
Civil Rights & Judiciary Committee

HB 1385

Brief Description: Concerning seizure and forfeiture procedures and reporting.

Sponsors: Representatives Hackney, Goodman, Fitzgibbon and Simmons.

Brief Summary of Bill

- Establishes a new chapter governing civil asset forfeiture under laws relating to specified criminal activity, and establishes standard procedures and requirements for seizure and forfeiture proceedings.
- Establishes general reporting requirements applicable to all seizing agencies, regardless of whether the seizure and forfeiture is made pursuant to the new chapter or other law, or in collaboration with a federal agency under federal law.
- Amends civil asset forfeiture provisions under the Uniform Controlled Substances Act to conform to requirements under the new civil asset forfeiture chapter.
- Provides that the Service Members' Civil Relief Act applies to civil asset forfeiture proceedings.

Hearing Date: 1/31/23

Staff: Edie Adams (786-7180).

Background:

Forfeiture Generally.

When authorized by statute, a law enforcement agency may seize possession of property for the purpose of forfeiting a person's right to own or possess that property. Generally, civil asset

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forfeiture is permitted when the property itself is illegal, was used to facilitate a crime, is an actual proceed of a crime, or was purchased from proceeds traceable to criminal activity.

Civil asset forfeiture is permitted under a variety of statutes, including in the case of drug crimes, crimes committed with a firearm, and human sex trafficking and sexual exploitation crimes. The seizing agency must comply with specific statutory process requirements, which operate separately from a criminal proceeding. With the exception of the statute governing forfeiture in felony cases, these statutes do not require the property owner to be convicted of the alleged crime for the property to be forfeited.

Many of the statutes' procedures and requirements are similar, but not identical, to those found in the Uniform Controlled Substances Act (UCSA).

Uniform Controlled Substances Act.

Under the UCSA, a variety of property is subject to forfeiture, including controlled substances and anything used to manufacture or pay for them, proceeds traceable to the sale or exchange of controlled substances, conveyances used to facilitate distribution of controlled substances, and other personal property furnished in exchange for a controlled substance. Conveyances and other personal property may not be subject to forfeiture if the owner establishes that the act or omission occurred without his or her knowledge or consent. Real property 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.

Seizure and Hearing 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.

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. The person asserting a claim or right may remove the matter to a court of competent jurisdiction. 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 10 percent of the net proceeds of any property forfeited during the preceding calendar year. Until June 30, 2027, the money must be deposited into the Behavioral Health Loan Repayment Program Account, and thereafter into 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.

Recordkeeping Requirements. When property is forfeited, seizing agencies must keep, and retain for at least seven years, a record indicating: the identity of the prior owner; a description of the property; the disposition of the property; the value of the property at the time of seizure; and the amount of proceeds realized from disposition. Quarterly reports detailing the above must be filed by each seizing agency.

Service Members' Civil Relief Act.

The Washington Service Members' Civil Relief Act (SCRA) contains certain rights for service members and their dependents whose financial and legal obligations may be adversely impacted by active military duty. It applies to any judicial or administrative proceeding commenced in any court or agency in the state in which a service member or his or her dependent is a party. The SCRA also contains provisions restricting contract fines and penalties, restructuring interest rates on certain business loans, and tolling statutes of limitations during military service periods.

Summary of Bill:

Forfeiture Generally.

A new chapter is created with respect to civil asset forfeiture proceedings. The entirety of the new chapter is applicable to seizures and forfeitures under statutes regarding the following:

- sexual exploitation of children;
- indecent exposure and prostitution;
- money laundering;
- theft of metal;
- impaired driving;
- fish and wildlife violations; and
- felony forfeiture.

Commencement of Forfeiture Proceedings.

Except with respect to contraband items, which must be seized and summarily forfeited, proceedings for forfeiture are deemed commenced by the seizure. 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 60 days of service of notice in the case of personal property, and 120 days in the case of real property, the property is deemed forfeited by default.

The Service Members' Civil Relief Act (SCRA) is applicable to civil asset proceedings.

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 if the seizure is by a state agency, may alternatively be before an administrative law judge. 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. No personal or real property may be forfeited to the extent of the interest of an owner by reason of any act or omission committed or omitted without the owner's knowledge or consent.

Upon a determination by a court or hearing officer that the claimant is the present lawful owner or is lawfully entitled to possession, the seizing agency must promptly return seized items in the same or substantially similar condition as when they were seized. Claimants who prevail are entitled to reasonable attorneys' fees.

Disposition of Forfeited Property and Proceeds.

If property is forfeited, and after satisfaction of any victim restitution, the seizing agency may sell, retain for official use, request another entity to take custody of, or forward to an appropriate entity, anything not required by law to be destroyed. Forfeited property retained by the seizing agency must be used exclusively for the expansion and improvement of related enforcement activities, and may not be used to supplant preexisting funding sources.

By January 31 of each year, each seizing agency must remit to the State Treasurer (Treasurer) 10 percent of the proceeds of any property forfeited during the previous calendar year for deposit into the State General Fund, except that 10 percent of the net proceeds of any property forfeited based on a felony conviction or a second or subsequent impaired driving offense during the preceding calendar year must be deposited into the Behavioral Health Loan Repayment Program Account until June 30, 2027, and into the State General Fund thereafter.

Uniform Controlled Substances Act.

The Uniform Controlled Substances Act (UCSA) is amended to:

- extend the time period for a person to contest a seizure from 45 to 60 days in the case of personal property, and from 90 to 120 days in the case of real property;
- strike language regarding forfeiture of conveyances and personal property that requires the owner, in order to avoid forfeiture, to establish that the commission or omission was without the owner's knowledge or consent;
- require that when property is ordered to be returned to a claimant, it must be returned in the same or substantially similar condition as when seized;
- strike the current reporting requirements, and make the UCSA subject to the reporting requirements found in the new chapter; and
- provide that the protections afforded by the SCRA are applicable to proceedings under the UCSA.

Reporting Requirements Applicable to All Seizing Agencies.

General reporting requirements are included in the new chapter and made applicable to all seizures by seizing agencies, regardless of whether the seizure was made pursuant to the new chapter, other state statutes, or was conducted in collaboration with a federal agency under federal law. Seizing agencies must keep records about property seized and forfeited, including information regarding multiple specific data points such as date of seizure, type and value of property, whether the forfeiture was contested, and value of net proceeds retained. Seizing

agencies must file with the Treasurer an annual report that includes these records and provide annual updates. If an agency has made no seizures during the previous year it must file a report to that effect. Seizing agencies must report information on expenditures from net proceeds to the Treasurer annually by March 1.

The Treasurer must establish and maintain a searchable public website that includes these records, as well information information regarding the expenditure of forfeiture proceeds, that includes:

- the total amount of funds expended in each of eight categories (such as prevention programs, witness protection, expert witnesses, salaries, travel, and operating expenses), which resulted from property seized, forfeited, and reported; and
- the total value of seized and forfeited property held by the agency at the end of the reporting period.

One hundred and twenty days after the close of each fiscal year, the Treasurer must submit a report summarizing forfeiture activity in the state to the Speaker of the House of Representatives, the President of the Senate, the Attorney General, and the Governor. The aggregate report must be made available on the Treasurer's website. In the report, the Treasurer may include recommendations to improve statutes, rules, and policies to facilitate seizure, forfeiture, and expenditure processes and reporting that are fair to crime victims, innocent property owners, secured interest holders, citizens, law enforcement, and taxpayers.

An agency failing to file a report as required is first issued a written warning, and any subsequent delinquency is subject to a civil penalty payable to the State General Fund of \$500 or the equivalent of one-quarter of the forfeiture proceeds received during the reporting period, whichever is greater. The data and reports are public information under the Public Records Act.

Application.

The act applies to seizures occurring on or after January 1, 2024.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains multiple effective dates. Please see the bill.