

HOUSE BILL REPORT

ESSB 5815

As Passed House
April 15, 1993

Title: An act relating to seizure and forfeiture.

Brief Description: Concerning seizure and forfeiture.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators West and Moyer).

Brief History:

Reported by House Committee on:
Judiciary, March 30, 1993, DPA;
Passed House - Amended, April 15, 1993, 95-1.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 16 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Forner; Johanson; Long; Mastin; H. Myers; Riley; Schmidt; Scott; Tate; and Wineberry.

Staff: Bill Perry (786-7123).

Background: Under the state's Uniform Controlled Substances Act, illegal drugs, and any real or personal property associated with the production, delivery, importation, or exportation of illegal drugs, are generally subject to seizure and forfeiture by law enforcement authorities. Forfeiture is a civil procedure that does not require arrest, charging, or conviction of a person for a criminal offense. Property may not be forfeited if the owner did not know of or consent to the act that is the basis for the seizure and forfeiture action.

A person whose personal or real property is seized by a law enforcement agency is afforded the opportunity at a hearing to make a claim of ownership or right to possession. The person must notify the seizing law enforcement agency in writing within 45 days of the seizure in the case of personal property, and 90 days in the case of real property. The hearing is before the chief law enforcement officer of the seizing agency or his or her designee. If the seizing agency is a state agency, the hearing is before the chief

law enforcement officer of the seizing agency or an administrative law judge.

Any person asserting a claim or right to the property may remove the case to a court of competent jurisdiction if the total value of the seized items is more than \$500. However, there are no express provisions in the current law for the procedures to be used in removing the case to a court.

The crime of DWI is a gross misdemeanor with a maximum penalty of one year in jail and a \$2,000 fine. Mandatory minimum criminal penalties plus alcohol assessment, schooling or treatment requirements, and the loss of driving privileges also apply. These penalties escalate with successive convictions.

For a first conviction, the mandatory minimum penalty is one day in jail and a \$250 fine. For a second conviction within five years, the mandatory minimum is seven days in jail and a \$500 fine, except that if at the time of the second offense, the driver was without a license because of a previous offense, the minimum penalty is 90 days in jail and a \$200 fine.

For a first conviction, the driver's license is suspended for 90 days or until age 19, whichever is longer. For a second conviction within five years, the license is revoked for one year. For a third conviction within five years, the license is revoked for two years.

Summary of Bill: Several changes are made to the property forfeiture provisions of the state's Uniform Controlled Substances Act. A new provision is added to the state's Motor Vehicle Code to allow for the seizure and forfeiture of vehicles driven by persons convicted of a second DWI offense.

With respect to the forfeiture of property under the drug law, new requirements are imposed on seizing agencies in the case of property subject to some perfected security interests. If a security interest is perfected by a Uniform Commercial Code (UCC) filing or by a title document, notice of the seizure must be sent to the secured party at the address shown on the filing or the document. In addition, no perfected security interest in seized property can be extinguished without a contested hearing or the agreement of the secured party. In all cases of seizure, the length of time which an owner or an interest holder has to respond to a notice of seized property is increased from 45 days to 90 days. In all cases of seizure, the contested hearing, if any, must be in a court of competent hearing. All administrative hearings before the seizing agency are eliminated.

With respect to the crime of DWI, upon a second conviction within a five year period, the vehicle driven by the offender is subject to seizure and forfeiture.

When a person who has had a conviction for DWI within the previous five years is charged with DWI, the court is to notify the Department of Licensing (DOL). When DOL receives such a notice, it is to withhold issuance of a certificate of ownership of the vehicle that was driven by the person charged with DWI, until it receives notice of dismissal or acquittal on the charges. It is a misdemeanor for a person to sell or otherwise transfer the ownership of a vehicle driven by a person currently charged with a second DWI.

Procedures, standards and exceptions for seizing and forfeiting vehicles are largely the same as for the seizure and forfeiture of property under the Uniform Controlled Substances Act. These provisions include the following:

- o An exception for vehicles owned by a person who did not know of or consent to the offense;
- o Forfeitures are subject to bona fide security interests;
- o The seizing law enforcement agency is to give at least 15 days notice to the owner of the vehicle and anyone with a known interest in the vehicle of the impending forfeiture proceeding. Persons claiming ownership or security interests have 90 days to respond;
- o The forfeiture hearing is in a court of competent jurisdiction;
- o The burden of proving ownership or other interest in the vehicle is on the person making the claim;
- o Upon forfeiture, the seizing agency may retain, trade or sell the vehicle; and
- o The seizing agency is to remit 10 percent of the net value of forfeited vehicles to the state public safety and education account. Net value is the appraised value minus appraisal costs, or the sale price minus sale costs and costs of satisfying any bona fide security interest.

It is a misdemeanor for a person to transfer ownership of a vehicle subject to forfeiture pending the disposition of DWI charges against the owner of the vehicle. Exceptions are made for the transfer of bona fide security interests and for the transfer of lease interests.

Fiscal Note: Not requested.

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

Testimony For: The current law provides no procedure for removing cases to court. The bill will benefit both sides in a dispute by making it clear how to remove a case.

Testimony Against: None.

Witnesses: Rocco Treppiedi and Salvatore Faggiano, Spokane City Attorney's Office (pro); Chris Bacha, Tacoma City Attorney's Office; and Richard Troberman, Washington Association of Criminal Defense Lawyers (opposed the bill before it was amended).