

ORIGINAL SENATE
FILE NO. SF0046

ENROLLED ACT NO. 5, SENATE

SIXTY-FOUR LEGISLATURE OF THE STATE OF WYOMING
2016 BUDGET SESSION

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

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

Section 1. W.S. 1-39-104(a), 1-39-120 by creating a new subsection (b) and 35-7-1049(a)(v)(intro), (vii), (b)(iii), by creating a new subsection (c), by amending and renumbering (c) and (d) as (d) and (e), by creating new subsections (f) through (q), by renumbering (e) and (f) as (r) and (s), by amending and renumbering (g) and (h) as (t) and (u), by renumbering (h) through (k) as (u) through (y) and by amending and renumbering (m) and (n) as (z) and (aa) are amended to read:

1-39-104. Granting immunity from tort liability; liability on contracts; exceptions.

(a) A governmental entity and its public employees while acting within the scope of duties are granted immunity from liability for any tort except as provided by W.S. 1-39-105 through 1-39-112 and limited by W.S. 1-39-121. Any immunity in actions based on a contract entered into by a governmental entity is waived except to the extent provided by the contract if the contract was within the powers granted to the entity and was properly executed and except as provided in W.S. 1-39-120(b) and 1-39-121. The claims procedures of W.S. 1-39-113 apply to contractual claims against governmental entities.

1-39-120. Exclusions from waiver of immunity.

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(b) Notwithstanding the waiver of immunity for tort liability provided by W.S. 1-39-105 through 1-39-112 or the waiver of immunity in actions based on contract provided by W.S. 1-39-104, a governmental entity and its public employees while acting within the scope of duties are immune from a civil action in tort, contract or otherwise alleging, in whole or in part, the improper seizure of property pursuant to W.S. 35-7-1049.

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

(a) The following are subject to forfeiture:

(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~~subsection may be seized by the commissioner and forfeited to the state pursuant to subsection (e) of this section:

(vii) All buildings knowingly used or intended for use to store, manufacture or distribute property described under ~~paragraphs (a)~~paragraph (i) or (ii) of this ~~section~~subsection if the owner has knowledge of or gives consent to the act of violation. A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if he did not have knowledge of or give consent to the act;

(b) Property subject to forfeiture under this act may be seized by any law enforcement officer of the state upon

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process issued by any district court or district court commissioner having jurisdiction over the property. Seizure without process may be made if:

(iii) The board or commissioner has probable cause to believe that the property was used or is intended to be used in violation of this act. Prior to property being seized by any law enforcement officer of the state pursuant to this paragraph, the following procedures shall be followed:

(A) The law enforcement officer shall communicate with the commissioner regarding the facts and circumstances involving the property to be seized. Based upon the information provided, the commissioner shall determine whether probable cause exists that the property identified by the law enforcement officer was used or was intended to be used in a violation of this act;

(B) If the commissioner determines there is probable cause to seize the property, he shall direct the officer to seize the property. At the time of the seizure, the person or persons from whom the property was seized shall be given written notice that the seized property is subject to forfeiture. The notice shall include an advisement that:

(I) The person has the right to attend the hearing required by subsection (c) of this section, but shall not have the right to present evidence or cross examine any witness;

(II) The person will be given at least fifteen (15) days' notice of the time, date and location of the hearing; and

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(III) The purpose of the hearing is for a court to determine whether there was probable cause to believe that the property was used or was intended to be used in violation of this act.

(C) If the commissioner determines there is no probable cause to seize the identified property, he shall not authorize the seizure of any property based upon that event or occurrence and the officer shall not seize any property.

(c) Within thirty (30) days of the seizure, a probable cause hearing shall be held in circuit court, in the county where the property was seized to determine whether probable cause existed to seize the property pursuant to paragraph (b)(iii) of this section. One (1) or more of the law enforcement officers who made the seizure shall testify under oath regarding the facts and circumstances which established probable cause to seize the property. The hearing shall be recorded by sound, sound-and-visual or stenographic means. If the court determines, based upon the evidence presented, that at the time of the seizure:

(i) Probable cause did not exist to seize the property, the court shall order the property to be immediately returned to its lawful owner or one (1) of the persons from whom it was seized; or

(ii) Probable cause existed to seize the property, the court shall order that the commissioner may file an action for the forfeiture of the property.

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~~(c)(d) Prompt institution of proceedings.~~ — In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of no action for the forfeiture of property pursuant to this section shall be instituted promptly unless it is brought within one hundred twenty (120) days from the date of seizure or within thirty (30) days following the completion of any criminal prosecution relating to the seizure, whichever is later. All forfeiture proceedings or actions shall be brought by the commissioner.

~~(d)(e) 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 preserve the property's value or may sell the property and hold the proceeds thereof if the property is perishable or threatens to decline speedily in value until the forfeiture proceedings have become final as to all parties and all rights of appeal have been exhausted. In order to preserve the property, if cash, the commissioner may deposit funds into a demand deposit account at an institution located within the state of Wyoming.

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

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

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

(f) Before a forfeiture action may be filed and no later than thirty (30) days from the date of entry of an order finding probable cause pursuant to subsection (c) of this section, the commissioner shall serve a notice of seizure and intended forfeiture upon any third party, ascertained after reasonably diligent inquiry, known to have an interest in the property. The notice shall describe the date and location of the seizure, the property seized and the statutory basis for the forfeiture. The notice shall be served in accordance with the Wyoming Rules of Civil Procedure except that service by publication shall not be required. The notice requirements of this subsection shall not apply to the party or parties from whom the property was directly seized.

(g) A court shall not issue any forfeiture order unless the notice under subsection (f) of this section has been accomplished to the satisfaction of the court.

(h) After the commissioner is authorized by the court or by this section to file a forfeiture action, the Wyoming Rules of Civil Procedure shall govern the action unless in conflict with subsections (j) through (n) of this section.

(j) The complaint to seek forfeiture of property under this section shall describe with reasonable particularity:

(i) The approximate value of the property;

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(ii) The facts giving rise to the seizure or custody;

(iii) The name and position of the person making the seizure or taking the property into custody;

(iv) The name and address of the owners of the property or those persons who were in possession of the property at the time of the seizure; and

(v) The manner in which all parties reasonably known to have an interest in the property seized were served in accordance with subsection (f) of this section.

(k) In the action for the forfeiture of property, the burden of proof shall be on the commissioner to establish by clear and convincing evidence the extent to which, if any, the property is subject to forfeiture.

(m) Subsequent to the commissioner carrying his burden of proof pursuant to subsection (k) of this section, an interest in property belonging to a third party shall not be forfeited to the extent the third party establishes he has a perfected lien in the property, proves by a preponderance of evidence that he has a perfected priority interest in the property or that 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 and neither had knowledge of nor consented to the violation;

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

(n) The right to trial by jury applies to forfeiture proceedings under this section.

(o) A person's interest in property is not subject to forfeiture to the extent that the forfeiture is grossly disproportionate to the gravity of the offense giving rise to the forfeiture. The commissioner shall have the burden of demonstrating by a preponderance of the evidence that a forfeiture is not grossly disproportionate. Proportionality shall be decided by the court as follows:

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

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

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

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

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

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

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

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

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

(p) In any forfeiture proceeding under this section, the court shall award a prevailing property owner reasonable:

(i) Attorney fees and costs; and

(ii) Damages.

(q) The proceedings and judgment of forfeiture shall be in rem and shall be against the property itself.

~~(e)~~(r) 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;

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(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

(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;

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(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;

(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

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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)~~ (s) 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)~~ (t) ~~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 wild growths, may be seized and summarily forfeited to the state.

~~(h)~~ (u) ~~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)~~ (w) 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

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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)~~(y) Any law enforcement agency of this state which receives property or proceeds pursuant to subsection ~~(j)~~(w) 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

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

~~(m)~~(z) 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 during the prior calendar year under ~~subsection (j) of this section~~by law enforcement agencies, other than property subject to summary forfeiture.

~~(n)~~(aa) No law enforcement agency of this state shall accept property or proceeds pursuant to subsection ~~(j)~~(w) of this section if the tender of the property or proceeds is conditioned upon the state law enforcement agency's

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adoption of federal law enforcement practices and procedure.

Section 2. This act shall apply to seizures of property which occur on or after July 1, 2016 and to any forfeitures proceedings related to property seized on or after July 1, 2016.

Section 3. This act is effective July 1, 2016.

(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