

# HOUSE RESEARCH

## Bill Summary

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**Authors:** Fuller and others

**Subject:** DWI Vehicle Forfeiture

**Analyst:** Joe Cox, 651-296-5044

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### Overview

This bill makes several changes to the DWI vehicle forfeiture laws.

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- 1** **Definitions** . Replaces the term of "significant relationship" with "family or household member" and makes a cross-reference to section 3 of the bill, which fleshes out the definition in detail. The change in this section will make the definition of "family or household member" in the license plate impoundment statutes consistent with the definition in the vehicle forfeiture statutes.
- 2** **Sale of vehicle subject to impoundment order.** Conforming change.
- 3** **Definitions.** Makes several definition changes to the DWI vehicle forfeiture statutes.
  - Para. (c).** Adds a definition of "claimant." This is a helpful clarification with little substantive effect.
  - Para. (e).** Clarifies that a "designated offense" occurs when a person's driver's license is canceled as inimical to public safety *and not reinstated*, among other times.
  - Para. (f).** Adds a definition of "family or household member." The definition includes blood relatives, people with a special legal relationship (such as guardians), people who live together, and people who regularly associate and communicate outside of work.
  - Para. (h).** Changes the definition of "owner" (of a motor vehicle). The current definition of owner is the "registered owner" according to state records. The bill replaces it with a broader

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definition that encompasses the legal right to possess a vehicle. However, it retains a rebuttable presumption that a registered owner is the legal owner. It also provides that a vehicle owned jointly is not subject to apportionment.

**Para. (j).** Adds a definition of "security interest." Provides that a security interest must be bona fide, perfected, and listed on the vehicle's title.

**4 Seizure.** Adds a provision requiring the prosecuting authority to serve a notice of seizure on the registered owner. This change goes along with the changes in sections 7 and 8 eliminating the requirement that the prosecuting authority file a separate complaint naming the vehicle as a defendant.

**5 Vehicle subject to forfeiture.** Provides that when a boat or off-road vehicle is legally seized under the DWI forfeiture laws, the trailer used to transport the vehicle may also be seized.

**6 Limitations on vehicle forfeiture.**

**Para. (a).** Under current law, this subdivision lists the circumstances that permit vehicle forfeiture. The first change in this section provides that there is only a *presumption* of forfeiture under the listed circumstances. This change is related to the affirmative defenses in paragraphs (b) through (d). Under the changes, a vehicle will be presumed forfeited in certain cases, but a claimant or offender will have an opportunity to raise and prove certain affirmative defenses.

Provides that a car is subject to forfeiture if the offender fails to appear for a scheduled court appearance. This applies to any court appearance the offender misses. Under current law, this provision applies only to trial. Therefore, if an offender absconds before a trial date is set, the forfeiture action is put on hold while the offender is at warrant.

Provides that a vehicle forfeiture is not subject to denial or reversal based on the outcome of an *administrative* driver's license review. Under current law, in some cases a seized vehicle must be returned if an offender's driver's license revocation is reviewed and overturned. Review can occur either judicially (asking a judge to overturn the revocation) or administratively (asking DPS to overturn the revocation). Administrative review can be sought anytime up to a year after revocation - thus potentially holding the forfeiture action in limbo for a year (or exposing the prosecuting authority to liability for a completed forfeiture). This change will limit the "window" for seeking review to 30 days because it limits it to judicial review.

**Para. (b).** The term "security interest" is defined under section 3, making the term "bona fide" redundant.

Provides that the prosecuting authority's costs for seizure, tow, forfeiture, and sale, have precedence over a security interest.

Repeals the requirement that the prosecuting authority must notify a secured party at least three days prior to the sale of a vehicle.

Requires that a security interest must be established by its holder by clear and convincing evidence.

**Para. (c).** If a secured party has knowledge of an offender's illegal acts, the changes in this paragraph place the burden of proof on the secured party to demonstrate that it took

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reasonable steps to terminate use of the vehicle by the offender. It is anticipated that this paragraph will only rarely be invoked, since it is very rare that a secured party has knowledge of an of an offender's illegal behavior.

This paragraph also makes conforming changes by deleting references to owners. Owners are considered separately in paragraph (d).

**Para. (d).** Modifies the "innocent owner" defense in forfeiture cases (cases in which the owner was not the person driving drunk). Establishes an affirmative defense for vehicle owners and places the burden of proof on the owner. Requires the owner to prove he did not have actual or constructive knowledge of the illegal vehicle use (or prove he tried to prevent the use). Provides that a family or household member is presumed to know of an offender's illegal use if the offender has three or more prior DWI convictions. Lists the applicable types of illegal vehicle use: driving without a license, no proof of insurance, violating a license restriction, DWI, underage drinking and driving, and open bottle. Also deletes a redundant paragraph relating to security interests.

### 7 **Administrative forfeiture procedure.**

**Para. (b).** Provides that service of a vehicle seizure notice may be made within a reasonable time after seizure, as opposed to the exact time of the seizure.

**Para. (d).** Provides that if a claimant files a claim in conciliation court for recovery of the seized vehicle, a copy of the claim must be served on the prosecuting authority within 30 days of the vehicle seizure. In some cases under current law, a claimant need not serve the claim until 60 days or more after the seizure, which may be after the court has already issued a certificate of forfeiture.

Deletes language that permits combining a driver's license revocation hearing and a forfeiture hearing.

**Para. (e).** Requires the claimant of a seized vehicle to state any affirmative defenses in the complaint.

**Para. (f).** Conforming change.

**Para. (g).** The provisions of this deleted paragraph are reproduced in paragraph (h) of the following section.

### 8 **Judicial forfeiture procedure.**

**Para. (a).** Provides that forfeiture is a civil action guided by the Rules of Civil Procedure.

**Para. (b).** Provides that the prosecuting authority *may* file a separate complaint against a vehicle if the vehicle owner does not do so. Under current law, a separate complaint *must* be filed.

**Para. (c).** Permits the prosecuting authority to file an answer to a claimant's complaint.

**Para. (d).** Provides that a forfeiture hearing generally must not precede a criminal prosecution. Provides that jury trials are not permitted in forfeiture cases.

**Para. (e).** Establishes a presumption that vehicles used in the commission of a designated offense is subject to forfeiture. Requires a claimant to prove any affirmative defense.

**Para. (f) and (g).** Requires a vehicle owner to show proof of ownership, valid driving

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privileges, insurance, and to pay any storage costs if a vehicle is ordered returned to the owner.

**Para. (h).** Authorizes the return of filing fees and permits sanctions if a vehicle is returned to the owner (these provisions are reproduced from the preceding section - logically they belong in this section). Provides that reimbursement fees and sanctions must be apportioned in the same manner as proceeds.

**9**        **Disposition of forfeited vehicle.** Conforming change.

**10**       **Sale of forfeited vehicle by secured party.** Provides that a forfeiture action must conclude before a forfeited vehicle is turned over to a secured party under this section. The secured party must prove the existence and amount of the security agreement. Requires up-front reimbursement to the prosecuting authority for towing, storage, and other costs. Requires a written agreement to not sell the vehicle to the offender, the owner, or a family or household member of the offender or owner. After sale of the vehicle, requires the secured party to forward any excess proceeds to the prosecuting authority within ten days.