

## HOUSE BILL NO. HB0014

Asset forfeiture-3.

Sponsored by: Representative(s) Miller, Baker, Halverson  
and Kroeker and Senator(s) Kinskey

A BILL

for

1 AN ACT relating to the Wyoming Controlled Substances Act;  
2 amending the procedures and requirements for seizing and  
3 forfeiting property; providing definitions; conforming  
4 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 creating a new subsection (n), by renumbering  
13 (j) as (o) and by amending and renumbering (k) through (n)  
14 as (p) through (r) is amended 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 (n) 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 (c) 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, or a misdemeanor violation of this  
20 act where the reasonably estimated value of the property  
21 seized, excluding any conveyance prohibited from being  
22 forfeited under paragraph (a)(v) of this section, is less  
23 than two thousand dollars (\$2,000.00), shall be subject to

1 forfeiture of property listed under subsection (a) of this  
2 section. ~~, proceedings under subsection (d) of this section~~  
3 ~~shall be instituted promptly~~ The procedure for forfeiture  
4 shall be as provided in this section.

5  
6 (d) Except for summary forfeiture under paragraph  
7 (h)(vi) and subsections (j) through (m) of this section, if  
8 the state seeks to forfeit property:

9  
10 (i) Within thirty (30) days from the date that  
11 property is seized, the commissioner shall serve a notice  
12 of intent to seek forfeiture upon any person reasonably  
13 known to have an interest in the property. The notice of  
14 intent to seek forfeiture shall describe the date and  
15 location of the seizure, the property seized and the  
16 statutory basis for the forfeiture. The notice of intent  
17 to seek forfeiture shall be served by:

18  
19 (A) Certified mail, return receipt  
20 requested, to the person's last known address; or

21  
22 (B) Service pursuant to the Wyoming Rules  
23 of Civil Procedure.

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(ii) After the notice of intent to seek forfeiture has been served, all forfeiture proceedings shall be stayed until there is a final order convicting the person from whom the property was seized of a violation specified in subsection (c) of this section and all rights of appeal to the Wyoming supreme court have been exhausted.

(iii) All property shall be returned to the person from whom it was seized unless there is a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere to a violation specified in subsection (c) of this section;

(iv) After a final order of conviction, the commissioner or the commissioner's designee shall file a petition for the forfeiture of property in the district court in which the criminal proceedings took place. Service of the petition on the person from whom the property was seized shall be pursuant to the Wyoming Rules of Civil Procedure. The petition under this paragraph shall describe with particularity the:

1                   (A) Approximate value of the property;

2

3                   (B) Facts giving rise to the seizure or  
4 custody;

5

6                   (C) Name and position of the person making  
7 the seizure or taking the property into custody;

8

9                   (D) Name and address of the owners of the  
10 property or those persons who were in possession of the  
11 property at the time of the seizure; and

12

13                   (E) Names and addresses of all persons  
14 known to have an interest in the property seized.

15

16                   (vi) The court shall conduct an evidentiary  
17 hearing to determine if the property is subject to  
18 forfeiture under this section. The commissioner or the  
19 commissioner's designee shall have the burden of proof that  
20 the property is subject to forfeiture. If the court finds  
21 under a preponderance of evidence standard that property is  
22 subject to forfeiture, the court shall enter a preliminary  
23 order directing the forfeiture. If the court finds the

1 property is not subject to forfeiture, it shall be returned  
2 within five (5) days to the person from whom it was seized  
3 or another legal owner.

4  
5 (e) If the court makes a preliminary order of  
6 forfeiture of property, legal interests of persons other  
7 than a party to the criminal action shall be determined,  
8 subject to the following:

9  
10 (i) After an entry of a preliminary order of  
11 forfeiture, the commissioner or the commissioner's designee  
12 shall publish notice of the order in a newspaper of general  
13 circulation in the state once a week for two (2) weeks and  
14 shall provide written notice by first class mail to the  
15 last known address of any person who, after reasonable  
16 inquiry, appears to be a potential owner or lien holder in  
17 the property. The notice shall describe the forfeited  
18 property and shall advise that parties with a potential  
19 interest in the property may contest the forfeiture by  
20 filing a petition with the court not later than sixty (60)  
21 days after the date of the second public notice or, if  
22 notice is mailed under this paragraph, not later than  
23 thirty (30) days after mailing written notice;

1  
2           (ii) If a third party files a timely response  
3 asserting an interest in the property, the court shall  
4 conduct a hearing. The court may permit the parties to  
5 conduct discovery in accordance with the Wyoming Rules of  
6 Civil Procedure if the court determines that discovery is  
7 necessary or desirable to resolve factual issues. After the  
8 hearing, the court shall enter a final order of forfeiture  
9 by amending the preliminary order as necessary to account  
10 for any third party rights. If no third party files a  
11 timely petition, the preliminary order becomes the final  
12 order upon expiration of the time for filing a petition;

13  
14           (iii) The party to the criminal action or a  
15 third party may appeal a final order of forfeiture. In the  
16 final order of forfeiture, the court shall enter terms  
17 appropriate to ensure that the property remains available  
18 pending appellate review.

19  
20           (f) An interest in property belonging to a third  
21 party shall not be forfeited to the extent that the third  
22 party establishes he has a perfected lien in the property  
23 or proves by a preponderance of evidence that he has a

1 perfected priority interest in the property or proves he is  
2 an innocent owner. For purposes of this subsection:

3  
4 (i) With respect to a property interest in  
5 existence at the time the violation of this act took place,  
6 "innocent owner" means a person who held an interest in the  
7 property who did not reasonably know of the conduct of the  
8 defendant related to the violation;

9  
10 (ii) With respect to a property interest  
11 acquired after the violation of this act has taken place,  
12 the term "innocent owner" means a person who, at the time  
13 that person acquired the interest in the property:

14  
15 (A) Was a bona fide purchaser or seller for  
16 value of goods or services or a holder of a bona fide  
17 security interest; and

18  
19 (B) Did not know and was reasonably without  
20 cause to believe the property was subject to forfeiture.

21  
22 ~~(d)(g) Seized property not repleviable; sealing or~~  
23 ~~removal of seized property.~~ Property taken or detained



1 under this section shall not be subject to replevin, but is  
2 deemed to be in the custody of the commissioner subject  
3 only to the orders and decrees of the court having  
4 jurisdiction over the ~~forfeiture~~ proceedings. When property  
5 is seized under this act, the commissioner ~~may:~~ shall place  
6 the property under seal or otherwise assure the property is  
7 maintained under conditions reasonably necessary to  
8 preserve the property's value or may sell the property and  
9 hold the proceeds thereof if the property is perishable or  
10 threatens to decline speedily in value until the forfeiture  
11 proceedings have become final as to all parties and all  
12 rights of appeal have been exhausted to the Wyoming supreme  
13 court.

14

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

16

17 ~~(ii) Remove the property to a place designated~~  
18 ~~by him; or~~

19

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

23

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

3  
4           (i) Retain it for official use; in which case it  
5 shall become the property of the state of Wyoming;

6  
7           (ii) Sell any such property which is not  
8 required to be destroyed by law and which is not harmful to  
9 the public. The proceeds shall be used for payment of all  
10 proper expenses of the proceedings for forfeiture and sale,  
11 including expenses of seizure, maintenance of custody,  
12 advertising and court costs;

13  
14           (iii) Require the board to take custody of the  
15 property and remove it for disposition in accordance with  
16 law;

17  
18           (iv) Repealed by Laws 1983, ch. 160, § 2.

19  
20           (v) Transfer ownership and control of the  
21 property to any municipality or political subdivision of  
22 the state for its official use; or

23

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

13  
14           (A) The photographing and videotaping of  
15 the entire bulk amount of seized contraband controlled  
16 substances to maintain its evidentiary value and to create  
17 exhibits for use in legal proceedings;

18  
19           (B) The extraction of ten (10) random  
20 samples from the entire bulk amount of seized contraband  
21 controlled substances for laboratory analysis;

1                   (C) A weighing on properly calibrated  
2 scales of both the bulk amount of seized contraband  
3 controlled substances and the representative samples;

4

5                   (D) The additional retention of:

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7                   (I) Five (5) ounces of organic  
8 material if the controlled substance is marihuana or a  
9 substance of similar organic composition;

10

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

13

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

16

17                   (IV) An amount sufficient for testing  
18 by experts shall be made available from the additionally  
19 retained sample for the purpose of defending criminal  
20 charges arising from the possession, use or sale of the  
21 controlled substance.

22

1                   (E) After the testing and retention of  
2 samples specified in this paragraph, the commissioner or  
3 his designee may order the destruction of the bulk amount  
4 of the seized contraband controlled substance in excess of  
5 the representative sample and the additional retained  
6 samples of the seized contraband controlled substance;

7  
8                   (F) Once the representative samples and the  
9 additional retained samples of the contraband controlled  
10 substance are no longer necessary for evidentiary purposes,  
11 any law enforcement officer, upon authorization from the  
12 commissioner, may apply to the district court with  
13 jurisdiction for an order providing for the destruction of  
14 the remaining contraband controlled substance.

15  
16       ~~(f)~~ (j) Any controlled substance listed in Schedules I  
17 through V that is possessed, transferred, sold or offered  
18 for sale in violation of this act is contraband and shall  
19 be seized and summarily forfeited to the state. Any  
20 controlled substance listed in Schedules I through V which  
21 is seized or comes into possession of the state and the  
22 owner is unknown, is contraband and shall be summarily  
23 forfeited to the state.

1

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

9

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

18

19       (n) A person's interest in property is not subject to  
20 forfeiture to the extent that the forfeiture is grossly  
21 disproportionate to the gravity of the offense giving rise  
22 to the forfeiture. The commissioner shall have the burden  
23 of demonstrating by a preponderance of the evidence that a

1 forfeiture is not grossly disproportionate. Proportionality  
2 shall be decided by the court as follows:

3  
4 (i) In determining whether a forfeiture is  
5 grossly disproportionate, the court shall consider:

6  
7 (A) The extent to which the property was  
8 used or intended to be used in executing the underlying  
9 offense;

10  
11 (B) The value of the property, including  
12 both its fair market and subjective value;

13  
14 (C) The actions of the person involved in  
15 the activity giving rise to the forfeiture proceedings;

16  
17 (D) The severity of the criminal sanctions  
18 associated with the actions of the person;

19  
20 (E) Whether the property constitutes the  
21 person's lawful livelihood or means of earning a living;

22

1                   (F) Whether the offense or attempted  
2 offense has severe collateral consequences; and

3  
4                   (G) Any other factors the court deems  
5 necessary and relevant.

6  
7                   (ii) If the court finds the forfeiture is  
8 grossly disproportionate to the offense, it shall reduce or  
9 eliminate the forfeiture as it finds appropriate.

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



1       ~~(k)~~(p) Any law enforcement agency of this state which  
2 seizes property, other than property subject to summary  
3 forfeiture under paragraph (h)(vi) and subsections (j)  
4 through (m) of this section, or which receives property or  
5 proceeds pursuant to subsection ~~(j)~~(o) of this section  
6 shall report to the ~~attorney general~~commissioner on forms  
7 to be prescribed by the ~~attorney general~~commissioner:

8  
9           (i) The receipt of property or proceeds within  
10 thirty (30) days from the receipt; and

11  
12           (ii) The disposition or expenditure of any  
13 property or proceeds within ninety (90) days from the  
14 disposition or expenditure.

15  
16       ~~(m)~~(q) The ~~attorney general~~commissioner shall submit  
17 ~~a biennial~~an annual report to the joint appropriations  
18 interim committee and the joint judiciary interim committee  
19 not later than August 1 concerning recipients and the  
20 amount of property and proceeds accepted, received,  
21 disposed of or expended under ~~subsection (j) of~~ this  
22 section by law enforcement agencies, other than property

1 subject to summary forfeiture under paragraph (h)(vi) and  
2 subsections (j) through (m) of this section.

3  
4 ~~(n)~~(r) No law enforcement agency of this state shall  
5 accept property or proceeds pursuant to subsection ~~(j)~~(o)  
6 of this section if the tender of the property or proceeds  
7 is conditioned upon the state law enforcement agency's  
8 adoption of federal law enforcement practices and  
9 procedure.

10  
11 **Section 2.** This act shall apply to seizures of  
12 property which occur on or after July 1, 2016 and to any  
13 subsequent forfeitures of property seized on or after July  
14 1, 2016.

15  
16 **Section 3.** This act is effective July 1, 2016.

17  
18 (END)