

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

SENATE NO. [BILL NUMBER]

Asset forfeiture-1.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

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

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

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8 **Section 1.** W.S. 35-7-1049 is repealed and recreated  
9 to read:

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**STAFF COMMENT**

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**This draft shows changes to existing law in strike and underline. If introduced, the bill will show the entire section as newly created**

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

(a) The following are subject to forfeiture:

(i) All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this act;

(ii) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substances in violation of this act;

(iii) All property which is used as a container for property described in paragraph (i) or (ii) of this subsection;

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2 (iv) All books, records, and research products  
3 and materials, including formulas, microfilm, tapes, and  
4 data, which are used, or intended for use, in violation of  
5 this act;

6

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

14

15 (A) No conveyance used by any person as a  
16 common carrier in the transaction of business as a common  
17 carrier is subject to forfeiture under this section unless  
18 it appears that the owner or corporate officer is a  
19 consenting party or privy to a violation of this act;

20

21 (B) No conveyance is subject to forfeiture  
22 under this section by reason of any act committed without  
23 the knowledge or consent of the owner;

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2 (C) A conveyance is not subject to  
3 forfeiture for a violation of W.S. 35-7-1031(c);

4

5 (D) A forfeiture of a conveyance encumbered  
6 by a bona fide security interest is subject to the interest  
7 of the secured party if he neither had knowledge of nor  
8 consented to the act.

9

10 (vi) All "drug paraphernalia" as defined by W.S.  
11 35-7-1002(a) (xxvii);

12

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

21

22 (viii) Any property or other thing of pecuniary  
23 value furnished in exchange for a controlled substance in

1 violation of this act including any proceeds, assets or  
2 other property of any kind traceable to the exchange and  
3 any money, securities or other negotiable instruments used  
4 to facilitate a violation of this act. Property used or  
5 furnished without the consent or knowledge of the owner is  
6 not forfeitable under this section to the extent of his  
7 interest.

8  
9 (b) Property subject to forfeiture under this act  
10 may be seized by any law enforcement officer of the state  
11 upon process issued by any district court or district court  
12 commissioner having jurisdiction over the property. Seizure  
13 without process may be made if:

14  
15 (i) The seizure is incident to an arrest or a  
16 search under a search warrant or an inspection under an  
17 administrative inspection warrant;

18  
19 (ii) The property subject to seizure has been  
20 the subject of a prior judgment in favor of the state in a  
21 criminal, injunction or forfeiture proceeding based upon  
22 this act;

23

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

7  
8           (A) The law enforcement officer shall  
9 communicate with the commissioner or the commissioner's  
10 designee regarding the facts and circumstances involving  
11 the property to be seized. Based upon the information  
12 provided, the commissioner or his designee shall determine  
13 whether probable cause exists that the property identified  
14 by the law enforcement officer was used or was intended to  
15 be used in a violation of this act;

16  
17           (B) If the commissioner or the  
18 commissioner's designee determines there is probable cause  
19 to seize the property, he shall direct the officer to seize  
20 the property. At the time of the seizure, the person or  
21 persons from whom the property was seized shall be given  
22 written notice that the seized property is subject to  
23 forfeiture. The notice shall include an advisement that:

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(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

(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 or his designee 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

1 the county where the property was seized to determine  
2 whether probable cause existed to seize the property  
3 pursuant to paragraph (b)(iii) of this section. The court  
4 may extend the time for the hearing by an additional thirty  
5 (30) days. One or more of the law enforcement officers who  
6 made the seizure shall testify under oath regarding the  
7 facts and circumstances which established probable cause to  
8 seize the property. The hearing shall be recorded by sound,  
9 sound-and-visual, or stenographic means. If the court  
10 determines, based upon the evidence presented, that at the  
11 time of the seizure:

12  
13 (i) Probable cause did not exist to seize the  
14 property, the court shall order the property to be  
15 immediately returned to its lawful owner or one of the  
16 persons from whom it was seized; or

17  
18 (ii) Probable cause existed to seize the  
19 property, the court shall order that the commissioner may  
20 file an action for the forfeiture of the property.

21  
22 ~~(c)(d) Prompt institution of proceedings.~~ → In the  
23 event of seizure pursuant to subsection (b) of this

1 section, ~~no proceedings under subsection (d)~~ action for the  
2 forfeiture of property pursuant to this section of this  
3 ~~section~~ shall be ~~instituted promptly~~ instituted unless it  
4 is brought within one (1) year from the date of seizure.  
5 All state forfeiture proceedings or actions shall be  
6 brought by the commissioner or the commissioner's designee.

7  
8 ~~(d)(e) 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. In order to preserve  
21 the property, the commissioner may deposit funds into a  
22 demand deposit account at an institution located within the  
23 state of Wyoming.

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

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~~(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.~~

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(f) Before a forfeiture action may be filed and no  
later than sixty (60) days from the date that property is  
seized pursuant to subsection (b) of this section or the  
date of entry of an order finding probable cause pursuant  
to subsection (c) of this section, whichever is later, 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

1 required. The notice requirements of this subsection shall  
2 not apply to the party or parties from whom the property  
3 was directly seized.

4  
5 (g) A court shall not issue any forfeiture order  
6 unless the notice under paragraph (f) of this section has  
7 been accomplished to the satisfaction of the court.

8  
9 (h) After the commissioner is authorized by the court  
10 or by this section to file a forfeiture action, the Wyoming  
11 Rules of Civil Procedure shall govern the forfeiture action  
12 unless in conflict with subsections (j) through (n) of this  
13 section.

14  
15 (j) The complaint to seek forfeiture of property  
16 under this section shall describe with reasonable  
17 particularity:

18  
19 (i) The approximate value of the property;

20  
21 (ii) The facts giving rise to the seizure or  
22 custody;

23

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

3  
4           (iv) The name and address of the owners of the  
5 property or those persons who were in possession of the  
6 property at the time of the seizure; and

7  
8           (v) The manner in which all parties reasonably  
9 known to have an interest in the property seized were  
10 served in accordance with subsection (f) of this section.

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14 **STAFF COMMENT**

15           The requirements of paragraphs (j) (i) through  
16 (j) (v) were taken from W.S. 7-2-105(a) (i) through (a) (v) in  
17 an effort to have uniform provisions in the two statutes,  
18 where appropriate Subsection (j) (v) was amended to comply  
19 with the new requirements of subsection (f).

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

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STAFF COMMENT

Compare subsection (j) to W.S. 7-2-105(c), (e) and (f),  
which places the burden of proof on the claimant rather  
than on the State.

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(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;

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

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

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

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

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18                           **STAFF COMMENT**  
19           **Compare W.S. 7-2-105(d), which provides all issues are**  
20           **decided by the judge rather than a jury.**

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24           (o) A person's interest in property is not subject to  
25 forfeiture to the extent that the forfeiture is grossly

1 disproportionate to the gravity of the offense giving rise  
2 to the forfeiture. The commissioner shall have the burden  
3 of demonstrating by a preponderance of the evidence that a  
4 forfeiture is not grossly disproportionate. Proportionality  
5 shall be decided by the court as follows:

6  
7 (i) In determining whether a forfeiture is  
8 grossly disproportionate, the court shall consider:

9  
10 (A) The extent to which the property was  
11 used or intended to be used in executing the underlying  
12 offense;

13  
14 (B) The value of the property, including  
15 both its fair market and subjective value;

16  
17 (C) The actions of the person involved in  
18 the activity giving rise to the forfeiture proceedings;

19  
20 (D) The severity of the criminal sanctions  
21 associated with the actions of the person;

22

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

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

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

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

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16                   **STAFF COMMENT**

17                   The proportionality standard provided in subsection (o) is  
18                   from the United States Supreme Court case of *U.S. v.*  
19                   *Bajakajian*, 524 U.S. 321 (1998). The Attorney General  
20                   provided factors to guide the courts determination of  
21                   proportionality. The committee may wish to compare  
22                   subsection (o) with W.S. 7-2-105(m) in considering the  
23                   proportionality issue. W.S. 7-2-105(m) provides: "Upon the  
24                   application of any claimant, the court may fix the value of  
25                   a forfeitable interest in the seized property and permit  
26                   the claimant to redeem the property upon the payment of a  
27                   sum equal to the value, which sum shall be disposed of as  
28                   would the proceeds of the sale of the property under a  
29                   judgment of forfeiture."

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

~~(e)~~(q) 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;

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

2

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

6

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

19

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

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

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

9

10 (D) The additional retention of:

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

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

18

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

21

22 (IV) An amount sufficient for testing  
23 by experts shall be made available from the additionally

1 retained sample for the purpose of defending criminal  
2 charges arising from the possession, use or sale of the  
3 controlled substance.

4

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

11

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

19

20 ~~(f)~~(r) Any controlled substance listed in Schedules I  
21 through V that is possessed, transferred, sold or offered  
22 for sale in violation of this act is contraband and shall  
23 be seized and summarily forfeited to the state. Any

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

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

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

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

12

13       ~~(k)~~(w) Any law enforcement agency of this state which  
14 receives property or proceeds pursuant to subsection ~~(j)~~(u)  
15 of this section shall report to the attorney general on  
16 forms to be prescribed by the attorney general:

17

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

20

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

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2       ~~(m)~~(y) The attorney general shall submit ~~a biennial~~  
3 an annual report to the joint appropriations interim  
4 committee and the joint judiciary interim committee not  
5 later than August 1 concerning recipients and the amount of  
6 property and proceeds accepted, received, disposed of or  
7 expended during the prior calendar year under ~~subsection~~  
8 ~~(j)~~of this section by law enforcement agencies, other than  
9 property subject to summary forfeiture.

10

11       ~~(n)~~(z) No law enforcement agency of this state shall  
12 accept property or proceeds pursuant to subsection ~~(j)~~(u)  
13 of this section if the tender of the property or proceeds  
14 is conditioned upon the state law enforcement agency's  
15 adoption of federal law enforcement practices and  
16 procedure.

17

18       **Section 2.** This act shall apply to seizures of  
19 property which occur after June 30, 2016 and to any  
20 forfeitures proceedings related to property seized after  
21 June 30, 2016.

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

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(END)