
SENATE BILL 5260

State of Washington 59th Legislature 2005 Regular Session

By Senators Kline, Keiser and Franklin

Read first time 01/19/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to proceeds from civil forfeitures; and amending
2 RCW 69.50.505, 9A.83.030, and 69.50.520.

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

4 **Sec. 1.** RCW 69.50.505 and 2003 c 53 s 348 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 in the case of personal property
21 and ninety days in the case of real property, the item seized shall be
22 deemed forfeited. The community property interest in real property of
23 a person whose spouse committed a violation giving rise to seizure of
24 the real property may not be forfeited if the person did not
25 participate in the violation.

26 (5) If any person notifies the seizing law enforcement agency in
27 writing of the person's claim of ownership or right to possession of
28 items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h)
29 of this section within forty-five days of the seizure in the case of
30 personal property and ninety days in the case of real property, the
31 person or persons shall be afforded a reasonable opportunity to be
32 heard as to the claim or right. The hearing shall be before the chief
33 law enforcement officer of the seizing agency or the chief law
34 enforcement officer's designee, except where the seizing agency is a
35 state agency as defined in RCW 34.12.020(4), the hearing shall be
36 before the chief law enforcement officer of the seizing agency or an
37 administrative law judge appointed under chapter 34.12 RCW, except that
38 any person asserting a claim or right may remove the matter to a court

1 of competent jurisdiction. Removal of any matter involving personal
2 property may only be accomplished according to the rules of civil
3 procedure. The person seeking removal of the matter must serve process
4 against the state, county, political subdivision, or municipality that
5 operates the seizing agency, and any other party of interest, in
6 accordance with RCW 4.28.080 or 4.92.020, within forty-five days after
7 the person seeking removal has notified the seizing law enforcement
8 agency of the person's claim of ownership or right to possession. The
9 court to which the matter is to be removed shall be the district court
10 when the aggregate value of personal property is within the
11 jurisdictional limit set forth in RCW 3.66.020. A hearing before the
12 seizing agency and any appeal therefrom shall be under Title 34 RCW.
13 In all cases, the burden of proof is upon the law enforcement agency to
14 establish, by a preponderance of the evidence, that the property is
15 subject to forfeiture.

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

22 (6) In any proceeding to forfeit property under this title, where
23 the claimant substantially prevails, the claimant is entitled to
24 reasonable attorneys' fees reasonably incurred by the claimant. In
25 addition, in a court hearing between two or more claimants to the
26 article or articles involved, the prevailing party is entitled to a
27 judgment for costs and reasonable attorneys' fees.

28 (7) When property is forfeited under this chapter the board or
29 seizing law enforcement agency (~~may~~) shall:

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

33 ~~(b))~~ Sell that which is not required to be destroyed by law and
34 which is not harmful to the public;

35 ~~((c) Request the appropriate sheriff or director of public safety
36 to take custody of the property and remove it for disposition in
37 accordance with law; or~~

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

3 ~~(8)(a) When property is forfeited, the seizing agency shall)) (b)~~
4 Keep a 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 ~~((b) Each seizing agency shall)) (c) Retain records of forfeited~~
9 property for at least seven years.

10 ~~((c) Each seizing agency shall)) (d) File a report including a~~
11 copy of the records of forfeited property with the state treasurer each
12 calendar quarter. ((d)) The quarterly report need not include a
13 record of forfeited property that is still being held for use as
14 evidence during the investigation or prosecution of a case or during
15 the appeal from a conviction.

16 ~~((9)(a)) (e) Destroy any property that is harmful to the public,~~
17 required to be destroyed by law, or otherwise not appropriate for sale
18 to the public.

19 The provisions of this subsection requiring the seizing agency to
20 keep records and file quarterly reports apply to all forfeited property
21 the seizing agency receives under federal seizure and forfeiture laws.
22 The seizing agency must specify from which federal agencies it receives
23 funds.

24 ~~(8)(a) By January 31st of each year, each seizing agency shall~~
25 remit to the state treasurer ((an amount equal to ten percent of the
26 net proceeds of any property forfeited during the preceding calendar
27 year. Money remitted shall be deposited in the violence reduction and
28 drug enforcement account under RCW 69.50.520)) all of the net proceeds
29 forfeited during the preceding calendar year. The net proceeds shall
30 be deposited in the criminal justice treatment account to be used
31 exclusively for public drug treatment programs as provided by law.

32 (b) The net proceeds of forfeited property is the value of the
33 forfeitable interest in the property after deducting the cost of
34 satisfying any bona fide security interest to which the property is
35 subject at the time of seizure; and in the case of sold property, after
36 deducting the cost of sale, including reasonable fees or commissions
37 paid to independent selling agents, and the cost of any valid

1 landlord's claim for damages under subsection ~~((+15+))~~ (14) of this
2 section.

3 (c) The value of sold forfeited property is the sale price. ~~((The~~
4 ~~value of retained forfeited property is the fair market value of the~~
5 ~~property at the time of seizure, determined when possible by reference~~
6 ~~to an applicable commonly used index, such as the index used by the~~
7 ~~department of licensing for valuation of motor vehicles. A seizing~~
8 ~~agency may use, but need not use, an independent qualified appraiser to~~
9 ~~determine the value of retained property. If an appraiser is used, the~~
10 ~~value of the property appraised is net of the cost of the appraisal.))~~
11 The value of destroyed property ~~((and retained firearms))~~ or illegal
12 property is zero.

13 ~~((+10+))~~ (9)(a) Forfeited property and net proceeds ~~((not required~~
14 ~~to be paid to the state treasurer shall be retained by the seizing law~~
15 ~~enforcement agency exclusively for the expansion and improvement of~~
16 ~~controlled substances related law enforcement activity. Money retained~~
17 ~~under this section may not be used to supplant preexisting funding~~
18 ~~sources)), including shared property or proceeds obtained from the~~
19 ~~federal government, shall be disposed of or distributed as required by~~
20 ~~subsections (7) and (8) of this section.~~

21 (b) The state of Washington or any of its political subdivisions
22 shall take all necessary steps to obtain shared property and proceeds
23 from the United States department of justice resulting from a federal
24 civil forfeiture. Neither the state of Washington, its political
25 subdivisions, nor any forfeiting agency shall transfer forfeiture
26 proceedings to the federal government unless a state court has
27 affirmatively found that:

- 28 (i) The activity giving rise to the forfeiture is interstate in
29 nature and sufficiently complex to justify the transfer; or
- 30 (ii) The seized property may only be forfeited under federal law.

31 ~~((+11+))~~ (10) Controlled substances listed in Schedule I, II, III,
32 IV, and V that are possessed, transferred, sold, or offered for sale in
33 violation of this chapter are contraband and shall be seized and
34 summarily forfeited to the state. Controlled substances listed in
35 Schedule I, II, III, IV, and V, which are seized or come into the
36 possession of the board, the owners of which are unknown, are
37 contraband and shall be summarily forfeited to the board.

1 ~~((12))~~ (11) Species of plants from which controlled substances in
2 Schedules I and II may be derived which have been planted or cultivated
3 in violation of this chapter, or of which the owners or cultivators are
4 unknown, or which are wild growths, may be seized and summarily
5 forfeited to the board.

6 ~~((13))~~ (12) The failure, upon demand by a board inspector or law
7 enforcement officer, of the person in occupancy or in control of land
8 or premises upon which the species of plants are growing or being
9 stored to produce an appropriate registration or proof that he or she
10 is the holder thereof constitutes authority for the seizure and
11 forfeiture of the plants.

12 ~~((14))~~ (13) Upon the entry of an order of forfeiture of real
13 property, the court shall forward a copy of the order to the assessor
14 of the county in which the property is located. Orders for the
15 forfeiture of real property shall be entered by the superior court,
16 subject to court rules. Such an order shall be filed by the seizing
17 agency in the county auditor's records in the county in which the real
18 property is located.

19 ~~((15))~~ (14) A landlord may assert a claim against proceeds from
20 the sale of assets seized and forfeited under ~~((subsection (7)(b) of))~~
21 this section, only if:

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

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

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

34 (ii) Only if the governmental entity denies or fails to respond to
35 the landlord's claim within sixty days of the date of filing, may the
36 landlord collect damages under this subsection by filing within thirty
37 days of denial or the expiration of the sixty-day period, whichever
38 occurs first, a claim with the seizing law enforcement agency. The

1 seizing law enforcement agency must notify the landlord of the status
2 of the claim by the end of the thirty-day period. Nothing in this
3 section requires the claim to be paid by the end of the sixty-day or
4 thirty-day period.

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

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

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

13 ~~((+16+))~~ (15) The landlord's claim for damages under subsection
14 ~~((+15+))~~ (14) of this section may not include a claim for loss of
15 business and is limited to:

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

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

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

21 (d) The proceeds available after the seizing law enforcement agency
22 satisfies any bona fide security interest in the tenant's property and
23 costs related to sale of the tenant's property as provided by
24 subsection ~~((+9+))~~ (8)(b) of this section.

25 ~~((+17+))~~ (16) Subsections ~~((+15+))~~ (14) and ~~((+16+))~~ (15) of this
26 section do not limit any other rights a landlord may have against a
27 tenant to collect for damages. However, if a law enforcement agency
28 satisfies a landlord's claim under subsection ~~((+15+))~~ (14) of this
29 section, the rights the landlord has against the tenant for damages
30 directly caused by a law enforcement officer under the terms of the
31 landlord and tenant's contract are subrogated to the law enforcement
32 agency.

33 **Sec. 2.** RCW 9A.83.030 and 2001 c 168 s 2 are each amended to read
34 as follows:

35 (1) Proceeds traceable to or derived from specified unlawful
36 activity or a violation of RCW 9A.83.020 are subject to seizure and
37 forfeiture. The attorney general or county prosecuting attorney may

1 file a civil action for the forfeiture of proceeds. Unless otherwise
2 provided for under this section, no property rights exist in these
3 proceeds. All right, title, and interest in the proceeds shall vest in
4 the governmental entity of which the seizing law enforcement agency is
5 a part upon commission of the act or omission giving rise to forfeiture
6 under this section.

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

18 (a) The seizure is incident to an arrest or a search under a search
19 warrant or an inspection under an administrative inspection warrant
20 issued pursuant to RCW 69.50.502; or

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

24 (3) A seizure under subsection (2) of this section commences
25 proceedings for forfeiture. The law enforcement agency under whose
26 authority the seizure was made shall cause notice of the seizure and
27 intended forfeiture of the seized proceeds to be served within fifteen
28 days after the seizure on the owner of the property seized and the
29 person in charge thereof and any person who has a known right or
30 interest therein, including a community property interest. Service of
31 notice of seizure of real property shall be made according to the rules
32 of civil procedure. However, the state may not obtain a default
33 judgment with respect to real property against a party who is served by
34 substituted service absent an affidavit stating that a good faith
35 effort has been made to ascertain if the defaulted party is
36 incarcerated within the state, and that there is no present basis to
37 believe that the party is incarcerated within the state. The notice of
38 seizure in other cases may be served by any method authorized by law or

1 court rule including but not limited to service by certified mail with
2 return receipt requested. Service by mail is complete upon mailing
3 within the fifteen-day period after the seizure.

4 (4) If no person notifies the seizing law enforcement agency in
5 writing of the person's claim of ownership or right to possession of
6 the property within forty-five days of the seizure in the case of
7 personal property and ninety days in the case of real property, the
8 property seized shall be deemed forfeited. The community property
9 interest in real property of a person whose spouse committed a
10 violation giving rise to seizure of the real property may not be
11 forfeited if the person did not participate in the violation.

12 (5) If a person notifies the seizing law enforcement agency in
13 writing of the person's claim of ownership or right to possession of
14 property within forty-five days of the seizure in the case of personal
15 property and ninety days in the case of real property, the person or
16 persons shall be afforded a reasonable opportunity to be heard as to
17 the claim or right. The provisions of RCW 69.50.505(~~(e)~~) (5) shall
18 apply to any such hearing. The seizing law enforcement agency shall
19 promptly return property to the claimant upon the direction of the
20 administrative law judge or court.

21 (6) Disposition of forfeited property shall be made in the manner
22 provided for in RCW 69.50.505 (~~(h)~~) (7) through (~~(j)~~) (9) and
23 (~~(n)~~) (13).

24 **Sec. 3.** RCW 69.50.520 and 2004 c 276 s 912 are each amended to
25 read as follows:

26 The violence reduction and drug enforcement account is created in
27 the state treasury. All designated receipts from RCW 9.41.110(8),
28 66.24.210(4), 66.24.290(2), 69.50.505(~~(9)~~) (8)(a), 82.08.150(5),
29 82.24.020(2), 82.64.020, and section 420, chapter 271, Laws of 1989
30 shall be deposited into the account. Expenditures from the account may
31 be used only for funding services and programs under chapter 271, Laws
32 of 1989 and chapter 7, Laws of 1994 sp. sess., including state
33 incarceration costs. Funds from the account may also be appropriated
34 to reimburse local governments for costs associated with implementing
35 criminal justice legislation including chapter 338, Laws of 1997.
36 During the 2003-2005 biennium, funds from the account may also be used
37 for costs associated with providing grants to local governments in

1 accordance with chapter 338, Laws of 1997, funding drug offender
2 treatment services in accordance with RCW 70.96A.350, maintenance and
3 operating costs of the Washington association of sheriffs and police
4 chiefs jail reporting system, maintenance and operating costs of the
5 juvenile rehabilitation administration's client activity tracking
6 system, civil indigent legal representation, multijurisdictional
7 narcotics task forces, and grants to community networks under chapter
8 70.190 RCW by the family policy council.

--- END ---