
Judiciary Committee

HB 2530

Title: An act relating to civil forfeitures of property.

Brief Description: Creating the innocent property owners protection act.

Sponsors: Representatives Pflug, Anderson, Dunshee, Grant, Nixon, Campbell, Boldt, Morell, Pearson and Dunn.

Brief Summary of Bill

- Requires a conviction of the owner before property may be forfeited under the drug laws.
- Creates procedures for a probable cause hearing.
- Allows a claimant to sue if property was damaged during seizure or storage.
- Changes how the proceeds of forfeited property is distributed.

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. Most commonly used is the drug forfeiture statute.

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:

Property seized under the drug forfeiture statute cannot be forfeited unless: (a) the owner of the property is convicted of a crime in violation of the drug laws; and (b) the state demonstrates by clear and convincing evidence that the property was instrumental in committing or facilitating the crime or is proceeds of the crime. In addition, the value of the property forfeited must be substantially proportional to the specific conduct for which the owner has been convicted. In cases of money, negotiable instruments, and securities, there must also be a substantial nexus between the crime for which the owner was convicted and the property.

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

Forfeiture is allowed without a conviction if the property is controlled substances or contraband, or if no person claims an interest in the seized property. The time frame in which the seizing agency must serve notice of the forfeiture proceeding is shortened from 15 days to 10 days.

In cases of real property, the agency may not forfeit the property unless the party was served personally.

The authority of a seizing agency to seize property based upon probable cause that the property was used or is intended to be used in violation of the drug laws is removed.

The owner of the property or any person claiming an interest may, within 20 days of receiving notice, request in writing a probable cause hearing. Within 72 hours of receiving the written request for a hearing, the seizing agency must cause a hearing to be held before a court. The seizing agency must show cause why the property was lawfully seized and should be held pending forfeiture proceedings. If the court finds probable causes did not exist for seizure, the property shall be immediately returned to the owner of the property or person, unless the agency demonstrates that the property should be held for evidentiary purposes in a pending criminal proceeding.

Any forfeiture hearing must be before an administrative law judge, as opposed to the chief law enforcement officer of the seizing agency. If a person removes the case to court, the filing fee shall be waived.

All seized property must be stored in a commercially reasonable manner until it is forfeited or returned to the claimant. For any property that is returned, the claimant is entitled to damages, costs, and reasonable attorneys' fees for any loss or damage incurred during seizure or storage.

The agency must distribute the forfeited property in the following manner: (a) an amount equal to 10 percent of the net proceeds of any forfeited property of the preceding year to the state treasurer for the drug enforcement and education account; and (b) the remaining 90 percent to the state treasurer to be equally shared between the permanent common school fund and public drug treatment programs.

In determining what the "net proceeds" are, the agency may deduct actual and reasonable expenses related to the costs of the forfeiture proceeding, including attorneys' fees, storage, maintenance, and disposition of the property incurred in connection with the sale of the property in an amount not to exceed 25 percent of the total proceeds in any single forfeiture.

Agencies must keep records and file quarterly reports of property the agency receives under federal seizure and forfeiture laws. Seizing agencies are required to use such forfeited property pursuant to federal restrictions. Agencies shall take all necessary steps to obtain shared property or proceeds from the Department of Justice resulting from a forfeiture. Any property or proceeds received from the federal agency shall be applied in the same manner as forfeited property under state law.

Every four years, the State Auditor must audit each seizing agency and submit a report to the Legislature.

The act shall be known as the "innocent property owners protection act."

Appropriation: None.

Fiscal Note: Requested on January 23, 2002.

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