

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 (g), by amending
 10 and renumbering (d) and (e) as (h) and (j), by renumbering
 11 (f) as (k), by amending and renumbering (g) and (h) as (m)
 12 and (n), by renumbering (j) as (o) and by amending and
 13 renumbering (k) through (n) as (p) through (r) 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 (r) 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 (n) of this section.

1

2 (d) Except for summary forfeiture under paragraph
3 (j)(vi) and subsections (k) through (n) 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) After a verdict or finding of guilty, or
13 after a plea of guilty or nolo contendere is accepted, if
14 the forfeiture is contested, the court shall conduct a
15 forfeiture hearing. If the case is tried before a jury,
16 subsection (e) of this section shall apply to the hearing.
17 After the hearing, if the court finds that property is
18 subject to forfeiture, the court shall enter a preliminary
19 order directing the forfeiture;

20

21 (iii) The court shall include in the preliminary
22 order of forfeiture conditions reasonably necessary to
23 preserve the property's value pending any appeal;

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(iv) At sentencing, the preliminary forfeiture order shall become final as to the defendant and shall remain preliminary as to third parties until the ancillary hearing is concluded under subsection (f) of this section;

6

7

(v) The court shall include the forfeiture order in the judgment.

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(e) In any case tried before a jury:

11

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(i) The court shall determine before the jury begins deliberating whether either party requests that the jury be retained to determine the forfeitability of property if it returns a guilty verdict;

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(ii) If a party timely requests to have the jury determine the forfeitability, the state shall submit a proposed special verdict form listing each property subject to forfeiture and asking the jury to determine whether the state has established the property is subject to forfeiture under this section;

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1 (iii) If no party timely requests the jury be
2 retained to determine the forfeitability of property, the
3 court shall determine whether the state has established the
4 property is subject to forfeiture under this section.

5
6 (f) If the court orders the forfeiture of property,
7 third parties may assert a legal interest in the property
8 in an ancillary hearing as provided in this subsection:

9
10 (i) Following an entry of a preliminary order of
11 forfeiture, the state shall publish notice of the order in
12 a newspaper of general circulation in the state once a week
13 for two (2) weeks and shall provide written notice to any
14 person who reasonably appears to be a potential claimant.
15 The notice shall describe the forfeited property and shall
16 advise that parties with a potential interest in the
17 property may contest the forfeiture by filing a petition
18 with the court not later than sixty (60) days after the
19 date of the second public notice;

20
21 (ii) If a third party files a petition asserting
22 an interest in the property, the court shall conduct an
23 ancillary hearing. The court may permit the parties to

1 conduct discovery in accordance with the Wyoming rules of
2 civil procedure if the court determines that discovery is
3 necessary or desirable to resolve factual issues. After the
4 hearing, the court shall enter a final order of forfeiture
5 by amending the preliminary order as necessary to account
6 for any third party rights. If no third party files a
7 timely petition, the preliminary order becomes the final
8 order upon expiration of the time for filing a petition;

9
10 (iii) If a defendant appeals from a conviction
11 or a preliminary order of forfeiture, the court may stay
12 the preliminary order of forfeiture on terms appropriate to
13 ensure that the property remains available pending
14 appellate review. A stay shall not delay the ancillary
15 hearing or the determination of a third party's rights or
16 interests. If the court rules in favor of any third party
17 while an appeal is pending, the court may amend the order
18 of forfeiture but shall not transfer any property interest
19 to a third party until the decision on appeal becomes
20 final, unless the defendant consents in writing or on the
21 record.

22

1 (g) An interest in property belonging to a third
2 party shall not be forfeited if the third party establishes
3 by a preponderance of evidence that he is an innocent
4 owner. For purposes of this subsection:

5
6 (i) With respect to a property interest in
7 existence at the time the violation of this act took place,
8 "innocent owner" means a person who held an interest in the
9 property who:

10
11 (A) Did not know of the act of violation;
12 or

13
14 (B) Upon learning of the violation of this
15 act, did all that reasonably could be expected under the
16 circumstances to terminate such use of the property. A
17 person is not required to take steps that the person
18 reasonably believes would be likely to subject any person
19 to physical danger.

20
21 (ii) With respect to a property interest
22 acquired after the violation of this act has taken place,

1 the term "innocent owner" means a person who, at the time
2 that person acquired the interest in the property:

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

7
8 (B) Did not know and was reasonably without
9 cause to believe the property was subject to forfeiture.

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

23

1 ~~(i) Place the property under seal;~~

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3 ~~(ii) Remove the property to a place designated~~
4 ~~by him; or~~

5

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

9

10 ~~(e)~~ (j) When property is forfeited under this act, the
11 commissioner may:

12

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

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

22

1 (iii) Require the board to take custody of the
2 property and remove it for disposition in accordance with
3 law;

4

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

6

7 (v) Transfer ownership and control of the
8 property to any municipality or political subdivision of
9 the state for its official use; or

10

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

23

1 (A) The photographing and videotaping of
2 the entire bulk amount of seized contraband controlled
3 substances to maintain its evidentiary value and to create
4 exhibits for use in legal proceedings;

5

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

9

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

13

14 (D) The additional retention of:

15

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

19

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

22

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

3

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

9

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

16

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

1

2 ~~(f)~~(k) Any controlled substance listed in Schedules I
3 through V that is possessed, transferred, sold or offered
4 for sale in violation of this act is contraband and shall
5 be seized and summarily forfeited to the state. Any
6 controlled substance listed in Schedules I through V which
7 is seized or comes into possession of the state and the
8 owner is unknown, is contraband and shall be summarily
9 forfeited to the state.

10

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

18

19 ~~(h)~~(n) ~~Authority for seizure and forfeiture of~~
20 ~~plants.~~ The failure, upon demand by the commissioner, or
21 his authorized agent, of the person in occupancy or in
22 control of land or premises upon which the species of
23 plants are growing or being stored, to produce an

1 appropriate registration, or proof that he is the holder
2 thereof, constitutes authority for the seizure and
3 forfeiture of the plants.

4

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

16

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

1

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

4

5 (ii) The disposition or expenditure of any
6 property or proceeds within ninety (90) days from the
7 disposition or expenditure.

8

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

18

19 ~~(n)~~(r) No law enforcement agency of this state shall
20 accept property or proceeds pursuant to subsection ~~(j)~~(o)
21 of this section if the tender of the property or proceeds
22 is conditioned upon the state law enforcement agency's

1 adoption of federal law enforcement practices and
2 procedure.

3

4 **Section 2.** This act shall apply to seizures of
5 property which occur after June 30, 2015 and to any
6 subsequent forfeitures of property seized after June 30,
7 2015.

8

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

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(END)