

SENATE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

March 1, 2005  
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Date

Committee on Transportation.

After consideration on the merits, the Committee recommends the following:

SB05-018 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and  
2 substitute the following:

3 "SECTION 1. 16-13-303 (1), Colorado Revised Statutes, is  
4 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

5 **16-13-303. Class 1 public nuisance.** (1) Every building or part  
6 of a building including the ground upon which it is situate and all fixtures  
7 and contents thereof, every vehicle, and any real property shall be  
8 deemed a class 1 public nuisance when:

9 (o) (I) USED IN THE COMMISSION OF DRIVING UNDER RESTRAINT IN  
10 VIOLATION OF SECTION 42-2-138 (1), C.R.S., IF THE PERSON IS DRIVING  
11 WHILE THE PERSON'S DRIVER'S LICENSE IS REVOKED:

12 (A) UNDER SECTION 42-2-125 (1), C.R.S., DUE TO A CONVICTION  
13 DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (o); OR

14 (B) UNDER THE PROVISIONS OF SECTION 42-2-126 (6) (b) (II), (6)  
15 (b) (II.5) (C), (6) (b) (III), (6) (b) (IV), (6) (b) (V), (6) (b) (VI), (6) (b)  
16 (VII), OR (6) (b) (VIII) (C), C.R.S.

17 (II) FOR PURPOSES OF SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH  
18 (I) OF THIS PARAGRAPH (o), A CONVICTION FOR WHICH A DRIVER'S LICENSE  
19 IS REVOKED UNDER SECTION 42-2-125 (1), C.R.S., MEANS A CONVICTION

1 FOR ONE OR MORE OF THE FOLLOWING OFFENSES:

2 (A) VEHICULAR HOMICIDE INVOLVING ALCOHOL OR DRUGS, AS  
3 DESCRIBED IN SECTION 18-3-106 (1) (b), C.R.S.;

4 (B) VEHICULAR ASSAULT INVOLVING ALCOHOL OR DRUGS, AS  
5 DESCRIBED IN SECTION 18-3-205 (1) (b), C.R.S.;

6 (C) DRIVING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF  
7 A CONTROLLED SUBSTANCE, AS DEFINED IN SECTION 12-22-303 (7), C.R.S.,  
8 OR WHILE AN HABITUAL USER OF SUCH A CONTROLLED SUBSTANCE;

9 (D) AN ALCOHOL-RELATED OR DRUG-RELATED TRAFFIC OFFENSE  
10 PROVIDED FOR IN SECTION 42-4-1301 (1) OR (2) (a), C.R.S., FOR ACTS  
11 COMMITTED WITHIN A PERIOD OF FIVE YEARS AFTER A PREVIOUS  
12 CONVICTION OF EITHER OF SUCH OFFENSES;

13 (E) AN ALCOHOL-RELATED OR DRUG-RELATED TRAFFIC OFFENSE  
14 UNDER SECTION 42-4-1301 (1), (2) (a), OR (2) (a.5), C.R.S., COMMITTED  
15 BY A DRIVER UNDER TWENTY-ONE YEARS OF AGE;

16 (F) AN ALCOHOL-RELATED OR DRUG-RELATED TRAFFIC OFFENSE  
17 PROVIDED FOR IN SECTION 42-4-1301 (1) OR (2) (a), C.R.S., WHEN THE  
18 OFFENDER HAS TWO PREVIOUS CONVICTIONS OF EITHER OF SUCH OFFENSES.

19 **SECTION 2.** 16-13-303, Colorado Revised Statutes, is amended  
20 BY THE ADDITION OF A NEW SUBSECTION to read:

21 **16-13-303. Class 1 public nuisance.** (5.5) AN OWNER OF A  
22 MOTOR VEHICLE THAT IS SUBJECT TO SEIZURE, CONFISCATION,  
23 ABATEMENT, OR FORFEITURE PURSUANT TO PARAGRAPH (o) OF  
24 SUBSECTION (1) OF THIS SECTION SHALL BE DEEMED A PARTY TO THE  
25 CREATION OF THE PUBLIC NUISANCE, AS DESCRIBED IN SUBSECTION (5.1)  
26 OF THIS SECTION, AND IS NOT AN INNOCENT OWNER, AS DEFINED IN  
27 SUBSECTION (5.2) OF THIS SECTION, IF THE OWNER VIOLATED THE  
28 PROVISIONS OF SECTION 42-2-141, C.R.S., OR NEGLIGENTLY FAILED TO  
29 PREVENT A DRIVER FROM USING THE MOTOR VEHICLE, AND HAD  
30 KNOWLEDGE OR REASONABLY SHOULD HAVE HAD KNOWLEDGE THAT THE  
31 DRIVER OF THE MOTOR VEHICLE WAS UNDER RESTRAINT. FOR PURPOSES  
32 OF THIS SUBSECTION (5.5), "KNOWLEDGE" HAS THE SAME MEANING AS SET  
33 FORTH IN SECTION 42-2-138 (4) (a), C.R.S.

1           **SECTION 3.** 16-13-307 (1.5), (1.6), and (1.7) (c), Colorado  
2 Revised Statutes, are amended to read:

3           **16-13-307. Jurisdiction - venue - parties - process.**

4 (1.5) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS  
5 SUBSECTION (1.5), no judgment of forfeiture of property in any forfeiture  
6 proceeding shall be entered unless and until an owner of the property is  
7 convicted of an offense listed in section 16-13-301 or 16-13-303, or a  
8 lesser included offense of an eligible offense if the conviction is the result  
9 of a negotiated guilty plea. Nothing in this section shall be construed to  
10 require the conviction to be obtained in the same jurisdiction as the  
11 jurisdiction in which the forfeiture action is brought. In the event  
12 criminal charges arising from the same activity giving rise to the  
13 forfeiture proceedings are filed against any individual claiming an interest  
14 in the property subject to the forfeiture proceeding, the trial and discovery  
15 phases of the forfeiture proceeding shall be stayed by the court until the  
16 disposition of the criminal charges. A stay shall not be maintained during  
17 an appeal or post-conviction proceeding challenging a criminal  
18 conviction. Nothing in this section shall be construed to prohibit or  
19 prevent the parties from contemporaneously resolving criminal charges  
20 and a forfeiture proceeding arising from the same activity.

21           (b) THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (1.5)  
22 SHALL NOT APPLY TO THE SEIZURE, CONFISCATION, ABATEMENT, OR  
23 FORFEITURE OF A MOTOR VEHICLE UNDER SECTION 16-13-303 (1) (o).

24           (1.6) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF  
25 THIS SUBSECTION (1.6), upon acquittal or dismissal of a criminal action  
26 against a person named in a forfeiture action related to the criminal  
27 action, unless the forfeiture action was brought pursuant to one or more  
28 of paragraphs (a) to (f) of subsection (1.7) of this section, the forfeiture  
29 claim shall be dismissed and the seized property shall be returned as  
30 respects the subject matter property or interest therein of that person, if  
31 the case has been adjudicated as to all other claims, interests, and owners,  
32 unless possession of the property is illegal. If the forfeiture action is  
33 dismissed or judgment is entered in favor of the claimant, the claimant  
34 shall not be subject to any monetary charges by the state for storage of  
35 the property or expenses incurred in the preservation of the property,  
36 unless at the time of dismissal the plaintiff shows that those expenses  
37 would have been incurred to prevent waste of the property even if it had  
38 not been seized.

1 (b) THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (1.6)  
2 SHALL NOT APPLY TO THE SEIZURE, CONFISCATION, ABATEMENT, OR  
3 FORFEITURE OF A MOTOR VEHICLE UNDER SECTION 16-13-303 (1) (o).

4 (1.7) Notwithstanding the provisions of subsection (1.5) of this  
5 section:

6 (c) If the plaintiff proves by clear and convincing evidence that  
7 the property was instrumental in the commission of an offense listed in  
8 section 16-13-303 (1) or that the property is traceable proceeds of the  
9 offense or related criminal activity by a nonowner and the plaintiff proves  
10 by clear and convincing evidence that an owner is not an innocent owner  
11 pursuant to section 16-13-303 (5.2) (a) OR (5.5), a judgment of forfeiture  
12 may be entered without a criminal conviction of an owner.

13 **SECTION 4.** The introductory portion to 16-13-311 (3) (a),  
14 Colorado Revised Statutes, is amended, and the said 16-13-311 (3) is  
15 further amended BY THE ADDITION OF A NEW PARAGRAPH, to  
16 read:

17 **16-13-311. Disposition of seized personal property.** (3) (a) If  
18 the prosecution prevails in the forfeiture action, the court shall order the  
19 property forfeited. Such order shall perfect the state's right and interest  
20 in and title to such property and shall relate back to the date when title to  
21 the property vested in the state pursuant to section 16-13-316. Except as  
22 otherwise provided in paragraph (c) of this subsection (3), the court shall  
23 also order such property to be sold at a public sale by the law  
24 enforcement agency in possession of the property in the manner provided  
25 for sales on execution, or in another commercially reasonable manner.  
26 EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b.5) OF THIS  
27 SUBSECTION (3), property forfeited under this section or proceeds  
28 therefrom shall be distributed or applied in the following order:

29 (b.5) (I) MOTOR VEHICLES THAT ARE FORFEITED UNDER THE  
30 PROVISIONS OF SECTION 16-13-303 (1) (o) OR PROCEEDS THEREFROM  
31 SHALL BE DISTRIBUTED OR APPLIED IN THE ORDER SET FORTH IN  
32 PARAGRAPH (a) OF THIS SUBSECTION (3); EXCEPT THAT:

33 (A) ANY LAW ENFORCEMENT AGENCY DESCRIBED IN  
34 SUBPARAGRAPH (IV) OF PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL  
35 HAVE PRIORITY OVER PERSONS DESCRIBED IN SUBPARAGRAPHS (II), (III),  
36 (V), (VI), AND (VII) OF SAID PARAGRAPH (a); AND

1 (B) ANY DISTRICT ATTORNEY DESCRIBED IN SUBPARAGRAPH (V)  
2 OF PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL HAVE PRIORITY OVER  
3 PERSONS DESCRIBED IN SUBPARAGRAPHS (II), (III), (VI), AND (VII) OF SAID  
4 PARAGRAPH (a).

5 (II) ANY LAW ENFORCEMENT AGENCY TO WHICH A MOTOR VEHICLE  
6 OR PROCEEDS THEREFROM IS DISTRIBUTED OR APPLIED UNDER THIS  
7 PARAGRAPH (b.5) MAY APPLY THE MOTOR VEHICLE OR THE PROCEEDS TO  
8 ITS REASONABLE FEES AND COSTS OF LOCATION, SEIZURE, TRANSPORT,  
9 SALE, MAINTENANCE, IMPOUNDMENT, AND STORAGE OF THE MOTOR  
10 VEHICLE.

11 **SECTION 5. Effective date - applicability.** This act shall take  
12 effect July 1, 2005, and shall apply to offenses committed on or after said  
13 date.

14 **SECTION 6. Safety clause.** The general assembly hereby finds,  
15 determines, and declares that this act is necessary for the immediate  
16 preservation of the public peace, health, and safety."

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