

Original sponsor: Sumner

Offered: 3/14/79
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

CS FOR SENATE BILL NO. 7

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

ELEVENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to judicial forfeitures."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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* Section 1. AS 16.05.190 is amended to read:

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10 Sec. 16.05.190. FORFEITURES [SEIZURE WITHOUT WARRANT AND CONFISCA-
11 TION BY COURT]. (a) Guns, traps, nets, fishing gear [TACKLE], boats,
12 aircraft, automobiles or other vehicles, sleds, and other equipment
13 [PARAPHERNALIA] used in or in aid of fishing or hunting activities that
14 are a violation of this title [CHAPTER], or a [RULE OR] regulation
15 adopted under it regarding closed areas, closed periods or seasons,
16 quotas or bag limits, unlawful gear, methods or means, commercial
17 licensing requirements or hunting same day as airborne, [OF THE DEPART-
18 MENT] may be forfeited to the state upon conviction of the offender of
19 any of the violations stated in this subsection. [SEIZED UNDER A VALID
SEARCH, AND ALL]

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(b) Fish [FISH] and game, or parts of fish and game, or nests or
21 eggs of birds, taken, transported, purchased, sold or possessed contrary
22 to the provisions of AS 16 or a [THIS CHAPTER, OR RULE OR] regulation
23 adopted under it shall be forfeited to the state [OF THE DEPARTMENT
24 SHALL BE SEIZED BY ANY PERSON DESIGNATED IN AS 16.05.150. UPON]

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(1) upon conviction of the offender in a criminal proceeding
26 under (a) of this section; or

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(2) upon judgment of a [THE] court of this state in an action
in rem [HAVING JURISDICTION] that the item was taken, transported,
purchased, sold or possessed in violation of this title or a regulation

1 adopted under it [CHAPTER OR RULE OR REGULATION OF THE DEPARTMENT, ALL
2 FISH AND GAME, OR PARTS OF THEM ARE FORFEITED TO THE STATE AND SHALL BE
3 DISPOSED OF AS DIRECTED BY THE COURT. IF SOLD, THE PROCEEDS OF THE SALE
4 SHALL BE TRANSMITTED TO THE PROPER STATE OFFICER FOR DEPOSIT IN THE
5 GENERAL FUND. GUNS, TRAPS, NETS, FISHING TACKLE, BOATS, AIRCRAFT, OR
6 OTHER VEHICLES, SLEDS, AND OTHER PARAPHERNALIA SEIZED UNDER THE PROVI-
7 SIONS OF THIS CHAPTER, OR RULE OR REGULATION OF THE DEPARTMENT, UNLESS
8 FORFEITED BY ORDER OF THE COURT, SHALL BE RETURNED, AFTER COMPLETION OF
9 THE CASE AND PAYMENT OF THE FINE, IF ANY].

10 * Sec. 2. AS 16.05.190 is amended by adding new subsections to read:

11 (c) It is no defense in an in rem action under (b) of this section
12 that a criminal proceeding is pending or has resulted in conviction or
13 acquittal for a violation of this section, or that the item has not been
14 forfeited in any criminal proceeding or that multiple actions are
15 pending.

16 (d) The state, in a separate action, may present a claim to re-
17 cover damages for the value of the fish or game or parts of fish and
18 game or nests or eggs taken, transported, purchased, sold or possessed
19 contrary to the provisions of AS 16.05 or a regulation adopted under it.

20 * Sec. 3. AS 16.05.195(a) is amended to read:

21 Sec. 16.05.195. SEIZURES [FORFEITURE OF EQUIPMENT]. (a) Guns,
22 traps, nets, fishing gear, boats [VESSELS], aircraft, automobiles or
23 other [MOTOR] vehicles, sleds, and other equipment [PARAPHERNALIA] or
24 gear used in or in aid of a violation of this title, or a regulation
25 adopted [PROMULGATED] under this title, and all fish and game or parts
26 of fish and game or nests or eggs of birds taken, transported, pur-
27 chased, sold, or possessed contrary to the provisions of AS 16 [THIS
28 TITLE], or regulation adopted [PROMULGATED] under it, may be seized
29 actually or constructively upon a valid search or inspection by any

1 person designated in AS 16.05.150; constructive seizure is effected
2 upon posting a signed notice of seizure on the item, stating the viola-
3 tion, and the date and place of seizure [MAY BE FORFEITED TO THE STATE

4 (1) UPON CONVICTION OF THE OFFENDER IN A CRIMINAL PROCEEDING
5 OF A VIOLATION OF THIS TITLE IN A COURT OF COMPETENT JURISDICTION, OR

6 (2) UPON JUDGMENT OF A COURT OF COMPETENT JURISDICTION IN A
7 PROCEEDING IN REM THAT AN ITEM SPECIFIED ABOVE WAS USED IN OR IN AID OF
8 A VIOLATION OF THIS TITLE OR A REGULATION PROMULGATED UNDER IT].

9 * Sec. 4. AS 16.05.195 is amended by adding new subsections to read:

10 (g) Within 10 days of any seizure under this section the state
11 shall inventory and appraise the value of the items seized.

12 (h) Within 30 days of any seizure under this section the state
13 shall, by certified mail, notify any person known to have an interest in
14 an item seized or who is ascertainable from official registration
15 numbers, licenses, or other state, federal, or municipal marks on the
16 item. The state shall publish a notice of forfeiture action of an item
17 seized in a newspaper of general circulation in the district in which
18 the seizure was made, or if no newspaper is published in that district,
19 in a newspaper published in the state and distributed in that district,
20 once a week for four consecutive calendar weeks.

21 * Sec. 5. AS 16.05 is amended by adding a new section to read:

22 Sec. 16.05.197. POST SEIZURE PROCEDURES. (a) A claimant who has
23 a valid interest in the item seized may file a claim in the state
24 district or superior court in which the action was filed or which issued
25 a seizure warrant, within 20 days of service by mail, personal service,
26 or the last day of publication under AS 16.05.195(h).

27 (b) An item may not be released by the court except upon

28 (1) assurance considered adequate by the court that the item
29 will remain subject to the court's jurisdiction and within the

1 constructive custody of the state; and

2 (2) a finding that the release is in the best interests of
3 the state; or

4 (3) the posting of a bond equal to twice the estimated value
5 of the item or the posting of other security considered adequate by the
6 court.

7 (c) A claimant may petition the court for sale of an item before
8 final disposition. The court shall grant the petition if it finds that
9 the sale is in the best interests of the state and will insure the
10 preservation and maintenance of the item seized. Proceeds from the sale
11 plus interest to the date of final disposition shall thereafter be
12 treated as the subject of the forfeiture action.

13 (d) If an item specified in AS 16.05.190(a) is forfeited, a clai-
14 mant who holds an interest in the item and has filed a timely claim,
15 may petition the court in which the action is pending for remittance of
16 his interest upon showing at a hearing before the court as trier of fact
17 that

18 (1) he holds a valid interest in the item; and

19 (2) he was not a consenting party to nor privy to the illegal
20 act.

21 (e) Upon a showing that the claimant is entitled to remittance,
22 the court shall order that

23 (1) if the item may be used for a state function, it shall be
24 delivered to the Department of Administration, and that department shall
25 remit to the claimant the actual value of the claimant's interest at the
26 time of seizure; or

27 (2) an item may be sold at public auction to the highest
28 bidder, and the claimant shall have a right of first refusal; if the
29 claimant does not exercise the right of first refusal the proceeds of

1 this sale shall first be used to satisfy the claimant's interest at the
2 time of seizure, and any balance shall be deposited in the general fund.

3 (f) An offender who used an item in violation of this title or a
4 regulation adopted under it shall be, if convicted, assessed a fine at
5 least equal to the cost of any lien payment or remittance made by the
6 state plus the reasonable costs of the seizure.

7 * Sec. 6. AS 16.05.195(b) - (f) are repealed.

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