

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5160

61st Legislature
2009 Regular Session

Passed by the Senate April 19, 2009
YEAS 44 NAYS 0

President of the Senate

Passed by the House April 6, 2009
YEAS 94 NAYS 2

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 5160** 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 5160

AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

State of Washington **61st Legislature** **2009 Regular Session**

By Senate Judiciary (originally sponsored by Senators Kline, McCaslin, and Tom)

READ FIRST TIME 02/10/09.

1 AN ACT Relating to service of notice from seizing law enforcement
2 agencies; 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 2008 c 6 s 631 are each amended to read
5 as follows:

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

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

1 (d) 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 (a) or (b) of this
4 subsection, 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 69.50.4014;

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 (e) 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 (f) All drug paraphernalia;

30 (g) 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

1 or 69.52 RCW. A forfeiture of money, negotiable instruments,
2 securities, or other tangible or intangible property encumbered by a
3 bona fide security interest is subject to the interest of the secured
4 party if, at the time the security interest was created, the secured
5 party neither had knowledge of nor consented to the act or omission.
6 No personal property may be forfeited under this subsection (1)(g), to
7 the extent of the interest of an owner, by reason of any act or
8 omission which that owner establishes was committed or omitted without
9 the owner's knowledge or consent; and

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

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

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

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

37 (iv) The unlawful sale of marijuana or a legend drug shall not
38 result in the forfeiture of real property unless the sale was forty

1 grams or more in the case of marijuana or one hundred dollars or more
2 in the case of a legend drug, and a substantial nexus exists between
3 the unlawful sale and the real property; and

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

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

20 (a) The seizure is incident to an arrest or a search under a search
21 warrant or an inspection under an administrative inspection warrant;

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

25 (c) A board inspector or law enforcement officer has probable cause
26 to believe that the property is directly or indirectly dangerous to
27 health or safety; or

28 (d) The board inspector or law enforcement officer has probable
29 cause to believe that the property was used or is intended to be used
30 in violation of this chapter.

31 (3) In the event of seizure pursuant to subsection (2) of this
32 section, proceedings for forfeiture shall be deemed commenced by the
33 seizure. The law enforcement agency under whose authority the seizure
34 was made shall cause notice to be served within fifteen days following
35 the seizure on the owner of the property seized and the person in
36 charge thereof and any person having any known right or interest
37 therein, including any community property interest, of the seizure and
38 intended forfeiture of the seized property. Service of notice of

1 seizure of real property shall be made according to the rules of civil
2 procedure. However, the state may not obtain a default judgment with
3 respect to real property against a party who is served by substituted
4 service absent an affidavit stating that a good faith effort has been
5 made to ascertain if the defaulted party is incarcerated within the
6 state, and that there is no present basis to believe that the party is
7 incarcerated within the state. Notice of seizure in the case of
8 property subject to a security interest that has been perfected by
9 filing a financing statement in accordance with chapter 62A.9A RCW, or
10 a certificate of title, shall be made by service upon the secured party
11 or the secured party's assignee at the address shown on the financing
12 statement or the certificate of title. The notice of seizure in other
13 cases may be served by any method authorized by law or court rule
14 including but not limited to service by certified mail with return
15 receipt requested. Service by mail shall be deemed complete upon
16 mailing within the fifteen day period following the seizure.

17 (4) If no 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)(d), (g), or (h) of this section
20 within forty-five days of the (~~seizure~~) service of notice from the
21 seizing agency in the case of personal property and ninety days in the
22 case of real property, the item seized shall be deemed forfeited. The
23 community property interest in real property of a person whose spouse
24 or domestic partner committed a violation giving rise to seizure of the
25 real property may not be forfeited if the person did not participate in
26 the violation.

27 (5) If any person notifies the seizing law enforcement agency in
28 writing of the person's claim of ownership or right to possession of
29 items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h)
30 of this section within forty-five days of the (~~seizure~~) service of
31 notice from the seizing agency in the case of personal property and
32 ninety days in the case of real property, the person or persons shall
33 be afforded a reasonable opportunity to be heard as to the claim or
34 right. The notice of claim may be served by any method authorized by
35 law or court rule including, but not limited to, service by first-class
36 mail. Service by mail shall be deemed complete upon mailing within the
37 forty-five day period following service of the notice of seizure in the
38 case of personal property and within the ninety-day period following

1 service of the notice of seizure in the case of real property. The
2 hearing shall be before the chief law enforcement officer of the
3 seizing agency or the chief law enforcement officer's designee, except
4 where the seizing agency is a state agency as defined in RCW
5 34.12.020(4), the hearing shall be before the chief law enforcement
6 officer of the seizing agency or an administrative law judge appointed
7 under chapter 34.12 RCW, except that any person asserting a claim or
8 right may remove the matter to a court of competent jurisdiction.
9 Removal of any matter involving personal property may only be
10 accomplished according to the rules of civil procedure. The person
11 seeking removal of the matter must serve process against the state,
12 county, political subdivision, or municipality that operates the
13 seizing agency, and any other party of interest, in accordance with RCW
14 4.28.080 or 4.92.020, within forty-five days after the person seeking
15 removal has notified the seizing law enforcement agency of the person's
16 claim of ownership or right to possession. The court to which the
17 matter is to be removed shall be the district court when the aggregate
18 value of personal property is within the jurisdictional limit set forth
19 in RCW 3.66.020. A hearing before the seizing agency and any appeal
20 therefrom shall be under Title 34 RCW. In all cases, the burden of
21 proof is upon the law enforcement agency to establish, by a
22 preponderance of the evidence, that the property is subject to
23 forfeiture.

24 The seizing law enforcement agency shall promptly return the
25 article or articles to the claimant upon a determination by the
26 administrative law judge or court that the claimant is the present
27 lawful owner or is lawfully entitled to possession thereof of items
28 specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this
29 section.

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

36 (7) When property is forfeited under this chapter the board or
37 seizing law enforcement agency may:

1 (a) 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 (b) Sell that which is not required to be destroyed by law and
5 which is not harmful to the public;

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

9 (d) Forward it to the drug enforcement administration for
10 disposition.

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

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

18 (c) Each seizing agency shall file a report including a copy of the
19 records of forfeited property with the state treasurer each calendar
20 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 net
27 proceeds of any property forfeited during the preceding calendar year.
28 Money remitted shall be deposited in the violence reduction and drug
29 enforcement account under RCW 69.50.520.

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, after
34 deducting the cost of sale, including reasonable fees or commissions
35 paid to independent selling agents, and the cost of any valid
36 landlord's claim for damages under subsection (15) of this section.

37 (c) The value of sold forfeited property is the sale price. The
38 value of retained forfeited property is the fair market value of the

1 property at the time of seizure, determined when possible by reference
2 to an applicable commonly used index, such as the index used by the
3 department of licensing for valuation of motor vehicles. A seizing
4 agency may use, but need not use, an independent qualified appraiser to
5 determine the value of retained property. If an appraiser is used, the
6 value of the property appraised is net of the cost of the appraisal.
7 The value of destroyed property and retained firearms or illegal
8 property is zero.

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

14 (11) Controlled substances listed in Schedule I, II, III, IV, and
15 V that are possessed, transferred, sold, or offered for sale in
16 violation of this chapter are contraband and shall be seized and
17 summarily forfeited to the state. Controlled substances listed in
18 Schedule I, II, III, IV, and V, which are seized or come into the
19 possession of the board, the owners of which are unknown, are
20 contraband and shall be summarily forfeited to the board.

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

26 (13) The failure, upon demand by a board inspector or law
27 enforcement officer, of the person in occupancy or in control of land
28 or premises upon which the species of plants are growing or being
29 stored to produce an appropriate registration or proof that he or she
30 is the holder thereof constitutes authority for the seizure and
31 forfeiture of the plants.

32 (14) Upon the entry of an order of forfeiture of real property, the
33 court shall forward a copy of the order to the assessor of the county
34 in which the property is located. Orders for the forfeiture of real
35 property shall be entered by the superior court, subject to court
36 rules. Such an order shall be filed by the seizing agency in the
37 county auditor's records in the county in which the real property is
38 located.

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

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

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

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

16 (ii) Only if the governmental entity denies or fails to respond to
17 the landlord's claim within sixty days of the date of filing, may the
18 landlord collect damages under this subsection by filing within thirty
19 days of denial or the expiration of the sixty-day period, whichever
20 occurs first, a claim with the seizing law enforcement agency. The
21 seizing law enforcement agency must notify the landlord of the status
22 of the claim by the end of the thirty-day period. Nothing in this
23 section requires the claim to be paid by the end of the sixty-day or
24 thirty-day period.

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

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

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

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

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

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

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

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

7 (17) Subsections (15) and (16) of this section do not limit any
8 other rights a landlord may have against a tenant to collect for
9 damages. However, if a law enforcement agency satisfies a landlord's
10 claim under subsection (15) of this section, the rights the landlord
11 has against the tenant for damages directly caused by a law enforcement
12 officer under the terms of the landlord and tenant's contract are
13 subrogated to the law enforcement agency.

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