
SENATE BILL 5041

State of Washington

64th Legislature

2015 Regular Session

By Senators O'Ban, Fain, and Dammeier

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1 AN ACT Relating to seizure and forfeiture of property for
2 patronizing a prostitute; amending RCW 9A.88.150; and creating a new
3 section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that human
6 trafficking is modern day slavery, which often takes the form of
7 forced prostitution. The potential to make significant financial
8 gains is what motivates sex traffickers to use force, coercion, and
9 physical violence to require victims to engage in sex acts for
10 profit. The legislature finds that both children and adults are
11 forced daily to sell themselves for the profit of others. It is the
12 intent of the legislature that the buyers of sex are held responsible
13 for their participation in this form of modern day slavery. Local
14 governments and law enforcement agencies must have the effective
15 tools necessary to focus on the buyers of sex in order to deter the
16 demand for prostitution. Providing law enforcement with the ability
17 to seize and forfeit the property of buyers who use that property to
18 commit the crime of patronizing a prostitute will hold these
19 individuals responsible for actions that perpetuate human sex
20 trafficking in our state.

1 **Sec. 2.** RCW 9A.88.150 and 2014 c 188 s 4 are each amended to
2 read as follows:

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

5 (a) Any property or other interest acquired or maintained in
6 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070 to the extent of
7 the investment of funds, and any appreciation or income attributable
8 to the investment, from a violation of RCW 9.68A.100, 9.68A.101, or
9 9A.88.070;

10 (b) All conveyances, including aircraft, vehicles, or vessels,
11 which are used, or intended for use, in any manner to facilitate a
12 violation of RCW 9.68A.100, 9.68A.101, (~~(or)~~) 9A.88.070, or
13 9A.88.110, except that:

14 (i) No conveyance used by any person as a common carrier in the
15 transaction of business as a common carrier is subject to forfeiture
16 under this section unless it appears that the owner or other person
17 in charge of the conveyance is a consenting party or privy to a
18 violation of RCW 9.68A.100, 9.68A.101, (~~(or)~~) 9A.88.070, or
19 9A.88.110;

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

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

28 (iv) When the owner of a conveyance has been arrested for a
29 violation of RCW 9.68A.100, 9.68A.101, (~~(or)~~) 9A.88.070, or
30 9A.88.110, the conveyance in which the person is arrested may not be
31 subject to forfeiture unless it is seized or process is issued for
32 its seizure within ten days of the owner's arrest;

33 (c) Any property, contractual right, or claim against property
34 used to influence any enterprise that a person has established,
35 operated, controlled, conducted, or participated in the conduct of,
36 in violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

37 (d) All proceeds traceable to or derived from an offense defined
38 in RCW 9.68A.100, 9.68A.101, or 9A.88.070 and all moneys, negotiable
39 instruments, securities, and other things of value significantly used

1 or intended to be used significantly to facilitate commission of the
2 offense;

3 (e) All books, records, and research products and materials,
4 including formulas, microfilm, tapes, and data which are used, or
5 intended for use, in violation of RCW 9.68A.100, 9.68A.101, or
6 9A.88.070;

7 (f) All moneys, negotiable instruments, securities, or other
8 tangible or intangible property of value furnished or intended to be
9 furnished by any person in exchange for a violation of RCW 9.68A.100,
10 9.68A.101, (~~(e)~~) 9A.88.070, or 9A.88.110, all tangible or intangible
11 personal property, proceeds, or assets acquired in whole or in part
12 with proceeds traceable to an exchange or series of exchanges in
13 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys,
14 negotiable instruments, and securities used or intended to be used to
15 facilitate any violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070. A
16 forfeiture of money, negotiable instruments, securities, or other
17 tangible or intangible property encumbered by a bona fide security
18 interest is subject to the interest of the secured party if, at the
19 time the security interest was created, the secured party neither had
20 knowledge of nor consented to the act or omission. No personal
21 property may be forfeited under this subsection (1)(f), to the extent
22 of the interest of an owner, by reason of any act or omission, which
23 that owner establishes was committed or omitted without the owner's
24 knowledge or consent; and

25 (g) All real property, including any right, title, and interest
26 in the whole of any lot or tract of land, and any appurtenances or
27 improvements which are being used with the knowledge of the owner for
28 a violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, or which have
29 been acquired in whole or in part with proceeds traceable to an
30 exchange or series of exchanges in violation of RCW 9.68A.100,
31 9.68A.101, or 9A.88.070, if a substantial nexus exists between the
32 violation and the real property. However:

33 (i) No property may be forfeited pursuant to this subsection
34 (1)(g), to the extent of the interest of an owner, by reason of any
35 act or omission committed or omitted without the owner's knowledge or
36 consent;

37 (ii) A forfeiture of real property encumbered by a bona fide
38 security interest is subject to the interest of the secured party if
39 the secured party, at the time the security interest was created,
40 neither had knowledge of nor consented to the act or omission.

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

13 (a) The seizure is incident to an arrest or a search under a
14 search warrant;

15 (b) The property subject to seizure has been the subject of a
16 prior judgment in favor of the state in a criminal injunction or
17 forfeiture proceeding; or

18 (c) The law enforcement officer has probable cause to believe
19 that the property was used or is intended to be used in violation of
20 RCW 9.68A.100, 9.68A.101, (~~(or)~~) 9A.88.070, or 9A.88.110.

21 (3) In the event of seizure pursuant to subsection (2) of this
22 section, proceedings for forfeiture shall be deemed commenced by the
23 seizure. The law enforcement agency under whose authority the seizure
24 was made shall cause notice to be served within fifteen days
25 following the seizure on the owner of the property seized and the
26 person in charge thereof and any person having any known right or
27 interest therein, including any community property interest, of the
28 seizure and intended forfeiture of the seized property. Service of
29 notice of seizure of real property shall be made according to the
30 rules of civil procedure. However, the state may not obtain a default
31 judgment with respect to real property against a party who is served
32 by substituted service absent an affidavit stating that a good faith
33 effort has been made to ascertain if the defaulted party is
34 incarcerated within the state, and that there is no present basis to
35 believe that the party is incarcerated within the state. Notice of
36 seizure in the case of property subject to a security interest that
37 has been perfected by filing a financing statement, or a certificate
38 of title, shall be made by service upon the secured party or the
39 secured party's assignee at the address shown on the financing
40 statement or the certificate of title. The notice of seizure in other

1 cases may be served by any method authorized by law or court rule
2 including, but not limited to, service by certified mail with return
3 receipt requested. Service by mail shall be deemed complete upon
4 mailing within the fifteen day period following the seizure.

5 (4) If no person notifies the seizing law enforcement agency in
6 writing of the person's claim of ownership or right to possession of
7 items specified in subsection (1) of this section within forty-five
8 days of the service of notice from the seizing agency in the case of
9 personal property and ninety days in the case of real property, the
10 item seized shall be deemed forfeited. The community property
11 interest in real property of a person whose spouse or domestic
12 partner committed a violation giving rise to seizure of the real
13 property may not be forfeited if the person did not participate in
14 the violation.

15 (5) If any person notifies the seizing law enforcement agency in
16 writing of the person's claim of ownership or right to possession of
17 items specified in subsection (1) of this section within forty-five
18 days of the service of notice from the seizing agency in the case of
19 personal property and ninety days in the case of real property, the
20 person or persons shall be afforded a reasonable opportunity to be
21 heard as to the claim or right. The notice of claim may be served by
22 any method authorized by law or court rule including, but not limited
23 to, service by first-class mail. Service by mail shall be deemed
24 complete upon mailing within the forty-five day period following
25 service of the notice of seizure in the case of personal property and
26 within the ninety day period following service of the notice of
27 seizure in the case of real property. The hearing shall be before the
28 chief law enforcement officer of the seizing agency or the chief law
29 enforcement officer's designee, except where the seizing agency is a
30 state agency as defined in RCW 34.12.020(4), the hearing shall be
31 before the chief law enforcement officer of the seizing agency or an
32 administrative law judge appointed under chapter 34.12 RCW, except
33 that any person asserting a claim or right may remove the matter to a
34 court of competent jurisdiction. Removal of any matter involving
35 personal property may only be accomplished according to the rules of
36 civil procedure. The person seeking removal of the matter must serve
37 process against the state, county, political subdivision, or
38 municipality that operates the seizing agency, and any other party of
39 interest, in accordance with RCW 4.28.080 or 4.92.020, within
40 forty-five days after the person seeking removal has notified the

1 seizing law enforcement agency of the person's claim of ownership or
2 right to possession. The court to which the matter is to be removed
3 shall be the district court when the aggregate value of personal
4 property is within the jurisdictional limit set forth in RCW
5 3.66.020. A hearing before the seizing agency and any appeal
6 therefrom shall be under Title 34 RCW. In all cases, the burden of
7 proof is upon the law enforcement agency to establish, by a
8 preponderance of the evidence, that the property is subject to
9 forfeiture.

10 The seizing law enforcement agency shall promptly return the
11 article or articles to the claimant upon a determination by the
12 administrative law judge or court that the claimant is the present
13 lawful owner or is lawfully entitled to possession thereof of items
14 specified in subsection (1) of this section.

15 (6) In any proceeding to forfeit property under this title, where
16 the claimant substantially prevails, the claimant is entitled to
17 reasonable attorneys' fees reasonably incurred by the claimant. In
18 addition, in a court hearing between two or more claimants to the
19 article or articles involved, the prevailing party is entitled to a
20 judgment for costs and reasonable attorneys' fees.

21 (7) When property is forfeited under this chapter, the seizing
22 law enforcement agency may:

23 (a) Retain it for official use or upon application by any law
24 enforcement agency of this state release the property to that agency
25 for the exclusive use of enforcing this chapter or chapter 9.68A RCW;

26 (b) Sell that which is not required to be destroyed by law and
27 which is not harmful to the public; or

28 (c) Request the appropriate sheriff or director of public safety
29 to take custody of the property and remove it for disposition in
30 accordance with law.

31 (8)(a) When property is forfeited, the seizing agency shall keep
32 a record indicating the identity of the prior owner, if known, a
33 description of the property, the disposition of the property, the
34 value of the property at the time of seizure, and the amount of
35 proceeds realized from disposition of the property.

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

38 (c) Each seizing agency shall file a report including a copy of
39 the records of forfeited property with the state treasurer each
40 calendar quarter.

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

5 (9)(a) By January 31st of each year, each seizing agency shall
6 remit to the state treasurer an amount equal to ten percent of the
7 net proceeds of any property forfeited during the preceding calendar
8 year. Money remitted shall be deposited in the prostitution
9 prevention and intervention account under RCW 43.63A.740.

10 (b) The net proceeds of forfeited property is the value of the
11 forfeitable interest in the property after deducting the cost of
12 satisfying any bona fide security interest to which the property is
13 subject at the time of seizure; and in the case of sold property,
14 after deducting the cost of sale, including reasonable fees or
15 commissions paid to independent selling agents, and the cost of any
16 valid landlord's claim for damages under subsection (12) of this
17 section.

18 (c) The value of sold forfeited property is the sale price. The
19 value of destroyed property and retained firearms or illegal property
20 is zero.

21 (10) Net proceeds not required to be paid to the state treasurer
22 shall be used for payment of all proper expenses of the investigation
23 leading to the seizure, including any money delivered to the subject
24 of the investigation by the law enforcement agency, and of the
25 proceedings for forfeiture and sale, including expenses of seizure,
26 maintenance of custody, advertising, actual costs of the prosecuting
27 or city attorney, and court costs. Money remaining after payment of
28 these expenses shall be retained by the seizing law enforcement
29 agency for the exclusive use of enforcing the provisions of this
30 chapter or chapter 9.68A RCW.

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

38 (12) A landlord may assert a claim against proceeds from the sale
39 of assets seized and forfeited under subsection (9) of this section,
40 only if:

1 (a) 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 residence;

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

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

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

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

26 (i) Knew or consented to actions of the tenant in violation of
27 RCW 9.68A.100, 9.68A.101, (~~(e)~~) 9A.88.070, or 9A.88.110; or

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

31 (13) The landlord's claim for damages under subsection (12) of
32 this section may not include a claim for loss of business and is
33 limited to:

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

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

37 (c) The proceeds from the sale of the specific tenant's property
38 seized and forfeited under subsection (9) of this section; and

39 (d) The proceeds available after the seizing law enforcement
40 agency satisfies any bona fide security interest in the tenant's

1 property and costs related to sale of the tenant's property as
2 provided by subsection (12) of this section.

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

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