

ORIGINAL Senate
FILE NO. SF0014

ENROLLED ACT NO. 1, SENATE

SIXTY-THIRD LEGISLATURE OF THE STATE OF WYOMING
2015 GENERAL SESSION

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

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

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

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

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

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

(c) ~~Prompt institution of proceedings. In the event of seizure pursuant to subsection (b),~~ Any person convicted of a violation of this act punishable by imprisonment for more than one (1) year shall be subject to forfeiture of property listed under subsection (a) of this section.

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~~proceedings under subsection (d) of this section shall be instituted promptly~~
The procedure for forfeiture shall be as provided in subsections (d) through (m) of this section.

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

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

(ii) 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 felony under this act;

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

(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:

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

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

(iii) If a defendant appeals from a conviction or a preliminary order of forfeiture, the court may stay the preliminary order of forfeiture on terms appropriate to ensure that the property remains available pending appellate review. A stay shall not delay the ancillary hearing or the determination of a third party's rights or interests. If the court rules in favor of any third party while an appeal is pending, the court may amend the order of forfeiture but shall not transfer any property interest to a third party until the decision on appeal becomes

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final, unless the defendant consents in writing or on the record.

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

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

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

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

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

~~(d)(g) Seized property not repleviable; sealing or removal of seized property.~~ Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the commissioner subject only to the orders and decrees of the court having jurisdiction over the ~~forfeiture~~ proceedings. When property is seized under this act, the commissioner ~~may:~~ shall place the property under seal or otherwise assure the property is maintained under conditions reasonably necessary to

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preserve the property's value or may sell the property for value and hold the proceeds thereof until the forfeiture proceedings have become final as to all parties and all rights of appeal have been exhausted.

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) The additional retention of:

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

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

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

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

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

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

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

~~(g)~~ (k) ~~Seizures and summary forfeiture of certain plants generally.~~ Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this act, or of which the owners or cultivators are unknown, or which are

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wild growths, may be seized and summarily forfeited to the state.

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

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

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

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

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

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

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

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

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

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk