
HOUSE BILL 1615

State of Washington

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By Representatives Orr, Mielke, Heavey, Dellwo, Riley, Winsley, Vance, Zellinsky, Brough, Jacobsen, Jones, Pruitt, R. Johnson, Van Luven, Haugen, Paris, Inslee, Kremen, Scott, Rayburn, Roland, Chandler, Moyer, Sheldon, Cooper, H. Myers, Rasmussen, O'Brien, Dorn and Anderson.

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1 AN ACT Relating to forfeiture of vehicles used in the sale and
2 purchase of drugs; reenacting and amending RCW 69.50.505; and creating
3 a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that: Drug
6 offenses and crimes resulting from illegal drug use are destructive to
7 society; the nature of drug trafficking results in many property crimes
8 and crimes of violence; state and local government agencies incur
9 immense expenses in the investigation, prosecution, adjudication,
10 incarceration, and treatment of drug-related offenders and the
11 compensation of their victims; drug-related offenses are difficult to
12 eradicate because of the profits derived from the criminal activities,
13 that can be invested in legitimate assets and later used for further
14 criminal activities. The forfeiture of real assets where a substantial
15 nexus exists between the sale or purchase of the substances and the

1 real property will provide a significant deterrent to crime by removing
2 the profit incentive of drug trafficking, increasing the risk for
3 potential drug purchasers, and will provide a revenue source that will
4 partially defray the large costs incurred by government as a result of
5 these crimes.

6 **Sec. 2.** RCW 69.50.505 and 1990 c 248 s 2 and 1990 c 213 s 12 are
7 each reenacted and amended to read as follows:

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

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

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

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

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

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

1 (ii) No conveyance is subject to forfeiture under this section by
2 reason of any act or omission established by the owner thereof to have
3 been committed or omitted without the owner's knowledge or consent,
4 except that a vehicle continuously used in a manner defined in this
5 section is subject to forfeiture even if not owned by the person using
6 the vehicle;

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

10 (iv) A forfeiture of a conveyance encumbered by a bona fide
11 security interest is subject to the interest of the secured party if
12 the secured party neither had knowledge of nor consented to the act or
13 omission; and

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

19 (5) All vehicles used or intended for use, in a manner to
20 facilitate the purchase of property described in (1) and (2) of this
21 subsection, except that:

22 (i) A vehicle is subject to forfeiture even if not owned by the
23 drug purchaser, but continually used in the purchase of drugs;

24 (ii) A vehicle is subject to forfeiture on the second conviction of
25 a person for the purchase of drugs; and

26 (iii) A forfeiture of a vehicle encumbered by a bona fide security
27 interest is subject to the interest of the secured party if the secured
28 party neither had knowledge nor consented to the purchase of drugs;

29 (6) 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))~~ (7) All drug paraphernalia;

4 ~~((7))~~ (8) All moneys, negotiable instruments, securities, or
5 other tangible or intangible property of value furnished or intended to
6 be 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: PROVIDED FURTHER, That no personal property may be forfeited
19 under this paragraph, to the extent of the interest of an owner, by
20 reason of any act or omission which that owner establishes was
21 committed or omitted without the owner's knowledge or consent; and

22 ~~((8))~~ (9) All real property, including any right, title, and
23 interest in the whole of any lot or tract of land, and any
24 appurtenances or improvements which are being used with the knowledge
25 of the owner for the manufacturing, compounding, processing, delivery,
26 importing, or exporting of any controlled substance, or which have been
27 acquired in whole or in part with proceeds traceable to an exchange or
28 series of exchanges in violation of this chapter or chapter 69.41 or
29 69.52 RCW, if such activity is not less than a class C felony and a

1 substantial nexus exists between the commercial production or sale of
2 the controlled substance and the real property: PROVIDED, That:

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

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

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

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

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

28 (b) Real or personal property subject to forfeiture under this
29 chapter may be seized by any board inspector or law enforcement officer
30 of this state upon process issued by any superior court having

1 jurisdiction over the property. Seizure of real property shall include
2 the filing of a lis pendens by the seizing agency. Real property
3 seized under this section shall not be transferred or otherwise
4 conveyed until ninety days after seizure or until a judgment of
5 forfeiture is entered, whichever is later: PROVIDED, That real
6 property seized under this section may be transferred or conveyed to
7 any person or entity who acquires title by foreclosure or deed in lieu
8 of foreclosure of a security interest. Seizure of personal property
9 without process may be made if:

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

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

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

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

21 (c) In the event of seizure pursuant to subsection (b), proceedings
22 for forfeiture shall be deemed commenced by the seizure. The law
23 enforcement agency under whose authority the seizure was made shall
24 cause notice to be served within fifteen days following the seizure on
25 the owner of the property seized and the person in charge thereof and
26 any person having any known right or interest therein, including any
27 community property interest, of the seizure and intended forfeiture of
28 the seized property. Service of notice of seizure of real property
29 shall be made according to the rules of civil procedure. However, the
30 state may not obtain a default judgment with respect to real property

1 against a party who is served by substituted service absent an
2 affidavit stating that a good faith effort has been made to ascertain
3 if the defaulted party is incarcerated within the state, and that there
4 is no present basis to believe that the party is incarcerated within
5 the state. The notice of seizure in other cases may be served by any
6 method authorized by law or court rule including but not limited to
7 service by certified mail with return receipt requested. Service by
8 mail shall be deemed complete upon mailing within the fifteen day
9 period following the seizure.

10 (d) If no person notifies the seizing law enforcement agency in
11 writing of the person's claim of ownership or right to possession of
12 items specified in subsection (a)(4), ~~(a)((+7))~~ (5), (a)(8), or
13 ~~(a)((+8))~~ (9) of this section within forty-five days of the seizure in
14 the case of personal property and ninety days in the case of real
15 property, the item seized shall be deemed forfeited. The community
16 property interest in real property of a person whose spouse committed
17 a violation giving rise to seizure of the real property may not be
18 forfeited if the person did not participate in the violation.

19 (e) If any person notifies the seizing law enforcement agency in
20 writing of the person's claim of ownership or right to possession of
21 items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6),
22 (a)(7), ~~((or))~~ (a)(8), or (a)(9) of this section within forty-five days
23 of the seizure in the case of personal property and ninety days in the
24 case of real property, the person or persons shall be afforded a
25 reasonable opportunity to be heard as to the claim or right. The
26 hearing shall be before the chief law enforcement officer of the
27 seizing agency or the chief law enforcement officer's designee, except
28 where the seizing agency is a state agency as defined in RCW
29 34.12.020(4), the hearing shall be before the chief law enforcement
30 officer of the seizing agency or an administrative law judge appointed

1 under chapter 34.12 RCW, except that any person asserting a claim or
2 right may remove the matter to a court of competent jurisdiction if the
3 aggregate value of the article or articles involved is more than five
4 hundred dollars. The court to which the matter is to be removed shall
5 be the district court when such aggregate value is ten thousand dollars
6 or less of personal property. A hearing before the seizing agency and
7 any appeal therefrom shall be under Title 34 RCW. In a court hearing
8 between two or more claimants to the article or articles involved, the
9 prevailing party shall be entitled to a judgment for costs and
10 reasonable attorney's fees. In cases involving personal property, the
11 burden of producing evidence shall be upon the person claiming to be
12 the lawful owner or the person claiming to have the lawful right to
13 possession of the property. In cases involving real property, the
14 burden of producing evidence shall be upon the law enforcement agency.
15 The burden of proof that the seized real property is subject to
16 forfeiture shall be upon the law enforcement agency. The seizing law
17 enforcement agency shall promptly return the article or articles to the
18 claimant upon a determination by the administrative law judge or court
19 that the claimant is the present lawful owner or is lawfully entitled
20 to possession thereof of items specified in subsection (a)(2), (a)(3),
21 (a)(4), (a)(5), (a)(6), (a)(7), ~~((a)(8))~~ (a)(8), or (a)(9) of this
22 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) (i) Sell that which is not required to be destroyed by law and
29 which is not harmful to the public. The proceeds and all moneys
30 forfeited under this title shall be used for payment of all proper

1 expenses of the investigation leading to the seizure, including any
2 money delivered to the subject of the investigation by the law
3 enforcement agency, and of the proceedings for forfeiture and sale,
4 including expenses of seizure, maintenance of custody, advertising,
5 actual costs of the prosecuting or city attorney, and court costs.
6 Money remaining after the payment of all expenses shall be distributed
7 as follows:

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

18 (B) Twenty-five percent of money derived from the forfeiture of
19 real property and twenty-five percent of money derived from the
20 forfeiture of personal property shall be remitted to the state
21 treasurer for deposit in the public safety and education account
22 established in RCW 43.08.250;

23 (C) Until July 1, 1995, fifty percent of money derived from the
24 forfeiture of real property shall be remitted to the state treasurer
25 for deposit in the drug enforcement and education account under RCW
26 69.50.520, on and after July 1, 1995, the fifty percent of the money
27 shall be remitted in the same manner as the twenty-five percent of the
28 money remitted under (2)(i)(A) of this subsection; and

29 (D) If an investigation involves a seizure of moneys and proceeds
30 having an aggregate value of less than five thousand dollars, the

1 moneys and proceeds may be deposited in total in the general fund of
2 the governmental unit of the seizing law enforcement agency and shall
3 be appropriated exclusively for the expansion of narcotics enforcement
4 services. Such moneys shall not supplant preexisting funding sources.

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

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

11 (4) Forward it to the drug enforcement administration for
12 disposition.

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

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

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

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