February 14, 2011

SENATE BILL No. 215

DIGEST OF SB 215 (Updated February 14, 2011 12:39 am - DI 106)

Citations Affected: IC 34-24.

Synopsis: Forfeiture. Provides that, in a forfeiture proceeding, 85% of the proceeds shall be awarded to participating law enforcement agencies, and 15% of the proceeds shall be deposited in the common school fund. Provides that 25% of the proceeds awarded to law enforcement shall be transferred to the prosecuting attorney to defray the expenses of bringing the forfeiture action; however, this amount is capped at: (1) $10,000 if the amount of property seized is less than $100,000; and (2) $20,000 if the amount of property seized is $100,000 or more. Specifies that money or the proceeds of seized property awarded to a law enforcement agency may be used only for: (1) law enforcement purposes; and (2) disbursements under an appropriation by the state or a local government unit. 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) $10,000 if the amount of property seized is less than $100,000; and (2) $20,000 if the amount of property seized is $100,000 or more. Prohibits a prosecuting attorney from retaining a prosecuting attorney or a deputy prosecuting attorney to bring a forfeiture action.

Effective: July 1, 2011.

Bray, Arnold

January 6, 2011, read first time and referred to Committee on Judiciary.
February 14, 2011, amended, reported favorably — Do Pass. Pursuant to Senate Rule 68(b); reassigned to Committee on Appropriations.

C o p y

February 14, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

C o p y

SENATE BILL No. 215

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 34-24-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) At the hearing, the prosecuting attorney must show by a preponderance of the evidence that the property was within the definition of property subject to seizure under section 1 of this chapter. If the property seized was a vehicle, the prosecuting attorney must also show by a preponderance of the evidence that a person who has an ownership interest of record in the bureau of motor vehicles knew or had reason to know that the vehicle was being used in the commission of the offense.

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

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

enforcement agency shall deliver the property to the county sheriff for public sale.

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

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

~~(2)~~ order that:

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

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

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

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

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

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

(3) the proceeds of the sale or money be deposited as follows:

(A) Eighty-five percent (85%) of the proceeds shall be deposited in the:

(i) state police asset forfeiture fund, if the property was seized by the state police department; or

(ii) local law enforcement forfeiture fund, if the unit has established a local law enforcement forfeiture fund. If there is no local law enforcement forfeiture fund, the proceeds shall be deposited in the safe schools fund established under IC 5-2-10.1.

(B) Fifteen percent (15%) of the proceeds shall be transferred to the treasurer of state for deposit in the common school fund.

If law enforcement agencies from more than one (1) jurisdiction participated in the seizure of forfeited property, the court shall determine how the proceeds of the sale or money shall be divided

C o p y

among the participating law enforcement agencies.

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

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

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

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

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

(g) Twenty-five percent (25%) of the part of the sale proceeds or money under subsection (d)(3)(A) shall be transferred to the state general fund for disbursement to the prosecuting attorney for use in defraying the expense of initiating and maintaining a forfeiture action. However, a prosecuting attorney may not receive in one (1) action more than:

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

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

(h) Proceeds or money described under subsection (d)(3)(A) may be:

(1) disbursed only from the local law enforcement forfeiture fund under an appropriation; and

(2) used only for law enforcement purposes.

(i) This subsection applies to every forfeiture action, including a forfeiture action that is the result of a settlement. Every forfeiture action must be filed with a court. Money or other proceeds from a forfeiture action may only be disbursed under a court order.

(j) As soon as practicable after the proceeds of the forfeiture have been distributed, the court shall notify the state police

C o p y

department of the amount and manner of the distribution.

SECTION 2. IC 34-24-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. (a) Where disposition of property is to be made at a public sale, notice of sale shall be published in accordance with IC 34-55-6.

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

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

(2) Second, to any person:

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

(B) who is a co-owner and has an ownership interest;

up to the amount of that person's interest as determined by the court.

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

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

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

(1) in writing; and

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

(c) Except as provided in subsection (d), the compensation agreement between a prosecuting attorney and an attorney retained to bring an action under this chapter may not permit the attorney to retain more than:

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

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

(d) A court may authorize a compensation agreement between a prosecuting attorney and an attorney retained to bring an action under this chapter that exceeds the limits established in subsection

C o p y

(c) if the court finds that the issues presented in a particular forfeiture action are unusually complex or time consuming as compared with other forfeiture actions.

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

(f) A prosecuting attorney may request the assistance of the attorney general in bringing an action under this chapter. The attorney general may decline to provide assistance.

(g) If an attorney retained under this section is paid on a contingency or percentage basis, the value of seized property used to calculate the attorney's fee is, unless otherwise ordered by a court:

(1) for currency, the value of the seized currency; and

(2) for other property, the amount realized from the sale of the property at auction.

C o p y

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 215, 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, delete lines 1 through 17, begin a new paragraph, and insert:

"SECTION 1. IC 34-24-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) At the hearing, the prosecuting attorney must show by a preponderance of the evidence that the property was within the definition of property subject to seizure under section 1 of this chapter. If the property seized was a vehicle, the prosecuting attorney must also show by a preponderance of the evidence that a person who has an ownership interest of record in the bureau of motor vehicles knew or had reason to know that the vehicle was being used in the commission of the offense.

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

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

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

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

~~(2)~~ order that:

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

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

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

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

~~(ii) deposited in the general fund of a unit if the property~~

C o p y

~~was seized by a local law enforcement agency of the unit for an offense, an attempted offense, or a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism; and~~

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

(3) the proceeds of the sale or money be deposited as follows:

(A) Eighty-five percent (85%) of the proceeds shall be deposited in the:

(i) state police asset forfeiture fund, if the property was seized by the state police department; or

(ii) local law enforcement forfeiture fund, if the unit has established a local law enforcement forfeiture fund. If there is no local law enforcement forfeiture fund, the proceeds shall be deposited in the safe schools fund established under IC 5-2-10.1.

(B) Fifteen percent (15%) of the proceeds shall be transferred to the treasurer of state for deposit in the common school fund.

If law enforcement agencies from more than one (1) jurisdiction participated in the seizure of forfeited property, the court shall determine how the proceeds of the sale or money shall be divided among the participating law enforcement agencies.

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

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

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

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

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

(g) Twenty-five percent (25%) of the part of the sale proceeds

C o p y

or money under subsection (d)(3)(A) shall be transferred to the state general fund for disbursement to the prosecuting attorney for use in defraying the expense of initiating and maintaining a forfeiture action. However, a prosecuting attorney may not receive in one (1) action more than:

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

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

(h) Proceeds or money described under subsection (d)(3)(A) may be:

(1) disbursed only from the local law enforcement forfeiture fund under an appropriation; and

(2) used only for law enforcement purposes.

(i) This subsection applies to every forfeiture action, including a forfeiture action that is the result of a settlement. Every forfeiture action must be filed with a court. Money or other proceeds from a forfeiture action may only be disbursed under a court order.

(j) As soon as practicable after the proceeds of the forfeiture have been distributed, the court shall notify the state police department of the amount and manner of the distribution.".

Delete pages 2 through 3.

Page 4, delete line 1.

Page 4, line 20, delete "4(e)" and insert "**4**".

Page 4, line 29, delete "general." and insert "**general for form and legality.**".

Page 4, line 30, delete "The" and insert "**Except as provided in subsection (d), the**".

Page 4, delete lines 39 through 42, begin a new paragraph and insert:

"**(d) A court may authorize a compensation agreement between a prosecuting attorney and an attorney retained to bring an action under this chapter that exceeds the limits established in subsection (c) if the court finds that the issues presented in a particular forfeiture action are unusually complex or time consuming as compared with other forfeiture actions.**".

Page 5, delete lines 1 through 4.

Page 5, after line 7, begin a new paragraph and insert:

"**(f) A prosecuting attorney may request the assistance of the**

C o p y

attorney general in bringing an action under this chapter. The attorney general may decline to provide assistance.

(g) If an attorney retained under this section is paid on a contingency or percentage basis, the value of seized property used to calculate the attorney's fee is, unless otherwise ordered by a court:

(1) for currency, the value of the seized currency; and

(2) for other property, the amount realized from the sale of the property at auction.".

and when so amended that said bill do pass.

(Reference is to SB 215 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 7, Nays 0.

Report of the President
Pro Tempore

Madam President: Pursuant to Senate Rule 68(b), I hereby report that, subsequent to the adoption of the Judiciary Committee Report on February 14, 2011, Senate Bill 215 was reassigned to the Committee on Appropriations.

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