

SENATE BILL REPORT

SB 5160

As Reported by Senate Committee On:
Judiciary, February 06, 2009

Title: An act relating to service of notice from seizing law enforcement agencies.

Brief Description: Concerning service of notice from seizing law enforcement agencies.

Sponsors: Senators Kline, McCaslin and Tom.

Brief History:

Committee Activity: Judiciary: 1/30/09, 2/06/09 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5160 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Kohl-Welles, Roach and Tom.

Staff: Lidia Mori (786-7755)

Background: The duty of the Washington State Board of Pharmacy, the department, and their officers, agents, inspectors and representatives, law enforcement officers within the state, and prosecuting attorneys to enforce all provisions of the Uniform Controlled Substances Act is proclaimed in RCW 69.50.500. As part of this duty, any Washington State Board of Pharmacy inspector or law enforcement officer may seize real or personal property that is subject to forfeiture under the Washington laws governing violations of the controlled substances act. When property is seized under the authority of this act, notice must be served within 15 days following the seizure on the owner of the property seized and any person having any known right or interest in it. Service by mail is deemed complete upon mailing within the 15-day period following the seizure.

If no person notifies the seizing law enforcement agency of the person's claim of ownership or right to possession within 45 days of the seizure, in the case of personal property, or 90 days, in the case of real property, the item seized is deemed forfeited. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the

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act or omission that led to the seizure. If a claim of ownership or right to possession is made within the proper time period, the person will be afforded a reasonable opportunity to be heard as to the claim or right.

Summary of Bill (Recommended Substitute): When property is seized under the authority of the Uniform Controlled Substances Act, a person who wishes to assert a claim of ownership or right to possession must notify the seizing law enforcement agency within 45 days of the service of notice from the seizing agency, in the case of personal property, or within 90 days, in the case of real property. If no person notifies the seizing law enforcement agency of the person's claim of ownership or right to possession within those time periods, the item seized is deemed forfeited.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute): Service of the notice of claim of ownership or right to possession, if served by certified mail, is deemed complete upon mailing.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: The way it works now, law enforcement initiates a forfeiture and notifies us; if we have a secured interest in the asset, that the property has been seized. We then have 45 days from that seizure to start the process to get the property back. There have been situations where the seizing agency does not send out the notice to us until the 15th day. If we receive it on the 19th day, that cuts in to the 45-day timeline. This is a simple bill, it changes it from 45 days of the seizure to 45 days of service of notice from the seizing agency. Other states run the timeline from the date of notice. There are two changes that should be made to this bill: (1) service of notice of a claim should be served in the same manner as service of notice of seizure; (2) the current law on this subject was adopted from the federal forfeiture statute which has since been amended to be in accordance with service not being allowed without process. We can't have a statute that authorizes an unconstitutional procedure.

Persons Testifying: PRO: Gary Gardner, Boeing Employees Credit Union, United Financial Lobby; Richard Troberman, Washington Association of Criminal Defense Lawyers.