

SENATE FILE NO. SF0014

Asset forfeiture-2.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to the Wyoming Controlled Substances Act;
 2 amending and expanding procedures and requirements for
 3 forfeiting and seizing property; providing definitions;
 4 conforming provisions; and providing for an effective date.

5

6 Be It Enacted by the Legislature of the State of Wyoming:

7

8 **Section 1.** W.S. 35-7-1049(a)(intro), (v)(intro), (c),
 9 by creating new subsections (d) through (f), by amending
 10 and renumbering (d) and (e) as (g) and (h), by renumbering
 11 (f) as (j), by amending and renumbering (g) and (h) as (k)
 12 and (m), by renumbering (j) as (n) and by amending and
 13 renumbering (k) through (n) as (o) through (q) is amended
 14 to read:

15

1 **35-7-1049. Forfeitures and seizures generally;**
2 **property subject to forfeiture.**

3
4 (a) The following are subject to forfeiture as
5 permitted pursuant to subsections (c) through (q) of this
6 section:

7
8 (v) All conveyances including aircraft, vehicles
9 or vessels, knowingly used or intended for use to transport
10 or in any manner to knowingly facilitate the transportation
11 for the sale or receipt of property described in paragraph
12 (a)(i) or (ii) of this section may be seized by the
13 commissioner and forfeited to the state pursuant to
14 ~~subsection (e) of~~ this section:

15
16 (c) ~~Prompt institution of proceedings. In the event~~
17 ~~of seizure pursuant to subsection (b),~~ Any person convicted
18 of a violation of this act punishable by imprisonment for
19 more than one (1) year shall be subject to forfeiture of
20 property listed under subsection (a) of this section.
21 ~~proceedings under subsection (d) of this section shall be~~
22 ~~instituted promptly~~ The procedure for forfeiture shall be
23 as provided in subsections (d) through (m) of this section.

1

2 (d) Except for summary forfeiture under paragraph
3 (h)(vi) and subsections (j) through (m) of this section,
4 the court shall order forfeiture as part of the defendant's
5 sentence. If the state seeks to forfeit property:

6

7 (i) The indictment or information shall contain
8 notice to the defendant that the state seeks forfeiture and
9 shall specifically identify the property sought to be
10 forfeited;

11

12 (ii) All property shall be returned to the
13 person from whom it was seized unless there is a finding or
14 verdict of guilt, an admission of guilt or a plea of nolo
15 contendere to a felony under this act;

16

17 (iii) After a verdict or finding of guilty, or
18 after a plea of guilty or nolo contendere is accepted, the
19 court shall conduct a forfeiture hearing to determine if
20 the property is subject to forfeiture under this section.
21 If the court finds under a preponderance of evidence
22 standard that property is subject to forfeiture, the court
23 shall enter a preliminary order directing the forfeiture;

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

(iv) The court may include in the preliminary order of forfeiture additional conditions reasonably necessary to preserve the property's value pending any appeal.

(e) If the court makes a preliminary order of forfeiture of property, legal interests of persons other than a party to the criminal action shall be determined, subject to the following:

(i) Following an entry of a preliminary order of forfeiture, the state shall publish notice of the order in a newspaper of general circulation in the state once a week for two (2) weeks and shall provide written notice by first class mail to the last known address of any person who, after reasonable inquiry, appears to be a potential owner or lien holder in the property. The notice shall describe the forfeited property and shall advise that parties with a potential interest in the property may contest the forfeiture by filing a petition with the court not later than sixty (60) days after the date of the second public

1 notice or, if notice is mailed under this paragraph, not
2 later than thirty (30) days after mailing written notice;

3
4 (ii) If a third party files a timely response
5 asserting an interest in the property, the court shall
6 conduct a hearing. The court may permit the parties to
7 conduct discovery in accordance with the Wyoming rules of
8 civil procedure if the court determines that discovery is
9 necessary or desirable to resolve factual issues. After the
10 hearing, the court shall enter a final order of forfeiture
11 by amending the preliminary order as necessary to account
12 for any third party rights. If no third party files a
13 timely petition, the preliminary order becomes the final
14 order upon expiration of the time for filing a petition;

15
16 (iii) If a defendant appeals from a conviction
17 or a preliminary order of forfeiture, the court may stay
18 the preliminary order of forfeiture on terms appropriate to
19 ensure that the property remains available pending
20 appellate review. A stay shall not delay the ancillary
21 hearing or the determination of a third party's rights or
22 interests. If the court rules in favor of any third party
23 while an appeal is pending, the court may amend the order

1 of forfeiture but shall not transfer any property interest
2 to a third party until the decision on appeal becomes
3 final, unless the defendant consents in writing or on the
4 record.

5
6 (f) An interest in property belonging to a third
7 party shall not be forfeited to the extent that the third
8 party establishes it has a perfected lien in the property
9 or proves by a preponderance of evidence that he has a
10 perfected priority interest in the property or proves he is
11 an innocent owner. For purposes of this subsection:

12
13 (i) With respect to a property interest in
14 existence at the time the violation of this act took place,
15 "innocent owner" means a person who held an interest in the
16 property who did not reasonably know of the conduct of the
17 defendant related to the violation;

18
19 (ii) With respect to a property interest
20 acquired after the violation of this act has taken place,
21 the term "innocent owner" means a person who, at the time
22 that person acquired the interest in the property:

23

1 (A) Was a bona fide purchaser or seller for
 2 value of goods or services or a holder of a bona fide
 3 security interest; and

4
 5 (B) Did not know and was reasonably without
 6 cause to believe the property was subject to forfeiture.

7
 8 ~~(d)(g) Seized property not repleviable; sealing or~~
 9 ~~removal of seized property.~~ Property taken or detained
 10 under this section shall not be subject to replevin, but is
 11 deemed to be in the custody of the commissioner subject
 12 only to the orders and decrees of the court having
 13 jurisdiction over the ~~forfeiture~~ proceedings. When property
 14 is seized under this act, the commissioner ~~may:~~ shall place
 15 the property under seal or otherwise assure the property is
 16 maintained under conditions reasonably necessary to
 17 preserve the property's value or may sell the property for
 18 value and hold the proceeds thereof until the forfeiture
 19 proceedings have become final as to all parties and all
 20 rights of appeal have been exhausted.

21
 22 ~~(i) Place the property under seal;~~

23

1 ~~(ii) Remove the property to a place designated~~
2 ~~by him; or~~

3

4 ~~(iii) Require the board to take custody of the~~
5 ~~property and remove it to an appropriate location for~~
6 ~~disposition in accordance with law.~~

7

8 ~~(e)~~ (h) When property is forfeited under this act, the
9 commissioner may:

10

11 (i) Retain it for official use; in which case it
12 shall become the property of the state of Wyoming;

13

14 (ii) Sell any such property which is not
15 required to be destroyed by law and which is not harmful to
16 the public. The proceeds shall be used for payment of all
17 proper expenses of the proceedings for forfeiture and sale,
18 including expenses of seizure, maintenance of custody,
19 advertising and court costs;

20

21 (iii) Require the board to take custody of the
22 property and remove it for disposition in accordance with
23 law;

1

2 (iv) Repealed by Laws 1983, ch. 160, § 2.

3

4 (v) Transfer ownership and control of the
5 property to any municipality or political subdivision of
6 the state for its official use; or

7

8 (vi) Authorize any law enforcement officer to
9 apply to the district court ~~with jurisdiction~~ for an order
10 providing for destruction of the contraband controlled
11 substances or paraphernalia if no longer necessary for
12 evidentiary purposes, provided, however, that a district
13 court order shall not be necessary for the division of
14 criminal investigation to destroy quantities of contraband
15 controlled substances after the division has tested random
16 samples. The division of criminal investigation shall
17 adopt rules necessary to operate a program to destroy bulk
18 quantities of contraband controlled substances, which shall
19 include:

20

21 (A) The photographing and videotaping of
22 the entire bulk amount of seized contraband controlled

1 substances to maintain its evidentiary value and to create
2 exhibits for use in legal proceedings;

3

4 (B) The extraction of ten (10) random
5 samples from the entire bulk amount of seized contraband
6 controlled substances for laboratory analysis;

7

8 (C) A weighing on properly calibrated
9 scales of both the bulk amount of seized contraband
10 controlled substances and the representative samples;

11

12 (D) The additional retention of:

13

14 (I) Five (5) ounces of organic
15 material if the controlled substance is marihuana or a
16 substance of similar organic composition;

17

18 (II) Five (5) grams of a controlled
19 substance in powdered or crystalline form;

20

21 (III) Five-tenths (0.5) of a gram of a
22 controlled substance in liquid form;

23

1 (IV) An amount sufficient for testing
2 by experts shall be made available from the additionally
3 retained sample for the purpose of defending criminal
4 charges arising from the possession, use or sale of the
5 controlled substance.

6
7 (E) After the testing and retention of
8 samples specified in this paragraph, the commissioner or
9 his designee may order the destruction of the bulk amount
10 of the seized contraband controlled substance in excess of
11 the representative sample and the additional retained
12 samples of the seized contraband controlled substance;

13
14 (F) Once the representative samples and the
15 additional retained samples of the contraband controlled
16 substance are no longer necessary for evidentiary purposes,
17 any law enforcement officer, upon authorization from the
18 commissioner, may apply to the district court with
19 jurisdiction for an order providing for the destruction of
20 the remaining contraband controlled substance.

21
22 ~~(f)~~(j) Any controlled substance listed in Schedules I
23 through V that is possessed, transferred, sold or offered

1 for sale in violation of this act is contraband and shall
2 be seized and summarily forfeited to the state. Any
3 controlled substance listed in Schedules I through V which
4 is seized or comes into possession of the state and the
5 owner is unknown, is contraband and shall be summarily
6 forfeited to the state.

7

8 ~~(g) (k) Seizures and summary forfeiture of certain~~
9 ~~plants generally.~~ Species of plants from which controlled
10 substances in Schedules I and II may be derived which have
11 been planted or cultivated in violation of this act, or of
12 which the owners or cultivators are unknown, or which are
13 wild growths, may be seized and summarily forfeited to the
14 state.

15

16 ~~(h) (m) Authority for seizure and forfeiture of~~
17 ~~plants.~~ The failure, upon demand by the commissioner, or
18 his authorized agent, of the person in occupancy or in
19 control of land or premises upon which the species of
20 plants are growing or being stored, to produce an
21 appropriate registration, or proof that he is the holder
22 thereof, constitutes authority for the seizure and
23 forfeiture of the plants.

1

2 ~~(j)~~(n) Any law enforcement agency of this state may
3 accept, receive, dispose of and expend the property or
4 proceeds from any property forfeited to the federal
5 government or any state and allocated to the agency by the
6 United States attorney general pursuant to 21 U.S.C. 881(e)
7 or any law of another state. The property or proceeds shall
8 be in addition to funds appropriated to the law enforcement
9 agency by the state legislature or any unit of local
10 government. The property or proceeds may be credited to
11 any lawfully created fund or account designated to receive
12 proceeds of forfeitures.

13

14 ~~(k)~~(o) Any law enforcement agency of this state which
15 seizes property, other than property subject to summary
16 forfeiture under paragraph (h)(vi) and subsections (j)
17 through (m) of this section, or which receives property or
18 proceeds pursuant to subsection ~~(j)~~(n) of this section
19 shall report to the attorney general on forms to be
20 prescribed by the attorney general:

21

22 (i) The receipt of property or proceeds within
23 thirty (30) days from the receipt; and

1

2 (ii) The disposition or expenditure of any
3 property or proceeds within ninety (90) days from the
4 disposition or expenditure.

5

6 ~~(m)~~(p) The attorney general shall submit ~~a biennial~~
7 an annual report to the joint appropriations interim
8 committee and the joint judiciary interim committee not
9 later than August 1 concerning recipients and the amount of
10 property and proceeds accepted, received, disposed of or
11 expended under ~~subsection (j) of~~ this section by law
12 enforcement agencies, other than property subject to
13 summary forfeiture under paragraph (h)(vi) and subsections
14 (j) through (m) of this section.

15

16 ~~(n)~~(q) No law enforcement agency of this state shall
17 accept property or proceeds pursuant to subsection ~~(j)~~(n)
18 of this section if the tender of the property or proceeds
19 is conditioned upon the state law enforcement agency's
20 adoption of federal law enforcement practices and
21 procedure.

22

1 **Section 2.** This act shall apply to seizures of
2 property which occur after June 30, 2015 and to any
3 subsequent forfeitures of property seized after June 30,
4 2015.

5

6 **Section 3.** This act is effective July 1, 2015.

7

8

(END)