunity to be heard as to the claim or right.

5 (2) The notice of claim may be served by any method authorized by  
6 law or court rule including, but not limited to, service by first-class  
7 mail. Service by mail is deemed complete upon mailing within the:

8 (a) Forty-five day period following service of the notice of  
9 seizure in the case of personal property; or

10 (b) Ninety-day period following service of the notice of seizure in  
11 the case of real property.

12 NEW SECTION. **Sec. 8.** (1) The hearing must be before the chief law  
13 enforcement officer of the seizing agency or the chief law enforcement  
14 officer's designee, except where the seizing agency is a state agency  
15 as defined in RCW 34.12.020(4), the hearing must be before the chief  
16 law enforcement officer of the seizing agency or an administrative law  
17 judge appointed under chapter 34.12 RCW, except that any person  
18 asserting a claim or right may remove the matter to a court of  
19 competent jurisdiction.

20 (2)(a) Removal of any matter involving personal property may only  
21 be accomplished according to the rules of civil procedure.

22 (b) The person seeking removal of the matter must serve process  
23 against the state, county, political subdivision, or municipality that  
24 operates the seizing agency, and any other party of interest, in  
25 accordance with RCW 4.28.080 or 4.92.020, within forty-five days after  
26 the person seeking removal has notified the seizing law enforcement  
27 agency of the person's claim of ownership or right to possession.

28 (c) The court to which the matter is to be removed must be the  
29 district court when the aggregate value of personal property is within  
30 the jurisdictional limit set forth in RCW 3.66.020.

31 (3) A hearing before the seizing agency and any appeal therefrom  
32 must be under Title 34 RCW.

33 (4) In all cases, the burden of proof is upon the law enforcement  
34 agency to establish, by a preponderance of the evidence, that the  
35 property is subject to forfeiture.

36 (5) The seizing law enforcement agency shall promptly return the

1 real or personal property to the claimant upon a determination by the  
2 administrative law judge or court that the claimant is the present  
3 lawful owner or is lawfully entitled to possession of the property.

4 (6)(a) In any proceeding to forfeit property under this chapter,  
5 where the claimant substantially prevails, the claimant is entitled to  
6 reasonable attorneys' fees.

7 (b) In a court hearing between two or more claimants to the  
8 property involved, the prevailing party is entitled to a judgment for  
9 costs and reasonable attorneys' fees.

10 NEW SECTION. **Sec. 9.** (1) When property is forfeited under this  
11 chapter, the seizing law enforcement agency may:

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

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

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

20 (2)(a) When property is forfeited, the seizing agency shall:

21 (i) Keep a record indicating the identity of the prior owner, if  
22 known, a description of the property, the disposition of the property,  
23 the value of the property at the time of seizure, and the amount of  
24 proceeds realized from disposition of the property;

25 (ii) Retain records of forfeited property for at least seven years;

26 (iii) File a report including a copy of the records of forfeited  
27 property with the state treasurer each calendar quarter. The quarterly  
28 report need not include a record of forfeited property that is still  
29 being held for use as evidence during the investigation or prosecution  
30 of a case or during the appeal from a conviction; and

31 (iv) By January 31st of each year, remit to the state treasurer an  
32 amount equal to ten percent of the net proceeds of any property  
33 forfeited during the preceding calendar year. Money remitted shall be  
34 deposited in the state general fund.

35 (b) For the purposes of this subsection:

36 (i) The net proceeds of forfeited property is the value of the  
37 forfeitable interest in the property after deducting the cost of

1 satisfying any bona fide security interest to which the property is  
2 subject at the time of seizure; and in the case of sold property, after  
3 deducting the cost of sale, including reasonable fees or commissions  
4 paid to independent selling agents, and the cost of any valid  
5 landlord's claim for damages under section 10 of this act.

6 (ii) The value of sold forfeited property is the sale price.

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

15 (iv) The value of destroyed property and retained firearms or  
16 illegal property is zero.

17 (3) Forfeited property and net proceeds not required to be paid to  
18 the state treasurer must be retained by the seizing law enforcement  
19 agency exclusively for the expansion and improvement of criminal street  
20 gang-related law enforcement activity. Money retained under this  
21 section may not be used to supplant preexisting funding sources.

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

28 NEW SECTION. **Sec. 10.** (1) A landlord may assert a claim against  
29 proceeds from the sale of assets seized and forfeited under section  
30 9(1)(b) of this act, only if:

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

34 (b) 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, to  
36 cover the damage directly caused by a law enforcement officer prior to  
37 asserting a claim under the provisions of this section, only if the:

1 (i) Funds applied under (b) of this subsection are insufficient to  
2 satisfy the damage directly caused by a law enforcement officer, may  
3 the landlord seek compensation for the damage by filing a claim against  
4 the governmental entity under whose authority the law enforcement  
5 agency operates within thirty days after the search;

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

15 (2) For any claim filed under subsection (1)(b) of this section,  
16 the law enforcement agency shall pay the claim unless the agency  
17 provides substantial proof that the landlord either:

18 (a) Knew or consented to the criminal street gang-related offense;  
19 or

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

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

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

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

28 (c) The proceeds from the sale of the specific tenant's property  
29 seized and forfeited under section 9(1)(b) of this act; and

30 (d) The proceeds available after the seizing law enforcement agency  
31 satisfies any bona fide security interest in the tenant's property and  
32 costs related to sale of the tenant's property as provided by section  
33 9(2)(b)(i) of this act.

34 (4) Subsections (1) through (3) of this section do not limit any  
35 other rights a landlord may have against a tenant to collect for  
36 damages. However, if a law enforcement agency satisfies a landlord's  
37 claim under subsection (1) of this section, the rights the landlord has



1 against the tenant for damages directly caused by a law enforcement  
2 officer under the terms of the landlord and tenant's contract are  
3 subrogated to the law enforcement agency.

4 NEW SECTION. **Sec. 11.** If real or personal property subject to  
5 seizure and forfeiture under this chapter may also be subject to  
6 seizure and forfeiture under RCW 9.68A.120 or chapter 69.50 RCW, the  
7 seizing law enforcement agency may designate which chapter applies to  
8 the forfeiture proceedings.

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

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