
SENATE BILL 5945

State of Washington

53rd Legislature

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By Senator Nelson

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1 AN ACT Relating to forfeiture of property illegally exchanged for
2 controlled substances; 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 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) of this subsection;

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)
4 or (2) of this subsection, 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 forfeited
6 under this (~~paragraph~~) subsection (a)(7), to the extent of the
7 interest of (~~an owner~~) a bona fide purchaser or recipient for value,
8 by reason of any act or omission which that (~~owner~~) purchaser or
9 recipient establishes was committed or omitted without the (~~owner's~~)
10 purchaser's or recipient'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
31 possession of marijuana and the real property. In such a case, the
32 intent of the offender shall be determined by the preponderance of the
33 evidence, including the offender's prior criminal history, the amount
34 of marijuana possessed by the offender, the sophistication of the
35 activity or equipment used by the offender, and other evidence which
36 demonstrates the offender's intent to engage in commercial activity;

37 (iv) The unlawful sale of marijuana or a legend drug shall not
38 result in the forfeiture of real property unless the sale was forty
39 grams or more in the case of marijuana or one hundred dollars or more

1 in the case of a legend drug, and a substantial nexus exists between
2 the unlawful sale and the real property; and

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

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

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

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

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

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

30 (c) In the event of seizure pursuant to subsection (b) of this
31 section, proceedings for forfeiture shall be deemed commenced by the
32 seizure. The law enforcement agency under whose authority the seizure
33 was made shall cause notice to be served within fifteen days following
34 the seizure on the owner of the property seized and the person in
35 charge thereof and any person having any known right or interest
36 therein, including any community property interest, of the seizure and
37 intended forfeiture of the seized property. Service of notice of
38 seizure of real property shall be made according to the rules of civil
39 procedure. However, the state may not obtain a default judgment with

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

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

19 (e) If any 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 (a)(2), (a)(3), (a)(4), (a)(5), (a)(6),
22 (a)(7), or (a)(8) of this section within forty-five days of the seizure
23 in the case of personal property and ninety days in the case of real
24 property, the person or persons shall be afforded a reasonable
25 opportunity to be heard as to the claim or right. The hearing shall be
26 before the chief law enforcement officer of the seizing agency or the
27 chief law enforcement officer's designee, except where the seizing
28 agency is a state agency as defined in RCW 34.12.020(4), the hearing
29 shall be before the chief law enforcement officer of the seizing agency
30 or an administrative law judge appointed under chapter 34.12 RCW,
31 except that any person asserting a claim or right may remove the matter
32 to a court of competent jurisdiction if the aggregate value of the
33 article or articles involved is more than five hundred dollars. The
34 court to which the matter is to be removed shall be the district court
35 when the aggregate value of personal property is within the
36 jurisdictional limit set forth in RCW 3.66.020. A hearing before the
37 seizing agency and any appeal therefrom shall be under Title 34 RCW.
38 In a court hearing between two or more claimants to the article or
39 articles involved, the prevailing party shall be entitled to a judgment

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

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

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

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

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

24 (4) Forward it to the drug enforcement administration for
25 disposition.

26 (g)(1) When property is forfeited, the seizing agency shall keep a
27 record indicating the identity of the prior owner, if known, a
28 description of the property, the disposition of the property, the value
29 of the property at the time of seizure, and the amount of proceeds
30 realized from disposition of the property.

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

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

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

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

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

13 (3) The value of sold forfeited property is the sale price. The
14 value of retained forfeited property is the fair market value of the
15 property at the time of seizure, determined when possible by reference
16 to an applicable commonly used index, such as the index used by the
17 department of licensing for valuation of motor vehicles. A seizing
18 agency may use, but need not use, an independent qualified appraiser to
19 determine the value of retained property. If an appraiser is used, the
20 value of the property appraised is net of the cost of the appraisal.
21 The value of destroyed property and retained firearms or illegal
22 property is zero.

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

28 (j) Controlled substances listed in Schedule I, II, III, IV, and V
29 that are possessed, transferred, sold, or offered for sale in violation
30 of this chapter are contraband and shall be seized and summarily
31 forfeited to the state. Controlled substances listed in Schedule I,
32 II, III, IV, and V, which are seized or come into the possession of the
33 board, the owners of which are unknown, are contraband and shall be
34 summarily forfeited to the board.

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

1 (1) The failure, upon demand by a board inspector or law
2 enforcement officer, of the person in occupancy or in control of land
3 or premises upon which the species of plants are growing or being
4 stored to produce an appropriate registration or proof that he is the
5 holder thereof constitutes authority for the seizure and forfeiture of
6 the plants.

7 (m) Upon the entry of an order of forfeiture of real property, the
8 court shall forward a copy of the order to the assessor of the county
9 in which the property is located. Orders for the forfeiture of real
10 property shall be entered by the superior court, subject to court
11 rules. Such an order shall be filed by the seizing agency in the
12 county auditor's records in the county in which the real property is
13 located.

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

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

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

24 (i) Only if the funds applied under (2) of this subsection are
25 insufficient to satisfy the damage directly caused by a law enforcement
26 officer, may the landlord seek compensation for the damage by filing a
27 claim against the governmental entity under whose authority the law
28 enforcement agency operates within thirty days after the search;

29 (ii) Only if the governmental entity denies or fails to respond to
30 the landlord's claim within sixty days of the date of filing, may the
31 landlord collect damages under this subsection by filing within thirty
32 days of denial or the expiration of the sixty-day period, whichever
33 occurs first, a claim with the seizing law enforcement agency. The
34 seizing law enforcement agency must notify the landlord of the status
35 of the claim by the end of the thirty-day period. Nothing in this
36 section requires the claim to be paid by the end of the sixty-day or
37 thirty-day period.

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

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

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

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

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

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

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

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

20 (p) Subsections (n) and (o) of this section do not limit any other
21 rights a landlord may have against a tenant to collect for damages.
22 However, if a law enforcement agency satisfies a landlord's claim under
23 subsection (n) of this section, the rights the landlord has against the
24 tenant for damages directly caused by a law enforcement officer under
25 the terms of the landlord and tenant's contract are subrogated to the
26 law enforcement agency.

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