

1 **ESSB 5815** - H AMD

2 By Representative Appelwick

3 Strike everything after the enacting clause and insert the
4 following"

5 "Sec. 1. RCW 69.50.505 and 1992 c 211 s 1 are each amended to
6 read as follows:

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

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

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

19 (3) All property which is used, or intended for use, as a
20 container 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
23 the sale, delivery, or receipt of property described in paragraphs
24 (1) or (2), except that:

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

30 (ii) No conveyance is subject to forfeiture under this section
31 by reason of any act or omission established by the owner thereof

1 to have been committed or omitted without the owner's knowledge or
2 consent;

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

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

10 (v) When the owner of a conveyance has been arrested under
11 this chapter or chapter 69.41 or 69.52 RCW the conveyance in which
12 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
14 the owner's arrest;

15 (5) All books, records, and research products and materials,
16 including formulas, microfilm, tapes, and data which are used, or
17 intended for use, in violation of this chapter or chapter 69.41 or
18 69.52 RCW;

19 (6) All drug paraphernalia;

20 (7) All moneys, negotiable instruments, securities, or other
21 tangible or intangible property of value furnished or intended to
22 be furnished by any person in exchange for a controlled substance
23 in violation of this chapter or chapter 69.41 or 69.52 RCW, all
24 tangible or intangible personal property, proceeds, or assets
25 acquired in whole or in part with proceeds traceable to an exchange
26 or series of exchanges in violation of this chapter or chapter
27 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and
28 securities used or intended to be used to facilitate any violation
29 of this chapter or chapter 69.41 or 69.52 RCW(~~(: PROVIDED, That)~~).
30 A forfeiture of money, negotiable instruments, securities, or other
31 tangible or intangible property encumbered by a bona fide security
32 interest is subject to the interest of the secured party if, at the
33 time the security interest was created, the secured party neither

1 had knowledge of nor consented to the act or omission(~~(:—PROVIDED~~
2 ~~FURTHER, That))~~). No personal property may be forfeited under this
3 paragraph, to the extent of the interest of an owner, by reason of
4 any act or omission which that owner establishes was committed or
5 omitted without the owner's knowledge or consent; and

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

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

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

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

1 the offender, and other evidence which demonstrates the offender's
2 intent to engage in commercial activity;

3 (iv) The unlawful sale of marijuana or a legend drug shall not
4 result in the forfeiture of real property unless the sale was forty
5 grams or more in the case of marijuana or one hundred dollars or
6 more in the case of a legend drug, and a substantial nexus exists
7 between the unlawful sale and the real property; and

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

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

25 (1) The seizure is incident to an arrest or a search under a
26 search warrant or an inspection under an administrative inspection
27 warrant;

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

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

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

4 (c) In the event of seizure pursuant to subsection (b),
5 proceedings for forfeiture shall be deemed commenced by the
6 seizure. The law enforcement agency under whose authority the
7 seizure was made shall cause notice to be served within fifteen
8 days following the seizure on the owner of the property seized and
9 the person in charge thereof and any person having any known right
10 or interest therein, including any community property interest, of
11 the seizure and intended forfeiture of the seized property.
12 Service of notice of seizure of real property shall be made
13 according to the rules of civil procedure. However, the state may
14 not obtain a default judgment with respect to real property against
15 a party who is served by substituted service absent an affidavit
16 stating that a good faith effort has been made to ascertain if the
17 defaulted party is incarcerated within the state, and that there is
18 no present basis to believe that the party is incarcerated within
19 the state. Notice of seizure in the case of property subject to a
20 security interest that has been perfected by filing a financing
21 statement in accordance with chapter 62A.9 RCW, or a certificate of
22 title shall be made by service upon the secured party to the
23 secured party's assignee at the address shown on the financing
24 statement or the certificate of title. The notice of seizure in
25 other cases may be served by any method authorized by law or court
26 rule including but not limited to service by certified mail with
27 return receipt requested. Service by mail shall be deemed complete
28 upon mailing within the fifteen day period following the seizure.

29 (d) If no person notifies the seizing law enforcement agency
30 in writing of the person's claim of ownership or right to
31 possession (~~of items specified in subsection (a)(4), (a)(7), or~~
32 ~~(a)(8) of this section within forty five days of the seizure in the~~
33 ~~case of personal property and ninety days in the case of real~~

1 ~~property))~~ within ninety days, the item seized shall be deemed
2 forfeited. The community property interest in real property of a
3 person whose spouse committed a violation giving rise to seizure of
4 the real property may not be forfeited if the person did not
5 participate in the violation. A perfected security interest of a
6 secured party may be extinguished only after a contested hearing or
7 agreement by the secured party.

8 (e) If any person notifies the seizing law enforcement agency
9 in writing of the person's claim of ownership or right to
10 possession ~~((of items specified in subsection (a)(2), (a)(3),~~
11 ~~(a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this section within~~
12 ~~forty-five days of the seizure in the case of personal property and~~
13 ~~ninety days in the case of real property))~~ within ninety days, the
14 person or persons shall be afforded a reasonable opportunity to be
15 heard as to the claim or right. ~~((The hearing shall be before the~~
16 ~~chief law enforcement officer of the seizing agency or the chief~~
17 ~~law enforcement officer's designee, except where the seizing agency~~
18 ~~is a state agency as defined in RCW 34.12.020(4), the hearing shall~~
19 ~~be before the chief law enforcement officer of the seizing agency~~
20 ~~or an administrative law judge appointed under chapter 34.12 RCW,~~
21 ~~except that any person asserting a claim or right may remove the~~
22 ~~matter to a court of competent jurisdiction if the aggregate value~~
23 ~~of the article or articles involved is more than five hundred~~
24 ~~dollars.))~~ The prosecuting attorney shall file the case into a
25 court of competent jurisdiction. The court to which the matter is
26 ~~((to be removed))~~ filed shall be the district court when the
27 aggregate value of personal property is within the jurisdictional
28 limit set forth in RCW 3.66.020. ~~((A hearing before the seizing~~
29 ~~agency and any appeal therefrom shall be under Title 34 RCW.))~~ In
30 a court hearing between two or more claimants to the article or
31 articles involved, the prevailing party shall be entitled to a
32 judgment for costs and reasonable attorney's fees. In cases
33 involving personal property, the burden of producing evidence shall

1 be upon the person claiming to be the lawful owner or the person
2 claiming to have the lawful right to possession of the property.
3 In cases involving real property, the burden of producing evidence
4 shall be upon the law enforcement agency. The burden of proof that
5 the seized real property is subject to forfeiture shall be upon the
6 law enforcement agency. The seizing law enforcement agency shall
7 promptly return the article or articles to the claimant upon a
8 determination by the ((~~administrative law judge or~~)) court that the
9 claimant is the present lawful owner or is lawfully entitled to
10 possession thereof of items specified in subsection (a)(2), (a)(3),
11 (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this section.

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

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

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

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

23 (4) Forward it to the drug enforcement administration for
24 disposition.

25 (g)(1) When property is forfeited, the seizing agency shall
26 keep a record indicating the identity of the prior owner, if known,
27 a description of the property, the disposition of the property, the
28 value of the property at the time of seizure, and the amount of
29 proceeds realized from disposition of the property.

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

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

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

8 (h)(1) By January 31st of each year, each seizing agency shall
9 remit to the state treasurer an amount equal to ten percent of the
10 net proceeds of any property forfeited during the preceding
11 calendar year. Money remitted shall be deposited in the drug
12 enforcement and education account under RCW 69.50.520.

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

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

32 (i) Forfeited property and net proceeds not required to be
33 paid to the state treasurer shall be retained by the seizing law

1 enforcement agency exclusively for the expansion and improvement of
2 controlled substances related law enforcement activity. Money
3 retained under this section may not be used to supplant preexisting
4 funding sources.

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

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

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

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

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

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

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

10 (i) Only if the funds applied under (2) of this subsection are
11 insufficient to satisfy the damage directly caused by a law
12 enforcement officer, may the landlord seek compensation for the
13 damage by filing a claim against the governmental entity under
14 whose authority the law enforcement agency operates within thirty
15 days after the search;

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

25 (3) For any claim filed under (2) 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
29 this chapter or chapter 69.41 or 69.52 RCW; or

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

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

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

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

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

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

14 (p) Subsections (n) and (o) of this section do not limit any
15 other rights a landlord may have against a tenant to collect for
16 damages. However, if a law enforcement agency satisfies a
17 landlord's claim under subsection (n) of this section, the rights
18 the landlord has against the tenant for damages directly caused by
19 a law enforcement officer under the terms of the landlord and
20 tenant's contract are subrogated to the law enforcement agency."