

House Research Act Summary

CHAPTER: 128

SESSION: 2012 Regular Session

TOPIC: Forfeiture

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Overview

This bill makes various changes to forfeiture provisions, including: revising provisions in DWI, off-highway vehicle (OHV), and drive-by shooting forfeiture laws to provide uniformity (similar changes were made in 2010 to the general forfeiture laws in chapter 609); amending notification language for administrative forfeitures; prohibiting sale of forfeited property to prosecuting authorities and their families; and increasing the monetary threshold on value of certain property that may be adjudicated in conciliation court. It also clarifies the burden of proof and creates a new reporting requirement if a forfeiture proceeding is transferred to another agency.

- 1, 8** **Seizure (OHV; DWI).** Require a law enforcement officer to provide a forfeiture receipt when seizing an off-highway vehicle or motor vehicle.
- 2, 9** **Right to possession (OHV; DWI).** Change statutory language from permissive to mandatory regarding a law enforcement officer's duty to secure seized property and prevent waste.
- 3, 10** **Bond by owner for possession (OHV; DWI).** Allow owners of seized vehicles to regain possession pending the forfeiture's outcome by giving security or posting bond equal to the value of the property. Current law gives law enforcement veto power over this. Amend the law to exclude vehicles being held for investigatory purposes.
- 4, 11** **Petition for remission (OHV; DWI).** Authorize a person with an interest in forfeited property to file a petition for remission or mitigation with the prosecuting authority. Provides that the prosecuting authority may remit or mitigate the forfeiture if: (1) the forfeiture was incurred without willful negligence or intent to violate the law, or (2) extenuating circumstances exist.
- 5, 12** **Administrative forfeiture procedure (OHV; DWI).** Require the appropriate agency to send notice of intent to forfeit vehicle within 60 days from when seizure occurs. Allow the agency or prosecuting authority to petition the court for an additional 90 days for good cause shown. Direct the agency to

return the property to the owner if notice is not timely sent. Provide that the agency retains the right to commence the forfeiture at a later time.

Increase the time for a claimant to file a demand for a judicial determination from 30 to 60 days.

Strike Hmong and Spanish from the list of languages required in printing the forfeiture notification. Provide that the notice must be printed in English and that printing in other languages would be done at the agency's discretion. Amend the statutory notice language to reflect the new conciliation court threshold of \$15,000 (*see* § 15), and strike the all-caps typeface in the notice and replace it with new language in regular typeface.

- 6, 13** **Judicial forfeiture procedure** (OHV; DWI). Require a judicial determination be held at the earliest practicable date, and no later than 180 days from the filing of the demand by the claimant unless a criminal proceeding is pending.
- 7, 14** **Disposition** (OHV; DWI). Amend the law addressing the disposition of forfeiture proceeds. Require sales of forfeited property to be conducted in a commercially reasonable manner. Prohibit employees of law enforcement agencies or the prosecuting authority and their relatives from purchasing forfeited items seized by the agency.
- For vehicles forfeited administratively, require a prosecuting authority to certify that the following procedures were taken before property may be forfeited (where no demand is made by the claimant): (1) the seizing agency provided an evidence or forfeiture receipt; (2) proper notice was timely served; and (3) probable cause for the forfeiture exists based upon the officer's statement.
- 15** **Jurisdiction** (OHV; DWI). Amends the conciliation court jurisdiction law to increase the monetary limit of certain claims that the court may hear to \$15,000. This increase applies to OHV and DWI forfeiture cases in chapters 84 and 169A.
- 16** **Definitions.** Defines "prosecuting authority" in forfeiture cases.
- 17** **Forfeiture a civil procedure.** Clarifies the burden of proof in forfeiture actions by restructuring and rewording the subdivision. It does not change the burden of proof or any other provision.
- 18** **Administrative forfeiture procedure.** Replaces "county attorney" with "prosecuting authority" (*see* § 21). Clarifies notification language. Strikes Hmong and Spanish from the list of languages required in printing the forfeiture notification. Provides that the notice must be printed in English and that printing in other languages would be done at the agency's discretion.
- 19** **Judicial determination.** Replaces "county attorney" with "prosecuting authority." Clarifies that claimant may serve complaint on prosecuting authority by any means permitted by court rule.
- 20** **Disposition.** Prohibits employees of the prosecuting authority and relatives from purchasing forfeited items.
- 21-23, 26** **Prosecuting authority.** Replace "county attorney" with "prosecuting authority" to reflect forfeiture actions conducted by city attorneys and the attorney general's office.
- 24** **Notice.** Amends notice language in drive-by shooting forfeiture provisions to be consistent with notice language found in other forfeiture provisions. See sections 5, 12, and 18 for changes to the language requirement for forfeiture notifications.
- 25** **Hearing.** Structural change.