

Offered: 3/30/88  
Referred: Finance

5-1354X

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1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 462 (Judiciary)

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 and  
8 imitation controlled substances."

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

10 \* Section 1. AS 11.73.060 is amended to read:

11 Sec. 11.73.060. FORFEITURES. (a) Property used during or in  
12 aid of a violation of this chapter may be forfeited to the state to  
13 the extent permitted under AS 17.30.110 - 17.30.138 [AND IN ACCORDANCE  
14 WITH THE PROVISIONS OF AS 17.30.110 - 17.30.126].

15 (b) For purposes of this section the terms "controlled sub-  
16 stance" and "this chapter", as used in AS 17.30.110 - 17.30.138  
17 [AS 17.30.110 - 17.30.126], shall be construed as "imitation con-  
18 trolled substance" and "AS 11.73" respectively.

19 \* Sec. 2. AS 17.30.110 is amended to read:

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

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

26 (2) property, including raw materials, products, and equip-  
27 ment, that is [WHICH ARE] used or intended for use in manufacturing,  
28 distributing, compounding, processing, delivering, importing, or  
29 exporting a controlled substance that [WHICH] is a felony under this

1 chapter or AS 11.71;

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

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

10 (A) a conveyance may not be forfeited under this  
11 paragraph if the owner of the conveyance establishes, by a pre-  
12 ponderance of the evidence, at a hearing before the court as the  
13 trier of fact, that use of the conveyance in violation of this  
14 chapter or AS 11.71 was committed by another person and that the  
15 owner was neither a consenting party nor privy to the violation;

16 (B) a forfeiture of a conveyance encumbered by a valid  
17 security interest at the time of seizure is subject to the inter-  
18 est of the secured party if the secured party establishes, by a  
19 preponderance of the evidence, at a hearing before the court as  
20 the trier of fact, that use of the conveyance in violation of  
21 this chapter or AS 11.71 was committed by another person and that  
22 the secured party was neither a consenting party nor privy to the  
23 violation;

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

27 (6) property, including money, securities, or negotiable  
28 instruments, that is

29 (A) furnished by a person in exchange for a controlled

1 substance in violation of this chapter or AS 11.71;  
2 (B) used in, intended for use in, or used to facili-  
3 tate a violation of this chapter or AS 11.71; or  
4 (C) proceeds derived directly or indirectly from a  
5 violation of this chapter or AS 11.71; [, OR OTHER THINGS OF  
6 VALUE USED IN FINANCIAL TRANSACTIONS DERIVED FROM ACTIVITY PRO-  
7 HIBITED BY THIS CHAPTER OR AS 11.71; AND]  
8 (7) a firearm that [WHICH] is visible, carried during, or  
9 used in furtherance of a violation of this chapter or AS 11.71; and  
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 (9) property acquired, maintained, produced by, or derived

1 from proceeds obtained directly or indirectly from a violation of this  
2 chapter or AS 11.71.

3 \* Sec. 3. AS 17.30.112 is repealed and reenacted to read:

4 Sec. 17.30.112. PROCEEDINGS RESULTING IN FORFEITURE. (a) Prop-  
5 erty listed in AS 17.30.110 may be forfeited to the state or a munic-  
6 ipality upon the order of the commissioner of public safety or a chief  
7 of police in a summary administrative forfeiture proceeding under  
8 AS 17.30.115, upon conviction of the defendant of a violation of this  
9 chapter or AS 11.71, or upon judgment of a court in a separate civil  
10 proceeding in rem.

11 (b) Unless the property is seized under a court order forfeiting  
12 the property to the state or a municipality, the commissioner of  
13 public safety or a chief of police, whoever is in custody of the  
14 property, shall within 20 days after the property is seized under  
15 AS 17.30.114

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

18 (2) commence a civil proceeding in rem under AS 17.30.116;  
19 or

20 (3) release the property, unless the property is subject to  
21 AS 17.30.126.

22 (c) Notwithstanding (b) of this section, if forfeiture of seized  
23 property is pursued as part of a criminal prosecution for a violation  
24 of this chapter or AS 11.71, the commissioner of public safety or the  
25 chief of police, whoever has custody of the property, may retain  
26 custody of the property until the criminal prosecution is concluded or  
27 until two years from the date of seizure, whichever occurs first.  
28 This subsection does not prevent the release, remission, or sale of  
29 the property under AS 17.30.120 - 17.30.138.

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

7 \* Sec. 4. 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  
21 AS 11.71 and the property is easily movable; property seized under  
22 this paragraph may not be held for more than 48 hours without a court  
23 order 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 estimate [APPRAISE] the  
13 value of any items seized other than controlled substances.

14 \* Sec. 5. 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 estimated 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 estimated value of the property, which-  
14 ever is lower, but not less than \$500. 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 de-  
8clare the property forfeited. The official shall execute a declara-  
9tion 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. 6. AS 17.30.116(a) is amended to read:

17 (a) If the estimated value of seized property is 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 with an estimated value of \$100,000 or less or  
21 against a conveyance, [WITHIN 20 DAYS AFTER A SEIZURE UNDER AS 17.-  
22 30.110 - 17.30.126,] the commissioner of public safety or chief of  
23 police shall, by certified mail, notify any person known to have an  
24 interest in an item with an estimated [APPRAISED] value of \$500 or  
25 more, or who is ascertainable from official registration numbers,  
26 licenses, or other state, federal, or municipal numbers on the item,  
27 of the pending forfeiture action. Additionally, the commissioner of  
28 public safety or chief of police shall publish notice of forfeiture  
29 action of an item valued at \$500 or more in a newspaper of general

1 circulation in the judicial district in which the seizure was made, or  
2 if no newspaper is published in that judicial district, in a newspaper  
3 published in the state and distributed in that judicial district. The  
4 notice shall be published once each week during four consecutive  
5 calendar weeks. The requirements of this subsection do not apply to

6 (1) a civil in rem proceeding commenced after a summary  
7 administrative forfeiture proceeding is terminated upon the timely and  
8 satisfactory filing of a claim and bond under AS 17.30.115(d); or

9 (2) the forfeiture of controlled substances which have been  
10 manufactured, distributed, dispensed, or possessed in violation of  
11 this chapter or AS 11.71, regardless of their value.

12 \* Sec. 7. AS 17.30.120 is amended to read:

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

21 \* Sec. 8. AS 17.30.122 is amended to read:

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

27 (1) destroy property harmful to the public;

28 (2) sell the property and use the proceeds for payment of  
29 all proper expenses of the proceedings for forfeiture and sale,

1 including expenses of seizure, custody, and court costs; proceeds re-  
2 maining from the sale of the property after expenses are paid shall be  
3 deposited in the general fund;

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

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

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

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

15 \* Sec. 9. AS 17.30.126(a) is amended to read:

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

26 \* Sec. 10. AS 17.30 is amended by adding a new section to article 2 to  
27 read:

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

29 (1) "chief of police" means the head of a law enforcement

1 agency of a municipality;

2 (2) "municipality" means a municipality that has adopted an  
3 ordinance under AS 29.35.135 providing for summary administrative  
4 forfeiture proceedings to be conducted by the municipality's chief of  
5 police;

6 (3) "violation of this chapter or AS 11.71" includes an  
7 attempt or solicitation to violate this chapter or AS 11.71.

8 \* Sec. 11. AS 29.10.200 is amended by adding a new paragraph to read:

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

10 \* Sec. 12. AS 29.35 is amended by adding a new section to read:

11 Sec. 29.35.135. FORFEITURE OF PROPERTY UNDER AS 17.30. (a) The  
12 governing body may adopt an ordinance authorizing the chief of police  
13 to conduct a summary administrative forfeiture proceeding under  
14 AS 17.30 for forfeiture of property seized by the municipal law en-  
15 forcement agency in cases involving controlled substances.

16 (b) Property forfeited to the municipality under AS 17.30.110 -  
17 17.30.138 shall be disposed of by the municipality under applicable  
18 law and ordinance. The municipality may

19 (1) destroy property harmful to the public;

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

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

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

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