

**SENATE BILL REPORT**

**ESSB 5815**

**AS PASSED SENATE, MARCH 12, 1993**

**Brief Description:** Concerning seizure and forfeiture.

**SPONSORS:** Senate Committee on Law & Justice (originally sponsored by Senators West and Moyer)

**SENATE COMMITTEE ON LAW & JUSTICE**

**Majority Report:** That Substitute Senate Bill No. 5815 be substituted therefor, and the substitute bill do pass.

Signed by Senators A. Smith, Chairman; Quigley, Vice Chairman; Hargrove, McCaslin, Nelson, Niemi, Roach, and Spanel.

**Staff:** Jon Carlson (786-7459)

**Hearing Dates:** March 3, 1993

**HOUSE COMMITTEE ON JUDICIARY**

**BACKGROUND:**

Under the state's Uniform Controlled Substances Act, illegal drugs, and any real or personal property associated with the production, delivery, importation, or exportation of illegal drugs, are generally subject to seizure and forfeiture by law enforcement authorities.

No real or personal property may be forfeited, to the extent of the interest of an owner, by reason of any act or omission committed without the owner's knowledge or consent. There is concern that the seizure and forfeiture provisions concerning personal property associated with illegal drug activity are being circumvented by individuals who simply transfer ownership of such property to another party.

A person whose personal or real property is seized by a law enforcement agency is afforded the opportunity at a hearing to make a claim of ownership or right to possession. The person must notify the seizing law enforcement agency in writing within 45 days of the seizure in the case of personal property, and 90 days in the case of real property. The hearing is before the chief law enforcement officer of the seizing agency or his or her designee. If the seizing agency is a state agency, the hearing is before the chief law enforcement officer of the seizing agency or an administrative law judge.

Any person asserting a claim or right to the property may remove the case to a court of competent jurisdiction if the total value of the seized items is more than \$500. However,

the current procedures for removing the case to court are unclear.

**SUMMARY:**

No personal property may be forfeited under the Uniform Controlled Substances Act by innocent owners who are devisees, legatees, or bona fide purchasers for value.

A person asserting a claim of ownership or right to possession with regard to seized property may only remove the case to a court of competent jurisdiction according to the rules of civil procedure.

The person who seeks to remove the case is required to serve process, in accordance with existing statutory requirements for service of process, against the state or political subdivision which operates the seizing agency and any other party of interest. The service of process must occur within 45 days after a person notifies the seizing agency of his or her claim of ownership.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** requested

**TESTIMONY FOR:**

This measure would eliminate the uncertainty and confusion surrounding the process of removing a claim of ownership from a seizing agency to a court of competent jurisdiction.

**TESTIMONY AGAINST:** None

**TESTIFIED:** Rocco N. Treppiedi, Salvatore J. Faggiano, Spokane City Attorney's office (pro); Jack Nevin, Pierce County Prosecutor's office (pro)

**HOUSE AMENDMENT(S):**

The House amendment strikes the language of the Senate bill in its entirety. A number of modifications are made relative to the seizure and forfeiture of personal property under the state's Uniform Controlled Substances Act. Provisions are also included in the motor vehicle statutes that allow for the seizure and forfeiture of vehicles where the owner has multiple DWI convictions.

With regard to seized property, requirements are included for notifying the holder of a security interest which is perfected by a UCC financing statement or by a title document. Before property which is subject to such an interest may be forfeited, the holder of the interest must be notified at the address shown on the financing statement or the certificate of title.

The time within which an owner or person with an interest may respond to a notice of seizure is extended to 90 days. A contested hearing is required before a perfected security interest may be extinguished. The prosecuting attorney must file the case into a court of competent jurisdiction.

A vehicle driven by or under the control of the owner is subject to seizure and forfeiture if the owner incurs more than one DWI conviction within a five-year period.

The seized vehicle is subject to forfeiture under procedures similar to those that apply to personal property forfeitures under the state's drug laws. Law enforcement must serve notice on the owner, and any person having any known right or interest in the vehicle including a community property interest, within 15 days after the seizure. The vehicle is deemed forfeited if no one notifies the law enforcement agency of a claim within 90 days of the seizure.

A person who claims ownership or right to possession of the vehicle is entitled to a hearing and the vehicle is then returned to the claimant if the court or the chief law enforcement officer of the seizing agency determines that the person has a lawful right to possession. Upon forfeiture, the seizing law enforcement agency may retain, trade, or sell the vehicle. Each year, the seizing agency must remit 10 percent of the net proceeds of forfeited vehicles to the public safety and education account.

When a person convicted for DWI within the previous five years is charged with DWI, the court must notify the Department of Licensing (DOL). When DOL receives such a notice, it is required to withhold issuance of a certificate of ownership for the vehicle that is driven by the person charged with DWI, until it receives notice of dismissal or acquittal of the charges. It is a misdemeanor to sell or otherwise transfer the ownership of a vehicle driven by the owner of the vehicle who is currently charged with a second DWI.