

# SENATE BILL REPORT

## SB 5935

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As Reported By Senate Committee On:  
Judiciary, February 27, 2001  
Ways & Means, March 8, 2001

**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:** Senators Constantine, Hargrove, Stevens, Oke, Thibaudeau, Kline, Swecker, Prentice, McCaslin, Roach and Kohl-Welles.

**Brief History:**

**Committee Activity:** Judiciary: 2/19/01, 2/27/01 [DPS].  
Ways & Means: 3/7/01, 3/8/01 [DPS (JUD), DNP].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** That Substitute Senate Bill No. 5935 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Constantine, Vice Chair; Costa, Hargrove, Johnson, Kastama, McCaslin, Roach and Thibaudeau.

**Staff:** Aldo Melchiori (786-7439)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Substitute Senate Bill No. 5935 as recommended by Committee on Judiciary be substituted therefor, and the substitute bill do pass.

Signed by Senators Brown, Chair; Constantine, Vice Chair; Fraser, Kline, Kohl-Welles, Regala, B. Sheldon, Snyder, Spanel, Thibaudeau and Winsley.

**Minority Report:** Do not pass.

Signed by Senators Hewitt, Honeyford, Rasmussen and Sheahan.

**Staff:** Bryon Moore (786-7726)

**Background:** The civil forfeiture provisions in drug cases provide that no property right exists in the controlled substances themselves, equipment or materials used to manufacture the substances, money and property intended to be used as payment, or proceeds traceable to the sale or exchange of controlled substances. Conveyances used or intended for use to facilitate the sale, delivery or receipt of controlled substances are subject to forfeiture, unless used without the knowledge or consent of the true owner.

Real property that is being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which has been acquired in whole or in part with proceeds, is subject to forfeiture. If the forfeited real property is encumbered by a security interest, it is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the prohibited act. The community property interest in real property may not be forfeited if the person did not participate in the violation.

Real or personal property subject to forfeiture may be seized by any State Board of Pharmacy inspector or law enforcement officer upon process. Real property may not be transferred or conveyed, by the law enforcement agency, until 90 days after seizure or until a judgment of forfeiture is entered. If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession within 45 days of the seizure in the case of personal property and 90 days in the case of real property, the property is deemed forfeited. If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession within the time period, the person or persons is afforded an opportunity to be heard as to the claim or right.

If property is forfeited, the board or seizing law enforcement agency may: (1) retain it for official use; (2) sell that which is not required to be destroyed by law and not harmful to the public; (3) request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition; or (4) forward it to the Drug Enforcement Administration for disposition. A report including a copy of the records of forfeited property is filed with the State Treasurer each calendar quarter.

By January 31 of each year, each seizing agency remits to the State Treasurer an amount equal to 10 percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted is deposited in the violence reduction and drug enforcement account. Forfeited property and net proceeds not required to be paid to the State Treasurer are retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity.

**Summary of Substitute Bill:** Judgment of forfeiture is not allowed unless the property owner has been convicted of a crime and the property is found by clear and convincing evidence to have been instrumental in committing the crime or to be proceeds of that crime. Forfeiture may be allowed without a conviction, however, if no person claims an interest in the property or if it is contraband. If the seizing agency fails to meet its burden of proof, the property must be promptly returned to the claimant. Real property cannot be transferred or conveyed until the judgment of forfeiture is entered. The value of the forfeited property must be substantially proportional to the specific crime.

If a financial institution claiming an interest in the property demonstrates that it hold an interest, that interest is not subject to forfeiture. If a person other than a financial institution or defendant demonstrates that it holds an interest, the interest is not subject to forfeiture unless the forfeiting agency proves by clear and convincing evidence that the person took the interest with the intent to defeat the forfeiture or a conviction is later obtained against the person.

When property is forfeited, the board or seizing law enforcement agency must: (1) destroy any property that is harmful to the public, required to be destroyed by law or not appropriate for sale, (2) sell all other property and (3) report the nature and disposition of all forfeited property to the State Auditor. The Auditor creates an annual report of the information collected and may make recommendations regarding process and fairness of asset forfeiture proceedings.

Sale of forfeited property must be conducted in a commercially reasonable manner. By January 31 of each year, each seizing agency remits to the State Treasurer all net proceeds of the forfeiture proceeding. Ten percent of the net proceeds are deposited in the violence reduction and drug education account as is presently done. Forty-five percent of the net proceeds are deposited in the violence reduction and drug education account and are earmarked for drug treatment. Forty-five percent of the net proceeds are deposited in the public safety and education account and are earmarked for the state crime laboratory. The seizing agency is not liable for damages to seized property if it is stored reasonably.

Proceeds from property seized in cases shared with the federal Drug Enforcement Administration are subject to the same distribution pattern. Forfeiture proceedings are not transferred to the Drug Enforcement Administration unless a state court affirmatively finds that: the activity giving rise to the forfeiture is interstate in nature, the seized property may only be forfeited under federal law, or proceeding under state law would unduly burden the state agency.

**Substitute Bill Compared to Original Bill:** The original bill was not considered.

**Appropriation:** None.

**Fiscal Note:** Requested on February 14, 2001.

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

**Testimony For (Judiciary):** If you are ultimately proven to be innocent of criminal activity, the state has no right to take and retain your property. The civil sanction for violation of the law should be proportional to the seriousness of the crime. Proceeds of civil forfeiture actions should go to the heart of the matter, drug treatment. There is an inherent conflict of interest in the present law that allows law enforcement to retain the seized property.

**Testimony Against (Judiciary):** This tool has allowed law enforcement to focus on major drug manufacturers and suppliers. Lien holders may prematurely default on loans to innocent third parties instead of waiting for the criminal proceedings to conclude.

**Testified (Judiciary):** PRO: Richard Troberman, Washington Association of Criminal Defense Lawyers; Jerry Sheehan, ACLU; David Edwards, Washington Hemp Education Network; Ken Houghton, Council for Legislative Action; Al Woodbridge, Washington Property Rights Alliance; Ted Cowan, Washington Firearms Rights Coalition; Ron Moss, Bob Owen, Washington Hemp Education Network; Ernie Lewis, Liberty Initiatives; Jeff Gilmore; CON: Steve Tucker, King County Sheriff; Tami Perdue, WAPA; Patrick Sainsbury, King County Prosecuting Attorney; Lee Reaves, WACOPS; Mark Brown, City of Vancouver;

Fabienne Brooks, King County Sheriff; David Reichert, King County Sheriff; Ron Main, COMPASS; Eric Robertson, Washington State Patrol.

**Testimony For (Ways & Means):** This bill corrects an error in the law, so that financial interests are not connected with law enforcement activities. This strikes at the heart of the property rights of citizens. The collateral damage of the war on drugs is unacceptable.

**Testimony Against (Ways & Means):** The proposed changes are unworkable, bad policy and eventually will be found unconstitutional. These seizures are a valuable tool in law enforcement and aid in addressing methamphetamine issues at the local level.

**Testified (Ways & Means):** PRO: Jerry Sheehan, ACLU; Al Woodbridge, Washington Property Rights Alliance; Chris Clifford; CON: Patrick Sainsbury, King County Prosecuting Attorney; Bill Hanson, WACOPS; Larry Erickson, Washington Association of Sheriffs and Police Chiefs.