
SENATE BILL 5935

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By Senators Constantine, Hargrove, Stevens, Oke, Thibaudeau, Kline, Swecker, Prentice, McCaslin, Roach and Kohl-Welles

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1 AN ACT Relating to civil forfeitures of property; amending RCW
2 69.50.505; and adding a new section to chapter 10.105 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 10.105 RCW
5 to read as follows:

6 (1) No judgment of forfeiture of property in a civil forfeiture
7 proceeding by the state or any of its political subdivisions shall be
8 allowed or entered until and unless the owner of the property is
9 convicted of a crime in Washington or another jurisdiction and the
10 property is found by clear and convincing evidence to have been
11 instrumental in committing or facilitating the crime or to be proceeds
12 of that crime. The value of the property forfeited under the
13 provisions of this subsection shall be substantially proportional to
14 the specific conduct for which the owner of the property has been
15 convicted. For purposes of this section, "property" means any interest
16 in anything of value, including the whole of any lot or tract of land
17 and tangible and intangible personal property, including currency,
18 instruments or securities or any other kind of privilege, interest,

1 claim, or right whether due or to become due. Nothing in this section
2 prohibits a person from voluntarily giving a judgment of forfeiture.

3 (2) In a civil forfeiture proceeding if a financial institution
4 claiming an interest in the property demonstrates that it holds an
5 interest, its interest shall not be subject to forfeiture. In a civil
6 forfeiture proceeding if a person claiming an interest in the property,
7 other than a financial institution or a defendant who has been charged
8 with or convicted of a crime involving that property, demonstrates that
9 the person has an interest in the property, that person's interest
10 shall not be subject to forfeiture unless:

11 (a) The forfeiting agency proves by clear and convincing evidence
12 that the person took the property or the interest with the intent to
13 defeat the forfeiture; or

14 (b) A conviction under subsection (1) of this section is later
15 obtained against the person.

16 (3) Notwithstanding the provisions of subsection (1) of this
17 section, if, following notice to all persons known to have an interest
18 or who may have an interest, no person claims an interest in the seized
19 property or if the property is contraband, a judgment of forfeiture may
20 be allowed and entered without a criminal conviction. For purposes of
21 this subsection, "contraband" means personal property, articles, or
22 things, including but not limited to controlled substances or drug
23 paraphernalia, that a person is prohibited by Washington statute or
24 local ordinance from producing, obtaining, or possessing.

25 (4) Nothing in this section shall be construed to affect the
26 temporary seizure of property for evidentiary, forfeiture, or
27 protective purposes, or to alter the power of the governor to remit
28 fines or forfeitures under Article III, section 11 of the Washington
29 Constitution.

30 (5) Any sale of forfeited property shall be conducted in a
31 commercially reasonable manner. Property or proceeds forfeited under
32 subsection (1), (3), or (6) of this section shall be distributed or
33 applied in the following order:

34 (a) To the satisfaction of any foreclosed liens, security
35 interests, and contracts in the order of their priority;

36 (b) To the state or any of its political subdivisions for actual
37 and reasonable expenses related to the costs of the forfeiture
38 proceeding, including attorney fees, storage, maintenance, management,
39 and disposition of the property incurred in connection with the sale of

1 any forfeited property in an amount not to exceed twenty-five percent
2 of the total proceeds in any single forfeiture;

3 (c) To the state or any of its political subdivisions to be used
4 exclusively for drug treatment, unless another disposition is specially
5 provided by law.

6 (6) The state of Washington or any of its political subdivisions
7 shall take all necessary steps to obtain shared property or proceeds
8 from the United States department of justice resulting from a
9 forfeiture. Any property or proceeds received from the United States
10 department of justice by the state of Washington or any of its
11 political subdivisions shall be applied as provided in subsection (5)
12 of this section.

13 (7) Neither the state of Washington, its political subdivisions,
14 nor any forfeiting agency shall transfer forfeiture proceedings to the
15 federal government unless a state court has affirmatively found that:

16 (a) The activity giving rise to the forfeiture is interstate in
17 nature and sufficiently complex to justify the transfer;

18 (b) The seized property may only be forfeited under federal law; or

19 (c) Pursuing forfeiture under state law would unduly burden the
20 state forfeiting agencies.

21 (8) All forfeiting agencies shall report the nature and disposition
22 of all property and proceeds seized for forfeiture or forfeited to the
23 asset forfeiture oversight committee, hereby created. The members of
24 the committee shall be appointed by the governor. The committee shall
25 be operated independent of any forfeiting agency. The committee shall
26 generate and make available to the public an annual report of the
27 information collected. The committee shall also make recommendations
28 to ensure that asset forfeiture proceedings are handled in a manner
29 that is fair to innocent property owners and interest holders.

30 **Sec. 2.** RCW 69.50.505 and 1993 c 487 s 1 are each amended to read
31 as follows:

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

34 (1) All controlled substances which have been manufactured,
35 distributed, dispensed, acquired, or possessed in violation of this
36 chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as
37 defined in RCW 64.44.010, used or intended to be used in the
38 manufacture of controlled substances;

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

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

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

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

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

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

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

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

31 (5) All books, records, and research products and materials,
32 including formulas, microfilm, tapes, and data which are used, or
33 intended for use, in violation of this chapter or chapter 69.41 or
34 69.52 RCW;

35 (6) All drug paraphernalia;

36 (7) All moneys, negotiable instruments, securities, or other
37 tangible or intangible property of value furnished or intended to be
38 furnished by any person in exchange for a controlled substance in
39 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible

1 or intangible personal property, proceeds, or assets acquired in whole
2 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 and all moneys, negotiable instruments, and securities used or intended
5 to be used to facilitate any violation of this chapter or chapter 69.41
6 or 69.52 RCW. A forfeiture of money, negotiable instruments,
7 securities, or other tangible or intangible property encumbered by a
8 bona fide security interest is subject to the interest of the secured
9 party if, at the time the security interest was created, the secured
10 party neither had knowledge of nor consented to the act or omission.
11 No personal property may be forfeited under this paragraph, to the
12 extent of the interest of an owner, by reason of any act or omission
13 which that owner establishes was committed or omitted without the
14 owner's knowledge or consent; and

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

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

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

31 (iii) The possession of marijuana shall not result in the
32 forfeiture of real property unless the marijuana is possessed for
33 commercial purposes, the amount possessed is five or more plants or one
34 pound or more of marijuana, and a substantial nexus exists between the
35 possession of marijuana and the real property. In such a case, the
36 intent of the offender shall be determined by the preponderance of the
37 evidence, including the offender's prior criminal history, the amount
38 of marijuana possessed by the offender, the sophistication of the

1 activity or equipment used by the offender, and other evidence which
2 demonstrates the offender's 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 more
6 in the case of a legend drug, and a substantial nexus exists between
7 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 if
10 the secured party, at the time the security interest was created,
11 neither had knowledge of nor consented to the act or omission.

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

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

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

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

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

35 (c) In the event of seizure pursuant to subsection (b), proceedings
36 for forfeiture shall be deemed commenced by the seizure. The law
37 enforcement agency under whose authority the seizure was made shall
38 cause notice to be served within fifteen days following the seizure on
39 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. Notice of seizure in the case of property subject to a
11 security interest that has been perfected by filing a financing
12 statement in accordance with chapter ((62A.9)) 62A.9A RCW, or a
13 certificate of title, shall be made by service upon the secured party
14 or the secured party's assignee at the address shown on the financing
15 statement or the certificate of title. The notice of seizure in other
16 cases may be served by any method authorized by law or court rule
17 including but not limited to service by certified mail with return
18 receipt requested. Service by mail shall be deemed complete upon
19 mailing within the fifteen day period following the seizure.

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

29 (e) If any person notifies the seizing law enforcement agency in
30 writing of the person's claim of ownership or right to possession of
31 items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6),
32 (a)(7), or (a)(8) of this section within forty-five days of the seizure
33 in the case of personal property and ninety days in the case of real
34 property, the person or persons shall be afforded a reasonable
35 opportunity to be heard as to the claim or right. The hearing shall be
36 before the chief law enforcement officer of the seizing agency or the
37 chief law enforcement officer's designee, except where the seizing
38 agency is a state agency as defined in RCW 34.12.020(4), the hearing
39 shall be before the chief law enforcement officer of the seizing agency

1 or an administrative law judge appointed under chapter 34.12 RCW,
2 except that any person asserting a claim or right may remove the matter
3 to a court of competent jurisdiction. Removal of any matter involving
4 personal property may only be accomplished according to the rules of
5 civil procedure. The person seeking removal of the matter must serve
6 process against the state, county, political subdivision, or
7 municipality that operates the seizing agency, and any other party of
8 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-
9 five days after the person seeking removal has notified the seizing law
10 enforcement agency of the person's claim of ownership or right to
11 possession. The court to which the matter is to be removed shall be
12 the district court when the aggregate value of personal property is
13 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
14 before the seizing agency and any appeal therefrom shall be under Title
15 34 RCW. In a court hearing between two or more claimants to the
16 article or articles involved, the prevailing party shall be entitled to
17 a judgment for costs and reasonable attorney's fees. In cases
18 involving personal property, the burden of producing evidence shall be
19 upon the person claiming to be the lawful owner or the person claiming
20 to have the lawful right to possession of the property. In cases
21 involving real property, the burden of producing evidence shall be upon
22 the law enforcement agency. The burden of proof that the seized real
23 property is subject to forfeiture shall be upon the law enforcement
24 agency. 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 (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7),
29 or (a)(8) of this section.

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

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

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

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

1 (4) Forward it to the drug enforcement administration for
2 disposition.

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

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

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

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

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

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

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

1 (i) Forfeited property and ((net)) proceeds ((not required to be
2 paid to the state treasurer shall be retained by the seizing law
3 enforcement agency exclusively for the expansion and improvement of
4 controlled substances related law enforcement activity. Money retained
5 under this section may not be used to supplant preexisting funding
6 sources)) shall be disposed of or distributed as specified in section
7 1 of this act.

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

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

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

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

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

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

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

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

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

19 (3) For any claim filed under (2) of this subsection, the law
20 enforcement agency shall pay the claim unless the agency provides
21 substantial proof that the landlord either:

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

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

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

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

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

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

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

38 (p) Subsections (n) and (o) of this section do not limit any other
39 rights a landlord may have against a tenant to collect for damages.

1 However, if a law enforcement agency satisfies a landlord's claim under
2 subsection (n) of this section, the rights the landlord has against the
3 tenant for damages directly caused by a law enforcement officer under
4 the terms of the landlord and tenant's contract are subrogated to the
5 law enforcement agency.

6 (q) Civil forfeitures of property under this section are subject to
7 section 1 of this act, and in case of conflict between section 1 of
8 this act and this section, section 1 of this act shall control.

9 NEW SECTION. **Sec. 3.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

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