

HOUSE BILL REPORT

SHB 1069

As Amended by the Senate

Title: An act relating to seizure of property.

Brief Description: Providing for seizure of property involved in a felony.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Ludwig, Mielke, Riley, Mastin, Bray, Orr, Vance, H. Myers, Lisk, R. Johnson, Grant, Basich, Edmondson, Schmidt, Campbell, Van Luven, Rayburn, Foreman, Ballasiotes, Long, Kremen, Brough, Brumsickle, Horn, Forner, Karahalios, Chandler, Wood, Cooke, Roland and Silver.)

Brief History:

Reported by House Committee on:
Judiciary, February 9, 1993, DPS;
Passed House, March 8, 1993, 95-0;
Amended by Senate.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Forner; Johanson; Locke; Long; Mastin; H. Myers; Riley; Scott; Tate; and Wineberry.

Staff: Bill Perry (786-7123).

Background: State law contains several provisions authorizing law enforcement agencies to seek the forfeiture of property that has been used in or procured through the commission of certain crimes. For instance, the Uniform Controlled Substances Act includes a provision authorizing forfeiture of real and personal property when the property has been employed in the commission of a drug law violation, or has been acquired with the proceeds of illegal drug activity.

Forfeiture is a civil procedure that does not rely on a criminal arrest, charge, or conviction. Because it is a civil proceeding, the burden of proof on the law enforcement

agency is a preponderance of the evidence, rather than "beyond a reasonable doubt."

Under the drug law, the forfeited property may be disposed of in a number of ways, including sale or retention by the law enforcement agency. However, a law enforcement agency is to remit to the state 10 percent of the net value of any forfeited property. Net value is determined by the sale price if the property is sold, or by appraised value if it is retained, and is net of any security interest, landlord's claim, and costs of sale or appraisal. The 10 percent remitted to the state is deposited in the drug enforcement and education account.

Summary of Bill: A general forfeiture statute is enacted covering personal property used in, or acquired through the commission of any felony crime not already covered by a specific forfeiture law.

All personal property used in, or acquired through the commission of any felony, is subject to forfeiture. Any law enforcement agency is authorized to seize such property and, after satisfying certain procedural requirements, retain the property or all the proceeds from the sale of the property.

The procedural requirements are comparable to those contained in the Uniform Controlled Substances Act. Seizure of property may be made upon process issued by any superior court or without process if necessary to preserve the public health and welfare. Within 15 days after seizure, the law enforcement agency is to serve notice of the seizure on all known holders of interest in the property. Any person responding to the notice within 45 days is entitled to an opportunity to be heard either before the chief law enforcement officer or, if the amount in controversy exceeds \$500, a court of competent jurisdiction. However, forfeiture cannot occur until after a conviction for the crime with which the property was associated.

No property will be forfeited if the felony was committed without the consent or knowledge of the owner. A forfeiture of property encumbered by a security interest is subject to the interest of a secured party who neither had knowledge of nor consented to the commission of the felony at the time the security interest was created.

The law enforcement agency that seizes the property and causes the forfeiture may retain the property or sell it. Ten percent of the net value of forfeited property must be remitted to the state in the same manner as under the drug law.

EFFECT OF SENATE AMENDMENT(S): The Senate striking amendment makes the following changes to the substitute House bill:

1. The amendment provides explicit requirements for notifying the holder of a security interest that has been perfected by a UCC financing statement or by a title document. Before property that is subject to such an interest may be forfeited, the holder of the interest must be notified at the address shown on the financing statement or the certificate of title.

2. The amendment extends the time for an owner or person with an interest to respond to a notice of seizure. The House version allows 45 days. The Senate amendment allows 90 days.

3. The amendment requires a contested hearing before a perfected security interest may be extinguished.

4. The amendment requires all hearings to be in court. The House version allows an administrative hearing before the seizing agency, except in a case in which the property is worth more than \$500 and the owner requests removal of the case to court.

5. The amendment explicitly requires "satisfying any court ordered victim restitution" out of forfeited property.

6. The amendment removes the requirement that the proceeds of sale of forfeited property be used for expenses of investigation, seizure, forfeiture and sale.

7. The amendment changes the fund into which the state's share of proceeds are to be deposited. In the House version, the fund is the drug education and enforcement account. In the Senate amendment, the fund is the public safety and education account.

8. The amendment removes redundant references to the state of mind requirement of property owners who have been convicted of a felony.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Getting at criminals' assets is one of law enforcement's best tools.

Testimony Against: These kinds of laws are being questioned nationwide because they lack sufficient procedural protections and have led to significant abuses by law enforcement agencies.

Witnesses: John Zulauf, Washington Association of Criminal Defense Lawyers (con).

VOTE ON FINAL PASSAGE:

Yeas 97; Excused 1

Excused: Representative Miller