
Judiciary Committee

HB 2377

Title: An act relating to civil forfeitures of property.

Brief Description: Prohibiting civil forfeitures of property unless the owner has been convicted of a crime.

Sponsors: Representatives Dickerson, Grant, Dunshee, Chase, Edwards, Kagi, Dunn, Wood and Pflug.

Brief Summary of Bill

- Requires a conviction of the owner before property may be forfeited under certain forfeiture statutes.
- Changes how forfeiture proceeds are to be distributed.
- Creates a forfeiture oversight committee.

Hearing Date: 1/31/02

Staff: Trudes Hutcheson (786-7384).

Background:

There are various statutes authorizing the government to seize and forfeit property because of the property's connection with specific offenses. One such forfeiture statute is contained in RCW 10.105, which allows forfeiture of property when the property has been involved in the commission of a felony. This statute is very similar to the drug forfeiture statute, which is the most often used of all the forfeiture statutes.

Real and personal property subject to seizure and forfeiture.

Under the drug forfeiture statute, law enforcement agencies may seize: (a) illegal drugs, materials used for making illegal drugs, drug paraphernalia; (b) conveyances used to facilitate the sale, delivery, or receipt of illegal drugs; (c) money intended to be used in exchange for illegal drugs; (d) personal property, proceeds, or assets acquired with proceeds traceable to an illegal drug transaction; and (e) real property used with the knowledge of the owner to manufacture illegal drugs when it constitutes at least a class C felony and there is a

substantial nexus between the real property and the commercial production or sale of illegal drugs.

Conveyances are not subject to forfeiture if used in the receipt of an amount of marijuana that constitutes a misdemeanor or if the owner of the conveyance did not know or consent to the illegal activity. The community property interest in real property of a person whose spouse committed the illegal act may not be forfeited if the person did not participate in the illegal act. A forfeiture of real property with a bona fide security interest is subject to the interest if the secured party neither had knowledge nor consented to the illegal activity.

Procedural requirements for seizure and forfeiture.

Real property may only be seized upon process issued by a superior court. However, law enforcement may seize personal property without first going to court if: (a) the seizure is incident to arrest or under a search warrant; (b) the officer has probable cause to believe the property is directly or indirectly dangerous to public health or safety; or (c) the officer has probable cause to believe the property was used or intended to be used in violation of the drug laws.

Seizure of the property commences the forfeiture proceeding. The law enforcement agency must give notice within 15 days of the seizure to the owner or anyone who has a known interest in the property. If no person notifies the agency of an interest in the property within a certain time, the agency may forfeit the property. Service of notice of forfeiture of real property is pursuant to the rules of civil procedure, which generally allows personal service, service by mail, and other methods of service under certain circumstances.

If a person claims an interest in the seized property, a forfeiture hearing will be held before the chief law enforcement officer of the seizing agency or an administrative law judge. The person claiming an interest may remove the case to a court of competent jurisdiction. The agency has the burden of showing by a preponderance of the evidence that the property is subject to forfeiture.

Distribution of forfeited property.

Generally, when property is forfeited, the seizing law enforcement agency may retain the property for official use, sell it, or forward it to another agency.

Seizing law enforcement agencies are required to remit 10 percent of the net proceeds from forfeited property annually to the state treasurer to be deposited in the drug enforcement and education account. Net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest or deducting the cost of sale. The seizing agency must keep certain records regarding forfeited property, including the amount of proceeds realized from the sale of any forfeited property.

The federal government may share federally forfeited property with participating state and local law enforcement agencies. Any state or local agency that directly participates in an investigation or prosecution that results in a federal forfeiture may request an equitable share of the net proceeds of the forfeiture. A state or local law enforcement agency that has seized property may request that one of the federal agencies adopt the seizure and proceed with federal forfeiture.

Last session, the Legislature passed House Concurrent Resolution 4414 that created a joint select committee on civil forfeiture made up of eight members. The committee was to report its recommendations to the Legislature no later than December 1, 2001. The committee terminated on December 15, 2001.

Summary of Bill:

A new section is added to the chapter on forfeiture of property involved in a felony. The forfeiture statute under the drug law is also amended to reference the new section.

The owner of the property must be convicted of a crime before any property can be forfeited. In order to obtain a forfeiture, the seizing law enforcement agency must show by clear and convincing evidence that the property was instrumental in committing or facilitating the crime, or that the property is proceeds of the crime. In addition, the value of the property forfeited must be proportional to the specific conduct for which the property owner was convicted. However, no conviction is required if the government gives proper notice and no person claims an interest in the property or the property is illegal contraband.

A financial institution's interest in property shall not be forfeited. Any other person, other than the defendant convicted, shall not have his or her interest forfeited unless: (a) the agency proves by clear and convincing evidence that the person took the property or the interest with intent to defeat the forfeiture; or (b) the person claiming an interest is later convicted.

Proceeds from civil forfeitures must be distributed in the following manner:

- first, to any foreclosed liens, security interests, and contracts;
- second, to the state or its subdivisions for actual and reasonable expenses related to the costs of the forfeiture not to exceed 25 percent of the total proceeds in any single forfeiture; and
- third, to the state or its subdivisions to be used exclusively for drug treatment unless another disposition is specially provided by law.

The state is required to take all necessary steps to obtain property and proceeds from federal civil forfeitures, and any property or proceeds received under federal forfeitures must be distributed under the state law. The state must not transfer a forfeiture proceeding to the federal government unless the court finds that: (a) The activity is interstate in nature and sufficiently complex to justify the transfer; (b) the seized property may only be forfeited under federal law; or (c) pursuing forfeiture under state law would unduly burden the state forfeiting agencies.

A committee is created to collect information, generate an annual report, and make recommendations regarding civil forfeiture. Law enforcement agencies involved in civil forfeitures are required to submit specific information to the committee.

Appropriation: None.

Fiscal Note: Requested on January 23, 2002.

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