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Original sponsors: Sturgulewski, Uehling,
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1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR SENATE BILL NO. 462 (State Affairs)
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 to read:

10 Sec. 17.30.110. ITEMS SUBJECT TO FORFEITURE. The following may
11 be forfeited to the state or a municipality, except as provided in
12 AS 17.30.126:

13 (1) a controlled substance that [WHICH] has been manufact-
14 ured, distributed, dispensed, acquired, or possessed in violation of
15 this chapter or AS 11.71;

16 (2) raw materials, products, and equipment that [WHICH] are
17 used or intended for use in manufacturing, distributing, compounding,
18 processing, delivering, importing, or exporting a controlled substance
19 that [WHICH] is a felony under this chapter or AS 11.71;

20 (3) property that [WHICH] is used or intended for use as a
21 container for property described in (1) or (2) of this section;

22 (4) a conveyance, including but not limited to aircraft,
23 vehicles, or vessels, that [WHICH] has been used or is intended for
24 use in transporting or in any manner in facilitating the transporta-
25 tion, sale, receipt, possession, or concealment of property described
26 in (1) or (2) of this section in violation of a felony offense under
27 this chapter or AS 11.71; however,

28 (A) a conveyance may not be forfeited under this
29 paragraph if the owner of the conveyance establishes, by a

1 preponderance of the evidence, at a hearing before the court as
2 the trier of fact, that use of the conveyance in violation of
3 this chapter or AS 11.71 was committed by another person and that
4 the owner was neither a consenting party nor privy to the viola-
5 tion;

6 (B) a forfeiture of a conveyance encumbered by a valid
7 security interest at the time of seizure is subject to the inter-
8 est of the secured party if the secured party establishes, by a
9 preponderance of the evidence, at a hearing before the court as
10 the trier of fact, that use of the conveyance in violation of
11 this chapter or AS 11.71 was committed by another person and that
12 the secured party was neither a consenting party nor privy to the
13 violation;

14 (5) books, records, and research products and materials,
15 including formulas, microfilm, tapes, and data, that [WHICH] are used
16 in violation of this chapter or AS 11.71;

17 (6) money, securities, negotiable instruments, or other
18 things of value used in financial transactions derived from activity
19 prohibited by this chapter or AS 11.71; [AND]

20 (7) a firearm that [WHICH] is visible, carried during, or
21 used in furtherance of a violation of this chapter or AS 11.71; and

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

26 (A) real property may not be forfeited under this
27 paragraph if the owner of the real property establishes, by a
28 preponderance of the evidence, at a hearing before the court as
29 the trier of fact, that use of the real property in violation of

1 this chapter or AS 11.71 was committed by another person and that
2 the owner was neither a consenting party nor privy to the vio-
3 lation;

4 (B) a forfeiture of real property encumbered by a
5 valid security interest at the time of seizure is subject to the
6 interest of the secured party if the secured party establishes,
7 by a preponderance of the evidence, at a hearing before the court
8 as the trier of fact, that use of the real property in violation
9 of this chapter or AS 11.71 was committed by another person and
10 that the secured party was neither a consenting party nor privy
11 to the violation.

12 * Sec. 2. AS 17.30.112 is amended to read:

13 Sec. 17.30.112. PROCEEDINGS RESULTING IN FORFEITURE. (a) Prop-
14 erty listed in AS 17.30.110 may be forfeited to the state or a munic-
15 ipality upon the order of the commissioner of public safety or a chief
16 of police in a summary administrative forfeiture proceeding under
17 AS 17.30.115, [EITHER] upon conviction of the defendant of a violation
18 of this chapter or AS 11.71, or upon judgment of a court in a separate
19 civil proceeding in rem.

20 (b) Within 20 days after property is seized under AS 17.30.114,
21 the commissioner of public safety or a chief of police, whoever is in
22 custody of the property, shall

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

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

26 or

27 (3) release the property, unless the property is subject to
28 AS 17.30.126.

29 (c) A [THE] court may order a forfeiture in the in rem

1 proceeding if it finds that an item specified in AS 17.30.110 was used
2 during or in aid of a violation of this chapter or AS 11.71. [(b)]
3 It is not a defense in an in rem proceeding brought under this chapter
4 [SECTION] that a criminal proceeding has resulted in a conviction or
5 conviction of a lesser offense for a violation of this chapter or
6 AS 11.71.

7 * Sec. 3. AS 17.30.114 is amended to read:

8 Sec. 17.30.114. SEIZURE AND CUSTODY OF PROPERTY. (a) Property
9 listed in AS 17.30.110 may be seized by a peace officer upon an order
10 issued by a court having jurisdiction over the property upon a showing
11 of probable cause that the property may be forfeited under AS 17.30.-
12 110. Seizure without a court order may be made if

13 (1) the seizure is incident to a valid arrest or a search
14 under a valid search warrant;

15 (2) the property subject to seizure has been the subject of
16 an earlier judgment in favor of the state or a municipality in a
17 criminal proceeding or civil proceeding in rem under this chapter or
18 AS 11.71; or

19 (3) there is probable cause that the property was used, is
20 being used, or is intended for use, in violation of this chapter or AS
21 11.71 and the property is easily movable; property seized under this
22 paragraph may not be held for more than 48 hours without a court order
23 obtained to continue its detention.

24 (b) Property taken or detained under (a) of this section shall
25 be held in the custody of either the commissioner of public safety or
26 a municipal law enforcement agency [AUTHORIZED BY THE COMMISSIONER OF
27 PUBLIC SAFETY TO RETAIN CUSTODY OF PROPERTY LISTED IN AS 17.30.110]
28 subject only to disposition under procedures set out in this chapter
29 [THE ORDERS AND DECREES OF THE COURT HAVING JURISDICTION OVER ANY

1 FORFEITURE PROCEEDINGS]. If property is seized under this chapter,
2 the commissioner of public safety or a [AN AUTHORIZED] municipal law
3 enforcement agency may

4 (1) place the property under seal;

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

6 or

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

9 (c) Within 10 days after a seizure under AS 17.30.110 - 17.30.-
10 138 [AS 17.30.110 - 17.30.126], the commissioner of public safety or
11 the chief of police shall make an inventory of any property seized,
12 including controlled substances, and shall appraise the value of any
13 items seized other than controlled substances.

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

15 Sec. 17.30.115. SUMMARY ADMINISTRATIVE FORFEITURE PROCEEDING.

16 (a) If the appraised value of seized property is \$100,000 or less or
17 if the seized property is a conveyance subject to forfeiture under
18 AS 17.30.110(4), the official who has custody of seized property may
19 commence a summary administrative forfeiture proceeding by

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

24 (2) publishing notice of the proceeding in a newspaper of
25 general circulation in the judicial district where the seizure was
26 made, or if no newspaper is published in that judicial district, in a
27 newspaper published in the state and distributed in that judicial
28 district; the notice shall be published once each week during three
29 consecutive calendar weeks; the notice must

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

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

4 (C) state that a person claiming an interest in the
5 property shall, within 20 days from the date of the first publi-
6 cation of the notice, file with the official a claim to the
7 property and a bond in the proper amount.

8 (b) A person claiming property subject to a proceeding under
9 this section shall submit a claim and a bond to the official within 20
10 days after the date of first publication of the notice required under
11 this section.

12 (c) The bond with satisfactory sureties shall be in the amount
13 of \$2,500 or 10 percent of the appraised value of the property, which-
14 ever is lower, but not less than \$250. The bond shall be in cash,
15 certified check, or satisfactory sureties. The bond shall be rendered
16 to the state or municipality, as appropriate, with sureties approved
17 by the official and conditioned that in the event of judicial forfei-
18 ture of the property the obligor shall pay from the bond all costs and
19 expenses of the civil proceeding in rem.

20 (d) When the claim and bond are received, the official shall
21 determine that the claim and bond are in proper form and the sureties
22 are satisfactory. If the claim and bond are satisfactory, the offi-
23 cial shall terminate the proceeding and commence a civil proceeding in
24 rem under AS 17.30.116. Notwithstanding AS 17.30.112(b), the official
25 shall commence the civil proceeding in rem within 20 days after the
26 timely and satisfactory claim and bond are filed. If the claim and
27 bond are not satisfactory when first received, a reasonable time for
28 correction of the claim and bond may be allowed. If satisfactory
29 corrections are not made to the claim and bond within a reasonable

1 time, the official may proceed as though the claim and bond had not
2 been tendered.

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

6 (f) If a timely and satisfactory claim and bond are not filed
7 within the time required under this section, the official shall
8 declare the property forfeited. The official shall execute a declara-
9 tion of forfeiture.

10 (g) In this section

11 (1) "commissioner of public safety" includes an employee of
12 the Department of Public Safety designated by the commissioner to
13 conduct summary administrative forfeiture proceedings;

14 (2) "official" means the commissioner of public safety or
15 chief of police who has custody of seized property.

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

17 (a) If an item of property seized is appraised at more than
18 \$100,000, or the commissioner of public safety or chief of police in
19 custody of seized property elects to commence a civil proceeding in
20 rem against property appraised at \$100,000 or less or against a con-
21 veyance, or a summary administrative forfeiture proceeding is ter-
22 minated upon the timely and satisfactory filing of a claim and bond,
23 [WITHIN 20 DAYS AFTER A SEIZURE UNDER AS 17.30.110 - 17.30.126,] the
24 commissioner of public safety or chief of police shall, by certified
25 mail, notify any person known to have an interest in an item with an
26 appraised value of \$500 or more, or who is ascertainable from official
27 registration numbers, licenses, or other state, federal, or municipal
28 numbers on the item, of the pending forfeiture action. Additionally,
29 the commissioner of public safety or chief of police shall publish

1 notice of forfeiture action of an item valued at \$500 or more in a
2 newspaper of general circulation in the judicial district in which the
3 seizure was made, or if no newspaper is published in that judicial
4 district, in a newspaper published in the state and distributed in
5 that judicial district. The notice shall be published once each week
6 during four consecutive calendar weeks. The requirements of this
7 subsection do not apply to the forfeiture of controlled substances
8 which have been manufactured, distributed, dispensed, or possessed in
9 violation of this chapter or AS 11.71, regardless of their value.

10 * Sec. 6. AS 17.30.120 is amended to read:

11 Sec. 17.30.120. PETITION FOR SALE OF SEIZED ITEM. A claimant
12 may petition the court for sale of an item before final disposition of
13 court proceedings. The court shall grant a petition for sale upon a
14 finding that the sale is in the best interests of the state or munic-
15 ipality, whichever is in custody of the property, and the preservation
16 and maintenance of the item seized. Proceeds from the sale plus
17 interest to the date of final disposition of the court proceedings
18 become the subject of the forfeiture action.

19 * Sec. 7. AS 17.30.122 is amended to read:

20 Sec. 17.30.122. STATE DISPOSAL OF FORFEITED PROPERTY. Property
21 forfeited to the state under AS 17.30.110 - 17.30.138, [AS 17.30.110 -
22 17.30.126] other than controlled substances, shall be disposed of by
23 the commissioner of administration in accordance with applicable law.
24 The commissioner of administration may

- 25 (1) destroy property harmful to the public;
- 26 (2) sell the property and use the proceeds for payment of
27 all proper expenses of the proceedings for forfeiture and sale, in-
28 cluding expenses of seizure, custody, and court costs; proceeds re-
29 maining from the sale of the property after expenses are paid shall be

1 deposited in the general fund;

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

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

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

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

13 * Sec. 8. AS 17.30.126(a) is amended to read:

14 (a) A controlled substance manufactured, possessed, transferred,
15 sold, or offered for sale in violation of this chapter or AS 11.71 is
16 contraband and must be seized and summarily forfeited to the state.
17 The commissioner of public safety or the commissioner's designee,
18 including a municipal law enforcement agency [AUTHORIZED UNDER AS 17.-
19 30.114(b) OF THIS SECTION TO RETAIN CUSTODY OF CONTROLLED SUBSTANCES],
20 is responsible for the disposal of controlled substances which have
21 been forfeited. The controlled substances shall be disposed of in
22 accordance with procedures and requirements prescribed by the commis-
23 sioner.

24 * Sec. 9. AS 17.30 is amended by adding a new section to article 2 to
25 read:

26 Sec. 17.30.138. DEFINITIONS. In AS 17.30.110 - 17.30.138

27 (1) "chief of police" means the head of a law enforcement
28 agency of a municipality;

29 (2) "municipality" means a municipality that has adopted an

1 ordinance under AS 29.35.135 providing for summary administrative
2 forfeiture proceedings to be conducted by the municipality's chief of
3 police.

4 * Sec. 10. AS 29.10.200 is amended by adding a new paragraph to read:

5 (49) AS 29.35.135 (forfeiture of property under AS 17.30)

6 * Sec. 11. AS 29.35 is amended by adding a new section to read:

7 Sec. 29.35.135. FORFEITURE OF PROPERTY UNDER AS 17.30. (a) The
8 governing body may adopt an ordinance authorizing the chief of police
9 to conduct a summary administrative forfeiture proceeding under
10 AS 17.30 for forfeiture of property seized by the municipal law
11 enforcement agency in cases involving controlled substances.

12 (b) Property forfeited to the municipality under AS 17.30.110 -
13 17.30.138 shall be disposed of by the municipality under applicable
14 law and ordinance. The municipality may

15 (1) destroy property harmful to the public;

16 (2) sell the property and use the proceeds for payment of
17 all proper expenses of the proceedings for forfeiture and sale, in-
18 cluding expenses of seizure, custody, and court costs;

19 (3) take custody of the property and authorize its use in
20 the enforcement of AS 11.71 or AS 17.30 or for a use in the adminis-
21 tration of justice;

22 (4) take custody of the property and remove it for disposi-
23 tion under law; or

24 (5) forward it to the Drug Enforcement Administration of
25 the United States Department of Justice for disposition.

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