
HOUSE BILL 2519

State of Washington

55th Legislature

1998 Regular Session

By Representatives McDonald, Sterk, Sheahan, Thompson, Bush, Sullivan and Benson

Read first time 01/14/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to dividing the net proceeds of property forfeited
2 under chapter 10.105 RCW; and amending RCW 10.105.010 and 10.105.900.

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

4 **Sec. 1.** RCW 10.105.010 and 1993 c 288 s 2 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: All personal property, including, but
8 not limited to, any item, object, tool, substance, device, weapon,
9 machine, vehicle of any kind, money, security, or negotiable
10 instrument, which has been or was actually employed as an
11 instrumentality in the commission of, or in aiding or abetting in the
12 commission of any felony, or which was furnished or was intended to be
13 furnished by any person in the commission of, as a result of, or as
14 compensation for the commission of, any felony, or which was acquired
15 in whole or in part with proceeds traceable to the commission of a
16 felony. No property may be forfeited under this section until after
17 there has been a superior court conviction of the owner of the property
18 for the felony in connection with which the property was employed,
19 furnished, or acquired.

1 A forfeiture of property encumbered by a bona fide security
2 interest is subject to the interest of the secured party if at the time
3 the security interest was created, the secured party neither had
4 knowledge of nor consented to the commission of the felony.

5 (2) Personal property subject to forfeiture under this chapter may
6 be seized by any law enforcement officer of this state upon process
7 issued by any superior court having jurisdiction over the property.
8 Seizure of personal property without process may be made if:

9 (a) The seizure is incident to an arrest or a search under a search
10 warrant;

11 (b) The property subject to seizure has been the subject of a prior
12 judgment in favor of the state in a criminal injunction or forfeiture
13 proceeding;

14 (c) A law enforcement officer has probable cause to believe that
15 the property is directly dangerous to health or safety; or

16 (d) The law enforcement officer has probable cause to believe that
17 the property was used or is intended to be used in the commission of a
18 felony.

19 (3) In the event of seizure pursuant to this section, proceedings
20 for forfeiture shall be deemed commenced by the seizure. The law
21 enforcement agency under whose authority the seizure was made shall
22 cause notice to be served within fifteen days following the seizure on
23 the owner of the property seized and the person in charge thereof and
24 any person having any known right or interest therein, including any
25 community property interest, of the seizure and intended forfeiture of
26 the seized property. The notice of seizure may be served by any method
27 authorized by law or court rule including but not limited to service by
28 certified mail with return receipt requested. Service by mail shall be
29 deemed complete upon mailing within the fifteen day period following
30 the seizure. Notice of seizure in the case of property subject to a
31 security interest that has been perfected by filing a financing
32 statement in accordance with chapter 62A.9 RCW, or a certificate of
33 title shall be made by service upon the secured party or the secured
34 party's assignee at the address shown on the financing statement or the
35 certificate of title.

36 (4) If no person notifies the seizing law enforcement agency in
37 writing of the person's claim of ownership or right to possession of
38 items specified in subsection (1) of this section within forty-five
39 days of the seizure, the item seized shall be deemed forfeited.

1 (5) If a person notifies the seizing law enforcement agency in
2 writing of the person's claim of ownership or right to possession of
3 the seized property within forty-five days of the seizure, the law
4 enforcement agency shall give the person or persons a reasonable
5 opportunity to be heard as to the claim or right. The hearing shall be
6 before the chief law enforcement officer of the seizing agency or the
7 chief law enforcement officer's designee, except where the seizing
8 agency is a state agency as defined in RCW 34.12.020(4), the hearing
9 shall be before the chief law enforcement officer of the seizing agency
10 or an administrative law judge appointed under chapter 34.12 RCW,
11 except that any person asserting a claim or right may remove the matter
12 to a court of competent jurisdiction. Removal may only be accomplished
13 according to the rules of civil procedure. The person seeking removal
14 of the matter must serve process against the state, county, political
15 subdivision, or municipality that operates the seizing agency, and any
16 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,
17 within forty-five days after the person seeking removal has notified
18 the seizing law enforcement agency of the person's claim of ownership
19 or right to possession. The court to which the matter is to be removed
20 shall be the district court when the aggregate value of the property is
21 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
22 before the seizing agency and any appeal therefrom shall be under Title
23 34 RCW. In a court hearing between two or more claimants to the
24 property involved, the prevailing party shall be entitled to a judgment
25 for costs and reasonable attorney's fees. The burden of producing
26 evidence shall be upon the person claiming to be the lawful owner or
27 the person claiming to have the lawful right to possession of the
28 property. The seizing law enforcement agency shall promptly return the
29 property to the claimant upon a determination by the administrative law
30 judge or court that the claimant is the present lawful owner or is
31 lawfully entitled to possession of the property.

32 (6) When property is forfeited under this chapter(~~(, after~~
33 ~~satisfying any court ordered victim restitution,~~) the seizing law
34 enforcement agency may:

35 (a) Retain it for official use or upon application by any law
36 enforcement agency of this state release such property to such agency
37 for the exclusive use of enforcing the criminal law;

38 (b) Sell that which is not required to be destroyed by law and
39 which is not harmful to the public.

1 (7) Whether the property is retained or sold as provided for in
2 subsection (6) of this section, the seizing agency must remit to the
3 victim or victims identified in the judgment and sentence as entitled
4 to restitution, an amount equal to fifty percent of the net proceeds of
5 the forfeited property or the full amount of all court-ordered victim
6 restitution, whichever amount is less. Where there is more than one
7 victim and the amount equal to fifty percent of the net proceeds is
8 insufficient to satisfy each victim's court-ordered restitution, the
9 seizing agency must distribute the amount proportionately according to
10 each victim's loss as determined by the court orders. Receipt of
11 proceeds under this subsection does not preclude any other civil
12 remedies available to the victim and does not preclude a victim from
13 enforcing any unsatisfied portion of the court-ordered restitution.

14 (8) By January 31st of each year, each seizing agency shall remit
15 to the state treasurer an amount equal to ten percent of the net
16 proceeds of any property forfeited during the preceding calendar year.
17 Money remitted shall be deposited in the public safety and education
18 account.

19 (a) The net proceeds of forfeited property is the value of the
20 forfeitable interest in the property after deducting the cost of
21 satisfying any bona fide security interest to which the property is
22 subject at the time of seizure; and in the case of sold property, after
23 deducting the cost of sale, including reasonable fees or commissions
24 paid to independent selling agents.

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

35 (c) Retained property and net proceeds not required to be paid to
36 the state treasurer, or otherwise required to be remitted or spent
37 under this section, shall be retained by the seizing law enforcement
38 agency exclusively for the expansion and improvement of law enforcement

1 activity. Money retained under this section may not be used to
2 supplant preexisting funding sources.

3 **Sec. 2.** RCW 10.105.900 and 1994 c 218 s 18 are each amended to
4 read as follows:

5 This chapter does not apply to property subject to specific
6 forfeiture (~~under~~) statutes, including but not limited to chapter
7 66.32 or 82.24 RCW, RCW 69.50.505, 9.41.098, 9.46.231, 9.68A.120,
8 9A.82.100, 9A.83.030, 7.48.090, 46.61.5058, 70.74.400, 70.77.440, or
9 77.12.101.

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