

Judiciary Committee

HB 1995

Title: *An act relating to civil forfeitures of property.*

Brief Description: *Prohibiting civil forfeitures of property unless the owner has been convicted of a crime.*

Sponsors: *Representatives Dickerson, Cairnes, Grant, Dunn, Campbell, Kagi, Pearson and Wood.*

Brief Summary of Bill

- *Requires a criminal conviction be obtained against the owner of the property before the property may be forfeited.*
- *Shifts the burden of proof to the seizing agency.*
- *Requires any forfeiture be proportional to the specific conduct for which the property owner was convicted.*
- *Sets forth the specific manner in which proceeds from forfeitures will be distributed.*

Hearing Date: *2/22/01*

Staff: *Matthew Zuchetto (786-7291); Trudes Hutcheson (786-7384).*

Background:

There are various statutes authorizing the government to seize and forfeit property because of the property's connection with specific offenses. In particular, law enforcement agencies may seize and forfeit certain property under Washington's drug forfeiture statute.

A. Real and personal property subject to seizure and forfeiture.

The drug forfeiture statute allows law enforcement agencies to seize the following property:

- **illegal drugs, materials used for making illegal drugs, containers for illegal drugs, and illegal drug paraphernalia;**
- **conveyances (e.g., aircraft, automobiles, and boats) used in any manner to facilitate the sale, delivery, or receipt of illegal drugs;**
- **money intended to be used in exchange for illegal drugs;**
- **personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an illegal drug transaction; and**
- **real property (e.g., land and homes) used with the knowledge of the owner to manufacture illegal drugs, if the act giving rise to the forfeiture constitutes at least a class C felony and there is a substantial nexus between the real property and the commercial production or sale of illegal drugs.**

There are some exceptions. For example, conveyances are not subject to forfeiture if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor. In addition, conveyances may not be forfeited if the owner did not know or consent to the illegal activity.

The community property interest in real property of a person whose spouse committed the illegal act may not be forfeited if the person did not participate in the illegal act. A forfeiture of real property with a bona fide security interest is subject to the interest if the secured party neither had knowledge nor consented to the illegal activity.

Possession of marijuana may not result in the forfeiture of real property unless the possession was for commercial purposes, the amount possessed was five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession and the real property. The unlawful sale of marijuana or a legend drug may not result in the forfeiture of real property unless the sale was 40 grams or more and a substantial nexus exists between the unlawful sale and the real property.

B. Procedural requirements for seizure and forfeiture.

Real property may only be seized upon process issued by a superior court. Forfeiture proceedings for real property are always judicial, as opposed to administrative. The seizure must include a filing of a lis pendens by the seizing agency to give notice to prospective purchasers that the property's title is unsettled.

Prior judicial action is not always necessary for the seizure of personal property. For example, law enforcement may seize personal property if:

- *the seizure was incident to arrest or under a search warrant;*
- *the officer has probable cause to believe the property is directly or indirectly dangerous to public health or safety; or*
- *the officer has probable cause to believe the property was used or intended to be used in violation of the drug laws.*

Once the seizure of property occurs, the forfeiture proceeding is considered commenced. The law enforcement agency must give notice within 15 days of the seizure to the owner or anyone who has a known interest in the property. If no person notifies the law

enforcement agency of an interest in the property, the property is deemed forfeited. The automatic forfeiture occurs 45 days after notice is given for personal property and 90 days after notice is given for real property when no person claims an interest.

If a person claims an interest in the seized property within the prescribed time period, the person will be afforded a reasonable opportunity to be heard. A hearing will be held before the chief law enforcement officer of the seizing agency or an administrative law judge. However, the person claiming an interest in the seized property may remove the case to a court of competent jurisdiction.

In cases of personal property, the seizing agency has the initial burden of showing probable cause exists to believe the property is subject to forfeiture. The burden shifts to the claimant to establish, by a preponderance of the evidence, that the property is not subject to forfeiture.

For real property, the burden of producing evidence and burden of proof that the real property is subject to forfeiture remains on the seizing law enforcement agency.

C. Distribution of forfeited property.

When property is forfeited, the seizing law enforcement agency may:

- retain the forfeited property for official use by the agency;*
- sell the forfeited property;*
- forward the forfeited property to the drug enforcement administration; or*
- request the sheriff or director of public safety to take custody of the forfeited property.*

Seizing law enforcement agencies are required to remit 10 percent of the net proceeds from forfeited property annually to the State Treasurer to be deposited in the drug enforcement and education account. Net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject, or deducting the cost of sale in the case of sold property.

The seizing law enforcement agency is required to keep records regarding forfeited property. Specifically, the agency must keep a record of the identity of the owner, description and disposition of the forfeited property, value of the property at the time of seizure, and amount of proceeds realized from the sale of any forfeited property. These records must be maintained for at least seven years and must be submitted annually to the State Treasurer.

Summary of Bill:

Generally, the owner of the property must be convicted of a crime before any property can be forfeited. In order to obtain a forfeiture, the seizing law enforcement agency must show by clear and convincing evidence that the property to be forfeited was instrumental in either committing or facilitating the crime, or must show that the property is proceeds of the crime. Moreover, the value of the property forfeited must be proportional to the specific conduct for which the property owner was convicted.

However, if the government gives proper notice and no one claims an interest in the property to be forfeited, no conviction is required. Likewise, contraband is forfeitable without a criminal conviction.

Proceeds from civil forfeitures must be distributed in the following manner:

- *first, to any foreclosed liens, security interests, and contracts;*
- *second, to the state for reasonable expenses related to the forfeiture proceeding, not to exceed 25 percent of the total proceeds; and*
- *third, to the state to be used exclusively for drug treatment.*

The state is required to take all necessary steps to obtain property and proceeds from federal civil forfeitures, and any property or proceeds received under federal forfeitures must be distributed under the state law. The state must not transfer a forfeiture proceeding to the federal government unless a specific criterion is met.

If a person who claims an interest in property subject to forfeiture is not a defendant or financial institution, the person's interest will not be forfeited, unless the government proves by clear and convincing evidence that the person obtained an interest in the property with intent to defeat the forfeiture.

A committee is created to collect information, generate an annual report, and make recommendations regarding civil forfeiture. Law enforcement agencies involved in civil forfeitures are required to submit specific information to the committee.

Appropriation: *None.*

Fiscal Note: *Requested on February 14, 2001.*

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