

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1001 be amended to read as follows:

- 1 Page 135, between lines 37 and 38, begin a new paragraph and
- 2 insert:
- 3 "SECTION 91. IC 34-24-1-4 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) **Law**
- 5 **enforcement costs under this article shall be calculated as follows:**
- 6 **(1) If the value of property seized under this article is three**
- 7 **thousand dollars (\$3,000) or less, seventy-five percent (75%)**
- 8 **of the value of the seized property constitutes law**
- 9 **enforcement costs.**
- 10 **(2) If the value of property seized under this article is more**
- 11 **than three thousand dollars (\$3,000) and less than one**
- 12 **hundred thousand dollars (\$100,000), law enforcement costs**
- 13 **consist of three thousand dollars (\$3,000) plus fifty percent**
- 14 **(50%) of the amount between three thousand dollars (\$3,000)**
- 15 **and one hundred thousand dollars (\$100,000). However, law**
- 16 **enforcement costs under this subdivision may not exceed**
- 17 **seventy-five percent (75%) of the value of the seized property.**
- 18 **(3) If the value of property seized is one hundred thousand**
- 19 **dollars (\$100,000) or more, law enforcement costs consist of**
- 20 **fifty-three thousand dollars (\$53,000) plus ten percent (10%)**
- 21 **of the amount equal to or exceeding one hundred thousand**
- 22 **dollars (\$100,000).**
- 23 ~~(a)~~ **(b) At the hearing, the prosecuting attorney must show by a**

1 preponderance of the evidence that the property was within the
 2 definition of property subject to seizure under section 1 of this chapter.
 3 If the property seized was a vehicle, the prosecuting attorney must also
 4 show by a preponderance of the evidence that a person who has an
 5 ownership interest of record in the bureau of motor vehicles knew or
 6 had reason to know that the vehicle was being used in the commission
 7 of the offense.

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

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

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

21 (1) determine the amount of law enforcement costs **under**
 22 **subsection (a)**; and

23 (2) order that:

24 (A) the property, if it is not money or real property, be sold
 25 under section 6 of this chapter, by the sheriff of the county in
 26 which the property was seized, and if the property is a vehicle,
 27 this sale must occur after any period of use specified in
 28 subsection ~~(c)~~; **(d)**;

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

31 (C) the proceeds of the sale or the money be

32 ~~(i)~~ deposited in the general fund of the state or **the general**
 33 **fund of** the unit that employed the law enforcement officers
 34 that seized the property; ~~or~~ **and**

35 ~~(ii)~~ deposited in the general fund of a unit if the property
 36 was seized by a local law enforcement agency of the unit for
 37 an offense, an attempted offense, or a conspiracy to commit
 38 an offense under IC 35-47 as part of or in furtherance of an
 39 act of terrorism; and

40 (D) any excess in value of the proceeds or the money over the
 41 law enforcement costs be forfeited and transferred to the
 42 treasurer of state for deposit in the common school fund. **The**
 43 **excess over the law enforcement costs may not be less than**
 44 **fifteen percent (15%) of the value of the proceeds or**
 45 **money.**

46 **(f) Twenty-five percent (25%) of the part of the sale proceeds or**

1 **money that constitutes law enforcement costs shall be transferred**
 2 **to the state general fund for disbursement to the prosecuting**
 3 **attorney for use in defraying the expense of initiating and**
 4 **maintaining a forfeiture action. However, a prosecuting attorney**
 5 **may not receive more than:**

6 (1) **ten thousand dollars (\$10,000), if the total value of**
 7 **property seized under this article is less than one hundred**
 8 **thousand dollars (\$100,000); or**

9 (2) **twenty thousand dollars (\$20,000), if the total value of**
 10 **property seized under this article is one hundred thousand**
 11 **dollars (\$100,000) or more.**

12 **(g) The part of the sale proceeds or money that constitutes law**
 13 **enforcement costs may be used only for:**

14 (1) **law enforcement purposes or to defray the expenses of**
 15 **initiating and maintaining a forfeiture action; and**

16 (2) **disbursements under an appropriation from the state**
 17 **general fund or the general fund of the unit that employed the**
 18 **law enforcement officers who seized the property.**

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

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

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

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

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

36 **SECTION 92. IC 34-24-1-5 IS AMENDED TO READ AS**
 37 **FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) If:**

38 (1) **the court has entered judgment in favor of the state, and a unit**
 39 **(if appropriate) concerning property that is subject to seizure**
 40 **under this chapter; and**

41 (2) **a person:**

42 (A) **holding a valid lien, mortgage, security interest, or interest**
 43 **under a conditional sales contract; or**

44 (B) **who is a co-owner of the property;**

45 **did not know of the illegal use;**

46 **the court shall determine whether the secured interest or the co-owner's**

- 1 interest is equal to or in excess of the appraised value of the property.
 2 (b) Appraised value is to be determined as of the date of judgment
 3 on a wholesale basis by:
 4 (1) agreement between the secured party or the co-owner and the
 5 prosecuting attorney; or
 6 (2) the inheritance tax appraiser for the county in which the action
 7 is brought.
 8 (c) If the amount:
 9 (1) due to the secured party; or
 10 (2) of the co-owner's interest;
 11 is equal to or greater than the appraised value of the property, the court
 12 shall order the property released to the secured party or the co-owner.
 13 (d) If the amount:
 14 (1) due the secured party; or
 15 (2) of the co-owner's interest;
 16 is less than the appraised value of the property, the holder of the
 17 interest or the co-owner may pay into the court an amount equal to the
 18 owner's equity, which shall be the difference between the appraised
 19 value and the amount of the lien, mortgage, security interest, interest
 20 under a conditional sales contract, or co-owner's interest. Upon such
 21 payment, the state or unit, or both, shall relinquish all claims to the
 22 property, and the court shall order the payment deposited as provided
 23 in section ~~4(d)~~ **4(e)** of this chapter.
 24 (e) If the seized property is a vehicle and if the security holder or the
 25 co-owner elects not to make payment as stated in subsection (d), the
 26 vehicle shall be disposed of in accordance with section ~~4(c)~~ **4(d)** of this
 27 chapter.
 28 SECTION 93. IC 34-24-1-6 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. (a) Where
 30 disposition of property is to be made at a public sale, notice of sale
 31 shall be published in accordance with IC 34-55-6.
 32 (b) When property is sold at a public sale under this chapter, the
 33 proceeds shall be distributed in the following order:
 34 (1) First, to the sheriff of the county for all expenditures made or
 35 incurred in connection with the sale, including storage,
 36 transportation, and necessary repair.
 37 (2) Second, to any person:
 38 (A) holding a valid lien, mortgage, land contract, or interest
 39 under a conditional sales contract or the holder of other such
 40 interest; or
 41 (B) who is a co-owner and has an ownership interest;
 42 up to the amount of that person's interest as determined by the
 43 court.
 44 (3) The remainder, if any, shall be transferred by the sheriff to the
 45 appropriate fund as ordered by the court in ~~section 4(d)~~ **section**
 46 **4(e)** of this chapter.

1 SECTION 94. IC 34-24-1-8 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) A prosecuting
3 attorney may retain an attorney to bring an action under this chapter
4 **only in accordance with this section.**

5 **(b) The compensation agreement between a prosecuting**
6 **attorney and an attorney retained to bring an action under this**
7 **chapter must be:**

8 **(1) in writing; and**

9 **(2) approved by the attorney general.**

10 **(c) The compensation agreement between a prosecuting**
11 **attorney and an attorney retained to bring an action under this**
12 **chapter may not permit the attorney to retain more than:**

13 **(1) ten thousand dollars (\$10,000) if the total value of**
14 **property seized under this article is less than one hundred**
15 **thousand dollars (\$100,000); or**

16 **(2) twenty thousand dollars (\$20,000) if the total value of**
17 **property seized under this article is one hundred thousand**
18 **dollars (\$100,000) or more.**

19 **(d) In determining whether to approve a compensation**
20 **agreement under this section, the attorney general shall consider:**

21 **(1) the reasonableness of the proposed compensation**
22 **agreement;**

23 **(2) whether the compensation agreement creates an actual or**
24 **apparent conflict of interest; and**

25 **(3) any other issue that is relevant to the fairness of the**
26 **proposed compensation agreement.**

27 ~~(b)~~ **(e) An attorney retained under this section is not required to may**
28 **not be a prosecuting attorney or a deputy prosecuting attorney, but**
29 **must be admitted to the practice of law in Indiana."**

30 Renumber all SECTIONS consecutively.

(Reference is to HB 1001 as printed February 21, 2011.)

Representative Welch