
SENATE BILL 5060

State of Washington

66th Legislature

2019 Regular Session

By Senator Hasegawa

Prefiled 12/31/18.

1 AN ACT Relating to the burden of proof in civil asset forfeiture
2 hearings; 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 2013 c 3 s 25 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 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,
11 as defined in RCW 64.44.010, used or intended to be used in the
12 manufacture of controlled substances;

13 (b) 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 (c) All property which is used, or intended for use, as a
18 container for property described in (a) or (b) of this subsection;

19 (d) All conveyances, including aircraft, vehicles, or vessels,
20 which are used, or intended for use, in any manner to facilitate the

1 sale, delivery, or receipt of property described in (a) or (b) of
2 this subsection, except that:

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

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

12 (iii) No conveyance is subject to forfeiture under this section
13 if used in the receipt of only an amount of marijuana for which
14 possession constitutes a misdemeanor under RCW 69.50.4014;

15 (iv) A forfeiture of a conveyance encumbered by a bona fide
16 security interest is subject to the interest of the secured party if
17 the secured party neither had knowledge of nor consented to the act
18 or omission; and

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

24 (e) All books, records, and research products and materials,
25 including formulas, microfilm, tapes, and data which are used, or
26 intended for use, in violation of this chapter or chapter 69.41 or
27 69.52 RCW;

28 (f) All drug paraphernalia(~~(21)~~) other than paraphernalia
29 possessed, sold, or used solely to facilitate marijuana-related
30 activities that are not violations of this chapter;

31 (g) All moneys, negotiable instruments, securities, or other
32 tangible or intangible property of value furnished or intended to be
33 furnished by any person in exchange for a controlled substance in
34 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible
35 or intangible personal property, proceeds, or assets acquired in
36 whole or in part with proceeds traceable to an exchange or series of
37 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,
38 and all moneys, negotiable instruments, and securities used or
39 intended to be used to facilitate any violation of this chapter or
40 chapter 69.41 or 69.52 RCW. 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
3 interest of the secured party if, at the time the security interest
4 was created, the secured party neither had knowledge of nor consented
5 to the act or omission. No personal property may be forfeited under
6 this subsection (1)(g), to the extent of the interest of an owner, by
7 reason of any act or omission which that owner establishes was
8 committed or omitted without the owner's knowledge or consent; and

9 (h) All real property, including any right, title, and interest
10 in the whole of any lot or tract of land, and any appurtenances or
11 improvements which are being used with the knowledge of the owner for
12 the manufacturing, compounding, processing, delivery, importing, or
13 exporting of any controlled substance, or which have been acquired in
14 whole or in part with proceeds traceable to an exchange or series of
15 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,
16 if such activity is not less than a class C felony and a substantial
17 nexus exists between the commercial production or sale of the
18 controlled substance and the real property. However:

19 (i) No property may be forfeited pursuant to this subsection
20 (1)(h), to the extent of the interest of an owner, by reason of any
21 act or omission committed or omitted without the owner's knowledge or
22 consent;

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

26 (iii) The possession of marijuana shall not result in the
27 forfeiture of real property unless the marijuana is possessed for
28 commercial purposes that are unlawful under Washington state law, the
29 amount possessed is five or more plants or one pound or more of
30 marijuana, and a substantial nexus exists between the possession of
31 marijuana and the real property. In such a case, the intent of the
32 offender shall be determined by the preponderance of the evidence,
33 including the offender's prior criminal history, the amount of
34 marijuana possessed by the offender, the sophistication of the
35 activity or equipment used by the offender, whether the offender was
36 licensed to produce, process, or sell marijuana, or was an employee
37 of a licensed producer, processor, or retailer, and other evidence
38 which demonstrates the offender's intent to engage in unlawful
39 commercial activity;

1 (iv) The unlawful sale of marijuana or a legend drug shall not
2 result in the forfeiture of real property unless the sale was forty
3 grams or more in the case of marijuana or one hundred dollars or more
4 in the case of a legend drug, and a substantial nexus exists between
5 the unlawful sale and the real property; and

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

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

22 (a) The seizure is incident to an arrest or a search under a
23 search warrant or an inspection under an administrative inspection
24 warrant;

25 (b) The property subject to seizure has been the subject of a
26 prior judgment in favor of the state in a criminal injunction or
27 forfeiture proceeding based upon this chapter;

28 (c) A ((~~board~~)) commission inspector or law enforcement officer
29 has probable cause to believe that the property is directly or
30 indirectly dangerous to health or safety; or

31 (d) The ((~~board~~)) commission inspector or law enforcement officer
32 has probable cause to believe that the property was used or is
33 intended to be used in violation of this chapter.

34 (3) In the event of seizure pursuant to subsection (2) of this
35 section, proceedings for forfeiture shall be deemed commenced by the
36 seizure. The law enforcement agency under whose authority the seizure
37 was made shall cause notice to be served within fifteen days
38 following the seizure on the owner of the property seized and the
39 person in charge thereof and any person having any known right or
40 interest therein, including any community property interest, of the

1 seizure and intended forfeiture of the seized property. Service of
2 notice of seizure of real property shall be made according to the
3 rules of civil procedure. However, the state may not obtain a default
4 judgment with respect to real property against a party who is served
5 by substituted service absent an affidavit stating that a good faith
6 effort has been made to ascertain if the defaulted party is
7 incarcerated within the state, and that there is no present basis to
8 believe that the party is incarcerated within the state. Notice of
9 seizure in the case of property subject to a security interest that
10 has been perfected by filing a financing statement in accordance with
11 chapter 62A.9A RCW, or a certificate of title, shall be made by
12 service upon the secured party or the secured party's assignee at the
13 address shown on the financing statement or the certificate of title.
14 The notice of seizure in other cases may be served by any method
15 authorized by law or court rule including but not limited to service
16 by certified mail with return receipt requested. Service by mail
17 shall be deemed complete upon mailing within the fifteen day period
18 following the seizure.

19 (4) If no 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 (1)(d), (g), or (h) of this section
22 within forty-five days of the service of notice from the seizing
23 agency in the case of personal property and ninety days in the case
24 of real property, the item seized shall be deemed forfeited. The
25 community property interest in real property of a person whose spouse
26 or domestic partner committed a violation giving rise to seizure of
27 the real property may not be forfeited if the person did not
28 participate in the violation.

29 (5) If any person notifies the seizing law enforcement agency in
30 writing of the person's claim of ownership or right to possession of
31 items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h)
32 of this section within forty-five days of the service of notice from
33 the seizing agency in the case of personal property and ninety days
34 in the case of real property, the person or persons shall be afforded
35 a reasonable opportunity to be heard as to the claim or right. The
36 notice of claim may be served by any method authorized by law or
37 court rule including, but not limited to, service by first-class
38 mail. Service by mail shall be deemed complete upon mailing within
39 the forty-five day period following service of the notice of seizure
40 in the case of personal property and within the ninety-day period

1 following service of the notice of seizure in the case of real
2 property. The hearing shall be before the chief law enforcement
3 officer of the seizing agency or the chief law enforcement officer's
4 designee, except where the seizing agency is a state agency as
5 defined in RCW 34.12.020(4), the hearing shall be before the chief
6 law enforcement officer of the seizing agency or an administrative
7 law judge appointed under chapter 34.12 RCW, except that any person
8 asserting a claim or right may remove the matter to a court of
9 competent jurisdiction. Removal of any matter involving personal
10 property may only be accomplished according to the rules of civil
11 procedure. The person seeking removal of the matter must serve
12 process against the state, county, political subdivision, or
13 municipality that operates the seizing agency, and any other party of
14 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-
15 five days after the person seeking removal has notified the seizing
16 law enforcement agency of the person's claim of ownership or right to
17 possession. The court to which the matter is to be removed shall be
18 the district court when the aggregate value of personal property is
19 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
20 before the seizing agency and any appeal therefrom shall be under
21 Title 34 RCW. In all cases, the burden of proof is upon the law
22 enforcement agency to establish, by ~~((a preponderance of the))~~ clear,
23 cogent, and convincing evidence, that the property is subject to
24 forfeiture.

25 The seizing law enforcement agency shall promptly return the
26 article or articles to the claimant upon a determination by the
27 administrative law judge or court that the claimant is the present
28 lawful owner or is lawfully entitled to possession thereof of items
29 specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of
30 this section.

31 (6) In any proceeding to forfeit property under this title, where
32 the claimant substantially prevails, the claimant is entitled to
33 reasonable attorneys' fees reasonably incurred by the claimant. In
34 addition, in a court hearing between two or more claimants to the
35 article or articles involved, the prevailing party is entitled to a
36 judgment for costs and reasonable attorneys' fees.

37 (7) When property is forfeited under this chapter the ~~((board))~~
38 commission or seizing law enforcement agency may:

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

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

6 (c) Request the appropriate sheriff or director of public safety
7 to take custody of the property and remove it for disposition in
8 accordance with law; or

9 (d) Forward it to the drug enforcement administration for
10 disposition.

11 (8) (a) When property is forfeited, the seizing agency shall keep
12 a record indicating the identity of the prior owner, if known, a
13 description of the property, the disposition of the property, the
14 value of the property at the time of seizure, and the amount of
15 proceeds realized from disposition of the property.

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

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

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

25 (9) (a) By January 31st of each year, each seizing agency shall
26 remit to the state treasurer an amount equal to ten percent of the
27 net proceeds of any property forfeited during the preceding calendar
28 year. Money remitted shall be deposited in the state general fund.

29 (b) The net proceeds of forfeited property is the value of the
30 forfeitable interest in the property after deducting the cost of
31 satisfying any bona fide security interest to which the property is
32 subject at the time of seizure; and in the case of sold property,
33 after deducting the cost of sale, including reasonable fees or
34 commissions paid to independent selling agents, and the cost of any
35 valid landlord's claim for damages under subsection (15) of this
36 section.

37 (c) The value of sold forfeited property is the sale price. The
38 value of retained forfeited property is the fair market value of the
39 property at the time of seizure, determined when possible by
40 reference to an applicable commonly used index, such as the index

1 used by the department of licensing for valuation of motor vehicles.
2 A seizing agency may use, but need not use, an independent qualified
3 appraiser to determine the value of retained property. If an
4 appraiser is used, the value of the property appraised is net of the
5 cost of the appraisal. The value of destroyed property and retained
6 firearms or illegal property is zero.

7 (10) Forfeited property and net proceeds not required to be paid
8 to the state treasurer shall be retained by the seizing law
9 enforcement agency exclusively for the expansion and improvement of
10 controlled substances related law enforcement activity. Money
11 retained under this section may not be used to supplant preexisting
12 funding sources.

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

21 (12) Species of plants from which controlled substances in
22 Schedules I and II may be derived which have been planted or
23 cultivated in violation of this chapter, or of which the owners or
24 cultivators are unknown, or which are wild growths, may be seized and
25 summarily forfeited to the ((board)) commission.

26 (13) The failure, upon demand by a ((board)) commission inspector
27 or law enforcement officer, of the person in occupancy or in control
28 of land or premises upon which the species of plants are growing or
29 being stored to produce an appropriate registration or proof that he
30 or she is the holder thereof constitutes authority for the seizure
31 and forfeiture of the plants.

32 (14) Upon the entry of an order of forfeiture of real property,
33 the court shall forward a copy of the order to the assessor of the
34 county in which the property is located. Orders for the forfeiture of
35 real property shall be entered by the superior court, subject to
36 court rules. Such an order shall be filed by the seizing agency in
37 the county auditor's records in the county in which the real property
38 is located.

1 (15)(a) A landlord may assert a claim against proceeds from the
2 sale of assets seized and forfeited under subsection (7)(b) of this
3 section, only if:

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

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

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

18 (B) Only if the governmental entity denies or fails to respond to
19 the landlord's claim within sixty days of the date of filing, may the
20 landlord collect damages under this subsection by filing within
21 thirty days of denial or the expiration of the sixty-day period,
22 whichever occurs first, a claim with the seizing law enforcement
23 agency. The seizing law enforcement agency must notify the landlord
24 of the status of the claim by the end of the thirty-day period.
25 Nothing in this section requires the claim to be paid by the end of
26 the sixty-day or thirty-day period.

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

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

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

35 (16) The landlord's claim for damages under subsection (15) of
36 this section may not include a claim for loss of business and is
37 limited to:

38 (a) Damage to tangible property and clean-up costs;

39 (b) The lesser of the cost of repair or fair market value of the
40 damage directly caused by a law enforcement officer;

1 (c) The proceeds from the sale of the specific tenant's property
2 seized and forfeited under subsection (7)(b) of this section; and

3 (d) The proceeds available after the seizing law enforcement
4 agency satisfies any bona fide security interest in the tenant's
5 property and costs related to sale of the tenant's property as
6 provided by subsection (9)(b) of this section.

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

--- **END** ---