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1 IN THE SENATE

BY STURGULEWSKI, UEHLING,  
FISCHER AND RODEY

2

SENATE BILL NO. 462

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to seizure and forfeiture of proper-  
7 ty in cases involving controlled substances."

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

9 \* Section 1. AS 17.30.110 is amended by adding a new paragraph to read:

10 (8) real property, including interests in real property and  
11 appurtenances and improvements to real property, that is used or  
12 intended for use to commit, or to facilitate the commission of, a  
13 felony offense under this chapter or AS 11.71; however

14 (A) real property may not be forfeited under this  
15 paragraph if the owner of the real property establishes, by a  
16 preponderance of the evidence, at a hearing before the court as  
17 the trier of fact, that use of the real property in violation of  
18 this chapter or AS 11.71 was committed by another person and that  
19 the owner was neither a consenting party nor privy to the vio-  
20 lation;

21 (B) a forfeiture of real property encumbered by a  
22 valid security interest at the time of seizure is subject to the  
23 interest of the secured party if the secured party establishes,  
24 by a preponderance of the evidence, at a hearing before the court  
25 as the trier of fact, that use of the real property in violation  
26 of this chapter or AS 11.71 was committed by another person and  
27 that the secured party was neither a consenting party nor privy  
28 to the violation.

29 \* Sec. 2. AS 17.30.112 is amended to read:

1           Sec. 17.30.112. PROCEEDINGS RESULTING IN FORFEITURE. (a) Prop-  
2           erty listed in AS 17.30.110 may be forfeited to the state upon the  
3           order of the commissioner of public safety in a summary administrative  
4           forfeiture proceeding under AS 17.30.115, [EITHER] upon conviction of  
5           the defendant of a violation of this chapter or AS 11.71, or upon  
6           judgment of a court in a separate civil proceeding in rem.

7           (b) Within 20 days after property is seized under AS 17.30.114,  
8           the custodian of the property shall

9                     (1) cause a summary administrative forfeiture proceeding to  
10            be commenced under AS 17.30.115;

11                    (2) commence a civil proceeding in rem under AS 17.30.116;

12            or

13                    (3) release the property, unless the property is subject to  
14            AS 17.30.126.

15            (c) A [THE] court may order a forfeiture in the in rem proceed-  
16            ing if it finds that an item specified in AS 17.30.110 was used during  
17            or in aid of a violation of this chapter or AS 11.71. [(b)] It is  
18            not a defense in an in rem proceeding brought under this chapter  
19            [SECTION] that a criminal proceeding has resulted in a conviction or  
20            conviction of a lesser offense for a violation of this chapter or  
21            AS 11.71.

22            \* Sec. 3. AS 17.30.114(b) is amended to read:

23                    (b) Property taken or detained under (a) of this section shall  
24            be held in the custody of either the commissioner of public safety or  
25            a municipal law enforcement agency authorized by the commissioner of  
26            public safety to retain custody of property listed in AS 17.30.110  
27            subject only to disposition under procedures set out in this chapter  
28            [THE ORDERS AND DECREES OF THE COURT HAVING JURISDICTION OVER ANY  
29            FORFEITURE PROCEEDINGS]. If property is seized under this chapter,

1 the commissioner of public safety or an authorized municipal law  
2 enforcement agency may

3 (1) place the property under seal;

4 (2) remove the property to a place designated by the court;

5 or

6 (3) take custody of the property and remove it to an appro-  
7 priate location for disposition in accordance with law.

8 \* Sec. 4. AS 17.30 is amended by adding a new section to read:

9 Sec. 17.30.115. SUMMARY ADMINISTRATIVE FORFEITURE PROCEEDING.

10 (a) If the appraised value of seized property is \$100,000 or less or  
11 if the seized property is a conveyance subject to forfeiture under  
12 AS 17.30.110(4), the commissioner of public safety may commence a  
13 summary administrative forfeiture proceeding by

14 (1) giving notice of the forfeiture proceeding to persons  
15 known to have an interest in the property or who are ascertainable  
16 from official registration numbers, licenses, or other state, federal,  
17 or municipal numbers on the property; and

18 (2) publishing notice of the proceeding in a newspaper of  
19 general circulation in the judicial district where the seizure was  
20 made, or if no newspaper is published in that judicial district, in a  
21 newspaper published in the state and distributed in that judicial  
22 district; the notice shall be published once each week during three  
23 consecutive calendar weeks; the notice must

24 (A) describe the property seized, including motor and  
25 serial numbers, if any;

26 (B) state the time, place, and cause of seizure; and

27 (C) state that a person claiming an interest in the  
28 property shall, within 20 days from the date of the first publi-  
29 cation of the notice, file with the commissioner of public safety

1 a claim to the property and a bond in the proper amount.

2 (b) A person claiming property subject to a proceeding under  
3 this section shall submit a claim and a bond to the commissioner of  
4 public safety within 20 days after the date of first publication of  
5 the notice required under this section.

6 (c) The bond with satisfactory sureties shall be in the amount  
7 of \$2,500 or 10 percent of the appraised value of the property, which-  
8 ever is lower, but not less than \$250. The bond shall be in cash,  
9 certified check, or satisfactory sureties. The bond shall be rendered  
10 to the state with sureties approved by the commissioner and condi-  
11 tioned that in the event of judicial forfeiture of the property the  
12 obligor shall pay from the bond all costs and expenses of the civil  
13 proceeding in rem.

14 (d) When the claim and bond are received, the commissioner of  
15 public safety shall determine that the claim and bond are in proper  
16 form and the sureties are satisfactory. If the claim and bond are  
17 satisfactory, the commissioner shall terminate the proceeding and  
18 commence a civil proceeding in rem under AS 17.30.116; notwithstanding  
19 AS 17.30.112(b), the commissioner shall commence the civil proceeding  
20 in rem within 20 days after the timely and satisfactory claim and bond  
21 are filed. If the claim and bond are not satisfactory when first  
22 received, a reasonable time for correction of the claim and bond may  
23 be allowed; if satisfactory corrections are not made to the claim and  
24 bond within a reasonable time, the commissioner may proceed as though  
25 the claim and bond had not been tendered.

26 (e) The filing of a timely and satisfactory claim and bond  
27 terminates the summary administrative forfeiture proceeding, but does  
28 not entitle the claimant to possession of the property.

29 (f) If a timely and satisfactory claim and bond are not filed

1 within the time required under this section, the commissioner shall  
2 declare the property forfeited. The commissioner shall prepare a  
3 declaration of forfeiture and forward a copy of the declaration to the  
4 custodian of the property.

5 (g) In this section "commissioner of public safety" includes an  
6 employee of the Department of Public Safety designated by the commis-  
7 sioner to conduct summary administrative forfeiture proceedings.

8 \* Sec. 5. AS 17.30.116(a) is amended to read:

9 (a) If an item of property seized is appraised at more than  
10 \$100,000, or the custodian of property seized elects to commence a  
11 civil proceeding in rem against property appraised at \$100,000 or less  
12 or against a conveyance, or a summary administrative forfeiture pro-  
13 ceeding is terminated upon the timely and satisfactory filing of a  
14 claim and bond, [WITHIN 20 DAYS AFTER A SEIZURE UNDER AS 17.30.110 -  
15 17.30.126,] the commissioner of public safety shall, by certified  
16 mail, notify any person known to have an interest in an item with an  
17 appraised value of \$500 or more, or who is ascertainable from official  
18 registration numbers, licenses, or other state, federal, or municipal  
19 numbers on the item, of the pending forfeiture action. Additionally,  
20 the commissioner of public safety shall publish notice of forfeiture  
21 action of an item valued at \$500 or more in a newspaper of general  
22 circulation in the judicial district in which the seizure was made, or  
23 if no newspaper is published in that judicial district, in a newspaper  
24 published in the state and distributed in that judicial district. The  
25 notice shall be published once each week during four consecutive  
26 calendar weeks. The requirements of this subsection do not apply to  
27 the forfeiture of controlled substances which have been manufactured,  
28 distributed, dispensed, or possessed in violation of this chapter or  
29 AS 11.71, regardless of their value.

1 \* Sec. 6. AS 17.30.122 is amended to read:

2           Sec. 17.30.122. STATE DISPOSAL OF FORFEITED PROPERTY. Property  
3 forfeited under AS 17.30.110 - 17.30.126 other than controlled sub-  
4 stances shall be disposed of by the commissioner of administration  
5 in accordance with applicable law. The commissioner of administration  
6 may

7           (1) destroy property harmful to the public;

8           (2) sell the property and use the proceeds for payment of  
9 all proper expenses of the proceedings for forfeiture and sale, in-  
10 cluding expenses of seizure, custody, and court costs; proceeds re-  
11 maining from the sale of the property after expenses are paid shall be  
12 returned to the political subdivision of the state that seized the  
13 property or placed in the general fund if the property was seized by  
14 an agency of the state;

15           (3) take custody of the property and authorize its use in  
16 the enforcement of this chapter or AS 11.71, or transfer it to another  
17 agency of the state or a political subdivision of the state for a use  
18 in furtherance of the administration of justice;

19           (4) take custody of the property and remove it for disposi-  
20 tion in accordance with law;

21           (5) forward the property [IT] to the Drug Enforcement  
22 Administration of the United States Department of Justice for disposi-  
23 tion; or

24           (6) transfer ownership of an aircraft to the Alaska Wing,  
25 Civil Air Patrol.