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HOUSE BILL 1364

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State of Washington

55th Legislature

1997 Regular Session

By Representatives K. Schmidt, Delvin, Mitchell and Wensman; by request of Gambling Commission

Read first time 01/23/97. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to the seizure and forfeiture of gambling-related  
2 property; and amending RCW 9.46.231.

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

4 **Sec. 1.** RCW 9.46.231 and 1994 c 218 s 7 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 gambling devices as defined in this chapter;

9 (b) All furnishings, fixtures, equipment, and stock, including  
10 without limitation furnishings and fixtures adaptable to nongambling  
11 uses and equipment and stock for printing, recording, computing,  
12 transporting, or safekeeping, used in connection with professional  
13 gambling or maintaining a gambling premises;

14 (c) All conveyances, including aircraft, vehicles, or vessels, that  
15 are used, or intended for use, in any manner to facilitate the sale,  
16 delivery, receipt, or operation of any gambling device, or the  
17 promotion or operation of a professional gambling activity, except  
18 that:

1 (i) A conveyance used by any person as a common carrier in the  
2 transaction of business as a common carrier is not subject to  
3 forfeiture under this section unless it appears that the owner or other  
4 person in charge of the conveyance is a consenting party or privy to a  
5 violation of this chapter;

6 (ii) A conveyance is not subject to forfeiture under this section  
7 by reason of any act or omission established by the owner thereof to  
8 have been committed or omitted without the owner's knowledge or  
9 consent;

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

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

18 (d) All books, records, and research products and materials,  
19 including formulas, microfilm, tapes, and electronic data that are  
20 used, or intended for use, in violation of this chapter;

21 (e) All moneys, negotiable instruments, securities, or other  
22 tangible or intangible property of value at stake or displayed in or in  
23 connection with professional gambling activity or furnished or intended  
24 to be furnished by any person to facilitate the promotion or operation  
25 of a professional gambling activity;

26 (f) All tangible or intangible personal property, proceeds, or  
27 assets acquired in whole or in part with proceeds traceable to  
28 professional gambling activity and all moneys, negotiable instruments,  
29 and securities used or intended to be used to facilitate any violation  
30 of this chapter. A forfeiture of money, negotiable instruments,  
31 securities, or other tangible or intangible property encumbered by a  
32 bona fide security interest is subject to the interest of the secured  
33 party if, at the time the security interest was created, the secured  
34 party neither had knowledge of nor consented to the act or omission.  
35 Personal property may not be forfeited under this subsection (1)(f), to  
36 the extent of the interest of an owner, by reason of any act or  
37 omission that that owner establishes was committed or omitted without  
38 the owner's knowledge or consent; and

1 (g) All real property, including any right, title, and interest in  
2 the whole of any lot or tract of land, and any appurtenances or  
3 improvements that:

4 (i) Have been used with the knowledge of the owner for the  
5 manufacturing, processing, delivery, importing, or exporting of any  
6 illegal gambling equipment, or operation of a professional gambling  
7 activity that would constitute a felony violation of this chapter; or

8 (ii) Have been acquired in whole or in part with proceeds traceable  
9 to a professional gambling activity, if the activity is not less than  
10 a class C felony.

11 Real property forfeited under this chapter that is encumbered by a  
12 bona fide security interest remains subject to the interest of the  
13 secured party if the secured party, at the time the security interest  
14 was created, neither had knowledge of nor consented to the act or  
15 omission. Property may not be forfeited under this subsection, to the  
16 extent of the interest of an owner, by reason of any act or omission  
17 committed or omitted without the owner's knowledge or consent.

18 (2)(a) A law enforcement officer of this state may seize real or  
19 personal property subject to forfeiture under this chapter upon process  
20 issued by any superior court having jurisdiction over the property.  
21 Seizure of real property includes the filing of a lis pendens by the  
22 seizing agency. Real property seized under this section may not be  
23 transferred or otherwise conveyed until ninety days after seizure or  
24 until a judgment of forfeiture is entered, whichever is later, but real  
25 property seized under this section may be transferred or conveyed to  
26 any person or entity who acquires title by foreclosure or deed in lieu  
27 of foreclosure of a bona fide security interest.

28 (b) Seizure of personal property without process may be made if:

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

31 (ii) The property subject to seizure has been the subject of a  
32 prior judgment in favor of the state in a criminal injunction or  
33 forfeiture proceeding based upon this chapter;

34 (iii) A law enforcement officer has probable cause to believe that  
35 the property is directly or indirectly dangerous to health or safety;  
36 or

37 (iv) The law enforcement officer has probable cause to believe that  
38 the property was used or is intended to be used in violation of this  
39 chapter.

1 (3) In the event of seizure under subsection (2) of this section,  
2 proceedings for forfeiture are deemed commenced by the seizure. The  
3 law enforcement agency under whose authority the seizure was made shall  
4 cause notice to be served within fifteen days following the seizure on  
5 the owner of the property seized and the person in charge thereof and  
6 any person having any known right or interest therein, including any  
7 community property interest, of the seizure and intended forfeiture of  
8 the seized property. Service of notice of seizure of real property  
9 must be made according to the rules of civil procedure. However, the  
10 state may not obtain a default judgment with respect to real property  
11 against a party who is served by substituted service absent an  
12 affidavit stating that a good faith effort has been made to ascertain  
13 if the defaulted party is incarcerated within the state, and that there  
14 is no present basis to believe that the party is incarcerated within  
15 the state. Notice of seizure in the case of property subject to a  
16 security interest that has been perfected by filing a financing  
17 statement in accordance with chapter 62A.9 RCW, or a certificate of  
18 title, must be made by service upon the secured party or the secured  
19 party's assignee at the address shown on the financing statement or the  
20 certificate of title. The notice of seizure in other cases may be  
21 served by any method authorized by law or court rule including but not  
22 limited to service by certified mail with return receipt requested.  
23 Service by mail is deemed complete upon mailing within the fifteen-day  
24 period following the seizure.

25 (4) If no person notifies the seizing law enforcement agency in  
26 writing of the person's claim of ownership or right to possession of  
27 items specified in subsection (1) (~~((c), (e), (f), or (g))~~) of this  
28 section within forty-five days of the seizure in the case of personal  
29 property and ninety days in the case of real property, the item seized  
30 is deemed forfeited. The community property interest in real property  
31 of a person whose spouse committed a violation giving rise to seizure  
32 of the real property may not be forfeited if the person did not  
33 participate in the violation.

34 (5) If any person notifies the seizing law enforcement agency in  
35 writing of the person's claim of ownership or right to possession of  
36 items specified in subsection (1) (~~((b), (c), (d), (e), (f), or (g))~~)  
37 of this section within forty-five days of the seizure in the case of  
38 personal property and ninety days in the case of real property, the  
39 person or persons must be afforded a reasonable opportunity to be heard

1 as to the claim or right. The hearing must be before the chief law  
2 enforcement officer of the seizing agency or the chief law enforcement  
3 officer's designee, except if the seizing agency is a state agency as  
4 defined in RCW 34.12.020(4), the hearing must be before the chief law  
5 enforcement officer of the seizing agency or an administrative law  
6 judge appointed under chapter 34.12 RCW, except that any person  
7 asserting a claim or right may remove the matter to a court of  
8 competent jurisdiction. Removal of any matter involving personal  
9 property may only be accomplished according to the rules of civil  
10 procedure. The person seeking removal of the matter must serve process  
11 against the state, county, political subdivision, or municipality that  
12 operates the seizing agency, and any other party of interest, in  
13 accordance with RCW 4.28.080 or 4.92.020, within forty-five days after  
14 the person seeking removal has notified the seizing law enforcement  
15 agency of the person's claim of ownership or right to possession. The  
16 court to which the matter is to be removed must be the district court  
17 if the aggregate value of personal property is within the  
18 jurisdictional limit set forth in RCW 3.66.020. A hearing before the  
19 seizing agency and any appeal therefrom must be under Title 34 RCW. In  
20 a court hearing between two or more claimants to the article or  
21 articles involved, the prevailing party is entitled to a judgment for  
22 costs and reasonable attorneys' fees. In cases involving personal  
23 property, the burden of producing evidence is upon the person claiming  
24 to be the lawful owner or the person claiming to have the lawful right  
25 to possession of the property. In cases involving property seized  
26 under subsection (1)(a) of this section, the only issues to be  
27 determined by the tribunal are whether the item seized is a gambling  
28 device, and whether the device is an antique device as defined by RCW  
29 9.46.235. In cases involving real property, the burden of producing  
30 evidence is upon the law enforcement agency. The burden of proof that  
31 the seized real property is subject to forfeiture is upon the law  
32 enforcement agency. The seizing law enforcement agency shall promptly  
33 return the article or articles to the claimant upon a final  
34 determination by the administrative law judge or court that the  
35 claimant is the present lawful owner or is lawfully entitled to  
36 possession thereof of items specified in subsection (1) (~~(b), (c),~~  
37 ~~(d), (e), (f), or (g)~~) of this section.

38 (6) If property is forfeited under this chapter the seizing law  
39 enforcement agency may:

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

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

6 (c) Destroy any articles that may not be lawfully possessed within  
7 the state of Washington, or that have a fair market value of less than  
8 one hundred dollars.

9 (7)(a) If property is forfeited, the seizing agency shall keep a  
10 record indicating the identity of the prior owner, if known, a  
11 description of the property, the disposition of the property, the value  
12 of the property at the time of seizure, and the amount of proceeds  
13 realized from disposition of the property. The net proceeds of  
14 forfeited property is the value of the forfeitable interest in the  
15 property after deducting the cost of satisfying any bona fide security  
16 interest to which the property is subject at the time of seizure, and  
17 in the case of sold property, after deducting the cost of sale,  
18 including reasonable fees or commissions paid to independent selling  
19 agents.

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

22 (c) Each seizing agency shall file a report including a copy of the  
23 records of forfeited property with the state treasurer the calendar  
24 quarter after the end of the fiscal year.

25 (d) The annual report need not include a record of forfeited  
26 property that is still being held for use as evidence during the  
27 investigation or prosecution of a case or during the appeal from a  
28 conviction.

29 (8) The seizing law enforcement agency shall retain forfeited  
30 property and net proceeds exclusively for the expansion and improvement  
31 of gambling-related law enforcement activity. Money retained under  
32 this section may not be used to supplant preexisting funding sources.

33 (9) Gambling devices that are possessed, transferred, sold, or  
34 offered for sale in violation of this chapter are contraband and must  
35 be seized and summarily forfeited to the state. Gambling equipment  
36 that is seized or comes into the possession of a law enforcement  
37 agency, the owners of which are unknown, are contraband and must be  
38 summarily forfeited to the state.

1 (10) Upon the entry of an order of forfeiture of real property, the  
2 court shall forward a copy of the order to the assessor of the county  
3 in which the property is located. The superior court shall enter  
4 orders for the forfeiture of real property, subject to court rules.  
5 The seizing agency shall file such an order in the county auditor's  
6 records in the county in which the real property is located.

7 (11)(a) A landlord may assert a claim against proceeds from the  
8 sale of assets seized and forfeited under subsection (6)(b) of this  
9 section, only if:

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

13 (ii) The landlord has applied any funds remaining in the tenant's  
14 deposit, to which the landlord has a right under chapter 59.18 RCW, to  
15 cover the damage directly caused by a law enforcement officer before  
16 asserting a claim under this section.

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

22 (B) Only if the governmental entity denies or fails to respond to  
23 the landlord's claim within sixty days of the date of filing, may the  
24 landlord collect damages under this subsection by filing within thirty  
25 days of denial or the expiration of the sixty-day period, whichever  
26 occurs first, a claim with the seizing law enforcement agency. The  
27 seizing law enforcement agency shall notify the landlord of the status  
28 of the claim by the end of the thirty-day period. This section does  
29 not require the claim to be paid by the end of the sixty-day or thirty-  
30 day period.

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

34 (i) Knew or consented to actions of the tenant in violation of this  
35 chapter; or

36 (ii) Failed to respond to a notification of the illegal activity,  
37 provided by a law enforcement agency within seven days of receipt of  
38 notification of the illegal activity.

1       (12) The landlord's claim for damages under subsection (11) of this  
2 section may not include a claim for loss of business and is limited to:  
3       (a) Damage to tangible property and clean-up costs;  
4       (b) The lesser of the cost of repair or fair market value of the  
5 damage directly caused by a law enforcement officer;  
6       (c) The proceeds from the sale of the specific tenant's property  
7 seized and forfeited under subsection (6)(b) of this section; and  
8       (d) The proceeds available after the seizing law enforcement agency  
9 satisfies any bona fide security interest in the tenant's property and  
10 costs related to sale of the tenant's property as provided by  
11 subsection (7)(a) of this section.

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

19       (14) Liability is not imposed by this chapter upon any authorized  
20 state, county, or municipal officer, including a commission special  
21 agent, in the lawful performance of his or her duties.

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