

# SENATE BILL REPORT

## SB 5260

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As of January 30, 2005

**Title:** An act relating to proceeds from civil forfeitures.

**Brief Description:** Modifying civil forfeiture provisions.

**Sponsors:** Senators Kline, Keiser and Franklin.

**Brief History:**

**Committee Activity:** Judiciary:

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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 federal 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:** When property is forfeited in drug cases, the property must be sold or destroyed. Forfeited property may no longer be retained or forwarded to the federal Drug Enforcement Administration for disposition, unless the activity giving rise to the forfeiture was interstate in nature or the property was only subject to forfeiture under federal law. The quarterly reports to the state treasurer include the disposition of property not yet sold and the amount of proceeds for the quarter, including funds received from federal agencies. The state must take all necessary steps to obtain shared property and proceeds from federal civil forfeitures.

All of the net proceeds, obtained during the previous year, are sent to the state treasurer. They are deposited in the criminal justice treatment account to be used exclusively for public drug treatment programs.

**Appropriation:** None.

**Fiscal Note:** Requested on January 30, 2005.

**Committee/Commission/Task Force Created:** No.

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