
HOUSE BILL 2952

State of Washington 60th Legislature 2008 Regular Session

By Representatives O'Brien, Kirby, Sullivan, Schual-Berke, Ericks,
Kelley, and Conway

Read first time 01/18/08. Referred to Committee on Judiciary.

1 AN ACT Relating to allowing civil forfeiture of conveyances used in
2 prostitution-related offenses; and adding a new section to chapter
3 9A.88 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.88 RCW
6 to read as follows:

7 (1)(a) Except as provided in (b) through (e) of this subsection,
8 the following are subject to seizure and forfeiture and no property
9 right exists in them: All conveyances, including aircraft, vehicles,
10 or vessels, which are used, or intended for use, in any manner to
11 facilitate a violation of RCW 9.68A.100, 9.68A.101, 9.68A.102,
12 9A.88.030, 9A.88.070, 9A.88.080, 9A.88.085, or 9A.88.110, within an
13 area designated under subsection (11) of this section.

14 (b) No conveyance used by any person as a common carrier in the
15 transaction of business as a common carrier is subject to forfeiture
16 under this section unless it appears that the owner or other person in
17 charge of the conveyance is a consenting party or privy to a violation
18 of an offense listed in (a) of this subsection.

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

4 (d) A forfeiture of a conveyance encumbered by a bona fide security
5 interest is subject to the interest of the secured party if the secured
6 party neither had knowledge of nor consented to the act or omission.

7 (e) When the owner of a conveyance has been arrested for a
8 violation of an offense listed in (a) of this subsection, the
9 conveyance in which the person is arrested may not be subject to
10 forfeiture unless it is seized or process is issued for its seizure
11 within ten days of the owner's arrest.

12 (2) Personal property subject to forfeiture under this section may
13 be seized by any board inspector or law enforcement officer of this
14 state upon process issued by any superior court having jurisdiction
15 over the property. Seizure of personal property without process may be
16 made if:

17 (a) The seizure is incident to an arrest or a search under a search
18 warrant;

19 (b) The property subject to seizure has been the subject of a prior
20 judgment in favor of the state in a criminal injunction or forfeiture
21 proceeding based upon this section;

22 (c) A board inspector or law enforcement officer has probable cause
23 to believe that the property was used or is intended to be used in
24 violation of an offense listed in subsection (1)(a) of this section.

25 (3) In the event of seizure pursuant to subsection (2) of this
26 section, proceedings for forfeiture shall be deemed commenced by the
27 seizure. The law enforcement agency under whose authority the seizure
28 was made shall cause notice to be served within fifteen days following
29 seizure on the owner of the property seized and the person in charge
30 thereof and any person having any known right of interest therein,
31 including any community property interest, of the seizure and intended
32 forfeiture of the seized property. Notice of seizure in the case of
33 property subject to a security interest that has been perfected by
34 filing a financing statement in accordance with chapter 62A.9A RCW, or
35 a certificate of title, shall be made by service upon the secured party
36 or the secured party's assignee at the address shown on the financing
37 statement or certificate of title. The notice of seizure in other
38 cases may be served by any method authorized by law or court rule

1 including but not limited to service by certified mail with return
2 receipt requested. Service by mail shall be deemed complete upon
3 mailing within the fifteen-day period following the seizure.

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

8 (5) If any person notifies the law enforcement agency in writing of
9 the person's claim of ownership or right to possession of items
10 specified in subsection (1) of this section within forty-five days of
11 the seizure, the person or persons shall be afforded a reasonable
12 opportunity to be heard as to the claim or right. The hearing shall be
13 before the chief law enforcement officer of the seizing agency or the
14 chief law enforcement officer's designee, except where the seizing
15 agency is a state agency as defined in RCW 34.12.020(4), the hearing
16 shall be before the chief law enforcement officer of the seizing agency
17 or an administrative law judge appointed under chapter 34.12 RCW,
18 except that any person asserting a claim or right may remove the matter
19 to a court of competent jurisdiction. Removal of any matter involving
20 personal property may only be accomplished according to the rules of
21 civil procedure. The person seeking removal of the matter must serve
22 process against the state, county, political subdivision, or
23 municipality that operates the seizing agency, and any other party of
24 interest, in accordance with RCW 4.28.080 or 4.92.020, within
25 forty-five days after the person seeking removal has notified the
26 seizing law enforcement agency of the person's claim of ownership or
27 right to possession. The court to which the matter is to be removed
28 shall be the district court when the aggregate value of personal
29 property is within the jurisdictional limit set forth in RCW 3.66.020.
30 A hearing before the seizing agency and any appeal therefrom shall be
31 under Title 34 RCW. In all cases, the burden of proof is upon the law
32 enforcement agency to establish, by a preponderance of the evidence,
33 that the property is subject to forfeiture.

34 The seizing law enforcement agency shall promptly return the
35 article or articles to the claimant upon a determination by the
36 administrative law judge or court that the claimant is the present
37 lawful owner or is lawfully entitled to possession thereof or items
38 specified in subsection (1) of this section.

1 (6) In any proceeding to forfeit property under this section, where
2 the claimant substantially prevails, the claimant is entitled to
3 reasonable attorneys' fees reasonably incurred by the claimant. In
4 addition, in a court hearing between two or more claimants to the
5 article or articles involved, the prevailing party is entitled to a
6 judgment for costs and reasonable attorneys' fees.

7 (7) When property is forfeited under this section, the board or
8 seizing law enforcement agency may:

9 (a) Retain it for official use or upon application by any law
10 enforcement agency of this state release such property to such agency
11 for the exclusive use of enforcing the provisions of this chapter;

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

14 (c) Request the appropriate sheriff or director of public safety to
15 take custody of the property and remove it for disposition in
16 accordance with law.

17 (8)(a) When property is forfeited, the seizing agency shall keep a
18 record indicating the identity of the prior owner, if known, a
19 description of the property, the disposition of the property, the value
20 of the property at the time of the seizure, and the amount of proceeds
21 realized from disposition of the property.

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

24 (c) Each seizing agency shall file a report including a copy of the
25 records of forfeited property with the state treasurer each calendar
26 quarter.

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

31 (9)(a) By January 31st of each year, each seizing agency shall
32 remit to the state treasurer an amount equal to the greater of ten
33 percent of the net proceeds of any property forfeited during the
34 preceding calendar year or the net proceeds of any property forfeited
35 during the year minus the administrative costs of the forfeiture.
36 Money remitted shall be deposited in the prostitution prevention and
37 intervention account established under RCW 43.63A.740.

1 (b) The net proceeds of forfeited property is the value of the
2 forfeitable interest in the property after deducting the cost of
3 satisfying any bona fide security interest to which the property is
4 subject at the time of the seizure; and in the case of sold property,
5 after deducting the cost of sale, including reasonable fees or
6 commissions paid to independent selling agents.

7 (c) The value of sold forfeited property is the sale price. The
8 value of retained forfeited property is the fair market value of the
9 property at the time of seizure, determined by reference to any
10 applicable commonly used index. A seizing agency may use, but need not
11 use, an independent qualified appraiser to determine the value of
12 retained property. If an appraiser is used, the value of the property
13 appraised is net of the cost of the appraisal. The value of destroyed
14 property is zero.

15 (d) The administrative costs of the forfeiture include, but are not
16 limited to, the costs of impoundment, towing, hearings, and employee
17 time.

18 (10) Forfeited property and net proceeds not required to be paid to
19 the state treasurer shall be retained by the seizing law enforcement
20 agency exclusively for the expansion and improvement of
21 prostitution-related law enforcement activity. Money retained under
22 this section may not be used to supplant preexisting funding sources.

23 (11) A local governing authority may designate areas within which
24 conveyances are subject to forfeiture under this section. The
25 designation must be based on evidence indicating that the area has a
26 disproportionate number of arrests for the offenses listed in
27 subsection (1)(a) of this section as compared to other areas. The
28 local governing authority shall post signs that indicate that the area
29 has been designated under this subsection.

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