

BY STURGULEWSKI, KELLY,
KERTTULA, PEARCE AND
RODEY

1 IN THE SENATE

2 SENATE BILL NO. 19

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST 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, imita-
8 tion controlled substances, and alcoholic beverage
9 control laws."

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

11 * Section 1. AS 04.11.020(a) is amended to read:

12 (a) A license or permit is not required to authorize sales made
13 by a person under a judgment and decree of foreclosure, under the
14 bankruptcy law of the United States, or under order of the board or a
15 court under AS 04.16.230 - 04.16.299 [AS 04.16.220].

16 * Sec. 2. AS 04.16 is amended by adding new sections to read:

17 Sec. 04.16.230. PROPERTY SUBJECT TO FORFEITURE. The following
18 are subject to forfeiture to the state or a municipality:

19 (1) alcoholic beverages

20 (A) manufactured, sold, offered for sale or possessed
21 for sale, bartered, or exchanged for goods and services in this
22 state in violation of AS 04.11.010;

23 (B) possessed, stocked, warehoused, or otherwise
24 stored in violation of AS 04.21.060;

25 (C) sold or offered for sale in an area where the
26 results of a local option election have, under AS 04.11.490 -
27 04.11.500, prohibited the possession of alcoholic beverages or
28 prohibited the board from issuing, renewing, or transferring one
29 or more licenses or permits under this title in the area;

1 (D) transported into the state and sold to persons not
2 licensed under this chapter in violation of AS 04.16.170(b);
3 (2) materials and equipment used
4 (A) in the manufacture, sale, offering for sale, pos-
5 session for sale, barter, or exchange of alcoholic beverages for
6 goods and services in this state in violation of AS 04.11.010;
7 (B) in the stocking, warehousing, or storage of alco-
8 holic beverages in violation of AS 04.21.060;
9 (C) in the sale or offering for sale of an alcoholic
10 beverage in an area where the results of a local option election
11 have, under AS 04.11.490 - 04.11.500, prohibited the board from
12 issuing, renewing, or transferring one or more licenses or per-
13 mits under this title in the area;
14 (3) a conveyance, including but not limited to aircraft,
15 vehicles, or vessels, used to transport, or facilitate the transporta-
16 tion of
17 (A) alcoholic beverages manufactured, sold, offered
18 for sale or possessed for sale, bartered, or exchanged for goods
19 and services in this state in violation of AS 04.11.010;
20 (B) property stocked, warehoused, or otherwise stored
21 in violation of AS 04.21.060;
22 (C) alcoholic beverages imported into a municipality
23 or established village in violation of AS 04.11.496;
24 (4) alcoholic beverages found on licensed premises that do
25 not bear federal excise stamps if excise stamps are required under
26 federal law;
27 (5) alcoholic beverages, materials, or equipment used in
28 violation of AS 04.16.175;
29 (6) real property, including interests in real property and

1 appurtenances and improvements to real property, that is used or
2 intended for use to manufacture, store, distribute, sell, or offer for
3 sale alcoholic beverages in violation of AS 04.11.010 or AS 04.21.060,
4 or an ordinance adopted under AS 04.11.490 - 04.11.500;

5 (7) property, including money, securities, or negotiable
6 instruments, that is

7 (A) furnished by a person in exchange for alcoholic
8 beverages manufactured, stored, distributed, sold, or offered for
9 sale in violation of AS 04.11.010 or AS 04.21.060, or an ordi-
10 nance adopted under AS 04.11.490 - 04.11.500;

11 (B) used in, intended for use in, or used to facili-
12 tate a violation of AS 04.11.010 or AS 04.21.060, or an ordinance
13 adopted under AS 04.11.490 - 04.11.500; or

14 (C) proceeds derived directly or indirectly from a
15 violation of AS 04.11.010 or AS 04.21.060, or an ordinance adopt-
16 ed under AS 04.11.490 - 04.11.500;

17 (8) property acquired, maintained, or derived from proceeds
18 obtained directly or indirectly from a violation of AS 04.11.010 or AS
19 04.21.060, or an ordinance adopted under AS 04.11.490 - 04.11.500.

20 Sec. 04.16.235. FORFEITURE AUTHORIZED. Property subject to
21 forfeiture under AS 04.16.230 may be forfeited to the state or a
22 municipality, as appropriate, upon

23 (1) conviction of a person under AS 04.11.010 or AS 04.21.-
24 060, or upon conviction for violating an ordinance adopted under
25 AS 04.11.490 - 04.11.500;

26 (2) the order of the commissioner of public safety or a
27 chief of police in a summary administrative forfeiture proceeding
28 under AS 04.16.265; or

29 (3) judgment by the superior court in a proceeding in rem

1 that the property was used in a manner subjecting it to forfeiture
2 under AS 04.16.230 - 04.16.299.

3 Sec. 04.16.240. SEIZURE. (a) Property subject to forfeiture
4 under AS 04.16.230 may be actually or constructively seized under an
5 order issued by the superior court upon a showing of probable cause
6 that the property is subject to forfeiture under AS 04.16.230 - 04.-
7 16.299.

8 (b) Property subject to forfeiture under AS 04.16.230 may be
9 actually or constructively seized without a court order if

10 (1) the seizure is incident to a valid arrest or search;

11 (2) the property subject to seizure is the subject of a
12 prior judgment in favor of the state or a municipality in a criminal
13 proceeding or civil proceeding in rem under this title; or

14 (3) there is probable cause to believe that the property
15 was used, is being used, or is intended for use in violation of
16 AS 04.11.010 or AS 04.21.060, or an ordinance adopted under AS 04.11.-
17 490 - 04.11.500, and the property is easily movable.

18 (c) Constructive seizure is made by posting a signed notice of
19 seizure on the property to be forfeited, stating the violation and the
20 date and place of seizure.

21 (d) Except for alcoholic beverages possessed in violation of
22 AS 04.11.498 or an ordinance adopted under AS 04.11.498, property
23 seized under (b)(3) of this section may not be held longer than 48
24 hours or until an order of forfeiture is issued by the court, which-
25 ever is earlier.

26 Sec. 04.16.245. CUSTODY. Property seized under AS 04.16.240
27 must be held in the custody of either the commissioner of public
28 safety or a municipal law enforcement agency, subject only to disposi-
29 tion under AS 04.16.235 - 04.16.299. The commissioner of public

1 safety or a municipal law enforcement agency shall
2 (1) place the seized property under seal;
3 (2) remove the seized property to a place designated by the
4 court; or
5 (3) take custody of the seized property and remove it to an
6 appropriate location for disposition in accordance with law.

7 Sec. 04.16.250. INVENTORY AND VALUATION. Within 10 days after a
8 seizure of property under AS 04.16.240, the official who has custody
9 of the seized property shall

10 (1) make an inventory of the property; and
11 (2) estimate its value.

12 Sec. 04.16.255. INITIATION OF FORFEITURE PROCEEDINGS. (a)
13 Within 20 days after a seizure of property under AS 04.16.240, the
14 official who has custody of the property shall make reasonable efforts
15 to ascertain the identity and location of the owner of the property
16 seized and the identity and location of a person holding an interest
17 in the property seized; and shall

18 (1) commence a summary administrative forfeiture proceeding
19 under AS 04.16.265;

20 (2) commence a civil proceeding in rem under AS 04.16.270;

21 or

22 (3) release the property.

23 (b) Notwithstanding (a) of this section, if forfeiture of seized
24 property is pursued as part of a criminal prosecution for a violation
25 of AS 04.11.010 or AS 04.21.060, or a municipal ordinance adopted
26 under AS 04.11.490 - 04.11.500, the official having custody of the
27 property may retain custody of the property until the criminal prose-
28 cution is concluded or until two years from the date of seizure,
29 whichever occurs first. This subsection does not prevent the official

1 from

2 (1) releasing the property;

3 (2) remitting the property under a court order issued under
4 AS 04.16.280; or

5 (3) selling the property under a court order issued under
6 AS 04.16.285.

7 (c) The provisions of (a) of this section do not apply if the
8 property was seized under a court order forfeiting the property to the
9 state or a municipality.

10 Sec. 04.16.260. NOTICE. Before forfeiture, and within 20 days
11 after property is seized under AS 04.16.240, the official who has
12 custody of the property shall

13 (1) in any manner authorized for service of process under
14 the rules of civil procedure, notify

15 (A) the owner of the seized property, if the owner's
16 identity is known; and

17 (B) each person ascertained to have an interest in the
18 seized property of the impending forfeiture; and

19 (2) begin to publish notice as required by

20 (A) AS 04.16.265(b) for property to be forfeited in a
21 summary administrative forfeiture proceeding; or

22 (B) AS 04.16.270(b) for property to be forfeited by an
23 in rem forfeiture proceeding.

24 Sec. 04.16.265. SUMMARY ADMINISTRATIVE FORFEITURE PROCEEDING.

25 (a) The provisions of this section apply when the

26 (1) estimated value of seized property is \$100,000 or less;

27 or

28 (2) seized property is a conveyance subject to forfeiture
29 under AS 04.16.230(3).

1 (b) The official who has custody of seized property may commence
2 a summary administrative forfeiture proceeding by giving notice of the
3 proceeding. In addition to the requirements of AS 04.16.260(1), the
4 person having custody of the property shall publish, once a week for
5 three consecutive calendar weeks, a notice of the impending forfeiture
6 in a newspaper of general circulation in the judicial district in
7 which the seizure was made, or if a newspaper is not published in that
8 judicial district, in a newspaper published in the state and distri-
9 buted in that judicial district. The notice provided must

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

12 (2) state the time, place, and cause of seizure; and

13 (3) state that a person claiming an interest in the proper-
14 ty must, within 20 days from the date of first publication of the
15 notice, file with the official a claim to the property and a bond in
16 the proper amount.

17 (c) A person claiming property subject to a proceeding under
18 this section shall submit a claim and a bond to the official who has
19 custody of the seized property. The bond must be

20 (1) in the amount of \$2,500 or 10 percent of the appraised
21 value of the property, whichever is less, but not less than \$500;

22 (2) rendered to the state or municipality, as appropriate,
23 with sureties approved by the official having custody of the property.

24 (d) In lieu of the bond required by (c) of this section, the
25 person claiming the property may deposit with the state or municipali-
26 ty, as appropriate, cash or a certified check in the amount required
27 by (c)(1) of this section.

28 (e) The bond required by (c) of this section or the deposit
29 authorized by (d) of this section must be conditioned to secure the

1 payment of all reasonable costs and expenses of the judicial forfei-
2 ture proceeding if the court orders the property forfeited.

3 (f) When the claim and bond or deposit are received, the offi-
4 cial shall determine if the claim and bond or deposit are in proper
5 form and the sureties are satisfactory.

6 (g) If the claim and bond or deposit are satisfactory, the offi-
7 cial shall terminate the summary administrative forfeiture proceeding
8 and commence a civil proceeding in rem. If the claim and bond or
9 deposit are not satisfactory when first received, a reasonable time
10 for correction of the claim and bond or deposit may be allowed; if
11 satisfactory corrections are not made to the claim and bond or deposit
12 within a reasonable time, the official having custody of the property
13 may proceed as though the claim and bond or deposit had not been
14 tendered. The filing of a timely and satisfactory claim and bond or
15 deposit terminates the summary administrative forfeiture proceeding,
16 but does not entitle the claimant to possession of the property.

17 (h) If the summary administrative proceeding is terminated under
18 (g) of this section, the official having custody of the property shall
19 commence a civil proceeding in rem within 20 days after the timely and
20 satisfactory claim and bond or deposit are filed.

21 (i) If a timely and satisfactory claim and bond or deposit are
22 not filed within the time required under this section, the official
23 having custody of the property

24 (1) shall declare the property forfeited; and

25 (2) execute a declaration of forfeiture.

26 Sec. 04.16.270. IN REM FORFEITURE PROCEEDING. (a) Unless the
27 property is handled in a summary administrative forfeiture proceeding
28 or released in accordance with law, the official who has custody of
29 the property shall commence an in rem forfeiture proceeding.

1 (b) In addition to the requirements of AS 04.16.260(1), the
2 official who has custody of the property shall, in the manner author-
3 ized for service of process under the rules of civil procedure, pub-
4 lish notice. Unless otherwise provided in the rules of civil proce-
5 dure, the person having custody of the property shall publish, once a
6 week for four consecutive calendar weeks, a notice of the impending
7 forfeiture in a newspaper of general circulation in the judicial
8 district in which the seizure was made, or if a newspaper is not
9 published in that judicial district, in a newspaper published in the
10 state and distributed in that judicial district. Unless the content
11 of the notice is otherwise provided for in the rules of civil proce-
12 dure, the notice provided must

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

15 (2) state the time, place, and cause of seizure; and

16 (3) state that a person claiming an interest in the proper-
17 ty must, within the time prescribed for answering a civil complaint
18 under the rules of civil procedure, file with the court an answer and
19 a claim to the property.

20 (c) The requirements of (f) of this section do not apply to a
21 civil in rem proceeding commenced after a summary administrative
22 forfeiture proceeding is terminated upon the timely and satisfactory
23 filing of a claim and bond or deposit under AS 04.16.265(f).

24 (d) If a claim and answer is not filed within the time speci-
25 fied, the court may order forfeiture of the property subject to the in
26 rem proceeding without further proceedings or showings.

27 (e) The court may consider any claim and answer. Questions of
28 fact or law raised by a notice of commencement of a forfeiture pro-
29 ceeding must be determined by the court sitting without a jury.

1 (f) At the conclusion of the in rem proceeding, the court may
2 order a forfeiture if it finds that property is subject to forfeiture
3 under AS 04.16.230.

4 (g) An in rem forfeiture proceeding may be held in abeyance
5 until the conclusion of any pending criminal charges against the
6 claimant.

7 Sec. 04.16.275. LIMITATION ON DEFENSE IN AN IN REM PROCEEDING.
8 It is not a defense in an in rem proceeding brought under AS 04.16.270.
9 that a criminal proceeding is pending or has resulted in a conviction,
10 an acquittal, or a conviction of a lesser offense, of the violation
11 for which forfeiture is authorized under AS 04.16.230.

12 Sec. 04.16.280. REMISSION OR RELIEF FROM THE FORFEITURE. (a)
13 Property subject to forfeiture under AS 04.16.230 - 04.16.299 may not
14 be forfeited if the owner of the property shows, by a preponderance of
15 the evidence, at a hearing before the court as the trier of fact, that
16 the violation of law subjecting the property to forfeiture under
17 AS 04.16.230 was committed by another person, and that the owner was
18 not a party to the violation and did not have actual knowledge that
19 the property was used or was to be used in violation of the law or
20 ordinance.

21 (b) The holder of a valid security interest, lien, mortgage,
22 deed of trust, conditional sales contract, or right to possession is
23 entitled to retain the holder's interest by showing, by a preponder-
24 ance of the evidence at a hearing before the court as the trier of
25 fact, that the violation of law subjecting the property to forfeiture
26 was committed by another person, and that holder was not a party to
27 the violation and did not have actual knowledge that the property was
28 used or was to be used in violation of the law or ordinance.

29 Sec. 04.16.285. SALE OF SEIZED ITEM. (a) A person who has a

1 claim on seized property may petition the court for sale of the prop-
2 erty before final disposition of court proceedings.

3 (b) The court shall grant a petition for sale upon a finding
4 that sale of the property

5 (1) is in the best interests of the state or municipality,
6 whichever has custody of the property; and

7 (2) will serve to preserve and maintain the property.

8 (c) Proceeds from the sale of property authorized by this sec-
9 tion plus interest to the date of final disposition of the court
10 proceedings become the subject of the forfeiture action.

11 Sec. 04.16.290. DISPOSITION OF PROPERTY UPON FORFEITURE. (a)
12 The court shall place alcoholic beverages forfeited under AS 04.16.-
13 230 - 04.16.299 in the custody of a peace officer of the state. The
14 alcoholic beverages must be destroyed not later than 30 days after
15 forfeiture.

16 (b) Except for property disposed of under (a) of this section,
17 the court shall place all property forfeited to the state under
18 AS 04.16.230 - 04.16.299 in the custody of the official who initiated
19 the forfeiture proceeding. The official shall destroy property placed
20 in the official's custody under this subsection that is harmful to the
21 public. If the property has been forfeited to the state, the commis-
22 sioner of public safety

23 (1) may

24 (A) transfer ownership of aircraft to the Alaska Wing,
25 Civil Air Patrol;

26 (B) authorize use of the property in the enforcement
27 of this title, or transfer it to another agency of the state, a
28 political subdivision of the state, or a law enforcement agency
29 of the United States government for a use in furtherance of the

1 administration of justice; and
2 (2) shall order all other property that has been forfeited
3 to the state sold.

4 (c) When the property has been sold under (b) of this section,
5 the commissioner of public safety

6 (1) may use the proceeds, subject to appropriation by the
7 legislature, for payment of expenses of the proceedings for forfeiture
8 and sale, including expenses of seizure, custody, and court costs, if
9 any; and

10 (2) shall deposit the remainder of the proceeds in the gen-
11 eral fund.

12 Sec. 04.16.299. DEFINITIONS. In AS 04.16.230 - 04.16.299

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

15 (2) "commissioner of public safety" includes an employee of
16 the Department of Public Safety designated by the commissioner to
17 conduct summary administrative forfeiture proceedings;

18 (3) "interest" as applied to property means an interest
19 evidenced by a security interest, right to possession, lien, mortgage,
20 deed of trust, or conditional sales contract;

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

25 (5) "official who has custody of the property" means the
26 commissioner of public safety or chief of police who has custody of
27 seized property;

28 (6) "security interest" has the meaning given in AS 45.01.-
29 201.

1 * Sec. 3. AS 11.73.060 is amended to read:

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

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

10 * Sec. 4. AS 17.30.110 is amended to read:

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

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

17 (2) property, including raw materials, products, and equip-
18 ment, that is [WHICH ARE] used or intended for use in manufacturing,
19 distributing, compounding, processing, delivering, importing, or
20 exporting a controlled substance that [WHICH] is a felony under this
21 chapter or AS 11.71;

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

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

1 (A) A CONVEYANCE MAY NOT BE FORFEITED UNDER THIS
2 PARAGRAPH IF THE OWNER OF THE CONVEYANCE ESTABLISHES, BY A PRE-
3 PONDERANCE OF THE EVIDENCE, AT A HEARING BEFORE THE COURT AS THE
4 TRIER OF FACT, THAT USE OF THE CONVEYANCE IN VIOLATION OF THIS
5 CHAPTER OR AS 11.71 WAS COMMITTED BY ANOTHER PERSON AND THAT THE
6 OWNER WAS NEITHER A CONSENTING PARTY NOR PRIVY TO THE VIOLATION;

7 (B) A FORFEITURE OF A CONVEYANCE ENCUMBERED BY A VALID
8 SECURITY INTEREST AT THE TIME OF SEIZURE IS SUBJECT TO THE INTER-
9 EST OF THE SECURED PARTY IF THE SECURED PARTY ESTABLISHES, BY A
10 PREPONDERANCE OF THE EVIDENCE, AT A HEARING BEFORE THE COURT AS
11 THE TRIER OF FACT, THAT USE OF THE CONVEYANCE IN VIOLATION OF
12 THIS CHAPTER OR AS 11.71 WAS COMMITTED BY ANOTHER PERSON AND THAT
13 THE SECURED PARTY WAS NEITHER A CONSENTING PARTY NOR PRIVY TO THE
14 VIOLATION];

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

18 (6) property, including money, securities, or negotiable
19 instruments, that is

20 (A) furnished by a person in exchange for a controlled
21 substance in violation of this chapter or AS 11.71;

22 (B) used in, intended for use in, or used to facili-
23 tate a violation of this chapter or AS 11.71; or

24 (C) proceeds derived directly or indirectly from a
25 violation of this chapter or AS 11.71; [, OR OTHER THINGS OF
26 VALUE USED IN FINANCIAL TRANSACTIONS DERIVED FROM ACTIVITY PRO-
27 HIBITED BY THIS CHAPTER OR AS 11.71; AND]

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

1 (8) real property, including interests in real property and
2 appurtenances and improvements to real property, that is used or
3 intended for use to commit, or to facilitate the commission of, a
4 felony offense under this chapter or AS 11.71; and

5 (9) property acquired, maintained, or derived from proceeds
6 obtained directly or indirectly from a violation of this chapter or
7 AS 11.71.

8 * Sec. 5. AS 17.30.110 is amended by adding a new subsection to read:

9 (b) Notwithstanding the provisions of (a) of this section,

10 (1) property described in (a)(4) - (9) of this section may
11 not be forfeited under this section if the owner of the property
12 shows, by a preponderance of the evidence, at a hearing before the
13 court as the trier of fact, that use of the property in violation of
14 this chapter or AS 11.71 was committed by another person, and that the
15 owner was not a party to the violation and did not have actual knowl-
16 edge that the property was used or was to be used in violation of the
17 law;

18 (2) the holder of a valid security interest, lien, mort-
19 gage, deed of trust, conditional sales contract, or right to pos-
20 session is entitled to retain the holder's interest by showing, by a
21 preponderance of the evidence, at a hearing before the court as the
22 trier of fact, that the violation of law subjecting the property to
23 forfeiture was committed by another person, and that the holder was
24 not a party to the violation and did not have actual knowledge that
25 the property was used or was to be used in violation of the law.

26 * Sec. 6. AS 17.30.112 is repealed and reenacted to read:

27 Sec. 17.30.112. PROCEEDINGS RESULTING IN FORFEITURE. (a) Prop-
28 erty listed in AS 17.30.110 may be forfeited to the state or a munic-
29 ipality upon the order of the commissioner of public safety or a chief

1 of police in a summary administrative forfeiture proceeding under
2 AS 17.30.115, upon conviction of the defendant of a violation of this
3 chapter or AS 11.71, or upon judgment of a court in a separate civil
4 proceeding in rem.

5 (b) Unless the property is seized under a court order forfeiting
6 the property to the state or a municipality, the commissioner of
7 public safety or a chief of police, whoever is in custody of the
8 property, shall within 20 days after the property is seized under
9 AS 17.30.114

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

12 (2) commence a civil proceeding in rem under AS 17.30.116;
13 or

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

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

24 (d) A court may order a forfeiture in the in rem proceeding if
25 it finds that an item specified in AS 17.30.110 was used during or in
26 aid of a violation of this chapter or AS 11.71. It is not a defense
27 in an in rem proceeding brought under this chapter that a criminal
28 proceeding is pending or has resulted in a conviction, an acquittal,
29 or a conviction of a lesser offense for a violation of this chapter or

1 AS 11.71.

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

3 Sec. 17.30.114. SEIZURE AND CUSTODY OF PROPERTY. (a) Property
4 listed in AS 17.30.110 may be actually or constructively seized under
5 [BY A PEACE OFFICER UPON] an order issued by a court [HAVING JURISDIC-
6 TION OVER THE PROPERTY] upon a showing of probable cause that the
7 property may be forfeited under AS 17.30.110. Constructive seizure is
8 effected by posting a signed notice of seizure on the item to be
9 forfeited, stating the violation and the date and place of seizure.
10 Seizure without a court order may be made if

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

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

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

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

- 1 (1) place the property under seal;
2 (2) remove the property to a place designated by the court;
3 or
4 (3) take custody of the property and remove it to an appro-
5 priate location for disposition in accordance with law.

6 (c) Within 10 days after a seizure under AS 17.30.110 - 17.30.-
7 138 [AS 17.30.110 - 17.30.126], the commissioner of public safety or
8 the chief of police shall make an inventory of any property seized,
9 including controlled substances, and shall estimate [APPRAISE] the
10 value of any items seized other than controlled substances.

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

12 Sec. 17.30.115. SUMMARY ADMINISTRATIVE FORFEITURE PROCEEDING.

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

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

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

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

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

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

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

9 (c) The bond with satisfactory sureties must be in the amount of
10 \$2,500 or 10 percent of the estimated value of the property, whichever
11 is lower, but not less than \$500. The bond must be rendered to the
12 state or municipality, as appropriate, with sureties approved by the
13 official. Cash or a certified check may be deposited in lieu of a
14 bond. The bond or cash deposit is conditioned that in the event of
15 judicial forfeiture of the property the obligor shall pay from the
16 bond or deposit all reasonable costs and expenses of the civil pro-
17 ceeding in rem.

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

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

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

8 (g) In this section

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

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

14 * Sec. 9. AS 17.30.116(a) is amended to read:

15 (a) If the estimated value of seized property is more than
16 \$100,000, or the commissioner of public safety or chief of police in
17 custody of seized property elects to commence a civil proceeding in
18 rem against property with an estimated value of \$100,000 or less or
19 against a conveyance, [WITHIN 20 DAYS AFTER A SEIZURE UNDER AS 17.-
20 30.110 - 17.30.126,] the commissioner of public safety or chief of
21 police shall, by certified mail, notify any person known to have an
22 interest in an item with an estimated [APPRAISED] value of \$500 or
23 more, or who is ascertainable from official registration numbers,
24 licenses, or other state, federal, or municipal numbers on the item,
25 of the pending forfeiture action. Additionally, the commissioner of
26 public safety or chief of police shall publish notice of forfeiture
27 action of an item valued at \$500 or more in a newspaper of general
28 circulation in the judicial district in which the seizure was made, or
29 if no newspaper is published in that judicial district, in a newspaper

1 published in the state and distributed in that judicial district. The
2 notice must [SHALL] be published once each week during four consecu-
3 tive calendar weeks. The requirements of this subsection do not apply
4 to

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

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

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

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

20 * Sec. 11. AS 17.30.122 is amended to read:

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

26 (1) destroy property harmful to the public;

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

1 remaining from the sale of the property after expenses are paid shall
2 be deposited in the general fund;

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

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

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

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

14 * Sec. 12. AS 17.30.126(a) is amended to read:

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

25 * Sec. 13. AS 17.30 is amended by adding a new section to article 2 to
26 read:

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

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

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

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

7 * Sec. 14. AS 29.10.200 is amended by adding a new paragraph to read:

8 (51) AS 29.35.135 (forfeiture of property under AS 04.16
9 and AS 17.30).

10 * Sec. 15. AS 29.35 is amended by adding a new section to read:

11 Sec. 29.35.135. FORFEITURE OF PROPERTY UNDER AS 04.16 AND
12 AS 17.30. (a) The governing body may adopt ordinances authorizing
13 the chief of police to conduct a summary administrative forfeiture
14 proceeding under AS 04.16 and AS 17.30 for forfeiture of property
15 seized by the municipal law enforcement agency in cases involving
16 controlled substances, imitation controlled substances, and alcoholic
17 beverages.

18 (b) Property forfeited to the municipality under AS 04.16.230 -
19 04.16.299 and AS 17.30.110 - 17.30.138 shall be disposed of by the
20 municipality under applicable law and ordinance. The municipality

21 (1) shall destroy property harmful to the public;

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

25 (3) may take custody of the property and authorize its use
26 in the enforcement of AS 04.11, AS 04.16, AS 04.21.060, AS 11.71,
27 AS 11.73, or AS 17.30 or for a use in the administration of justice;

28 (4) may take custody of the property and remove it for
29 disposition under law; or

1 (5) shall forward property seized under AS 17.30 to the
2 Drug Enforcement Administration of the United States Department of
3 Justice for disposition.
4 * Sec. 16. AS 04.16.220 is repealed.