

(16) To perform all other matters and things necessary to carry out the purposes and provisions of this chapter.

Passed the House May 16, 1977.

Passed the Senate May 11, 1977.

Approved by the Governor May 24, 1977.

Filed in Office of Secretary of State May 24, 1977.

CHAPTER 77

[Engrossed Senate Bill No. 2416]

CONTROLLED SUBSTANCES—SEIZURE AND FORFEITURE

AN ACT Relating to controlled substances; and amending section 69.50.505, chapter 308, Laws of 1971 ex. sess. and RCW 69.50.505.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 69.50.505, chapter 308, Laws of 1971 ex. sess. and RCW 69.50.505 are each amended to read as follows:

(a) The following are subject to seizure and forfeiture:

(1) all controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this chapter;

(2) all raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter;

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

(4) all conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraphs (1) or (2), but:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(ii) no conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;

(iii) a conveyance is not subject to forfeiture for a violation of RCW 69.50.401(c); and,

(iv) a forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if ~~((he))~~ the secured party neither had knowledge of nor consented to the act or omission~~((:))~~; and

(5) all books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.

(b) Property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure without process may be made if:

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

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

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

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

(c) In the event of seizure pursuant to subsection (b), proceedings (~~under subsection (d) shall be instituted promptly~~) for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

~~(d) ((Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the board or seizing law enforcement agency subject only to the orders and decrees of the superior court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the board or seizing law enforcement agency may:~~

~~(1) place the property under seal;~~

~~(2) remove the property to a place designated by it; or~~

~~(3) request the appropriate sheriff or director of public safety to take custody of the property and remove it to an appropriate location for disposition in accordance with law.~~

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

(e) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(4) of this section within forty-five days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is more than five hundred dollars. A hearing before the seizing agency and any appeal therefrom shall be under chapter 34.04 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of items specified in subsection (a)(4) of this section. The

seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the hearing officer or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (a)(4) of this section.

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

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

(2) sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs;

(3) request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(4) forward it to the Bureau for disposition.

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

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

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

Passed the Senate April 5, 1977.

Passed the House May 16, 1977.

Approved by the Governor May 24, 1977.

Filed in Office of Secretary of State May 24, 1977.

CHAPTER 78

[Engrossed Senate Bill No. 2365]

HIGHWAYS—ACQUISITION, OWNERSHIP, DISPOSITION, OF PROPERTY

AN ACT Relating to highways; amending section 36.75.090, chapter 4, Laws of 1963 and RCW 36.75.090; amending section 47.12.080, chapter 13, Laws of 1961 as amended by section 3, chapter 96, Laws of 1975 1st ex. sess. and RCW 47.12.080; amending section 47.12.140, chapter 13, Laws of 1961 and RCW 47.12.140; amending section 47.24.020, chapter 13, Laws of 1961 as last amended by section 1, chapter 115, Laws of 1967 and RCW 47.24.020; amending section 47.52.090, chapter 13, Laws of 1961 as amended by section 11, chapter 108, Laws of 1967 and RCW 47.52.090; adding new sections to chapter 47.12 RCW; adding a new section to chapter 47.52 RCW; repealing section 47.12.060, chapter 13, Laws of 1961, section 1, chapter 96, Laws of 1975