
SUBSTITUTE HOUSE BILL 2429

State of Washington

52nd Legislature

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By House Committee on Judiciary (originally sponsored by Representatives Riley, Padden, Appelwick, Ludwig, Scott, Mielke, D. Sommers, Paris, Bowman, Ferguson, Orr, Brough, Broback and Hochstatter)

Read first time 01/24/92. Referred to Committee on Judiciary.

1 AN ACT Relating to distribution of proceeds from forfeiture of
2 property seized under the uniform controlled substances act; and
3 reenacting and amending RCW 69.50.505.

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

5 **Sec. 1.** RCW 69.50.505 and 1990 c 248 s 2 and 1990 c 213 s 12 are
6 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

1 (5) All books, records, and research products and materials,
2 including formulas, microfilm, tapes, and data which are used, or
3 intended for use, in violation of this chapter or chapter 69.41 or
4 69.52 RCW;

5 (6) All drug paraphernalia;

6 (7) All moneys, negotiable instruments, securities, or other
7 tangible or intangible property of value furnished or intended to be
8 furnished by any person in exchange for a controlled substance in
9 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible
10 or intangible personal property, proceeds, or assets acquired in whole
11 or in part with proceeds traceable to an exchange or series of
12 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,
13 and all moneys, negotiable instruments, and securities used or intended
14 to be used to facilitate any violation of this chapter or chapter 69.41
15 or 69.52 RCW: PROVIDED, That a forfeiture of money, negotiable
16 instruments, securities, or other tangible or intangible property
17 encumbered by a bona fide security interest is subject to the interest
18 of the secured party if, at the time the security interest was created,
19 the secured party neither had knowledge of nor consented to the act or
20 omission: PROVIDED FURTHER, That no personal property may be forfeited
21 under this paragraph, to the extent of the interest of an owner, by
22 reason of any act or omission which that owner establishes was
23 committed or omitted without the owner's knowledge or consent; and

24 (8) All real property, including any right, title, and interest in
25 the whole of any lot or tract of land, and any appurtenances or
26 improvements which are being used with the knowledge of the owner for
27 the manufacturing, compounding, processing, delivery, importing, or
28 exporting of any controlled substance, or which have been acquired in
29 whole or in part with proceeds traceable to an exchange or series of
30 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,

1 if such activity is not less than a class C felony and a substantial
2 nexus exists between the commercial production or sale of the
3 controlled substance and the real property: PROVIDED, That:

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

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

10 (iii) The possession of marijuana shall not result in the
11 forfeiture of real property unless the marijuana is possessed for
12 commercial purposes, the amount possessed is five or more plants or one
13 pound or more of marijuana, and a substantial nexus exists between the
14 possession of marijuana and the real property. In such a case, the
15 intent of the offender shall be determined by the preponderance of the
16 evidence, including the offender's prior criminal history, the amount
17 of marijuana possessed by the offender, the sophistication of the
18 activity or equipment used by the offender, and other evidence which
19 demonstrates the offender's intent to engage in commercial activity;

20 (iv) The unlawful sale of marijuana or a legend drug shall not
21 result in the forfeiture of real property unless the sale was forty
22 grams or more in the case of marijuana or one hundred dollars or more
23 in the case of a legend drug, and a substantial nexus exists between
24 the unlawful sale and the real property; and

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

29 (b) Real or personal property subject to forfeiture under this
30 chapter may be seized by any board inspector or law enforcement officer

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

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

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

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

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

22 (c) In the event of seizure pursuant to subsection (b), proceedings
23 for forfeiture shall be deemed commenced by the seizure. The law
24 enforcement agency under whose authority the seizure was made shall
25 cause notice to be served within fifteen days following the seizure on
26 the owner of the property seized and the person in charge thereof and
27 any person having any known right or interest therein, including any
28 community property interest, of the seizure and intended forfeiture of
29 the seized property. Service of notice of seizure of real property
30 shall be made according to the rules of civil procedure. However, the

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

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

20 (e) If any person notifies the seizing law enforcement agency in
21 writing of the person's claim of ownership or right to possession of
22 items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6),
23 (a)(7), or (a)(8) of this section within forty-five days of the seizure
24 in the case of personal property and ninety days in the case of real
25 property, the person or persons shall be afforded a reasonable
26 opportunity to be heard as to the claim or right. The hearing shall be
27 before the chief law enforcement officer of the seizing agency or the
28 chief law enforcement officer's designee, except where the seizing
29 agency is a state agency as defined in RCW 34.12.020(4), the hearing
30 shall be before the chief law enforcement officer of the seizing agency

1 or an administrative law judge appointed under chapter 34.12 RCW,
2 except that any person asserting a claim or right may remove the matter
3 to a court of competent jurisdiction if the aggregate value of the
4 article or articles involved is more than five hundred dollars. The
5 court to which the matter is to be removed shall be the district court
6 when ~~((such))~~ the aggregate value ~~((is ten thousand dollars or less))~~
7 of personal property is within the jurisdictional limit set forth in
8 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) ~~((i))~~ Sell that which is not required to be destroyed by law
30 and which is not harmful to the public ~~((The proceeds and all moneys~~

1 forfeited under this title shall be used for payment of all proper
2 expenses of the investigation leading to the seizure, including any
3 money delivered to the subject of the investigation by the law
4 enforcement agency, and of the proceedings for forfeiture and sale,
5 including expenses of seizure, maintenance of custody, advertising,
6 actual costs of the prosecuting or city attorney, and court costs.
7 Money remaining after the payment of all expenses shall be distributed
8 as follows:

9 (A) Twenty five percent of the money derived from the forfeiture of
10 real property and seventy five percent of the money derived from the
11 forfeiture of personal property shall be deposited in the general fund
12 of the state, county, and/or city of the seizing law enforcement agency
13 and shall be used exclusively for the expansion or improvement of law
14 enforcement services. These services may include the creation of
15 reward funds for the purpose of rewarding informants who supply
16 information leading to the arrest, prosecution and conviction of
17 persons who violate laws relating to controlled substances. Such
18 moneys shall not supplant preexisting funding sources;

19 (B) Twenty five percent of money derived from the forfeiture of
20 real property and twenty five percent of money derived from the
21 forfeiture of personal property shall be remitted to the state
22 treasurer for deposit in the public safety and education account
23 established in RCW 43.08.250;

24 (C) Until July 1, 1995, fifty percent of money derived from the
25 forfeiture of real property shall be remitted to the state treasurer
26 for deposit in the drug enforcement and education account under RCW
27 69.50.520, on and after July 1, 1995, the fifty percent of the money
28 shall be remitted in the same manner as the twenty five percent of the
29 money remitted under (2)(i)(A) of this subsection; and

1 ~~(D) If an investigation involves a seizure of moneys and proceeds~~
2 ~~having an aggregate value of less than five thousand dollars, the~~
3 ~~moneys and proceeds may be deposited in total in the general fund of~~
4 ~~the governmental unit of the seizing law enforcement agency and shall~~
5 ~~be appropriated exclusively for the expansion of narcotics enforcement~~
6 ~~services. Such moneys shall not supplant preexisting funding sources.~~

7 ~~(ii) Money deposited according to this section must be deposited~~
8 ~~within ninety days of the date of final disposition of either the~~
9 ~~administrative seizure or the judicial seizure));~~

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

13 (4) Forward it to the drug enforcement administration for
14 disposition.

15 (g) Whenever the board or an agency retains or sells forfeited
16 property it shall remit to the state treasurer an amount equal to ten
17 percent of the value of the property. An amount equal to ninety
18 percent of the value of any property retained in the form of money and
19 an amount equal to ninety percent of the value of any property sold
20 shall be deposited in the general fund of the state, county, city,
21 town, or other general purpose unit of government of which the seizing
22 agency is a part. Such deposits in a general fund shall be used
23 exclusively for the expansion or improvement of law enforcement
24 services and may not be used to supplant preexisting funding sources.

25 (1) The value of retained property shall be determined by an
26 appraisal done by an independent appraiser.

27 (2) The value of sold property is the sale price less the amount of
28 any nonforfeitable ownership interest in the property and the cost of
29 satisfying any bona fide security interest to which the property was
30 subject at the time of seizure.

1 (3) The board or agency shall remit or deposit funds under this
2 subsection within ninety days after the final disposition of the
3 forfeiture proceedings or the last date the property is needed as
4 evidence in a criminal proceeding, whichever occurs later.

5 (4) Until July 1, 1995, the money remitted to the state treasurer
6 shall be deposited in the drug enforcement and education account under
7 RCW 69.50.520. Beginning on July 1, 1995, the money remitted to the
8 state treasurer shall be deposited in the public safety and education
9 account under RCW 43.08.250.

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

17 ~~((h))~~ (i) Species of plants from which controlled substances in
18 Schedules I and II may be derived which have been planted or cultivated
19 in violation of this chapter, or of which the owners or cultivators are
20 unknown, or which are wild growths, may be seized and summarily
21 forfeited to the board.

22 ~~((i))~~ (j) The failure, upon demand by a board inspector or law
23 enforcement officer, of the person in occupancy or in control of land
24 or premises upon which the species of plants are growing or being
25 stored to produce an appropriate registration or proof that he is the
26 holder thereof constitutes authority for the seizure and forfeiture of
27 the plants.

28 ~~((j))~~ (k) Upon the entry of an order of forfeiture of real
29 property, the court shall forward a copy of the order to the assessor
30 of the county in which the property is located. Orders for the

1 forfeiture of real property shall be entered by the superior court,
2 subject to court rules. Such an order shall be filed by the seizing
3 agency in the county auditor's records in the county in which the real
4 property is located.