

SENATE BILL REPORT

SHB 1616

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, FEBRUARY 28, 1992

Brief Description: Providing for seizure of property involved in a felony.

SPONSORS: House Committee on Judiciary (originally sponsored by Representatives Ludwig, Riley, Paris, Heavey, Prince, R. Johnson, Mielke, Orr, Bray, Ferguson, Vance, Winsley, Van Luven, Haugen, Kremen, Scott, Rayburn, Miller, Roland, Chandler, Moyer and Sheldon).

HOUSE JUDICIARY COMMITTEE

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Nelson, Chairman; Thorsness, Vice Chairman; Erwin, Hayner, M. Kreidler, Madsen, Newhouse, Rasmussen, and A. Smith.

Staff: Jack Brummel (786-7428)

Hearing Dates: April 2, 1991; February 20, 1992; February 28, 1992

BACKGROUND:

Within state law, there are several provisions authorizing or requiring forfeiture of property when the property has been used in or procured through the commission of some unlawful act. For instance, the Uniform Controlled Substances Act includes a provision authorizing forfeiture of real and personal property when the property has been employed as an element of some drug law violation. There is no law, however, which generally authorizes the seizure and forfeiture of property when it is used in the commission of a felony.

SUMMARY:

All personal property used in the commission of, or as compensation for, a felony, is subject to forfeiture. The law enforcement agency with jurisdiction over the property is authorized to seize the property and, after satisfying due process requirements, retain all proceeds from the sale of the property.

Seizure of property may be made upon process issued by any superior court or without process if necessary to preserve the public health and welfare. Within 15 days after seizure, the law enforcement agency will serve notice of the seizure on all known holders of interest in the property. Any person responding to the notice within 45 days is entitled to an

opportunity to be heard either before the chief law enforcement officer or, if the amount in controversy exceeds \$500, a court of competent jurisdiction.

No property will be forfeited if the felony was committed without the consent or knowledge of the owner. A forfeiture of property encumbered by a security interest is subject to the interest of a secured party who neither had knowledge of nor consented to the commission of the felony at the time the security interest was created.

Appropriation: none

Revenue: none

Fiscal Note: none requested

SUMMARY OF PROPOSED SENATE AMENDMENT:

Seizure of property without process may be made without a warrant if the seizing officer has probable cause to believe that the property was used in the commission of a felony. The seizing officer must obtain a warrant within 48 hours after seizure or the property is returned.

A person claiming a right to the property seized within 45 days of seizure is entitled to a hearing before the agency within 120 days of seizure.

A person claiming a right to seized property may remove the matter to court but does not have a right to a new trial before a court if the agency conducts a hearing and makes a decision.

The initial burden of producing evidence of legitimate ownership and lack of knowledge of, or consent to, the felony is on the person claiming ownership. After that the burden of proof is on the law enforcement agency.

Towing and storage costs for property seized from innocent owners will be paid by the seizing agency. Seizing agencies may cover their costs from proceeds of sales, the remainder of the proceeds go to the state.

TESTIMONY FOR:

Personal property used in the commission of a crime should be subject to forfeiture.

TESTIMONY AGAINST:

The bill has some constitutional problems and fails to address a number of procedural issues regarding the quick return of property and the burden of persuasion.

TESTIFIED: Representative Ludwig (pro); John Zulauf, WA Assoc. of Criminal Defense Lawyers