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Referred: Judiciary and Finance

go00249s

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 367

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 forfeiture as a result of violat-
7 ing state drug laws."

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

9 * Section 1. AS 17.30 is amended by adding new sections to read:

10 Sec. 17.30.103. PROPERTY SUBJECT TO FORFEITURE. (a) In addi-
11 tion to a controlled substance or imitation controlled substance that
12 is manufactured, delivered, possessed, concealed, stored, acquired, or
13 transported in violation of AS 11.71 or AS 11.73, the following prop-
14 erty is also subject to forfeiture to the state if used, or intended
15 to be used, to manufacture, deliver, possess, conceal, store, acquire,
16 or transport a controlled substance or imitation controlled substance
17 in violation of AS 11.71 or AS 11.73:

18 (1) firearms, explosives, or weapons of any type;
19 (2) money, securities, negotiable instruments, or anything
20 of value, whether tangible or intangible, secured or unsecured, ex-
21 cluding real property;

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

25 (4) books, records, tapes, formulas, research papers, and
26 equipment of any type, including data processing or other electronic
27 equipment; and

28 (5) aircraft, vehicles, vessels, and conveyances of any
29 type, if the crime committed, solicited, or attempted is a felony

1 offense.

2 (b) In addition to the provisions of (a) of this section, prop-
3 erty is subject to forfeiture to the state if used, or intended to be
4 used, in a direct or indirect exchange for a controlled substance or
5 imitation controlled substance in violation of AS 11.71 or AS 11.73,
6 or if traceable to or derived from such an exchange. In this sub-
7 section, "property" means money, securities, negotiable instruments,
8 or anything of value, whether tangible or intangible, secured or un-
9 secured, including any right, title, or interest in real property and
10 any improvements or appurtenances.

11 Sec. 17.30.105. SEIZURE AND CUSTODY OF PROPERTY. (a) Property
12 subject to forfeiture may be seized by a peace officer

13 (1) under an order issued by a court in an ex parte pro-
14 ceeding upon a showing

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

17 (B) that a grand jury has returned an indictment
18 charging that the evidence, if unexplained or uncontradicted,
19 would warrant a court's conclusion that the property specifically
20 identified in the indictment is subject to forfeiture under
21 AS 17.30.103; or

22 (2) without a court order if

23 (A) constitutionally permissible or otherwise au-
24 thorized by law;

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

27 (C) there is probable cause to believe that the prop-
28 erty is subject to forfeiture and is easily movable; property
29 seized under this subparagraph may not be held for more than 48

1 hours without a court order, which may be obtained as described
2 in (a)(1) of this section.

3 (b) Subject to the order of the court, or to an order by a
4 hearing officer in an administrative forfeiture proceeding under
5 AS 17.30.117, property seized under this section must be held in the
6 custody of the commissioner of public safety or a municipal law en-
7 forcement agency authorized by the commissioner of public safety to
8 retain custody. Within 10 days after a seizure under this section,
9 the law enforcement agency with custody of the property shall estimate
10 the value and make an inventory of the property. The inventory and
11 estimate must be sent to the attorney general.

12 (c) If the attorney general determines that a forfeiture pro-
13 ceeding cannot be sustained or as a matter of discretion will not be
14 instituted, a written report of that decision must be sent to the
15 agency with custody of the property and, except as provided in AS 17.-
16 30.107, the property must be returned to the owner.

17 (d) A person claiming an exemption under AS 17.30.119(b) may
18 petition the court, or the hearing officer if an administrative for-
19 feiture proceeding has been initiated, for use of exempted property
20 while forfeiture proceedings are pending.

21 Sec. 17.30.107. SEIZURE, FORFEITURE, AND DISPOSAL OF CONTROLLED
22 SUBSTANCES AND IMITATION CONTROLLED SUBSTANCES. Notwithstanding any
23 other provisions of this chapter, a controlled substance or imitation
24 controlled substance subject to forfeiture under AS 17.30.103, or
25 plants grown in the wild from which controlled substances or imitation
26 controlled substances might be derived, must be seized and summarily
27 forfeited to the state. The commissioner of public safety, or a
28 municipal law enforcement agency authorized under AS 17.30.105(b) to
29 retain custody of seized property, shall dispose of controlled

1 substances or imitation controlled substances in accordance with
2 procedures prescribed by the commissioner of public safety.

3 Sec. 17.30.109. PRESERVATION, RELEASE, OR DISPOSAL OF PROPERTY
4 BEFORE ORDER OF FORFEITURE. (a) A court, whether or not a forfeiture
5 proceeding has been initiated, or a hearing officer in an administra-
6 tive proceeding under AS 17.30.117, 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 that might be subject to forfeiture under
10 AS 17.30.103 or AS 17.30.119(d). A temporary order to preserve the
11 availability or value of property subject to forfeiture may be entered
12 upon ex parte application of the state, if there is reason to believe
13 that notice would jeopardize the availability of the property for
14 forfeiture.

15 (b) The state may at any time before an order of forfeiture is
16 issued, request the sale or release of property seized under AS 17.-
17 30.105 or encumbered under (a) of this section. A claimant may also
18 request sale or release before an order of forfeiture is issued if

19 (1) the claimant has filed a timely answer under AS 17.30.-
20 113 or, before the initiation of a forfeiture proceeding, has sent a
21 notice of claim to the attorney general setting out the nature of the
22 claimant's interest in the property, the date it was acquired, the
23 consideration paid, and the circumstances under which it was acquired;

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

26 (3) the claimant gives adequate assurance that the property
27 or its proceeds will remain subject to the court's or the hearing
28 officer's jurisdiction;

29 (4) the sale or release is in the best interests of the

1 state and will provide for protection of the value of the property;
2 and

3 (5) the claimant provides a bond or other equivalent secu-
4 rity equal to twice the estimated value of any released property.

5 (c) Proceeds from any sale of property, plus interest earned on
6 the proceeds to the date of termination of the proceedings, become the
7 subject of the forfeiture action.

8 Sec. 17.30.111. NOTICE OF SEIZURE AND OF FORFEITURE PROCEEDINGS.

9 (a) Within 30 days after a seizure under AS 17.30.105, the commis-
10 sioner of public safety shall notify persons known to have an interest
11 in an item with an estimated value of \$500 or more, or whose interest
12 in such property is ascertainable from official registration numbers,
13 licenses, or other state, federal, or municipal identification numbers
14 affixed to the property. Notice may be given in any manner authorized
15 for service of process under the rules of civil procedure.

16 (b) Within 30 days after a forfeiture proceeding has been initi-
17 ated under AS 17.30.115,

18 (1) persons required to be notified under (a) of this
19 section must be served with a copy of the motion, complaint, or other
20 pleading in any manner authorized for service of process under the
21 rules of civil procedure; and

22 (2) the commissioner of public safety shall begin to pub-
23 lish notice of the action to forfeit property in the manner provided
24 for service by publication in the rules of civil procedure.

25 (c) The notice requirements of this section do not apply to
26 property that consists of controlled substances or imitation con-
27 trolled substances.

28 Sec. 17.30.113. PROCEDURE FOR CLAIMANTS. Upon notice under
29 AS 17.30.111, a person claiming an interest in property that is the

1 subject of a forfeiture proceeding, including a defendant in a crimi-
2 nal proceeding who has been served with a motion to forfeit, shall
3 file an answer within the time permitted for answering civil com-
4 plaints under the rules of civil procedure. The answer must, under
5 penalty of perjury, set out the reasons why the property is not sub-
6 ject to forfeiture or why the claimant is entitled to remission under
7 AS 17.30.121. The answer must state the nature of the claimant's
8 right, title, or interest in the property, the time and circumstances
9 of the claimant's acquisition, the consideration paid, and any addi-
10 tional facts supporting the claim. If an answer is not timely filed,
11 the property is forfeited to the state without further proceedings.

12 Sec. 17.30.115. PROCEEDINGS RESULTING IN FORFEITURE; BURDEN OF
13 PROOF; DEFENSES EXEMPTED. (a) A forfeiture proceeding may be initi-
14 ated by the state by

15 (1) filing a motion to forfeit in a criminal or civil pro-
16 ceeding relating to the conduct that makes the property subject to
17 forfeiture;

18 (2) filing a complaint in a separate in rem proceeding; or

19 (3) filing a notice with the commissioner of administration
20 of the state's intent to seek forfeiture of property administratively
21 as provided in AS 17.30.117.

22 (b) In a forfeiture proceeding the state must prove by a prepon-
23 derance of the evidence that the property is subject to forfeiture
24 under AS 17.30.103. It is prima facie evidence sufficient to support
25 an order of forfeiture, that a defendant has been convicted of conduct
26 making the property subject to forfeiture, or that a grand jury has
27 returned an indictment charging that the evidence, if unexplained or
28 uncontradicted, would warrant a court to conclude that the property
29 specifically identified in the indictment is subject to forfeiture.

1 under AS 17.30.103.

2 (c) Questions of fact or law in a forfeiture proceeding must be
3 determined by the court or by the administrative hearing officer,
4 sitting without a jury. A claimant may testify, present evidence and
5 witnesses, and cross-examine witnesses presented by other parties. In
6 addition to other testimony and evidence presented, the court or the
7 hearing officer shall consider the relevant portions of the record of
8 any related criminal action.

9 (d) Except as to preliminary proceedings under AS 17.30.105(d)
10 to permit use of exempted property, at the request of the state a
11 forfeiture proceeding, including discovery, must be held in abeyance
12 until the conclusion of a pending criminal action relating to the
13 conduct making the property subject to forfeiture.

14 (e) It is not a defense to a forfeiture proceeding that a crimi-
15 nal violation has not been prosecuted, or has resulted in a conviction
16 of a different offense or an acquittal.

17 Sec. 17.30.117. ADMINISTRATIVE FORFEITURE PROCEDURES. (a) If a
18 notice is filed under AS 17.30.115(a)(3), and if the value of the
19 property sought to be forfeited does not exceed \$100,000, the commis-
20 sioner of administration may order forfeiture of the property adminis-
21 tratively. The administrative process is governed by AS 17.30.100 -
22 17.30.130, and not by the Administrative Procedure Act (AS 44.62). If
23 the proposed administrative forfeiture is contested, the commissioner
24 of administration shall appoint a hearing officer to hold a hearing
25 and make a recommendation regarding forfeiture of the property.

26 (b) In an administrative forfeiture hearing, the hearing officer
27 may order discovery as provided in the rules of civil procedure, order
28 equitable relief as provided in AS 17.30.109, and may issue subpoenas
29 and subpoenas duces tecum at the request of a party. Orders and

1 subpoenas issued by a hearing officer are enforceable in the superior
2 court.

3 (c) Judicial review of an administrative forfeiture is available
4 under applicable rules of court for appeals from administrative
5 agencies.

6 Sec. 17.30.119. ORDER OF FORFEITURE; EXEMPTIONS. (a) If the
7 state establishes in a forfeiture proceeding, that property is subject
8 to forfeiture under AS 17.30.103, the property must be ordered for-
9 feited to the state, subject to remission to an innocent claimant
10 under AS 17.30.121 and subject to exemptions under (b) of this sec-
11 tion. An order of forfeiture must provide clear title to the state.
12 An order of forfeiture subject to remission must clear, in favor of
13 the claimant, all liens, encumbrances, or other clouds on the title
14 resulting from the forfeiture proceeding.

15 (b) With the exception of liquor licenses granted under AS 04
16 and limited entry permits granted under AS 16.43, a person whose
17 property is subject to forfeiture under AS 17.30.103 may claim ex-
18 emptions to the extent permitted under AS 09.38.010 - 09.38.090 of the
19 Alaska Exemptions Act. A person claiming such an exemption has the
20 burden of proving, by a preponderance of the evidence, that the person
21 is entitled to the exemption.

22 (c) A person who causes property to be subject to forfeiture
23 shall pay the reasonable cost of maintenance, storage, disposal, or
24 other expenses of the forfeiture or remission, either as part of a
25 sentence, a condition of probation or suspended imposition of sen-
26 tence, or as a mandatory assessment of costs in a forfeiture proceed-
27 ing.

28 (d) The order of forfeiture must include any other assets, up to
29 the value of any property found to be subject to forfeiture which has

1 been

2 (1) commingled with other property and cannot be separated
3 without difficulty;

4 (2) transferred to, sold to, or deposited with a third
5 party;

6 (3) placed beyond the jurisdiction of the court or cannot
7 be located;

8 (4) substantially diminished in value by any act or omis-
9 sion of the person who caused the property to be subject to forfei-
10 ture; or

11 (5) remitted to an innocent claimant under AS 17.30.121.

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

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

23 Sec. 17.30.121. REMISSION OF PROPERTY SUBJECT TO FORFEITURE.

24 (a) A claimant who has filed an answer under AS 17.30.113 may obtain
25 remission of property that is subject to forfeiture upon proof by a
26 preponderance of the evidence that the claimant

27 (1) has a valid right, title, or interest in the property,
28 acquired in good faith, which takes priority over a lien in favor of
29 the state under AS 17.30.119(f);

1 (2) did not knowingly participate in or facilitate the
2 conduct that resulted in the property being subject to forfeiture; and

3 (3) at no time knew, or had reasonable cause to believe,
4 that the property was or might be subject to forfeiture or that a
5 person using the property with the claimant's permission or ac-
6 quiescence, except persons using common carriers, had a criminal
7 record or reputation for offenses involving controlled substances or
8 imitation controlled substances.

9 (b) If the claimant to property subject to remission under (a)
10 of this section is entitled to less than the total value of the prop-
11 erty, the claimant may choose to receive either the proportional value
12 of the partial interest or, upon payment of the difference in value,
13 the entire property, if there are no other claimants. In cases of
14 multiple claimants, the return of the property is to be based on the
15 value and priority of each claimant's respective interest.

16 Sec. 17.30.123. STATE DISPOSAL OF FORFEITED PROPERTY. (a)
17 Property forfeited under AS 17.30.100 - 17.30.130, other than con-
18 trolled substances or imitation controlled substances, must be trans-
19 ferred to the commissioner of administration for disposition in accor-
20 dance with applicable law. Controlled substances and imitation con-
21 trolled substances must be disposed of as provided in AS 17.30.107.
22 The commissioner of administration may

23 (1) destroy property harmful to the public;

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

28 (3) transfer the property to another agency of the state or
29 a political subdivision of the state for use in the furtherance of the

1 administration of justice;

2 (4) transfer the property to the United States Department
3 of Justice for disposition;

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

6 (6) upon the recommendation of the commissioner of public
7 safety, transfer property or the proceeds of its sale, up to a total
8 of 50 percent of the net value of forfeited property, to one or more
9 political subdivisions of the state for significant contributions to
10 the investigation of the conduct making the property subject to for-
11 feiture; and

12 (7) otherwise dispose of the property in accordance with
13 the law.

14 (b) The commissioner of administration shall separately account
15 for the proceeds from the sale of forfeited property under (a) of this
16 section which the commissioner deposits in the general fund. The
17 annual estimated balance in the account may be used by the legislature
18 to make appropriations to the department for the purposes described in
19 (a)(2) of this section.

20 * Sec. 2. AS 17.30.900(a) is amended to read:

21 Sec. 17.30.900. DEFINITIONS. (a) Unless the context clearly
22 requires otherwise, the definitions set out in AS 11.71.900 and
23 AS 11.73.099(3) apply to this chapter.

24 * Sec. 3. AS 17.30.900 is amended by adding a new subsection to read:

25 (c) In this chapter, "violation of AS 11.71 or AS 11.73" in-
26 cludes an attempt or solicitation under AS 11.31 to violate AS 11.71
27 or AS 11.73.

28 * Sec. 4. AS 11.73.060, AS 17.30.110, 17.30.112, 17.30.114, 17.30.116,
29 17.30.118, 17.30.120, 17.30.122, 17.30.124, and 17.30.126 are repealed.