
HOUSE BILL 1130

State of Washington

52nd Legislature

1991 Regular Session

By Representatives Wineberry, Winsley, Leonard, P. Johnson, Sheldon, Ballard, Padden, Chandler, Wood, Forner, Casada, Horn, Mielke, Hochstatter, Van Luven, Paris, D. Sommers, Hargrove, Fuhrman, Edmondson, Brough, Betrozoff, Wynne, Nealey, Miller, Bowman, Moyer and Tate.

Read first time January 21, 1991. Referred to Committee on Judiciary.

1 AN ACT Relating to landlord's claims on confiscated property; and
2 reenacting and amending RCW 69.50.505.

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

4 **Sec. 1.** RCW 69.50.505 and 1990 c 248 s 2 and 1990 c 213 s 12 are
5 each reenacted and amended to read 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,

1 processing, delivering, importing, or exporting any controlled
2 substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

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

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

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

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

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

20 (iv) A forfeiture of a conveyance encumbered by a bona fide
21 security interest is subject to the interest of the secured party if
22 the secured party neither had knowledge of nor consented to the act or
23 omission; and

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

29 (5) All books, records, and research products and materials,
30 including formulas, microfilm, tapes, and data which are used, or

1 intended for use, in violation of this chapter or chapter 69.41 or
2 69.52 RCW;

3 (6) All drug paraphernalia;

4 (7) All moneys, negotiable instruments, securities, or other
5 tangible or intangible property of value furnished or intended to be
6 furnished by any person in exchange for a controlled substance in
7 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible
8 or intangible personal property, proceeds, or assets acquired in whole
9 or in part with proceeds traceable to an exchange or series of
10 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,
11 and all moneys, negotiable instruments, and securities used or intended
12 to be used to facilitate any violation of this chapter or chapter 69.41
13 or 69.52 RCW: PROVIDED, That a forfeiture of money, negotiable
14 instruments, securities, or other tangible or intangible property
15 encumbered by a bona fide security interest is subject to the interest
16 of the secured party if, at the time the security interest was created,
17 the secured party neither had knowledge of nor consented to the act or
18 omission and a forfeiture of money, negotiable instruments, securities,
19 or other tangible or intangible property is subject to a claim by a
20 landlord for damage to the property caused by a law enforcement officer
21 or by activities of the tenant, related to a violation of this chapter
22 or chapter 69.41 or 69.52 RCW: PROVIDED FURTHER, That no personal
23 property may be forfeited under this paragraph, to the extent of the
24 interest of an owner, by reason of any act or omission which that owner
25 establishes was committed or omitted without the owner's knowledge or
26 consent; and

27 (8) All real property, including any right, title, and interest in
28 the whole of any lot or tract of land, and any appurtenances or
29 improvements which are being used with the knowledge of the owner for
30 the manufacturing, compounding, processing, delivery, importing, or

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

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

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

13 (iii) The possession of marijuana shall not result in the
14 forfeiture of real property unless the marijuana is possessed for
15 commercial purposes, the amount possessed is five or more plants or one
16 pound or more of marijuana, and a substantial nexus exists between the
17 possession of marijuana and the real property. In such a case, the
18 intent of the offender shall be determined by the preponderance of the
19 evidence, including the offender's prior criminal history, the amount
20 of marijuana possessed by the offender, the sophistication of the
21 activity or equipment used by the offender, and other evidence which
22 demonstrates the offender's intent to engage in commercial activity;

23 (iv) The unlawful sale of marijuana or a legend drug shall not
24 result in the forfeiture of real property unless the sale was forty
25 grams or more in the case of marijuana or one hundred dollars or more
26 in the case of a legend drug, and a substantial nexus exists between
27 the unlawful sale and the real property; and

28 (v) A forfeiture of real property encumbered by a bona fide
29 security interest is subject to the interest of the secured party if

1 the secured party, at the time the security interest was created,
2 neither had knowledge of nor consented to the act or omission.

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

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

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

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

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

26 (c) In the event of seizure pursuant to subsection (b), proceedings
27 for forfeiture shall be deemed commenced by the seizure. The law
28 enforcement agency under whose authority the seizure was made shall
29 cause notice to be served within fifteen days following the seizure on
30 the owner of the property seized and the person in charge thereof and

1 any person having any known right or interest therein, including any
2 community property interest, of the seizure and intended forfeiture of
3 the seized property. Service of notice of seizure of real property
4 shall be made according to the rules of civil procedure. However, the
5 state may not obtain a default judgment with respect to real property
6 against a party who is served by substituted service absent an
7 affidavit stating that a good faith effort has been made to ascertain
8 if the defaulted party is incarcerated within the state, and that there
9 is no present basis to believe that the party is incarcerated within
10 the state. The notice of seizure in other cases may be served by any
11 method authorized by law or court rule including but not limited to
12 service by certified mail with return receipt requested. Service by
13 mail shall be deemed complete upon mailing within the fifteen day
14 period following the seizure.

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

24 (e) If any person notifies the seizing law enforcement agency in
25 writing of the person's claim of ownership or right to possession of
26 items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6),
27 (a)(7), or (a)(8) of this section within forty-five days of the seizure
28 in the case of personal property and ninety days in the case of real
29 property, the person or persons shall be afforded a reasonable
30 opportunity to be heard as to the claim or right. The hearing shall be

1 before the chief law enforcement officer of the seizing agency or the
2 chief law enforcement officer's designee, except where the seizing
3 agency is a state agency as defined in RCW 34.12.020(4), the hearing
4 shall be before the chief law enforcement officer of the seizing agency
5 or an administrative law judge appointed under chapter 34.12 RCW,
6 except that any person asserting a claim or right may remove the matter
7 to a court of competent jurisdiction if the aggregate value of the
8 article or articles involved is more than five hundred dollars. The
9 court to which the matter is to be removed shall be the district court
10 when such aggregate value is ten thousand dollars or less of personal
11 property. A hearing before the seizing agency and any appeal therefrom
12 shall be under Title 34 RCW. In a court hearing between two or more
13 claimants to the article or articles involved, the prevailing party
14 shall be entitled to a judgment for costs and reasonable attorney's
15 fees. In cases involving personal property, the burden of producing
16 evidence shall be upon the person claiming to be the lawful owner or
17 the person claiming to have the lawful right to possession of the
18 property. In cases involving real property, the burden of producing
19 evidence shall be upon the law enforcement agency. The burden of proof
20 that the seized real property is subject to forfeiture shall be upon
21 the law enforcement agency. The seizing law enforcement agency shall
22 promptly return the article or articles to the claimant upon a
23 determination by the administrative law judge or court that the
24 claimant is the present lawful owner or is lawfully entitled to
25 possession thereof of items specified in subsection (a)(2), (a)(3),
26 (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this section.

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

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

4 (2) (i) Sell that which is not required to be destroyed by law and
5 which is not harmful to the public. The proceeds and all moneys
6 forfeited under this title shall be used for payment of all proper
7 expenses of the investigation leading to the seizure, including any
8 money delivered to the subject of the investigation by the law
9 enforcement agency, and of the proceedings for forfeiture and sale,
10 including expenses of seizure, maintenance of custody, advertising,
11 actual costs of the prosecuting or city attorney, and court costs.
12 Money remaining after the payment of all expenses shall be distributed
13 as follows:

14 (A) Twenty-five percent of the money derived from the forfeiture of
15 real property and seventy-five percent of the money derived from the
16 forfeiture of personal property shall be deposited in the general fund
17 of the state, county, and/or city of the seizing law enforcement agency
18 and shall be used exclusively for the expansion or improvement of law
19 enforcement services. These services may include the creation of
20 reward funds for the purpose of rewarding informants who supply
21 information leading to the arrest, prosecution and conviction of
22 persons who violate laws relating to controlled substances. Such
23 moneys shall not supplant preexisting funding sources;

24 (B) Twenty-five percent of money derived from the forfeiture of
25 real property and twenty-five percent of money derived from the
26 forfeiture of personal property shall be remitted to the state
27 treasurer for deposit in the public safety and education account
28 established in RCW 43.08.250;

29 (C) Until July 1, 1995, fifty percent of money derived from the
30 forfeiture of real property shall be remitted to the state treasurer

1 for deposit in the drug enforcement and education account under RCW
2 69.50.520, on and after July 1, 1995, the fifty percent of the money
3 shall be remitted in the same manner as the twenty-five percent of the
4 money remitted under (2)(i)(A) of this subsection; and

5 (D) If an investigation involves a seizure of moneys and proceeds
6 having an aggregate value of less than five thousand dollars, the
7 moneys and proceeds may be deposited in total in the general fund of
8 the governmental unit of the seizing law enforcement agency and shall
9 be appropriated exclusively for the expansion of narcotics enforcement
10 services. Such moneys shall not supplant preexisting funding sources.

11 (ii) Money deposited according to this section must be deposited
12 within ninety days of the date of final disposition of either the
13 administrative seizure or the judicial seizure;

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

17 (4) Forward it to the drug enforcement administration for
18 disposition.

19 (g) Controlled substances listed in Schedule I, II, III, IV, and V
20 that are possessed, transferred, sold, or offered for sale in violation
21 of this chapter are contraband and shall be seized and summarily
22 forfeited to the state. Controlled substances listed in Schedule I, II,
23 III, IV, and V, which are seized or come into the possession of the
24 board, the owners of which are unknown, are contraband and shall be
25 summarily forfeited to the board.

26 (h) Species of plants from which controlled substances in Schedules
27 I and II may be derived which have been planted or cultivated in
28 violation of this chapter, or of which the owners or cultivators are
29 unknown, or which are wild growths, may be seized and summarily
30 forfeited to the board.

1 (i) The failure, upon demand by a board inspector or law
2 enforcement officer, of the person in occupancy or in control of land
3 or premises upon which the species of plants are growing or being
4 stored to produce an appropriate registration or proof that he is the
5 holder thereof constitutes authority for the seizure and forfeiture of
6 the plants.

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