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SENATE BILL 6253

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State of Washington

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By Senators Eide, Kline, Regala, Shin, Kohl-Welles, Litzow, Chase, Stevens, Nelson, Keiser, Roach, and Conway

Read first time 01/16/12. Referred to Committee on Judiciary.

1 AN ACT Relating to seizure and forfeiture; and adding a new section  
2 to chapter 9A.88 RCW.

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

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

6 (1) The following are subject to seizure and forfeiture and no  
7 property right exists in them:

8 (a) Any property or other interest acquired or maintained in  
9 violation of RCW 9.68A.100 or 9A.88.070 to the extent of the investment  
10 of funds, and any appreciation or income attributable to the  
11 investment, from a violation of RCW 9.68A.100 or 9A.88.070;

12 (b) All conveyances, including aircraft, vehicles, or vessels,  
13 which are used, or intended for use, in any manner to facilitate a  
14 violation of RCW 9.68A.100 or 9A.88.070, except that:

15 (i) No conveyance used by any person as a common carrier in the  
16 transaction of business as a common carrier is subject to forfeiture  
17 under this section unless it appears that the owner or other person in  
18 charge of the conveyance is a consenting party or privy to a violation  
19 of RCW 9.68A.100 or 9A.88.070;

1 (ii) 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 (iii) A forfeiture of a conveyance encumbered by a bona fide  
5 security interest is subject to the interest of the secured party if  
6 the secured party neither had knowledge of nor consented to the act or  
7 omission; and

8 (iv) When the owner of a conveyance has been arrested for a  
9 violation of RCW 9.68A.100 or 9A.88.070, the conveyance in which the  
10 person is arrested may not be subject to forfeiture unless it is seized  
11 or process is issued for its seizure within ten days of the owner's  
12 arrest;

13 (c) Any property, contractual right, or claim against property used  
14 to influence any enterprise that a person has established, operated,  
15 controlled, conducted, or participated in the conduct of, in violation  
16 of RCW 9.68A.100 or 9A.88.070;

17 (d) All proceeds traceable to or derived from an offense defined in  
18 RCW 9.68A.100 or 9A.88.070 and all moneys, negotiable instruments,  
19 securities, and other things of value significantly used or intended to  
20 be used significantly to facilitate commission of the offense;

21 (e) All books, records, and research products and materials,  
22 including formulas, microfilm, tapes, and data which are used, or  
23 intended for use, in violation of RCW 9.68A.100 or 9A.88.070;

24 (f) All moneys, negotiable instruments, securities, or other  
25 tangible or intangible property of value furnished or intended to be  
26 furnished by any person in exchange for a violation of RCW 9.68A.100 or  
27 9A.88.070, all tangible or intangible personal property, proceeds, or  
28 assets acquired in whole or in part with proceeds traceable to an  
29 exchange or series of exchanges in violation of RCW 9.68A.100 or  
30 9A.88.070, and all moneys, negotiable instruments, and securities used  
31 or intended to be used to facilitate any violation of RCW 9.68A.100 or  
32 9A.88.070. A forfeiture of money, negotiable instruments, securities,  
33 or other tangible or intangible property encumbered by a bona fide  
34 security interest is subject to the interest of the secured party if,  
35 at the time the security interest was created, the secured party  
36 neither had knowledge of nor consented to the act or omission. No  
37 personal property may be forfeited under this subsection (1)(f), to the

1 extent of the interest of an owner, by reason of any act or omission,  
2 which that owner establishes was committed or omitted without the  
3 owner's knowledge or consent; and

4 (g) All real property, including any right, title, and interest in  
5 the whole of any lot or tract of land, and any appurtenances or  
6 improvements which are being used with the knowledge of the owner for  
7 a violation of RCW 9.68A.100 or 9A.88.070, or which have been acquired  
8 in whole or in part with proceeds traceable to an exchange or series of  
9 exchanges in violation of RCW 9.68A.100 or 9A.88.070, if a substantial  
10 nexus exists between the violation and the real property. However:

11 (i) No property may be forfeited pursuant to this subsection  
12 (1)(g), to the extent of the interest of an owner, by reason of any act  
13 or omission committed or omitted without the owner's knowledge or  
14 consent;

15 (ii) A forfeiture of real property encumbered by a bona fide  
16 security interest is subject to the interest of the secured party if  
17 the secured party, at the time the security interest was created,  
18 neither had knowledge of nor consented to the act or omission.

19 (2) Real or personal property subject to forfeiture under this  
20 section may be seized by any law enforcement officer of this state upon  
21 process issued by any superior court having jurisdiction over the  
22 property. Seizure of real property shall include the filing of a lis  
23 pendens by the seizing agency. Real property seized under this section  
24 shall not be transferred or otherwise conveyed until ninety days after  
25 seizure or until a judgment of forfeiture is entered, whichever is  
26 later: PROVIDED, That real property seized under this section may be  
27 transferred or conveyed to any person or entity who acquires title by  
28 foreclosure or deed in lieu of foreclosure of a security interest.  
29 Seizure of personal property without process may be made if:

30 (a) The seizure is incident to an arrest or a search under a search  
31 warrant;

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

35 (c) The law enforcement officer has probable cause to believe that  
36 the property was used or is intended to be used in violation of RCW  
37 9.68A.100 or 9A.88.070.

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

1 person or persons shall be afforded a reasonable opportunity to be  
2 heard as to the claim or right. The notice of claim may be served by  
3 any method authorized by law or court rule including, but not limited  
4 to, service by first-class mail. Service by mail shall be deemed  
5 complete upon mailing within the forty-five day period following  
6 service of the notice of seizure in the case of personal property and  
7 within the ninety day period following service of the notice of seizure  
8 in the case of real property. The hearing shall be before the chief  
9 law enforcement officer of the seizing agency or the chief law  
10 enforcement officer's designee, except where the seizing agency is a  
11 state agency as defined in RCW 34.12.020(4), the hearing shall be  
12 before the chief law enforcement officer of the seizing agency or an  
13 administrative law judge appointed under chapter 34.12 RCW, except that  
14 any person asserting a claim or right may remove the matter to a court  
15 of competent jurisdiction. Removal of any matter involving personal  
16 property may only be accomplished according to the rules of civil  
17 procedure. The person seeking removal of the matter must serve process  
18 against the state, county, political subdivision, or municipality that  
19 operates the seizing agency, and any other party of interest, in  
20 accordance with RCW 4.28.080 or 4.92.020, within forty-five days after  
21 the person seeking removal has notified the seizing law enforcement  
22 agency of the person's claim of ownership or right to possession. The  
23 court to which the matter is to be removed shall be the district court  
24 when the aggregate value of personal property is within the  
25 jurisdictional limit set forth in RCW 3.66.020. A hearing before the  
26 seizing agency and any appeal therefrom shall be under Title 34 RCW.  
27 In all cases, the burden of proof is upon the law enforcement agency to  
28 establish, by a preponderance of the evidence, that the property is  
29 subject to forfeiture.

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

35 (6) In any proceeding to forfeit property under this title, where  
36 the claimant substantially prevails, the claimant is entitled to  
37 reasonable attorneys' fees reasonably incurred by the claimant. In

1 addition, in a court hearing between two or more claimants to the  
2 article or articles involved, the prevailing party is entitled to a  
3 judgment for costs and reasonable attorneys' fees.

4 (7) When property is forfeited under this chapter, the seizing law  
5 enforcement agency shall sell the property that is not required to be  
6 destroyed by law and that is not harmful to the public.

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

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

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

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

21 (9)(a) By January 31st of each year, each seizing agency shall  
22 remit to the state treasurer the net proceeds of any property forfeited  
23 during the preceding calendar year. Money remitted shall be deposited  
24 in the prostitution prevention and intervention account under RCW  
25 43.63A.740.

26 (b) The net proceeds of forfeited property is the value of the  
27 forfeitable interest in the property after deducting the cost of  
28 satisfying any bona fide security interest to which the property is  
29 subject at the time of seizure; and in the case of sold property, after  
30 deducting the cost of sale, including reasonable fees or commissions  
31 paid to independent selling agents, and the cost of any valid  
32 landlord's claim for damages under subsection (11) of this section.

33 (c) The value of sold forfeited property is the sale price. The  
34 value of destroyed property and retained firearms or illegal property  
35 is zero.

36 (10) Upon the entry of an order of forfeiture of real property, the  
37 court shall forward a copy of the order to the assessor of the county  
38 in which the property is located. Orders for the forfeiture of real

1 property shall be entered by the superior court, subject to court  
2 rules. Such an order shall be filed by the seizing agency in the  
3 county auditor's records in the county in which the real property is  
4 located.

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

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

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

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

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

29 (c) For any claim filed under (b) of this subsection, the law  
30 enforcement agency shall pay the claim unless the agency provides  
31 substantial proof that the landlord either:

32 (i) Knew or consented to actions of the tenant in violation of RCW  
33 9.68A.100 or 9A.88.070; or

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

37 (12) The landlord's claim for damages under subsection (11) of this  
38 section may not include a claim for loss of business and is limited to:

1           (a) Damage to tangible property and clean-up costs;  
2           (b) The lesser of the cost of repair or fair market value of the  
3 damage directly caused by a law enforcement officer;  
4           (c) The proceeds from the sale of the specific tenant's property  
5 seized and forfeited under subsection (9) of this section; and  
6           (d) The proceeds available after the seizing law enforcement agency  
7 satisfies any bona fide security interest in the tenant's property and  
8 costs related to sale of the tenant's property as provided by  
9 subsection (11) of this section.

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

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