

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 215**

Citations Affected: IC 34-24-1.

Synopsis: Forfeiture. Conference committee report for ESB 215. Requires counties to create an asset forfeiture account. Provides that, in a forfeiture proceeding, 1/3 of the proceeds may be provided to the prosecuting attorney or an attorney retained by the prosecuting attorney in a forfeiture action, unless the prosecuting attorney has declined a request from the state police department to transfer the forfeiture to federal jurisdiction, in which case 20% of the proceeds but no more than \$5,000 may be transferred to the prosecuting attorney. Provides that of the remaining proceeds, 15% shall be provided to the common school fund and 85% shall be distributed to an account for distribution to law enforcement agencies participating in the seizure as necessary law enforcement expenses. Specifies that money or the proceeds of seized property placed in a county asset forfeiture account may be disbursed only by action of the county legislative body under a claim submitted by a law enforcement agency or prosecuting attorney, and must be disbursed pursuant to an interlocal agreement, if applicable. Permits a prosecuting attorney to retain an attorney to bring a forfeiture action only if the attorney general reviews the compensation agreement between the prosecuting attorney and the retained attorney, and requires that the compensation agreement with the attorney be capped at: (1) 33 1/3% of the first \$10,000 of the amount of the proceeds or money obtained; (2) 25% of the part of the amount between \$10,000 and \$100,000; and (3) 20% of the part of the amount that is at least \$100,000; unless a court finds that the forfeiture action is unusually complex. Requires a court to notify the Indiana criminal justice institute of the amount and manner of a forfeiture distribution. Provides that a prosecuting attorney or deputy prosecuting attorney who engages in a forfeiture action for the prosecuting attorney's office may not receive a contingency fee. **(This conference committee report: (1) provides that the prosecuting attorney or attorney retained by a prosecuting attorney receives 20% (to a maximum of \$5,000) of the forfeiture proceeds if the prosecuting attorney declines to transfer a forfeiture case to federal jurisdiction; (2) provides that 15% of the remaining funds shall be transferred to the common school fund, and 85% to participating law enforcement agencies as necessary law enforcement expenses; (3) removes a provision permitting the state police department to move to transfer a forfeiture to federal jurisdiction; and (4) removes provisions concerning the school safety fund.)**

Effective: July 1, 2011.

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 215 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
 2 SECTION 1. IC 34-24-1-3 IS AMENDED TO READ AS
 3 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) The prosecuting
 4 attorney for the county in which the seizure occurs may, within ninety
 5 (90) days after receiving written notice from the owner demanding
 6 return of the seized property or within one hundred eighty (180) days
 7 after the property is seized, whichever occurs first, cause an action for
 8 reimbursement of law enforcement costs and forfeiture to be brought
 9 by filing a complaint in the circuit, superior, or county court in the
 10 jurisdiction where the seizure occurred. The action must be brought:
 11 (1) in the name of the state; ~~or the state and the unit that employed~~
 12 ~~the law enforcement officers who made the seizure if the state~~
 13 ~~was not the employer; and~~
 14 (2) within the period that a prosecution may be commenced under
 15 IC 35-41-4-2 for the offense that is the basis for the seizure.
 16 (b) If the property seized was a vehicle or real property, the
 17 prosecuting attorney shall serve, under the Indiana Rules of Trial
 18 Procedure, a copy of the complaint upon each person whose right, title,
 19 or interest is of record in the bureau of motor vehicles, in the county
 20 recorder's office, or other office authorized to receive or record vehicle
 21 or real property ownership interests.
 22 (c) The owner of the seized property, or any person whose right,

1 title, or interest is of record may, within twenty (20) days after service
 2 of the complaint under the Indiana Rules of Trial Procedure, file an
 3 answer to the complaint and may appear at the hearing on the action.

4 (d) If, at the end of the time allotted for an answer, there is no
 5 answer on file, the court, upon motion, shall enter judgment in favor of
 6 the state ~~and the unit (if appropriate)~~ for reimbursement of law
 7 enforcement costs and shall order the property disposed of in
 8 accordance with section 4 of this chapter.

9 SECTION 2. IC 34-24-1-4 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) At the hearing,
 11 the prosecuting attorney must show by a preponderance of the evidence
 12 that the property was within the definition of property subject to seizure
 13 under section 1 of this chapter. If the property seized was a vehicle, the
 14 prosecuting attorney must also show by a preponderance of the
 15 evidence that a person who has an ownership interest of record in the
 16 bureau of motor vehicles knew or had reason to know that the vehicle
 17 was being used in the commission of the offense. **If the property
 18 seized was personal property that is not a vehicle, the prosecuting
 19 attorney must also show by a preponderance of the evidence that
 20 a person who has an ownership interest in the personal property
 21 knew or had reason to know that the personal property was being
 22 used in the commission of the offense.**

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

25 (c) If the court enters judgment in favor of the state, ~~or the state and
 26 a unit (if appropriate)~~; the court, subject to section 5 of this chapter,
 27 shall order ~~delivery to the law enforcement agency that seized the
 28 property.~~ **distribution of the property in accordance with subsection
 29 (d).** The court's order may permit the law enforcement agency to use
 30 the property for a period not to exceed three (3) years. However, the
 31 order must require that, after the period specified by the court, the law
 32 enforcement agency shall deliver the property to the county sheriff for
 33 public sale.

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

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

38 ~~(2) order that:~~

39 ~~(A) (1) the property, if it is not money or real property, be sold~~
 40 ~~under section 6 of this chapter by the sheriff of the county in~~
 41 ~~which the property was seized, and if the property is a vehicle,~~
 42 ~~this sale must occur after any period of use specified in subsection~~
 43 ~~(c);~~

44 ~~(B) (2) the property, if it is real property, be sold in the same~~
 45 ~~manner as real property is sold on execution under IC 34-55-6;~~

46 ~~(C) the proceeds of the sale or the money be:~~

47 ~~(i) deposited in the general fund of the state; or the unit that~~
 48 ~~employed the law enforcement officers that seized the~~
 49 ~~property; or~~

50 ~~(ii) deposited in the general fund of a unit if the property~~
 51 ~~was seized by a local law enforcement agency of the unit for~~

1 an offense; an attempted offense; or a conspiracy to commit
2 an offense under IC 35-47 as part of or in furtherance of an
3 act of terrorism; and

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

7 (3) the proceeds of the sale or the money shall be transferred
8 to the county auditor for deposit in the county's asset
9 forfeiture account, established by ordinance, for distribution
10 as follows:

11 (A) If the state police department has not requested that
12 the seized property be transferred to the appropriate
13 federal authority for disposition under 18 U.S.C. 981(e), 19
14 U.S.C. 1616a, or 21 U.S.C. 881(e), and any related
15 regulations adopted by the United States Department of
16 Justice, not more than thirty-three and one-third percent
17 (33 1/3%) of the proceeds of the sale or the money to be
18 transferred as an administrative fee to:

19 (i) the prosecuting attorney's office only if an attorney
20 was not retained under a compensation agreement under
21 section 8 of this chapter; or

22 (ii) an attorney retained by the prosecuting attorney
23 under a compensation agreement under section 8 of this
24 chapter.

25 (B) If the prosecuting attorney has declined a request from
26 the state police department that the seized property be
27 transferred to the appropriate federal authority for
28 disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21
29 U.S.C. 881(e), and any related regulations adopted by the
30 United States Department of Justice, not more than twenty
31 percent (20%) of the proceeds of the sale or the money, up
32 to a maximum of five thousand dollars (\$5,000), to be
33 transferred as an administrative fee to:

34 (i) the prosecuting attorney's office only if an attorney
35 was not retained under a compensation agreement under
36 section 8 of this chapter; or

37 (ii) an attorney retained by the prosecuting attorney
38 under a compensation agreement under section 8 of this
39 chapter.

40 After the administrative fee is deducted under clause (A) or
41 (B), fifteen percent (15%) of the remaining money or sale
42 proceeds shall be transferred to the county auditor for deposit
43 in the common school fund, and eighty-five percent (85%) of
44 the remaining money or sale proceeds shall be distributed to
45 the county auditor for distribution to law enforcement
46 agencies participating in the seizure or forfeiture, as provided
47 in subsection (e).

48 (e) The distribution of the eighty-five percent (85%) share
49 allocated to law enforcement agencies under subsection (d)(3) must
50 be made as follows:

51 (1) Pursuant to a claim submitted by the prosecuting attorney

1 to the county auditor on behalf of the prosecuting attorney or
 2 another agency. However, a claim on behalf of the prosecuting
 3 attorney may be approved only if:

4 (A) the prosecuting attorney is not entitled to the
 5 administrative fee under subsection (d)(3); and

6 (B) the prosecuting attorney presents documented evidence
 7 of direct costs incurred as a result of the seizure or
 8 forfeiture.

9 (2) In accordance with the terms of an interlocal agreement or
 10 memorandum of understanding among all local, state,
 11 out-of-state, and federal law enforcement agencies and the
 12 prosecuting attorney, if applicable.

13 (3) If there is no interlocal agreement or memorandum of
 14 understanding among all local, state, out-of-state, and federal
 15 law enforcement agencies and the prosecuting attorney, the
 16 court may distribute remaining proceeds among local, state,
 17 out-of-state, and federal law enforcement agencies and the
 18 prosecuting attorney in proportion to the contribution the
 19 agency or prosecuting attorney made to the seizure or
 20 forfeiture. In determining the appropriate distribution under
 21 this subdivision, the court shall consider any form, document,
 22 agreement, or other documentary evidence relevant to this
 23 distribution. The prosecuting attorney may receive a
 24 distribution under this subdivision only if:

25 (A) the prosecuting attorney is not entitled to the
 26 administrative fee under subsection (d)(3); and

27 (B) the prosecuting attorney presents documented evidence
 28 of direct costs incurred as a result of the seizure or
 29 forfeiture.

30 **Funds distributed to a law enforcement agency of a city or town**
 31 **shall be transferred to the fiscal body of the city or town and may**
 32 **only be disbursed pursuant to an appropriation. Funds distributed**
 33 **under this subsection may be used only for law enforcement**
 34 **purposes.**

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

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

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

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

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

1 **(h) This subsection applies to every forfeiture action, including**
 2 **a forfeiture action that is the result of a settlement. Every**
 3 **forfeiture action must be filed with a court. Except for money or**
 4 **property seized under this chapter that is transferred to a federal**
 5 **authority under IC 34-24-1-9, money or other proceeds from a**
 6 **forfeiture action may be disbursed only in accordance with this**
 7 **section.**

8 **(i) As soon as practicable after the proceeds of the forfeiture**
 9 **have been distributed, the court shall notify the Indiana criminal**
 10 **justice institute of the amount and manner of the distribution.**

11 **(j) Funds transferred:**

12 **(1) as an administrative fee to a prosecuting attorney or an**
 13 **attorney retained by a prosecuting attorney under subsection**

14 **(d)(3)(A) or (d)(3)(B); or**

15 **(2) to a law enforcement agency or prosecuting attorney**
 16 **under subsection (e);**

17 **are necessary reimbursement of law enforcement expenses without**
 18 **which a forfeiture could not have been effected.**

19 SECTION 3. IC 34-24-1-6 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. (a) Where
 21 disposition of property is to be made at a public sale, notice of sale
 22 shall be published in accordance with IC 34-55-6.

23 (b) When property is sold at a public sale under this chapter, the
 24 proceeds shall be distributed in the following order:

25 (1) First, to the sheriff of the county for all expenditures made or
 26 incurred in connection with the sale, including storage,
 27 transportation, and necessary repair.

28 (2) Second, to any person:

29 (A) holding a valid lien, mortgage, land contract, or interest
 30 under a conditional sales contract or the holder of other such
 31 interest; or

32 (B) who is a co-owner and has an ownership interest;
 33 up to the amount of that person's interest as determined by the
 34 court.

35 (3) The remainder, if any, shall be transferred by the sheriff to the
 36 appropriate fund as ordered by the court in ~~section 4(d)~~ **section 4**
 37 of this chapter.

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

42 **(b) The compensation agreement between a prosecuting**
 43 **attorney and an attorney retained to bring an action under this**
 44 **chapter must be:**

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

46 **(2) approved by the attorney general for form and legality.**

47 **(c) Except as provided in subsection (d), a compensation**
 48 **agreement between a prosecuting attorney and an attorney**
 49 **retained to bring an action under this chapter may be established**
 50 **under a contingency fee agreement limited as follows:**

51 **(1) The contingency fee may not exceed thirty-three and**

- 1 **one-third percent (33 1/3%) of the first ten thousand dollars**
2 **(\$10,000) of proceeds or money obtained under a settlement**
3 **or judgment.**
- 4 **(2) The contingency fee may not exceed twenty-five percent**
5 **(25%) of the part of the proceeds or money obtained under a**
6 **settlement or judgment that is more than ten thousand dollars**
7 **(\$10,000) and less than one hundred thousand dollars**
8 **(\$100,000).**
- 9 **(3) The contingency fee may not exceed twenty percent (20%)**
10 **of the part of the proceeds or money obtained under a**
11 **settlement or judgment that is at least one hundred thousand**
12 **dollars (\$100,000).**
- 13 **(d) A court may authorize a compensation agreement between**
14 **a prosecuting attorney and an attorney retained to bring an action**
15 **under this chapter that exceeds the limits established in subsection**
16 **(c) if the court finds that the issues presented in a particular**
17 **forfeiture action are unusually complex or time consuming as**
18 **compared with other forfeiture actions.**
- 19 ~~(b)~~ **(e) An attorney retained under this section is not required to be**
20 **a deputy prosecuting attorney, but must be admitted to the practice of**
21 **law in Indiana. A prosecuting attorney or deputy prosecuting**
22 **attorney who engages in a forfeiture action for the prosecuting**
23 **attorney's office may not receive a contingency fee.**
- 24 **(f) A prosecuting attorney may request the assistance of the**
25 **attorney general in bringing an action under this chapter. The**
26 **attorney general may decline to provide assistance.**
- 27 **(g) If an attorney retained under this section is paid on a**
28 **contingency or percentage basis, the value of seized property used**
29 **to calculate the attorney's fee is, unless otherwise ordered by a**
30 **court:**
- 31 **(1) for currency, the value of the seized currency; and**
32 **(2) for other property, the amount realized from the sale of**
33 **the property at auction.**
- (Reference is to ESB 215 as reprinted April 12, 2011.)

Conference Committee Report
on
Engrossed Senate Bill 215

Signed by:

Senator Bray
Chairperson

Representative Foley

Senator Lanane

Representative Lawson L

Senate Conferees

House Conferees