

Original sponsor(s): SEN. STURGULEWSKI, Kelly, Kerttula, Pearce, Rodey,
Binkley, Uehling

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 19 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH 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 alcoholic beverages, controlled
8 substances, and imitation controlled substances; and
9 amending Rules 16, 16.1, 40(e), 65(b), and 77(a),
10 Alaska Rules of Civil Procedure."
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
12 * Section 1. AS 04.16.220 is repealed and reenacted to read:
13 Sec. 04.16.220. PROPERTY SUBJECT TO FORFEITURE. (a) Under the
14 procedures set out in AS 12.38, alcoholic beverages are subject to
15 forfeiture to the state if
16 (1) manufactured, delivered, distributed, possessed, con-
17 cealed, stored, acquired, sold, exchanged, offered for sale or ex-
18 change, or transported, or one of these acts is attempted or soli-
19 cited, in violation of a criminal law under this title;
20 (2) unlawfully possessed in an area where the results of a
21 local election under AS 04.11.498 have prohibited possession of alco-
22 holic beverages; or
23 (3) found on licensed premises without excise stamps re-
24 quired by federal law.
25 (b) The property listed in (c) of this section is subject to
26 forfeiture, under the procedures set out in AS 12.38, if
27 (1) except for liquor licenses forfeited under AS 04.16.-
28 180, the property is used, or intended to be used, to commit or facil-
29 itate an offense under AS 04.11.010, AS 04.16.175, AS 04.21.060, an

1 offense relating to alcoholic beverages on licensed premises without
2 excise stamps required by federal law, or an offense relating to
3 conduct made criminal because of the results of a local election under
4 AS 04.11.490 - 04.11.500; or

5 (2) the property is used, or intended to be used, in a
6 direct or indirect exchange for an alcoholic beverage in violation of
7 AS 04.11.010, or is traceable to or derived from the exchange.

8 (c) The following property is subject to forfeiture under (b) of
9 this section:

10 (1) firearms, explosives, and weapons;

11 (2) money, securities, negotiable instruments, and anything
12 of value, whether tangible or intangible, secured or unsecured;

13 (3) raw materials, chemicals, pharmaceuticals, and any-
14 thing, including plants or other living organisms, from which alco-
15 holic beverages might be derived;

16 (4) books, records, tapes, formulas, research papers, and
17 equipment, including data processing equipment and electronic equip-
18 ment used in surveillance or countersurveillance efforts;

19 (5) aircraft, vehicles, vessels, and conveyances; and

20 (6) a right, title, or interest in real property, and any
21 improvements or appurtenances, if the offense making the property
22 subject to forfeiture is a felony offense.

23 (d) Notwithstanding any other provisions of AS 12.38, alcoholic
24 beverages seized under AS 12.38.020 are automatically forfeited to the
25 state and subject to immediate destruction by a peace officer if

26 (1) unlawfully possessed in an area where the results of a
27 local election under AS 04.11.498 have prohibited possession of alco-
28 holic beverages; or

29 (2) in the process of being consumed or in a container that

1 has been opened or the seal of which has been broken.

2 (e) Except as provided in (d) of this section, alcoholic beverages
3 forfeited to the state shall be destroyed by the law enforcement
4 agency with custody of the property under procedures prescribed by the
5 commissioner of public safety.

6 * Sec. 2. AS 12 is amended by adding a new chapter to read:

7 CHAPTER 38. FORFEITURE OF PROPERTY.

8 Sec. 12.38.010. APPLICABILITY. This chapter applies to property
9 subject to forfeiture under AS 04.16.220 and AS 17.30.110.

10 Sec. 12.38.020. SEIZURE OF PROPERTY SUBJECT TO FORFEITURE. (a)

11 Property subject to forfeiture may be seized by a peace officer

12 (1) under an order issued by a court in an ex parte proceeding
13 upon a showing

14 (A) of probable cause that the property is subject to
15 forfeiture; or

16 (B) that a grand jury has returned an indictment
17 finding that the evidence, if unexplained or uncontradicted,
18 would warrant a court's conclusion that the property specifically
19 identified in the indictment is subject to forfeiture; or

20 (2) without a court order if

21 (A) constitutionally permissible or otherwise authorized
22 by law;

23 (B) the property has been the subject of a judgment in
24 favor of the state in a forfeiture proceeding; or

25 (C) there is probable cause to believe that the property
26 is subject to forfeiture and is easily movable; except for
27 alcoholic beverages, controlled substances, or imitation controlled
28 substances, property seized solely under this subparagraph may not
29 be held for more than 48 hours without a court

1 order under (1) of this subsection.

2 (b) Property that cannot with reasonable effort be taken into
3 physical custody may be constructively seized by posting a written
4 notice of the seizure in a conspicuous place on the property. This
5 subsection does not prohibit other reasonable methods of constructive
6 seizure.

7 Sec. 12.38.030. NOTICE OF SEIZURE; CUSTODY OF SEIZED PROPERTY;
8 INVENTORY AND APPRAISAL. (a) Within 30 days after a seizure under
9 AS 12.38.020, the law enforcement agency responsible for custody of
10 the property shall give notice by certified mail of the seizure to
11 persons known to have a financial interest in an item with an estimat-
12 ed value more than \$1,000, or whose interest in the property is ascer-
13 tainable from official tax rolls, registration numbers, licenses, or
14 other state, federal, or municipal identification numbers affixed to
15 the property.

16 (b) Subject to the order of the court, property seized under
17 AS 12.38.020 remains in the legal custody of the Department of Public
18 Safety or a municipal law enforcement agency authorized by the commis-
19 sioner of public safety to retain custody. The agency responsible for
20 custody may, in its discretion, release the property to another appro-
21 priate person.

22 (c) Within 10 days after a seizure under AS 12.38.020, the law
23 enforcement agency responsible for custody of the property shall
24 estimate the value, make an inventory of the property, and send the
25 inventory and estimate to the attorney general.

26 (d) If the attorney general determines that a forfeiture pro-
27 ceeding cannot be sustained or as a matter of discretion will not be
28 instituted, a written report of that decision shall be sent to the
29 agency responsible for custody of the property and the property must

1 be returned to the person from whom it was obtained.

2 (e) This section does not apply to property that is subject to
3 automatic forfeiture under AS 04.16.220(d) or AS 17.30.110(c), or to
4 property seized under AS 12.38.020(a)(2)(B).

5 Sec. 12.38.040. PRESERVATION OR DISPOSAL OF PROPERTY BEFORE
6 ORDER OF FORFEITURE. (a) A court may issue an appropriate temporary
7 or other order, require execution of a satisfactory performance bond
8 to the state, or take other action to preserve the availability or
9 value of property seized under AS 12.38.020.

10 (b) Action by the court under (a) of this section may be taken
11 upon ex parte application of the state if there is reason to believe
12 that notice would jeopardize the availability or value of the property
13 for forfeiture.

14 (c) The state may, at any time before an order of forfeiture is
15 issued, request the sale or other disposition of property seized under
16 AS 12.38.020. A person claiming an interest in the property may also
17 request sale or other disposition before an order of forfeiture is
18 issued if the person proves by a preponderance of the evidence that

19 (1) the person has filed a timely claim under AS 12.38.070
20 or, before the initiation of a forfeiture proceeding, has sent a
21 notice of claim to the commissioner of public safety in conformance
22 with the requirements of AS 12.38.070(b);

23 (2) the property is not likely to be used as evidence in a
24 judicial or administrative proceeding;

25 (3) the person has given adequate assurance that the prop-
26 erty or its proceeds will remain subject to the court's jurisdiction;

27 (4) the sale or other disposition is in the best interests
28 of the state and will provide for protection of the value of the
29 property; and

1 (5) the person provides a bond or other equivalent security
2 equal to twice the estimated value of the property.

3 (d) Proceeds from the sale of property, plus interest earned on
4 the proceeds to the date of termination of the proceedings, become the
5 subject of the forfeiture action in the same manner as the property
6 itself.

7 Sec. 12.38.050. FORFEITURE PROCEEDINGS; NOTICE; BURDEN OF PROOF;
8 DEFENSES EXEMPTED. (a) A forfeiture proceeding

9 (1) may be initiated by the state filing a motion to for-
10 feit in a criminal or civil proceeding relating to the conduct that
11 makes the property subject to forfeiture;

12 (2) may be initiated by the state filing a complaint in a
13 separate in rem proceeding; or

14 (3) under AS 12.38.060 may be initiated by the commissioner
15 of public safety directing that publication under (b) of this section
16 be made of the state's intent to seek forfeiture of property adminis-
17 tratively.

18 (b) Within 30 days after a forfeiture proceeding has been initi-
19 ated as provided in (a) of this section,

20 (1) persons required to be notified under AS 12.38.030
21 shall be served with a copy of the motion, complaint, or other notice
22 in a manner authorized for service of process under the rules of civil
23 procedure; and

24 (2) the law enforcement agency with custody of the property
25 shall begin to publish notice of the forfeiture proceeding in the
26 manner provided for service by publication under the rules of civil
27 procedure; the notice must include

28 (A) a list of property with an estimated value of more
29 than \$1,000, with a description of the property, including motor

1 vehicle or other registration numbers;
2 (B) the approximate value of the property;
3 (C) the date and place of seizure;
4 (D) the reason the property is subject to forfeiture;
5 (E) a citation to this chapter, and a citation to the
6 court docket number relating to a judicial forfeiture proceeding;
7 and

8 (F) notice that the property will be forfeited to the
9 state if a timely claim is not filed under this chapter.

10 (c) The notice requirements of (b) of this section do not apply
11 to property that is subject to automatic forfeiture under AS 04.16.-
12 220(d) or AS 17.30.110(c).

13 (d) In a forfeiture proceeding other than a summary administra-
14 tive proceeding under AS 12.38.060, the state must prove by a prepon-
15 derance of the evidence that the property is subject to forfeiture.
16 It is prima facie evidence, sufficient to support an order of forfei-
17 ture, that a defendant has been convicted of conduct making the prop-
18 erty subject to forfeiture, or that a grand jury has returned an
19 indictment finding that the evidence, if unexplained or uncontradict-
20 ed, would warrant a court to conclude that the property specifically
21 identified in the indictment is subject to forfeiture.

22 (e) In a forfeiture proceeding other than a summary administra-
23 tive proceeding under AS 12.38.060, questions of fact or law shall be
24 determined by the court, sitting without a jury. A person claiming an
25 interest in the property under AS 12.38.070 and 12.38.090 may testify,
26 present evidence and witnesses, and cross-examine witnesses presented
27 by other parties. In addition to other testimony and evidence pre-
28 sented, the court may consider the relevant portions of the record of
29 a related criminal action.

1 (f) Except for proceedings under AS 12.38.090(a)(2) to permit
2 use of exempted property, at the request of the state a forfeiture
3 proceeding, including discovery, shall be held in abeyance until the
4 conclusion of a pending criminal action relating to the conduct making
5 the property subject to forfeiture.

6 (g) It is not a defense to a forfeiture proceeding that a crimi-
7 nal offense has not been prosecuted, or has resulted in a conviction
8 of a different offense or an acquittal.

9 Sec. 12.38.060. SUMMARY ADMINISTRATIVE FORFEITURE PROCEDURES.

10 (a) If the value of the property seized under AS 12.38.020 does not
11 exceed \$100,000 and is not real property, the commissioner of public
12 safety may order administrative forfeiture of the property under this
13 chapter. The Administrative Procedure Act (AS 44.62) does not apply
14 to an administrative forfeiture.

15 (b) The commissioner of public safety shall terminate the admin-
16 istrative forfeiture proceeding and refer the matter to the attorney
17 general for initiation of a judicial forfeiture proceeding if a person
18 files a timely claim under AS 12.38.070 and deposits with the commis-
19 sioner, in cash or bond approved by the commissioner, 25 percent of
20 the appraised value of the property, but not less than \$1,000. The
21 deposit is conditioned to secure the payment of all reasonable costs
22 and expenses of the judicial forfeiture proceeding, including attorney
23 fees, if the state is the prevailing party.

24 Sec. 12.38.070. PROCEDURE FOR CLAIMANTS. (a) A person claiming
25 an interest in property that is the subject of a forfeiture proceed-
26 ing, including persons who claim an exemption under AS 12.38.-
27 090(a)(2), shall file a claim

28 (1) in a judicial forfeiture proceeding, within the time
29 permitted under applicable court rules; or

1 (2) in an administrative forfeiture proceeding under
2 AS 12.38.060, within 20 days of the date of the final publication
3 under AS 12.38.050(b)(2).

4 (b) The claim must

5 (1) be filed with the court in judicial forfeiture proceed-
6 ings, or with the commissioner of public safety in administrative
7 forfeiture proceedings under AS 12.38.060;

8 (2) be sworn under oath; and

9 (3) set out with specificity the reasons why the property
10 is not subject to forfeiture or why the person is entitled to relief
11 under AS 12.38.090, the nature of the person's right, title, or inter-
12 est in the property, the time and circumstances of the person's acqui-
13 sition, the consideration paid, and additional facts supporting the
14 claim.

15 (c) If a claim is not timely filed, the property shall be for-
16 feited to the state without further proceedings.

17 Sec. 12.38.080. ORDER OF FORFEITURE; LIEN IN FAVOR OF THE STATE.

18 (a) If the state proves that property is subject to forfeiture, the
19 property may be ordered forfeited to the state, except as provided in
20 AS 12.38.090.

21 (b) An order of judicial or administrative forfeiture, or an
22 order granting relief under AS 12.38.090, removes all liens, encum-
23 brances, or other clouds on the title resulting from the forfeiture
24 proceeding.

25 (c) A person whose conduct causes property to be subject to
26 forfeiture shall pay the reasonable cost of maintenance, storage,
27 disposal, or other expenses of the forfeiture proceeding, including
28 attorney fees, either as part of a sentence, a condition of probation
29 or suspended imposition of sentence, or as a mandatory assessment of

1 costs in a forfeiture proceeding.

2 (d) A judicial order of forfeiture shall forfeit to the state
3 any other assets of the person who caused the property to be subject
4 to forfeiture, up to the value of any property subject to forfeiture,
5 if the property subject to forfeiture has been

6 (1) commingled with other property and cannot be separated
7 without difficulty;

8 (2) transferred to, sold to, or deposited with a third
9 party, placed beyond the jurisdiction of the court, or removed so it
10 cannot be located;

11 (3) substantially diminished in value by an act or omission
12 of the person who caused the property to be subject to forfeiture; or

13 (4) ordered returned to an innocent party under AS 12.38.-
14 090(a)(1).

15 (e) An order of forfeiture issued under this section may be made
16 regardless of the location of the property that might be subject to
17 forfeiture or that has been ordered forfeited.

18 (f) A perfected priority lien on property that has been ordered
19 forfeited is created in favor of the state up to an amount that is the
20 sum of the expenses of investigation, prosecution, and forfeiture
21 arising out of the conduct making the property subject to forfeiture.
22 In calculating the amount of the lien, expenses of all state, federal,
23 or local agencies are to be included. The lien has priority over all
24 unsecured and all unperfected secured debts associated with the prop-
25 erty.

26 Sec. 12.38.090. RELIEF FROM FORFEITURE. (a) A person who has
27 filed a timely claim under AS 12.38.070 may obtain relief from the
28 forfeiture upon proof by a preponderance of the evidence

29 (1) that the person

1 (A) has a valid right, title, or interest in the
2 property, acquired in good faith, which takes priority over a
3 lien in favor of the state under AS 12.38.080(f);

4 (B) did not knowingly participate in or facilitate the
5 conduct that resulted in the property being subject to forfei-
6 ture; and

7 (C) at no time knew, or had reasonable cause to be-
8 lieve, that the property was or might be subject to forfeiture;
9 or

10 (2) that the person provides more than half the support of
11 a minor dependent living in the person's household, in which case the
12 person may claim exemptions from the forfeiture to the extent permit-
13 ted under AS 09.38.010 - 09.38.090; however, an exemption may not be
14 permitted for a liquor license granted under AS 04 or a limited entry
15 permit granted under AS 16.43.

16 (b) If the person claiming an interest in the property is found
17 to be entitled to less than the total value of the property, the
18 person may choose to receive either the proportional value of the
19 partial interest that is realized upon disposition of the property or,
20 upon payment of the difference in value, the entire property. In
21 cases of multiple claims, the return of the property is to be based on
22 the value and priority of each person's respective interest, or is to
23 be otherwise allocated by the court in the interests of justice.

24 Sec. 12.38.100. STATE DISPOSAL OF FORFEITED PROPERTY. (a) For-
25 feited property, other than property summarily forfeited under AS 04.-
26 16.220(d) or AS 17.30.110(c), shall be transferred to the commissioner
27 of administration for disposition in accordance with applicable law.
28 The commissioner of administration may

29 (1) destroy property harmful to the public;

1 (2) sell the property and, subject to appropriations for
2 that purpose, use the proceeds to pay the expenses of the proceedings
3 of forfeiture and sale, including expenses of seizure, custody, and
4 court costs;

5 (3) transfer the property to another agency of the state or
6 a political subdivision of the state for use in the furtherance of the
7 administration of justice;

8 (4) transfer the property to the United States Department
9 of Justice for disposition;

10 (5) transfer ownership of an aircraft to the Alaska Wing,
11 Civil Air Patrol;

12 (6) at the direction of the commissioner of public safety,
13 transfer up to 90 percent of the net value of forfeited property to
14 one or more political subdivisions of the state; in directing this
15 transfer, the commissioner of public safety may take into account an
16 equitable allocation based on the amount of the contribution made by
17 each agency to the investigation of the conduct making the property
18 subject to forfeiture, or any agreements as to the sharing of assets;
19 or

20 (7) otherwise dispose of the property in accordance with
21 the law.

22 (b) The commissioner of administration shall separately account
23 for the proceeds from the sale of forfeited property under (a) of this
24 section that the commissioner deposits in the general fund. The
25 annual estimated balance in the account may be used by the legislature
26 to make appropriations to the Department of Public Safety for use in
27 the administration of justice.

28 * Sec. 3. AS 17.30.110 is repealed and reenacted to read:

29 Sec. 17.30.110. PROPERTY SUBJECT TO FORFEITURE. (a) Under the

1 procedures set out in AS 12.38, the property listed in (b) of this
2 section is subject to forfeiture to the state if

3 (1) manufactured, delivered, dispensed, distributed, pos-
4 sessed, concealed, stored, acquired, or transported in violation of
5 AS 11.71 or AS 11.73;

6 (2) used, or intended to be used, to accomplish or facili-
7 tate the manufacture, delivery, dispensing, distribution, possession,
8 concealment, storage, acquiring, or transportation of a controlled
9 substance or imitation controlled substance in violation of AS 11.71
10 or AS 11.73; or

11 (3) used, or intended to be used, in a direct or indirect
12 exchange for a controlled substance or imitation controlled substance
13 in violation of AS 11.71 or AS 11.73, or if traceable to or derived
14 from such an exchange.

15 (b) The following property is subject to forfeiture under (a) of
16 this section:

17 (1) firearms, explosives, or weapons;

18 (2) money, securities, negotiable instruments, or anything
19 of value, whether tangible or intangible, secured or unsecured;

20 (3) raw materials, chemicals, pharmaceuticals, or anything,
21 including plants or other living organisms, from which controlled
22 substances might be derived;

23 (4) books, records, tapes, formulas, research papers, and
24 equipment, including data processing and electronic equipment used in
25 surveillance or counter-surveillance efforts;

26 (5) aircraft, vehicles, vessels, and conveyances, if the
27 offense making the property subject to forfeiture is a felony offense;
28 and

29 (6) real property, and its improvements and appurtenances,

1 if the offense making the property subject to forfeiture is a felony
2 offense.

3 (c) Notwithstanding the provisions of AS 12.38, a controlled
4 substance or imitation controlled substance, and plants grown in the
5 wild from which controlled substances or imitation controlled sub-
6 stances are derived, seized under AS 12.38.020, are automatically
7 forfeited to the state. The law enforcement agency with custody of
8 property described in this subsection shall dispose of it under proce-
9 dures prescribed by the commissioner of public safety.

10 (d) In this section, "violation of AS 11.71 or AS 11.73" in-
11 cludes an attempt or solicitation under AS 11.31 to violate AS 11.71
12 or AS 11.73.

13 * Sec. 4. AS 18.60.148(a) is amended to read:

14 (a) A transfer to the Alaska Wing, Civil Air Patrol, of a for-
15 feited aircraft under AS 12.38, AS 16.05.195(f), [AS 17.30.122,] or
16 another state law or regulation, is subject to the following condi-
17 tions:

18 (1) the transfer shall be made without cost to the Civil
19 Air Patrol;

20 (2) the aircraft becomes a corporate Civil Air Patrol
21 aircraft;

22 (3) the aircraft may only be used for Civil Air Patrol
23 search and rescue, civil defense, and training purposes;

24 (4) the aircraft may not be transferred to another wing of
25 the Civil Air Patrol unless

26 (A) the aircraft has been corporate aircraft of the
27 Alaska Wing, Civil Air Patrol for at least 36 months after the
28 date of transfer to the Alaska Wing; or

29 (B) the aircraft is being exchanged for another Civil

1 Air Patrol corporate aircraft of equivalent or greater value;
2 (5) if the Civil Air Patrol determines that the aircraft
3 should be disposed of as surplus property, the disposition shall first
4 be approved by the Department of Administration.

5 * Sec. 5. AS 12.38.040(b), added by sec. 2 of this Act, has the effect
6 of amending Rule 65(b), Alaska Rules of Civil Procedure, by permitting
7 issuance of appropriate temporary orders, which may include temporary
8 restraining orders, relating to preservation of seized property without
9 notice to a party on grounds other than those identified in the rule, and
10 has the effect of amending Rule 77(a), Alaska Rules of Civil Procedure, by
11 authorizing state application for an order relating to seized property
12 without service of notice on an adverse party.

13 * Sec. 6. AS 12.38.050(f), added by sec. 2 of this Act, has the effect
14 of amending Rule 16.1, Alaska Rules of Civil Procedure, by excepting from
15 the special procedures for reducing delay in civil litigation outlined in
16 that section a forfeiture proceeding held in abeyance until conclusion of a
17 related pending criminal action, and Rules 16 and 40(e), Alaska Rules of
18 Civil Procedure, by requiring a judge to hold proceedings in abeyance until
19 conclusion of a related pending criminal action.

20 * Sec. 7. AS 11.73.060; AS 17.30.112, 17.30.114, 17.30.116, 17.30.118,
21 17.30.120, 17.30.122, 17.30.124, and 17.30.126 are repealed.