
SENATE BILL No. 247

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-24-1.

Synopsis: Forfeiture. Specifies that law enforcement costs in a civil forfeiture include only those costs actually incurred in the investigation and prosecution of the specific offense, including expenses actually incurred in bringing the forfeiture action. Requires every forfeiture action to be filed with a court, and requires a court to notify the Indiana criminal justice institute of the amount and manner of a forfeiture distribution. 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. 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, and specifies that if an attorney receives a contingency fee, the contingency fee must be determined based on: (1) the value of the seized currency, if applicable; and (2) the amount realized from the sale of other property at auction.

Effective: July 1, 2012.

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January 4, 2012, read first time and referred to Committee on Judiciary.

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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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SENATE BILL No. 247



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 34-24-1-3, AS AMENDED BY P.L.201-2011,
2 SECTION 108, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2012]: Sec. 3. (a) The prosecuting attorney for
4 the county in which the seizure occurs may, within ninety (90) days
5 after receiving written notice from the owner demanding return of the
6 seized property or within one hundred eighty (180) days after the
7 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 or superior court in the jurisdiction
10 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



1 Procedure, a copy of the complaint upon each person whose right, title,
 2 or interest is of record in the bureau of motor vehicles, in the county
 3 recorder's office, or other office authorized to receive or record vehicle
 4 or real property ownership interests.

5 (c) The owner of the seized property, or any person whose right,
 6 title, or interest is of record may, within twenty (20) days after service
 7 of the complaint under the Indiana Rules of Trial Procedure, file an
 8 answer to the complaint and may appear at the hearing on the action.

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

14 SECTION 2. IC 34-24-1-4 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4. (a) At the hearing,
 16 the prosecuting attorney must show by a preponderance of the evidence
 17 that the property was within the definition of property subject to seizure
 18 under section 1 of this chapter. If the property seized was a vehicle, the
 19 prosecuting attorney must also show by a preponderance of the
 20 evidence that a person who has an ownership interest of record in the
 21 bureau of motor vehicles knew or had reason to know that the vehicle
 22 was being used in the commission of the offense. **If the property**
 23 **seized was personal property that is not a vehicle, the prosecuting**
 24 **attorney must also show by a preponderance of the evidence that**
 25 **a person who has an ownership interest in the personal property**
 26 **knew or had reason to know that the personal property was being**
 27 **used in the commission of the offense.**

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

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

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

42 (1) determine the amount of law enforcement costs **actually**

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incurred in the investigation and prosecution of the specific offense, including expenses actually incurred in bringing the forfeiture action; and

(2) order that:

(A) 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) 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 **actual** law enforcement costs be forfeited and transferred to the treasurer of state for deposit in the common school fund.

(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) This subsection applies to every forfeiture action, including a forfeiture action that is the result of a settlement. Every

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1 forfeiture action must be filed with a court. Except for money or
 2 property seized under this chapter that is transferred to a federal
 3 authority under IC 34-24-1-9, money or other proceeds from a
 4 forfeiture action may be disbursed only in accordance with this
 5 section.

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

9 SECTION 3. IC 34-24-1-8 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8. (a) A prosecuting
 11 attorney may retain an attorney to bring an action under this chapter
 12 only in accordance with this section.

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

16 (1) in writing; and

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

18 (c) Except as provided in subsection (d), a compensation
 19 agreement between a prosecuting attorney and an attorney
 20 retained to bring an action under this chapter may be established
 21 under a contingency fee agreement limited as follows:

22 (1) The contingency fee may not exceed thirty-three and
 23 one-third percent (33 1/3%) of the first ten thousand dollars
 24 (\$10,000) of proceeds or money obtained under a settlement
 25 or judgment.

26 (2) The contingency fee may not exceed twenty-five percent
 27 (25%) of the part of the proceeds or money obtained under a
 28 settlement or judgment that is more than ten thousand dollars
 29 (\$10,000) and less than one hundred thousand dollars
 30 (\$100,000).

31 (3) The contingency fee may not exceed twenty percent (20%)
 32 of the part of the proceeds or money obtained under a
 33 settlement or judgment that is at least one hundred thousand
 34 dollars (\$100,000).

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

41 (b) (e) An attorney retained under this section is not required to be
 42 a deputy prosecuting attorney, but must be admitted to the practice of

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1 law in Indiana. A prosecuting attorney or deputy prosecuting
2 attorney who engages in a forfeiture action for the prosecuting
3 attorney's office may not receive a contingency fee.

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

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

- 11 (1) for currency, the value of the seized currency; and
12 (2) for other property, the amount realized from the sale of
13 the property at auction.

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