

SENATE BILL REPORT

SB 5751

As of February 12, 2015

Title: An act relating to the burden of proof in civil asset forfeiture hearings.

Brief Description: Changing the burden of proof in certain civil asset forfeiture hearings.

Sponsors: Senators Hasegawa, Jayapal, Darneille and Chase.

Brief History:

Committee Activity: Law & Justice: 2/12/15.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Aldo Melchiori (786-7439)

Background: The civil forfeiture provisions under the Uniform Controlled Substances Act (UCSA) 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 Pharmacy Quality Assurance Commission 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 forfeit. If any person notifies the seizing law enforcement

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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.

The hearing is before the chief law enforcement officer of the seizing agency or an administrative law judge if the seizure is by a state agency. The person asserting a claim or right to the property may remove the matter to a court of competent jurisdiction. In all cases, the burden of proof is on the law enforcement agency to establish by a preponderance of the evidence that the property is subject to forfeiture. Claimants who substantially prevail, are entitled to reasonable attorneys' fees.

If property is forfeit, the Pharmacy Quality Assurance Commission 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 forfeit during the preceding calendar year. Money remitted is deposited in the state general fund. 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: In all civil forfeiture cases brought under the UCSA, the law enforcement agency must establish that the property is subject to forfeiture by clear, cogent, and convincing evidence rather than by a preponderance of the evidence. Numerous technical changes are made to correctly refer to the Pharmacy Quality Assurance Commission rather than the Board of Pharmacy.

Appropriation: None.

Fiscal Note: Available.

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: Some of the people who have their property forfeited have never been charged or convicted of a crime. Civil forfeiture has a disparate impact on minorities. Ninety percent of the net proceeds from these forfeiture actions go to the seizing agency and this creates a conflict of interest. The goals of justice can be compromised when the agencies can profit from these forfeitures.

Persons Testifying: PRO: Senator Hasegawa, prime sponsor.