



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-1662/2
CMH&MLJ:kjf&wlj

2017 SENATE BILL 61

February 21, 2017 - Introduced by Senators CRAIG, NASS, WIRCH, TIFFANY, KAPENGA, STROEBEL and LASEE, cosponsored by Representatives TAUCHEN, JARCHOW, KESSLER, KOOYENGA, SANFELIPPO, SARGENT, RIEMER, BROSTOFF, KUGLITSCH, THIESFELDT, QUINN, KNODL, BOWEN, KREMER, SCHRAA, SINICKI, WICHGERS, MASON, SKOWRONSKI and RIPP. Referred to Committee on Labor and Regulatory Reform.

1 **AN ACT** *to repeal* 961.55 (1) (d) 1., 961.55 (1) (d) 2., 961.55 (1) (d) 3., 961.55 (1)
2 (d) 4., 961.55 (5) (a), 961.55 (5) (e) 1., 961.55 (5) (e) 2., 973.075 (1) (b) 2m. and
3 973.075 (5m); *to renumber* 973.075 (1) (b) 1m. a. to h.; *to renumber and*
4 **amend** 961.55 (1) (d) (intro.), 961.55 (5) (e) (intro.) and 973.075 (1) (b) 1m.
5 (intro.); *to amend* 29.934 (1) (d), 961.55 (1) (intro.), 961.55 (3) (intro.), 961.55
6 (5) (b), 961.555 (1), 961.555 (2) (a), 961.555 (3), 973.075 (1) (intro.), 973.075 (1)
7 (bg), 973.075 (1) (bm), 973.075 (1) (d), 973.075 (1) (e), 973.075 (4), 973.075 (5)
8 (intro.), 973.076 (1) (a), 973.076 (1) (b) 1. and 973.076 (3); and *to create* 961.55
9 (1g), 961.55 (1k), 961.55 (1m), 961.55 (1r), 961.555 (2) (am), 961.555 (3m),
10 961.555 (5), 961.555 (6), 973.075 (1g), 973.075 (1k), 973.075 (1m), 973.075 (1r),
11 973.075 (5r), 973.076 (1) (b) 1m., 973.076 (3m), 973.076 (5) and 973.076 (6) of
12 the statutes; **relating to:** forfeiture of property seized in relation to a crime.

Analysis by the Legislative Reference Bureau

This bill changes the procedure for forfeiture of property after it has been seized in relation to a crime. Under current law, the state or a local law enforcement agency

SENATE BILL 61

may acquire certain property involved in the commission of a crime or seized in relation to a criminal investigation through a forfeiture proceeding. The forfeiture law applies to all property directly or indirectly derived from or used for the commission of a crime. This bill allows property to be subject to forfeiture only after a person has been convicted of the crime related to the forfeiture action and only if a court finds that the property seized is proportional to the crime committed. If the person is acquitted or the charges against the person are dropped, the court must order that his or her property be returned within 30 days. The bill requires seized property to be returned to innocent owners of the property unless the owners were involved with or knowledgeable about the crime related to his or her property. Further, the bill allows the court, upon petition by a person whose property was seized but not yet forfeited, to return the property to the person under certain circumstances. Under the bill, the person may not sell, give away, or burden the property and, if the person is found to have committed the crime related to the property, must surrender the property for forfeiture after conviction. This bill also allows a person who prevails in a forfeiture action to recover reasonable attorney fees from the state.

This bill requires that all proceeds from the sale of all forfeited property be turned in to the state school fund. It also prohibits local law enforcement agencies from transferring property to federal agencies for forfeiture under federal law unless the value of the property exceeds \$50,000 or the property can be forfeited only under federal law.

Under current law, forfeiture proceedings may proceed prior to an actual conviction in a criminal case, and any seized property will be held by the law enforcement agency until the case is finished.

Under current law, after a court orders that property be forfeited, an agency may keep certain property for its own use, transfer the property to another agency, or sell the property. The agency that seized the property may retain a set percentage of the proceeds of selling the property to cover administrative and other costs and the remainder goes into the state school fund. In addition, current law allows local law enforcement agencies to enter into agreements with federal authorities wherein property that is seized in relation to a federal crime is turned over to the federal authorities for forfeiture under federal law. Proceeds from selling the property are then shared between the federal authorities and local law enforcement agencies.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 29.934 (1) (d) of the statutes is amended to read:
- 2 29.934 (1) (d) The provisions of s. 973.075 (1) (b) ~~2m.~~ and (5) ~~(1m)~~ apply to boats
- 3 and vehicles, other than motor vehicles, under this subsection.

SENATE BILL 61

1 **SECTION 2.** 961.55 (1) (intro.) of the statutes is amended to read:

2 961.55 (1) (intro.) The Subject to subs. (1g) and (1m), the following are subject
3 to forfeiture:

4 **SECTION 3.** 961.55 (1) (d) (intro.) of the statutes is renumbered 961.55 (1) (d)
5 and amended to read:

6 961.55 (1) (d) All vehicles which are used, or intended for use, to transport, or
7 in any manner to facilitate the transportation, for the purpose of sale or receipt of
8 property described in pars. (a) and (b) or for the purpose of transporting any property
9 or weapon used or to be used or received in the commission of any felony under this
10 chapter, but: except that a vehicle is not subject to forfeiture for a violation of s.
11 961.41 (3g) (b) to (g).

12 **SECTION 4.** 961.55 (1) (d) 1. of the statutes is repealed.

13 **SECTION 5.** 961.55 (1) (d) 2. of the statutes is repealed.

14 **SECTION 6.** 961.55 (1) (d) 3. of the statutes is repealed.

15 **SECTION 7.** 961.55 (1) (d) 4. of the statutes is repealed.

16 **SECTION 8.** 961.55 (1g) of the statutes is created to read:

17 961.55 (1g) No item is subject to forfeiture under this chapter unless a person
18 is convicted of the criminal offense that was the basis for the seizure of the item or
19 that is related to the action for forfeiture.

20 **SECTION 9.** 961.55 (1k) of the statutes is created to read:

21 961.55 (1k) (a) A person who has been subject to a seizure of property has a
22 right to a pretrial hearing to determine the validity of the seizure. He or she may
23 claim the right to possession of seized property at any time prior to 60 days before
24 trial for the crime that gave rise to the seizure by motion to the court establishing
25 the validity of the alleged interest in the property.

SENATE BILL 61

1 (b) The state shall file an answer to the motion filed under par. (a) showing
2 probable cause for the seizure at least 10 days before the hearing of the motion.

3 (c) The court shall hear the motion filed under par. (a) no more than 30 days
4 after the motion is filed.

5 (d) Either party may, by agreement or for good cause, move the court for one
6 extension of no more than 10 days. Any such motion may be supported by affidavits
7 or other submissions.

8 (e) Following hearing of the motion under par. (a), the court shall order the
9 seized property to be returned to a person under this subsection if it finds any of the
10 following:

11 1. It is likely that the final judgement will be that the state must return the
12 property to the claimant, and the property is not reasonably required to be held for
13 investigatory reasons.

14 2. The property is the only reasonable means for a defendant to pay for legal
15 representation in the forfeiture or criminal proceeding, and the property is not
16 reasonably required to be held for investigatory reasons. If the court makes this
17 finding, it may order the return of funds or property sufficient to obtain legal counsel
18 but less than the total amount seized, and require an accounting.

19 (f) If a court orders property returned under this subsection, the court shall
20 order the person not to sell, transfer, assign, or otherwise encumber the property
21 until the court orders the property either returned under sub. (3) or forfeited under
22 s. 961.555.

23 (g) If the person is subsequently convicted of or found to have committed the
24 offense, the court shall order the person to surrender the returned property for
25 proceedings under s. 961.555.

SENATE BILL 61

1 **SECTION 10.** 961.55 (1m) of the statutes is created to read:

2 961.55 **(1m)** (a) The property of an innocent owner may not be forfeited.

3 (b) A person who has an ownership interest in property subject to forfeiture
4 that exists at the occurrence of the illegal conduct giving rise to the forfeiture who
5 claims to be an innocent owner has the burden of proving by clear and convincing
6 evidence that he or she has a legal right, title, or interest in the property seized under
7 this chapter.

8 (c) If the requisite showing under par. (b) has been made, in order to proceed
9 with a forfeiture action against the property, the state has the burden of proving by
10 clear and convincing evidence that the person had actual or constructive knowledge
11 of the underlying crime giving rise to the forfeiture.

12 (d) A person who has an ownership interest in property subject to forfeiture
13 that he or she acquired after the occurrence of the conduct giving rise to the forfeiture
14 who claims to be an innocent owner has the burden of proving by clear and convincing
15 evidence that he or she has a legal right, title, or interest in the property seized under
16 this chapter.

17 (e) If the requisite showing under par. (d) has been made, in order to proceed
18 with a forfeiture action against the property, the state has the burden of proving by
19 clear and convincing evidence that the person had actual or constructive knowledge
20 that the property was subject to forfeiture or that the person was not a bona fide
21 purchaser without notice of any defect in title and for valuable consideration.

22 (f) If the state does not meet the burden under par. (c) or (e) as to any property,
23 the court shall find that the property is the property of an innocent owner and not
24 subject to forfeiture under this chapter and shall order the state to relinquish all
25 claims of title to the property.

SENATE BILL 61**SECTION 10**

1 (g) The defendant or convicted offender may invoke the right against
2 self-incrimination or the marital privilege during the forfeiture-related stage of the
3 prosecution. The trier of fact at the hearing may draw an adverse inference from the
4 invocation of the right or privilege.

5 **SECTION 11.** 961.55 (1r) of the statutes is created to read:

6 961.55 (1r) (a) No law enforcement officer or agency or state or local employee
7 or agency may enter into an agreement to transfer property to a federal agency
8 directly, indirectly, by adoption, through an intergovernmental joint task force, or by
9 other means, for the purposes of forfeiture litigation unless the seized property
10 includes more than \$50,000 of U.S. currency or the property may be forfeited only
11 under federal law.

12 (b) All law enforcement agencies shall refer seized property to the appropriate
13 state prosecuting attorney for forfeiture under this chapter unless the seized
14 property includes more than \$50,000 of U.S. currency or the property may be
15 forfeited only under federal law. If the seized property includes more than \$50,000
16 of U.S. currency, the law enforcement agency may, but is not required to, refer or
17 transfer the seized property to a federal agency for forfeiture litigation under federal
18 law.

19 (c) Nothing in this subsection shall be construed to restrict a law enforcement
20 officer or agency from collaborating with a federal agency to seize contraband or
21 property that the law enforcement agency has probable cause to believe is subject to
22 forfeiture through an intergovernmental joint task force.

23 **SECTION 12.** 961.55 (3) (intro.) of the statutes is amended to read:

24 961.55 (3) (intro.) In the event of seizure under sub. (2), proceedings under sub.
25 (4) shall be instituted promptly. All dispositions and forfeitures under this section

SENATE BILL 61

1 and ss. 961.555 and 961.56 shall be made with due provision for the rights of innocent
2 persons under sub. (1) (d) 1., 2. and 4. subs. (1g), (1k), and (1m). Any property seized
3 but not forfeited shall be returned to its rightful owner. Any person claiming the
4 right to possession of property seized may apply for its return to the circuit court for
5 the county in which the property was seized. The court shall order such notice as it
6 deems adequate to be given the district attorney and all persons who have or may
7 have an interest in the property and shall hold a hearing to hear all claims to its true
8 ownership. If the right to possession is proved to the court's satisfaction, it shall
9 order the property returned if:

10 **SECTION 13.** 961.55 (5) (a) of the statutes is repealed.

11 **SECTION 14.** 961.55 (5) (b) of the statutes is amended to read:

12 961.55 (5) (b) Sell that which is not required to be destroyed by law and which
13 is not harmful to the public. The agency ~~may use 50 percent of the amount received~~
14 ~~for payment of forfeiture expenses. The remainder shall be deposited~~ shall deposit
15 all amounts received in the school fund as proceeds of the forfeiture. In this
16 paragraph, ~~“forfeiture expenses” include all proper expenses of the proceedings for~~
17 ~~forfeiture and sale, including expenses of seizure, maintenance of custody,~~
18 ~~advertising, and court costs and the costs of investigation and prosecution~~
19 ~~reasonably incurred.~~

20 **SECTION 15.** 961.55 (5) (e) (intro.) of the statutes is renumbered 961.55 (5) (e)
21 and amended to read:

22 961.55 (5) (e) If the property forfeited is money, ~~retain the sum of all of the~~
23 ~~following for payment of forfeiture expenses, as defined in par. (b), and deposit the~~
24 ~~remainder~~ money in the school fund.

25 **SECTION 16.** 961.55 (5) (e) 1. of the statutes is repealed.

SENATE BILL 61

1 **SECTION 17.** 961.55 (5) (e) 2. of the statutes is repealed.

2 **SECTION 18.** 961.555 (1) of the statutes is amended to read:

3 961.555 (1) TYPE OF ACTION; WHERE BROUGHT. In an action brought to cause the
4 forfeiture of any property seized under s. 961.55, the court may render a judgment
5 in rem or against a party personally, or both. The circuit court for the county in which
6 the property was seized shall have jurisdiction over any proceedings regarding the
7 property when the action is commenced in state court. ~~Any~~ Subject to s. 961.55 (1r),
8 any property seized may be the subject of a federal forfeiture action.

9 **SECTION 19.** 961.555 (2) (a) of the statutes is amended to read:

10 961.555 (2) (a) The district attorney of the county within which the property
11 was seized shall commence the forfeiture action within 30 days after the seizure of
12 the property, ~~except that the defendant may request that~~ and the forfeiture
13 proceedings shall be adjourned until after ~~adjudication~~ the defendant is convicted of
14 any charge concerning a crime which was the basis for the seizure of the property.
15 ~~The request shall be granted.~~ The forfeiture action shall be commenced by filing a
16 summons, complaint and affidavit of the person who seized the property with the
17 clerk of circuit court, provided service of authenticated copies of those papers is made
18 in accordance with ch. 801 within 90 days after filing upon the person from whom
19 the property was seized and upon any person known to have a bona fide perfected
20 security interest in the property.

21 **SECTION 20.** 961.555 (2) (am) of the statutes is created to read:

22 961.555 (2) (am) Upon motion by the prosecuting attorney, the court may waive
23 the conviction requirement under par. (a) if the prosecuting attorney shows by clear
24 and convincing evidence that any of the following applies:

25 1. The defendant has died.

SENATE BILL 61

1 2. The defendant was deported by the U.S. government.

2 3. The defendant has been granted immunity in exchange for testifying or
3 otherwise assisting a law enforcement investigation or prosecution.

4 4. The defendant fled the jurisdiction after being arrested, charged with a crime
5 that includes the forfeiture of property, and released on bail.

6 **SECTION 21.** 961.555 (3) of the statutes is amended to read:

7 961.555 (3) BURDEN OF PROOF. The state shall have the burden of ~~satisfying or~~
8 proving by clear and convincing to a reasonable certainty by the greater weight of the
9 ~~credible~~ evidence that the property is subject to forfeiture under s. 961.55.

10 **SECTION 22.** 961.555 (3m) of the statutes is created to read:

11 961.555 (3m) PROPORTIONALITY. (a) The court may not order the forfeiture of
12 property if the court finds that the forfeiture is grossly disproportional to the crime
13 for which the person whose property was seized was convicted or that the forfeiture
14 is unconstitutionally excessive under the state or federal constitution.

15 (b) A person who is alleging that the forfeiture is grossly disproportional or is
16 unconstitutionally excessive under this subsection shall have the burden of
17 satisfying or convincing to a reasonable certainty by the greater weight of the
18 credible evidence that the forfeiture is grossly disproportional or unconstitutionally
19 excessive.

20 (c) In determining whether the forfeiture is grossly disproportional or
21 unconstitutionally excessive, the court shall consider the following:

22 1. The seriousness of the offense and its impact on the community, including
23 the duration of the activity and the harm caused by the person.

24 2. The extent to which the person participated in the offense.

25 3. The extent to which the property was used in committing the offense.

SENATE BILL 61

- 1 4. The sentence imposed on the person for the offense.
- 2 5. Whether the person completed or attempted to complete the offense.
- 3 6. The fair market value of the property.
- 4 7. The value of the property to the person, including the hardship to the person
- 5 if the property is forfeited.
- 6 8. The hardship to the person's family members if the property is forfeited.

7 (d) In determining whether the forfeiture is grossly disproportional or
8 unconstitutionally excessive, the court may not consider the value of the property to
9 the state.

10 **SECTION 23.** 961.555 (5) of the statutes is created to read:

11 961.555 (5) RETURN OF PROPERTY. The court shall order the return of any
12 property subject to forfeiture under ss. 961.55 to 961.56 within 30 days of acquittal
13 or dismissal of charges for the offense which was the basis of the forfeiture action.

14 **SECTION 24.** 961.555 (6) of the statutes is created to read:

15 961.555 (6) ATTORNEY FEES. A person who prevails in an action to return
16 property subject to forfeiture under ss. 961.55 to 961.56 shall be awarded reasonable
17 attorney fees by the state. For the purposes of this subsection, a person prevails if
18 the claimant recovers more than 50 percent, by value, of the money or other property
19 that is claimed.

20 **SECTION 25.** 973.075 (1) (intro.) of the statutes is amended to read:

21 973.075 (1) (intro.) The Subject to subs. (1g) and (1m), the following are subject
22 to seizure and forfeiture under ss. 973.075 to 973.077:

23 **SECTION 26.** 973.075 (1) (b) 1m. (intro.) of the statutes is renumbered 973.075
24 (1) (b) (intro.) and amended to read:

SENATE BILL 61

1 973.075 (1) (b) (intro.) ~~Except as provided in subd. 2m., all~~ All vehicles, as
2 defined in s. 939.22 (44), which are used in any of the following ways:

3 **SECTION 27.** 973.075 (1) (b) 1m. a. to h. of the statutes are renumbered 973.075
4 (1) (b) 1. to 8.

5 **SECTION 28.** 973.075 (1) (b) 2m. of the statutes is repealed.

6 **SECTION 29.** 973.075 (1) (bg) of the statutes is amended to read:

7 973.075 (1) (bg) Any property used or to be used in the commission of a crime
8 under s. 943.74, 943.75 (2) or (2m), or 948.07, ~~but if the property is encumbered by~~
9 ~~a bona fide perfected security interest that was perfected before the date of the~~
10 ~~commission of the current violation and the holder of the security interest neither~~
11 ~~had knowledge of nor consented to the commission of that violation, the holder of the~~
12 ~~security interest shall be paid from the proceeds of the forfeiture.~~

13 **SECTION 30.** 973.075 (1) (bm) of the statutes is amended to read:

14 973.075 (1) (bm) Any property used in the commission of a crime under s.
15 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 (4) or 940.32, ~~but if the~~
16 ~~property is encumbered by a bonafide perfected security interest that was perfected~~
17 ~~before the date of the commission of the current violation and the holder of the~~
18 ~~security interest neither had knowledge of nor consented to the commission of that~~
19 ~~violation, the holder of the security interest shall be paid from the proceeds of the~~
20 ~~forfeiture.~~

21 **SECTION 31.** 973.075 (1) (d) of the statutes is amended to read:

22 973.075 (1) (d) A tank vessel that violates s. 299.62 (2) that is owned by a person
23 who, within 5 years before the commission of the current violation, was previously
24 convicted of violating s. 299.62 (2), ~~but if the tank vessel is encumbered by a bona fide~~
25 ~~perfected security interest that was perfected before the date of the commission of~~

SENATE BILL 61

1 ~~the current violation and the holder of the security interest neither had knowledge~~
2 ~~of nor consented to the commission of that violation, the holder of the security~~
3 ~~interest shall be paid from the proceeds of the forfeiture.~~

4 **SECTION 32.** 973.075 (1) (e) of the statutes is amended to read:

5 973.075 (1) (e) Any recording, as defined in s. 943.206 (5), created, advertised,
6 offered for sale or rent, sold, rented, transported or possessed in violation of ss.
7 943.207 to 943.209 or s. 943.49 and any electronic, mechanical or other device for
8 making a recording or for manufacturing, reproducing, packaging or assembling a
9 recording that was used to facilitate a violation of ss. 943.207 to 943.209 or s. 943.49,
10 regardless of the knowledge or intent of the person from whom the recording or
11 device is seized. ~~If a device subject to forfeiture under this paragraph is encumbered~~
12 ~~by a bona fide perfected security interest that was perfected before the date of the~~
13 ~~commission of the current violation and the holder of the security interest neither~~
14 ~~had knowledge of nor consented to the commission of that violation, the holder of the~~
15 ~~security interest shall be paid from the proceeds of the forfeiture.~~

16 **SECTION 33.** 973.075 (1g) of the statutes is created to read:

17 973.075 (1g) No item is subject to forfeiture under ss. 973.075 to 973.077 unless
18 a person is convicted of the criminal offense that was the basis for the seizure of the
19 item or that is related to the action for forfeiture.

20 **SECTION 34.** 973.075 (1k) of the statutes is created to read:

21 973.075 (1k) (a) A person who has been subject to a seizure of property has a
22 right to a pretrial hearing to determine the validity of the seizure. He or she may
23 claim the right to possession of seized property at any time prior to 60 days before
24 trial for the crime that gave rise to the seizure by motion to the court establishing
25 the validity of the alleged interest in the property.

SENATE BILL 61

1 (b) The state shall file an answer to the motion filed under par. (a) showing
2 probable cause for the seizure at least 10 days before the hearing of the motion.

3 (c) The court shall hear the motion filed under par. (a) no more than 30 days
4 after the motion is filed.

5 (d) Either party may, by agreement or for good cause, move the court for one
6 extension of no more than 10 days. Any such motion may be supported by affidavits
7 or other submissions.

8 (e) Following hearing of the motion under par. (a), the court shall order the
9 seized property to be returned to a person under this subsection if it finds any of the
10 following:

11 1. It is likely that the final judgement will be that the state must return the
12 property to the claimant, and the property is not reasonably required to be held for
13 investigatory reasons.

14 2. The property is the only reasonable means for a defendant to pay for legal
15 representation in the forfeiture or criminal proceeding, and the property is not
16 reasonably required to be held for investigatory reasons. If the court makes this
17 finding, it may order the return of funds or property sufficient to obtain legal counsel
18 but less than the total amount seized, and require an accounting.

19 (f) If a court orders property returned under this subsection, the court shall
20 order the person not to sell, transfer, assign, or otherwise encumber the property
21 until the court orders the property either returned under sub. (5) or forfeited under
22 s. 973.076.

23 (g) If the person is subsequently convicted of or found to have committed the
24 offense, the court shall order the person to surrender the returned property for
25 proceedings under s. 973.076.

SENATE BILL 61

1 **SECTION 35.** 973.075 (1m) of the statutes is created to read:

2 973.075 **(1m)** (a) The property of an innocent owner may not be forfeited.

3 (b) A person who has an ownership interest in property subject to forfeiture
4 that exists at the occurrence of the illegal conduct giving rise to the forfeiture who
5 claims to be an innocent owner has the burden of proving by clear and convincing
6 evidence that he or she has a legal right, title, or interest in the property seized under
7 this chapter.

8 (c) If the requisite showing under par. (b) has been made, in order to proceed
9 with a forfeiture action against the property, the state has the burden of proving by
10 clear and convincing evidence that the person had actual or constructive knowledge
11 of the underlying crime giving rise to the forfeiture.

12 (d) A person who has an ownership interest in property subject to forfeiture
13 that he or she acquired after the occurrence of the conduct giving rise to the forfeiture
14 who claims to be an innocent owner has the burden of proving by clear and convincing
15 evidence that he or she has a legal right, title, or interest in the property seized under
16 this chapter.

17 (e) If the requisite showing under par. (d) has been made, in order to proceed
18 with a forfeiture action against the property, the state has the burden of proving by
19 clear and convincing evidence that the person had actual or constructive knowledge
20 that the property was subject to forfeiture or that the person was not a bona fide
21 purchaser without notice of any defect in title and for valuable consideration.

22 (f) If the state does not meet the burden under par. (c) or (e) as to any property,
23 the court shall find that the property is the property of an innocent owner and not
24 subject to forfeiture under ss. 973.075 to 973.077 and shall order the state to
25 relinquish all claims of title to the property.

SENATE BILL 61

1 (g) The defendant or convicted offender may invoke the right against
2 self-incrimination or the marital privilege during the forfeiture-related stage of the
3 prosecution. The trier of fact at the hearing may draw an adverse inference from the
4 invocation of the right or privilege.

5 **SECTION 36.** 973.075 (1r) of the statutes is created to read:

6 973.075 (1r) (a) No law enforcement officer or agency or state or local employee
7 or agency may enter into an agreement to transfer property to a federal agency
8 directly, indirectly, by adoption, through an intergovernmental joint task force, or by
9 other means, for the purposes of forfeiture litigation unless the seized property
10 includes more than \$50,000 of U.S. currency or the property may be forfeited only
11 under federal law.

12 (b) All law enforcement agencies shall refer seized property to the appropriate
13 state prosecuting attorney for forfeiture under ss. 973.075 to 973.077 unless the
14 seized property includes more than \$50,000 of U.S. currency or the property may only
15 be forfeited under federal law. If the seized property includes more than \$50,000 of
16 U.S. currency, the law enforcement agency may, but is not required to, refer or
17 transfer the seized property to a federal agency for forfeiture litigation under federal
18 law.

19 (c) Nothing in this subsection shall be construed to restrict a law enforcement
20 officer or agency from collaborating with a federal agency to seize contraband or
21 property that the law enforcement agency has probable cause to believe is subject to
22 forfeiture through an intergovernmental joint task force.

23 **SECTION 37.** 973.075 (4) of the statutes is amended to read:

24 973.075 (4) When property is forfeited under ss. 973.075 to 973.077, the agency
25 seizing the property may sell the property that is not required by law to be destroyed

SENATE BILL 61

1 or transferred to another agency. ~~The agency may retain any vehicle for official use~~
2 ~~or sell the vehicle. The agency seizing the property may deduct 50 percent of the~~
3 ~~amount received for administrative expenses of seizure, maintenance of custody,~~
4 ~~advertising and court costs and the costs of investigation and prosecution reasonably~~
5 ~~incurred. The remainder shall be deposited in the school fund as the agency shall~~
6 ~~deposit all proceeds of the forfeiture in the school fund.~~ If the property forfeited
7 under ss. 973.075 to 973.077 is money, all the money shall be deposited in the school
8 fund.

9 **SECTION 38.** 973.075 (5) (intro.) of the statutes is amended to read:

10 973.075 (5) (intro.) All forfeitures under ss. 973.075 to 973.077 shall be made
11 with due provision for the rights of innocent persons under sub. (1) ~~(b) 2m., (bg), (bm),~~
12 ~~(d) and (e) subs. (1g), (1k), and (1m).~~ Except as provided in sub. ~~(5m) (5r),~~ any
13 property seized but not forfeited shall be returned to its rightful owner. Any person
14 claiming the right to possession of property seized may apply for its return to the
15 circuit court for the county in which the property was seized. The court shall order
16 such notice as it deems adequate to be given the district attorney and all persons who
17 have or may have an interest in the property and shall hold a hearing to hear all
18 claims to its true ownership. If the right to possession is proved to the court's
19 satisfaction, it shall order the property returned as soon as practically possible if:

20 **SECTION 39.** 973.075 (5m) of the statutes is repealed.

21 **SECTION 40.** 973.075 (5r) of the statutes is created to read:

22 973.075 (5r) If a recording involved in a violation of ss. 943.207 to 943.209 is
23 forfeited, the sheriff of the county in which the recording was seized shall destroy it
24 after the completion of all proceedings in which the recording might be required as
25 evidence.

SENATE BILL 61

1 **SECTION 41.** 973.076 (1) (a) of the statutes is amended to read:

2 973.076 (1) (a) *Type of action; where brought.* In an action brought to cause the
3 forfeiture of any property specified in s. 342.30 (4) (a) or s. 973.075 (1), the court may
4 render a judgment in rem or against a party personally, or both. The circuit court
5 for the county in which the property was seized shall have jurisdiction over any
6 proceedings regarding the property when the action is commenced in state court.
7 ~~Any~~ Subject to s. 973.075 (1r), any property seized may be the subject of a federal
8 forfeiture action.

9 **SECTION 42.** 973.076 (1) (b) 1. of the statutes is amended to read:

10 973.076 (1) (b) 1. The district attorney of the county within which the property
11 was seized or in which the defendant is convicted shall commence the forfeiture
12 action within 30 days after the seizure of the property or the date of conviction,
13 whichever is earlier, ~~except that the defendant may request that~~ and the forfeiture
14 proceedings shall be adjourned until after ~~adjudication~~ the defendant is convicted of
15 any charge concerning a crime which was the basis for the seizure of the property.
16 ~~The request shall be granted.~~ The forfeiture action shall be commenced by filing a
17 summons, complaint and affidavit of the person who seized the property with the
18 clerk of circuit court, provided service of authenticated copies of those papers is made
19 in accordance with ch. 801 within 90 days after filing upon the person from whom
20 the property was seized and upon any person known to have a bona fide perfected
21 security interest in the property.

22 **SECTION 43.** 973.076 (1) (b) 1m. of the statutes is created to read:

23 973.076 (1) (b) 1m. Upon motion by the prosecuting attorney, the court may
24 waive the conviction requirement under subd. 1. if the prosecuting attorney shows
25 by clear and convincing evidence that any of the following applies:

SENATE BILL 61

- 1 a. The defendant has died.
- 2 b. The defendant was deported by the U.S. government.
- 3 c. The defendant has been granted immunity in exchange for testifying or
4 otherwise assisting a law enforcement investigation or prosecution.
- 5 d. The defendant fled the jurisdiction after being arrested, charged with a crime
6 that includes the forfeiture of property, and released on bail.

7 **SECTION 44.** 973.076 (3) of the statutes is amended to read:

8 973.076 (3) BURDEN OF PROOF. The state shall have the burden of ~~satisfying or~~
9 proving by clear and convincing to a reasonable certainty by the greater weight of the
10 ~~credible~~ evidence that the property is subject to forfeiture under s. ~~ss.~~ 973.075 to
11 973.077.

12 **SECTION 45.** 973.076 (3m) of the statutes is created to read:

13 973.076 (3m) PROPORTIONALITY. (a) The court may not order the forfeiture of
14 property if the court finds that the forfeiture is grossly disproportional to the crime
15 for which the person whose property was seized was convicted or that the forfeiture
16 is unconstitutionally excessive under the state or federal constitution.

17 (b) A person who is alleging that the forfeiture is grossly disproportional or is
18 unconstitutionally excessive under this subsection shall have the burden of
19 satisfying or convincing to a reasonable certainty by the greater weight of the
20 credible evidence that the forfeiture is grossly disproportional or unconstitutionally
21 excessive.

22 (c) In determining whether the forfeiture is grossly disproportional or
23 unconstitutionally excessive, the court shall consider the following:

- 24 1. The seriousness of the offense and its impact on the community, including
25 the duration of the activity and the harm caused by the person.

SENATE BILL 61

- 1 2. The extent to which the person participated in the offense.
- 2 3. The extent to which the property was used in committing the offense.
- 3 4. The sentence imposed on the person for the offense.
- 4 5. Whether the person completed or attempted to complete the offense.
- 5 6. The fair market value of the property.
- 6 7. The value of the property to the person, including the hardship to the person
- 7 if the property is forfeited
- 8 8. The hardship to the person's family members if the property is forfeited.

9 (d) In determining whether the forfeiture is grossly disproportional or
10 unconstitutionally excessive, the court may not consider the value of the property to
11 the state.

12 **SECTION 46.** 973.076 (5) of the statutes is created to read:

13 973.076 (5) RETURN OF PROPERTY. The court shall order the return of any
14 property subject to forfeiture under ss. 973.075 to 973.077 within 30 days of acquittal
15 or dismissal of charges for the offense which was the basis of the forfeiture action.

16 **SECTION 47.** 973.076 (6) of the statutes is created to read:

17 973.076 (6) ATTORNEY FEES. A person who prevails in an action to return
18 property subject to forfeiture under ss. 973.075 to 973.077 shall be awarded
19 reasonable attorney fees by the state. For the purposes of this subsection, a claimant
20 prevails if the person recovers more than 50 percent, by value, of the money or other
21 property that is claimed.

22 **SECTION 48. Initial applicability.**

23 (1) This act first applies to property that is seized on the effective date of this
24 subsection.

25

(END)