

SB

192

SENATE BILL NO. 192

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATOR STURGULEWSKI

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 AS 04.16.220 is repealed and reenacted to read: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

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 (b) 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 se.
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.

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

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

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.

1 (c) The notice requirements of (b) of this section do not apply to property that is subject
2 to automatic forfeiture under AS 04.16.220(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

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

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

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,

1 acquired, or transported in violation of AS 11.71 or AS 11.73;

2 (2) used, or intended to be used, to accomplish or facilitate the manufacture,
3 delivery, dispensing, distribution, possession, concealment, storage, acquiring, or transportation
4 of a controlled substance or imitation controlled substance in violation of AS 11.71 or AS 11.73;
5 or

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

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

10 (1) firearms, explosives, or weapons;

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

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

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

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

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

21 (c) Notwithstanding the provisions of AS 12.38, a controlled substance or imitation
22 controlled substance, and plants grown in the wild from which controlled substances or imitation
23 controlled substances are derived, seized under AS 12.38.020, are automatically forfeited to the
24 state. The law enforcement agency with custody of property described in this subsection shall
25 dispose of it under procedures prescribed by the commissioner of public safety.

26 (d) In this section, "violation of AS 11.71 or AS 11.73" includes an attempt or
27 solicitation under AS 11.31 to violate AS 11.71 or AS 11.73.

28 * Sec. 5. AS 18.60.148(a) is amended to read:

29 (a) A transfer to the Alaska Wing, Civil Air Patrol, of a forfeited aircraft under
30 AS 12.38, AS 16.05.195(f), [AS 17.30.122,] or another state law or regulation, is subject to the
31 following conditions:

- 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.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB-192

Revision Date: _____ Department Affected: PUBLIC SAFETY
 Title: Relating to seizure and forfeiture of property in cases involving alcohol or drugs BRU: _____
 Sponsor: _____ Component: _____
 Requestor: _____ COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	Ø					

CAPITAL	Ø					
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REVENUE	Ø					
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FUNDING: (Thousands of Dollars)

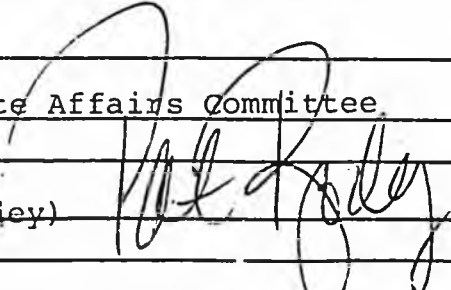
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	Ø					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: none

ANALYSIS: (Attach a separate page if necessary.) Based on testimony from the department and on zero fiscal notes from DPS on a nearly identical bill from last year, the fiscal impact of this measure is expected to be zero.

Prepared By: Senate State Affairs Committee Phone: x4522
 Division: Legislature Date: 3/20/91
 Approved by Chairman (Rodey)  Date: _____
 Agency: _____ Date: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Alaska State Legislature



SENATOR
ARLISS STURGULEWSKI

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Senate

MEMORANDUM

14 March 1991

TO: Senator Pat Rodey
Chairman, Senate State Affairs Committee

FROM: Senator Arliss Sturgulewski *AS*

RE: Senate Bill 192

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

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

The major policy changes addressed by the bill include

1. Applying these seizure and forfeiture provisions to violations of alcohol laws.
2. Adding real property to the list of items subject to seizure in felony cases.
3. Adding to the ways in which persons may obtain relief from

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).