

S B

19

# HOUSE COMMITTEE REPORT

4/20

(7)

Date Referred: March 22, 1990

FURTHER REFERRALS:

JUDICIARY  
FINANCE

Date of Committee Action: 4/20/90

The HESS Committee considered:

CSSSSB 19(RLS) (LM)

CS SS SB NO. 19 (Rls) am FORFEITURES IN ALCOHOL OR DRUG CASES

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

### RECOMMENDATIONS:

- be replaced with \_\_\_\_\_  the same title
- have attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Date/Dept)

- fiscal impact \_\_\_\_\_ generate  fiscal note(s) \_\_\_\_\_ Pub Safety 3/20/90
- zero fiscal note \_\_\_\_\_ 5  zero fiscal note(s) \_\_\_\_\_ Admin (Gen)
- zero with analysis \_\_\_\_\_  zero fn/analysis \_\_\_\_\_ Admin (Gen) in comm

### SIGNING DO PASS:

J. Ellis ELLIS

Mark Boyer BOYER

### SIGNING: (Check approp. column)

Signature	Do Not Pass	No Rec	Amend
<u>W. Chamberlain</u> CHAMBERLAIN			
<u>Cheri Davis</u> DAVIS			
<u>Jacko</u> JACKO			✓

J. Ellis  
Chairman's Signature

Senate Letter of Intent

for

CS FOR SS FOR SB 19 (Rules) AM

It is the intent of the legislature that the Office of Public Advocacy and the Public Defender make an annual report to the legislature stating the number of cases and attorney hours spend on cases as a result of SENATE BILL NO. 19.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Public Safety  
Title: Forfeitures in alcohol or  
drug cases BRU: \_\_\_\_\_  
Sponsor: Senator Sturgulewski Component: \_\_\_\_\_  
Requestor: Senate Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Changes in CSSSB 19 (Rules) have no fiscal impact. This fiscal note is appropriate. Projections of no fiscal impact would continue through 1996.

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

By improving the procedures under which property used to commit drug offenses can be forfeited, this bill could result in an increase of funds and property forfeited to the State. It is impossible to estimate the amount of this increase, however, especially as some of the forfeited assets may be passed on to municipalities that assist in these investigations.

Prepared by: Lt. Thomas Stearns Phone: 269-5620  
Division: Alaska State Troopers Date: 2/09/90

Approved by Commissioner: Arthur English Date: 2-9-90  
Agency: Department of Public Safety Page 1 of 1

*Handwritten:* 2/9/90

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Administration  
 Title: An Act relating to seizure and BRU: Central Admin. Svcs.  
forfeiture of property . . . substances.  
 Sponsor: Sen. Sturgelewski et al. Components: Finance  
 Requestor: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The only noted impact of this bill is in amended section 12.35.330(d). This section deals with the sale of forfeited property and accounting for the proceeds. This is not expected to have a fiscal impact.

Prepared by: <sup>for</sup> Keith Busch, Director *John Thomas* Phone: 465-2240  
 Division: Finance *Frank Baxter* Date: \_\_\_\_\_

Approved by Commissioner: Frank S. Baxter Date: 1/31/90  
 Agency: Department of Administration

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

Changes in CS55B 19 (Rules) have no fiscal impact. This fiscal note is appropriate. Projections of no fiscal impact would continue through 1996.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Administration  
 Title: An Act relating to seizure and BRU: General Services and Supply  
forfeiture of property  
 Sponsor: Sturgulewski Components: Property Management  
 Requestor: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary) The fiscal impact for the current fiscal year and future fiscal years on the sales/disposal function of property management will be negligible. Since the sales can be held concurrent with routine disposal sales, negligible impacts on the sales are anticipated. This fiscal note applies only to property management and disposal and does not cover the expenses for forfeiture proceedings, or seizure custody, or court costs.

Prepared by: Robert J. Link *Robert J. Link* Phone: 465-2250  
 Division: General Services and Supply Date: 1/30/90  
 Approved by Commissioner: Frank S. Baxter *Frank S. Baxter* Date: 1/31/90  
 Agency: Department of Administration

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

Changes in CS SSSB 19 (Rubs)  
 have no fiscal impact. This  
 fiscal note is appropriate.  
 Projections of no fiscal impact  
 would continue through 1996.

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: Seizure & forfeiture of property in alcohol & drug cases  
Sponsor: Sturgulewski, et al  
Requestor: \_\_\_\_\_

Agency Affected: Administration  
BRU: Public Defender Agency  
Components: Third Judicial District

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>	0	0	0	0	0	0
----------------	---	---	---	---	---	---

<b>REVENUE</b>	0	0	0	0	0	0
----------------	---	---	---	---	---	---

**FUNDING:** (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS :** (Attach a separate page if necessary)

Prepared by: Senator Rick Uehling, Co-chairman  
Division: Senate Finance Committee

Phone: 465-4821  
Date: 2/27/90

Approved by Commissioner: \_\_\_\_\_  
Agency: \_\_\_\_\_

Date: \_\_\_\_\_

**Distribution (by preparer):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

*Changes in CS SSB 19 Rules  
have no fiscal impact.  
This fiscal note is  
appropriate.*

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: Seizure & forfeiture of  
property in alcohol & drug cases  
 Sponsor: Sturgulewski, et al  
 Requestor: \_\_\_\_\_

Agency Affected: Administration  
 BRU: Office of Public Advocacy  
 Components: \_\_\_\_\_

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

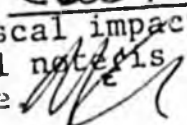
**FUNDING:** (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS :** (Attach a separate page if necessary)

Changes in CSSTS 19 (Rules)  
 have no fiscal impact.  
 This fiscal note is  
 appropriate 

Prepared by: Senator Rick Uehling, Co-chairman  
 Division: Senate Finance Committee

Phone: 465-4821  
 Date: 2/27/90

Approved by Commissioner: \_\_\_\_\_  
 Agency: \_\_\_\_\_

Date: \_\_\_\_\_

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

# Alaska State Legislature



Senate

2957 SHELDON JACKSON STREET  
ANCHORAGE, ALASKA 99504

While in Juneau  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3818

SENATOR  
ARLISS STURGULEWSKI  
Senate President Pro Tempore  
Chairman, Senate Rules Committee

MEMORANDUM

19 March 1990

TO: Representative Max Gruenberg  
Representative Peter Goll  
Co-Chairmen, House Judiciary Committee

FROM: Senator Arliss Sturgulewski *(Signature)*

RE: Senate Bill 19

I respectfully request your scheduling of Senate Bill 19 for a hearing before the House Judiciary Committee. This legislation amends current seizure and forfeiture laws as they pertain to drugs and bootleg alcohol.

The major change to current procedures is a new chapter in Title 12 outlining seizure and forfeiture proceedings. That new chapter clarifies current procedures and adds an administrative proceeding to the current methods by which property can be declared forfeit.

The major policy changes addressed by the bill include

1. Applying these seizure and forfeiture provisions to violations of alcohol laws.
2. Adding real property to the list of items subject to seizure in felony cases.
3. Adding to the ways in which persons may obtain relief from seizure and forfeiture provisions. This is accomplished by a new section that exempts persons who provide for than half the support of a minor child in that persons household. This relief is the same as that listed in the Alaska Exemptions Act (from bankruptcy).

This legislation is needed in order to bring our state's forfeiture and

seizure laws more closely in line with the federal model forfeiture act and with constitutional standards set by the courts since the current law was enacted.

Because of the backlog in the federal courts, there is a possibility that states with seizure laws will have to start processing drug cases through their own courts. The cases currently processed through federal courts cost us 20% of any proceeds realized.

As you know, this bill was introduced into the 15th Legislature as well. There have been numerous discussions with the administration in development of this legislation. The administration supports Senate Bill 19.

This is good legislation that gives our law enforcement agencies better tools with which to work and at the same time protects the rights of our citizenry.

Attached is a sectional analysis of the Senate Rules Committee Substitute.

Please contact me or Melissa Fouse of my staff if you have any questions.

SECTIONAL ANALYSIS  
SS SENATE BILL 19  
Rules Committee Substitute  
19 March 1990

SECTION 1:

This section repeals and reenacts current law regarding seizure and forfeiture of property for violation of bootlegging statutes.

Subsection (a) outlines the conditions under which alcoholic beverages are subject to forfeiture.

Subsection (b) lists the conditions under which property is subject to seizure and forfeiture.

\*Change from current law is the addition of a provision allowing property traceable to or derived from the illegal activity to be subject to forfeiture.

Subsection (c) lists the property that is subject to forfeiture.

\*change from current law adds items in subsections (1), (2), (3), (4), and (6).

Subsection (d) is new language that allows a peace officer to immediately destroy alcoholic beverages if the alcoholic beverages are in a prohibited area or are being consumed illegally.

Subsection (e) requires that seized alcoholic beverages be destroyed.

SECTION 2:

This is a new chapter in Title 12, the Code of Criminal Procedure. It sets out procedures to be followed to declare seized property forfeit.

Sec.12.38.010 states that these procedures apply to property seized under the controlled substances and bootlegging statutes.

Sec.12.38.020 (a) lists the conditions under which property may be seized with and without a court order.

Subsection (b) describes how constructive seizure may take place.

Sec. 12.38.030 (a) requires the agency with custody of the property to give notice of the seizure to interested parties within 30 days.

Subsection (b) authorizes the seizing agency to keep the property or, in its discretion, release the property to an appropriate person.

Subsection (c) directs the department of public safety to inventory the seized property and estimate its value. The inventory and estimate is to be sent to the attorney general.

Subsection (d) gives the attorney general authority to decide whether or not to pursue forfeiture proceedings on seized property. If forfeiture proceedings are not pursued, the seized property must be returned.

Subsection (e) exempts controlled substances, imitation controlled substances, bootleg alcohol, and property ordered forfeit by a court from the provisions of this section.

Sec. 12.38.040 (a) allows the court to issue orders or prescribe requirements to ensure the availability of seized property.

Subsection (b) authorizes the state to request sale or other disposition of the property. A person claiming an interest in the property may also request a sale or other disposition if the conditions in subsections 1-5 are met.

Subsection (c) makes the proceeds from the sale of the seized property, plus interest, subject to the forfeiture action.

Sec. 12.38.050 (a) sets out the conditions under which a forfeiture proceeding may begin:

- (1) by the state's filing a motion in a civil or criminal proceeding
- (2) by the state's filing a complaint in a separate in rem proceeding
- (3) by publication of a notice by the commissioner of public safety that the state intends to seek administrative forfeiture.

Subsection (b) requires that within 30 days after initiation of a forfeiture proceeding persons with an interest in the property must be served with notice and public notice of the proceeding must be started. This subsection sets out the items required in the public notice.

Subsection (c) exempts public notice requirements for those items subject to automatic forfeiture.

Subsection (d) requires the state to prove in court by a preponderance of the evidence that the property is subject to forfeiture. Subsection (d) states that it is prima facie evidence that the defendant has been convicted of the conduct making the property subject to forfeiture or that a grand jury has returned an indictment specifying that the property is subject to forfeiture.

Subsection (e) outlines court procedures in forfeiture cases.

Subsection (f) allows the state to request that forfeiture proceedings be delayed until the conclusion of a pending criminal action relating to the conduct that made the property subject to forfeiture.

Subsection (g) asserts that it is not a defense in a forfeiture proceeding that a criminal violation has not been prosecuted, or has resulted in a conviction of a different offense or in an acquittal.

Sec. 12.38.060 (a) allows seized property with a value of less than \$100,000, or is not real property, to be ordered forfeit to the state administratively following the procedures outlined in this chapter. ✓

Subsection (b) directs the commissioner of public safety to end an administrative forfeiture proceeding if a timely claim and appropriate security is filed by a person with an interest in the seized property.

Sec. 12.38.070 (a) sets out the conditions under which a claim may be filed.

Subsection (b) sets out where the claim is to be filed and what information it must contain.

Subsection (c) authorizes property to be forfeited to the state without further proceedings if the claim is not timely filed.

Sec. 12.38.080 (a) allows the court to order property forfeit to the state.

Subsection (b) states that an order of judicial or administrative forfeiture provides clear title to the property to the state. States that an order on behalf of party subject to relief from the order of forfeiture (see Sec.12.38.090) clears any cloud on the title to the property resulting from the forfeiture proceeding.

Subsection (c) orders costs of maintenance, storage, disposal, attorney's fees, to be paid by the person who causes property to be subject to forfeiture.

Subsection (d) allows a court to order other assets to be forfeited if the property subject to forfeiture is hard to reach.

Subsection (e) allows an order of forfeiture to be made regardless of the location of the property.

Subsection (f) creates a perfected priority lien to the state over property ordered forfeited. That lien has priority over all unsecured and all unperfected secured debts associated with the property.\*\*

\*\* This is in response to an Alaska Supreme Court ruling that unrecorded, unsecured, creditors can file claims for remission of forfeitable property. According to the Department of Law this is a serious potential problem since it would require the state to give the property to an associate of the defendant unless it could be proven that the transaction was a sham. The supreme court (according to the Department of Law) hinted at a possible way of correcting this problem, which would be to create a lien in favor of the state that has priority over the "creditor's" unrecorded lien. This subsection was drafted to correct this problem.

Sec. 12.38.090 (a) allows a person to obtain relief by filing a timely claim and proving by a preponderance of the evidence that

the person has a valid right to the property

the person did not knowingly participate in or facilitate the conduct that resulted in the property being subject to forfeiture, and

did not know, or have reason to believe, that a person might engage in the conduct that resulted in the property being subject in the property being subject to forfeiture.

or

that the person provides more than half the support of a minor dependent living in the persons household and is claiming exemptions from the forfeiture under the Alaska Exemptions Act (AS 09.38.010 - 09.38.090). This exemption does not apply to limited entry permits or liquor licenses.

Subsection (b) allows a person with a partial interest in the property to choose to receive the partial value, or after paying the difference, the entire property. Disposition of multiple claims is to be proportional based on the priority and value of each person's respective interest, or is to be otherwise allocated by the court in the interests of justice.

Sec. 12.38.100 (a) directs that property be transferred to the commissioner of administration for disposal and sets out methods by which property may be disposed of.

Subsection (b) directs the commissioner of administration to separately account for the proceeds from the sale of forfeited property. Allows for these funds to be appropriated for the furtherance of the administration of justice.

SECTION 3:

This section repeals and reenacts the seizure and forfeiture provisions in Title 17 having to do with violations of the controlled substances and imitation controlled substances laws.

Sec.17.30.110 sets out the list of property subject to forfeiture. The major change from current law is the addition of real property. This conforms to the federal model forfeiture act, except that in this bill we have made real property subject to forfeiture only in cases of a felony offense.

SECTION 4:

This is current law with the addition of a statutory reference to the forfeiture procedures under AS 12.38.

SECTION 5:

Repeals current forfeiture provisions in Title 11 (Criminal Law) and Title 17 (Controlled Substances).

## CURRENT LAW

### Sec.04.16.220 Alcoholic Beverages-Forfeitures

Sec. 04.16.220. Forfeitures. (a) The following are subject to forfeiture:  
(1) alcoholic beverages manufactured, sold, offered for sale or possessed for sale, bartered or exchanged for goods and services in this state in violation of AS 04.11.010; alcoholic beverages stocked, warehoused, or otherwise stored in violation of AS 04.21.060; alcoholic beverages possessed, sold or offered for sale in an area where the results of a local option election have, under AS 04.11.490 - 04.11.500, prohibited the possession of alcoholic beverages or prohibited the board from issuing, renewing, or transferring one or more licenses or permits under this title in the area; alcoholic beverages transported into the state and sold to persons not licensed under this chapter in violation of AS 04.16.170(b);

Original sponsor(s): SEN. STURGULEWSKI, Kelly, Kerttula, Pearce, Rodey, Binkley, Uehling

1 IN THE SENATE BY THE RULES COMMITTEE  
2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 19 (Rules) am  
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 seizure and forfeiture of property  
7 in cases involving alcoholic beverages, controlled  
8 substances, and imitation controlled substances."  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
10 \* Section 1. AS 04.16.220 is repealed and reenacted to read:  
11 Sec. 04.16.220. PROPERTY SUBJECT TO FORFEITURE. (a) Under the  
12 procedures set out in AS 12.38, alcoholic beverages are subject to  
13 forfeiture to the state if  
14 (1) manufactured, delivered, distributed, possessed, concealed,  
15 stored, acquired, sold, exchanged, offered for sale or exchange,  
16 or transported, or one of these acts is attempted or solicited, in violation of a criminal law under this title;  
17 (2) unlawfully possessed in an area where the results of a  
18 local election under AS 04.11.498 have prohibited possession of alcoholic beverages; or  
19 (3) found on licensed premises without excise stamps required by federal law.  
20  
21 (b) The property listed in (c) of this section is subject to  
22 forfeiture, under the procedures set out in AS 12.38, if  
23 (1) except for liquor licenses forfeited under AS 04.16.-  
24 180, the property is used, or intended to be used, to commit or facilitate an offense under AS 04.11.010, AS 04.16.175, AS 04.21.060, an  
25 offense relating to alcoholic beverages on licensed premises without  
26 excise stamps required by federal law, or an offense relating to  
27  
28  
29

# CURRENT LAW

## Sec.04.16.220 Alcoholic Beverages-Forfeitures

(2) materials and equipment used in the manufacture, sale, offering for sale, possession for sale, barter or exchange of alcoholic beverages for goods and services in this state in violation of AS 04.11.010; materials and equipment used in the stocking, warehousing, or storage of alcoholic beverages in violation of AS 04.21.060; materials and equipment used in the sale or offering for sale of an alcoholic beverage in an area where the results of a local option election have, under AS 04.11.490 - 04.11.500, prohibited the board from issuing, renewing, or transferring one or more licenses or permits under this title in the area;

(3) aircraft, vehicles, or vessels used to transport, or facilitate the transportation of

(A) alcoholic beverages manufactured, sold, offered for sale or possessed for sale, bartered or exchanged for goods and services in this state in violation of AS 04.11.010;

(B) property stocked, warehoused, or otherwise stored in violation of AS 04.21.060;

(C) alcoholic beverages imported into a municipality or established village in violation of AS 04.11.496.

(4) alcoholic beverages found on licensed premises that do not bear federal excise stamps if excise stamps are required under federal law;

(5) alcoholic beverages, materials, or equipment used in violation of AS 04.16.175.

## Sec.04.16.220 Alcoholic Beverages-Forfeitures

(b) Alcoholic beverages forfeited under (d) of this section shall be placed in the custody of a peace officer of the state and destroyed no earlier than 30 days after forfeiture. All other property forfeited under this section shall be placed in the custody of the commissioner of public safety for disposition according to an order entered by the court. The court shall order destroyed any property forfeited under this section that is harmful to the public. Other property shall be ordered sold and the proceeds used for payment of expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody and court costs. The remainder of the proceeds shall be deposited in the general fund.

1 conduct made criminal because of the results of a local election under  
2 AS 04.11.490 - 04.11.500; or

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

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

8 (1) firearms, explosives, and weapons;

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

11 (3) raw materials, chemicals, pharmaceuticals, and any-  
12 thing, including plants or other living organisms, from which alco-  
13 holic beverages might be derived;

14 (4) books, records, tapes, formulas, research papers, and  
15 equipment, including data processing equipment and electronic equip-  
16 ment used in surveillance or countersurveillance efforts;

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

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

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

24 (1) unlawfully possessed in an area where the results of a  
25 local election under AS 04.11.498 have prohibited possession of alco-  
26 holic beverages; or

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

29 (e) Except as provided in (d) of this section, alcoholic

# CURRENT LAW

## Sec.04.16.220 Alcoholic Beverages-Forfeitures

(b) Property subject to forfeiture under this section may be actually or constructively seized under an order issued by the superior court upon a showing of probable cause that the property is subject to forfeiture under this section. Constructive seizure is effected upon posting a signed notice of seizure on the item to be forfeited, stating the violation and the date and place of seizure. Seizure without a court order may be made if

(1) the seizure is incident to a valid arrest or search;

(2) the property subject to seizure is the subject of a prior judgment in favor of the state; or

(3) there is probable cause to believe that the property is subject to forfeiture under (a) of this section; except for alcoholic beverages possessed in violation of AS 04.11.498 or an ordinance adopted under AS 04.11.498, property seized under this paragraph may not be held over 48 hours or until an order of forfeiture is issued by the court, whichever is earlier.

## Sec.17.30.114-Controlled Substances

Sec. 17.30.114. Seizure and custody of property. (a) Property listed in AS 17.30.110 may be seized by a peace officer upon an order issued by a court having jurisdiction over the property upon a showing of probable cause that the property may be forfeited under AS 17.30.110. Seizure without a court order may be made if

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

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

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

(b) Property taken or detained under (a) of this section shall be held in the custody of either the commissioner of public safety or a municipal law enforcement agency authorized by the commissioner of public safety to retain custody of property listed in AS 17.30.110 subject only to the orders and decrees of the court having jurisdiction over any forfeiture proceedings. If property is seized under this chapter, the commissioner of public safety or an authorized municipal law enforcement agency may

(1) place the property under seal;

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

(3) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

1 beverages forfeited to the state shall be destroyed by the law  
2 enforcement agency with custody of the property under procedures  
3 prescribed by the commissioner of public safety.

4 \* Sec. 2. 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  
7 subject to forfeiture under AS 04.16.220 and AS 17.30.110.

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

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

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

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

18 (2) without a court order if

19 (A) constitutionally permissible or otherwise au-  
20 thorized by law;

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

23 (C) there is probable cause to believe that the prop-  
24 erty is subject to forfeiture and is easily movable; except for  
25 alcoholic beverages, controlled substances, or imitation con-  
26 trolled substances, property seized solely under this subpara-  
27 graph may not be held for more than 48 hours without a court  
28 order under (1) of this subsection.

29 (b) Property that cannot with reasonable effort be taken into

**Sec.04.16.220 Alcoholic Beverages-**

(c) Within 30 days of a seizure under this section the Department of Public Safety shall make reasonable efforts to ascertain the identity and whereabouts of any person holding an interest or an assignee of a person holding an interest in the property seized, including a right to possession, a lien, mortgage, or conditional sales contract. The Department of Public Safety shall notify the person ascertained to have an interest in property seized of the impending forfeiture, and before forfeiture the Department of Law shall publish, once a week for four consecutive calendar weeks, a notice of the impending forfeiture in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district.

**Sec.17.30.116-Controlled Substances**

Sec. 17.30.116. Procedure for forfeiture action. (a) Within 20 days after a seizure under AS 17.30.110 — 17.30.126, the commissioner of public safety shall, by certified mail, notify any person known to have an interest in an item with an appraised value of \$500 or more, or who is ascertainable from official registration numbers, licenses, or other state, federal or municipal numbers on the item, of the pending forfeiture action. Additionally, the commissioner of public safety shall publish notice of forfeiture action of an item valued at \$500 or more in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district. The notice shall be published once each week during four consecutive calendar weeks. The requirements of this subsection do not apply to the forfeiture of controlled substances which have been manufactured, distributed, dispensed, or possessed in violation of this chapter or AS 11.71, regardless of their value.

**Sec.17.30.114-Controlled Substances**

(c) Within 10 days after a seizure under AS 17.30.110 — 17.30.126, the commissioner of public safety shall make an inventory of any property seized, including controlled substances, and shall appraise the value of any items seized other than controlled substances. (§ 4 ch 45 SLA 1982)

1 physical custody may be constructively seized by posting a written  
2 notice of the seizure in a conspicuous place on the property. This  
3 subsection does not prohibit other reasonable methods of constructive  
4 seizure.

5 Sec. 12.38.030. NOTICE OF SEIZURE; CUSTODY OF SEIZED PROPERTY;  
6 INVENTORY AND APPRAISAL. (a) Within 30 days after a seizure under  
7 AS 12.38.020, the law enforcement agency responsible for custody of  
8 the property shall give notice by certified mail of the seizure to  
9 persons known to have a financial interest in an item with an estimat-  
10 ed value more than \$1,000, or whose interest in the property is ascer-  
11 tainable from official tax rolls, registration numbers, licenses, or  
12 other state, federal, or municipal identification numbers affixed to  
13 the property.

14 (b) Subject to the order of the court, property seized under  
15 AS 12.38.020 remains in the legal custody of the Department of Public  
16 Safety or a municipal law enforcement agency authorized by the commis-  
17 sioner of public safety to retain custody. The agency responsible for  
18 custody may, in its discretion, release the property to another appro-  
19 priate person.

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

24 (d) If the attorney general determines that a forfeiture pro-  
25 ceeding cannot be sustained or as a matter of discretion will not be  
26 instituted, a written report of that decision shall be sent to the  
27 agency responsible for custody of the property and the property must  
28 be returned to the person from whom it was obtained.

29 (e) This section does not apply to property that is subject to

**Sec.17.30.118-Controlled Substances**

**Sec. 17.30.118. Petition for release of seized items.** (a) A claimant under AS 17.30.116(b) may at any time petition for release of a seized item as follows:

- (1) to a court in which a warrant for seizure has been issued;
- (2) to a court in which a criminal or civil action alleging forfeiture of the item has been filed; or
- (3) before an action is filed, or if no seizure warrant was issued, to a court in the judicial district in which the violation took place.

(b) An item may not be released by the court under (a) of this section unless the claimant gives adequate assurance that the item will remain subject to the court's jurisdiction and

- (1) the court finds that the release is in the best interests of the state; or
- (2) the claimant provides a bond or other valid and equivalent security equal to twice the assessed value of the item. (§ 4 ch 45 SLA 1982)

**Sec.17.30.120-Controlled Substances**

**Sec. 17.30.120. Petition for sale of seized item.** A claimant may petition the court for sale of an item before final disposition of court proceedings. The court shall grant a petition for sale upon a finding that the sale is in the best interests of the state and the preservation and maintenance of the item seized. Proceeds from the sale plus interest to the date of final disposition of the court proceedings become the subject of the forfeiture action. (§ 4 ch 45 SLA 1982)

1 automatic forfeiture under AS 04.16.220(d) or AS 17.30.110(c), or to  
2 property seized under AS 12.38.020(a)(2)(B).

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

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

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

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

19 (3) the person has given adequate assurance that the prop-  
20 erty or its proceeds will remain subject to the court's jurisdiction;

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

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

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

**Sec.04.16.220 Alcoholic Beverages-Forfeitures**

(d) Property subject to forfeiture under (a) of this section may be forfeited

(1) upon conviction of a person under AS 04.11.010, 04.11.496(b), or AS 04.21.060 or upon entry of judgment under AS 04.11.498 or an ordinance adopted under AS 04.11.498;

(2) upon judgment by the superior court in a proceeding in rem that the property was used in a manner subjecting it to forfeiture under (a) of this section.

**Sec.17.30.112-Controlled Substances**

**Sec. 17.30.112. Proceedings resulting in forfeiture.** (a) Property listed in AS 17.30.110 may be forfeited to the state either upon conviction of the defendant of a violation of this chapter or AS 11.71, or upon judgment of a court in a separate civil proceeding in rem. The court may order a forfeiture in the in rem proceeding if it finds that an item specified in AS 17.30.110 was used during or in aid of a violation of this chapter or AS 11.71.

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

3           (1) may be initiated by the state filing a motion to for-  
4 feited in a criminal or civil proceeding relating to the conduct that  
5 makes the property subject to forfeiture;

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

8           (3) under AS 12.38.060 may be initiated by the commissioner  
9 of public safety directing that publication under (b) of this section  
10 be made of the state's intent to seek forfeiture of property adminis-  
11 tratively.

12           (b) Within 30 days after a forfeiture proceeding has been initi-  
13 ated as provided in (a) of this section,

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

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

22           (A) a list of property with an estimated value of more  
23 than \$1,000, with a description of the property, including motor  
24 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  
29 court docket number relating to a judicial forfeiture proceeding;

**Sec.17.30.116-Controlled Substances**

(c) Questions of fact or law raised by a notice of forfeiture action and answer of a claimant in an action commenced under this section must be determined by the court sitting without a jury. This proceeding may be held in abeyance until conclusion of any pending criminal charges

**Sec.04.16.220 Alcoholic Beverages-Forfeitures**

(g) It is no defense in an in rem forfeiture proceeding brought under (d)(2) of this section that a criminal proceeding is pending or has resulted in conviction or acquittal of a person charged with violating AS 04.11.010, 04.11.496(b), or AS 04.21.060.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

and

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

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

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

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

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

(g) It is not a defense to a forfeiture proceeding that a

**Sec.17.30.112-Controlled Substances**

(b) It is not a defense in an in rem proceeding brought under this section that a criminal proceeding has resulted in a conviction or conviction of a lesser offense for a violation of this chapter or AS 11.71. (§ 4 ch 45 SLA 1982)

**Sec.17.30.116-Controlled Substances**

(b) Upon service or publication of notice of commencement of a forfeiture action under this section, a person claiming interest in the property shall file within 30 days after the service or publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the state's allegations. If a claim and answer is not filed within the time specified, the property described in the state's allegation must be ordered forfeited to the state without further proceedings or showings.

1 criminal offense has not been prosecuted, or has resulted in a  
2 conviction of a different offense or an acquittal.

3 Sec. 12.38.060. SUMMARY ADMINISTRATIVE FORFEITURE PROCEDURES.

4 (a) If the value of the property seized under AS 12.38.020 does not  
5 exceed \$100,000 and is not real property, the commissioner of public  
6 safety may order administrative forfeiture of the property under this  
7 chapter. The Administrative Procedure Act (AS 44.62) does not apply  
8 to an administrative forfeiture.

9 (b) The commissioner of public safety shall terminate the admin-  
10 istrative forfeiture proceeding and refer the matter to the attorney  
11 general for initiation of a judicial forfeiture proceeding if a person  
12 files a timely claim under AS 12.38.070 and deposits with the commis-  
13 sioner, in cash or bond approved by the commissioner, 25 percent of  
14 the appraised value of the property, but not less than \$1,000. The  
15 deposit is conditioned to secure the payment of all reasonable costs  
16 and expenses of the judicial forfeiture proceeding, including attorney  
17 fees, if the state is the prevailing party.

18 Sec. 12.38.070. PROCEDURE FOR CLAIMANTS. (a) A person claiming  
19 an interest in property that is the subject of a forfeiture proceed-  
20 ing, including persons who claim an exemption under AS 12.38.-  
21 090(a)(2), shall file a claim

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

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

27 (b) The claim must

28 (1) be filed with the court in judicial forfeiture proceed-  
29 ings, or with the commissioner of public safety in administrative

1 forfeiture proceedings under AS 12.38.060;  
2 (2) be sworn under oath; and  
3 (3) set out with specificity the reasons why the property  
4 is not subject to forfeiture or why the person is entitled to relief  
5 under AS 12.38.090, the nature of the person's right, title, or inter-  
6 est in the property, the time and circumstances of the person's acqui-  
7 sition, the consideration paid, and additional facts supporting the  
8 claim.  
9 (c) If a claim is not timely filed, the property shall be for-  
10 feited to the state without further proceedings.  
11 Sec. 12.38.080. ORDER OF FORFEITURE; LIEN IN FAVOR OF THE STATE.  
12 (a) If the state proves that property is subject to forfeiture, the  
13 property may be ordered forfeited to the state, except as provided in  
14 AS 12.38.090.  
15 (b) An order of judicial or administrative forfeiture, or an  
16 order granting relief under AS 12.38.090, removes all liens, encum-  
17 brances, or other clouds on the title resulting from the forfeiture  
18 proceeding.  
19 (c) A person whose conduct causes property to be subject to  
20 forfeiture shall pay the reasonable cost of maintenance, storage,  
21 disposal, or other expense of the forfeiture proceeding, including  
22 attorney fees, either as part of a sentence, a condition of probation  
23 or suspended imposition of sentence, or as a mandatory assessment of  
24 costs in a forfeiture proceeding.  
25 (d) A judicial order of forfeiture shall forfeit to the state  
26 any other assets of the person who caused the property to be subject  
27 to forfeiture, up to the value of any property subject to forfeiture,  
28 if the property subject to forfeiture has been  
29 (1) commingled with other property and cannot be separated

**Sec.04.16.220 Alcoholic Beverages-Forfeitures**

(e) The owner of property subject to forfeiture under (a) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if in an action under (d) of this section the owner shows that the owner was not a party to the violation and had no actual knowledge that the property was used or was to be used in violation of the law.

(f) A person other than the owner holding, or the assignee of, a lien, mortgage, conditional sales contract on, or the right to possession to property subject to forfeiture under (a) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if in an action under (d) of this section the person shows that the person was not a party to the violation subjecting the property to forfeiture and had no actual knowledge that the property was used or was to be used in violation of the law.

1 without difficulty;  
2 (2) transferred to, sold to, or deposited with a third  
3 party, placed beyond the jurisdiction of the court, or removed so it  
4 cannot be located;  
5 (3) substantially diminished in value by an act or omission  
6 of the person who caused the property to be subject to forfeiture; or  
7 (4) ordered returned to an innocent party under AS 12.38.-  
8 090(a)(1).  
9 (e) An order of forfeiture issued under this section may be made  
10 regardless of the location of the property that might be subject to  
11 forfeiture or that has been ordered forfeited.  
12 (f) A perfected priority lien on property that has been ordered  
13 forfeited is created in favor of the state up to an amount that is the  
14 sum of the expenses of investigation, prosecution, and forfeiture  
15 arising out of the conduct making the property subject to forfeiture.  
16 In calculating the amount of the lien, expenses of all state, federal,  
17 or local agencies are to be included. The lien has priority over all  
18 unsecured and all unperfected secured debts associated with the prop-  
19 erty.  
20 Sec. 12.38.090. RELIEF FROM FORFEITURE. (a) A person who has  
21 filed a timely claim under AS 12.38.070 may obtain relief from the  
22 forfeiture upon proof by a preponderance of the evidence  
23 (1) that the person  
24 (A) has a valid right, title, or interest in the  
25 property, acquired in good faith, which takes priority over a  
26 lien in favor of the state under AS 12.38.080(f);  
27 (B) did not knowingly participate in or facilitate the  
28 conduct that resulted in the property being subject to forfei-  
29 ture; and

**Sec.17.30.122-Controlled Substances**

Sec. 17.30.122. State disposal of forfeited property. Property forfeited under AS 17.30.110 — 17.30.126 other than controlled substances shall be disposed of by the commissioner of administration in accordance with applicable law. The commissioner of administration may

- (1) destroy property harmful to the public;
- (2) sell the property and use the proceeds for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody, and court costs;

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

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

9 (b) If the person claiming an interest in the property is found  
10 to be entitled to less than the total value of the property, the  
11 person may choose to receive either the proportional value of the  
12 partial interest that is realized upon disposition of the property or,  
13 upon payment of the difference in value, the entire property. In  
14 cases of multiple claims, the return of the property is to be based on  
15 the value and priority of each person's respective interest, or is to  
16 be otherwise allocated by the court in the interests of justice.

17 Sec. 12.38.100. STATE DISPOSAL OF FORFEITED PROPERTY. (a) For-  
18 feited property, other than property summarily forfeited under AS 04.-  
19 16.220(d) or AS 17.30.110(c), shall be transferred to the commissioner  
20 of administration for disposition in accordance with applicable law.  
21 The commissioner of administration may

- 22 (1) destroy property harmful to the public;
- 23 (2) sell the property and, subject to appropriations for  
24 that purpose, use the proceeds to pay the expenses of the proceedings  
25 of forfeiture and sale, including expenses of seizure, custody, and  
26 court costs;
- 27 (3) transfer the property to another agency of the state or  
28 a political subdivision of the state for use in the furtherance of the  
29 administration of justice;

# CURRENT LAW

## Sec.17.30.122-Controlled Substances

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

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

(5) forward it to the Drug Enforcement Administration of the United States Department of Justice for disposition; or

(6) transfer ownership of an aircraft to the Alaska Wing, Civil Air Patrol. (§ 4 ch 45 SLA 1982; am § 2 ch 18 SLA 1983)

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

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

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

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

15 (b) The commissioner of administration shall separately account  
16 for the proceeds from the sale of forfeited property under (a) of this  
17 section that the commissioner deposits in the general fund. The  
18 annual estimated balance in the account may be used by the legislature  
19 to make appropriations to the Department of Public Safety for use in  
20 the administration of justice.

21 \* Sec. 3. AS 17.30.110 is repealed and reenacted to read:

22 Sec. 17.30.110. PROPERTY SUBJECT TO FORFEITURE. (a) Under the  
23 procedures set out in AS 12.33, the property listed in (b) of this  
24 section is subject to forfeiture to the state if

25 (1) manufactured, delivered, dispensed, distributed, pos-  
26 sessed, concealed, stored, acquired, or transported in violation of  
27 AS 11.71 or AS 11.73;

28 (2) used, or intended to be used, to accomplish or facili-  
29 tate the manufacture, delivery, dispensing, distribution, possession,

# CURRENT LAW

## Sec.17.30.110-Controlled Substances

Sec. 17.30.110. Items subject to forfeiture. The following may be forfeited to the state:

(1) a controlled substance which has been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or AS 11.71;

(2) raw materials, products, and equipment which are used or intended for use in manufacturing, distributing, compounding, processing, delivering, importing, or exporting a controlled substance which is a felony under this chapter or AS 11.71;

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

(4) a conveyance, including but not limited to aircraft, vehicles or vessels, which has been used or is intended for use in transporting or in any manner in facilitating the transportation, sale, receipt, possession, or concealment of property described in (1) or (2) of this section in violation of a felony offense under this chapter or AS 11.71; however,

(A) a conveyance may not be forfeited under this paragraph if the owner of the conveyance establishes, by a preponderance of the evidence, at a hearing before the court as the trier of fact, that use of the conveyance in violation of this chapter or AS 11.71 was committed by another person and that the owner was neither a consenting party nor privy to the violation;

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

(5) books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used in violation of this chapter or AS 11.71;

(6) money, securities, negotiable instruments, or other things of value used in financial transactions derived from activity prohibited by this chapter or AS 11.71; and

(7) a firearm which is visible, carried during, or used in furtherance of a violation of this chapter or AS 11.71. (§ 4 ch 45 SLA 1982)

1 concealment, storage, acquiring, or transportation of a controlled  
2 substance or imitation controlled substance in violation of AS 11.71  
3 or AS 11.73; or

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

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

10 (1) firearms, explosives, or weapons;

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

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

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

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

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

25 (c) Notwithstanding the provisions of AS 12.38, a controlled  
26 substance or imitation controlled substance, and plants grown in the  
27 wild from which controlled substances or imitation controlled sub-  
28 stances are derived, seized under AS 12.38.020, are automatically  
29 forfeited to the state. The law enforcement agency with custody of

# CURRENT LAW

## Sec.17.30.126- Controlled Substances

Sec. 17.30.126. Forfeiture of controlled substances. (a) A controlled substance manufactured, possessed, transferred, sold, or offered for sale in violation of this chapter or AS 11.71 is contraband and must be seized and summarily forfeited to the state. The commissioner of public safety or the commissioner's designee, including a municipal law enforcement agency authorized under AS 17.30.114(b) of this section to retain custody of controlled substances, is responsible for the disposal of controlled substances which have been forfeited. The controlled substances shall be disposed of in accordance with procedures and requirements prescribed by the commissioner.

(b) Plants from which controlled substances may be derived and which have been planted or cultivated in violation of this chapter or AS 11.71, or which are grown in the wild, may be seized and summarily forfeited to the state. (§ 4 ch 45 SLA 1982)

1 property described in this subsection shall dispose of it under proce-  
2 dures prescribed by the commissioner of public safety.

3 (d) In this section, "violation of AS 11.71 or AS 11.73" in-  
4 cludes an attempt or solicitation under AS 11.31 to violate AS 11.71  
5 or AS 11.73.

6 \* Sec. 4. AS 18.60.148(a) is amended to read:

7 (a) A transfer to the Alaska Wing, Civil Air Patrol, of a for-  
8 feited aircraft under AS 12.38, AS 16.05.195(f), [AS 17.30.122,] or  
9 another state law or regulation, is subject to the following condi-  
10 tions:

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

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

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

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

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

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

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

27 \* Sec. 5. AS 11.73.060; AS 17.30.112, 17.30.114, 17.30.116, 17.30.118,  
28 17.30.120, 17.30.122, 17.30.124, and 17.30.126 are repealed.