



Reprinted
February 16, 1999

SENATE BILL No. 592

DIGEST OF SB 592 (Updated February 15, 1999 3:59 pm - DI 51)

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

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. Requires the forfeiture sale proceeds that are returned by the federal government to a state or local law enforcement agency to be deposited in the general fund of the governmental entity employing the law enforcement agency.

Effective: July 1, 1999.

Bray

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.

SB 592—LS 8028/DI 69+



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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.

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 34-24-1-9 IS ADDED TO THE INDIANA CODE
2 A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1,**
3 **1999]: Sec. 9. (a) Upon motion of a prosecuting attorney under**
4 **IC 35-33-5-5(i), property seized under this chapter must be**
5 **transferred, subject to the perfected liens or other security**
6 **interests of any person in the property, to the appropriate federal**
7 **authority for disposition under 19 U.S.C. 1616a or 21 U.S.C. 881(e)**
8 **and any related regulations adopted by the United States**
9 **Department of Justice.**
10 (b) Money received as a result of a forfeiture subject to 19
11 U.S.C. 1616a or 21 U.S.C. 881 by:
12 (1) a law enforcement agency in the executive department of
13 state government shall be deposited in the state general fund;
14 (2) a county sheriff shall be deposited in the county general
15 fund; or
16 (3) a law enforcement agency for a city or town shall be

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1 **deposited in the general fund of the city or town.**
 2 **Money deposited under this subsection may be expended after**
 3 **appropriation by the governmental entity receiving the money.**

4 SECTION 2. IC 35-33-5-5 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) All items of
 6 property seized by any law enforcement agency as a result of an arrest,
 7 search warrant, or warrantless search, shall be securely held by the law
 8 enforcement agency under the order of the court trying the cause,
 9 except as provided in this section.

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

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

15 (1) Property which may be lawfully possessed shall be returned
 16 to its rightful owner, if known. If ownership is unknown, a
 17 reasonable attempt shall be made by the law enforcement agency
 18 holding the property to ascertain ownership of the property. After
 19 ninety (90) days from the time:

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

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

24 the law enforcement agency holding the property shall, at such
 25 time as it is convenient, dispose of this property at a public
 26 auction. The proceeds of this property shall be paid into the
 27 county general fund.

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

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

34 (e) For purposes of preserving the record of any conviction on
 35 appeal, a photograph demonstrating the nature of the property, and an
 36 adequate description of the property must be obtained before the
 37 disposition of it. In the event of a retrial, the photograph and
 38 description of the property shall be admissible into evidence in place
 39 of the actual physical evidence. All other rules of law governing the
 40 admissibility of evidence shall apply to the photographs.

41 (f) The law enforcement agency disposing of property in any manner
 42 provided in subsections (b) and (c) of this section shall maintain

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1 certified records of any such disposition. Disposition by destruction of
2 property shall be witnessed by two (2) persons who shall also attest to
3 the destruction.
4 (g) This section does not affect the procedure for the disposition of
5 firearms seized by a law enforcement agency.
6 (h) A law enforcement agency that disposes of property by auction
7 under this section shall permanently stamp or otherwise permanently
8 identify the property as property sold by the law enforcement agency.
9 (i) **Upon motion of the prosecuting attorney, the court shall**
10 **order property seized under IC 34-24-1 transferred, subject to the**
11 **perfected liens or other security interests of any person in the**
12 **property, to the appropriate federal authority for disposition under**
13 **19 U.S.C. 1616a or 21 U.S.C. 881(e) and any related regulations**
14 **adopted by the United States Department of Justice.**

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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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