

HOUSE BILL NO. 188

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/1/93

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to forfeiture of certain property; and providing for an effective
2 date."

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

4 * Section 1. AS 17.30.110 is amended to read:

5 Sec. 17.30.110. ITEMS SUBJECT TO FORFEITURE. The following
6 property is subject to forfeiture under AS 17.30.110 - 17.30.126 [MAY BE
7 FORFEITED TO THE STATE]:

8 (1) a controlled substance that [WHICH] has been manufactured,
9 distributed, dispensed, acquired, or possessed in violation of this chapter or AS 11.71;

10 (2) raw materials, products, and equipment that [WHICH] are used or
11 intended for use in manufacturing, distributing, compounding, processing, delivering,
12 importing, or exporting a controlled substance in violation of [WHICH IS A FELONY
13 UNDER] this chapter or AS 11.71;

14 (3) property that [WHICH] is used or intended for use as a container

1 for property described in (1) or (2) of this section;

2 (4) a right, title, or interest in real property, including buildings
3 and any other improvements, or a conveyance, including but not limited to aircraft,
4 vehicles, or vessels, that [WHICH] has been used or is intended for use in
5 manufacturing, transporting or in any manner in facilitating the manufacture,
6 transportation, sale, receipt, possession, or concealment of property described in (1) or
7 (2) of this section in violation of a felony offense under this chapter or AS 11.71[;
8 HOWEVER,

9 (A) A CONVEYANCE MAY NOT BE FORFEITED UNDER
10 THIS PARAGRAPH IF THE OWNER OF THE CONVEYANCE
11 ESTABLISHES, BY A PREPONDERANCE OF THE EVIDENCE, AT A
12 HEARING BEFORE THE COURT AS THE TRIER OF FACT, THAT USE
13 OF THE CONVEYANCE IN VIOLATION OF THIS CHAPTER OR AS 11.71
14 WAS COMMITTED BY ANOTHER PERSON AND THAT THE OWNER
15 WAS NEITHER A CONSENTING PARTY NOR PRIVY TO THE
16 VIOLATION;

17 (B) A FORFEITURE OF A CONVEYANCE ENCUMBERED
18 BY A VALID SECURITY INTEREST AT THE TIME OF SEIZURE IS
19 SUBJECT TO THE INTEREST OF THE SECURED PARTY IF THE
20 SECURED PARTY ESTABLISHES, BY A PREPONDERANCE OF THE
21 EVIDENCE, AT A HEARING BEFORE THE COURT AS THE TRIER OF
22 FACT, THAT USE OF THE CONVEYANCE IN VIOLATION OF THIS
23 CHAPTER OR AS 11.71 WAS COMMITTED BY ANOTHER PERSON AND
24 THAT THE SECURED PARTY WAS NEITHER A CONSENTING PARTY
25 NOR PRIVY TO THE VIOLATION];

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

29 (6) money, securities, negotiable instruments, or other things of value
30 used in financial transactions derived from or used to facilitate a violation of
31 [ACTIVITY PROHIBITED BY] this chapter or AS 11.71; [AND]

1 (7) a dangerous instrument that [FIREARM WHICH] is visible,
2 carried during, or used in furtherance of a violation of this chapter or AS 11.71 ; and
3 (8) property of any type traceable to a violation of this chapter or
4 AS 11.71, except that for property that is real property, the violation must be a
5 felony under this chapter or AS 11.71.

6 * Sec. 2. AS 17.30.112 is repealed and reenacted to read:

7 Sec. 17.30.112. PROCEEDINGS RESULTING IN FORFEITURE; ORDERS
8 OF FORFEITURE. (a) Property listed in AS 17.30.110(2) - (8) may be forfeited to
9 the state in a criminal proceeding or in a separate civil proceeding in rem under
10 procedures set out in AS 17.30.116, if the state proves by a preponderance of the
11 evidence that the property is subject to forfeiture. It is prima facie evidence, sufficient
12 to support an order of forfeiture, that a defendant has been convicted of conduct
13 making the property subject to forfeiture, or that a grand jury has returned an
14 indictment finding that the evidence, if unexplained or uncontradicted, would warrant
15 a court to conclude that property identified in the indictment is subject to forfeiture.

16 (b) In commencing a forfeiture proceeding, the state shall provide notice of the
17 property to be forfeited and of the connection the state will attempt to prove between
18 the property and the conduct making it subject to forfeiture. Notice must be sent to
19 any person whose interest would be affected by the forfeiture.

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

22 (d) A forfeiture order or an order granting relief under AS 17.30.124 removes
23 all liens, encumbrances, or other clouds on the title that are a direct result of the
24 forfeiture proceedings.

25 (e) A person whose conduct causes property to be subject to forfeiture shall,
26 in addition to any other fine, be assessed the reasonable charge of maintenance,
27 storage, disposal, or other expenses of the forfeiture proceeding, including attorney fees
28 of the state. These charges may be ordered paid as part of a sentence, a condition of
29 probation or suspended imposition of sentence, or as an assessment of costs or attorney
30 fees as appropriate in a civil or criminal proceeding.

31 (f) An order of forfeiture shall forfeit to the state any other assets of the person

1 who caused the property to be subject to forfeiture, up to the value of any property
2 subject to forfeiture, if the property subject to forfeiture has been

3 (1) commingled with other property and cannot be separated without
4 difficulty or unreasonable expense to the state;

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

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

9 (4) remitted to a claimant under AS 17.30.124.

10 (g) An order of forfeiture issued under this section may be made regardless of
11 the location of the property, if the state has obtained personal jurisdiction over the
12 person whose interest would be affected by the forfeiture.

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

19 * Sec. 3. AS 17.30.114(a) is amended to read:

20 (a) Property listed in AS 17.30.110 may be seized by a peace officer upon an
21 order issued by a court having jurisdiction over the property upon a showing of
22 probable cause that the property may be forfeited under AS 17.30.110. Seizure
23 without a court order may be made if

24 (1) the seizure is incident to a valid arrest or a search under a valid
25 search warrant or is otherwise constitutionally permissible;

26 (2) the property subject to seizure has been the subject of an earlier
27 judgment in favor of the state in a criminal proceeding or civil proceeding in rem
28 under this chapter or AS 11.71; or

29 (3) there is probable cause that the property is subject to forfeiture
30 under AS 17.30.110 - 17.30.126 [WAS USED, IS BEING USED, OR IS INTENDED
31 FOR USE, IN VIOLATION OF THIS CHAPTER OR AS 11.71] and the property is

1 easily movable; property seized under this paragraph may not be held for more than
2 48 hours without a court order obtained to continue its detention.

3 * Sec. 4. AS 17.30.116(b) is amended to read:

4 (b) Upon service or publication of notice of commencement of a forfeiture
5 action under this section, a person, including a criminal defendant, claiming interest
6 in the property shall file within 30 days after the service or publication, a notice of
7 claim. The notice of claim shall be made under oath and must set [SETTING] out
8 the nature of the interest, the date it was acquired, the consideration paid, and an
9 answer to the state's allegations. If a claim and answer is not filed within the time
10 specified, the property described in the state's allegation must be ordered forfeited to
11 the state without further proceedings or showings.

12 * Sec. 5. AS 17.30.116 is amended by adding a new subsection to read:

13 (d) A criminal defendant or a person claiming an interest in the property under
14 this section and AS 17.30.124 may testify, present evidence and witnesses, and cross-
15 examine witnesses presented by other parties. In addition to other testimony and
16 evidence presented, the court may consider the relevant portions of the record of a
17 related criminal action. The court shall make findings of fact regarding contested
18 issues and shall set out its conclusions of law.

19 * Sec. 6. AS 17.30.122 is amended to read:

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

24 (1) destroy property harmful to the public;

25 (2) sell the property and use the proceeds for payment of all proper
26 expenses of the proceedings for forfeiture and sale, including expenses of seizure,
27 custody, and court costs;

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

1 (4) at the direction of the commissioner of public safety, transfer
2 up to 90 percent of the net value of the forfeited property to one or more agencies
3 or political subdivisions of the state for use in furtherance of the administration
4 of justice; in directing this transfer, the commissioner of public safety may take
5 into account an equitable allocation based on the amount of the contribution
6 made by each agency to the investigation or prosecution of the conduct making
7 the property subject to forfeiture, or based on any agreements as to the sharing
8 of assets;

9 (5) take custody of the property and remove it for disposition in
10 accordance with law;

11 (6) [(5)] forward it to the Drug Enforcement Administration of the
12 United States Department of Justice for disposition; or

13 (7) [(6)] transfer ownership of an aircraft to the Alaska Wing, Civil Air
14 Patrol.

15 * Sec. 7. AS 17.30.124 is amending by adding a new subsection to read:

16 (c) A person who has filed a timely claim under AS 17.30.116(b) may have
17 the property remitted by the court under (a) of this section upon proof by a
18 preponderance of the evidence that the person

19 (1) has a valid right, title, or interest in the property, acquired in good
20 faith, that takes priority over a lien in favor of the state arising under AS 17.30.112(h);

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

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

25 * Sec. 8. AS 17.30.900 is amended by adding a new subsection to read:

26 (c) In AS 17.30.110 - 17.30.126, "dangerous instrument" has the meaning
27 given in AS 11.81.900(b).

28 * Sec. 9. AS 17.30.124(b) is repealed.

29 * Sec. 10. This Act takes effect July 1, 1993.