
Judiciary Committee

HB 1016

Title: An act relating to requiring a finding of guilt prior to the forfeiture of private property.

Brief Description: Requiring a finding of guilt prior to the forfeiture of private property.

Sponsors: Representatives Taylor, Shea, Goodman, Condotta, Holy, Young, McCaslin, Hayes, Appleton, Van Werven, Buys, Haler and Blake.

Brief Summary of Bill

- Requires that a property owner be found guilty of a felony before a court may enter a final order of forfeiture of private property.
- Limits property that may be forfeited to that which a court finds is directly involved in, connected with, traceable to, or derived from the felony offense committed by the owner.

Hearing Date: 1/11/17

Staff: Alex Pearson (786-7291) and Edie Adams (786-7180).

Background:

When authorized by statute, a law enforcement agency may take possession of property for the purpose of forfeiting a person's right to own or possess that property. Generally, civil property forfeiture is permitted when the property itself is illegal, was used to facilitate a crime, is actual proceeds of a crime, or was purchased from proceeds traceable to criminal activity.

Forfeiture is permitted under numerous statutes, including in the case of drug crimes, crimes committed with a firearm, human sex trafficking and sexual exploitation crimes, criminal profiteering, and felony crimes generally. The seizing agency must comply with specific statutory due process requirements, which operate separately from a criminal proceeding. Many of the statutes' procedures and requirements are similar to those found in the Uniform Controlled Substances Act (UCSA).

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.

Forfeiture under the Uniformed Controlled Substances Act.

Property subject to forfeiture: Under the UCSA, no property right exists in the controlled substances themselves, anything used to manufacture or pay for them, or proceeds traceable to the sale or exchange of controlled substances. Conveyances, such as vehicles used to facilitate distribution 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 in connection with a crime, or which has been acquired in whole or in part with proceeds of a crime, is subject to forfeiture. Generally, protections exist for the financial interests of innocent third party owners whose property is used without their knowledge or consent.

Seizure process: Upon seizure by a law enforcement agency, the agency must serve notice of seizure and possible forfeiture upon the owner within 15 days. If no person notifies the seizing agency in writing of a claim of ownership or right to possession within 45 days of service of notice in the case of personal property, and 90 days in the case of real property, the property is deemed forfeited by default.

Hearing process: A person who timely notifies the seizing agency in writing of a claim of ownership or right to possession is entitled to a hearing. 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; however, the person asserting a claim or right 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 prevail are entitled to reasonable attorneys' fees.

Disposition of forfeited property: If property is forfeited, the seizing agency may sell, or retain for official use, anything not required by law to be destroyed. A seizing agency must remit to the State Treasurer 10 percent of the net proceeds of any property forfeited during the preceding calendar year for deposit in the State General Fund. The remaining net proceeds are retained by the seizing agency exclusively for the expansion and improvement of controlled substances-related law enforcement, but must not supplant existing funding sources. A report, including a copy of the records of forfeited property, is filed with the State Treasurer each calendar quarter.

Other Forfeiture Statutes.

Many of the other statutes authorizing forfeiture follow a similar scheme, with some variation in, for instance, the types of property that may be forfeited, which party bears the burden of proof, whether records of forfeitures must be kept or reported by the seizing agency, and the protections afforded to innocent third party owners.

Criminal Conviction Generally Not Required.

The majority of statutes do not require the property owner to be convicted of the alleged crime for the property to be forfeited. However, the statute allowing forfeiture of property actually employed in the commission of any felony does not allow forfeiture until after there has been a superior court conviction of the owner of the property for the felony in connection with which the property was employed, furnished, or acquired.

Summary of Bill:

Statutes authorizing forfeiture of property are amended to require that the property owner be found guilty of a felony before a court may enter a final order of forfeiture of private property. Only property a court has found was directly involved in, connected with, traceable to, or derived from the commission of the felony for which the owner was convicted may be forfeited. These requirements apply to statutes authorizing forfeiture of the following:

- property used to facilitate illegal gambling;
- property used to facilitate or create child pornography;
- property used in, or derived from, prostitution or child prostitution;
- property used in the commission of any felony;
- property derived from money laundering;
- property used to commit crimes related to commercial metal property;
- the vehicle a person was driving if convicted of driving while under the influence of alcohol or any drug;
- property used in, or derived from, controlled substances crimes;
- illegal explosives, improvised devices, and their components;
- property used to facilitate the sale or possession of untaxed cigarettes;
- property used to facilitate the unlicensed distribution of tobacco products;
- property used to facilitate tax evasion by electronic means; and
- property used to illegally import, manufacture, or possess untaxed fuel.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.