

CS FOR HOUSE BILL NO. 188(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/20/93
Referred: Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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
9 manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter
10 or AS 11.71;

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

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

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

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

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

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

30 (6) money, securities, negotiable instruments, or other things of value
31 used in financial transactions derived from or used to facilitate a violation of

1 [ACTIVITY PROHIBITED BY] this chapter or AS 11.71; [AND]

2 (7) a dangerous instrument that [FIREARM WHICH] is visible,
3 carried during, or used in furtherance of a violation of this chapter or AS 11.71; and

4 (8) property of any type traceable to a violation of this chapter or
5 AS 11.71, except that for property that is real property, the violation must be a
6 felony under this chapter or AS 11.71.

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

8 Sec. 17.30.112. PROCEEDINGS RESULTING IN FORFEITURE; ORDERS
9 OF FORFEITURE. (a) Property listed in AS 17.30.110(2) - (8) may be forfeited to
10 the state in a criminal proceeding or in a separate civil proceeding in rem under
11 procedures set out in AS 17.30.116, if the state proves that the property is subject to
12 forfeiture by (1) a preponderance of the evidence for property other than real property,
13 or (2) clear and convincing evidence for real property. It is prima facie evidence,
14 sufficient to support an order of forfeiture, that a defendant has been convicted of
15 conduct making the property subject to forfeiture, or that a grand jury has returned an
16 indictment finding that the evidence, if unexplained or uncontradicted, would warrant
17 a court to conclude that property identified in the indictment is subject to forfeiture.

18 (b) In commencing a forfeiture proceeding, the state shall provide notice of the
19 property to be forfeited and of the connection the state will attempt to prove between
20 the property and the conduct making it subject to forfeiture.

21 (c) At the request of either party, a forfeiture proceeding, including discovery,
22 shall be held in abeyance until the conclusion of a pending criminal action relating to
23 the conduct making the property subject to forfeiture.

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

26 (e) A forfeiture order or an order granting relief under AS 17.30.124 removes
27 all liens, encumbrances, or other clouds on the title that are a direct result of the
28 forfeiture proceedings.

29 (f) A person whose conduct causes property to be subject to forfeiture shall,
30 in addition to any other fine, be assessed the reasonable charge of maintenance,
31 storage, disposal, or other expenses of the forfeiture proceeding, including attorney fees

1 of the state. These charges may be ordered paid as part of a sentence, a condition of
2 probation or suspended imposition of sentence, or as an assessment of costs or attorney
3 fees as appropriate in a civil or criminal proceeding.

4 (g) An order of forfeiture shall forfeit to the state any other assets of the
5 person who caused the property to be subject to forfeiture, up to the value of property
6 subject to forfeiture, if the property subject to forfeiture has been

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

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

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

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

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

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

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

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

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

30 (2) the property subject to seizure has been the subject of an earlier
31 judgment in favor of the state in a criminal proceeding or civil proceeding in rem

1 under this chapter or AS 11.71; or

2 (3) there is probable cause that the property is subject to forfeiture
3 under AS 17.30.110 - 17.30.126 [WAS USED, IS BEING USED, OR IS INTENDED
4 FOR USE, IN VIOLATION OF THIS CHAPTER OR AS 11.71] and the property is
5 easily movable; property seized under this paragraph may not be held for more than
6 48 hours without a court order obtained to continue its detention.

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

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

16 * Sec. 5. AS 17.30.116(c) is amended to read:

17 (c) Questions of fact or law raised by a notice of forfeiture action and answer
18 of a claimant in an action commenced under this section must be determined by the
19 court sitting without a jury. [THIS PROCEEDING MAY BE HELD IN ABEYANCE
20 UNTIL CONCLUSION OF ANY PENDING CRIMINAL CHARGES AGAINST THE
21 CLAIMANT UNDER THIS CHAPTER OR AS 11.71.]

22 * Sec. 6. AS 17.30.116 is amended by adding a new subsection to read:

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

29 * Sec. 7. AS 17.30.122 is amended to read:

30 Sec. 17.30.122. STATE DISPOSAL OF FORFEITED PROPERTY. Property
31 forfeited under AS 17.30.110 - 17.30.126 other than controlled substances shall be

1 disposed of by the commissioner of administration in accordance with applicable law.
2 The commissioner of administration may
3 (1) destroy property harmful to the public;
4 (2) sell the property and use the proceeds for payment of all proper
5 expenses of the proceedings for forfeiture and sale, including expenses of seizure,
6 custody, and court costs;
7 (3) take custody of the property and authorize its use in the
8 enforcement of this chapter or AS 11.71, or transfer it to another agency of the state
9 or a political subdivision of the state for a use in furtherance of the administration of
10 justice;
11 (4) at the direction of the commissioner of public safety, transfer up to 90
12 percent of the net value of the forfeited property to one or more agencies or
13 political subdivisions of the state for use in furtherance of the administration of
14 justice; in directing this transfer, the commissioner of public safety may take into
15 account an equitable allocation based on the amount of the contribution made by
16 each agency to the investigation or prosecution of the conduct making the
17 property subject to forfeiture, or based on any agreements as to the sharing of
18 assets;
19 (5) take custody of the property and remove it for disposition in
20 accordance with law;
21 (6) [(5)] forward it to the Drug Enforcement Administration of the
22 United States Department of Justice for disposition; or
23 (7) [(6)] transfer ownership of an aircraft to the Alaska Wing, Civil Air
24 Patrol.
25 * Sec. 8. AS 17.30.124 is amending by adding a new subsection to read:
26 (c) A person who has filed a timely claim under AS 17.30.116(b) may have
27 the property remitted by the court under (a) of this section upon proof by a
28 preponderance of the evidence that the person
29 (1) has a valid right, title, or interest in the property, acquired in good
30 faith, that takes priority over a lien in favor of the state arising under AS 17.30.112(h);
31 (2) did not knowingly participate in or facilitate the conduct that

1 resulted in the property being subject to forfeiture; and

2 (3) did not know that a person might engage in the conduct that
3 resulted in the property being subject to forfeiture.

4 * Sec. 9. AS 17.30.900 is amended by adding a new subsection to read:

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

7 * Sec. 10. AS 17.30.124(b) is repealed.

8 * Sec. 11. This Act takes effect July 1, 1993.