
HOUSE BILL 3115

State of Washington

55th Legislature

1998 Regular Session

By Representative Smith

Read first time . Referred to Committee on .

1 AN ACT Relating to the sale of forfeited property; and amending RCW
2 69.50.505.

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

4 **Sec. 1.** RCW 69.50.505 and 1993 c 487 s 1 are each amended to read
5 as follows:

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

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

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

17 (3) All property which is used, or intended for use, as a container
18 for property described in paragraphs (1) or (2);

1 (4) All conveyances, including aircraft, vehicles, or vessels,
2 which are used, or intended for use, in any manner to facilitate the
3 sale, delivery, or receipt of property described in paragraphs (1) or
4 (2), except that:

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

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

13 (iii) No conveyance is subject to forfeiture under this section if
14 used in the receipt of only an amount of marijuana for which possession
15 constitutes a misdemeanor under RCW 69.50.401(e);

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

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

25 (5) All books, records, and research products and materials,
26 including formulas, microfilm, tapes, and data which are used, or
27 intended for use, in violation of this chapter or chapter 69.41 or
28 69.52 RCW;

29 (6) All drug paraphernalia;

30 (7) All moneys, negotiable instruments, securities, or other
31 tangible or intangible property of value furnished or intended to be
32 furnished by any person in exchange for a controlled substance in
33 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible
34 or intangible personal property, proceeds, or assets acquired in whole
35 or in part with proceeds traceable to an exchange or series of
36 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,
37 and all moneys, negotiable instruments, and securities used or intended
38 to be used to facilitate any violation of this chapter or chapter 69.41
39 or 69.52 RCW. A forfeiture of money, negotiable instruments,

1 securities, or other tangible or intangible property encumbered by a
2 bona fide security interest is subject to the interest of the secured
3 party if, at the time the security interest was created, the secured
4 party neither had knowledge of nor consented to the act or omission.
5 No personal property may be forfeited under this paragraph, to the
6 extent of the interest of an owner, by reason of any act or omission
7 which that owner establishes was committed or omitted without the
8 owner's knowledge or consent; and

9 (8) All real property, including any right, title, and interest in
10 the whole of any lot or tract of land, and any appurtenances or
11 improvements which are being used with the knowledge of the owner for
12 the manufacturing, compounding, processing, delivery, importing, or
13 exporting of any controlled substance, or which have been acquired in
14 whole or in part with proceeds traceable to an exchange or series of
15 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,
16 if such activity is not less than a class C felony and a substantial
17 nexus exists between the commercial production or sale of the
18 controlled substance and the real property. However:

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

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

25 (iii) The possession of marijuana shall not result in the
26 forfeiture of real property unless the marijuana is possessed for
27 commercial purposes, the amount possessed is five or more plants or one
28 pound or more of marijuana, and a substantial nexus exists between the
29 possession of marijuana and the real property. In such a case, the
30 intent of the offender shall be determined by the preponderance of the
31 evidence, including the offender's prior criminal history, the amount
32 of marijuana possessed by the offender, the sophistication of the
33 activity or equipment used by the offender, and other evidence which
34 demonstrates the offender's intent to engage in commercial activity;

35 (iv) The unlawful sale of marijuana or a legend drug shall not
36 result in the forfeiture of real property unless the sale was forty
37 grams or more in the case of marijuana or one hundred dollars or more
38 in the case of a legend drug, and a substantial nexus exists between
39 the unlawful sale and the real property; and

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

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

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

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

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

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

28 (c) In the event of seizure pursuant to subsection (b), proceedings
29 for forfeiture shall be deemed commenced by the seizure. The law
30 enforcement agency under whose authority the seizure was made shall
31 cause notice to be served within fifteen days following the seizure on
32 the owner of the property seized and the person in charge thereof and
33 any person having any known right or interest therein, including any
34 community property interest, of the seizure and intended forfeiture of
35 the seized property. Service of notice of seizure of real property
36 shall be made according to the rules of civil procedure. However, the
37 state may not obtain a default judgment with respect to real property
38 against a party who is served by substituted service absent an
39 affidavit stating that a good faith effort has been made to ascertain

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

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

22 (e) If any person notifies the seizing law enforcement agency in
23 writing of the person's claim of ownership or right to possession of
24 items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6),
25 (a)(7), or (a)(8) of this section within forty-five days of the seizure
26 in the case of personal property and ninety days in the case of real
27 property, the person or persons shall be afforded a reasonable
28 opportunity to be heard as to the claim or right. The hearing shall be
29 before the chief law enforcement officer of the seizing agency or the
30 chief law enforcement officer's designee, except where the seizing
31 agency is a state agency as defined in RCW 34.12.020(4), the hearing
32 shall be before the chief law enforcement officer of the seizing agency
33 or an administrative law judge appointed under chapter 34.12 RCW,
34 except that any person asserting a claim or right may remove the matter
35 to a court of competent jurisdiction. Removal of any matter involving
36 personal property may only be accomplished according to the rules of
37 civil procedure. The person seeking removal of the matter must serve
38 process against the state, county, political subdivision, or
39 municipality that operates the seizing agency, and any other party of

1 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-
2 five days after the person seeking removal has notified the seizing law
3 enforcement agency of the person's claim of ownership or right to
4 possession. The court to which the matter is to be removed shall be
5 the district court when the aggregate value of personal property is
6 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
7 before the seizing agency and any appeal therefrom shall be under Title
8 34 RCW. In a court hearing between two or more claimants to the
9 article or articles involved, the prevailing party shall be entitled to
10 a judgment for costs and reasonable attorney's fees. In cases
11 involving personal property, the burden of producing evidence shall be
12 upon the person claiming to be the lawful owner or the person claiming
13 to have the lawful right to possession of the property. In cases
14 involving real property, the burden of producing evidence shall be upon
15 the law enforcement agency. The burden of proof that the seized real
16 property is subject to forfeiture shall be upon the law enforcement
17 agency. The seizing law enforcement agency shall promptly return the
18 article or articles to the claimant upon a determination by the
19 administrative law judge or court that the claimant is the present
20 lawful owner or is lawfully entitled to possession thereof of items
21 specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7),
22 or (a)(8) of this section.

23 (f) When property is forfeited under this chapter the board or
24 seizing law enforcement agency may:

25 (1) Retain it for official use or upon application by any law
26 enforcement agency of this state release such property to such agency
27 for the exclusive use of enforcing the provisions of this chapter;

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

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

33 (4) Forward it to the drug enforcement administration for
34 disposition.

35 If the board or seizing law enforcement agency sells the forfeited
36 property, no employee of the board or seizing law enforcement agency,
37 nor any immediate family member of any employee of the board or seizing
38 law enforcement agency, may bid on the forfeited property at auction or
39 purchase the forfeited property at the sale.

1 (g)(1) When property is forfeited, the seizing agency shall keep a
2 record indicating the identity of the prior owner, if known, a
3 description of the property, the disposition of the property, the value
4 of the property at the time of seizure, and the amount of proceeds
5 realized from disposition of the property.

6 (2) Each seizing agency shall retain records of forfeited property
7 for at least seven years.

8 (3) Each seizing agency shall file a report including a copy of the
9 records of forfeited property with the state treasurer each calendar
10 quarter.

11 (4) The quarterly report need not include a record of forfeited
12 property that is still being held for use as evidence during the
13 investigation or prosecution of a case or during the appeal from a
14 conviction.

15 (h)(1) By January 31st of each year, each seizing agency shall
16 remit to the state treasurer an amount equal to ten percent of the net
17 proceeds of any property forfeited during the preceding calendar year.
18 Money remitted shall be deposited in the violence reduction and drug
19 enforcement ((and education)) account under RCW 69.50.520.

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

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

37 (i) Forfeited property and net proceeds not required to be paid to
38 the state treasurer shall be retained by the seizing law enforcement
39 agency exclusively for the expansion and improvement of controlled

1 substances related law enforcement activity. Money retained under this
2 section may not be used to supplant preexisting funding sources.

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

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

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

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

28 (n) A landlord may assert a claim against proceeds from the sale of
29 assets seized and forfeited under subsection (f)(2) of this section,
30 only if:

31 (1) 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 (2) 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;

38 (i) Only if the funds applied under (2) of this subsection are
39 insufficient to satisfy the damage directly caused by a law enforcement

1 officer, may the landlord seek compensation for the damage by filing a
2 claim against the governmental entity under whose authority the law
3 enforcement agency operates within thirty days after the search;

4 (ii) 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 thirty
7 days of denial or the expiration of the sixty-day period, whichever
8 occurs first, a claim with the seizing law enforcement agency. The
9 seizing law enforcement agency must notify the landlord of the status
10 of the claim by the end of the thirty-day period. Nothing in this
11 section requires the claim to be paid by the end of the sixty-day or
12 thirty-day period.

13 (3) For any claim filed under (2) 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 this
17 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 seven
20 days of receipt of notification of the illegal activity.

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

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

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

26 (3) The proceeds from the sale of the specific tenant's property
27 seized and forfeited under subsection (f)(2) of this section; and

28 (4) The proceeds available after the seizing law enforcement agency
29 satisfies any bona fide security interest in the tenant's property and
30 costs related to sale of the tenant's property as provided by
31 subsection (h)(2) of this section.

32 (p) Subsections (n) and (o) of this section do not limit any other
33 rights a landlord may have against a tenant to collect for damages.
34 However, if a law enforcement agency satisfies a landlord's claim under
35 subsection (n) of this section, the rights the landlord has against the
36 tenant for damages directly caused by a law enforcement officer under

1 the terms of the landlord and tenant's contract are subrogated to the
2 law enforcement agency.

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