



March 26, 1999

**ENGROSSED
SENATE BILL No. 592**

DIGEST OF SB 592 (Updated March 24, 1999 5:59 pm - DI 76)

Citations Affected: IC 34-24; IC 35-33; IC 35-43.

Synopsis: Disposition of seized property. Requires property seized under the law concerning forfeiture of property used in violation of certain criminal statutes to be transferred, upon motion of a prosecuting attorney, to the appropriate federal authority for disposition, subject to all perfected liens and other security interests, under federal laws concerning customs duties and drug abuse prevention and control.
(Continued next page)

Effective: July 1, 1999.

Bray, Waterman, Alexa, Antich

(HOUSE SPONSORS — COCHRAN, DILLON, DVORAK)

January 21, 1999, read first time and referred to Committee on Judiciary.
February 11, 1999, amended, reported favorably — Do Pass.
February 15, 1999, read second time, amended, ordered engrossed.
February 16, 1999, engrossed.
February 18, 1999, read third time, passed. Yeas 47, nays 3.

HOUSE ACTION

March 3, 1999, read first time and referred to Committee on Courts and Criminal Code.
March 25, 1999, amended, reported — Do Pass.

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Requires the forfeiture sale proceeds that are returned by the federal government to a state or local law enforcement agency to be expended only with the approval of: (1) the appropriate county executive, if the proceeds are received by a local law enforcement agency; or (2) the governor, if the proceeds are received by a law enforcement agency in the executive branch. Provides that a person who, with the intent to deceive or defraud another person, manufactures or sells an item bearing a counterfeit mark or a service identified by a counterfeit mark, commits trademark counterfeiting, a Class A misdemeanor. Provides for felony penalty enhancements that apply to trademark counterfeiting if the offense involves a certain retail value or a certain quantity of items. Provides that items bearing a counterfeit mark and certain property that is used in connection with felony trademark counterfeiting may be seized and the property is subject to forfeiture. Provides, however, that property bearing a counterfeit mark must be: (1) released to the owner of the trademark or service mark that was counterfeited; or (2) destroyed.

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March 26, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

ENGROSSED SENATE BILL No. 592

A BILL FOR AN ACT to amend the Indiana Code concerning civil and criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 34-24-1-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) The following
3 may be seized:
4 (1) All vehicles (as defined by IC 35-41-1), if they are used or are
5 intended for use by the person or persons in possession of them to
6 transport or in any manner to facilitate the transportation of the
7 following:
8 (A) A controlled substance for the purpose of committing,
9 attempting to commit, or conspiring to commit any of the
10 following:
11 (i) Dealing in cocaine or narcotic drug (IC 35-48-4-1).
12 (ii) Dealing in a schedule I, II, or III controlled substance
13 (IC 35-48-4-2).
14 (iii) Dealing in a schedule IV controlled substance
15 (IC 35-48-4-3).

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- 1 (iv) Dealing in a schedule V controlled substance
 2 (IC 35-48-4-4).
 3 (v) Dealing in a counterfeit substance (IC 35-48-4-5).
 4 (vi) Possession of cocaine or narcotic drug (IC 35-48-4-6).
 5 (vii) Dealing in paraphernalia (IC 35-48-4-8.5).
 6 (viii) Dealing in marijuana, hash oil, or hashish
 7 (IC 35-48-4-10).
 8 (B) Any stolen (IC 35-43-4-2) or converted property
 9 (IC 35-43-4-3) if the retail or repurchase value of that property
 10 is one hundred dollars (\$100) or more.
 11 (C) Any hazardous waste in violation of IC 13-30-6-6.
 12 (2) All money, negotiable instruments, securities, weapons,
 13 communications devices, or any property commonly used as
 14 consideration for a violation of IC 35-48-4 (other than items
 15 subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1
 16 before its repeal):
 17 (A) furnished or intended to be furnished by any person in
 18 exchange for an act that is in violation of a criminal statute;
 19 (B) used to facilitate any violation of a criminal statute; or
 20 (C) traceable as proceeds of the violation of a criminal statute.
 21 (3) Any portion of real or personal property purchased with
 22 money that is traceable as a proceed of a violation of a criminal
 23 statute.
 24 (4) A vehicle that is used by a person to:
 25 (A) commit, attempt to commit, or conspire to commit;
 26 (B) facilitate the commission of; or
 27 (C) escape from the commission of;
 28 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 29 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 30 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4).
 31 (5) Real property owned by a person who uses it to commit any of
 32 the following as a Class A felony, a Class B felony, or a Class C
 33 felony:
 34 (A) Dealing in cocaine or narcotic drug (IC 35-48-4-1).
 35 (B) Dealing in a schedule I, II, or III controlled substance
 36 (IC 35-48-4-2).
 37 (C) Dealing in a schedule IV controlled substance
 38 (IC 35-48-4-3).
 39 (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
 40 (6) Equipment and recordings used by a person to commit fraud
 41 under IC 35-43-5-4(11).
 42 (7) Recordings sold, rented, transported, or possessed by a person

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1 in violation of IC 24-4-10.

2 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as
3 defined by IC 35-45-6-1) that is the object of a corrupt business
4 influence violation (IC 35-45-6-2).

5 (9) Unlawful telecommunications devices (as defined in
6 IC 35-45-13-6) and plans, instructions, or publications used to
7 commit an offense under IC 35-45-13.

8 **(10) Items bearing a counterfeit mark and all property (as**
9 **defined in IC 35-41-1-23) used in connection with a violation**
10 **of IC 35-43-5-14(c).**

11 (b) A vehicle used by any person as a common or contract carrier in
12 the transaction of business as a common or contract carrier is not
13 subject to seizure under this section, unless it can be proven by a
14 preponderance of the evidence that the owner of the vehicle knowingly
15 permitted the vehicle to be used to engage in conduct that subjects it to
16 seizure under subsection (a).

17 (c) Money, negotiable instruments, securities, weapons,
18 communications devices, or any property commonly used as
19 consideration for a violation of IC 35-48-4 found near or on a person
20 who is committing, attempting to commit, or conspiring to commit any
21 of the following offenses shall be admitted into evidence in an action
22 under this chapter as prima facie evidence that the money, negotiable
23 instrument, security, or other thing of value is property that has been
24 used or was to have been used to facilitate the violation of a criminal
25 statute or is the proceeds of the violation of a criminal statute:

26 (1) IC 35-48-4-1 (dealing in cocaine or narcotic drug).

27 (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled
28 substance).

29 (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

30 (4) IC 35-48-4-4 (dealing in a schedule V controlled substance)
31 as a Class B felony.

32 (5) IC 35-48-4-6 (possession of cocaine or narcotic drug) as a
33 Class A felony, Class B felony, or Class C felony.

34 (6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as
35 a Class C felony.

36 SECTION 2. IC 34-24-1-4 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) At the hearing,
38 the prosecuting attorney must show by a preponderance of the evidence
39 that the property was within the definition of property subject to seizure
40 under section 1 of this chapter. If the property seized was a vehicle, the
41 prosecuting attorney must also show by a preponderance of the
42 evidence that a person who has an ownership interest of record in the

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1 bureau of motor vehicles knew or had reason to know that the vehicle
2 was being used in the commission of the offense.

3 (b) If the prosecuting attorney fails to meet the burden of proof, the
4 court shall order the property released to the owner.

5 (c) If the court enters judgment in favor of the state, or the state and
6 a unit (if appropriate), the court, subject to section 5 of this chapter,
7 shall order delivery to the law enforcement agency that seized the
8 property. The court's order may permit the agency to use the property
9 for a period not to exceed three (3) years. However, the order must
10 require that, after the period specified by the court, the law
11 enforcement agency shall deliver the property to the county sheriff for
12 public sale.

13 (d) If the court enters judgment in favor of the state, or the state and
14 a unit (if appropriate), the court shall, subject to section 5 of this
15 chapter:

- 16 (1) determine the amount of law enforcement costs; and
17 (2) order that:

18 (A) the property, if it is not money or real property, be sold
19 under section 6 of this chapter, by the sheriff of the county in
20 which the property was seized, and if the property is a vehicle,
21 this sale must occur after any period of use specified in
22 subsection (c);

23 (B) the property, if it is real property, be sold in the same
24 manner as real property is sold on execution under IC 34-55-6;

25 (C) the proceeds of the sale or the money be deposited in the
26 general fund of the state, or the unit that employed the law
27 enforcement officers that seized the property; and

28 (D) any excess in value of the proceeds or the money over the
29 law enforcement costs be forfeited and transferred to the
30 treasurer of state for deposit in the common school fund.

31 (e) If property that is seized under this chapter (or IC 34-4-30.1-4
32 before its repeal) is transferred:

33 (1) after its seizure, but before an action is filed under section 3
34 of this chapter (or IC 34-4-30.1-3 before its repeal); or

35 (2) when an action filed under section 3 of this chapter (or
36 IC 34-4-30.1-3 before its repeal) is pending;

37 the person to whom the property is transferred must establish an
38 ownership interest of record as a bona fide purchaser for value. A
39 person is a bona fide purchaser for value under this section if the
40 person, at the time of the transfer, did not have reasonable cause to
41 believe that the property was subject to forfeiture under this chapter.

42 (f) If the property seized was an unlawful telecommunications

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1 device (as defined in IC 35-45-13-6) or plans, instructions, or
 2 publications used to commit an offense under IC 35-45-13 , the court
 3 may order the sheriff of the county in which the person was convicted
 4 of an offense under IC 35-45-13 to destroy as contraband or to
 5 otherwise lawfully dispose of the property.

6 **(g) If the item seized was property (as defined in IC 35-41-1-23)**
 7 **used in violation of IC 35-43-5-14(c), the property is subject to**
 8 **forfeiture under this chapter. However, property bearing a**
 9 **counterfeit mark must be:**

- 10 (1) released to the owner of the trademark or service mark
 11 that was counterfeited; or
 12 (2) destroyed.

13 SECTION 3. IC 34-24-1-9 IS ADDED TO THE INDIANA CODE
 14 A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 15 1999]: **Sec. 9. (a) Upon motion of a prosecuting attorney under**
 16 **IC 35-33-5-5(i), property seized under this chapter must be**
 17 **transferred, subject to the perfected liens or other security**
 18 **interests of any person in the property, to the appropriate federal**
 19 **authority for disposition under 19 U.S.C. 1616a or 21 U.S.C. 881(e)**
 20 **and any related regulations adopted by the United States**
 21 **Department of Justice.**

22 (b) Money received by a law enforcement agency as a result of
 23 a forfeiture under 19 U.S.C. 1616a or 21 U.S.C. 881(e) and any
 24 related regulations adopted by the United States Department of
 25 Justice may be expended only with the approval of:

- 26 (1) the executive (as defined in IC 36-1-2-5), if the money is
 27 received by a local law enforcement agency; or
 28 (2) the governor, if the money is received by a law
 29 enforcement agency in the executive branch.

30 SECTION 4. IC 35-33-5-5 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 5. (a) All items of**
 32 **property seized by any law enforcement agency as a result of an arrest,**
 33 **search warrant, or warrantless search, shall be securely held by the law**
 34 **enforcement agency under the order of the court trying the cause,**
 35 **except as provided in this section.**

36 (b) Evidence that consists of property obtained unlawfully from its
 37 owner may be returned by the law enforcement agency to the owner
 38 before trial, in accordance with IC 35-43-4-4(h).

39 (c) Following the final disposition of the cause at trial level or any
 40 other final disposition **the following shall be done:**

- 41 (1) Property which may be lawfully possessed shall be returned
 42 to its rightful owner, if known. If ownership is unknown, a

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1 reasonable attempt shall be made by the law enforcement agency
 2 holding the property to ascertain ownership of the property. After
 3 ninety (90) days from the time:

4 (A) the rightful owner has been notified to take possession of
 5 the property; or

6 (B) a reasonable effort has been made to ascertain ownership
 7 of the property;

8 the law enforcement agency holding the property shall, at such
 9 time as it is convenient, dispose of this property at a public
 10 auction. The proceeds of this property shall be paid into the
 11 county general fund.

12 (2) Property, the possession of which is unlawful, shall be
 13 destroyed by the law enforcement agency holding it sixty (60)
 14 days after final disposition of the cause.

15 (d) If any property described in subsection (c) was admitted into
 16 evidence in the cause, the property shall be disposed of in accordance
 17 with an order of the court trying the cause.

18 (e) For purposes of preserving the record of any conviction on
 19 appeal, a photograph demonstrating the nature of the property, and an
 20 adequate description of the property must be obtained before the
 21 disposition of it. In the event of a retrial, the photograph and
 22 description of the property shall be admissible into evidence in place
 23 of the actual physical evidence. All other rules of law governing the
 24 admissibility of evidence shall apply to the photographs.

25 (f) The law enforcement agency disposing of property in any manner
 26 provided in subsections (b) and (c) of this section shall maintain
 27 certified records of any such disposition. Disposition by destruction of
 28 property shall be witnessed by two (2) persons who shall also attest to
 29 the destruction.

30 (g) This section does not affect the procedure for the disposition of
 31 firearms seized by a law enforcement agency.

32 (h) A law enforcement agency that disposes of property by auction
 33 under this section shall permanently stamp or otherwise permanently
 34 identify the property as property sold by the law enforcement agency.

35 **(i) Upon motion of the prosecuting attorney, the court shall**
 36 **order property seized under IC 34-24-1 transferred, subject to the**
 37 **perfected liens or other security interests of any person in the**
 38 **property, to the appropriate federal authority for disposition under**
 39 **19 U.S.C. 1616a or 21 U.S.C. 881(e) and any related regulations**
 40 **adopted by the United States Department of Justice.**

41 SECTION 5. IC 35-43-5-14 IS ADDED TO THE INDIANA CODE
 42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 1999]: **Sec. 14. (a) As used in this section:**

2 (1) "Trademark" has the meaning set forth in IC 24-2-1-2.

3 (2) "Counterfeit mark" means:

4 (A) a trademark affixed to an item of property or used to
5 identify services without the authorization of the
6 trademark's owner; or

7 (B) a copy or imitation of a trademark made without the
8 authorization of the trademark's owner.

9 (3) "Retail value" means the counterfeiter's regular selling
10 price for the item or service bearing or identified by the
11 counterfeit mark. In the case of items bearing a counterfeit
12 mark that are components of a finished product, the retail
13 value is the counterfeiter's regular selling price of the finished
14 product on or in which the component is used.

15 (4) For purposes of this section, the quantity or retail value of
16 items or services includes the aggregate quantity or retail
17 value of all items bearing or services identified by every
18 counterfeit mark the defendant manufactures, advertises,
19 offers for sale, sells, or possesses with intent to sell.

20 (b) A person who with intent to deceive or defraud another
21 person:

22 (1) manufactures;

23 (2) sells;

24 (3) offers for sale; or

25 (4) possesses with intent to sell;

26 an item bearing a counterfeit mark or a service identified by a
27 counterfeit mark, commits trademark counterfeiting, a Class A
28 misdemeanor, except as provided in subsection (c).

29 (c) The offense described in subsection (b) is:

30 (1) a Class D felony if the violation involves at least one
31 hundred (100) but less than one thousand (1,000) items
32 bearing a counterfeit mark or the total retail value of all items
33 bearing or services identified by a counterfeit mark is at least
34 one thousand dollars (\$1,000) but less than ten thousand
35 dollars (\$10,000); and

36 (2) a Class C felony if the violation involves at least one
37 thousand (1,000) items bearing a counterfeit mark or the total
38 retail value of all items bearing or services identified by a
39 counterfeit mark is at least ten thousand dollars (\$10,000).

40 (d) Evidence that a person knowingly had possession, custody,
41 or control of more than twenty-five (25) items bearing a counterfeit
42 mark constitutes prima facie evidence of possession with intent to



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sell or distribute.

(e) Notwithstanding the fine imposed under IC 35-50-3-2, IC 35-50-2-7, or IC 35-50-2-6, a person who violates subsection (b) or (c) shall be fined an amount up to three (3) times the retail value of the property bearing or services identified by a counterfeit mark.

(f) In a trial for a violation of this section, a state or federal certificate of registration of intellectual property constitutes prima facie evidence of the facts stated in the certificate of registration.

(g) The remedies provided in this section do not preclude other civil or criminal remedies provided by law.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 592, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 5, after "transferred" insert "**, subject to the perfected liens or other security interests of any person in the property,**".

Page 2, line 38, after "transferred" insert "**, subject to the perfected liens or other security interests of any person in the property,**".

and when so amended that said bill do pass.

(Reference is to SB 592 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 3.

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SENATE MOTION

Mr. President: I move that Senate Bill 592 be amended to read as follows:

Page 1, line 3, after "9." insert "(a)".

Page 1, line 7, after "881(e)" delete "." and insert "**and any related regulations adopted by the United States Department of Justice.**

(b) Money received as a result of a forfeiture subject to 19 U.S.C. 1616a or 21 U.S.C. 881 by:

(1) a law enforcement agency in the executive department of state government shall be deposited in the state general fund;

(2) a county sheriff shall be deposited in the county general fund; or

(3) a law enforcement agency for a city or town shall be deposited in the general fund of the city or town.

Money deposited under this subsection may be expended after appropriation by the governmental entity receiving the money."

Page 2, line 42, after "881(e)" delete "." and insert "**and any related regulations adopted by the United States Department of Justice.**"

(Reference is to SB 592 as printed February 12, 1999.)

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SENATE MOTION

Mr. President: I move that Senators Waterman, Alexa and Antich be added as coauthors of Senate Bill 592.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 592, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 34-24-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

- (i) Dealing in cocaine or narcotic drug (IC 35-48-4-1).
- (ii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (iii) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (iv) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (v) Dealing in a counterfeit substance (IC 35-48-4-5).
- (vi) Possession of cocaine or narcotic drug (IC 35-48-4-6).
- (vii) Dealing in paraphernalia (IC 35-48-4-8.5).
- (viii) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-6-6.

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

- (A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;
- (B) used to facilitate any violation of a criminal statute; or
- (C) traceable as proceeds of the violation of a criminal statute.

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(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;

(B) facilitate the commission of; or

(C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4).

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

(A) Dealing in cocaine or narcotic drug (IC 35-48-4-1).

(B) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(C) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(11).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Items bearing a counterfeit mark and all property (as defined in IC 35-41-1-23) used in connection with a violation of IC 35-43-5-14(c).

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any

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of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

- (1) IC 35-48-4-1 (dealing in cocaine or narcotic drug).
- (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).
- (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
- (4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.
- (5) IC 35-48-4-6 (possession of cocaine or narcotic drug) as a Class A felony, Class B felony, or Class C felony.
- (6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

SECTION 2. IC 34-24-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) At the hearing, the prosecuting attorney must show by a preponderance of the evidence that the property was within the definition of property subject to seizure under section 1 of this chapter. If the property seized was a vehicle, the prosecuting attorney must also show by a preponderance of the evidence that a person who has an ownership interest of record in the bureau of motor vehicles knew or had reason to know that the vehicle was being used in the commission of the offense.

(b) If the prosecuting attorney fails to meet the burden of proof, the court shall order the property released to the owner.

(c) If the court enters judgment in favor of the state, or the state and a unit (if appropriate), the court, subject to section 5 of this chapter, shall order delivery to the law enforcement agency that seized the property. The court's order may permit the agency to use the property for a period not to exceed three (3) years. However, the order must require that, after the period specified by the court, the law enforcement agency shall deliver the property to the county sheriff for public sale.

(d) If the court enters judgment in favor of the state, or the state and a unit (if appropriate), the court shall, subject to section 5 of this chapter:

- (1) determine the amount of law enforcement costs; and
- (2) order that:
 - (A) the property, if it is not money or real property, be sold under section 6 of this chapter, by the sheriff of the county in which the property was seized, and if the property is a vehicle,



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this sale must occur after any period of use specified in subsection (c);

(B) the property, if it is real property, be sold in the same manner as real property is sold on execution under IC 34-55-6;

(C) the proceeds of the sale or the money be deposited in the general fund of the state, or the unit that employed the law enforcement officers that seized the property; and

(D) any excess in value of the proceeds or the money over the law enforcement costs be forfeited and transferred to the treasurer of state for deposit in the common school fund.

(e) If property that is seized under this chapter (or IC 34-4-30.1-4 before its repeal) is transferred:

(1) after its seizure, but before an action is filed under section 3 of this chapter (or IC 34-4-30.1-3 before its repeal); or

(2) when an action filed under section 3 of this chapter (or IC 34-4-30.1-3 before its repeal) is pending;

the person to whom the property is transferred must establish an ownership interest of record as a bona fide purchaser for value. A person is a bona fide purchaser for value under this section if the person, at the time of the transfer, did not have reasonable cause to believe that the property was subject to forfeiture under this chapter.

(f) If the property seized was an unlawful telecommunications device (as defined in IC 35-45-13-6) or plans, instructions, or publications used to commit an offense under IC 35-45-13 , the court may order the sheriff of the county in which the person was convicted of an offense under IC 35-45-13 to destroy as contraband or to otherwise lawfully dispose of the property.

(g) If the item seized was property (as defined in IC 35-41-1-23) used in violation of IC 35-43-5-14(c), the property is subject to forfeiture under this chapter. However, property bearing a counterfeit mark must be:

(1) released to the owner of the trademark or service mark that was counterfeited; or

(2) destroyed."

Page 1, delete lines 10 through 16, begin a new paragraph and insert:

"(b) Money received by a law enforcement agency as a result of a forfeiture under 19 U.S.C. 1616a or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice may be expended only with the approval of:

(1) the executive (as defined in IC 36-1-2-5), if the money is received by a local law enforcement agency; or



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(2) the governor, if the money is received by a law enforcement agency in the executive branch."

Page 2, delete lines 1 through 3.

Page 3, after line 14, begin a new paragraph and insert:

"SECTION 5. IC 35-43-5-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 14. (a) As used in this section:**

(1) "Trademark" has the meaning set forth in IC 24-2-1-2.

(2) "Counterfeit mark" means:

(A) a trademark affixed to an item of property or used to identify services without the authorization of the trademark's owner; or

(B) a copy or imitation of a trademark made without the authorization of the trademark's owner.

(3) "Retail value" means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark that are components of a finished product, the retail value is the counterfeiter's regular selling price of the finished product on or in which the component is used.

(4) For purposes of this section, the quantity or retail value of items or services includes the aggregate quantity or retail value of all items bearing or services identified by every counterfeit mark the defendant manufactures, advertises, offers for sale, sells, or possesses with intent to sell.

(b) A person who with intent to deceive or defraud another person:

(1) manufactures;

(2) sells;

(3) offers for sale; or

(4) possesses with intent to sell;

an item bearing a counterfeit mark or a service identified by a counterfeit mark, commits trademark counterfeiting, a Class A misdemeanor, except as provided in subsection (c).

(c) The offense described in subsection (b) is:

(1) a Class D felony if the violation involves at least one hundred (100) but less than one thousand (1,000) items bearing a counterfeit mark or the total retail value of all items bearing or services identified by a counterfeit mark is at least one thousand dollars (\$1,000) but less than ten thousand dollars (\$10,000); and

(2) a Class C felony if the violation involves at least one

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thousand (1,000) items bearing a counterfeit mark or the total retail value of all items bearing or services identified by a counterfeit mark is at least ten thousand dollars (\$10,000).

(d) Evidence that a person knowingly had possession, custody, or control of more than twenty-five (25) items bearing a counterfeit mark constitutes prima facie evidence of possession with intent to sell or distribute.

(e) Notwithstanding the fine imposed under IC 35-50-3-2, IC 35-50-2-7, or IC 35-50-2-6, a person who violates subsection (b) or (c) shall be fined an amount up to three (3) times the retail value of the property bearing or services identified by a counterfeit mark.

(f) In a trial for a violation of this section, a state or federal certificate of registration of intellectual property constitutes prima facie evidence of the facts stated in the certificate of registration.

(g) The remedies provided in this section do not preclude other civil or criminal remedies provided by law."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 592 as reprinted February 16, 1999.)

DVORAK, Chair

Committee Vote: yeas 11, nays 1.

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