

Adopted	Rejected
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COMMITTEE REPORT

YES:	11
NO:	1

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:*

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

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

- 1 (C) Dealing in a schedule IV controlled substance
2 (IC 35-48-4-3).
- 3 (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
- 4 (6) Equipment and recordings used by a person to commit fraud
5 under IC 35-43-5-4(11).
- 6 (7) Recordings sold, rented, transported, or possessed by a person
7 in violation of IC 24-4-10.
- 8 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as
9 defined by IC 35-45-6-1) that is the object of a corrupt business
10 influence violation (IC 35-45-6-2).
- 11 (9) Unlawful telecommunications devices (as defined in
12 IC 35-45-13-6) and plans, instructions, or publications used to
13 commit an offense under IC 35-45-13.
- 14 **(10) Items bearing a counterfeit mark and all property (as**
15 **defined in IC 35-41-1-23) used in connection with a violation**
16 **of IC 35-43-5-14(c).**
- 17 (b) A vehicle used by any person as a common or contract carrier in
18 the transaction of business as a common or contract carrier is not
19 subject to seizure under this section, unless it can be proven by a
20 preponderance of the evidence that the owner of the vehicle knowingly
21 permitted the vehicle to be used to engage in conduct that subjects it to
22 seizure under subsection (a).
- 23 (c) Money, negotiable instruments, securities, weapons,
24 communications devices, or any property commonly used as
25 consideration for a violation of IC 35-48-4 found near or on a person
26 who is committing, attempting to commit, or conspiring to commit any
27 of the following offenses shall be admitted into evidence in an action
28 under this chapter as prima facie evidence that the money, negotiable
29 instrument, security, or other thing of value is property that has been
30 used or was to have been used to facilitate the violation of a criminal
31 statute or is the proceeds of the violation of a criminal statute:
- 32 (1) IC 35-48-4-1 (dealing in cocaine or narcotic drug).
- 33 (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled
34 substance).
- 35 (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
- 36 (4) IC 35-48-4-4 (dealing in a schedule V controlled substance)
37 as a Class B felony.
- 38 (5) IC 35-48-4-6 (possession of cocaine or narcotic drug) as a

1 Class A felony, Class B felony, or Class C felony.

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

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

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

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

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

26 (1) determine the amount of law enforcement costs; and

27 (2) order that:

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

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

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

38 (D) any excess in value of the proceeds or the money over the

1 law enforcement costs be forfeited and transferred to the
2 treasurer of state for deposit in the common school fund.

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

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

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

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

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

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

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

26 **(2) destroyed."**

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

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

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

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

37 Page 2, delete lines 1 through 3.

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

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

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

5 (2) "Counterfeit mark" means:

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

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

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

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

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

24 (1) manufactures;

25 (2) sells;

26 (3) offers for sale; or

27 (4) possesses with intent to sell;

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

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

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

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

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

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

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

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

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

18 Renumber all SECTIONS consecutively.

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

and when so amended that said bill do pass.

Representative Dvorak