

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 8028
BILL NUMBER: SB 592

DATE PREPARED: Mar 26, 1999
BILL AMENDED: Mar 25, 1999

SUBJECT: Disposition of seized property.

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FUNDS AFFECTED: **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill 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.

It requires that any forfeiture sale proceeds that are returned by the federal government to a state or local law enforcement agency 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.

It 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. It provides for felony penalty enhancements that apply to trademark counterfeiting if the offense involves a certain retail value or a certain quantity of items. It 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. It also 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.

Effective Date: July 1, 1999.

Explanation of State Expenditures: (Revised) This bill makes trademark counterfeiting a Class A misdemeanor. However, if the violation involves at least 100 but less than 1,000 items bearing a counterfeit mark, or if the total retail value of the items is at \$1,000 but less than \$10,000, the offense is enhanced to a Class D felony. If the violation involves at least 1,000 items bearing a counterfeit mark, or if the total retail value of the items is at least \$10,000, the offense is enhanced to a Class C felony.

A Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. A Class C felony is punishable by a prison term ranging from 2 to 8 years depending upon mitigating and aggravating circumstances.

The average expenditure to house an adult offender was \$17,500 in FY 98. Individual facility expenditures range from \$12,000 to \$29,000. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually or \$5 daily per prisoner.

The average length of stay in DOC facilities for all Class D felony offenders is approximately seven months. The average length of stay in DOC facilities for all Class C felony offenders is approximately one year, seven months.

Explanation of State Revenues: (Revised) Passage of this bill may increase revenue to the state. The bill provides that any money received by a law enforcement agency in the executive branch as a result of a forfeiture can only be expended with the approval of the governor. The bill does not designate the fund into which forfeiture proceeds should be deposited.

If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund could increase. The maximum fine for a Class A misdemeanor is \$5,000. The maximum fine for a Class C or Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, county or municipal court (courts of record), 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: (Revised) This bill would require law enforcement agencies, upon motion of a prosecuting attorney, to transfer certain seized property to federal authorities for disposition under federal laws concerning customs duties and drug abuse prevention and control. Local expenditures will increase if costs are incurred to transfer the property.

This bill makes trademark counterfeiting a Class A misdemeanor, which is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: (Revised) Passage of this bill may increase revenue to local governmental units. The bill provides that any money received by a local law enforcement agency as a result of a forfeiture can only be expended with the approval of the appropriate executive (such as the mayor for a city, or the president of the town council for a town). The bill does not designate the local fund into which forfeiture proceeds should be deposited.

If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed, and if collected would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed, and if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: State Police; Department of Correction.

Local Agencies Affected: Local law enforcement agencies; prosecuting attorneys; trial courts.

Information Sources: Indiana Sheriffs Association, Department of Correction.