

# SENATE BILL REPORT

## ESHB 1995

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As of April 11, 2001

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

**Brief Description:** Revising provisions relating to civil forfeitures of property and convening a workgroup to evaluate civil forfeiture laws.

**Sponsors:** By House Committee on Judiciary (originally sponsored by Representatives Dickerson, Cairnes, Grant, Dunn, Campbell, Kagi, Pearson and Wood).

**Brief History:**

**Committee Activity:**

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**Staff:** Aldo Melchiori (786-7439)

**Background:** The civil forfeiture provisions in drug cases 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 State Board of Pharmacy 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 forfeited. If any person notifies the seizing law enforcement 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.

If property is forfeited, the board 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 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 forfeited during the preceding calendar year. Money remitted is deposited in the violence reduction and drug enforcement account. 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 cases involving personal property or real property, the burden of proof is upon the law enforcement agency to establish by a preponderance of the evidence that the property is subject to forfeiture. If a claimant substantially prevails in a forfeiture proceeding, the claimant is entitled to reasonable attorney fees that were reasonably incurred.

A 16-member workgroup is created to evaluate the civil forfeiture laws and practices. The workgroup must, among other things, study whether a requirement for a criminal conviction before forfeiture raises constitutional issues and review every civil forfeiture case that took place under state law during the year 2000. The workgroup consists of: four members from the Senate, two from each caucus; four members from the House, two from each caucus; two representatives from the American Civil Liberties Union; two representatives from the Washington Association of Sheriffs and Police Chiefs; two representatives from the Washington Association of Prosecuting Attorneys; and two representatives from the Washington Association of Criminal Defense Lawyers. The workgroup must submit its findings and recommendations to the Senate and House Judiciary Committees by December 1, 2001. The workgroup terminates on December 15, 2001.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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