
SENATE BILL No. 314

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-24-1.

Synopsis: Forfeiture of vehicles and other property used in crimes. Makes forfeiture of certain items used to facilitate a crime mandatory. Specifies that a vehicle is subject to forfeiture if the person operating the vehicle is convicted of operating while intoxicated and has three prior operating while intoxicated convictions in the preceding five years. Requires a prosecuting attorney to file an action for forfeiture not later than 90 days after receiving a written demand for the return of the seized item from the owner, or not later than 180 days after the item was seized, whichever occurs first.

Effective: July 1, 2005.

Antich-Carr

January 6, 2005, read first time and referred to Committee on Judiciary.

C
o
p
y



First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

C
o
p
y

SENATE BILL No. 314



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:

- 1 SECTION 1. IC 34-24-1-1 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The following
- 3 ~~may~~ **shall** be seized:
- 4 (1) All vehicles (as defined by IC 35-41-1), if they are used or are
- 5 intended for use by the person or persons in possession of them to
- 6 transport or in any manner to facilitate the transportation of the
- 7 following:
- 8 (A) A controlled substance for the purpose of committing,
- 9 attempting to commit, or conspiring to commit any of the
- 10 following:
- 11 (i) Dealing in or manufacturing cocaine, a narcotic drug, or
- 12 methamphetamine (IC 35-48-4-1).
- 13 (ii) Dealing in a schedule I, II, or III controlled substance
- 14 (IC 35-48-4-2).
- 15 (iii) Dealing in a schedule IV controlled substance
- 16 (IC 35-48-4-3).
- 17 (iv) Dealing in a schedule V controlled substance



- 1 (IC 35-48-4-4).
 2 (v) Dealing in a counterfeit substance (IC 35-48-4-5).
 3 (vi) Possession of cocaine, a narcotic drug, or
 4 methamphetamine (IC 35-48-4-6).
 5 (vii) Dealing in paraphernalia (IC 35-48-4-8.5).
 6 (viii) Dealing in marijuana, hash oil, or hashish
 7 (IC 35-48-4-10).
 8 (B) Any stolen (IC 35-43-4-2) or converted property
 9 (IC 35-43-4-3) if the retail or repurchase value of that property
 10 is one hundred dollars (\$100) or more.
 11 (C) Any hazardous waste in violation of IC 13-30-6-6.
 12 (D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass
 13 destruction (as defined in IC 35-41-1-29.4) used to commit,
 14 used in an attempt to commit, or used in a conspiracy to
 15 commit an offense under IC 35-47 as part of or in furtherance
 16 of an act of terrorism (as defined by IC 35-41-1-26.5).
 17 (2) All money, negotiable instruments, securities, weapons,
 18 communications devices, or any property used to commit, used in
 19 an attempt to commit, or used in a conspiracy to commit an
 20 offense under IC 35-47 as part of or in furtherance of an act of
 21 terrorism or commonly used as consideration for a violation of
 22 IC 35-48-4 (other than items subject to forfeiture under
 23 IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):
 24 (A) furnished or intended to be furnished by any person in
 25 exchange for an act that is in violation of a criminal statute;
 26 (B) used to facilitate any violation of a criminal statute; or
 27 (C) traceable as proceeds of the violation of a criminal statute.
 28 (3) Any portion of real or personal property purchased with
 29 money that is traceable as a proceed of a violation of a criminal
 30 statute.
 31 (4) A vehicle that is used by a person to:
 32 (A) commit, attempt to commit, or conspire to commit;
 33 (B) facilitate the commission of; or
 34 (C) escape from the commission of;
 35 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 36 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 37 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense
 38 under IC 35-47 as part of or in furtherance of an act of terrorism.
 39 (5) Real property owned by a person who uses it to commit any of
 40 the following as a Class A felony, a Class B felony, or a Class C
 41 felony:
 42 (A) Dealing in or manufacturing cocaine, a narcotic drug, or

C
O
P
Y



- 1 methamphetamine (IC 35-48-4-1).
 2 (B) Dealing in a schedule I, II, or III controlled substance
 3 (IC 35-48-4-2).
 4 (C) Dealing in a schedule IV controlled substance
 5 (IC 35-48-4-3).
 6 (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
 7 (6) Equipment and recordings used by a person to commit fraud
 8 under IC 35-43-5-4(11).
 9 (7) Recordings sold, rented, transported, or possessed by a person
 10 in violation of IC 24-4-10.
 11 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as
 12 defined by IC 35-45-6-1) that is the object of a corrupt business
 13 influence violation (IC 35-45-6-2).
 14 (9) Unlawful telecommunications devices (as defined in
 15 IC 35-45-13-6) and plans, instructions, or publications used to
 16 commit an offense under IC 35-45-13.
 17 (10) Any equipment used or intended for use in preparing,
 18 photographing, recording, videotaping, digitizing, printing,
 19 copying, or disseminating matter in violation of IC 35-42-4-4.
 20 (11) Destructive devices used, possessed, transported, or sold in
 21 violation of IC 35-47.5.
 22 (12) Cigarettes that are sold in violation of IC 24-3-5.2, cigarettes
 23 that a person attempts to sell in violation of IC 24-3-5.2, and other
 24 personal property owned and used by a person to facilitate a
 25 violation of IC 24-3-5.2.
 26 (13) Tobacco products that are sold in violation of IC 24-3-5,
 27 tobacco products that a person attempts to sell in violation of
 28 IC 24-3-5, and other personal property owned and used by a
 29 person to facilitate a violation of IC 24-3-5.
 30 **(14) A vehicle operated by a person who:**
 31 **(A) is convicted of an offense under IC 9-30-5-1 through**
 32 **IC 9-30-5-5; and**
 33 **(B) has three (3) prior unrelated convictions:**
 34 **(i) under IC 9-30-5-1 through IC 9-30-5-5;**
 35 **(ii) in another jurisdiction in which the elements of the**
 36 **crimes for which the convictions were entered are**
 37 **substantially similar to the elements of a crime described**
 38 **in IC 9-30-5-1 through IC 9-30-5-5; or**
 39 **(iii) under items (i) and (ii);**
 40 **occurring within the five (5) years immediately preceding**
 41 **the conviction for an offense under clause (A).**
 42 (b) A vehicle used by any person as a common or contract carrier in

C
o
p
y



1 the transaction of business as a common or contract carrier is not
2 subject to seizure under this section, unless it can be proven by a
3 preponderance of the evidence that the owner of the vehicle knowingly
4 permitted the vehicle to be used to engage in conduct that subjects it to
5 seizure under subsection (a).

6 (c) Equipment under subsection (a)(10) may not be seized unless it
7 can be proven by a preponderance of the evidence that the owner of the
8 equipment knowingly permitted the equipment to be used to engage in
9 conduct that subjects it to seizure under subsection (a)(10).

10 (d) Money, negotiable instruments, securities, weapons,
11 communications devices, or any property commonly used as
12 consideration for a violation of IC 35-48-4 found near or on a person
13 who is committing, attempting to commit, or conspiring to commit any
14 of the following offenses shall be admitted into evidence in an action
15 under this chapter as prima facie evidence that the money, negotiable
16 instrument, security, or other thing of value is property that has been
17 used or was to have been used to facilitate the violation of a criminal
18 statute or is the proceeds of the violation of a criminal statute:

- 19 (1) IC 35-48-4-1 (dealing in or manufacturing cocaine, a narcotic
20 drug, or methamphetamine).
- 21 (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled
22 substance).
- 23 (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
- 24 (4) IC 35-48-4-4 (dealing in a schedule V controlled substance)
25 as a Class B felony.
- 26 (5) IC 35-48-4-6 (possession of cocaine, a narcotic drug, or
27 methamphetamine) as a Class A felony, Class B felony, or Class
28 C felony.
- 29 (6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as
30 a Class C felony.

31 SECTION 2. IC 34-24-1-3 IS AMENDED TO READ AS
32 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) The prosecuting
33 attorney for the county in which the seizure occurs ~~may~~ **shall**, within
34 ninety (90) days after receiving written notice from the owner
35 demanding return of the seized property or within one hundred eighty
36 (180) days after the property is seized, whichever occurs first, cause an
37 action for reimbursement of law enforcement costs and forfeiture to be
38 brought by filing a complaint in the circuit, superior, or county court in
39 the jurisdiction where the seizure occurred. The action must be
40 brought:

- 41 (1) in the name of the state or the state and the unit that employed
42 the law enforcement officers who made the seizure if the state

C
O
P
Y



1 was not the employer; and
 2 (2) within the period that a prosecution may be commenced under
 3 IC 35-41-4-2 for the offense that is the basis for the seizure.
 4 (b) If the property seized was a vehicle or real property, the
 5 prosecuting attorney shall serve, under the Indiana Rules of Trial
 6 Procedure, a copy of the complaint upon each person whose right, title,
 7 or interest is of record in the bureau of motor vehicles, in the county
 8 recorder's office, or other office authorized to receive or record vehicle
 9 or real property ownership interests.
 10 (c) The owner of the seized property, or any person whose right,
 11 title, or interest is of record may, within twenty (20) days after service
 12 of the complaint under the Indiana Rules of Trial Procedure, file an
 13 answer to the complaint and may appear at the hearing on the action.
 14 (d) If, at the end of the time allotted for an answer, there is no
 15 answer on file, the court, upon motion, shall enter judgment in favor of
 16 the state and the unit (if appropriate) for reimbursement of law
 17 enforcement costs and shall order the property disposed of in
 18 accordance with section 4 of this chapter.

**C
O
P
Y**

