

2 SHB 2501 - S COMM AMD

3 By Committee on Law & Justice

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5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 69.50.505 and 1990 c 248 s 2 and 1990 c 213 s 12 are
8 each reenacted and amended to read as follows:

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

11 (1) All controlled substances which have been manufactured,
12 distributed, dispensed, acquired, or possessed in violation of this
13 chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as
14 defined in RCW 64.44.010, used or intended to be used in the
15 manufacture of controlled substances;

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

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

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

26 (i) No conveyance used by any person as a common carrier in the
27 transaction of business as a common carrier is subject to forfeiture
28 under this section unless it appears that the owner or other person in

1 charge of the conveyance is a consenting party or privy to a violation
2 of this chapter or chapter 69.41 or 69.52 RCW;

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

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

9 (iv) A forfeiture of a conveyance encumbered by a bona fide
10 security interest is subject to the interest of the secured party if
11 the secured party neither had knowledge of nor consented to the act or
12 omission; and

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

18 (5) All books, records, and research products and materials,
19 including formulas, microfilm, tapes, and data which are used, or
20 intended for use, in violation of this chapter or chapter 69.41 or
21 69.52 RCW;

22 (6) All drug paraphernalia;

23 (7) All moneys, negotiable instruments, securities, or other
24 tangible or intangible property of value furnished or intended to be
25 furnished by any person in exchange for a controlled substance in
26 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible
27 or intangible personal property, proceeds, or assets acquired in whole
28 or in part with proceeds traceable to an exchange or series of
29 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,
30 and all moneys, negotiable instruments, and securities used or intended

1 to be used to facilitate any violation of this chapter or chapter 69.41
2 or 69.52 RCW: PROVIDED, That a forfeiture of money, negotiable
3 instruments, securities, or other tangible or intangible property
4 encumbered by a bona fide security interest is subject to the interest
5 of the secured party if, at the time the security interest was created,
6 the secured party neither had knowledge of nor consented to the act or
7 omission: PROVIDED FURTHER, That no personal property may be forfeited
8 under this paragraph, to the extent of the interest of an owner, by
9 reason of any act or omission which that owner establishes was
10 committed or omitted without the owner's knowledge or consent; and

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

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

1 possession of marijuana and the real property. In such a case, the
2 intent of the offender shall be determined by the preponderance of the
3 evidence, including the offender's prior criminal history, the amount
4 of marijuana possessed by the offender, the sophistication of the
5 activity or equipment used by the offender, and other evidence which
6 demonstrates the offender's intent to engage in commercial activity;

7 (iv) The unlawful sale of marijuana or a legend drug shall not
8 result in the forfeiture of real property unless the sale was forty
9 grams or more in the case of marijuana or one hundred dollars or more
10 in the case of a legend drug, and a substantial nexus exists between
11 the unlawful sale and the real property; and

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

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

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

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

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

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

10 (c) In the event of seizure pursuant to subsection (b), proceedings
11 for forfeiture shall be deemed commenced by the seizure. The law
12 enforcement agency under whose authority the seizure was made shall
13 cause notice to be served within fifteen days following the seizure on
14 the owner of the property seized and the person in charge thereof and
15 any person having any known right or interest therein, including any
16 community property interest, of the seizure and intended forfeiture of
17 the seized property. Service of notice of seizure of real property
18 shall be made according to the rules of civil procedure. However, the
19 state may not obtain a default judgment with respect to real property
20 against a party who is served by substituted service absent an
21 affidavit stating that a good faith effort has been made to ascertain
22 if the defaulted party is incarcerated within the state, and that there
23 is no present basis to believe that the party is incarcerated within
24 the state. The notice of seizure in other cases may be served by any
25 method authorized by law or court rule including but not limited to
26 service by certified mail with return receipt requested. Service by
27 mail shall be deemed complete upon mailing within the fifteen day
28 period following the seizure.

29 (d) If no person notifies the seizing law enforcement agency in
30 writing of the person's claim of ownership or right to possession of

1 items specified in subsection (a)(4), (a)(7), or (a)(8) of this section
2 within forty-five days of the seizure in the case of personal property
3 and ninety days in the case of real property, the item seized shall be
4 deemed forfeited. The community property interest in real property of
5 a person whose spouse committed a violation giving rise to seizure of
6 the real property may not be forfeited if the person did not
7 participate in the violation.

8 (e) If any person notifies the seizing law enforcement agency in
9 writing of the person's claim of ownership or right to possession of
10 items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6),
11 (a)(7), or (a)(8) of this section within forty-five days of the seizure
12 in the case of personal property and ninety days in the case of real
13 property, the person or persons shall be afforded a reasonable
14 opportunity to be heard as to the claim or right. The hearing shall be
15 before the chief law enforcement officer of the seizing agency or the
16 chief law enforcement officer's designee, except where the seizing
17 agency is a state agency as defined in RCW 34.12.020(4), the hearing
18 shall be before the chief law enforcement officer of the seizing agency
19 or an administrative law judge appointed under chapter 34.12 RCW,
20 except that any person asserting a claim or right may remove the matter
21 to a court of competent jurisdiction if the aggregate value of the
22 article or articles involved is more than five hundred dollars. The
23 court to which the matter is to be removed shall be the district court
24 when such aggregate value is ten thousand dollars or less of personal
25 property. A hearing before the seizing agency and any appeal therefrom
26 shall be under Title 34 RCW. In a court hearing between two or more
27 claimants to the article or articles involved, the prevailing party
28 shall be entitled to a judgment for costs and reasonable attorney's
29 fees. In cases involving personal property, the burden of producing
30 evidence shall be upon the person claiming to be the lawful owner or

1 the person claiming to have the lawful right to possession of the
2 property. In cases involving real property, the burden of producing
3 evidence shall be upon the law enforcement agency. The burden of proof
4 that the seized real property is subject to forfeiture shall be upon
5 the law enforcement agency. The seizing law enforcement agency shall
6 promptly return the article or articles to the claimant upon a
7 determination by the administrative law judge or court that the
8 claimant is the present lawful owner or is lawfully entitled to
9 possession thereof of items specified in subsection (a)(2), (a)(3),
10 (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this section.

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

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

16 (2)(i) Sell that which is not required to be destroyed by law and
17 which is not harmful to the public. The proceeds and all moneys
18 forfeited under this title shall be used for payment of all proper
19 expenses of the investigation leading to the seizure, including any
20 money delivered to the subject of the investigation by the law
21 enforcement agency, and of the proceedings for forfeiture and sale,
22 including expenses of seizure, maintenance of custody, advertising,
23 actual costs of the prosecuting or city attorney, and court costs.
24 Money remaining after the payment of all expenses shall be distributed
25 as follows:

26 (A) Twenty-five percent of the money derived from the forfeiture of
27 real property and seventy-five percent of the money derived from the
28 forfeiture of personal property shall be deposited in the general fund
29 of the state, county, and/or city of the seizing law enforcement agency
30 and shall be used exclusively for the expansion or improvement of law

1 enforcement services. These services may include the creation of
2 reward funds for the purpose of rewarding informants who supply
3 information leading to the arrest, prosecution and conviction of
4 persons who violate laws relating to controlled substances. Such
5 moneys shall not supplant preexisting funding sources;

6 (B) Twenty-five percent of money derived from the forfeiture of
7 real property and twenty-five percent of money derived from the
8 forfeiture of personal property shall be remitted to the state
9 treasurer for deposit in the public safety and education account
10 established in RCW 43.08.250;

11 (C) Until July 1, 1995, fifty percent of money derived from the
12 forfeiture of real property shall be remitted to the state treasurer
13 for deposit in the drug enforcement and education account under RCW
14 69.50.520, on and after July 1, 1995, the fifty percent of the money
15 shall be remitted in the same manner as the twenty-five percent of the
16 money remitted under (2)(i)(A) of this subsection; and

17 (D) If an investigation involves a seizure of moneys and proceeds
18 having an aggregate value of less than five thousand dollars, the
19 moneys and proceeds may be deposited in total in the general fund of
20 the governmental unit of the seizing law enforcement agency and shall
21 be appropriated exclusively for the expansion of narcotics enforcement
22 services. Such moneys shall not supplant preexisting funding sources.

23 (ii) Money deposited according to this section must be deposited
24 within ninety days of the date of final disposition of either the
25 administrative seizure or the judicial seizure;

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

29 (4) Forward it to the drug enforcement administration for
30 disposition.

1 (g) 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, II,
5 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 (h) 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 (i) 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 (j) 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 (k) 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:

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

4 (2) 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, to
6 cover the damage directly caused by a law enforcement officer prior to
7 asserting a claim under the provisions of this section;

8 (i) Only if the funds applied under (2) of this subsection are
9 insufficient to satisfy the damage directly caused by a law enforcement
10 officer, may the landlord seek compensation for the damage by filing a
11 claim against the governmental entity under whose authority the law
12 enforcement agency operates;

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

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

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

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

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

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

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

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

3 (4) The proceeds available after the seizing law enforcement agency
4 satisfies all its expenses and costs related to the seizure and
5 forfeiture of the tenant's property as provided by subsection (f)(2)(i)
6 of this section.

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

14 **SHB 2501** - S COMM AMD
15 By Committee on Law & Justice

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17 On page 1, line 1 of the title, after "property;" strike the
18 remainder of the title and insert "and reenacting and amending RCW
19 69.50.505."