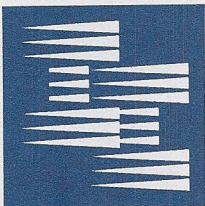


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SEIZURE OF PRIVATE PROPERTY BY STATE GOVERNMENT



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SEIZURE OF PRIVATE PROPERTY BY STATE GOVERNMENT

Will Senate Bill 102, due for House action the week of March 18, produce unintended adverse consequences for property rights in Colorado? This policy brief from the Independence Institute suggests that it could do so if not amended.

The bill is presented as a proposal to augment the government's powers to seize the assets of narcotics traffickers. The bill's goal is certainly laudable, but particular provisions in the bill may pose a serious threat to many businesses and individuals who have nothing to do with drugs.

In particular, the bill has generally been discussed in relation only to drug forfeitures. In fact, some parts of the bill apply to any public nuisance forfeiture; and all parts of the bill apply to class I public nuisance forfeitures. Drug violations are only type of class I public nuisance. Any property involved in a felony can be a class I public nuisance.

For example, if a business uses solvents to clean its machinery, and then mistakenly ships the solvent waste off-site without proper paperwork -- a hazardous waste felony -- all the business's machinery becomes subject to forfeiture.

Another example: A person from Salida visits his uncle in Kanorado, Kansas, and the uncle gives the person an old family handgun, which the person takes home to Salida. This transfer is a felony violation of the federal laws on interstate handgun sales. The person's car which he used to transport the handgun would be subject to forfeiture.

Are prosecutions like this unlikely? Ask a small businessman if he thinks that regulations are always enforced appropriately. Ask a licensed firearms dealer how often he has to deal with harassment from the government for hyper-technical issues.

As currently written, SB 102 severely undercuts established property rights. For example, the government might be attempting a forfeiture action against a condominium in which hard drugs were stored for the owner's personal consumption. The bank which holds the mortgage on the condominium might

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PROPERTY SEIZURES
Analysis of SB 102
Continued

seek a temporary restraining order to halt the forfeiture. Under SB 102, the court considering the bank's request would be forbidden to take into account the bank's proof that its mortgage was not legally subject to forfeiture.

Many other provisions of SB 102 are extremely harsh -- especially considering that the bill applies to many contexts besides drug distribution. The bill greatly expands what property is subject to forfeiture, and then makes forfeiture *mandatory*. No matter how inappropriate a forfeiture might be in a particular case (like the automobile and the technically illegal handgun), the court would be required to order the forfeiture; there would be no discretion.

In addition, SB 102 allows all sorts of "proof" of illegal activity to be used that are normally never admissible in court. Under SB 102, a police officer could testify about an anonymous complaint the officer had received. Thus, poison-pen letters from unnamed ex-employees, phone calls from malicious and anonymous neighbors, and other secret denunciations could in themselves be sufficient proof to force a court to forfeit a person's home or a business's assets. While anonymous tips might be a useful starting point for search warrants, they should not be allowed into evidence in an actual trial.

Finally, any forfeiture bill should correct one of the worst current abuses of forfeiture law. Oftentimes a person's property will be seized, and the government will file neither criminal charges nor a forfeiture action. The authorities just take the property and keep it, without even bothering to go to court. Legally-owned firearms are often seized during traffic stops in this manner; if the owner can afford to hire an attorney, the police may return the gun. In a fair society, if the government confiscates someone's property, the government should have the burden of going to court and proving a case. Accordingly, forfeitures should only be allowed if the government initiates a forfeiture proceeding within 60 days of the seizure.

Respect for property rights is the foundation of a free society. In its current form, SB 102 will do more to undermine the security of private property than any other bill currently before the legislature. The strong weapons necessary for the drug war should not be carelessly used against non-combatants. ◆◆◆

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government should have the burden of going to court and
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allowed if the government initiates a forfeiture proceeding
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Respect for property rights is the foundation of a free
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