

SENATE BILL REPORT

SB 6701

As Reported By Senate Committee On:
Judiciary, February 08, 2008

Title: An act relating to money laundering.

Brief Description: Expanding the types of property subject to seizure and forfeiture in money laundering provisions.

Sponsors: Senators McDermott, Weinstein, Tom and Kline.

Brief History:

Committee Activity: Judiciary: 2/06/08, 2/08/08 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, McDermott and Weinstein.

Staff: Robert Kay (786-7405)

Background: RCW 69.50.505 sets out the law regarding seizure and forfeiture of proceeds of and property used in the commission of drug offenses. RCW 9A.83.030 applies more generally and concerns the seizure and forfeiture of proceeds traceable to or derived from other specified unlawful activity and money laundering. There are cross-references in the general seizure and forfeiture statute, the general statute, to the drug seizure and forfeiture statute, the drug statute, regarding the means by which a claimant of seized property or proceeds is to be afforded the due process of notice and hearing to challenge the seizure. The amendment and recodification of the drug statute since the codification of the existing general statute has resulted in the destruction of the cross-referencing scheme in the general statute.

The general statute sets out the procedures for seizing and forfeiture of both personal and real property. The statute describes generally how a civil forfeiture action can be filed by the government, how real or personal property may be seized by law enforcement officers, both with and without obtaining court process ordering the seizure, how notice must be given of the seizure to the owner and possessor of the property, and anyone else with an interest in it, under what circumstances seized property is forfeited by default to the state after such notice, and what rights a claimant to the property has to a hearing. Inaccurate cross-reference in the general statute is made to the drug statute regarding the proper forum and fact-finder for the hearing, and the procedures to be followed to remove the hearing from one forum to another.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Inaccurate cross-reference is also made to the drug statute regarding disposition of forfeited property by the government.

Summary of Bill: This bill amends 9A.83.030, the general seizure and forfeiture statute. The bill clarifies when property is the proper object of seizure and forfeiture by the state. Law enforcement agencies are added to the offices of the Attorney General and the county prosecuting attorney as proper government plaintiffs that may file civil actions for the forfeiture of property. A third circumstance is added in which the seizure of personal property by a law enforcement officer without prior court process ordering the seizure is allowed: when an officer has probable cause to believe that the property is forfeitable as provided in the statute, and an exception to the federal and state constitutional search warrant requirements would apply.

The requirements of notice to holders of perfected security interests in real property seized are clarified. Cross-references to the drug statute regarding the forum for a hearing afforded a claimant of seized property are corrected. Procedures and elements, burdens, and standards of proof are set out by which owners of an interest in seized property may recover it before forfeiture. Provisions are set out for an award of attorney fees expended by an owner of an interest in seized property who substantially prevails after challenging the seizure. It is clarified that only the superior court can order the forfeiture of real property, and that such a forfeiture of real property must be followed by filing notice of the forfeiture in the county auditor's record.

It is mandated that all property forfeited must be used first to pay restitution to persons damaged by the illegal conduct. Accurate cross-references are revived to the provisions in the drug forfeiture statute governing disposition of any remaining forfeited property after restitution has been made. Net proceeds remaining are to be used exclusively for the expansion and improvement of law enforcement activity in general.

Appropriation: None.

Fiscal Note: Requested on February 5, 2008.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: Organizations representing prosecutors and defense attorneys have agreed on the language of this bill. This bill corrects the statute that governs seizure and forfeiture of instrumentalities and proceeds of criminal offenses, other than drug offenses. Seizure and forfeiture of instrumentalities and proceeds of drug offenses is governed by a separate statute. The drug offense seizure and forfeiture statute was amended more recently than the general offense statute, and was brought in line with the federal seizure and forfeiture statutes. This bill brings the state general offense statute into line with the state drug offense statute. The bill clarifies that instrumentalities of non-drug crime, and not merely proceeds from such crime, are subject to seizure and forfeiture, as is the case in the drug offense statute. This bill sets out in detail the rules governing how a claim of right can be raised by an innocent owner of property that has been seized and is subject to forfeiture, which is an important part of the process of seizure and forfeiture so that innocent owners are not unjustly deprived of their property because it was in some way involved in a crime without

their knowledge. This bill updates and corrects the cross-references to the drug offense statute in the general offense statute, a needed technical correction.

Persons Testifying: PRO: Zach Fleet, Washington Association of Criminal Defense Attorneys; Tom McBride, Washington Association of Prosecuting Attorneys.