

## SENATE BILL NO. 192 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY SENATORS STURGULEWSKI, Uehling

Amended: 3/19/92

Introduced: 3/13/91

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to seizure and forfeiture of property in cases involving alcoholic  
2 beverages, controlled substances, and imitation controlled substances."

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

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

5 (a) A license or permit is not required to authorize sales made by a person under a  
6 judgment and decree of foreclosure, or under the bankruptcy law of the United States [, OR  
7 UNDER ORDER OF THE BOARD OR A COURT UNDER AS 04.16.220].

8 \* Sec. 2. AS 04.16.220 is repealed and reenacted to read:

9 Sec. 04.16.220. PROPERTY SUBJECT TO FORFEITURE. (a) Under the procedures  
10 set out in AS 12.38, alcoholic beverages are subject to forfeiture to the state if

11 (1) manufactured, delivered, distributed, possessed, concealed, stored, acquired,  
12 sold, exchanged, offered for sale or exchange, or transported, or one of these acts is attempted  
13 or solicited, in violation of a criminal law under this title;

14 (2) unlawfully possessed in an area where the results of a local election under

1 AS 04.11.498 have prohibited possession of alcoholic beverages; or

2 (3) found on licensed premises without excise stamps required by federal law.

3 (b) The property listed in (c) of this section is subject to forfeiture, under the procedures  
4 set out in AS 12.38, if

5 (1) except for liquor licenses forfeited under AS 04.16.180, the property is used,  
6 or intended to be used, to commit or facilitate an offense under AS 04.11.010, AS 04.16.175,  
7 AS 04.21.060, an offense relating to alcoholic beverages on licensed premises without excise  
8 stamps required by federal law, or an offense relating to conduct made criminal because of the  
9 results of a local election under AS 04.11.490 - 04.11.500; or

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

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

14 (1) firearms, explosives, and weapons;

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

17 (3) raw materials, chemicals, pharmaceuticals, and anything, including plants or  
18 other living organisms, from which alcoholic beverages might be derived;

19 (4) books, records, tapes, formulas, research papers, and equipment, including data  
20 processing equipment and electronic equipment used in surveillance or countersurveillance  
21 efforts;

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

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

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

28 (1) unlawfully possessed in an area where the results of a local election under  
29 AS 04.11.498 have prohibited possession of alcoholic beverages; or

30 (2) in the process of being consumed or in a container that has been opened or  
31 the seal of which has been broken.

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

4 \* Sec. 3. AS 12 is amended by adding a new chapter to read:

5 CHAPTER 38. FORFEITURE OF PROPERTY.

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

8 Sec. 12.38.020. SEIZURE OF PROPERTY SUBJECT TO FORFEITURE. (a) Property  
9 subject to forfeiture may be seized by a peace officer

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

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

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

15 (2) without a court order if

16 (A) constitutionally permissible or otherwise authorized by law;

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

19 (C) there is probable cause to believe that the property is subject to  
20 forfeiture and is easily movable; except for alcoholic beverages, controlled substances, or  
21 imitation controlled substances, property seized solely under this subparagraph may not  
22 be held for more than 48 hours without a court order under (1) of this subsection.

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

26 Sec. 12.38.030. NOTICE OF SEIZURE; CUSTODY OF SEIZED PROPERTY;  
27 INVENTORY AND APPRAISAL. (a) Within 30 days after a seizure under AS 12.38.020, the  
28 law enforcement agency responsible for custody of the property shall give notice by certified mail  
29 of the seizure to persons known to have a financial interest in an item with an estimated value  
30 more than \$1,000, or whose interest in the property is ascertainable from official tax rolls,  
31 registration numbers, licenses, or other state, federal, or municipal identification numbers affixed

1 to the property.

2 (b) Subject to the order of the court, property seized under AS 12.38.020 remains in the  
3 legal custody of the Department of Public Safety or a municipal law enforcement agency  
4 authorized by the commissioner of public safety to retain custody. The agency responsible for  
5 custody may, in its discretion, release the property to another appropriate person.

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

9 (d) If the attorney general determines that a forfeiture proceeding cannot be sustained or  
10 as a matter of discretion will not be instituted, a written report of that decision shall be sent to  
11 the agency responsible for custody of the property and the property must be returned to the  
12 person from whom it was obtained.

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

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

19 (b) The state may, at any time before an order of forfeiture is issued, request the sale or  
20 other disposition of property seized under AS 12.38.020. A person claiming an interest in the  
21 property may also request sale or other disposition before an order of forfeiture is issued if the  
22 person proves by a preponderance of the evidence that

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

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

28 (3) the person has given adequate assurance that the property or its proceeds will  
29 remain subject to the court's jurisdiction;

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

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

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

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

8 (1) may be initiated by the state filing a motion to forfeit in a criminal or civil  
9 proceeding relating to the conduct that makes the property subject to forfeiture;

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

12 (3) under AS 12.38.060 may be initiated by the commissioner of public safety  
13 directing that publication under (b) of this section be made of the state's intent to seek forfeiture  
14 of property administratively.

15 (b) Within 30 days after a forfeiture proceeding has been initiated as provided in (a) of  
16 this section,

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

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

23 (A) a list of property with an estimated value of more than \$1,000, with  
24 a description of the property, including motor vehicle or other registration numbers;

25 (B) the approximate value of the property;

26 (C) the date and place of seizure;

27 (D) the reason the property is subject to forfeiture;

28 (E) a citation to this chapter, and a citation to the court docket number  
29 relating to a judicial forfeiture proceeding; and

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

1 (c) The notice requirements of (b) of this section do not apply to property that is subject  
2 to automatic forfeiture under AS 04.16.220(d) or AS 17.30.110(c).

3 (d) In a forfeiture proceeding other than a summary administrative proceeding under  
4 AS 12.38.060, the state must prove by a preponderance of the evidence that the property is  
5 subject to forfeiture. It is prima facie evidence, sufficient to support an order of forfeiture, that  
6 a defendant has been convicted of conduct making the property subject to forfeiture, or that a  
7 grand jury has returned an indictment finding that the evidence, if unexplained or uncontradicted,  
8 would warrant a court to conclude that the property specifically identified in the indictment is  
9 subject to forfeiture.

10 (e) In a forfeiture proceeding other than a summary administrative proceeding under  
11 AS 12.38.060, questions of fact or law shall be determined by the court, sitting without a jury.  
12 A person claiming an interest in the property under AS 12.38.070 and 12.38.090 may testify,  
13 present evidence and witnesses, and cross-examine witnesses presented by other parties. In  
14 addition to other testimony and evidence presented, the court may consider the relevant portions  
15 of the record of a related criminal action.

16 (f) Except for proceedings under AS 12.38.090(a)(2) to permit use of exempted property,  
17 at the request of either party a forfeiture proceeding, including discovery, shall be held in  
18 abeyance until the conclusion of a pending criminal action relating to the conduct making the  
19 property subject to forfeiture.

20 (g) It is not a defense to a forfeiture proceeding that a criminal offense has not been  
21 prosecuted, or has resulted in a conviction of a different offense or an acquittal.

22 Sec. 12.38.060. SUMMARY ADMINISTRATIVE FORFEITURE PROCEDURES. (a)  
23 If the value of the property seized under AS 12.38.020 does not exceed \$100,000 and is not real  
24 property, the commissioner of public safety may order administrative forfeiture of the property  
25 under this chapter. The Administrative Procedure Act (AS 44.62) does not apply to an  
26 administrative forfeiture.

27 (b) The commissioner of public safety shall terminate the administrative forfeiture  
28 proceeding and refer the matter to the attorney general for initiation of a judicial forfeiture  
29 proceeding if a person files a timely claim under AS 12.38.070 and deposits with the  
30 commissioner, in cash or bond approved by the commissioner, 25 percent of the appraised value  
31 of the property, but not less than \$1,000. The deposit is conditioned to secure the payment of

1 all reasonable costs and expenses of the judicial forfeiture proceeding, including attorney fees,  
2 if the state is the prevailing party.

3 Sec. 12.38.070. PROCEDURE FOR CLAIMANTS. (a) A person claiming an interest  
4 in property that is the subject of a forfeiture proceeding, including persons who claim an  
5 exemption under AS 12.38.090(a)(2), shall file a claim

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

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

10 (b) The claim must

11 (1) be filed with the court in judicial forfeiture proceedings, or with the  
12 commissioner of public safety in administrative forfeiture proceedings under AS 12.38.060;

13 (2) be sworn under oath; and

14 (3) set out with specificity the reasons why the property is not subject to forfeiture  
15 or why the person is entitled to relief under AS 12.38.090, the nature of the person's right, title,  
16 or interest in the property, the time and circumstances of the person's acquisition, the  
17 consideration paid, and additional facts supporting the claim.

18 (c) If a claim is not timely filed, the property shall be forfeited to the state without  
19 further proceedings.

20 Sec. 12.38.080. ORDER OF FORFEITURE; LIEN IN FAVOR OF THE STATE. (a)  
21 If the state proves that property is subject to forfeiture, the property may be ordered forfeited to  
22 the state, except as provided in AS 12.38.090.

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

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

30 (d) A judicial order of forfeiture shall forfeit to the state any other assets of the person  
31 who caused the property to be subject to forfeiture, up to the value of any property subject to

1 forfeiture, if the property subject to forfeiture has been

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

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

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

7 (4) ordered returned to an innocent party under AS 12.38.090(a)(1).

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

10 (f) A perfected priority lien on property that has been ordered forfeited is created in favor  
11 of the state up to an amount that is the sum of the expenses of investigation, prosecution, and  
12 forfeiture arising out of the conduct making the property subject to forfeiture. In calculating the  
13 amount of the lien, expenses of all state, federal, or local agencies are to be included. The lien  
14 has priority over all unsecured and all unperfected secured debts associated with the property.

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

18 (1) that the person

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

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

23 (C) did not know or have reasonable cause to believe that a person might  
24 engage in the conduct that resulted in the property being subject to forfeiture; or

25 (2) that the person provides more than half the support of a minor dependent  
26 living in the person's household, in which case the person may claim exemptions from the  
27 forfeiture to the extent permitted under AS 09.38.010 - 09.38.090; however, an exemption may  
28 not be permitted for a liquor license granted under AS 04.

29 (b) If the person claiming an interest in the property is found to be entitled to less than  
30 the total value of the property, the person may choose to receive either the proportional value of  
31 the partial interest that is realized upon disposition of the property or, upon payment of the

1 difference in value, the entire property. In cases of multiple claims, the return of the property  
2 is to be based on the value and priority of each person's respective interest, or is to be otherwise  
3 allocated by the court in the interests of justice.

4 Sec. 12.38.100. STATE DISPOSAL OF FORFEITED PROPERTY. (a) Forfeited  
5 property, other than property summarily forfeited under AS 04.16.220(d) or AS 17.30.110(c),  
6 shall be transferred to the commissioner of administration for disposition in accordance with  
7 applicable law. The commissioner of administration may

8 (1) destroy property harmful to the public;

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

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

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

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

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

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

23 (b) The commissioner of administration shall separately account for the proceeds from  
24 the sale of forfeited property under (a) of this section that the commissioner deposits in the  
25 general fund. The annual estimated balance in the account may be used by the legislature to  
26 make appropriations to the Department of Public Safety for use in the administration of justice  
27 and the Violent Crimes Compensation Program under AS 18.67.010.

28 \* Sec. 4. AS 17.30.110 is repealed and reenacted to read:

29 Sec. 17.30.110. PROPERTY SUBJECT TO FORFEITURE. (a) Under the procedures  
30 set out in AS 12.38, the property listed in (b) of this section is subject to forfeiture to the state  
31 if

1 (1) manufactured, delivered, dispensed, distributed, possessed, concealed, stored,  
2 acquired, or transported in violation of AS 11.71 or AS 11.73;

3 (2) used, or intended to be used, to accomplish or facilitate the manufacture,  
4 delivery, dispensing, distribution, possession, concealment, storage, acquiring, or transportation  
5 of a controlled substance or imitation controlled substance in violation of AS 11.71 or AS 11.73;  
6 or

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

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

11 (1) firearms, explosives, or weapons;

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

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

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

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

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

22 (c) Notwithstanding the provisions of AS 12.38, a controlled substance or imitation  
23 controlled substance, and plants grown in the wild from which controlled substances or imitation  
24 controlled substances are derived, seized under AS 12.38.020, are automatically forfeited to the  
25 state. The law enforcement agency with custody of property described in this subsection shall  
26 dispose of it under procedures prescribed by the commissioner of public safety.

27 (d) In this section, "violation of AS 11.71 or AS 11.73" includes an attempt or  
28 solicitation under AS 11.31 to violate AS 11.71 or AS 11.73.

29 \* Sec. 5. AS 18.60.148(a) is amended to read:

30 (a) A transfer to the Alaska Wing, Civil Air Patrol, of a forfeited aircraft under  
31 AS 12.38, AS 16.05.195(f), [AS 17.30.122,] or another state law or regulation, is subject to the

1 following conditions:

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

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

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

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

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

10 (B) the aircraft is being exchanged for another Civil Air Patrol corporate  
11 aircraft of equivalent or greater value;

12 (5) if the Civil Air Patrol determines that the aircraft should be disposed of as  
13 surplus property, the disposition shall first be approved by the Department of Administration.

14 \* Sec. 6. AS 11.73.060; AS 17.30.112, 17.30.114, 17.30.116, 17.30.118, 17.30.120, 17.30.122,  
15 17.30.124, and 17.30.126 are repealed.