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192

SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE

BILL NUMBER: 192
ABBREVIATED TITLE: For forfeiture of Property: Alcohol & Drugs -

SPONSER: Artiss ORIGINAL RECEIVED: 3-21-91
WRITTEN REQUEST TO SCHEDULE REC'D: 4/1/91 FROM: Artiss
SPONSER'S STATEMENT REC'D: _____ FROM: _____
SECTIONAL ANALYSIS RQST'D: _____ FROM: _____
SECTIONAL ANALYSIS RECEIVED: 3-26-91

FISCAL NOTE (ORIGINAL)
RQST'D OF: _____ REC'D FROM: Pub Safety DATE: With Bill
RQST'D OF: _____ REC'D FROM: _____ DATE: _____
RQST'D OF: _____ REC'D FROM: _____ DATE: _____

FISCAL NOTE (C.S.)
RQST'D OF: _____ REC'D FROM: _____ DATE: _____
RQST'D OF: _____ REC'D FROM: _____ DATE: _____
RQST'D OF: _____ REC'D FROM: _____ DATE: _____

FIVE DAY NOTICE GIVEN: _____ NOTICE OF HEARINGS GIVEN: _____
COMMITTEES OF REFERRAL: FIRST: SA SECOND: Jud THIRD: _____

COMMITTEE ACTION

DATE: 1/30
Passed from Jud 3 do pass
1 do not pass

PERSONS TO BE NOTIFIED OF HEARING

1. SPONSOR Artiss
2. AGENCY Public Safety
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

Revision Date: _____ Department Affected: Public Safety
 Title: An Act relating to forfeitures BRU: Alaska State Troopers
for violations of state drug laws Component: Narcotics Task Force
 Sponsor: Senator Sturgulewski
 Requestor: Senate Judiciary COMPONENT SERIAL NO.

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

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

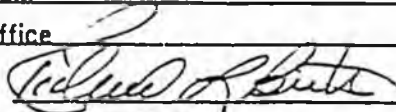
POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

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

Prepared By: Gayle A. Horetski Phone: 465-4322
 Division: Commissioner's Office Date: 1/29/92
 Approved by Commissioner:  Richard L. Burton
 Agency: Department of Public Safety Date: 1/30/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 192

Revision Date: _____ Department Affected: Department of Law
 Title: "...seizure and forfeiture of property...alcoholic beverages...controlled substances..." BRU: Prosecution
 Sponsor: Senator Sturgulowski Component: All
 Requestor: Senate Judiciary COMPONENT SERIAL NO.

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 85 through 91

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL						

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: January 30, 1992
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: January 30, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 192

This bill sets out a comprehensive statutory scheme for the seizure and forfeiture of property involved in the illegal manufacture, distribution and sale of alcoholic beverages, controlled substances, and imitation controlled substances.

Property subject to seizure and forfeiture includes the illicit products, as well as most other property related to illegal conduct such as weapons, money, securities, raw materials used in the manufacture of illicit products, and books, tapes and other written records, including data processing equipment and electronic surveillance equipment. Aircraft, vehicles and vessels, and real property interests would also be subject to forfeiture if the offense making the property subject to forfeiture is a felony offense.

Under the bill, forfeiture proceedings may be either judicial or administrative, except that an administrative proceeding could only be used if the value of the seized property is less than \$100,000. Administrative proceedings would be conducted by the Department of Public Safety. The bill provides procedures for persons claiming an interest in seized property to file claims.

The Department of Law would represent the state at all judicial proceedings, and in some administrative when an attorney is needed to represent the state. We are not able to predict how often this will occur. However, the bill also provides that proceeds from the sale of property may be used to pay the cost of proceedings, among several other public safety purposes. These also include: sharing the proceeds with political subdivisions of the state, when they are involved in the investigation of conduct resulting in forfeiture; transferring equipment to other agencies for administration of justice purposes, and; depositing net proceeds in a general fund account that may be used by the legislature to make appropriations to the Department of Public Safety for use in the administration of justice. To the extent that the Department of Law might incur additional expense for providing forfeiture legal services, the department will seek reimbursement from the Department of Public Safety.

Alaska State Legislature

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While in Juneau
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(907) 465-3818

SENATOR
ARLISS STURGULEWSKI

Senate

MEMORANDUM

13 Jan 1992

TO: Senator Rick Halford
Chairman, Senate Judiciary Committee

FROM: Senator Arliss Sturgulewski

RE: Senate Bill 192

I respectfully request your scheduling Senate Bill 192 for a hearing before the Senate Judiciary Committee. This legislation amends current seizure and forfeiture laws as they pertain to drugs and bootleg alcohol.

This bill has been passed by the last two Senates and then failed to leave the House Judiciary Committee in the House. It is my hope that we will be able to get this bill through the House during this legislature.

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

The major policy changes addressed by the bill include

1. Applying these seizure and forfeiture provisions to violations of alcohol laws.

2. Adding real property to the list of items subject to seizure in felony cases.

3. Adding to the ways in which persons may obtain relief from seizure and forfeiture provisions. This is accomplished by a new section exempting persons who provide for than half the support of a minor child in that persons' household. This relief is the same as that listed in the Alaska Exemptions Act (from bankruptcy).

This legislation is needed in order to bring our state's forfeiture and seizure laws more closely in line with the federal model forfeiture act and with constitutional standards set by the courts since the current law was enacted.

Because of the backlog in the federal courts, there is a possibility that states with seizure laws will have to start processing drug cases through their own courts.

As you know, this bill was introduced into the 15th Legislature and the 16th Legislature as well. The Senate has passed this bill both times

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

Attached is a sectional analysis. Please contact me or Melissa Fouse of my staff if you have any questions.

Alaska State Legislature



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Attached is a sectional analysis. Please contact me or Melissa Fouse of my staff if you have any questions.

SECTIONAL ANALYSIS
SENATE BILL 192
14 March 1991

SECTION 1:

Removes the provision allowing the state to sell seized liquor without a license. The bill calls for seized liquor to be destroyed.

SECTION 2:

Repeals and reenacts current law regarding seizure and forfeiture of property for violation of bootlegging statutes.

Sec 04.16.220 (a) outlines the conditions under which alcoholic beverages are subject to seizure and forfeiture.

(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.

(c) lists the property that may be forfeited.

Change from current law adds items in (1), (2), (3), (4), and (6).

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

(e) requires that seized alcoholic beverages be destroyed.

SECTION 3:

This is a new chapter in Title 12 (Code of Criminal Procedure). It sets out procedures to be followed in declaring seized property forfeit.

Sec. 12.38.010 - procedures apply to property seized under the controlled substance, imitation controlled substance, and bootlegging statutes.

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

(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.

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

(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.

(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.

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

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

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

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

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

(1) by the state's filing of 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.

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

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

(d) requires the state to prove in court by a preponderance of the evidence that the property is subject to forfeiture. 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.

(e) outlines court procedures in forfeiture cases.

(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.

(g) states 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. 12.38.070 (a) sets out conditions under which a claim may be filed.

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

(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 to be forfeited to the state.

(b) states that an order of judicial or administrative forfeiture provides to the state clear title to the property. States that an order on behalf of a 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.

(c) orders costs of maintenance, storage, disposal, and attorneys' fees to be paid by the person causing the property to be subject to forfeiture.

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

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

(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 having priority over the "creditor's" unrecorded lien. This subsection was drafted to correct this problem.

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

-the person has a valid right to the property

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

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

or

that the person provides more than half the support of a minor dependent living in the person's 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 liquor licenses.

(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 a court in the interests of justice.

Sec. 12.38.100 (a) direct property be transferred to the commissioner of administration for disposal. Sets out methods by which property may be disposed of.

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

SECTION 4:

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 real property is subject to forfeiture only in cases of a felony offense.

SECTION 5:

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

SECTION 6:

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

Sen. Boards

SENATE BILL NO. 192

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR STURGOLEWSKI

Introduced: 3/13/91

Referred: State Affairs and Judiciary

A BILL

FOR AN ACT ENTITLED

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

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

4 * Section 1. AS 04.11.020(a) is amended to read:

5 (a) A license or permit is not required to authorize sales made by a person under a
6 judgment and decree of foreclosure, or under the bankruptcy law of the United States [, OR
7 UNDER ORDER OF THE BOARD OR A COURT UNDER AS 04.16.220].

8 * Sec. 2. AS 04.16.220 is repealed and reenacted to read:

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

11 (1) manufactured, delivered, distributed, possessed, concealed, stored, acquired,
12 sold, exchanged, offered for sale or exchange, or transported, or one of these acts is attempted
13 or solicited, in violation of a criminal law under this title;

14 (2) unlawfully possessed in an area where the results of a local election under

SECTION 1:

Removes the provision allowing the state to sell seized liquor without a license. The bill calls for seized liquor to be destroyed.

SECTION 2:

Repeals and reenacts current law regarding seizure and forfeiture of property for violation of bootlegging statutes.

Sec 04.16.220 (a) outlines the conditions under which alcoholic beverages are subject to seizure and forfeiture.

(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.

(c) lists the property that may be forfeited.

Change from current law adds items in (1), (2), (3), (4), and (6).

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

1 AS 04.11.498 have prohibited possession of alcoholic beverages; or
2 (3) found on licensed premises without excise stamps required by federal law.
3 (c) The property listed in (c) of this section is subject to forfeiture, under the procedures
4 set out in AS 12.38, if
5 (1) except for liquor licenses forfeited under AS 04.16.180, the property is used,
6 or intended to be used, to commit or facilitate an offense under AS 04.11.010, AS 04.16.175,
7 AS 04.21.060, an offense relating to alcoholic beverages on licensed premises without excise
8 stamps required by federal law, or an offense relating to conduct made criminal because of the
9 results of a local election under AS 04.11.490 - 04.11.500; or
10 (2) the property is used, or intended to be used, in a direct or indirect exchange
11 for an alcoholic beverage in violation of AS 04.11.010, or is traceable to or derived from the
12 exchange.
13 (c) The following property is subject to forfeiture under (b) of this section:
14 (1) firearms, explosives, and weapons;
15 (2) money, securities, negotiable instruments, and anything of value, whether
16 tangible or intangible, secured or unsecured;
17 (3) raw materials, chemicals, pharmaceuticals, and anything, including plants or
18 other living organisms, from which alcoholic beverages might be derived;
19 (4) books, records, tapes, formulas, research papers, and equipment, including data
20 processing equipment and electronic equipment used in surveillance or countersurveillance
21 efforts;
22 (5) aircraft, vehicles, vessels, and conveyances; and
23 (6) a right, title, or interest in real property, and any improvements or
24 appurtenances, if the offense making the property subject to forfeiture is a felony offense.
25 (d) Notwithstanding any other provisions of AS 12.38, alcoholic beverages seized under
26 AS 12.38.020 are automatically forfeited to the state and subject to immediate destruction by a
27 peace officer if
28 (1) unlawfully possessed in an area where the results of a local election under
29 AS 04.11.498 have prohibited possession of alcoholic beverages; or
30 (2) in the process of being consumed or in a container that has been opened or
31 the seal of which has been broken.

(e) requires that seized alcoholic beverages be destroyed.

SECTION 3:

This is a new chapter in Title 12 (Code of Criminal Procedure). It sets out procedures to be followed in declaring seized property forfeit.

Sec. 12.38.010 - procedures apply to property seized under the controlled substance, imitation controlled substance, and bootlegging statutes.

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

(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.

1 (e) Except as provided in (d) of this section, alcoholic beverages forfeited to the state
2 shall be destroyed by the law enforcement agency with custody of the property under procedures
3 prescribed by the commissioner of public safety.
4 * Sec. 3. AS 12 is amended by adding a new chapter to read:
5 CHAPTER 38. FORFEITURE OF PROPERTY.
6 Sec. 12.38.010. APPLICABILITY. This chapter applies to property subject to forfeiture
7 under AS 04.16.220 and AS 17.30.110.
8 Sec. 12.38.020. SEIZURE OF PROPERTY SUBJECT TO FORFEITURE. (a) Property
9 subject to forfeiture may be seized by a peace officer
10 (1) under an order issued by a court in an ex parte proceeding upon a showing
11 (A) of probable cause that the property is subject to forfeiture; or
12 (B) that a grand jury has returned an indictment finding that the evidence,
13 if unexplained or uncontradicted, would warrant a court's conclusion that the property
14 specifically identified in the indictment is subject to forfeiture; or
15 (2) without a court order if
16 (A) constitutionally permissible or otherwise authorized by law;
17 (B) the property has been the subject of a judgment in favor of the state
18 in a forfeiture proceeding; or
19 (C) there is probable cause to believe that the property is subject to
20 forfeiture and is easily movable; except for alcoholic beverages, controlled substances, or
21 imitation controlled substances, property seized solely under this subparagraph may not
22 be held for more than 48 hours without a court order under (1) of this subsection.
23 (b) Property that cannot with reasonable effort be taken into physical custody may be
24 constructively seized by posting a written notice of the seizure in a conspicuous place on the
25 property. This subsection does not prohibit other reasonable methods of constructive seizure.
26 Sec. 12.38.030. NOTICE OF SEIZURE; CUSTODY OF SEIZED PROPERTY;
27 INVENTORY AND APPRAISAL. (a) Within 30 days after a seizure under AS 12.38.020, the
28 law enforcement agency responsible for custody of the property shall give notice by certified mail
29 of the seizure to persons known to have a financial interest in an item with an estimated value
30 more than \$1,000, or whose interest in the property is ascertainable from official tax rolls,
31 registration numbers, licenses, or other state, federal, or municipal identification numbers affixed

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

(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.

(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.

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

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

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

1 to the property.

2 (b) Subject to the order of the court, property seized under AS 12.38.020 remains in the

3 legal custody of the Department of Public Safety or a municipal law enforcement agency

4 authorized by the commissioner of public safety to retain custody. The agency responsible for

5 custody may, in its discretion, release the property to another appropriate person.

6 (c) Within 10 days after a seizure under AS 12.38.020, the law enforcement agency

7 responsible for custody of the property shall estimate the value, make an inventory of the

8 property, and send the inventory and estimate to the attorney general.

9 (d) If the attorney general determines that a forfeiture proceeding cannot be sustained or

10 as a matter of discretion will not be instituted, a written report of that decision shall be sent to

11 the agency responsible for custody of the property and the property must be returned to the

12 person from whom it was obtained

13 (e) This section does not apply to property that is subject to automatic forfeiture under

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

15 Sec. 12.38.040. PRESERVATION OR DISPOSAL OF PROPERTY BEFORE ORDER

16 OF FORFEITURE. (a) A court may issue an appropriate temporary or other order, require

17 execution of a satisfactory performance bond to the state, or take other action to preserve the

18 availability or value of property seized under AS 12.38.020.

19 (b) The state may, at any time before an order of forfeiture is issued, request the sale or

20 other disposition of property seized under AS 12.38.020. A person claiming an interest in the

21 property may also request sale or other disposition before an order of forfeiture is issued if the

22 person proves by a preponderance of the evidence that

23 (1) the person has filed a timely claim under AS 12.38.070 or, before the

24 initiation of a forfeiture proceeding, has sent a notice of claim to the commissioner of public

25 safety in conformance with the requirements of AS 12.38.070(b);

26 (2) the property is not likely to be used as evidence in a judicial or administrative

27 proceeding;

28 (3) the person has given adequate assurance that the property or its proceeds will

29 remain subject to the court's jurisdiction;

30 (4) the sale or other disposition is in the best interests of the state and will

31 provide for protection of the value of the property; and

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

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

(1) by the state's filing of 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.

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

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

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

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

8 (1) may be initiated by the state filing a motion to forfeit in a criminal or civil
9 proceeding relating to the conduct that makes the property subject to forfeiture;

10 (2) may be initiated by the state filing a complaint in a separate *in rem*
11 proceeding; or

12 (3) under AS 12.38.060 may be initiated by the commissioner of public safety
13 directing that publication under (b) of this section be made of the state's intent to seek forfeiture
14 of property administratively.

15 (b) Within 30 days after a forfeiture proceeding has been initiated as provided in (a) of
16 this section,

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

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

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

25 (B) the approximate value of the property;

26 (C) the date and place of seizure;

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

28 (E) a citation to this chapter, and a citation to the court docket number
29 relating to a judicial forfeiture proceeding; and

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

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

(d) requires the state to prove in court by a preponderance of the evidence that the property is subject to forfeiture. Establishes 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.

(e) outlines court procedures in forfeiture cases.

(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.

(g) states 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. 12.38.070 SUMMARY ADMINISTRATIVE FORFEITURE PROCEDURES: (a) sets out conditions under which a claim may be filed.

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

1 (c) The notice requirements of (b) of this section do not apply to property that is subject
2 to automatic forfeiture under AS 14.16.220(d) or AS 17.30.110(c).

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

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

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

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

22 Sec. 12.38.060. SUMMARY ADMINISTRATIVE FORFEITURE PROCEDURES. (a)
23 If the value of the property seized under AS 12.38.020 does not exceed \$100,000 and is not real
24 property, the commissioner of public safety may order administrative forfeiture of the property
25 under this chapter. The Administrative Procedure Act (AS 44.62) does not apply to an
26 administrative forfeiture.

27 (b) The commissioner of public safety shall terminate the administrative forfeiture
28 proceeding and refer the matter to the attorney general for initiation of a judicial forfeiture
29 proceeding if a person files a timely claim under AS 12.38.070 and deposits with the
30 commissioner, in cash or bond approved by the commissioner, 25 percent of the appraised value
31 of the property, but not less than \$1,000. The deposit is conditioned to secure the payment of

(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 to be forfeited to the state.

(b) states that an order of judicial or administrative forfeiture provides to the state clear title to the property. States that an order on behalf of a 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.

(c) orders costs of maintenance, storage, disposal, and attorneys' fees to be paid by the person causing the property to be subject to forfeiture.

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

1 all reasonable costs and expenses of the judicial forfeiture proceeding, including attorney fees,
2 if the state is the prevailing party.

3 Sec. 12.38.070. PROCEDURE FOR CLAIMANTS. (a) A person claiming an interest
4 in property that is the subject of a forfeiture proceeding, including persons who claim an
5 exemption under AS 12.38.090(a)(2), shall file a claim

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

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

10 (b) The claim must

11 (1) be filed with the court in judicial forfeiture proceedings, or with the
12 commissioner of public safety in administrative forfeiture proceedings under AS 12.38.060;

13 (2) be sworn under oath; and

14 (3) set out with specificity the reasons why the property is not subject to forfeiture
15 or why the person is entitled to relief under AS 12.38.090, the nature of the person's right, title,
16 or interest in the property, the time and circumstances of the person's acquisition, the
17 consideration paid, and additional facts supporting the claim.

18 (c) If a claim is not timely filed, the property shall be forfeited to the state without
19 further proceedings.

20 Sec. 12.38.080. ORDER OF FORFEITURE; LIEN IN FAVOR OF THE STATE. (a)
21 If the state proves that property is subject to forfeiture, the property may be ordered forfeited to
22 the state, except as provided in AS 12.38.090.

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

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

30 (d) A judicial order of forfeiture shall forfeit to the state any other assets of the person
31 who caused the property to be subject to forfeiture, up to the value of any property subject to

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

(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 having priority over the "creditor's" unrecorded lien. This subsection was drafted to correct this problem.

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

-the person has a valid right to the property

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

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

1 forfeiture, if the property subject to forfeiture has been
2 (1) commingled with other property and cannot be separated without difficulty;
3 (2) transferred to, sold to, or deposited with a third party, placed beyond the
4 jurisdiction of the court, or removed so it cannot be located;
5 (3) substantially diminished in value by an act or omission of the person who
6 caused the property to be subject to forfeiture; or
7 (4) ordered returned to an innocent party under AS 12.38.090(a)(1).
8 (e) An order of forfeiture issued under this section may be made regardless of the
9 location of the property that might be subject to forfeiture or that has been ordered forfeited.
10 (f) A perfected priority lien on property that has been ordered forfeited is created in favor
11 of the state up to an amount that is the sum of the expenses of investigation, prosecution, and
12 forfeiture arising out of the conduct making the property subject to forfeiture. In calculating the
13 amount of the lien, expenses of all state, federal, or local agencies are to be included. The lien
14 has priority over all unsecured and all unperfected secured debts associated with the property.
15 Sec. 12.38.090. RELIEF FROM FORFEITURE. (a) A person who has filed a timely
16 claim under AS 12.38.070 may obtain relief from the forfeiture upon proof by a preponderance
17 of the evidence
18 (1) that the person
19 (A) has a valid right, title, or interest in the property, acquired in good
20 faith, which takes priority over a lien in favor of the state under AS 12.38.080(f);
21 (B) did not knowingly participate in or facilitate the conduct that resulted
22 in the property being subject to forfeiture; and
23 (C) did not know or have reasonable cause to believe that a person might
24 engage in the conduct that resulted in the property being subject to forfeiture; or
25 (2) that the person provides more than half the support of a minor dependent
26 living in the person's household, in which case the person may claim exemptions from the
27 forfeiture to the extent permitted under AS 09.38.010 - 09.38.090; however, an exemption may
28 not be permitted for a liquor license granted under AS 04.
29 (b) If the person claiming an interest in the property is found to be entitled to less than
30 the total value of the property, the person may choose to receive either the proportional value of
31 the partial interest that is realized upon disposition of the property or, upon payment of the

OR

that the person provides more than half the support of a minor dependent living in the person's 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 liquor licenses.

(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 a court in the interests of justice.

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

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

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

4 Sec. 12.38.100. STATE DISPOSAL OF FORFEITED PROPERTY. (a) Forfeited
5 property, other than property summarily forfeited under AS 04.16.220(d) or AS 17.30.110(c),
6 shall be transferred to the commissioner of administration for disposition in accordance with
7 applicable law. The commissioner of administration may

8 (1) destroy property harmful to the public;
9 (2) sell the property and, subject to appropriations for that purpose, use the
10 proceeds to pay the expenses of the proceedings of forfeiture and sale, including expenses of
11 seizure, custody, and court costs;

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

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

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

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

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

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

27 * Sec. 4. AS 17.30.110 is repealed and reenacted to read:

28 Sec. 17.30.110. PROPERTY SUBJECT TO FORFEITURE. (a) Under the procedures
29 set out in AS 12.38, the property listed in (b) of this section is subject to forfeiture to the state
30 if

31 (1) manufactured, delivered, dispensed, distributed, possessed, concealed, stored,

SECTION 6:

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

-
- 1 (1) the transfer shall be made without cost to the Civil Air Patrol;
2 (2) the aircraft becomes a corporate Civil Air Patrol aircraft;
3 (3) the aircraft may only be used for Civil Air Patrol search and rescue, civil
4 defense, and training purposes;
5 (4) the aircraft may not be transferred to another wing of the Civil Air Patrol
6 unless
7 (A) the aircraft has been corporate aircraft of the Alaska Wing, Civil Air
8 Patrol for at least 36 months after the date of transfer to the Alaska Wing; or
9 (B) the aircraft is being exchanged for another Civil Air Patrol corporate
10 aircraft of equivalent or greater value;
11 (5) if the Civil Air Patrol determines that the aircraft should be disposed of as
12 surplus property, the disposition shall first be approved by the Department of Administration.
13 * Sec. 6. AS 11.73.060; AS 17.30.112, 17.30.114, 17.30.116, 17.30.118, 17.30.120, 17.30.122,
14 17.30.124, and 17.30.126 are repealed.

CURRENT LAW

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);

LICENSE REQUIRED →
← WAREHOUSING

Prohibiting sale

PROHIBITING SALE w/o LICENSE

Sec.04.16.220 Alcoholic Beverages-Forfeitures

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

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

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

LICENSE REQUIRED

(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. → SALE + IMPORTATION

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

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

Sec.04.16.220 Alcoholic Beverages-Forfeitures

(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.

Sec. 04.16.220 Alcoholic Beverages-Forfeitures

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

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

Sec. 17.30.114-Controlled Substances

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

- (1) the seizure is incident to a valid arrest or a search under a valid search warrant;
- (2) the property subject to seizure has been the subject of an earlier judgment in favor of the state in a criminal proceeding or civil proceeding in rem under this chapter or AS 11.71; or
- (3) there is probable cause that the property was used, is being used, or is intended for use, in violation of this chapter or AS 11.71 and the property is easily movable; property seized under this paragraph may not be held for more than 48 hours without a court order obtained to continue its detention.

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

- (1) place the property under seal;
- (2) remove the property to a place designated by the court; or
- (3) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

Sec. 04.16.220 Alcoholic Beverages-Forfeitures

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

Sec. 17.30.116-Controlled Substances

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

Sec. 17.30.114-Controlled Substances

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

Sec.17.30.112-Controlled Substances

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

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

Sec.17.30.116-Controlled Substances

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

Sec.17.30.116-Controlled Substances

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

Sec.04.16.220 Alcoholic Beverages-Forfeitures

(d) Property subject to forfeiture under (a) of this section may be forfeited (1) upon conviction of a person under AS 04.11.010, 04.11.496(b), or AS 04.21.060 or upon entry of judgment under AS 04.11.498 or an ordinance adopted under AS 04.11.498;

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

Sec.04.16.220 Alcoholic Beverages-Forfeitures

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

Sec.17.30.118-Controlled Substances

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

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

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

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

Sec. 17.30.120. 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)

CURRENT LAW

Sec. 17.30.110—Controlled Substances

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

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

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

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

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

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

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

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

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

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

Sec. 17.30.126—Controlled Substances

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

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

Sec. 17.30.122—Controlled Substances

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

(1) destroy property harmful to the public;

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

(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)