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HOUSE BILL 2501

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State of Washington

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By Representatives Wineberry, Ballard, Ogden, Mitchell, P. Johnson, Franklin, D. Sommers, Winsley, Paris, Van Luven, Bowman, Brough and Wynne

Read first time 01/20/92. Referred to Committee on Housing.

1 AN ACT Relating to landlords' claims on tenants' property; and  
2 reenacting 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 1990 c 248 s 2 and 1990 c 213 s 12 are  
5 each reenacted and amended to read as follows:

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

8 (1) 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, as  
11 defined in RCW 64.44.010, used or intended to be used in the  
12 manufacture of controlled substances;

13 (2) All raw materials, products, and equipment of any kind which  
14 are used, or intended for use, in manufacturing, compounding,

1 processing, delivering, importing, or exporting any controlled  
2 substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

3 (3) All property which is used, or intended for use, as a container  
4 for property described in paragraphs (1) or (2);

5 (4) All conveyances, including aircraft, vehicles, or vessels,  
6 which are used, or intended for use, in any manner to facilitate the  
7 sale, delivery, or receipt of property described in paragraphs (1) or  
8 (2), except that:

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

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

17 (iii) No conveyance is subject to forfeiture under this section if  
18 used in the receipt of only an amount of marijuana for which possession  
19 constitutes a misdemeanor under RCW 69.50.401(e);

20 (iv) A forfeiture of a conveyance encumbered by a bona fide  
21 security interest is subject to the interest of the secured party if  
22 the secured party neither had knowledge of nor consented to the act or  
23 omission; and

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

29 (5) All books, records, and research products and materials,  
30 including formulas, microfilm, tapes, and data which are used, or

1 intended for use, in violation of this chapter or chapter 69.41 or  
2 69.52 RCW;

3 (6) All drug paraphernalia;

4 (7) All moneys, negotiable instruments, securities, or other  
5 tangible or intangible property of value furnished or intended to be  
6 furnished by any person in exchange for a controlled substance in  
7 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible  
8 or intangible personal property, proceeds, or assets acquired in whole  
9 or in part with proceeds traceable to an exchange or series of  
10 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,  
11 and all moneys, negotiable instruments, and securities used or intended  
12 to be used to facilitate any violation of this chapter or chapter 69.41  
13 or 69.52 RCW: PROVIDED, That a forfeiture of money, negotiable  
14 instruments, securities, or other tangible or intangible property  
15 encumbered by a bona fide security interest is subject to the interest  
16 of the secured party if, at the time the security interest was created,  
17 the secured party neither had knowledge of nor consented to the act or  
18 omission and a forfeiture of money, negotiable instruments, securities,  
19 or other tangible or intangible property is subject to a claim by a  
20 landlord for damage to the property caused by a law enforcement officer  
21 or by activities of the tenant, related to a violation of this chapter  
22 or chapter 69.41 or 69.52 RCW. Such claim by a landlord must be filed  
23 with the law enforcement agency under whose authority the seizure was  
24 made within thirty days after the seizure: PROVIDED FURTHER, That no  
25 personal property may be forfeited under this paragraph, to the extent  
26 of the interest of an owner, by reason of any act or omission which  
27 that owner establishes was committed or omitted without the owner's  
28 knowledge or consent; and

29 (8) All real property, including any right, title, and interest in  
30 the whole of any lot or tract of land, and any appurtenances or

1 improvements which are being used with the knowledge of the owner for  
2 the manufacturing, compounding, processing, delivery, importing, or  
3 exporting of any controlled substance, or which have been acquired in  
4 whole or in part with proceeds traceable to an exchange or series of  
5 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,  
6 if such activity is not less than a class C felony and a substantial  
7 nexus exists between the commercial production or sale of the  
8 controlled substance and the real property: PROVIDED, That:

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

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

15 (iii) The possession of marijuana shall not result in the  
16 forfeiture of real property unless the marijuana is possessed for  
17 commercial purposes, the amount possessed is five or more plants or one  
18 pound or more of marijuana, and a substantial nexus exists between the  
19 possession of marijuana and the real property. In such a case, the  
20 intent of the offender shall be determined by the preponderance of the  
21 evidence, including the offender's prior criminal history, the amount  
22 of marijuana possessed by the offender, the sophistication of the  
23 activity or equipment used by the offender, and other evidence which  
24 demonstrates the offender's intent to engage in commercial activity;

25 (iv) The unlawful sale of marijuana or a legend drug shall not  
26 result in the forfeiture of real property unless the sale was forty  
27 grams or more in the case of marijuana or one hundred dollars or more  
28 in the case of a legend drug, and a substantial nexus exists between  
29 the unlawful sale and the real property; and

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

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

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

19 (2) 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 chapter;

22 (3) A board inspector or law enforcement officer has probable cause  
23 to believe that the property is directly or indirectly dangerous to  
24 health or safety; or

25 (4) The board inspector or law enforcement officer has probable  
26 cause to believe that the property was used or is intended to be used  
27 in violation of this chapter.

28 (c) In the event of seizure pursuant to subsection (b), proceedings  
29 for forfeiture shall be deemed commenced by the seizure. The law  
30 enforcement agency under whose authority the seizure was made shall

1 cause notice to be served within fifteen days following the seizure on  
2 the owner of the property seized and the person in charge thereof and  
3 any person having any known right or interest therein, including any  
4 community property interest, of the seizure and intended forfeiture of  
5 the seized property. Service of notice of seizure of real property  
6 shall be made according to the rules of civil procedure. However, the  
7 state may not obtain a default judgment with respect to real property  
8 against a party who is served by substituted service absent an  
9 affidavit stating that a good faith effort has been made to ascertain  
10 if the defaulted party is incarcerated within the state, and that there  
11 is no present basis to believe that the party is incarcerated within  
12 the state. The notice of seizure in other cases may be served by any  
13 method authorized by law or court rule including but not limited to  
14 service by certified mail with return receipt requested. Service by  
15 mail shall be deemed complete upon mailing within the fifteen day  
16 period following the seizure.

17 (d) If no person notifies the seizing law enforcement agency in  
18 writing of the person's claim of ownership or right to possession of  
19 items specified in subsection (a)(4), (a)(7), or (a)(8) of this section  
20 within forty-five days of the seizure in the case of personal property  
21 and ninety days in the case of real property, the item seized shall be  
22 deemed forfeited. The community property interest in real property of  
23 a person whose spouse committed a violation giving rise to seizure of  
24 the real property may not be forfeited if the person did not  
25 participate in the violation.

26 (e) If any person notifies the seizing law enforcement agency in  
27 writing of the person's claim of ownership or right to possession of  
28 items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6),  
29 (a)(7), or (a)(8) of this section within forty-five days of the seizure  
30 in the case of personal property and ninety days in the case of real

1 property, the person or persons shall be afforded a reasonable  
2 opportunity to be heard as to the claim or right. The hearing shall be  
3 before the chief law enforcement officer of the seizing agency or the  
4 chief law enforcement officer's designee, except where the seizing  
5 agency is a state agency as defined in RCW 34.12.020(4), the hearing  
6 shall be before the chief law enforcement officer of the seizing agency  
7 or an administrative law judge appointed under chapter 34.12 RCW,  
8 except that any person asserting a claim or right may remove the matter  
9 to a court of competent jurisdiction if the aggregate value of the  
10 article or articles involved is more than five hundred dollars. The  
11 court to which the matter is to be removed shall be the district court  
12 when such aggregate value is ten thousand dollars or less of personal  
13 property. A hearing before the seizing agency and any appeal therefrom  
14 shall be under Title 34 RCW. In a court hearing between two or more  
15 claimants to the article or articles involved, the prevailing party  
16 shall be entitled to a judgment for costs and reasonable attorney's  
17 fees. In cases involving personal property, the burden of producing  
18 evidence shall be upon the person claiming to be the lawful owner or  
19 the person claiming to have the lawful right to possession of the  
20 property. In cases involving real property, the burden of producing  
21 evidence shall be upon the law enforcement agency. The burden of proof  
22 that the seized real property is subject to forfeiture shall be upon  
23 the law enforcement agency. The seizing law enforcement agency shall  
24 promptly return the article or articles to the claimant upon a  
25 determination by the administrative law judge or court that the  
26 claimant is the present lawful owner or is lawfully entitled to  
27 possession thereof of items specified in subsection (a)(2), (a)(3),  
28 (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this section.

29 (f) When property is forfeited under this chapter the board or  
30 seizing law enforcement agency may:

1 (1) 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 (2) (i) Sell that which is not required to be destroyed by law and  
5 which is not harmful to the public. The proceeds and all moneys  
6 forfeited under this title shall be used for payment of all proper  
7 expenses of the investigation leading to the seizure, including any  
8 money delivered to the subject of the investigation by the law  
9 enforcement agency, and of the proceedings for forfeiture and sale,  
10 including expenses of seizure, maintenance of custody, advertising,  
11 actual costs of the prosecuting or city attorney, and court costs.  
12 Money remaining after the payment of all expenses shall be distributed  
13 as follows:

14 (A) Twenty-five percent of the money derived from the forfeiture of  
15 real property and seventy-five percent of the money derived from the  
16 forfeiture of personal property shall be deposited in the general fund  
17 of the state, county, and/or city of the seizing law enforcement agency  
18 and shall be used exclusively for the expansion or improvement of law  
19 enforcement services. These services may include the creation of  
20 reward funds for the purpose of rewarding informants who supply  
21 information leading to the arrest, prosecution and conviction of  
22 persons who violate laws relating to controlled substances. Such  
23 moneys shall not supplant preexisting funding sources;

24 (B) Twenty-five percent of money derived from the forfeiture of  
25 real property and twenty-five percent of money derived from the  
26 forfeiture of personal property shall be remitted to the state  
27 treasurer for deposit in the public safety and education account  
28 established in RCW 43.08.250;

29 (C) Until July 1, 1995, fifty percent of money derived from the  
30 forfeiture of real property shall be remitted to the state treasurer

1 for deposit in the drug enforcement and education account under RCW  
2 69.50.520, on and after July 1, 1995, the fifty percent of the money  
3 shall be remitted in the same manner as the twenty-five percent of the  
4 money remitted under (2)(i)(A) of this subsection; and

5 (D) If an investigation involves a seizure of moneys and proceeds  
6 having an aggregate value of less than five thousand dollars, the  
7 moneys and proceeds may be deposited in total in the general fund of  
8 the governmental unit of the seizing law enforcement agency and shall  
9 be appropriated exclusively for the expansion of narcotics enforcement  
10 services. Such moneys shall not supplant preexisting funding sources.

11 (ii) Money deposited according to this section must be deposited  
12 within ninety days of the date of final disposition of either the  
13 administrative seizure or the judicial seizure;

14 (3) 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; or

17 (4) Forward it to the drug enforcement administration for  
18 disposition.

19 (g) Controlled substances listed in Schedule I, II, III, IV, and V  
20 that are possessed, transferred, sold, or offered for sale in violation  
21 of this chapter are contraband and shall be seized and summarily  
22 forfeited to the state. Controlled substances listed in Schedule I, II,  
23 III, IV, and V, which are seized or come into the possession of the  
24 board, the owners of which are unknown, are contraband and shall be  
25 summarily forfeited to the board.

26 (h) Species of plants from which controlled substances in Schedules  
27 I and II may be derived which have been planted or cultivated in  
28 violation of this chapter, or of which the owners or cultivators are  
29 unknown, or which are wild growths, may be seized and summarily  
30 forfeited to the board.

1 (i) The failure, upon demand by a board inspector or law  
2 enforcement officer, of the person in occupancy or in control of land  
3 or premises upon which the species of plants are growing or being  
4 stored to produce an appropriate registration or proof that he is the  
5 holder thereof constitutes authority for the seizure and forfeiture of  
6 the plants.

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