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462

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 3-21-88 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY

\*\*FISCAL NOTE(S) ATTACHED                      \*\*  
IN ACCORDANCE WITH AS 24.08.035  
(see below)

2/16/88

DATE TURNED INTO OFFICE 3-2-88

Mr. President:

STATE AFFAIRS

Committee considered SB 462

seizure and forfeiture of property in cases involving controlled substances

and recommended:

replace with CS SB 462 (SA)  same title  
 attached amendment(s) and  new title

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

letter of intent adopted and attached

\*\* Committee  attached or  adopted fiscal note(s)  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature] (DO PASS)  
[Signature]  
[Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature]

Chairman signature and recommendation

Committee Backup Attached

# Alaska State Legislature



SENATOR  
ARLISS STURGULEWSKI

Chairman, Senate Community and Regional Affairs Committee  
Vice-Chairman, Senate Judiciary Committee  
Member, Senate Resources Committee

2937 SHELDON JACKSON STREET  
ANCHORAGE, ALASKA 99504

White in Juneau  
P. O. BOX 5  
JUNEAU, ALASKA 99411  
(907) 465-3818

## Senate

MEMORANDUM

18 February 1988

TO: Senator Mitch Abood  
Chairman, Senate State Affairs Committee

FROM: Senator Arliss Sturgulewski *AS*

RE: Senate Bill 462

I would appreciate your scheduling of Senate Bill 462 "An Act relating to seizure and forfeiture of property in cases involving controlled substances". Attached is a copy of the current Alaska statute and a sectional analysis of the bill.

This bill is designed to allow law enforcement agencies to administratively pursue forfeiture of property seized as a result of a violation of the controlled substances act.

Current state law allows seized property to be forfeited to the state only through a civil proceeding against the property itself in court. This bill adds an administrative procedure and outlines how it is to be conducted. This procedure is taken from that used by the federal Drug Enforcement Agency.

I feel this legislation strikes a balance between allowing our law enforcement agencies to perform their duties in a timely fashion and protecting the rights of property owners. Please call me or Melissa Fouse of my staff at 465-3818 if you have any questions.

# Alaska State Legislature



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ARLISS STURGULEWSKI

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## Senate

29 February 1988

TO: Senator Mitch Abood  
Chairman, Senate State Affairs Committee

FROM: Senator Arliss Sturgulewski *as*

Attached is a new working draft of Senate Bill 462. I requested legal services to provide me with this due to concerns on the part of municipalities that due to the dedicated funds prohibition in the state constitution, funds resulting from the administrative forfeiture proceeding authorized by this bill would all have to go into the general fund. Municipalities feel that proceeds from property seized and forfeited to them should be returned to them.

This new bill will allow municipalities to adopt an ordinance allowing municipal law enforcement agencies to conduct an administrative forfeiture proceeding against property just as the department of public safety will be able to do under this legislation.

SECTIONAL ANALYSIS DRAFT CS

Senate Bill 462:

"An Act relating to seizure and forfeiture of property in cases involving controlled substances."

Section 1: Provides that the listed items subject to forfeiture may be forfeited to the municipality as well as to the state.

Adds real property to the list of items eligible for seizure. Provides that if the owner can establish that the owner was neither a consenting party nor privy to the violation then the property may not be forfeited. Makes the same exception for a party with a valid security interest.

Section 2: Adds summary administrative procedure by the state or by a municipality to the list of those proceedings resulting in forfeiture. Provides that any forfeiture proceeding must be commenced within 20 days after the property is seized or the property must be released.

Section 3: Clarifies that property can also be awarded to municipalities. Changes reference to the court having jurisdiction over forfeiture proceedings to procedures set out in the chapter. Adds chief of police of a municipality to section requiring inventory and appraisal within 10 days.

Section 4: Sets out the summary administrative procedure to be followed by the custodian of the seized property.

(a) Limits value of seized property that can be seized administratively to \$100,000 (unless it is a conveyance),

(1) requires notice to be sent to persons having an interest in the property,

(2) requires that notice be published in a newspaper for three weeks and sets out what must be contained in the published notice,

(b) requires a person claiming the property to respond within 20 days and also submit a bond,

(c) sets out the amount and type of the bond to be submitted,

(d) provides that if the bond is satisfactory, the administrative proceeding shall be terminated and within 20 days the civil proceeding against the property shall be commenced. Provides that if the bond is not satisfactory, a reasonable time must be allowed for corrections.

(e) makes it clear that the filing of a bond does not entitle the claimant to the property.

(f) if the property is not claimed, the custodian of the property shall declare the property forfeited and notify the custodian of the property.

Section 5: sets out notice requirements for circumstances under which the forfeiture proceeding is not done administratively, such as going to court.

Section 6: adds municipality to clarify that this section applies to municipalities as well as the state.

Section 7: clarifies that this section on disposal of property applies to property forfeited to the state. Clarifies that proceeds from sale of forfeited property goes to the state general fund after expenses are paid.

Section 8: deletes requirement that a municipal law enforcement agency must be authorized by the commissioner of public safety to disposal of controlled substances. This is a conforming change to section 3 of the bill.

Section 9: adds to definitions section.

Section 10: adds new section 29.35.135 to list of home rule limitations in Title 29.

Section 11: adds new section to Title 29 allowing municipalities to adopt an ordinance authorizing the chief of police to conduct a summary administrative forfeiture proceeding.

FROM SENATOR STURGULEWSKI  
29 February 1988

## SECTIONAL ANALYSIS

"An Act relating to seizure and forfeiture of property in cases involving controlled substances."

Section 1: Adds real property to the list of items eligible for seizure. Provides that if the owner can establish that the owner was neither a consenting party nor privy to the violation then the property may not be forfeited. Makes the same exception for a party with a valid security interest.

Section 2: Adds summary administrative procedure to the list of those proceedings resulting in forfeiture. Provides that any forfeiture proceeding must be commenced within 20 days after the property is seized or the property must be released.

Section 3: Changes reference to the court having jurisdiction over forfeiture proceedings to procedures set out in the chapter.

Section 4: Sets out the summary administrative procedure to be followed by the commissioner of public safety.

(a) Limits value of seized property that can be seized administratively to \$100,000 (unless it is a conveyance),

(1) requires the commissioner to send notice to persons having an interest in the property,

(2) requires the commissioner to publish notice in a newspaper for three weeks and sets out what must be contained in the published notice,

(b) requires a person claiming the property to respond within 20 days and also submit a bond,

(c) sets out the amount and type of the bond to be submitted,

(d) provides that if the bond is satisfactory, the commissioner shall terminate the administrative proceeding and within 20 days commence the civil proceeding against the property. Provides that if the bond is not satisfactory, a reasonable time must be allowed for corrections.

(e) makes it clear that the filing of a bond does not entitle the claimant to the property.

(f) if the property is not claimed, the commissioner shall declare the property forfeited and notify the custodian of the property.

Section 5: Sets out notice requirements for circumstances under which the forfeiture proceeding is not done administratively, such as going to court.

Section 6: Adds a provision that proceeds from the sale of forfeited property shall be returned to the political subdivision of the state that seized the property.

Seizure

MORE THAN \$100,000

CIVIL COURT PROCEEDING

Inventory & Appraisal  
Less than \$100,000  
OR a conveyance

Summary Administrative Proceeding

Notice to Persons and Parties  
and notice in Paper 4x2 WK  
for 3 wks

20 days

Response from interested parties with bond and sureties

NO response

TO COURT

Declared Forfeit

SPB 462

Prepared by Sen. Stump's Office

5-1354B  
Utermohle  
2/29/88

Original sponsors: Sturgulewski, Uehling,  
Fischer and Rodey

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 462 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH 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 controlled substances."

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

9 \* Section 1. AS 17.30.110 is amended to read:

10 Sec. 17.30.110. ITEMS SUBJECT TO FORFEITURE. The following may  
11 be forfeited to the state or a municipality, except as provided in  
12 AS 17.30.126:

13 (1) a controlled substance that [WHICH] has been manufact-  
14 ured, distributed, dispensed, acquired, or possessed in violation of  
15 this chapter or AS 11.71;

16 (2) raw materials, products, and equipment that [WHICH] are  
17 used or intended for use in manufacturing, distributing, compounding,  
18 processing, delivering, importing, or exporting a controlled substance  
19 that [WHICH] is a felony under this chapter or AS 11.71;

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

22 (4) a conveyance, including but not limited to aircraft,  
23 vehicles, or vessels, that [WHICH] has been used or is intended for  
24 use in transporting or in any manner in facilitating the transporta-  
25 tion, sale, receipt, possession, or concealment of property described  
26 in (1) or (2) of this section in violation of a felony offense under  
27 this chapter or AS 11.71; however,

28 (A) a conveyance may not be forfeited under this  
29 paragraph if the owner of the conveyance establishes, by a

1           preponderance of the evidence, at a hearing before the court as  
2           the trier of fact, that use of the conveyance in violation of  
3           this chapter or AS 11.71 was committed by another person and that  
4           the owner was neither a consenting party nor privy to the viola-  
5           tion;

6                   (B) a forfeiture of a conveyance encumbered by a valid  
7           security interest at the time of seizure is subject to the inter-  
8           est of the secured party if the secured party establishes, by a  
9           preponderance of the evidence, at a hearing before the court as  
10          the trier of fact, that use of the conveyance in violation of  
11          this chapter or AS 11.71 was committed by another person and that  
12          the secured party was neither a consenting party nor privy to the  
13          violation;

14                   (5) books, records, and research products and materials,  
15          including formulas, microfilm, tapes, and data, that [WHICH] are used  
16          in violation of this chapter or AS 11.71;

17                   (6) money, securities, negotiable instruments, or other  
18          things of value used in financial transaction: derived from activity  
19          prohibited by this chapter or AS 11.71; [AND]

20                   (7) a firearm that [WHICH] is visible, carried during, or  
21          used in furtherance of a violation of this chapter or AS 11.71; and

22                   (8) real property, including interests in real property and  
23          appurtenances and improvements to real property, that is used or  
24          intended for use to commit, or to facilitate the commission of, a  
25          felony offense under this chapter or AS 11.71; however

26                   (A) real property may not be forfeited under this  
27          paragraph if the owner of the real property establishes, by a  
28          preponderance of the evidence, at a hearing before the court as  
29          the trier of fact, that use of the real property in violation of

1 this chapter or AS 11.71 was committed by another person and that  
2 the owner was neither a consenting party nor privy to the vio-  
3 lation;

4 (B) a forfeiture of real property encumbered by a  
5 valid security interest at the time of seizure is subject to the  
6 interest of the secured party if the secured party establishes,  
7 by a preponderance of the evidence, at a hearing before the court  
8 as the trier of fact, that use of the real property in violation  
9 of this chapter or AS 11.71 was committed by another person and  
10 that the secured party was neither a consenting party nor privy  
11 to the violation.

12 \* Sec. 2. AS 17.30.112 is amended to read:

13 Sec. 17.30.112. PROCEEDINGS RESULTING IN FORFEITURE. (a) Prop-  
14 erty listed in AS 17.30.110 may be forfeited to the state or a munic-  
15 ipality upon the order of the commissioner of public safety or a chief  
16 of police in a summary administrative forfeiture proceeding under  
17 AS 17.30.115, [EITHER] upon conviction of the defendant of a violation  
18 of this chapter or AS 11.71, or upon judgment of a court in a separate  
19 civil proceeding in rem.

20 (b) Within 20 days after property is seized under AS 17.30.114,  
21 the commissioner of public safety or a chief of police, whoever is in  
22 custody of the property, shall

23 (1) cause a summary administrative forfeiture proceeding to  
24 be commenced under AS 17.30.115;

25 (2) commence a civil proceeding in rem under AS 17.30.116;

26 or

27 (3) release the property, unless the property is subject to  
28 AS 17.30.126.

29 (c) A [THE] court may order a forfeiture in the in rem

1 proceeding if it finds that an item specified in AS 17.30.110 was used  
2 during or in aid of a violation of this chapter or AS 11.71. [(b)]  
3 It is not a defense in an in rem proceeding brought under this chapter  
4 [SECTION] that a criminal proceeding has resulted in a conviction or  
5 conviction of a lesser offense for a violation of this chapter or  
6 AS 11.71.

7 \* Sec. 3. AS 17.30.114 is amended to read:

8 Sec. 17.30.114. SEIZURE AND CUSTODY OF PROPERTY. (a) Property  
9 listed in AS 17.30.110 may be seized by a peace officer upon an order  
10 issued by a court having jurisdiction over the property upon a showing  
11 of probable cause that the property may be forfeited under AS 17.30.-  
12 110. Seizure without a court order may be made if

13 (1) the seizure is incident to a valid arrest or a search  
14 under a valid search warrant;

15 (2) the property subject to seizure has been the subject of  
16 an earlier judgment in favor of the state or a municipality in a  
17 criminal proceeding or civil proceeding in rem under this chapter or  
18 AS 11.71; or

19 (3) there is probable cause that the property was used, is  
20 being used, or is intended for use, in violation of this chapter or AS  
21 11.71 and the property is easily movable; property seized under this  
22 paragraph may not be held for more than 48 hours without a court order  
23 obtained to continue its detention.

24 (b) Property taken or detained under (a) of this section shall  
25 be held in the custody of either the commissioner of public safety or  
26 a municipal law enforcement agency [AUTHORIZED BY THE COMMISSIONER OF  
27 PUBLIC SAFETY TO RETAIN CUSTODY OF PROPERTY LISTED IN AS 17.30.110]  
28 subject only to disposition under procedures set out in this chapter  
29 [THE ORDERS AND DECREES OF THE COURT HAVING JURISDICTION OVER ANY

1 FORFEITURE PROCEEDINGS]. If property is seized under this chapter,  
2 the commissioner of public safety or a [AN AUTHORIZED] municipal law  
3 enforcement agency may

4 (1) place the property under seal;

5 (2) remove the property to a place designated by the court;

6 or

7 (3) take custody of the property and remove it to an appro-  
8 priate location for disposition in accordance with law.

9 (c) Within 10 days after a seizure under AS 17.30.110 - 17.30.-  
10 138 [AS 17.30.110 - 17.30.126], the commissioner of public safety or  
11 the chief of police shall make an inventory of any property seized,  
12 including controlled substances, and shall appraise the value of any  
13 items seized other than controlled substances.

14 \* Sec. 4. AS 17.30 is amended by adding a new section to read:

15 Sec. 17.30.115. SUMMARY ADMINISTRATIVE FORFEITURE PROCEEDING.

16 (a) If the appraised value of seized property is \$100,000 or less or  
17 if the seized property is a conveyance subject to forfeiture under  
18 AS 17.30.110(4), the official who has custody of seized property may  
19 commence a summary administrative forfeiture proceeding by

20 (1) giving notice of the forfeiture proceeding to persons  
21 known to have an interest in the property or who are ascertainable  
22 from official registration numbers, licenses, or other state, federal,  
23 or municipal numbers on the property; and

24 (2) publishing notice of the proceeding in a newspaper of  
25 general circulation in the judicial district where the seizure was  
26 made, or if no newspaper is published in that judicial district, in a  
27 newspaper published in the state and distributed in that judicial  
28 district; the notice shall be published once each week during three  
29 consecutive calendar weeks; the notice must

1 (A) describe the property seized, including motor and  
2 serial numbers, if any;

3 (B) state the time, place, and cause of seizure; and

4 (C) state that a person claiming an interest in the  
5 property shall, within 20 days from the date of the first publi-  
6 cation of the notice, file with the official a claim to the  
7 property and a bond in the proper amount.

8 (b) A person claiming property subject to a proceeding under  
9 this section shall submit a claim and a bond to the official within 20  
10 days after the date of first publication of the notice required under  
11 this section.

12 (c) The bond with satisfactory sureties shall be in the amount  
13 of \$2,500 or 10 percent of the appraised value of the property, which-  
14 ever is lower, but not less than \$250. The bond shall be in cash,  
15 certified check, or satisfactory sureties. The bond shall be rendered  
16 to the state or municipality, as appropriate, with sureties approved  
17 by the official and conditioned that in the event of judicial forfei-  
18 ture of the property the obligor shall pay from the bond all costs and  
19 expenses of the civil proceeding in rem.

20 (d) When the claim and bond are received, the official shall  
21 determine that the claim and bond are in proper form and the sureties  
22 are satisfactory. If the claim and bond are satisfactory, the offi-  
23 cial shall terminate the proceeding and commence a civil proceeding in  
24 rem under AS 17.30.116. Notwithstanding AS 17.30.112(b), the official  
25 shall commence the civil proceeding in rem within 20 days after the  
26 timely and satisfactory claim and bond are filed. If the claim and  
27 bond are not satisfactory when first received, a reasonable time for  
28 correction of the claim and bond may be allowed. If satisfactory  
29 corrections are not made to the claim and bond within a reasonable

1 time, the official may proceed as though the claim and bond had not  
2 been tendered.

3 (e) The filing of a timely and satisfactory claim and bond  
4 terminates the summary administrative forfeiture proceeding, but does  
5 not entitle the claimant to possession of the property.

6 (f) If a timely and satisfactory claim and bond are not filed  
7 within the time required under this section, the official shall  
8 declare the property forfeited. The official shall execute a declara-  
9 tion of forfeiture.

10 (g) In this section

11 (1) "commissioner of public safety" includes an employee of  
12 the Department of Public Safety designated by the commissioner to  
13 conduct summary administrative forfeiture proceedings;

14 (2) "official" means the commissioner of public safety or  
15 chief of police who has custody of seized property.

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

17 (a) If an item of property seized is appraised at more than  
18 \$100,000, or the commissioner of public safety or chief of police in  
19 custody of seized property elects to commence a civil proceeding in  
20 rem against property appraised at \$100,000 or less or against a con-  
21 veyance, or a summary administrative forfeiture proceeding is ter-  
22 minated upon the timely and satisfactory filing of a claim and bond,  
23 [WITHIN 20 DAYS AFTER A SEIZURE UNDER AS 17.30.110 - 17.30.126,] the  
24 commissioner of public safety or chief of police shall, by certified  
25 mail, notify any person known to have an interest in an item with an  
26 appraised value of \$500 or more, or who is ascertainable from official  
27 registration numbers, licenses, or other state, federal, or municipal  
28 numbers on the item, of the pending forfeiture action. Additionally,  
29 the commissioner of public safety or chief of police shall publish

1 notice of forfeiture action of an item valued at \$500 or more in a  
2 newspaper of general circulation in the judicial district in which the  
3 seizure was made, or if no newspaper is published in that judicial  
4 district, in a newspaper published in the state and distributed in  
5 that judicial district. The notice shall be published once each week  
6 during four consecutive calendar weeks. The requirements of this  
7 subsection do not apply to the forfeiture of controlled substances  
8 which have been manufactured, distributed, dispensed, or possessed in  
9 violation of this chapter or AS 11.71, regardless of their value.

10 \* Sec. 6. AS 17.30.120 is amended to read:

11 Sec. 17.30.120. PETITION FOR SALE OF SEIZED ITEM. A claimant  
12 may petition the court for sale of an item before final disposition of  
13 court proceedings. The court shall grant a petition for sale upon a  
14 finding that the sale is in the best interests of the state or munic-  
15 ipality, whichever is in custody of the property, and the preservation  
16 and maintenance of the item seized. Proceeds from the sale plus  
17 interest to the date of final disposition of the court proceedings  
18 become the subject of the forfeiture action.

19 \* Sec. 7. AS 17.30.122 is amended to read:

20 Sec. 17.30.122. STATE DISPOSAL OF FORFEITED PROPERTY. Property  
21 forfeited to the state under AS 17.30.110 - 17.30.138, [AS 17.30.110 -  
22 17.30.126] other than controlled substances, shall be disposed of by  
23 the commissioner of administration in accordance with applicable law.  
24 The commissioner of administration may

25 (1) destroy property harmful to the public;

26 (2) sell the property and use the proceeds for payment of  
27 all proper expenses of the proceedings for forfeiture and sale, in-  
28 cluding expenses of seizure, custody, and court costs; proceeds re-  
29 maining from the sale of the property after expenses are paid shall be

1 deposited in the general fund;

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

6 (4) take custody of the property and remove it for disposi-  
7 tion in accordance with law;

8 (5) forward the property [IT] to the Drug Enforcement  
9 Administration of the United States Department of Justice for disposi-  
10 tion; or

11 (6) transfer ownership of an aircraft to the Alaska Wing,  
12 Civil Air Patrol.

13 \* Sec. 8. AS 17.30.126(a) is amended to read:

14 (a) A controlled substance manufactured, possessed, transferred,  
15 sold, or offered for sale in violation of this chapter or AS 11.71 is  
16 contraband and must be seized and summarily forfeited to the state.  
17 The commissioner of public safety or the commissioner's designee,  
18 including a municipal law enforcement agency [AUTHORIZED UNDER AS 17.-  
19 30.114(b) OF THIS SECTION TO RETAIN CUSTODY OF CONTROLLED SUBSTANCES],  
20 is responsible for the disposal of controlled substances which have  
21 been forfeited. The controlled substances shall be disposed of in  
22 accordance with procedures and requirements prescribed by the commis-  
23 sioner.

24 \* Sec. 9. AS 17.30 is amended by adding a new section to article 2 to  
25 read:

26 Sec. 17.30.138. DEFINITIONS. In AS 17.30.110 - 17.30.138

27 (1) "chief of police" means the head of a law enforcement  
28 agency of a municipality;

29 (2) "municipality" means a municipality that has adopted an

1 ordinance under AS 29.35.135 providing for summary administrative  
2 forfeiture proceedings to be conducted by the municipality's chief of  
3 police.

4 \* Sec. 10. AS 29.10.200 is amended by adding a new paragraph to read:

5 (49) AS 29.35.135 (forfeiture of property under AS 17.30)

6 \* Sec. 11. AS 29.35 is amended by adding a new section to read:

7 Sec. 29.35.135. FORFEITURE OF PROPERTY UNDER AS 17.30. (a) The  
8 governing body may adopt an ordinance authorizing the chief of police  
9 to conduct a summary administrative forfeiture proceeding under  
10 AS 17.30 for forfeiture of property seized by the municipal law  
11 enforcement agency in cases involving controlled substances.

12 (b) Property forfeited to the municipality under AS 17.30.110 -  
13 17.30.138 shall be disposed of by the municipality under applicable  
14 law and ordinance. The municipality may

15 (1) destroy property harmful to the public;

16 (2) sell the property and use the proceeds for payment of  
17 all proper expenses of the proceedings for forfeiture and sale, in-  
18 cluding expenses of seizure, custody, and court costs;

19 (3) take custody of the property and authorize its use in  
20 the enforcement of AS 11.71 or AS 17.30 or for a use in the adminis-  
21 tration of justice;

22 (4) take custody of the property and remove it for disposi-  
23 tion under law; or

24 (5) forward it to the Drug Enforcement Administration of  
25 the United States Department of Justice for disposition.