

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6253

62nd Legislature
2012 Regular Session

Passed by the Senate February 8, 2012
YEAS 49 NAYS 0

President of the Senate

Passed by the House March 2, 2012
YEAS 97 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6253** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6253

Passed Legislature - 2012 Regular Session

State of Washington 62nd Legislature 2012 Regular Session

By Senate Judiciary (originally sponsored by Senators Eide, Kline, Regala, Shin, Kohl-Welles, Litzow, Chase, Stevens, Nelson, Keiser, Roach, and Conway)

READ FIRST TIME 02/01/12.

1 AN ACT Relating to seizure and forfeiture; and adding a new section
2 to chapter 9A.88 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.88 RCW
5 to read as follows:

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

8 (a) Any property or other interest acquired or maintained in
9 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070 to the extent of
10 the investment of funds, and any appreciation or income attributable to
11 the investment, from a violation of RCW 9.68A.100, 9.68A.101, or
12 9A.88.070;

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

16 (i) No conveyance used by any person as a common carrier in the
17 transaction of business as a common carrier is subject to forfeiture
18 under this section unless it appears that the owner or other person in

1 charge of the conveyance is a consenting party or privy to a violation
2 of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

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

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

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

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

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

24 (e) All books, records, and research products and materials,
25 including formulas, microfilm, tapes, and data which are used, or
26 intended for use, in violation of RCW 9.68A.100, 9.68A.101, or
27 9A.88.070;

28 (f) All moneys, negotiable instruments, securities, or other
29 tangible or intangible property of value furnished or intended to be
30 furnished by any person in exchange for a violation of RCW 9.68A.100,
31 9.68A.101, or 9A.88.070, all tangible or intangible personal property,
32 proceeds, or assets acquired in whole or in part with proceeds
33 traceable to an exchange or series of exchanges in violation of RCW
34 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys, negotiable
35 instruments, and securities used or intended to be used to facilitate
36 any violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070. A forfeiture
37 of money, negotiable instruments, securities, or other tangible or
38 intangible property encumbered by a bona fide security interest is

1 subject to the interest of the secured party if, at the time the
2 security interest was created, the secured party neither had knowledge
3 of nor consented to the act or omission. No personal property may be
4 forfeited under this subsection (1)(f), to the extent of the interest
5 of an owner, by reason of any act or omission, which that owner
6 establishes was committed or omitted without the owner's knowledge or
7 consent; and

8 (g) All real property, including any right, title, and interest in
9 the whole of any lot or tract of land, and any appurtenances or
10 improvements which are being used with the knowledge of the owner for
11 a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, or which have
12 been acquired in whole or in part with proceeds traceable to an
13 exchange or series of exchanges in violation of RCW 9.68A.100,
14 9.68A.101, or 9A.88.070, if a substantial nexus exists between the
15 violation and the real property. However:

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

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

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

35 (a) The seizure is incident to an arrest or a search under a search
36 warrant;

37 (b) The property subject to seizure has been the subject of a prior

1 judgment in favor of the state in a criminal injunction or forfeiture
2 proceeding; or

3 (c) The law enforcement officer has probable cause to believe that
4 the property was used or is intended to be used in violation of RCW
5 9.68A.100, 9.68A.101, or 9A.88.070.

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

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

1 (5) If any person notifies the seizing law enforcement agency in
2 writing of the person's claim of ownership or right to possession of
3 items specified in subsection (1) of this section within forty-five
4 days of the service of notice from the seizing agency in the case of
5 personal property and ninety days in the case of real property, the
6 person or persons shall be afforded a reasonable opportunity to be
7 heard as to the claim or right. The notice of claim may be served by
8 any method authorized by law or court rule including, but not limited
9 to, service by first-class mail. Service by mail shall be deemed
10 complete upon mailing within the forty-five day period following
11 service of the notice of seizure in the case of personal property and
12 within the ninety day period following service of the notice of seizure
13 in the case of real property. The hearing shall be before the chief
14 law enforcement officer of the seizing agency or the chief law
15 enforcement officer's designee, except where the seizing agency is a
16 state agency as defined in RCW 34.12.020(4), the hearing shall be
17 before the chief law enforcement officer of the seizing agency or an
18 administrative law judge appointed under chapter 34.12 RCW, except that
19 any person asserting a claim or right may remove the matter to a court
20 of competent jurisdiction. Removal of any matter involving personal
21 property may only be accomplished according to the rules of civil
22 procedure. 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. The
28 court to which the matter is to be removed shall be the district court
29 when the aggregate value of personal property is within the
30 jurisdictional limit set forth in RCW 3.66.020. A hearing before the
31 seizing agency and any appeal therefrom shall be under Title 34 RCW.
32 In all cases, the burden of proof is upon the law enforcement agency to
33 establish, by a preponderance of the evidence, that the property is
34 subject to forfeiture.

35 The seizing law enforcement agency shall promptly return the
36 article or articles to the claimant upon a determination by the
37 administrative law judge or court that the claimant is the present

1 lawful owner or is lawfully entitled to possession thereof of items
2 specified in subsection (1) of this section.

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

9 (7) When property is forfeited under this chapter, the seizing law
10 enforcement agency shall sell the property that is not required to be
11 destroyed by law and that is not harmful to the public.

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

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

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

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

26 (9)(a) By January 31st of each year, each seizing agency shall
27 remit to the state treasurer the net proceeds of any property forfeited
28 during the preceding calendar year. Money remitted shall be deposited
29 in the prostitution prevention and intervention account under RCW
30 43.63A.740.

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

1 (c) The value of sold forfeited property is the sale price. The
2 value of destroyed property and retained firearms or illegal property
3 is zero.

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

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

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

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

21 (i) Only if the funds applied under (b) of this subsection are
22 insufficient to satisfy the damage directly caused by a law enforcement
23 officer, may the landlord seek compensation for the damage by filing a
24 claim against the governmental entity under whose authority the law
25 enforcement agency operates within thirty days after the search;

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

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

1 (i) Knew or consented to actions of the tenant in violation of RCW
2 9.68A.100, 9.68A.101, or 9A.88.070; or
3 (ii) Failed to respond to a notification of the illegal activity,
4 provided by a law enforcement agency under RCW 59.18.075, within seven
5 days of receipt of notification of the illegal activity.
6 (12) The landlord's claim for damages under subsection (11) of this
7 section may not include a claim for loss of business and is limited to:
8 (a) Damage to tangible property and clean-up costs;
9 (b) The lesser of the cost of repair or fair market value of the
10 damage directly caused by a law enforcement officer;
11 (c) The proceeds from the sale of the specific tenant's property
12 seized and forfeited under subsection (9) of this section; and
13 (d) The proceeds available after the seizing law enforcement agency
14 satisfies any bona fide security interest in the tenant's property and
15 costs related to sale of the tenant's property as provided by
16 subsection (11) of this section.
17 (13) Subsections (11) and (12) of this section do not limit any
18 other rights a landlord may have against a tenant to collect for
19 damages. However, if a law enforcement agency satisfies a landlord's
20 claim under subsection (11) of this section, the rights the landlord
21 has against the tenant for damages directly caused by a law enforcement
22 officer under the terms of the landlord and tenant's contract are
23 subrogated to the law enforcement agency.

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