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Alaska State Legislature



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Senate

M E M O R A N D U M

08 February 1990

TO: Senate Judiciary Committee

FROM: Senator Arliss Sturgulewski *AS*

The Senate Judiciary Committee Substitute for Senate Bill 19 addresses the committee's concerns as follows:

1. Sec. 12.38.090 allows a person to obtain relief under the Alaska Exemptions Act during the forfeiture process by filing a timely claim and proving that the person provides for than half the support of a minor dependent living in the person's household.

2. Real property is now exempted from the administrative forfeiture procedure and is subject instead only to court proceedings. The bill also now says the court may order property forfeited, rather than shall.

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL

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LEGISLATIVE AFFAIRS AGENCY


M E M O R A N D U M

January 22, 1990

SUBJECT: SSSB 19 - sectional analysis of version to be introduced

TO: Senator Arliss Sturgulewski
ATTN: Melissa A. Fouse

FROM: Jack Chenoweth
Legislative Counsel



The Sponsor Substitute for Senate Bill 19 combines in one place the seizure and forfeiture provisions applicable to property used in violation of the criminal laws of the state governing alcoholic beverages (AS 04) and controlled substances (AS 11.71 and 17.30) and imitation controlled substances (AS 11.73). It replaces the seizure and forfeiture provisions separately applicable to these chapters with a single set of procedures applicable to the taking of property used in violation of state law applicable to alcoholic beverages, controlled substances, and imitation controlled substances.

In essence, bill section 1 of the sponsor substitute establishes the procedures, while the remainder of the bill defines the applicability of those procedures in relationship to the specific statutes in which forfeiture of property is currently authorized under the various separate titles, and makes other necessary changes.

This version of the sponsor substitute does not address seizure and forfeiture of property in the following subject matter areas:

- property used in violation of guide licensing laws;
- property used to violate criminal laws relating to illegal use of animals;
- property used to violate state gaming laws; and

-- property used in violation of state fish and game statutes and regulations.

These topics continue to be covered by their own provisions.

The procedures defined in the proposed sponsor substitute are made part of Title 12, the Code of Criminal Procedure. While seizure and forfeiture is a civil process, its actual use relates so closely to criminal conduct that it seemed to me best to place the material in the part of the statutes (AS 12.35, relating to search and seizure) to which the subject matter of the legislation most logically relates.

*

Bill section 1 restates the general provisions applicable to all seizures and forfeitures. In summary:

Proposed AS 12.35.200 [Applicability] identifies as the property subject to forfeiture under the procedure established property subject to forfeiture under the alcoholic beverage control laws (AS 04) and property covered by the controlled substance (AS 17.30) and imitation controlled substances laws (AS 11.73).

Proposed AS 12.35.210 [Seizure] authorizes, in the alternative, actual seizure of "property subject to forfeiture" under a warrant or court order, constructive seizure of that property under a warrant or court order, and actual or constructive seizure of that property without a warrant if made incident to a valid arrest, if subject to prior judgment in a criminal proceeding, or under probable cause. The section also briefly describes how a constructive seizure of the property may be made.

Proposed AS 12.35.220 [Custody] directs the commissioner of public safety (or, by definition, the commissioner's designee) to take custody of seized property, and the alternatives available to that officer in the performance of that duty.

Proposed AS 12.35.230 [Duration] sets limits on the duration of the holding of seized property. As a general rule, the period of holding is limited to the earlier of securing an order of forfeiture from a court or 48 hours. The rule is subject to exceptions that permit a longer holding of certain illicitly-held alcoholic beverages and to controlled

substances, nor does the duration apply to property whose forfeiture is pursued in conjunction with a criminal prosecution.

As to the seized property, proposed AS 12.35.240 [Inventory and valuation] outlines minimal inventory and valuation procedures that the commissioner must follow after obtaining custody of the seized property. The commissioner is to inform the attorney general who, after determining whether or not a successful forfeiture proceeding may be maintained, may order return of the seized property (excepting only illicit controlled substances).

*

The forfeiture procedures commence with proposed AS 12.-35.250 [Proceedings] and 12.35.260 [Notice].

Forfeiture is predicated upon the reasonable efforts of the commissioner of public safety to determine the identity of the owner of the seized property and any other persons who may hold an interest in the property. Three alternative proceedings are identified. Foreclosure may occur (1) in conjunction with a criminal proceeding, under a forfeiture motion; (2) through the summary administrative proceeding process outlined in the bill; and (3) by commencement of an in rem civil proceeding under the process outlined in the bill. An exception from these requirements is made for property seized under a court order forfeiting the property to the state. Within the 20 day period following the property's seizure, the commissioner of public safety is to give actual and publication notice to the parties indicated in the manner prescribed.

Proposed AS 12.35.270 [Administrative forfeiture] establishes a summary administrative forfeiture process applicable to seized property of a value of not more than \$100,000 or of seized property that is a conveyance. This is a concept new to current law, and the procedures applicable are outlined in a fair measure of detail. If the commissioner elects (there is no obligation to use the process) to use the summary administrative process, the commissioner must give the notice required by subsection (b). A person having an interest is to submit a claim and a bond, cash, or certified check. If the claim and the bond or deposit are not found satisfactory, the commissioner may allow limited additional time for the claimant to make the claim satisfactory. If found

satisfactory, the commissioner must promptly commence a civil proceeding in rem. If found not satisfactory within the time allowed, the commissioner may order the property forfeited.

The in rem forfeiture proceeding, set out in proposed AS 12.-35.280 [In rem forfeiture], is the usual or normal process applicable to the forfeiture of seized property. The process essentially involves court examination of the state's claim to forfeiture of the subject property, with the property itself as the focal point of the inquiry. The section outlines applicable notice provisions, to be followed if there are no comparable applicable provisions adopted in the state's rules of civil procedure. A principal purpose of the notice is to give a person claiming an interest in the property to file an answer and claim with the court. Unless disposed of in another manner, or summarily in the absence of any answer and claim, the court is to consider and determine any claim and answer. Subsection (g) of AS 12.35.280 specifically provides that an in rem proceeding may be held in abeyance while criminal proceedings are undertaken against a property claimant.

AS 12.35.290 [Limitation of defense] relates to the preceding section. By denying a party the defenses specified in it, proposed AS 12.35.290 is intended to affirm that the in rem proceeding and the associated criminal prosecution are separate proceedings.

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When forfeiture proceedings are completed, the court enters a forfeiture order. Under AS 12.35.300 [Status of property], the order establishes a lien on the property in favor of the state. That lien takes precedence over an unperfected security interest (i.e. a "naked" third party claim). The inclusion of this provision is intended to respond to concerns expressed by the Department of Law as to the status of claimants under the decision in Fehir v. State, 755 P.2d 1107 (Alaska 1988).

Proposed AS 12.35.310 [Remission] is concerned with the property rights and interests of "innocent" owners of seized property and of "innocent" third parties having a valid security or similar interest in seized property subject to forfeiture. The section outlines how those parties may exercise their rights and secure return of the property.

Property of an innocent owner may not be forfeited if the owner, in an administrative or an in rem proceeding, meets the burden of proof prescribed in subsection (a) (preponderance of the evidence), while property in which an innocent third party has an interest may not be forfeited in one of those proceedings if the party having the interest meets the burden of proof prescribed in subsection (b) (preponderance of the evidence).

As an alternative, if a party has a claim on seized property, the party may petition the court for the property's sale. The procedures for sale of the property in response to petition are set out in AS 12.35.320 [Sale of seized item]. The court may allow that sale if the court makes the findings specifically required by subsection (b). If sale is allowed and occurs, the proceeds of the property's sale are substituted for the property itself as the object of the forfeiture action.

*

Proposed AS 12.35.330 [Disposal upon forfeiture] outlines the manner of disposition of seized property. Forfeited alcoholic beverages are to be transferred to a state peace officer and destroyed. Other forfeited property is to be returned to the custody of the commissioner of public safety, who may thereafter order the property to be used in law enforcement activities, transferred, or sold, with the proceeds of the sale (subject to legislative appropriation) made available to cover expenses of the applicable seizure and forfeiture proceedings, or deposited into the state general fund. A key addition is the proposed "transfer to a political subdivision" formula, page 10, lines 10 - 22.

Proposed AS 12.35.399 [Definitions] sets out applicable definitions used in the preceding sections.

* * *

The next six bill sections apply the seizure and forfeiture procedures to specific types of property to which state law currently specifically authorizes a seizure and forfeiture provision:

- Bill sections 2 and 3 -- Alcoholic beverages and related property
- Bill section 4 -- Property used in violation of laws

Senator Arliss Sturgulewski

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applicable to imitation controlled substances
Bill sections 5 - 7 -- Property used in violation of
state laws governing controlled substances

The approach generally used with respect to these substantive criminal provisions is to (1) identify the specific property that may be seized and (2) authorize that property's seizure and forfeiture by cross-reference to the procedural provisions of AS 12.35.200 - 12.35.399.

Please note these distinctions: Summary forfeiture of certain plants grown in violation of AS 11.71 and AS 17.30 may be required under AS 17.30.115(c). Controlled substances held or possessed in violation of AS 11.71 or AS 17.30 must be seized and summarily forfeited to the state, to be disposed of. Under proposed AS 17.30.115(b), holding and disposition of controlled substances by a local government is not authorized.

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Bill section 8 makes a technical amendment applicable to the disposition of forfeited property to the Alaska Wing of the Civil Air Patrol.

Provisions of current law that conflict with, or are invalidated by, the changes made in the bill are repealed by bill section 9.

JC:lmb
L9/067

STATE OF ALASKA
THE LEGISLATURE

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LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 24, 1990

SUBJECT: Comparison between SSSB 19 and SB 367

TO: Senator Arliss Sturgulewski
ATTN: Melissa A. Fouse

FROM: Jack Chenoweth
Legislative Counsel 

This memorandum highlights the principal similarities and differences between Sponsor Substitute for Senate Bill 19, your measure proposing additions and amendments to the laws applicable to seizure and forfeiture, and Senate Bill 367, the governor's bill on substantially the same subject.

This memo keys to the bill order set out in SSSB 19 and cross-references from that measure to the related provisions of the administration's bill.

SCOPE OF SUBJECT MATTER COVERED IN MEASURES:

SSSB 19 brings together seizure and forfeiture provisions applicable to property used in violation of the criminal laws of the state governing

- alcoholic beverages (AS 04);
- controlled substances (AS 11.71 and 17.30); and
- imitation controlled substances (AS 11.73).

If enacted, the legislation would replace seizure and forfeiture provisions separately applicable to these chapters with a single set of procedures applicable to the taking of property used in violation of state law applicable to alcoholic beverages, controlled substances, and imitation controlled substances. The procedures defined in the sponsor substitute are made part of Title 12, the Code of Criminal Procedure. (While forfeiture is a civil process, its actual use relates so closely to criminal conduct that it seemed to me best to place the material in the part of the statutes--

AS 12.35, relating to search and seizure--to which the subject matter of the legislation most logically relates.) */ Additionally, SSSB 19 is, in my view, a more "process"-sensitive approach in that it is organized in a manner that more nearly approximates the chronology that the owner or claimant of seized property, or that party's legal counsel, would likely encounter in dealing with questions of seizure and forfeiture of property.

SB 367, the administrative measure, omits reference to alcoholic beverages, limiting the changes proposed to state laws applicable to controlled substances and imitation controlled substances. Consequently, the administration seeks to achieve its objective through a revision of current seizure and forfeiture laws in existing AS 17.30.100 and the sections that follow.

*/ Initially, the drafting strategy for what eventually became Senate Bill 19 involved consolidating in one place seizure and forfeiture provisions applicable to property involving any criminal violation so that one set of procedures and standards would govern throughout state law. Following discussion with the administration representatives, you asked me to omit from the draft of SB 19 the provisions governing each of the following, as to each of which explicit seizure and forfeiture provisions may be found in the respective titles and chapters elsewhere in the body of state law:

-- property used in violation of guide licensing laws;

-- property used to violate criminal laws relating to illegal use of animals;

-- property used to violate state gaming laws; and

-- property used in violation of state fish and game statutes and regulations.

Each of these topics continues to be covered by its own separate statutory foreclosure provisions.

Committees considering the legislation should determine the scope of the subject matter to be addressed in this legislation: if limited to controlled substances/imitation controlled substances, placement of the subject material in AS 17.30 is proper; if broadened to include other subjects, use of AS 12 5 seems a better choice.

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SSSB 19 is, in some respects, a more traditional approach. Under it, seizure and foreclosure responsibilities devolve on one executive branch agency--the Department of Public Safety--and, in contested foreclosures, the judicial branch has the exclusive role.

SB 367 introduces some additional players--while public safety has a role in the seizure and custody, the commissioner of administration figures prominently in the administrative and property disposition process--and, indeed, the Department of Administration has a larger role in contested summary administrative hearings.

Committees considering the legislation should also determine whether and to what extent the role of executive agencies in the consideration and disposition of forfeiture actions should be enlarged.

DRAFTING NOTES:

SSSB 19's bill section 1 establishes the procedures applicable to seizure and forfeiture, while the remainder of the bill (sections 2 - 8) define the applicability of those procedures in relationship to the specific statutes in which forfeiture of property is currently authorized under the various separate titles, and makes other necessary changes.

The principal operative provision of SB 367, also its bill section 1, inserts into AS 17.30 a sequence of new sections in place of materials proposed to be repealed. The remaining few sections of the bill make technical conforming amendments.

Both bills incorporate necessary repealers.

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APPLICABILITY:

An "Applicability" section appears only in SSSB 19; there is no directly comparable provision in the administration bill. Proposed AS 12.35.200 [Applicability] of SSSB 19 identifies in general or collective terms property subject to forfeiture under the alcoholic beverage control laws (AS 04) and property covered by the controlled substance (AS 17.30) and imitation controlled substances laws (AS 11.73).

SEIZURE:

Proposed AS 12.35.210 [Seizure] of SSSB 19 authorizes, in the alternative,

- actual seizure of "property subject to forfeiture" under a warrant or court order;
- constructive seizure of that property under a warrant or court order; or
- actual or constructive seizure of that property without a warrant
 - if made incident to a valid arrest;
 - if subject to prior judgment in a criminal proceeding; or
 - under a showing of probable cause.

In its AS 17.30.105(a) [page 2, line 11 and following], SB 367, the administration measure, likewise authorizes seizure either under court order or without court order and sets out relevant standards to guide those property seizures. As the transmittal letter accompanying SB 367 notes, the administration measure incorporates seizure authority "if otherwise constitutionally permissible," in order to take advantage of the constitutionally-authorized exceptions to the warrant requirement, and authorizes seizure on the basis of a grand jury finding that the property is subject to forfeiture. These additional circumstances are not explicitly incorporated into the legislation you have introduced.

Proposed AS 12.35.210 in SSSB 19 also briefly describes how a constructive seizure of the property may be made. The administration measure makes no provision for a constructive seizure.

CUSTODY OF SEIZED PROPERTY:

In SSSB 19, proposed AS 12.35.220 [Custody] directs the commissioner of public safety (or, by definition, the commissioner's designee) to take custody of seized property, and sets out the alternatives available to that officer in the performance of that duty.

Custody is briefly addressed in AS 17.30.105(b) of the administration measure. The task is assigned to the commissioner of public safety or a municipal law enforcement agent whom the commissioner authorizes.

DURATION OF CUSTODY OF SEIZED PROPERTY:

In SSSB 19, proposed AS 12.35.230 [Duration] sets limits on the duration of the holding of seized property. As a general rule, as to property used or intended for use in a crime that is movable, the period of holding is limited to the earlier of the securing of an order of forfeiture from a court or 48 hours. The holding rule is subject to exceptions that permit longer retention of certain illicitly-held alcoholic beverages and controlled substances, nor does the holding limitation apply to property whose forfeiture is pursued in conjunction with a criminal prosecution.

In the administration measure, SB 367, a 48 hour holding period is likewise set (see AS 17.30.105(a)(2)(C)) for property of this type.

RESPONSIBILITY TO INVENTORY AND VALUE SEIZED PROPERTY:

As to the seized property, SSSB 19's proposed AS 12.35.240 [Inventory and valuation] outlines minimal inventory and valuation procedures that the commissioner must follow after obtaining custody of the seized property. Inventory and valuation must occur within 10 days. The commissioner is to inform the attorney general who, after determining whether or not a successful forfeiture proceeding may be maintained, may order return of the seized property (excepting only illicit controlled substances).

Substantially the same process is to be followed in the inventory and valuation provisions of the administration's measure, SB 367. The same time limit applies. See AS 17.-30.105(b) and (c).

In SSSB 19, the forfeiture procedure itself commences with proposed AS 12.35.250 [Proceedings] and 12.35.260 [Notice].

FORFEITURE ALTERNATIVES:

Three alternative forfeiture methods are identified. Foreclosure may occur:

- in conjunction with a criminal proceeding, under a jeopardy forfeiture motion;
- through the summary administrative proceeding process outlined in the bill; and
- by commencement of an in rem civil proceeding under the process outlined in the bill.

An exception from these requirements is made for property seized under a court order explicitly forfeiting the property to the state.

The comparable provision in SB 367 is AS 17.30.115(a). The administration's alternatives include "filing a motion to forfeit in a . . . civil proceeding," an alternative not set out in SSSB 19.

NOTICE:

In SSSB 19, forfeiture is predicated upon the reasonable efforts of the commissioner of public safety, once having valued the property seized, to determine the identity of the owner of the seized property and any other persons who may hold interest in the property. Within the 20 day period following the property's seizure, the commissioner of public safety is to give actual and publication notice to the parties indicated in the manner prescribed.

In SB 367, the comparable provision is AS 17.30.111. The administration extends the notice window to 30 days after seizure, and establishes a minimum value of the property for which the notice of seizure and forfeiture must be given at \$500. As with SSSB 19, actual notice that is in compliance with applicable rules of civil procedure is authorized. However, a different requirement for publication notice attaches. In SSSB 19, the manner of publication notice depends on the method of forfeiture selected.

ADMINISTRATIVE FORFEITURE:

Both measures authorize administrative or summary forfeiture. This is, as Governor Cowper's transmittal letter declares, a concept new to current Alaska law. The procedures applicable are outlined in a fair measure of detail, especially in SSSB 19. The scope of permissible use of administrative forfeiture and the procedures applicable differ between the two bills.

In SSSB 19, proposed AS 12.35.270 [Administrative forfeiture] establishes a summary administrative forfeiture process applicable to

-- seized property of a value of not more than \$100,000; or

-- seized property that is a conveyance.

Under your bill, there is no obligation to use the administrative or summary process. The decision as to use rests with the commissioner of public safety (who has at least nominal custody of the seized item(s)). If the commissioner elects to use the summary administrative process, the commissioner must give the publication notice in the manner required by AS 12.35.270(b). Thereafter, a person having an interest must submit a claim and a bond, cash, or certified check. If the claim and the bond or deposit are not found satisfactory, the commissioner may allow limited additional time for the claimant to make the claim satisfactory. If found satisfactory, the commissioner must promptly commence a civil proceeding in rem, looking to the courts to order final disposition of the seized property. If found not satisfactory within the time allowed, the commissioner may, at the conclusion of the administrative proceeding, order the property forfeited. Thus, administrative proceedings are available for what the administration has described as "uncontested" foreclosure proceedings only, that is, when no claim against the property is forthcoming. "Contested" claims would be referred to the judiciary.

The administration's approach, set out in AS 17.30.117 of SB 367, differs. Use of summary administrative forfeiture is limited to property of less than \$100,000 value; there is no separate exception for conveyances. The alternative remains discretionary, but under the administration's approach, the discretion (and the process) become the responsibility of

the commissioner of administration. SB 367 does not incorporate a bond requirement, and authorizes the commissioner (through a hearing officer) to make final disposition of the seized property in all cases, contested or uncontested.

IN REM FORFEITURE:

In rem is the usual or normal process applicable to the forfeiture of seized property. Don't be put off by the term. "In rem" is Latin shorthand for "[a civil action against] the thing," meaning an action against, in the context of a forfeiture action, the object(s) whose ownership is to be determined.

In SSSB 19, the in rem forfeiture proceeding is set out in proposed AS 12.35.280 [In rem forfeiture]. The process essentially involves court examination of the state's claim to forfeiture of the subject property, with the property itself as the focal point of the inquiry.

The section outlines applicable notice provisions, to be followed if there are no comparable applicable provisions adopted in the state's rules of civil procedure. A principal purpose of the notice is to give a person claiming an interest in the property opportunity to file an answer and claim with the court. Unless disposed of in another manner, or summarily in the absence of any answer and claim, the court is to consider and determine any claim and answer. Subsection (g) of AS 12.35.280 specifically provides that an in rem proceeding may be held in abeyance while criminal proceedings are undertaken against a property claimant.

In SB 367, the in rem process is not described in the same order within one section. For example, the notice provision (comparable to SSSB's AS 12.35.280(b)) relies on the general notice provision of AS 17.30.111(b) and applicable civil rule, and the claim provision (comparable to SSSB 19's AS 12.35.280(d) - (f)) is set out in proposed AS 17.30.113. On the other hand, as will be noted later in this memo, SB 367 provides more detail with respect to other aspects of forfeiture proceedings, especially as regards standard and burden of proof and the scope of a claimant's ability to participate in the foreclosure proceedings.

LIMITATION OF CRIMINAL PROCEEDING AS A DEFENSE:

Each bill incorporates as a "defense" a roughly similar provision that, while acknowledging the interrelationship be-

tween the in rem proceeding and an associated criminal prosecution, is intended to affirm that the proceedings are separate, and that the criminal proceeding or prosecution, or its outcome, is not dispositive in the in rem proceeding. (A "defense" is evidentiary matter interposed by the defendant that must be met and disproved by the prosecution beyond a reasonable doubt.) In SSSB 19, that provision is AS 12.35.290 [Limitation of defense]. In SB 367, the provision is AS 17.30.115(e). The language differs--indeed, the administration's language covers all proceedings while SSSB 19's applies, by its terms, only in in rem proceedings. But, since, under SSSB 19, in rem proceedings are used in all contested proceedings, the difference may be one more of form than of substance.

* * *

When forfeiture proceedings are completed, the court enters a forfeiture order.

STATUS OF PROPERTY ORDERED FORFEITED:

The administration has advised you, and in his transmittal letter Governor Cowper noted to the legislature, that it would be well to have a provision that

. . . gives the state a lien creditor preference over persons who claim an unperfected security interest in property [Such a provision would be] in response to the Alaska Supreme Court's opinion in Fehir v. State, 755 P.2d 1107 (Alaska 1988), which allows persons with unperfected security interests to file a claim for forfeited property. Drug traffickers are often adept at hiding assets or otherwise thwarting forfeitures by transferring assets Therefore, it is appropriate to give the state priority over these unknown (i.e. unrecorded) claimants to the property, at least to the extent that the state is able to recoup its expenses.

The language used differs--indeed, the provision of your bill is a little tighter than that proposed by the governor--but SSSB 19's AS 12.35.300 and SB 367's AS 17.30.119(f) are intended to address this concern.

REMISSION OR RELIEF:

Recent incidents involving criminal activities aboard vessels without knowledge of the vessel owners prompts inclusion of a remission provision in both bills.

In SSSB 19, proposed AS 12.35.310 [Remission] is concerned with the property rights and interests of "innocent" owners of seized property and of "innocent" third parties having a valid security or similar interest in seized property subject to forfeiture. The section outlines how those parties may exercise their rights and secure return of the property. Property of an innocent owner may not be forfeited if the owner, in an administrative or an in rem proceeding, meets the burden of proof prescribed in subsection (a) (preponderance of the evidence), while property in which an innocent third party has an interest may not be forfeited in one of those proceedings if the party having the interest meets the burden of proof prescribed in subsection (b) (preponderance of the evidence). The approach taken is one of interposing a prohibition against forfeiture in those situations.

The comparable provision in the administration's measure appears as AS 17.30.121. The administration's approach is one of authorizing remission if the claimant meets the standards established, and requiring the claimant to file an answer in a foreclosure proceeding. (SSSB 19 does not explicitly indicate how the owner or claimant is to indicate an interest in the property; filing of a claim or answer is presumed, not stated.) The administration's measure also makes provision for remission claims based on partial value and remission claims involving multiple claimants; these are not addressed in SSSB 19.

SALE OF SEIZED PROPERTY:

In SSSB 19, as an alternative to availing oneself of the remission claim process, if a party has a claim on seized property, the party may petition the court for the property's sale. The procedures for sale of the property in response to petition are set out in AS 12.35.320 [Sale of seized item]. The court may allow that sale if the court makes the findings specifically required by subsection (b). If sale is allowed and occurs, the proceeds of the property's sale are substituted for the property itself as the object of the forfeiture action.

On the subject of sale, the administration's measure provides more detail. AS 17.30.109(b) and (c) authorize sale and substitution of the sale proceeds in further foreclosure proceedings. In the administration's measure, the state (as well as any claimant) may seek sale, and both parties may seek a release of the property. The requirements that must be met and the standards that the court must apply in considering a petition for sale or release are more explicit; all five requirements and standards must be met, including the submission of a bond.

DISPOSITION FOLLOWING FORFEITURE:

In SSSB 19, proposed AS 12.35.330 [Disposal upon forfeiture] outlines the manner of disposition of seized property. Forfeited alcoholic beverages are to be transferred to a state peace officer and destroyed. SSSB 19 makes provision for the summary forfeiture of certain plants grown in violation of AS 11.71 and AS 17.30. See AS 17.30.115(b), added by bill section 6. The holding and disposition by a local government of controlled substances that are seized would not be authorized.

Except for the handling of alcoholic beverages and controlled substances, under AS 12.35.330, other forfeited property is to be returned to the custody of the commissioner of public safety, who may thereafter order the property to be used in law enforcement activities, transferred, or sold, with the proceeds of the sale (subject to legislative appropriation) made available to cover expenses of the applicable seizure and forfeiture proceedings, or deposited into the state general fund. A key addition is the proposed "transfer to a political subdivision" formula, page 10, lines 10 - 22.

In SB 367, the disposal provisions are set out in AS 17.30.-107 and 17.30.123. The provisions are not dissimilar. The administration bill requires seizure, summary forfeiture, and disposal of controlled substances and imitation controlled substances by the state. All other forfeited property is transferable to the commissioner of administration for use or sale across a comparable range of options.

* * *

SB 367 incorporates additional provisions or adds detail as to some aspects of the seizure and forfeiture process, not

included in SSSB 19. Among the chief provisions set out in SB 367 that are not directly replicated in SSSB 19:

-- an equitable relief provision, AS 17.30.109(a), authorizing a court (or a hearing officer in an administrative proceeding) to provide for issuance of restraining orders and injunctions, principally to protect property that may be subject to foreclosure;

-- explicit provisions, set out in AS 17.30.115(b), describing the burden of proof that the state must bear in trying to secure a forfeiture order, and establishing the means by which a prima facie case may be made (shifting the burden of proof to any claimants) based on a criminal conviction or grand jury indictment;

-- more specific direction, given by AS 17.30.119(a), that mandates forfeiture (subject to remission) and specifies what must be contained within a forfeiture order;

-- authority, under AS 17.30.119(b), to claim exemptions from the forfeiture order under the state's Exemptions Act;

-- a duty, imposed by AS 17.30.119(c), on a person "who causes property to be subject to forfeiture" to pay certain expenses related to the property;

-- a provision, AS 17.30.119(d), spelling out what must be incorporated into the forfeiture order; and

-- authority, given by AS 17.30.105(d), for a person claiming an exemption under AS 17.30.119(b) to petition for court for use of the exempted property while forfeiture procedures are pending.

Some or all of these might be considered for inclusion in SSSB 19.

* * *

The subject remaining to be discussed involves the respective approaches taken to identify property subject to seizure and forfeiture.

In SSSB 19, bill section 5, an amendment of AS 17.30.110, identifies controlled substance-related property that may be forfeited. In SB 367, that list appears in proposed AS 17.-30.103. The list in SB 367 is more encompassing; it also authorizes, as Governor Cowper's transmittal letter notes, forfeiture of property "traceable" to illegal activity. Briefly:

-- In SSSB 19, the controlled substances are forfeitable. In SB 367, AS 17.30.107 makes controlled substances summarily forfeitable.

-- In SSSB 19, "property," including raw materials incorporated into controlled substances, used in conjunction with illicit activity involving the controlled substance if that illicit activity is a felony is forfeitable. In SB 367, while there is a reference to forfeiture of raw materials, there is no directly parallel provision, but the general reference to "property" set out in proposed AS 17.30.103(b) might be read to embrace the same items.

-- SSSB 19 authorizes forfeiture of containers for drugs; SB 367 has no directly parallel provision, but, again, the general provision applicable to "property" in AS 17.30.103(b) would appear to apply.

-- Both bills make provision for forfeiture of conveyances or vehicles used in felony offenses.

-- Both incorporate reference to forfeiture of books, records, equipment, and data.

-- Both make provision for forfeiture of money, securities, and negotiable instruments.

-- Both bills authorize forfeiture of firearms (SSSB 19 retains a concealed weapon requirement; SB 367 eliminates that contingency); only SB 367 explicitly authorizes forfeiture of explosives and weapons.

-- SSSB 19 specifically identifies as forfeitable any real property that is involved in the commission of a felony offense; SB 367 does not enumerate this, and the governor's transmittal letter specifically notes its omission.

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In SSSB 19, six bill sections apply the seizure and forfeiture procedures to specific types of property to which state law currently specifically authorizes a seizure and forfeiture provision:

Bill sections 2 and 3 treat with alcoholic beverages and related property, a subject not covered in SB 367.

Bill sections 4 - 7 identify forfeitable property used in violation of laws applicable to controlled substances and imitation controlled substances, for which there are related provisions in SB 367.

JC:gc
G13/063

NOTES TO DECISIONS

The common-law cause of action for breach of a vendor's duty to exercise reasonable care when dispensing alcohol is limited to cases arising before the legislature amended this section in 1980. *Nazareno v. Urie*, Sup. Ct. Op. No. 2456 (File No. 4807), 638 P.2d 671 (1981).

Civil liability under former law. —

Former AS 04.15.020(a) established a minimum standard of conduct for vendors of alcoholic beverages and failure to adhere to that standard constituted negligence per se. *Nazareno v. Urie*, Sup. Ct. Op. No. 2456 (File No. 4807), 638 P.2d 671 (1981).

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);

(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.

(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.

(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.

(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.

(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.

(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.

(h) 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. (§ 3 ch 131 SLA 1980; am §§ 5 — 8 ch 80 SLA 1986)

Effect of amendments. — The 1986 amendment in subsection (a) in paragraph (1) inserted "possessed," and "possession of alcoholic beverages or prohibited the," in paragraph (4) substituted "that" for "which," and in paragraph (5) inserted a comma following "materials"; in subsection (b) in paragraph (3) inserted "except for alcoholic beverages possessed

in violation of AS 04.11.498 or an ordinance adopted under AS 04.11.498,"; in subsection (c) in paragraph (1) added the language beginning "or upon entry"; and in subsection (h) added the first sentence, in the second sentence substituted "All other property" for "Property," and in the third sentence substituted "that" for "which."

NOTES TO DECISIONS

Former law construed. — See *Territory of Alaska v. 188 Cases of Mixed Intoxicating Liquors*, 10 Alaska 414 (1944).

Collateral references. — 45 Am. Jur. 2d. Intoxicating Liquors, §§ 486-532. 4SA C.J.S. Intoxicating Liquors, §§ 365-397.

Revisor's notes. — AS 17.30.110(b) — (q) were renumbered as AS 17.30.112 — 17.30.126 in 1983.

NOTES TO DECISIONS

Former forfeiture statute construed. 1265 (1977), decided under former AS — See *One Cocktail Glass v. State*, Sup. 17.12.130. Ct. Op. No. 1437 (File No. 2729), 565 P.2d

Collateral references. — Forfeiture of personal property used in illegal manufacture, processing, or sale of controlled substances under § 511 of Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 USCS § 881), 59 ALR Fed. 765.

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.

(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)

Revisor's notes. — Formerly AS 17.30.110(b) and (c). Renumbered in 1983.

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 munic-

ipal 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.

(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)

Revisor's notes. — Formerly AS 17.30.110(d) — (f). Renumbered in 1983.

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.

(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.

(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

against the claimant under this chapter or AS 11.71. (§ 4 ch 45 SLA 1982)

Revisor's notes. — Formerly AS 17.30.110(g) — (i). Renumbered in 1983. **failure to furnish notification required under this chapter. see AS 11.71.050(a)(4).**
Cross references. — For penalty for

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)

Revisor's notes. — Formerly AS 17.30.110(j) and (k). Renumbered in 1983.

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)

Revisor's notes. — Formerly AS 17.30.110(l). Renumbered in 1983.

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;

(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)

Revisor's notes. — Formerly AS 17.30.110(m). Renumbered in 1983.

Effect of amendments. — The 1983 amendment added paragraph (6).

Sec. 17.30.124. Remittance to claimant. (a) Upon a showing that a claimant is entitled to remittance under AS 17.30.110 — 17.30.126, the court shall order that

(1) if the claimant is entitled to the item, it shall be delivered to the claimant immediately;

(2) if the claimant is entitled to remittance of some value less than the total value of the item, the claimant is entitled, at the claimant's choice, to receive either the value of the claimant's interest or, upon receipt of payment of the difference in value by the claimant, the entire item.

(b) An offender who used an item subject to remission in violation of this chapter or AS 11.71 shall be assessed a fine which may not be less than the cost of any lien payment or remittance made by the state plus the reasonable costs of the seizure. (§ 4 ch 45 SLA 1982)

Revisor's notes. — Formerly AS 17.30.110(n) and (o). Renumbered in 1983.

~~**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)~~

Sec. 17.30.116. Procedure for forfeiture action.**NOTES TO DECISIONS**

Cited in *Resek v. State*, 706 P.2d 288
(Alaska 1985).

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) 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)

Editor's notes. — This section is set out to incorporate editorial changes made by the Revisor of Statutes

Sec. 17.30.130. Judicial review. [Repealed, § 22 ch 146 SLA 1986.]

Article 4. General Provisions.

Section	Section
150. Reliance on Drug Enforcement Administration	900. Definitions
155. Confidentiality of certain information	

Sec. 17.30.150. Reliance on Drug Enforcement Administration. Results, information, and evidence received from the Drug Enforcement Administration of the United States Department of Justice relating to the enforcement functions of this chapter, including results of inspections conducted by it, may be relied on and acted on by the Department of Public Safety in the exercise of its enforcement functions under this chapter. (§ 4 ch 45 SLA 1982; am § 20 ch 146 SLA 1986)

Effect of amendments. — The 1986 amendment substituted "enforcement" for "regulatory" in two places and substituted "Department of Public Safety" for "board."

Alaska State Legislature



2957 SHELDON JACKSON STREET
ANCHORAGE, ALASKA 99508

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

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

Senate

M E M O R A N D U M

31 January 1990

TO: Senator Jan Faiks
Chair, Senate Rules Committee

FROM: Senator Arliss Sturgulewski *AS*

RE: SS Senate Bill 19

I appreciate your scheduling Senate Bill 19 for a hearing in the Senate Judiciary Committee. As you know, this bill was introduced into the Fifteenth Legislature as Senate Bill 462, passed the Senate with a vote of 20-0, and died in the House Judiciary Committee.

A member of the Anchorage Police Department approached me in 1987 and asked me to introduce legislation on the subject of seizure and forfeiture that would incorporate an administrative forfeiture process into it. That process would allow for speedier disposition of seized property in uncontested cases.

The bill also added real property to the list of items subject to forfeiture to bring it into conformance with the federal model forfeiture act. SB 462 would have allowed municipalities to retain possession of seized property and conduct administrative forfeiture proceedings as well.

SB 462 was heard in the Senate State Affairs Committee, the Senate Judiciary Committee, and the Senate Finance Committee. There were changes in all the committees. The major changes were suggestions by the Department of Public Safety in the Senate Judiciary Committee and the addition of applicability to alcohol in the Senate Finance Committee.

Sponsor Substitute for Senate Bill 19 was drafted to incorporate the revisions made to Senate Bill 462 during the hearing process as well as suggestions made by the Departments of Law and Public Safety in discussions last spring.

You have a sectional analysis of Senate Bill 19 prepared by our legal service division as well as a comparison with Senate Bill 367.

It is my hope that the committee will address what I perceive to be the major policy differences between the two bills. These are:

1. The applicability of the seizure and forfeiture provisions to alcohol violations.

2. The inclusion of real property as an item subject to forfeiture.

3. The applicability of bankruptcy exemptions made in SB 367 that would allow a violator of Title 17 or Title 4 to retain funds under AS 09.38.010 - 09.38.090.

Alaska State Legislature



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Senate

M E M O R A N D U M

08 February 1990

TO: Senate Judiciary Committee

FROM: Senator Arliss Sturgulewski 

The Senate Judiciary Committee Substitute for Senate Bill 19 addresses the committee's concerns as follows:

1. Sec. 12.38.090 allows a person to obtain relief under the Alaska Exemptions Act during the forfeiture process by filing a timely claim and proving that the person provides for than half the support of a minor dependent living in the person's household.

2. Real property is now exempted from the administrative forfeiture procedure and is subject instead only to court proceedings. The bill also now says the court may order property forfeited, rather than shall.

SECTIONAL ANALYSIS
SS SENATE BILL 19
Proposed Judiciary Committee Substitute

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

Subsection (f) defines "offense" to include attempted offenses.

SECTION 2:

This is a new chapter in Title 12, the Code of Civil 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 the action taken under subsection (a).

Subsection (c) 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 (d) 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 a 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 the property was or might be 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).

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 8, 1990

SUBJECT: Draft CSSB 19 (Judiciary)

TO: Senator Jan Faiks, Chair
Senate Judiciary Committee

FROM: Jack Chenoweth
Legislative Counsel

A further question with respect to the enclosed draft: Does the last sentence of AS 12.38.050(e), directing a court conducting a forfeiture proceeding to "consider the relevant portions of the record of a related criminal action," raise a possible due process problem? To the extent that a person claiming an interest in the property was not a party to the related criminal action, the person would not have had the opportunity to present evidence or examine witnesses in that action. Now, in the subsequent foreclosure proceeding, the record of the earlier criminal action and the evidence presented may be adverse to the claim of the person.

If this is a problem, substituting "may" for "shall" in the sentence suggests an expeditious resolution.

JBC:pl
WKP2/014

6-0144D ✓
Chenoweth
2/8/90

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

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 19 (Judiciary)

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 proper
7 ty in cases involving alcoholic beverages, controlled
8 substances, and imitation controlled substances; and
9 amending Rules 16, 16.1, 40(e), 65(b), and 77(a),
10 Alaska Rules of Civil Procedure."

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

12 * Section 1. AS 04.16.220 is repealed and reenacted to read:

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

16 (1) manufactured, delivered, distributed, possessed, con-
17 cealed, stored, acquired, sold, exchanged, offered for sale or ex-
18 change, or transported, or one of these acts is attempted or soli-
19 cited, in violation of a criminal law under this title;

20 (2) unlawfully possessed in an area where the results of a
21 local election under AS 04.11.498 have prohibited possession of alco-
22 holic beverages; or

23 (3) found on licensed premises without excise stamps re-
24 quired by federal law.

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

27 (1) except for liquor licenses forfeited under AS 04.16.-
28 180, the property is used, or intended to be used, to commit or facil-
29 itate an offense under AS 04.11.010, AS 04.16.175, AS 04.21.060, an

1 offense relating to alcoholic beverages on licensed premises without
2 excise stamps required by federal law, or an offense relating to
3 conduct made criminal because of the results of a local election under
4 AS 04.11.490 - 04.11.500; or

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

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

10 (1) firearms, explosives, and weapons;

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

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

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

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

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

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

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

29 (2) in the process of being consumed or in a container that

1 has been opened or the seal of which has been broken.

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

6 * Sec. 2. AS 12 is amended by adding a new chapter to read:

7 CHAPTER 38. FORFEITURE OF PROPERTY.

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

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

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

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

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

20 (2) without a court order if

21 (A) constitutionally permissible or otherwise au-
22 thorized by law;

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

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

1 order under (1) of this subsection.

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

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

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

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

26 (d) If the attorney general determines that a forfeiture pro-
27 ceeding cannot be sustained or as a matter of discretion will not be
28 instituted, a written report of that decision shall be sent to the
29 agency responsible for custody of the property and the property must

1 be returned to the person from whom it was obtained.

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

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

10 (b) Action by the court under (a) of this section may be taken
11 upon ex parte application of the state if there is reason to believe
12 that notice would jeopardize the availability or value of the property
13 for forfeiture.

14 (c) The state may, at any time before an order of forfeiture is
15 issued, request the sale or other disposition of property seized under
16 AS 12.38.020. A person claiming an interest in the property may also
17 request sale or other disposition before an order of forfeiture is
18 issued if the person proves by a preponderance of the evidence that

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

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

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

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

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

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

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

9 (1) may be initiated by the state filing a motion to for-
10 feit in a criminal or civil proceeding relating to the conduct that
11 makes the property subject to forfeiture;

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

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

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

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

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

28 (A) a list of property with an estimated value of more
29 than \$1,000, with a description of the property, including motor

1 vehicle or other registration numbers;

2 (B) the approximate value of the property;

3 (C) the date and place of seizure;

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

5 (E) a citation to this chapter, and a citation to the
6 court docket number relating to a judicial forfeiture proceeding;
7 and

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

10 (c) The notice requirements of (b) of this section do not apply
11 to property that is subject to automatic forfeiture under AS 04.16.-
12 220(d) or AS 17.30.110(c).

13 (d) In a forfeiture proceeding other than a summary administra-
14 tive proceeding under AS 12.38.060, the state must prove by a prepon-
15 derance of the evidence that the property is subject to forfeiture.
16 It is prima facie evidence, sufficient to support an order of forfei-
17 ture, that a defendant has been convicted of conduct making the prop-
18 erty subject to forfeiture, or that a grand jury has returned an
19 indictment finding that the evidence, if unexplained or uncontradict-
20 ed, would warrant a court to conclude that the property specifically
21 identified in the indictment is subject to forfeiture.

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

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

6 (g) It is not a defense to a forfeiture proceeding that a crimi-
7 nal offense has not been prosecuted, or has resulted in a conviction
8 of a different offense or an acquittal.

9 Sec. 12.38.060. SUMMARY ADMINISTRATIVE FORFEITURE PROCEDURES.

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

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

24 Sec. 12.38.070. PROCEDURE FOR CLAIMANTS. (a) A person claiming
25 an interest in property that is the subject of a forfeiture proceed-
26 ing, including persons who claim an exemption under AS 12.38.-
27 090(a)(2), shall file a claim

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

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

4 (b) The claim must

5 (1) be filed with the court in judicial forfeiture proceed-
6 ings, or with the commissioner of public safety in administrative
7 forfeiture proceedings under AS 12.38.060;

8 (2) be sworn under oath; and

9 (3) set out with specificity the reasons why the property
10 is not subject to forfeiture or why the person is entitled to relief
11 under AS 12.38.090, the nature of the person's right, title, or inter-
12 est in the property, the time and circumstances of the person's acqui-
13 sition, the consideration paid, and additional facts supporting the
14 claim.

15 (c) If a claim is not timely filed, the property shall be for-
16 feited to the state without further proceedings.

17 Sec. 12.38.080. ORDER OF FORFEITURE; LIEN IN FAVOR OF THE STATE.

18 (a) If the state proves that property is subject to forfeiture, the
19 property may be ordered forfeited to the state, except as provided in
20 AS 12.38.090.

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

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

1 costs in a forfeiture proceeding.

2 (d) A judicial order of forfeiture shall forfeit to the state
3 any other assets of the person who caused the property to be subject
4 to forfeiture, up to the value of any property subject to forfeiture,
5 if the property subject to forfeiture has been

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

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

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

13 (4) ordered returned to an innocent party under AS 12.38.-
14 090(a)(1).

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

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

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

29 (1) that the person

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

4 (B) did not knowingly participate in or facilitate the
5 conduct that resulted in the property being subject to forfei-
6 ture; and

7 (C) at no time knew, or had reasonable cause to be-
8 lieve, that the property was or might be subject to forfeiture;
9 or

10 (2) that the person provides more than half the support of
11 a minor dependent living in the person's household, in which case the
12 person may claim exemptions from the forfeiture to the extent permit-
13 ted under AS 09.38.010 - 09.38.090; however, an exemption may not be
14 permitted for a liquor license granted under AS 04 or a limited entry
15 permit granted under AS 16.43.

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

24 Sec. 12.38.100. STATE DISPOSAL OF FORFEITED PROPERTY. (a) For-
25 feited property, other than property summarily forfeited under AS 04.-
26 16.220(d) or AS 17.30.110(c), shall be transferred to the commissioner
27 of administration for disposition in accordance with applicable law.
28 The commissioner of administration may

29 (1) destroy property harmful to the public;

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

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

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

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

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

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

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

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

29 Sec. 17.30.110. PROPERTY SUBJECT TO FORFEITURE. (a) Under the

1 procedures set out in AS 12.38, the property listed in (b) of this
2 section is subject to forfeiture to the state if

3 (1) manufactured, delivered, dispensed, distributed, pos-
4 sessed, concealed, stored, acquired, or transported in violation of
5 AS 11.71 or AS 11.73;

6 (2) used, or intended to be used, to accomplish or facili-
7 tate the manufacture, delivery, dispensing, distribution, possession,
8 concealment, storage, acquiring, or transportation of a controlled
9 substance or imitation controlled substance in violation of AS 11.71
10 or AS 11.73; or

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

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

17 (1) firearms, explosives, or weapons;

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

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

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

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

29 (6) real property, and its improvements and appurtenances,

1 if the offense making the property subject to forfeiture is a felony
2 offense.

3 (c) Notwithstanding the provisions of AS 12.38, a controlled
4 substance or imitation controlled substance, and plants grown in the
5 wild from which controlled substances or imitation controlled sub-
6 stances are derived, seized under AS 12.38.020, are automatically
7 forfeited to the state. The law enforcement agency with custody of
8 property described in this subsection shall dispose of it under proce-
9 dures prescribed by the commissioner of public safety.

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

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

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

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

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

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

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

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

29 (B) the aircraft is being exchanged for another Civil

1 Air Patrol corporate aircraft of equivalent or greater value;

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

5 * Sec. 5. AS 12.38.040(b), added by sec. 2 of this Act, has the effect
6 of amending Rule 65(b), Alaska Rules of Civil Procedure, by permitting
7 issuance of appropriate temporary orders, which may include temporary
8 restraining orders, relating to preservation of seized property without
9 notice to a party on grounds other than those identified in the rule, and
10 has the effect of amending Rule 77(a), Alaska Rules of Civil Procedure, by
11 authorizing state application for an order relating to seized property
12 without service of notice on an adverse party.

13 * Sec. 6. AS 12.38.050(f), added by sec. 2 of this Act, has the effect
14 of amending Rule 16.1, Alaska Rules of Civil Procedure, by excepting from
15 the special procedures for reducing delay in civil litigation outlined in
16 that section a forfeiture proceeding held in abeyance until conclusion of a
17 related pending criminal action, and Rules 16 and 40(e), Alaska Rules of
18 Civil Procedure, by requiring a judge to hold proceedings in abeyance until
19 conclusion of a related pending criminal action.

20 * Sec. 7. AS 11.73.060; AS 17.30.112, 17.30.114, 17.30.116, 17.30.118,
21 17.30.120, 17.30.122, 17.30.124, and 17.30.126 are repealed.
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STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 6, 1990

SUBJECT: Draft CSSSSB 19 (Judiciary), relating to seizure and forfeiture

TO: Senator Jan Faiks, Chair
Senate Judiciary Committee
ATTN: Chris Christensen

FROM: Jack Chenoweth
Legislative Counsel

I received this 13-page draft in mid-afternoon of Monday, with instructions to have a clean draft prepared for the Judiciary Committee hearing this afternoon. I also learned that, independently of our efforts, Melissa Fouse of the bill sponsor's office was preparing a sectional analysis for the committee substitute, and the analysis would be keyed to the draft as presented. Melissa indicated that the office should make no changes in the draft submitted. This office thus treated this as no more than a typing assignment and did not make changes in the material presented.

I incorporated Dean Guaneli's amendments, received at 9:45 this morning.

Had we the opportunity, the office would have questioned or suggested the following:

Page 1, lines 16 and 17: ". . . or an attempt or solicitation to commit one of these acts, . . .": Something is missing. Should it not read: ". . . is made to commit one of these acts"? Should it incorporate a cross-reference to "under AS 11.31"? Is this language even necessary in light of AS 04.16.220(f) [page 3, lines 6 and 7]?

Page 1, line 25 - page 2, line 2: What does this say? Specifically, in lines 28 and 29, what does "relating to" refer back to? A court would struggle to make sense of this.

Page 2, line 13: Is the "plants or other living organisms" clause necessary in the context of alcoholic beverages?

Page 4, lines 6 and 7: Isn't all we're really saying is that the order may be obtained under (a)(1)?

Page 4, lines 26, 27: For purpose of release of property from custody, who is "another appropriate person"? Who makes the decision as to appropriateness?

Page 5, lines 3 - 7: Who makes the report required by subsection (d), and in what time frame must it be provided?

Page 5, lines 12 and 13: An "appropriate temporary or other order. . ." Is something missing?

Page 6, lines 4 - 6: Why should the person claiming the interest have to prove that the sale or other disposition would be "in the best interests of the state"? Shouldn't it be enough that the state's interest in the value of the property were protected?

Page 6, lines 9, 10: ". . . interest earned on the proceeds . . ." How is interest earned? What authorizes its payment?

Page 8: AS 12.38.060, relating to administrative forfeiture: What procedures apply? Is the commissioner to establish procedures by regulation? Is the commissioner to be guided by procedures applicable to forfeitures handled by the court? Does AS 12.38.050, the immediately preceding section, apply?

Page 9: AS 12.38.080(b): If "an order of . . . forfeiture provides clear title to the state," why wouldn't "an order of forfeiture subject to relief under AS 12.38.090" provide clear title to the state subject to the interests of the person entitled to relief, who would take clear of any liens, encumbrances, etc. The way this is put together doesn't seem to fit together quite right.

Page 10, line 4: "A person who causes property to be subject to forfeiture . . ." I think I know what is intended, but should it not rather read: "A person whose conduct makes property subject to forfeiture . . ." or something comparable?

Senator Jan Faiks
Page 3
February 6, 1990

Page 13: AS 17.30.110(a)(1): "sold" and "offered for sale" do not appear in the litany (as they do in AS 04.16.-220(a)(1) earlier in the bill). Is their omission intentional? Or is "sold" and "offered for sale" subsumed in the "exchange" provision of paragraph (3)?

In addition to a number of editorial and stylistic changes, we would switch all of the "pursuant to" phrases to read "under"; change "must" to "shall" in many places; eliminate some of the "which"es in favor of "that", and change the "such"es to "the"; replace "any" by "a," "an," or "the," as applicable; and otherwise try to make the changes that would conform the bill to the Manual of Legislative Drafting.

JBC:lmb
L9/099

Enclosure

6-0144D
Chenoweth
2/6/90

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

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 19 (Judiciary)

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 proper-
7 ty 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) Pursuant
12 to the procedures set out in AS 12.38, alcoholic beverages are subject
13 to forfeiture to the state if

14 (1) manufactured, delivered, distributed, possessed, con-
15 cealed, stored, acquired, sold, exchanged, or offered for sale or
16 exchange, or transported, or an attempt or solicitation to commit one
17 of these acts, in violation of a criminal law under AS 04;

18 (2) unlawfully possessed in an area where the results of a
19 local election under AS 04.11.498 have prohibited possession of alco-
20 holic beverages; or

21 (3) found on licensed premises without excise stamps re-
22 quired by federal law.

23 (b) The property listed in (c) of this section is subject to
24 forfeiture, pursuant to the procedures set out in AS 12.38, if

25 (1) except for liquor licenses forfeited under AS 04.16.-
26 180, the property is used, or intended to be used, to commit or facil-
27 itate an offense under AS 04.11.010, AS 04.16.175, AS 04.21.060,
28 relating to alcoholic beverages on licensed premises without excise
29 stamps required by federal law, or relating to conduct made criminal

1 because of the results of a local election under AS 04.11.490 - 04.-
2 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 an offense under AS 04.11.010, or is traceable to or derived from such
6 an exchange.

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

9 (1) firearms, explosives, or weapons of any type;

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

12 (3) raw materials, chemicals, pharmaceuticals, or anything,
13 including plants or other living organisms, from which alcoholic
14 beverages might be derived;

15 (4) books, records, tapes, formulas, research papers, and
16 equipment of any type, including data processing equipment and elec-
17 tronic equipment used in surveillance or countersurveillance efforts;

18 (5) aircraft, vehicles, vessels, and conveyances of any
19 type; and

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

23 (d) Notwithstanding any other provisions of AS 12.38, alcoholic
24 beverages seized pursuant to AS 12.38.020 are forfeit and subject to
25 immediate destruction by a peace officer if

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

29 (2) in the process of being consumed or the container of

1 the alcoholic beverage has been opened or the seal on the container
2 has been broken.

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

7 (f) As used in this section, "offense" includes an attempt or
8 solicitation to commit an offense.

9 * Sec. 2. AS 12 is amended by adding a new chapter to read:

10 CHAPTER 38. FORFEITURE OF PROPERTY.

11 Sec. 12.38.010. APPLICABILITY. The provisions of this chapter
12 apply to property subject to forfeiture under

13 (1) AS 04.16.220; and

14 (2) AS 17.30.110.

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

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

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

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

25 (2) without a court order if

26 (A) constitutionally permissible or otherwise authorized
27 by law;

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

1 (C) there is probable cause to believe that the prop-
2 erty is subject to forfeiture and is easily movable; except for
3 alcoholic beverages, controlled substances, or imitation con-
4 trolled substances, property seized solely under this subpara-
5 graph may not be held for more than 48 hours without a court
6 order, which may be obtained as described in (a)(1) of this
7 section.

8 (b) Property which cannot, with reasonable effort, be taken into
9 physical custody may be constructively seized by posting a written
10 notice of the seizure in a conspicuous place on the property. This
11 paragraph does not prohibit other reasonable methods of constructive
12 seizure.

13 Sec. 12.38.030. NOTICE OF SEIZURE; CUSTODY OF SEIZED PROPERTY;
14 INVENTORY AND APPRAISAL. (a) Within 30 days after a seizure under
15 AS 12.38.020, the law enforcement agency responsible for custody of
16 the property shall, by certified mail, give notice of the seizure to
17 persons known to have a financial interest in an item with an estimat-
18 ed value more than \$1,000, or whose interest in such property is
19 ascertainable from official tax rolls, registration numbers, licenses,
20 or other state, federal, or municipal identification numbers affixed
21 to the property.

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

28 (c) Within 10 days after a seizure under AS 12.38.020, the law
29 enforcement agency responsible for custody of the property shall

1 estimate the value and make an inventory of the property. The inven-
2 tory and estimate must be sent to the attorney general.

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

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

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

16 (b) Action by the court under (a) of this section may be taken
17 upon ex parte application of the state if there is reason to believe
18 that notice would jeopardize the availability or value of the property
19 for forfeiture.

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

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

29 (2) the property is not likely to be used as evidence in a

1 judicial or administrative proceeding;

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

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

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

9 (d) Proceeds from any sale of property, plus interest earned on
10 the proceeds to the date of termination of the proceedings, become the
11 subject of the forfeiture action in the same manner as the property
12 itself.

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

15 (1) may be initiated by the state filing a motion to for-
16 feit in a criminal or civil proceeding relating to the conduct that
17 makes the property subject to forfeiture;

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

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

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

26 (1) persons required to be notified under AS 12.38.030 must
27 be served with a copy of the motion, complaint, or other notice in any
28 manner authorized for service of process under the rules of civil
29 procedure; and

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

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

8 (B) the approximate value of the property;

9 (C) the date and place of seizure;

10 (D) the reason why the property is subject to forfei-
11 ture;

12 (E) provide a citation to this chapter, and a citation
13 to the court docket number relating to any judicial forfeiture
14 proceeding; and

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

17 (c) The notice requirements of (b) of this section do not apply
18 to property that is subject to automatic forfeiture under AS 04.16.-
19 220(d) or AS 17.30.110(c).

20 (d) In a forfeiture proceeding other than a summary administra-
21 tive proceeding under AS 12.38.060, the state must prove by a prepon-
22 derance of the evidence that the property is subject to forfeiture.
23 It is prima facie evidence, sufficient to support an order of forfei-
24 ture, that a defendant has been convicted of conduct making the prop-
25 erty subject to forfeiture, or that a grand jury has returned an
26 indictment finding that the evidence, if unexplained or uncontradict-
27 ed, would warrant a court to conclude that the property specifically
28 identified in the indictment is subject to forfeiture.

29 (e) Questions of fact or law in a forfeiture proceeding must be

1 determined by the court, sitting without a jury. A person claiming an
2 interest in the property under AS 12.38.070 and 12.38.090 may testify,
3 present evidence and witnesses, and cross-examine witnesses presented
4 by other parties. In addition to other testimony and evidence pre-
5 sented, the court shall consider the relevant portions of the record
6 of any related criminal action.

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

12 (g) It is not a defense to a forfeiture proceeding that a crimi-
13 nal offense has not been prosecuted, or has resulted in a conviction
14 of a different offense or an acquittal.

15 Sec. 12.38.060. SUMMARY ADMINISTRATIVE FORFEITURE PROCEDURES.

16 (a) If the value of the property seized under AS 12.38.020 does not
17 exceed \$100,000 and is not real property, the commissioner of public
18 safety may order forfeiture of the property administratively. The
19 administrative process is governed by this chapter, and not by the
20 Administrative Procedure Act (AS 44.62).

21 (b) The commissioner of public safety shall terminate the admin-
22 istrative forfeiture proceeding, and refer the matter to the attorney
23 general for initiation of a judicial forfeiture proceeding, if a
24 person files a timely claim under AS 12.38.070 and at the same time
25 deposits with the commissioner, in cash or by way of a bond approved
26 by the commissioner, 25 percent of the appraised value of the prop-
27 erty, but not less than \$1,000. The deposit is conditioned to secure
28 the payment of all reasonable costs and expenses of the judicial
29 forfeiture proceeding, including attorney fees, if the state is the

1 prevailing party.

2 Sec. 12.38.070. PROCEDURE FOR CLAIMANTS. (a) A person claiming
3 an interest in property that is the subject of a forfeiture proceed-
4 ing, including persons who claim an exemption under AS 12.38.-
5 090(a)(2), shall file a claim

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

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

11 (b) The claim must be

12 (1) filed with the court in judicial forfeiture proceed-
13 ings, or with the commissioner of public safety in administrative
14 forfeiture proceedings under AS 12.38.060;

15 (2) sworn under oath; and

16 (3) set out with specificity the reasons why the property
17 is not subject to forfeiture or why the person is entitled to relief
18 under AS 12.38.090, the nature of the person's right, title, or inter-
19 est in the property, the time and circumstances of the person's acqui-
20 sition, the consideration paid, and any additional facts supporting
21 the claim.

22 (c) If a claim is not timely filed, the property shall be for-
23 feited to the state without further proceedings.

24 Sec. 12.38.080. ORDER OF FORFEITURE; LIEN IN FAVOR OF THE STATE.

25 (a) If the state proves that property is subject to forfeiture, the
26 property may be ordered forfeited to the state, subject to proof that
27 a person is entitled to relief under AS 12.38.090.

28 (b) An order of judicial or administrative forfeiture provides
29 clear title to the state. An order of forfeiture subject to relief

1 under AS 12.38.090 clears, in favor of the person entitled to the
2 property, all liens, encumbrances, or other clouds on the title re-
3 sulting from the forfeiture proceeding.

4 (c) A person who causes property to be subject to forfeiture
5 shall pay the reasonable cost of maintenance, storage, disposal, or
6 other expenses of the forfeiture proceeding, including attorney fees,
7 either as part of a sentence, a condition of probation or suspended
8 imposition of sentence, or as a mandatory assessment of costs in a
9 forfeiture proceeding.

10 (d) A judicial order of forfeiture shall forfeit to the state
11 any other assets of the person who caused the property to be subject
12 to forfeiture, up to the value of any property subject to forfeiture
13 which has been

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

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

19 (3) substantially diminished in value by any act or omis-
20 sion of the person who caused the property to be subject to forfei-
21 ture; or

22 (4) ordered returned to an innocent party under AS 12.38.-
23 090(a)(1).

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

27 (f) A perfected priority lien over property that has been order-
28 ed forfeited is created in favor of the state up to an amount that is
29 the sum of the expenses of investigation, prosecution, and forfeiture

1 arising out of the conduct making the property subject to forfeiture.
2 In calculating the amount of the lien, expenses of all state, federal,
3 or local agencies are to be included. The lien has priority over all
4 unsecured and all unperfected secured debts associated with the prop-
5 erty.

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

9 (1) that the person

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

13 (B) did not knowingly participate in or facilitate the
14 conduct that resulted in the property being subject to forfei-
15 ture; and

16 (C) at no time knew, or had reasonable cause to be-
17 lieve, that the property was or might be subject to forfeiture;
18 or

19 (2) that the person provides more than half the support of
20 a minor dependent living in the person's household, in which case the
21 person may claim exemptions from the forfeiture to the extent permit-
22 ted under AS 09.38.010 - 09.38.090 of the Alaska Exemptions Act;
23 however, an exemption may not be permitted for a liquor license gran-
24 ted under AS 04 or a limited entry permit granted under AS 16.43.

25 (b) If the person claiming an interest in the property is found
26 to be entitled to less than the total value of the property, the
27 person may choose to receive either the proportional value of the
28 partial interest that is realized upon disposition of the property or,
29 upon payment of the difference in value, the entire property. In

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

4 Sec. 12.38.100. STATE DISPOSAL OF FORFEITED PROPERTY. (a) For-
5 feited property, other than property summarily forfeited under AS 04.-
6 16.220(c) or AS 17.30.110(c), must be transferred to the commissioner
7 of administration for disposition in accordance with applicable law.
8 The commissioner of administration may

9 (1) destroy property harmful to the public;

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

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

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

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

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

29 (7) otherwise dispose of the property in accordance with

1 the law.

2 (b) The commissioner of administration shall separately account
3 for the proceeds from the sale of forfeited property under (a) of this
4 section which the commissioner deposits in the general fund. The
5 annual estimated balance in the account may be used by the legislature
6 to make appropriations to the Department of Public Safety for use in
7 the administration of justice.

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

9 Sec. 17.30.110. PROPERTY SUBJECT TO FORFEITURE. (a) Pursuant
10 to the procedures set out in AS 12.38, the property listed in (b) of
11 this section is subject to forfeiture to the state if

12 (1) manufactured, delivered, dispensed, distributed, pos-
13 sessed, concealed, stored, acquired, or transported in violation of
14 AS 11.71 or AS 11.73;

15 (2) used, or intended to be used, to accomplish or facili-
16 tate the manufacture, delivery, dispensing, distribution, possession,
17 concealment, storage, acquiring, or transportation of a controlled
18 substance or imitation controlled substance in violation of AS 11.71
19 or AS 11.73; or

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

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

26 (1) firearms, explosives, or weapons of any type;

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

29 (3) raw materials, chemicals, pharmaceuticals, or anything,

1 including plants or other living organisms, from which controlled
2 substances might be derived;

3 (4) books, records, tapes, formulas, research papers, and
4 equipment of any type, including data processing and electronic equip-
5 ment used in surveillance or counter-surveillance efforts;

6 (5) aircraft, vehicles, vessels, and conveyances of any
7 type, if the offense making the property subject to forfeiture is a
8 felony offense; and

9 (6) real property, and any improvements and appurtenances,
10 if the offense making the property subject to forfeiture is a felony
11 offense.

12 (c) Notwithstanding the provisions of AS 12.38, a controlled
13 substance or imitation controlled substance, or plants grown in the
14 wild from which controlled substances or imitation controlled sub-
15 stances are derived, seized pursuant to AS 12.38.020, is automatically
16 forfeited to the state. The law enforcement agency with custody of
17 such property shall dispose of it in accordance with procedures pre-
18 scribed by the commissioner of public safety.

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

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

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

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

29 (2) the aircraft becomes a corporate Civil Air Patrol

1 aircraft;

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

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

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

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

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

14 * Sec. 5. AS 11.73.060; AS 17.30.112, 17.30.114, 17.30.116, 17.30.118,
15 17.30.120, 17.30.122, 17.30.124, and 17.30.126 are repealed.
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Original sponsor(s): SEN. STURGULEWSKI, Kelly, Kerttula, Pearce, Rodey,
Binkley, Uehling

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 19 (Judiciary)
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 proper-
7 ty 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) ~~Pursuant~~
12 ^{Under} the procedures set out in AS 12.38, alcoholic beverages are subject
13 to forfeiture to the state if

14 (1) manufactured, delivered, distributed, possessed, con-
15 cealed, stored, acquired, sold, exchanged, or offered for sale or
16 exchange, or transported, or ~~an attempt or solicitation to commit~~ one
17 ^{is attempted or solicited,} of these acts, in violation of a criminal law under AS 04;

18 (2) unlawfully possessed in an area where the results of a
19 local election under AS 04.11.498 have prohibited possession of alco-
20 holic beverages; or

21 (3) found on licensed premises without excise stamps re-
22 quired by federal law.

23 (b) The property listed in (c) of this section is subject to
24 forfeiture, ^{under} ~~pursuant~~ to the procedures set out in AS 12.38, if

25 (1) except for liquor licenses forfeited under AS 04.16.-
26 180, the property is used, or intended to be used, to commit or facil-
27 itate an offense under AS 04.11.010, AS 04.16.175, AS 04.21.060,
28 ^{an offense} relating to alcoholic beverages on licensed premises without excise
29 stamps required by federal law, or ^{an offense} relating to conduct made criminal

1 because of the results of a local election under AS 04.11.490 - 04.-
2 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 an offense under AS 04.11.010, or is traceable to or derived from such
6 an exchange.

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

9 (1) firearms, explosives, or weapons of any type;

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

12 (3) raw materials, chemicals, pharmaceuticals, or anything,
13 including plants or other living organisms, from which alcoholic
14 beverages might be derived;

15 (4) books, records, tapes, formulas, research papers, and
16 equipment of any type, including data processing equipment and elec-
17 tronic equipment used in surveillance or countersurveillance efforts;

18 (5) aircraft, vehicles, vessels, and conveyances of any
19 type; and

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

23 (d) Notwithstanding any other provisions of AS 12.38, alcoholic
24 beverages seized ~~pursuant~~ ^{under} to AS 12.38.020 are forfeit and subject to
25 immediate destruction by a peace officer if

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

29 (2) in the process of being consumed or the container of

1 the alcoholic beverage has been opened or the seal on the container
2 has been broken.

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

7 (f) As used in this section, "offense" includes an attempt or
8 solicitation to commit an offense.

9 * Sec. 2. AS 12 is amended by adding a new chapter to read:

10 CHAPTER 38. FORFEITURE OF PROPERTY.

11 Sec. 12.38.010. APPLICABILITY. The provisions of this chapter
12 apply to property subject to forfeiture under

13 (1) AS 04.16.220; and

14 (2) AS 17.30.110.

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

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

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

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

25 (2) without a court order if

26 (A) constitutionally permissible or otherwise authorized by law;
27

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

1 (C) there is probable cause to believe that the prop-
2 erty is subject to forfeiture and is easily movable; except for
3 alcoholic beverages, controlled substances, or imitation con-
4 trolled substances, property seized solely under this subpara-
5 graph may not be held for more than 48 hours without a court
6 order ~~which may be obtained as described in~~ ^{under} (a)(1) of this
7 section.

8 (b) Property which cannot, with reasonable effort, be taken into
9 physical custody may be constructively seized by posting a written
10 notice of the seizure in a conspicuous place on the property. This
11 paragraph does not prohibit other reasonable methods of constructive
12 seizure.

13 Sec. 12.38.030. NOTICE OF SEIZURE; CUSTODY OF SEIZED PROPERTY;
14 INVENTORY AND APPRAISAL. (a) Within 30 days after a seizure under
15 AS 12.38.020, the law enforcement agency responsible for custody of
16 the property shall, by certified mail, give notice of the seizure to
17 persons known to have a financial interest in an item with an estimat-
18 ed value more than \$1,000, or whose interest in such property is
19 ascertainable from official tax rolls, registration numbers, licenses,
20 or other state, federal, or municipal identification numbers affixed
21 to the property.

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

28 (c) Within 10 days after a seizure under AS 12.38.020, the law
29 enforcement agency responsible for custody of the property shall

1 estimate the value, ~~and~~ make an inventory of the property, ^{and send} ~~The inven-~~ ¹ ~~tory and estimate must be sent~~ to the attorney general.

2
3 (d) If the attorney general determines that a forfeiture pro-
4 ceeding cannot be sustained or as a matter of discretion will not be
5 instituted, a written report of that decision must be sent to the
6 agency responsible for custody of the property and the property must
7 be returned to the person from whom it was obtained.

8 (e) This section does not apply to property that is subject to
9 automatic forfeiture under AS 04.16.220(d) or AS 17.30.110(c), or to
10 property seized ^{under} ~~pursuant~~ to AS 12.38.020(a)(2)(B).

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

16 (b) Action by the court under (a) of this section may be taken
17 upon ex parte application of the state if there is reason to believe
18 that notice would jeopardize the availability or value of the property
19 for forfeiture.

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

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

29 (2) the property is not likely to be used as evidence in a

1 judicial or administrative proceeding;

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

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

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

9 (d) Proceeds from any sale of property, plus interest earned on
10 the proceeds to the date of termination of the proceedings, become the
11 subject of the forfeiture action in the same manner as the property
12 itself.

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

15 (1) may be initiated by the state filing a motion to for-
16 feit in a criminal or civil proceeding relating to the conduct that
17 makes the property subject to forfeiture;

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

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

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

26 (1) persons required to be notified under AS 12.38.030 must
27 be served with a copy of the motion, complaint, or other notice in any
28 manner authorized for service of process under the rules of civil
29 procedure; and

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

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

8 (B) the approximate value of the property;

9 (C) the date and place of seizure;

10 (D) the reason why the property is subject to forfei-
11 ture;

12 (E) provide a citation to this chapter, and a citation
13 to the court docket number relating to any judicial forfeiture
14 proceeding; and

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

17 (c) The notice requirements of (b) of this section do not apply
18 to property that is subject to automatic forfeiture under AS 04.16.-
19 220(d) or AS 17.30.110(c).

20 (d) In a forfeiture proceeding other than a summary administra-
21 tive proceeding under AS 12.38.060, the state must prove by a prepon-
22 derance of the evidence that the property is subject to forfeiture.
23 It is prima facie evidence, sufficient to support an order of forfei-
24 ture, that a defendant has been convicted of conduct making the prop-
25 erty subject to forfeiture, or that a grand jury has returned an
26 indictment finding that the evidence, if unexplained or uncontradict-
27 ed, would warrant a court to conclude that the property specifically
28 identified in the indictment is subject to forfeiture.

29 (e) Questions of fact or law in a forfeiture proceeding ^{shall} ~~must~~ be

1 determined by the court, sitting without a jury. A person claiming an
2 interest in the property under AS 12.38.070 and 12.38.090 may testify,
3 present evidence and witnesses, and cross-examine witnesses presented
4 by other parties. In addition to other testimony and evidence pre-
5 sented, the court shall consider the relevant portions of the record
6 of any related criminal action.

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

12 (g) It is not a defense to a forfeiture proceeding that a crimi-
13 nal offense has not been prosecuted, or has resulted in a conviction
14 of a different offense or an acquittal.

15 Sec. 12.38.060. SUMMARY ADMINISTRATIVE FORFEITURE PROCEDURES.

16 (a) If the value of the property seized under AS 12.38.020 does not
17 exceed \$100,000 and is not real property, the commissioner of public
18 safety may order forfeiture of the property administratively. The
19 administrative process is governed by this chapter, and not by the
20 Administrative Procedure Act (AS 44.62).

21 (b) The commissioner of public safety shall terminate the admin-
22 istrative forfeiture proceeding, and refer the matter to the attorney
23 general for initiation of a judicial forfeiture proceeding, if a
24 person files a timely claim under AS 12.38.070 and at the same time
25 deposits with the commissioner, in cash or by way of a bond approved
26 by the commissioner, 25 percent of the appraised value of the prop-
27 erty, but not less than \$1,000. The deposit is conditioned to secure
28 the payment of all reasonable costs and expenses of the judicial
29 forfeiture proceeding, including attorney fees, if the state is the

1 prevailing party.

2 Sec. 12.38.070. PROCEDURE FOR CLAIMANTS. (a) A person claiming
3 an interest in property that is the subject of a forfeiture proceed-
4 ing, including persons who claim an exemption under AS 12.38.-
5 090(a)(2), shall file a claim

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

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

11 (b) The claim ^{shall} ~~must~~ be

12 (1) filed with the court in judicial forfeiture proceed-
13 ings, or with the commissioner of public safety in administrative
14 forfeiture proceedings under AS 12.38.060;

15 (2) sworn under oath; and

16 (3) set out with specificity the reasons why the property
17 is not subject to forfeiture or why the person is entitled to relief
18 under AS 12.38.090, the nature of the person's right, title, or inter-
19 est in the property, the time and circumstances of the person's acqui-
20 sition, the consideration paid, and any additional facts supporting
21 the claim.

22 (c) If a claim is not timely filed, the property shall be for-
23 feited to the state without further proceedings.

24 Sec. 12.38.080. ORDER OF FORFEITURE; LIEN IN FAVOR OF THE STATE.

25 (a) If the state proves that property is subject to forfeiture, the
26 property may be ordered forfeited to the state, ~~subject to proof that~~
27 ~~a person is entitled to relief under AS 12.38.090.~~ ^{except as provided in} ^{or an order granting}
^{relief under AS 12.38.090.}

28 (b) An order of judicial or administrative forfeiture,[^] provides
29 clear title to the ~~state. An order of forfeiture subject to relief~~

1 ~~under AS 12.38.090 clears, in favor of the person~~ ^{party} entitled to the
2 ~~property,~~ ^{free of} all liens, encumbrances, or other clouds on the title re-
3 sulting from the forfeiture proceeding.

4 (c) A person ~~who~~ ^{whose conduct} causes property to be subject to forfeiture
5 shall pay the reasonable cost of maintenance, storage, disposal, or
6 other expenses of the forfeiture proceeding, including attorney fees,
7 either as part of a sentence, a condition of probation or suspended
8 imposition of sentence, or as a mandatory assessment of costs in a
9 forfeiture proceeding.

10 (d) A judicial order of forfeiture shall forfeit to the state
11 any other assets of the person who caused the property to be subject
12 to forfeiture, up to the value of any property subject to forfeiture
13 ~~which~~ ^{that} has been

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

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

19 (3) substantially diminished in value by any act or omis-
20 sion of the person who caused the property to be subject to forfei-
21 ture; or

22 (4) ordered returned to an innocent party under AS 12.38.-
23 090(a)(1).

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

27 (f) A perfected priority lien over property that has been order-
28 ed forfeited is created in favor of the state up to an amount that is
29 the sum of the expenses of investigation, prosecution, and forfeiture

1 arising out of the conduct making the property subject to forfeiture.
2 In calculating the amount of the lien, expenses of all state, federal,
3 or local agencies are to be included. The lien has priority over all
4 unsecured and all unperfected secured debts associated with the prop-
5 erty.

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

9 (1) that the person

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

13 (B) did not knowingly participate in or facilitate the
14 conduct that resulted in the property being subject to forfei-
15 ture; and

16 (C) at no time knew, or had reasonable cause to be-
17 lieve, that the property was or might be subject to forfeiture;
18 or

19 (2) that the person provides more than half the support of
20 a minor dependent living in the person's household, in which case the
21 person may claim exemptions from the forfeiture to the extent permit-
22 ted under AS 09.38.010 - 09.38.090 of the Alaska Exemptions Act;
23 however, an exemption may not be permitted for a liquor license gran-
24 ted under AS 04 or a limited entry permit granted under AS 16.43.

25 (b) If the person claiming an interest in the property is found
26 to be entitled to less than the total value of the property, the
27 person may choose to receive either the proportional value of the
28 partial interest that is realized upon disposition of the property or,
29 upon payment of the difference in value, the entire property. In

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

4 Sec. 12.38.100. STATE DISPOSAL OF FORFEITED PROPERTY. (a) For-
5 feited property, other than property summarily forfeited under AS 04.-
6 16.220(c) or AS 17.30.110(c), must be transferred to the commissioner
7 of administration for disposition in accordance with applicable law.
8 The commissioner of administration may

9 (1) destroy property harmful to the public;

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

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

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

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

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

29 (7) otherwise dispose of the property in accordance with

1 the law.

2 (b) The commissioner of administration shall separately account
3 for the proceeds from the sale of forfeited property under (a) of this
4 section which the commissioner deposits in the general fund. The
5 annual estimated balance in the account may be used by the legislature
6 to make appropriations to the Department of Public Safety for use in
7 the administration of justice.

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

9 Sec. 17.30.110. PROPERTY SUBJECT TO FORFEITURE. (a) ~~Pursuant~~
10 *Under* ~~to~~ the procedures set out in AS 12.38, the property listed in (b) of
11 this section is subject to forfeiture to the state if

12 (1) manufactured, delivered, dispensed, distributed, pos-
13 sessed, concealed, stored, acquired, or transported in violation of
14 AS 11.71 or AS 11.73;

15 (2) used, or intended to be used, to accomplish or facili-
16 tate the manufacture, delivery, dispensing, distribution, possession,
17 concealment, storage, acquiring, or transportation of a controlled
18 substance or imitation controlled substance in violation of AS 11.71
19 or AS 11.73; or

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

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

26 (1) firearms, explosives, or weapons of any type;

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

29 (3) raw materials, chemicals, pharmaceuticals, or anything,

1 including plants or other living organisms, from which controlled
2 substances might be derived;

3 (4) books, records, tapes, formulas, research papers, and
4 equipment of any type, including data processing and electronic equip-
5 ment used in surveillance or counter-surveillance efforts;

6 (5) aircraft, vehicles, vessels, and conveyances of any
7 type, if the offense making the property subject to forfeiture is a
8 felony offense; and

9 (6) real property, and any improvements and appurtenances,
10 if the offense making the property subject to forfeiture is a felony
11 offense.

12 (c) Notwithstanding the provisions of AS 12.38, a controlled
13 substance or imitation controlled substance, or plants grown in the
14 wild from which controlled substances or imitation controlled sub-
15 stances are derived, seized pursuant to AS 12.38.020, is automatically
16 forfeited to the state. The law enforcement agency with custody of
17 such property shall dispose of it in accordance with procedures pre-
18 scribed by the commissioner of public safety.

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

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

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

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

29 (2) the aircraft becomes a corporate Civil Air Patrol

1 aircraft;

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

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

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

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

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

14 * Sec. 5. AS 11.73.060; AS 17.30.112, 17.30.114, 17.30.116, 17.30.118,
15 17.30.120, 17.30.122, 17.30.124, and 17.30.126 are repealed.
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