

# SENATE BILL REPORT

## SB 6514

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As of February 4, 2002

**Title:** An act relating to civil forfeitures of property.

**Brief Description:** Modifying provisions concerning civil forfeitures.

**Sponsors:** Senators Swecker, Oke, T. Sheldon, Hochstatter and Stevens.

**Brief History:**

**Committee Activity:** Judiciary: 2/6/02.

**Brief Summary of Bill**

- No forfeiture is allowed unless there is a criminal conviction.
- Forfeited property must be sold unless it is contraband or dangerous to the public.
- The clear and convincing evidence standard is used.
- Forfeiture procedures are modified.
- Ten percent of the net proceeds are retained by the seizing agency, 45 percent are deposited in the permanent common school fund and the remaining funds are allocated to public drug treatment programs.
- Plants from which Schedule I and II substances may be derived are not seized and summarily forfeited.

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**SENATE COMMITTEE ON JUDICIARY**

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

**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 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. Money, negotiable instruments, and securities furnished in exchange for a controlled substance or proceeds of a transaction may only be forfeited when a substantial nexus exists between the crime for which the owner was convicted and those items. Plants from which Schedule I and II substances may be derived are not seized and summarily forfeited.

If a financial institution claiming an interest in the property demonstrates that it holds 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.

Within ten days of the seizure, the property owner must be given notice of seizure which must inform the owner of the right to request a hearing before a court at which time the seizing agency must show that probable cause exists to seize the property. For real property, the notice must be personally served, otherwise alternative service is acceptable. Within 20 days of receiving notice of a seizure, the owner may serve the seizing agency with a written request for a hearing. The hearing must occur within 72 hours of receipt. If the court fails to find probable cause, the property must be returned immediately unless it is held for evidentiary purposes. Forfeiture proceedings occur before administrative law judges instead of officers in the seizing agency with clear and convincing evidence as the standard of proof. The burden of proof must be carried by the agency.

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) keep records and file quarterly reports. Sale of forfeited property must be conducted in a commercially reasonable manner. A landlord may assert a claim against proceeds from the sale of assets. The seizing agency must pay the claim unless it proves by a preponderance of the evidence that the landlord knew or consented to the tenant's actions or failed to respond to law enforcement notification of the illegal activity within seven days.

Ten percent of the net proceeds are retained by the seizing agency. By January 31 of each year, each seizing agency remits to the State Treasurer 90 percent of the net proceeds of the forfeiture proceeding. 45 percent of the net proceeds are deposited in the permanent common school fund. The remaining 45 percent of the net proceeds are allocated to public drug treatment programs. 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, unless federal restrictions apply. 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.

Every four years, the State Auditor reports to the Legislature regarding compliance with the act.

**Appropriation:** None.

**Fiscal Note:** Requested on February 1, 2002.

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