

FINAL BILL REPORT

ESSB 5815

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SYNOPSIS AS ENACTED

Brief Description: Concerning seizure and forfeiture.

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

SENATE COMMITTEE ON LAW & JUSTICE

HOUSE COMMITTEE ON JUDICIARY

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. Likewise, the interest of an innocent secured party cannot be forfeited.

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 driving while intoxicated (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:

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, explicit notice procedures are added 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, explicit procedures are imposed for the removal of a case from an administrative agency to a court. Cases involving property of any value, not just property worth more than \$500, may be removed to court.

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.

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:

Forfeitures are subject to bona fide security interests;

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 45 days to respond;

The forfeiture hearing is before the seizing agency, but may be removed to a court of competent jurisdiction;

The burden of proving ownership or other interest in the vehicle is on the person making the claim;

Upon forfeiture, the seizing agency may retain, trade or sell the vehicle; and

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.

When a person convicted 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 is 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. Exceptions are made for the transfer of bona fide security interests and for the transfer of lease interests.

VOTES ON FINAL PASSAGE:

Senate	41	0	
House	95	1	(House amended)
Senate			(Senate refused to concur)

Conference Committee

House	94	0
Senate	44	0

EFFECTIVE: July 25, 1993