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SENATE BILL 5044

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State of Washington                      65th Legislature                      2017 Regular Session

By Senators Hasegawa and Chase

Read first time 01/11/17. Referred to Committee on Law & Justice.

1            AN ACT Relating to the burden of proof in civil asset forfeiture  
2 hearings; and amending RCW 69.50.505.

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

4            **Sec. 1.** RCW 69.50.505 and 2013 c 3 s 25 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,  
11 as 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  
18 container for property described in (a) or (b) of this subsection;

19            (d) All conveyances, including aircraft, vehicles, or vessels,  
20 which are used, or intended for use, in any manner to facilitate the

1 sale, delivery, or receipt of property described in (a) or (b) of  
2 this subsection, except that:

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

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

12 (iii) No conveyance is subject to forfeiture under this section  
13 if used in the receipt of only an amount of marijuana for which  
14 possession constitutes a misdemeanor under RCW 69.50.4014;

15 (iv) A forfeiture of a conveyance encumbered by a bona fide  
16 security interest is subject to the interest of the secured party if  
17 the secured party neither had knowledge of nor consented to the act  
18 or omission; and

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

24 (e) All books, records, and research products and materials,  
25 including formulas, microfilm, tapes, and data which are used, or  
26 intended for use, in violation of this chapter or chapter 69.41 or  
27 69.52 RCW;

28 (f) All drug paraphernalia(~~21~~) other than paraphernalia  
29 possessed, sold, or used solely to facilitate marijuana-related  
30 activities that are not violations of this chapter;

31 (g) All moneys, negotiable instruments, securities, or other  
32 tangible or intangible property of value furnished or intended to be  
33 furnished by any person in exchange for a controlled substance in  
34 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible  
35 or intangible personal property, proceeds, or assets acquired in  
36 whole or in part with proceeds traceable to an exchange or series of  
37 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,  
38 and all moneys, negotiable instruments, and securities used or  
39 intended to be used to facilitate any violation of this chapter or  
40 chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable

1 instruments, securities, or other tangible or intangible property  
2 encumbered by a bona fide security interest is subject to the  
3 interest of the secured party if, at the time the security interest  
4 was created, the secured party neither had knowledge of nor consented  
5 to the act or omission. No personal property may be forfeited under  
6 this subsection (1)(g), to the extent of the interest of an owner, by  
7 reason of any act or omission which that owner establishes was  
8 committed or omitted without the owner's knowledge or consent; and

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

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

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

26 (iii) The possession of marijuana shall not result in the  
27 forfeiture of real property unless the marijuana is possessed for  
28 commercial purposes that are unlawful under Washington state law, the  
29 amount possessed is five or more plants or one pound or more of  
30 marijuana, and a substantial nexus exists between the possession of  
31 marijuana and the real property. In such a case, the intent of the  
32 offender shall be determined by the preponderance of the evidence,  
33 including the offender's prior criminal history, the amount of  
34 marijuana possessed by the offender, the sophistication of the  
35 activity or equipment used by the offender, whether the offender was  
36 licensed to produce, process, or sell marijuana, or was an employee  
37 of a licensed producer, processor, or retailer, and other evidence  
38 which demonstrates the offender's intent to engage in unlawful  
39 commercial activity;

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

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

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

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

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

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

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

34 (3) In the event of seizure pursuant to subsection (2) of this  
35 section, proceedings for forfeiture shall be deemed commenced by the  
36 seizure. The law enforcement agency under whose authority the seizure  
37 was made shall cause notice to be served within fifteen days  
38 following the seizure on the owner of the property seized and the  
39 person in charge thereof and any person having any known right or  
40 interest therein, including any community property interest, of the

1 seizure and intended forfeiture of the seized property. Service of  
2 notice of seizure of real property shall be made according to the  
3 rules of civil procedure. However, the state may not obtain a default  
4 judgment with respect to real property against a party who is served  
5 by substituted service absent an affidavit stating that a good faith  
6 effort has been made to ascertain if the defaulted party is  
7 incarcerated within the state, and that there is no present basis to  
8 believe that the party is incarcerated within the state. Notice of  
9 seizure in the case of property subject to a security interest that  
10 has been perfected by filing a financing statement in accordance with  
11 chapter 62A.9A RCW, or a certificate of title, shall be made by  
12 service upon the secured party or the secured party's assignee at the  
13 address shown on the financing statement or the certificate of title.  
14 The notice of seizure in other cases may be served by any method  
15 authorized by law or court rule including but not limited to service  
16 by certified mail with return receipt requested. Service by mail  
17 shall be deemed complete upon mailing within the fifteen day period  
18 following the seizure.

19 (4) If no person notifies the seizing law enforcement agency in  
20 writing of the person's claim of ownership or right to possession of  
21 items specified in subsection (1)(d), (g), or (h) of this section  
22 within forty-five days of the service of notice from the seizing  
23 agency in the case of personal property and ninety days in the case  
24 of real property, the item seized shall be deemed forfeited. The  
25 community property interest in real property of a person whose spouse  
26 or domestic partner 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 (5) 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 (1)(b), (c), (d), (e), (f), (g), or (h)  
32 of this section within forty-five days of the service of notice from  
33 the seizing agency in the case of personal property and ninety days  
34 in the case of real property, the person or persons shall be afforded  
35 a reasonable opportunity to be heard as to the claim or right. The  
36 notice of claim may be served by any method authorized by law or  
37 court rule including, but not limited to, service by first-class  
38 mail. Service by mail shall be deemed complete upon mailing within  
39 the forty-five day period following service of the notice of seizure  
40 in the case of personal property and within the ninety-day period

1 following service of the notice of seizure in the case of real  
2 property. The hearing shall be before the chief law enforcement  
3 officer of the seizing agency or the chief law enforcement officer's  
4 designee, except where the seizing agency is a state agency as  
5 defined in RCW 34.12.020(4), the hearing shall be before the chief  
6 law enforcement officer of the seizing agency or an administrative  
7 law judge appointed under chapter 34.12 RCW, except that any person  
8 asserting a claim or right may remove the matter to a court of  
9 competent jurisdiction. Removal of any matter involving personal  
10 property may only be accomplished according to the rules of civil  
11 procedure. The person seeking removal of the matter must serve  
12 process against the state, county, political subdivision, or  
13 municipality that operates the seizing agency, and any other party of  
14 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-  
15 five days after the person seeking removal has notified the seizing  
16 law enforcement agency of the person's claim of ownership or right to  
17 possession. The court to which the matter is to be removed shall be  
18 the district court when the aggregate value of personal property is  
19 within the jurisdictional limit set forth in RCW 3.66.020. A hearing  
20 before the seizing agency and any appeal therefrom shall be under  
21 Title 34 RCW. In all cases, the burden of proof is upon the law  
22 enforcement agency to establish, by ~~((a preponderance of the))~~ clear,  
23 cogent, and convincing evidence, that the property is subject to  
24 forfeiture.

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

31 (6) In any proceeding to forfeit property under this title, where  
32 the claimant substantially prevails, the claimant is entitled to  
33 reasonable attorneys' fees reasonably incurred by the claimant. In  
34 addition, in a court hearing between two or more claimants to the  
35 article or articles involved, the prevailing party is entitled to a  
36 judgment for costs and reasonable attorneys' fees.

37 (7) When property is forfeited under this chapter the ~~((board))~~  
38 commission or seizing law enforcement agency may:

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

4 (b) Sell that which is not required to be destroyed by law and  
5 which is not harmful to the public;

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

9 (d) Forward it to the drug enforcement administration for  
10 disposition.

11 (8)(a) When property is forfeited, the seizing agency shall keep  
12 a record indicating the identity of the prior owner, if known, a  
13 description of the property, the disposition of the property, the  
14 value of the property at the time of seizure, and the amount of  
15 proceeds realized from disposition of the property.

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

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

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

25 (9)(a) By January 31st of each year, each seizing agency shall  
26 remit to the state treasurer an amount equal to ten percent of the  
27 net proceeds of any property forfeited during the preceding calendar  
28 year. Money remitted shall be deposited in the state general fund.

29 (b) The net proceeds of forfeited property is the value of the  
30 forfeitable interest in the property after deducting the cost of  
31 satisfying any bona fide security interest to which the property is  
32 subject at the time of seizure; and in the case of sold property,  
33 after deducting the cost of sale, including reasonable fees or  
34 commissions paid to independent selling agents, and the cost of any  
35 valid landlord's claim for damages under subsection (15) of this  
36 section.

37 (c) The value of sold forfeited property is the sale price. The  
38 value of retained forfeited property is the fair market value of the  
39 property at the time of seizure, determined when possible by  
40 reference to an applicable commonly used index, such as the index

1 used by the department of licensing for valuation of motor vehicles.  
2 A seizing agency may use, but need not use, an independent qualified  
3 appraiser to determine the value of retained property. If an  
4 appraiser is used, the value of the property appraised is net of the  
5 cost of the appraisal. The value of destroyed property and retained  
6 firearms or illegal property is zero.

7 (10) Forfeited property and net proceeds not required to be paid  
8 to the state treasurer shall be retained by the seizing law  
9 enforcement agency exclusively for the expansion and improvement of  
10 controlled substances related law enforcement activity. Money  
11 retained under this section may not be used to supplant preexisting  
12 funding sources.

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

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

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

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



1 (15)(a) A landlord may assert a claim against proceeds from the  
2 sale of assets seized and forfeited under subsection (7)(b) of this  
3 section, only if:

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

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

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

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

27 (b) For any claim filed under (a)(ii) of this subsection, the law  
28 enforcement agency shall pay the claim unless the agency provides  
29 substantial proof that the landlord either:

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

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

35 (16) The landlord's claim for damages under subsection (15) of  
36 this section may not include a claim for loss of business and is  
37 limited to:

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

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

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

3 (d) The proceeds available after the seizing law enforcement  
4 agency satisfies any bona fide security interest in the tenant's  
5 property and costs related to sale of the tenant's property as  
6 provided by subsection (9)(b) of this section.

7 (17) Subsections (15) and (16) of this section do not limit any  
8 other rights a landlord may have against a tenant to collect for  
9 damages. However, if a law enforcement agency satisfies a landlord's  
10 claim under subsection (15) of this section, the rights the landlord  
11 has against the tenant for damages directly caused by a law  
12 enforcement officer under the terms of the landlord and tenant's  
13 contract are subrogated to the law enforcement agency.

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