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ENGROSSED SUBSTITUTE SENATE BILL 5815

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State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators West and Moyer)

Read first time 03/03/93.

1 AN ACT Relating to seizure and forfeiture; and amending RCW  
2 69.50.505.

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

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

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

8 (1) 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 (2) 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 (3) All property which is used, or intended for use, as a container  
18 for property described in paragraphs (1) or (2);

1 (4) 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 paragraphs (1) or  
4 (2), 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 69.50.401(e);

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 (5) 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 (6) All drug paraphernalia;

30 (7) 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  
39 or 69.52 RCW(~~(:—PROVIDED, That)~~). 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 interest  
3 of the secured party if, at the time the security interest was created,  
4 the secured party neither had knowledge of nor consented to the act or  
5 omission(~~(:—PROVIDED FURTHER, That)~~). No personal property may be  
6 forfeited under this paragraph, to the extent of the interest of ((an  
7 owner)) a devisee, legatee, or bona fide purchaser or recipient for  
8 value, by reason of any act or omission which that ((owner)) devisee,  
9 legatee, or purchaser or recipient establishes was committed or omitted  
10 without the ((owner's)) devisee's, legatee's, or purchaser's or  
11 recipient's knowledge or consent; and

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

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

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

29 (iii) The possession of marijuana shall not result in the  
30 forfeiture of real property unless the marijuana is possessed for  
31 commercial purposes, the amount possessed is five or more plants or one  
32 pound or more of marijuana, and a substantial nexus exists between the  
33 possession of marijuana and the real property. In such a case, the  
34 intent of the offender shall be determined by the preponderance of the  
35 evidence, including the offender's prior criminal history, the amount  
36 of marijuana possessed by the offender, the sophistication of the  
37 activity or equipment used by the offender, and other evidence which  
38 demonstrates the offender's intent to engage in 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 (b) Real or personal property subject to forfeiture under this  
11 chapter may be seized by any board inspector or law enforcement officer  
12 of this state upon process issued by any superior court having  
13 jurisdiction over the property. Seizure of real property shall include  
14 the filing of a lis pendens by the seizing agency. Real property  
15 seized under this section shall not be transferred or otherwise  
16 conveyed until ninety days after seizure or until a judgment of  
17 forfeiture is entered, whichever is later: PROVIDED, That real  
18 property seized under this section may be transferred or conveyed to  
19 any person or entity who acquires title by foreclosure or deed in lieu  
20 of foreclosure of a security interest. Seizure of personal property  
21 without process may be made if:

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

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

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

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

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

1 the seized property. Service of notice of seizure of real property  
2 shall be made according to the rules of civil procedure. However, the  
3 state may not obtain a default judgment with respect to real property  
4 against a party who is served by substituted service absent an  
5 affidavit stating that a good faith effort has been made to ascertain  
6 if the defaulted party is incarcerated within the state, and that there  
7 is no present basis to believe that the party is incarcerated within  
8 the state. The notice of seizure in other cases may be served by any  
9 method authorized by law or court rule including but not limited to  
10 service by certified mail with return receipt requested. Service by  
11 mail shall be deemed complete upon mailing within the fifteen day  
12 period following the seizure.

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

22 (e) If any person notifies the seizing law enforcement agency in  
23 writing of the person's claim of ownership or right to possession of  
24 items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6),  
25 (a)(7), or (a)(8) of this section within forty-five days of the seizure  
26 in the case of personal property and ninety days in the case of real  
27 property, the person or persons shall be afforded a reasonable  
28 opportunity to be heard as to the claim or right. The hearing shall be  
29 before the chief law enforcement officer of the seizing agency or the  
30 chief law enforcement officer's designee, except where the seizing  
31 agency is a state agency as defined in RCW 34.12.020(4), the hearing  
32 shall be before the chief law enforcement officer of the seizing agency  
33 or an administrative law judge appointed under chapter 34.12 RCW,  
34 except that any person asserting a claim or right may remove the matter  
35 to a court of competent jurisdiction if the aggregate value of the  
36 article or articles involved is more than five hundred dollars.  
37 Removal of any matter involving personal property may only be  
38 accomplished according to the rules of civil procedure. The person  
39 seeking removal of the matter must serve process against the state,

1 county, political subdivision, or municipality that operates the  
2 seizing agency, and any other party of interest, in accordance with RCW  
3 4.28.080 or 4.92.020, within forty-five days after the person seeking  
4 removal has notified the seizing law enforcement agency of the person's  
5 claim of ownership or right to possession. The court to which the  
6 matter is to be removed shall be the district court when the aggregate  
7 value of personal property is within the jurisdictional limit set forth  
8 in RCW 3.66.020. A hearing before the seizing agency and any appeal  
9 therefrom shall be under Title 34 RCW. In a court hearing between two  
10 or more claimants to the article or articles involved, the prevailing  
11 party shall be entitled to a judgment for costs and reasonable  
12 attorney's fees. In cases involving personal property, the burden of  
13 producing evidence shall be upon the person claiming to be the lawful  
14 owner or the person claiming to have the lawful right to possession of  
15 the property. In cases involving real property, the burden of  
16 producing evidence shall be upon the law enforcement agency. The  
17 burden of proof that the seized real property is subject to forfeiture  
18 shall be upon the law enforcement agency. The seizing law enforcement  
19 agency shall promptly return the article or articles to the claimant  
20 upon a determination by the administrative law judge or court that the  
21 claimant is the present lawful owner or is lawfully entitled to  
22 possession thereof of items specified in subsection (a)(2), (a)(3),  
23 (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this section.

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

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

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

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

34 (4) Forward it to the drug enforcement administration for  
35 disposition.

36 (g)(1) When property is forfeited, the seizing agency shall keep a  
37 record indicating the identity of the prior owner, if known, a  
38 description of the property, the disposition of the property, the value

1 of the property at the time of seizure, and the amount of proceeds  
2 realized from disposition of the property.

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

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

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

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

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

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

34 (i) Forfeited property and net proceeds not required to be paid to  
35 the state treasurer shall be retained by the seizing law enforcement  
36 agency exclusively for the expansion and improvement of controlled  
37 substances related law enforcement activity. Money retained under this  
38 section may not be used to supplant preexisting funding sources.

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

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

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

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

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

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

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

36 (i) Only if the funds applied under (2) of this subsection are  
37 insufficient to satisfy the damage directly caused by a law enforcement  
38 officer, may the landlord seek compensation for the damage by filing a

1 claim against the governmental entity under whose authority the law  
2 enforcement agency operates within thirty days after the search;

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

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

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

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

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

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

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

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

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

31 (p) Subsections (n) and (o) of this section do not limit any other  
32 rights a landlord may have against a tenant to collect for damages.  
33 However, if a law enforcement agency satisfies a landlord's claim under  
34 subsection (n) of this section, the rights the landlord has against the  
35 tenant for damages directly caused by a law enforcement officer under  
36 the terms of the landlord and tenant's contract are subrogated to the  
37 law enforcement agency.

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