
SENATE BILL 6434

State of Washington

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By Senators O'Ban, Kohl-Welles, Fain, Kline, Bailey, Angel, Becker, Dammeier, and Chase

Read first time 01/24/14. Referred to Committee on Law & Justice.

1 AN ACT Relating to seizure and forfeiture of property for
2 patronizing a prostitute; and amending RCW 9A.88.150.

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

4 **Sec. 1.** RCW 9A.88.150 and 2012 c 140 s 1 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) Any property or other interest acquired or maintained in
9 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070 to the extent of
10 the investment of funds, and any appreciation or income attributable to
11 the investment, from a violation of RCW 9.68A.100, 9.68A.101, or
12 9A.88.070;

13 (b) All conveyances, including aircraft, vehicles, or vessels,
14 which are used, or intended for use, in any manner to facilitate a
15 violation of RCW 9.68A.100, 9.68A.101, (~~(or)~~) 9A.88.070, or 9A.88.110,
16 except that:

17 (i) No conveyance used by any person as a common carrier in the
18 transaction of business as a common carrier is subject to forfeiture

1 under this section unless it appears that the owner or other person in
2 charge of the conveyance is a consenting party or privy to a violation
3 of RCW 9.68A.100, 9.68A.101, (~~(or)~~) 9A.88.070, or 9A.88.110;

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

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

11 (iv) When the owner of a conveyance has been arrested for a
12 violation of RCW 9.68A.100, 9.68A.101, (~~(or)~~) 9A.88.070, or 9A.88.110,
13 the conveyance in which the person is arrested may not be subject to
14 forfeiture unless it is seized or process is issued for its seizure
15 within ten days of the owner's arrest;

16 (c) Any property, contractual right, or claim against property used
17 to influence any enterprise that a person has established, operated,
18 controlled, conducted, or participated in the conduct of, in violation
19 of RCW 9.68A.100, 9.68A.101, or 9A.88.070;

20 (d) All proceeds traceable to or derived from an offense defined in
21 RCW 9.68A.100, 9.68A.101, or 9A.88.070 and all moneys, negotiable
22 instruments, securities, and other things of value significantly used
23 or intended to be used significantly to facilitate commission of the
24 offense;

25 (e) All books, records, and research products and materials,
26 including formulas, microfilm, tapes, and data which are used, or
27 intended for use, in violation of RCW 9.68A.100, 9.68A.101, or
28 9A.88.070;

29 (f) All moneys, negotiable instruments, securities, or other
30 tangible or intangible property of value furnished or intended to be
31 furnished by any person in exchange for a violation of RCW 9.68A.100,
32 9.68A.101, (~~(or)~~) 9A.88.070, or 9A.88.110, all tangible or intangible
33 personal property, proceeds, or assets acquired in whole or in part
34 with proceeds traceable to an exchange or series of exchanges in
35 violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070, and all moneys,
36 negotiable instruments, and securities used or intended to be used to
37 facilitate any violation of RCW 9.68A.100, 9.68A.101, or 9A.88.070. A
38 forfeiture of money, negotiable instruments, securities, or other

1 tangible or intangible property encumbered by a bona fide security
2 interest is subject to the interest of the secured party if, at the
3 time the security interest was created, the secured party neither had
4 knowledge of nor consented to the act or omission. No personal
5 property may be forfeited under this subsection (1)(f), to the extent
6 of the interest of an owner, by reason of any act or omission, which
7 that owner establishes was committed or omitted without the owner's
8 knowledge or consent; and

9 (g) All real property, including any right, title, and interest in
10 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 a violation of RCW 9.68A.100, 9.68A.101, (~~(e)~~) 9A.88.070, or
13 9A.88.110, or which have been acquired in whole or in part with
14 proceeds traceable to an exchange or series of exchanges in violation
15 of RCW 9.68A.100, 9.68A.101, or 9A.88.070, if a substantial nexus
16 exists between the violation and the real property. However:

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

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

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

36 (a) The seizure is incident to an arrest or a search under a search
37 warrant;

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

4 (c) The law enforcement officer has probable cause to believe that
5 the property was used or is intended to be used in violation of RCW
6 9.68A.100, 9.68A.101, (~~(e)~~) 9A.88.070, or 9A.88.110.

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

31 (4) If no person notifies the seizing law enforcement agency in
32 writing of the person's claim of ownership or right to possession of
33 items specified in subsection (1) of this section within forty-five
34 days of the service of notice from the seizing agency in the case of
35 personal property and ninety days in the case of real property, the
36 item seized shall be deemed forfeited. The community property interest
37 in real property of a person whose spouse or domestic partner committed

1 a violation giving rise to seizure of the real property may not be
2 forfeited if the person did not participate in the violation.

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

37 The seizing law enforcement agency shall promptly return the
38 article or articles to the claimant upon a determination by the

1 administrative law judge or court that the claimant is the present
2 lawful owner or is lawfully entitled to possession thereof of items
3 specified in subsection (1) of this section.

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

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

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

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

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

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

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

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

1 (c) The value of sold forfeited property is the sale price. The
2 value of destroyed property and retained firearms or illegal property
3 is zero.

4 (10) Upon the entry of an order of forfeiture of real property, the
5 court shall forward a copy of the order to the assessor of the county
6 in which the property is located. Orders for the forfeiture of real
7 property shall be entered by the superior court, subject to court
8 rules. Such an order shall be filed by the seizing agency in the
9 county auditor's records in the county in which the real property is
10 located.

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

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

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

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

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

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

1 (i) Knew or consented to actions of the tenant in violation of RCW
2 9.68A.100, 9.68A.101, (~~(or)~~) 9A.88.070, or 9A.88.110; or
3 (ii) Failed to respond to a notification of the illegal activity,
4 provided by a law enforcement agency under RCW 59.18.075, within seven
5 days of receipt of notification of the illegal activity.
6 (12) The landlord's claim for damages under subsection (11) of this
7 section may not include a claim for loss of business and is limited to:
8 (a) Damage to tangible property and clean-up costs;
9 (b) The lesser of the cost of repair or fair market value of the
10 damage directly caused by a law enforcement officer;
11 (c) The proceeds from the sale of the specific tenant's property
12 seized and forfeited under subsection (9) of this section; and
13 (d) The proceeds available after the seizing law enforcement agency
14 satisfies any bona fide security interest in the tenant's property and
15 costs related to sale of the tenant's property as provided by
16 subsection (11) of this section.
17 (13) Subsections (11) and (12) of this section do not limit any
18 other rights a landlord may have against a tenant to collect for
19 damages. However, if a law enforcement agency satisfies a landlord's
20 claim under subsection (11) of this section, the rights the landlord
21 has against the tenant for damages directly caused by a law enforcement
22 officer under the terms of the landlord and tenant's contract are
23 subrogated to the law enforcement agency.

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