

INITIATIVE 784

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 784 to the People is a true and correct copy as it was received by this office.

1 AN ACT Relating to property forfeiture; adding new sections to
2 chapter 69.50 RCW; creating a new section; and repealing RCW 69.50.505.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 69.50 RCW
5 to read as follows:

6 (a) The people of Washington find the current practice of asset
7 forfeiture to be unjust and, therefore, find it necessary to reform
8 existing property forfeiture laws. Good citizens have had their
9 property taken from them in civil forfeiture actions without the
10 benefit of fair procedures designed to protect their rights. We
11 believe that no person should have property civilly forfeited for a
12 crime unless the owner has been found guilty of a crime related to the
13 property, and then only if the value of the property taken is
14 substantially proportionate to the seriousness of the offense.

15 (b) No judgment of forfeiture of property in a civil forfeiture
16 proceeding under this section by the state or any of its political
17 subdivisions shall be allowed or entered until and unless the owner or
18 owners of the property is convicted of a criminal violation of this
19 chapter or an equivalent crime in another jurisdiction and the state
20 demonstrates by clear and convincing evidence that the property was
21 instrumental in committing or facilitating the crime or the property is

1 proceeds of that crime. The value of the property forfeited under the
2 provisions of this subsection shall be considered together with other
3 sentences and fines imposed under other sections, and shall, taken
4 together, be substantially proportional to the specific conduct for
5 which the owner of the property has been convicted; however:

6 (1) The bona fide gift of a controlled substance, legend drug, or
7 imitation controlled substance shall not result in the forfeiture of
8 property;

9 (2) The possession of marijuana shall not result in the forfeiture
10 of property unless the marijuana is possessed for commercial purposes,
11 the amount possessed is five or more plants or one pound or more of
12 marijuana, and a substantial nexus exists between the possession of
13 marijuana and the property. In such a case, the intent of the offender
14 shall be determined by clear and compelling evidence, including the
15 offender's prior criminal history, the amount of marijuana possessed by
16 the offender, the sophistication of the activity or equipment used by
17 the offender, and other evidence which demonstrates the offender's
18 intent to engage in commercial activity; and

19 (3) The unlawful sale of marijuana or a legend drug shall not
20 result in the forfeiture of property unless the sale was forty grams or
21 more in the case of marijuana or one hundred dollars or more in the
22 case of a legend drug, and a substantial nexus exists between the
23 unlawful sale and the property.

24 (c) Notwithstanding the provisions of subsection (b) of this
25 section, and subject to subsection (r) of this section, if, following
26 notice as required in this section, no person claims an interest in the
27 seized property or if the property is subject to seizure under
28 subsection (f) of this section, a judgment of forfeiture may be allowed
29 and entered without a criminal conviction as provided in subsection (q)
30 of this section.

31 (d) Nothing in this section shall alter the power of the governor
32 to remit fines or forfeitures under Article III, section 11 of the
33 Washington state Constitution.

34 (e) Nothing in this section may be construed to affect the
35 temporary seizure of property for evidentiary, forfeiture, or
36 protective purposes, if:

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

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

1 (3) A board inspector or law enforcement officer has probable cause
2 to believe that the property is directly or indirectly dangerous to
3 health or safety.

4 (f) The following are subject to seizure for purposes of evidence
5 and/or destruction and no property right exists in them:

6 (1) All controlled substances which have been manufactured,
7 distributed, dispensed, acquired, or possessed in violation of this
8 chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as
9 defined in RCW 64.44.010, used or intended to be used in the
10 manufacture of controlled substances;

11 (2) All raw materials, products, and specialized equipment designed
12 for use in manufacturing, compounding, or processing any controlled
13 substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

14 (3) All drug paraphernalia.

15 (g) Property subject to forfeiture under this chapter may be seized
16 by any board inspector or law enforcement officer of this state upon
17 process issued by any superior court having jurisdiction over the
18 property. Seizure of real property shall include the filing of a lis
19 pendens by the seizing agency. Property seized under this section
20 shall not be transferred or otherwise conveyed until a judgment of
21 forfeiture is entered. However, property seized may be transferred or
22 conveyed to any person or entity who acquires title by foreclosure or
23 deed in lieu of foreclosure of a security interest.

24 (h) Seizure of property without process may be made if the seizure
25 is incident to an arrest or a search under a search warrant or an
26 inspection under an administrative inspection warrant; the property
27 subject to seizure has been the subject of a prior judgment in favor of
28 the state in a criminal injunction or forfeiture proceeding based upon
29 this chapter; or a board inspector or law enforcement officer has
30 probable cause to believe that the property is directly or indirectly
31 dangerous to health or safety.

32 (i) In the event of seizure pursuant to subsection (g) or (h) of
33 this section, the law enforcement agency under whose authority the
34 seizure was made shall cause notice to be served within ten days
35 following the seizure on the owner or owners of the property seized and
36 the person in charge thereof. The notice must include a statement that
37 the owner of the property or any person having any known right or
38 interest in the property may request, in writing, that the seizing
39 agency appear in a hearing before a court of competent jurisdiction to
40 show that probable cause exists to seize the property. Service of
41 notice of seizure shall be made according to the rules of civil

1 procedure. Notice of seizure in the case of property subject to a
2 security interest that has been perfected by filing a financing
3 statement in accordance with chapter 62A.9A RCW, or a certificate of
4 title, shall be made by service upon the secured party or the secured
5 party's assignee at the address shown on the financing statement or the
6 certificate of title. Within twenty days of receiving notice of the
7 seizure of personal property, the owner of the property or any person
8 having any known right or interest in the property may serve upon the
9 seizing agency a written request for a hearing before a court of
10 competent jurisdiction to determine that probable cause exists for the
11 seizure and detention of property pending the outcome of the forfeiture
12 proceedings. Within seventy-two hours of receiving the written request
13 for a hearing, the seizing agency shall cause a hearing to be held
14 before a court of competent jurisdiction. The seizing agency must show
15 cause why the property was lawfully seized and should be held pending
16 forfeiture proceedings. If the court finds probable cause did not
17 exist for seizure, the property shall be immediately returned to the
18 owner of the property or person having an interest in the property,
19 unless the seizing agency is holding the property as evidence in
20 accordance with the laws and court rules governing the seizure and
21 retention of evidence in criminal cases. If property is held under
22 this subsection for evidentiary purposes, the property not forfeited
23 shall be returned to the owner or person having an interest in the
24 property upon adjudication of the criminal proceedings.

25 (j)(1) 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 the seized property within forty-five days of the seizure in the case
28 of personal property and ninety days in the case of real property, the
29 item seized shall be deemed forfeited.

30 (2) If any person notifies the seizing law enforcement agency in
31 writing of the person's claim of ownership or right to possession of
32 the seized property within forty-five days of the seizure in the case
33 of personal property and ninety days in the case of real property, the
34 person or persons shall be afforded a reasonable opportunity to be
35 heard as to the claim or right. The hearing shall be before an
36 administrative law judge appointed under chapter 34.12 RCW, except that
37 any person asserting a claim or right may remove the matter to a court
38 of competent jurisdiction. Removal of any matter involving personal
39 property may only be accomplished according to the rules of civil
40 procedure. The person seeking removal of the matter must serve process
41 against the state, county, political subdivision, or municipality that

1 operates the seizing agency, and any other party of interest, in
2 accordance with RCW 4.28.080 or 4.92.020, within forty-five days after
3 the person seeking removal has notified the seizing law enforcement
4 agency of the person's claim of ownership or right to possession. The
5 court to which the matter is to be removed shall be the district court
6 when the aggregate value of personal property is within the
7 jurisdictional limit set forth in RCW 3.66.020. The hearing provided
8 under this subsection is in addition to the probable cause hearing
9 authorized under subsection (i) of this section. Any filing fee
10 required for removal of any matter to a court of competent jurisdiction
11 shall be waived.

12 (3) In all cases, the burden of proof is upon the law enforcement
13 agency to establish, by clear and convincing evidence, the property is
14 subject to forfeiture.

15 (4) The seizing law enforcement agency shall promptly return the
16 article or articles to the claimant upon a determination by the
17 administrative law judge or court that the claimant is the present
18 lawful owner or is lawfully entitled to possession of the property.

19 (k) In any proceeding to forfeit property under this title, where
20 the claimant substantially prevails, the claimant is entitled to
21 reasonable attorneys' fees reasonably incurred by the claimant. In
22 addition, in a court hearing between two or more claimants to the
23 article or articles involved, the prevailing party is entitled to a
24 judgment for costs and reasonable attorneys' fees.

25 (1) All seized property must be stored in a commercially reasonable
26 manner until it is forfeited or returned to the claimant. For any
27 property that is returned to the claimant, the claimant is entitled to
28 damages, costs, and reasonable attorneys' fees for any loss or damage
29 incurred during seizure or storage.

30 (m) When property is forfeited under this chapter, the board or
31 seizing law enforcement agency shall:

32 (1) Sell that which is not required to be destroyed by law;

33 (2) Keep a record indicating the identity of the prior owner, if
34 known, a description of the property, the disposition of the property,
35 the value of the property at the time of seizure, and the amount of
36 proceeds realized from disposition of the property;

37 (3) Retain records of forfeited property for at least seven years;

38 (4) File a report including a copy of the records of forfeited
39 property with the state treasurer each calendar quarter. The quarterly
40 report need not include a record of forfeited property that is still

1 being held for use as evidence during the investigation or prosecution
2 of a case or during the appeal from a conviction; and

3 (5) Destroy any property that is harmful to the public, required to
4 be destroyed by law, or otherwise not appropriate for sale to the
5 public.

6 (n) The provisions of subsection (m) of this section requiring the
7 seizing agency to keep records and file quarterly reports apply to all
8 forfeited property the seizing agency receives under federal seizure
9 and forfeiture laws. The seizing agency must also specify from which
10 federal agencies it receives funds. Seizing agencies that receive
11 forfeited property under the federal seizure and forfeiture laws shall
12 remit to the state treasurer an amount equal to the value or amount
13 received from the federal government.

14 (o)(1) By January 31st of each year, each seizing agency shall
15 remit to the state treasurer an amount equal to the net proceeds of any
16 property forfeited during the preceding calendar year. Money remitted
17 shall be deposited in the common school construction fund as required
18 by Article IX, section 3 of the Constitution of the state of
19 Washington.

20 (2) The net proceeds of forfeited property is the value of the
21 forfeitable interest in the property after first satisfying any bona
22 fide security interest to which the property is subject at the time of
23 seizure; and second the cost of any valid claims for damages, any
24 foreclosed liens, security interest, and contracts in the order of
25 their priority; and third in the case of sold property, after deducting
26 the cost of sale, including reasonable fees or commissions paid to
27 independent selling agents; and then actual and reasonable expenses
28 related to the costs of the forfeiture proceeding, including attorneys'
29 fees, storage, maintenance, management, and disposition of the property
30 incurred in connection with the sale of any forfeited property. The
31 cost of the above shall not exceed twenty-five percent of the total
32 proceeds of any single forfeiture.

33 (3) The value of sold forfeited property is the sale price. The
34 value of destroyed illegal property is zero.

35 (p) Forfeited property and net proceeds, including shared property
36 or amounts equal to proceeds obtained from the federal government,
37 shall be disposed of or distributed according to the following:

38 (1) Any sale of forfeited property shall be conducted in a
39 commercially reasonable manner. Property or proceeds forfeited under
40 this section shall be distributed or applied as required by subsection
41 (o) of this section.

1 (2) The state of Washington or any of its political subdivisions
2 shall take all necessary steps to obtain shared property or proceeds
3 from the federal government resulting from federal forfeitures. Any
4 such property or proceeds received by the state of Washington or any of
5 its political subdivisions shall be applied as provided in (1) of this
6 subsection.

7 (3) Neither the state of Washington, its political subdivisions,
8 nor any forfeiting agency shall transfer forfeiture proceedings to the
9 federal government unless a state court has affirmatively found that
10 the activity giving rise to the forfeiture is interstate in nature and
11 sufficiently complex to justify the transfer or the seized property may
12 only be forfeited under federal law.

13 (q) Controlled substances listed in Schedule I, II, III, IV, and V
14 that are possessed, transferred, sold, or offered for sale in violation
15 of this chapter are contraband and shall be seized and summarily
16 forfeited to the state.

17 (r) Upon the entry of an order of forfeiture of real property, the
18 court shall forward a copy of the order to the assessor of the county
19 in which the property is located. Orders for the forfeiture of real
20 property shall be entered by the superior court, subject to court
21 rules. The order shall be filed by the seizing agency in the county
22 auditor's records in the county in which the real property is located.

23 (s) For the purposes of this section:

24 (1) "Property" means any interest including community property
25 interest in anything of value, including the whole of any lot or tract
26 of land and tangible and intangible personal property, including
27 currency, instruments, or securities, or any other kind of privilege,
28 interest, claim, or right whether due or to become due.

29 (2) "Owner" means anyone who owns property as above.

30 NEW SECTION. **Sec. 2.** A new section is added to chapter 69.50 RCW
31 to read as follows:

32 Within four years of the effective date of this act, and every four
33 years thereafter, the state auditor shall conduct an audit of each
34 seizing agency filing quarterly reports with the state treasurer
35 pursuant to section 1 (m) through (p) of this act to monitor the
36 agency's compliance. The state auditor shall produce written findings
37 regarding compliance and submit a report to the legislature within a
38 reasonable time after each audit period.

1 NEW SECTION. **Sec. 3.** This act may be known and cited as the
2 innocent property owners protection act.

3 NEW SECTION. **Sec. 4.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 5.** RCW 69.50.505 (Seizure and forfeiture) and
8 2001 c 168 s 1, 1993 c 487 s 1, & 1992 c 211 s 1 are each repealed.

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