

HOUSE BILL No. 1035

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-24-1; IC 35-33-5-5.

Synopsis: Use of proceeds from forfeited property. Provides that: (1) money; or (2) proceeds from the sale of property; that has been seized and forfeited because of its connection to the violation of certain criminal statutes may not be used to purchase a passenger motor vehicle if the value of the motor vehicle is greater than the maximum value of a Class XV vehicle as determined under the law concerning the motor vehicle excise tax. (Under current law, the value of a Class XV vehicle is at least \$30,000 but less than \$35,000.)

Effective: July 1, 2015.

Culver

January 6, 2015, read first time and referred to Committee on Judiciary.



First Regular Session of the 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1035



A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

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

1 SECTION 1. IC 34-24-1-4 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. (a) At the hearing,
3 the prosecuting attorney must show by a preponderance of the evidence
4 that the property was within the definition of property subject to seizure
5 under section 1 of this chapter. If the property seized was a vehicle, the
6 prosecuting attorney must also show by a preponderance of the
7 evidence that a person who has an ownership interest of record in the
8 bureau of motor vehicles knew or had reason to know that the vehicle
9 was being used in the commission of the offense.

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

12 (c) If the court enters judgment in favor of the state, or the state and
13 a unit (if appropriate), the court, subject to section 5 of this chapter,
14 shall order delivery to the law enforcement agency that seized the
15 property. The court's order may permit the agency to use the property



1 for a period not to exceed three (3) years. However, the order must
 2 require that, after the period specified by the court, the law
 3 enforcement agency shall deliver the property to the county sheriff for
 4 public sale.

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

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

9 (2) order that:

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

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

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

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

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

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

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

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

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

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

40 (f) If the property seized was an unlawful telecommunications
 41 device (as defined in IC 35-45-13-6) or plans, instructions, or
 42 publications used to commit an offense under IC 35-45-13, the court



1 may order the sheriff of the county in which the person was convicted
 2 of an offense under IC 35-45-13 to destroy as contraband or to
 3 otherwise lawfully dispose of the property.

4 **(g) Any:**

5 **(1) money; or**

6 **(2) proceeds from the sale of property;**

7 **seized under this chapter may not be used to purchase a passenger**
 8 **motor vehicle if the value of the motor vehicle is greater than the**
 9 **maximum value of a Class XV vehicle as determined under**
 10 **IC 6-6-5-3 and IC 6-6-5-4 concerning the motor vehicle excise tax.**

11 SECTION 2. IC 34-24-1-9 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 9. (a) Upon motion of
 13 a prosecuting attorney under IC 35-33-5-5(j), property seized under this
 14 chapter must be transferred, subject to the perfected liens or other
 15 security interests of any person in the property, to the appropriate
 16 federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C.
 17 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the
 18 United States Department of Justice.

19 (b) Money received by a law enforcement agency as a result of a
 20 forfeiture under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C.
 21 881(e) and any related regulations adopted by the United States
 22 Department of Justice must be deposited into a nonreverting fund and
 23 may be expended only with the approval of:

24 (1) the executive (as defined in IC 36-1-2-5), if the money is
 25 received by a local law enforcement agency; or

26 (2) the governor, if the money is received by a law enforcement
 27 agency in the executive branch.

28 The money received under this subsection must be used solely for the
 29 benefit of any agency directly participating in the seizure or forfeiture
 30 for purposes consistent with federal laws and regulations. **However,**
 31 **the money received under this subsection may not be used to**
 32 **purchase a passenger motor vehicle if the value of the motor**
 33 **vehicle is greater than the maximum value of a Class XV vehicle as**
 34 **determined under IC 6-6-5-3 and IC 6-6-5-4 concerning the motor**
 35 **vehicle excise tax.**

36 SECTION 3. IC 35-33-5-5, AS AMENDED BY P.L.1-2007,
 37 SECTION 225, IS AMENDED TO READ AS FOLLOWS
 38 [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) All items of property seized
 39 by any law enforcement agency as a result of an arrest, search warrant,
 40 or warrantless search, shall be securely held by the law enforcement
 41 agency under the order of the court trying the cause, except as provided
 42 in this section.



1 (b) Evidence that consists of property obtained unlawfully from its
2 owner may be returned by the law enforcement agency to the owner
3 before trial, in accordance with IC 35-43-4-4(h).

4 (c) Following the final disposition of the cause at trial level or any
5 other final disposition the following shall be done:

6 (1) Property which may be lawfully possessed shall be returned
7 to its rightful owner, if known. If ownership is unknown, a
8 reasonable attempt shall be made by the law enforcement agency
9 holding the property to ascertain ownership of the property. After
10 ninety (90) days from the time:

11 (A) the rightful owner has been notified to take possession of
12 the property; or

13 (B) a reasonable effort has been made to ascertain ownership
14 of the property;

15 the law enforcement agency holding the property shall, at a
16 convenient time, dispose of this property at a public auction. The
17 proceeds of this property shall be paid into the county general
18 fund **and may not be used to purchase a passenger motor**
19 **vehicle if the value of the motor vehicle is greater than the**
20 **maximum value of a Class XV vehicle as determined under**
21 **IC 6-6-5-3 and IC 6-6-5-4 concerning the motor vehicle excise**
22 **tax.**

23 (2) Except as provided in subsection (e), property, the possession
24 of which is unlawful, shall be destroyed by the law enforcement
25 agency holding it sixty (60) days after final disposition of the
26 cause.

27 (3) A firearm that has been seized from a person who is
28 dangerous (as defined in IC 35-47-14-1) shall be retained,
29 returned, or disposed of in accordance with IC 35-47-14.

30 (d) If any property described in subsection (c) was admitted into
31 evidence in the cause, the property shall be disposed of in accordance
32 with an order of the court trying the cause.

33 (e) A law enforcement agency may destroy or cause to be destroyed
34 chemicals, controlled substances, or chemically contaminated
35 equipment (including drug paraphernalia as described in
36 IC 35-48-4-8.5) associated with the illegal manufacture of drugs or
37 controlled substances without a court order if all the following
38 conditions are met:

39 (1) The law enforcement agency collects and preserves a
40 sufficient quantity of the chemicals, controlled substances, or
41 chemically contaminated equipment to demonstrate that the
42 chemicals, controlled substances, or chemically contaminated



- 1 equipment was associated with the illegal manufacture of drugs
2 or controlled substances.
- 3 (2) The law enforcement agency takes photographs of the illegal
4 drug manufacturing site that accurately depict the presence and
5 quantity of chemicals, controlled substances, and chemically
6 contaminated equipment.
- 7 (3) The law enforcement agency completes a chemical inventory
8 report that describes the type and quantities of chemicals,
9 controlled substances, and chemically contaminated equipment
10 present at the illegal manufacturing site.
- 11 The photographs and description of the property shall be admissible
12 into evidence in place of the actual physical evidence.
- 13 (f) For purposes of preserving the record of any conviction on
14 appeal, a photograph demonstrating the nature of the property, and an
15 adequate description of the property must be obtained before the
16 disposition of the property. In the event of a retrial, the photograph and
17 description of the property shall be admissible into evidence in place
18 of the actual physical evidence. All other rules of law governing the
19 admissibility of evidence shall apply to the photographs.
- 20 (g) The law enforcement agency disposing of property in any
21 manner provided in subsection (b), (c), or (e) shall maintain certified
22 records of any disposition under subsection (b), (c), or (e). Disposition
23 by destruction of property shall be witnessed by two (2) persons who
24 shall also attest to the destruction.
- 25 (h) This section does not affect the procedure for the disposition of
26 firearms seized by a law enforcement agency.
- 27 (i) A law enforcement agency that disposes of property by auction
28 under this section shall permanently stamp or otherwise permanently
29 identify the property as property sold by the law enforcement agency.
- 30 (j) Upon motion of the prosecuting attorney, the court shall order
31 property seized under IC 34-24-1 transferred, subject to the perfected
32 liens or other security interests of any person in the property, to the
33 appropriate federal authority for disposition under 18 U.S.C. 981(e), 19
34 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted
35 by the United States Department of Justice.

