

SENATE BILL REPORT

SHB 1069

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, MARCH 30, 1993

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

SPONSORS: 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)

HOUSE COMMITTEE ON JUDICIARY

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators A. Smith, Chairman; Quigley, Vice Chairman; Hargrove, Nelson, Niemi, Roach, and Spanel.

Staff: Tom McBride (786-7448)

Hearing Dates: March 24, 1993; March 30, 1993

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.

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:

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 the owner has been convicted for the crime with which the property was associated.

The bill contains a provision that 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.

SUMMARY OF PROPOSED SENATE AMENDMENT:

The amendments clarify that the owner of the forfeited property must be convicted of the felony. They provide that the hearing shall be done in a court and that claims of right to the property must be proven by a preponderance. The bill provides that victim restitution has priority in payment with proceeds from the forfeited property and that perfected security interests will not automatically default after 90 days. State revenue will be deposited in the public safety and education account.

Appropriation: none

Revenue: none

Fiscal Note: none requested

TESTIMONY FOR:

There are concerns about forfeitures being adjudicated by law enforcement rather than courts.

TESTIMONY AGAINST: None

TESTIFIED: Representative Ludwig (pro); John Zulant, WA Assn. of
Criminal Defense Attorneys (con)