

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE NO. [BILL NUMBER]

Asset forfeiture-2.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to the Wyoming Controlled Substances Act;
2 amending the procedures and requirements for forfeiting and
3 seizing 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 renumbering (j) as (n) and by amending and

1 renumbering (k) through (n) as (o) through (q) is amended
2 to read:

3
4 **35-7-1049. Forfeitures and seizures generally;**
5 **property subject to forfeiture.**

6
7 (a) The following are subject to forfeiture as
8 permitted pursuant to subsections (c) through (n) of this
9 section:

10

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

18

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

1 ~~proceedings under subsection (d) of this section shall be~~
2 ~~instituted promptly~~ The procedure for forfeiture shall be
3 as provided in subsections (d) through (m) of this section.
4

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

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

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

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

1 (ii) After the notice of intent to seek
2 forfeiture has been served, all forfeiture proceedings
3 shall be stayed until there is a final order convicting the
4 person from whom the property was seized of a felony
5 violation under this act and all rights of appeal to the
6 Wyoming Supreme Court have been exhausted.

7
8 (iii) All property shall be returned to the
9 person from whom it was seized unless there is a finding or
10 verdict of guilt, an admission of guilt or a plea of nolo
11 contendere to a felony under this act;

12
13 (iv) After a final order of conviction, the
14 attorney general shall file a petition for the forfeiture
15 of property in the district court in which the criminal
16 proceedings took place. Service of the petition on the
17 person from whom the property was seized shall be pursuant
18 to the Wyoming Rules of Civil Procedure. The petition under
19 this paragraph shall describe with reasonable particularity
20 the:

21
22 (A) The approximate value of the property;
23

1 (B) The facts giving rise to the seizure or
2 custody;

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

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

11 (E) The names and addresses of all persons
12 known to have an interest in the property seized.

13 *****

14 *****

15 **STAFF COMMENT**

16 **The petition requirements were taken from W.S. 7-2-**
17 **105(a) (i) through (a) (v) in an effort to have uniform**
18 **provisions between the two statutes, where appropriate.**
19 *****

20 *****

21 (vi) The court shall conduct an evidentiary
22 hearing to determine if the property is subject to
23 forfeiture under this section. The attorney general shall
24 have the burden of proof that the property is subject to

1 forfeiture. If the court finds under a preponderance of
2 evidence standard that property is subject to forfeiture,
3 the court shall enter a preliminary order directing the
4 forfeiture. If the court finds the property is not subject
5 to forfeiture, it shall be immediately returned to the
6 person from whom it was seized.

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

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

1 after the date of the second public notice or, if notice is
2 mailed under this paragraph, not later than thirty (30)
3 days after mailing written notice;

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

16
17 (iii) If a defendant appeals from a conviction
18 or a preliminary order of forfeiture, the court may stay
19 the preliminary order of forfeiture on terms appropriate to
20 ensure that the property remains available pending
21 appellate review. A stay shall not delay the ancillary
22 hearing or the determination of a third party's rights or
23 interests. If the court rules in favor of any third party

1 while an appeal is pending, the court may amend the order
2 of forfeiture but shall not transfer any property interest
3 to a third party until the decision on appeal becomes
4 final, unless the defendant consents in writing or on the
5 record.

6
7 (f) An interest in property belonging to a third
8 party shall not be forfeited to the extent that the third
9 party establishes it has a perfected lien in the property
10 or proves by a preponderance of evidence that he has a
11 perfected priority interest in the property or proves he is
12 an innocent owner. For purposes of this subsection:

13
14 (i) With respect to a property interest in
15 existence at the time the violation of this act took place,
16 "innocent owner" means a person who held an interest in the
17 property who did not reasonably know of the conduct of the
18 defendant related to the violation;

19
20 (ii) With respect to a property interest
21 acquired after the violation of this act has taken place,
22 the term "innocent owner" means a person who, at the time
23 that person acquired the interest in the property:

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(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 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;~~

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2

~~(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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9

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

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(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;

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.

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2 ~~(f)~~(j) 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)~~(k) ~~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)~~(m) ~~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 (n) A person's interest in property is not subject to
6 forfeiture if the forfeiture is grossly disproportional to
7 the gravity of the offense giving rise to the forfeiture.
8 The commissioner shall have the burden to demonstrate that
9 any forfeiture is not grossly disproportional. The court
10 shall decide questions of proportionality. If the court
11 finds that the forfeiture is grossly disproportional to the
12 offense, it shall reduce or eliminate the forfeiture as it
13 finds appropriate.

14

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16 *****

17 **STAFF COMMENT**

18 **The proportionality standard provided in subsection**
19 **(n) is the from the United States Supreme Court case of**
20 ***U.S. v. Bajakajian*, 524 U.S. 321 (1998). The committee may**
21 **wish to compare subsection (n) with W.S. 7-2-105(m) in**
22 **considering the proportionality issue.**

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25 *****

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

20
21 (i) The receipt of property or proceeds within
22 thirty (30) days from the receipt; and

23

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

4
5 ~~(m)~~(q) The attorney general shall submit ~~a biennial~~
6 an annual report to the joint appropriations interim
7 committee and the joint judiciary interim committee not
8 later than August 1 concerning recipients and the amount of
9 property and proceeds accepted, received, disposed of or
10 expended under ~~subsection (j) of~~ this section by law
11 enforcement agencies, other than property subject to
12 summary forfeiture under paragraph (h)(vi) and subsections
13 (j) through (m) of this section.

14
15 ~~(n)~~(r) No law enforcement agency of this state shall
16 accept property or proceeds pursuant to subsection ~~(j)~~(o)
17 of this section if the tender of the property or proceeds
18 is conditioned upon the state law enforcement agency's
19 adoption of federal law enforcement practices and
20 procedure.

21
22 **Section 2.** This act shall apply to seizures of
23 property which occur after June 30, 2016 and to any

1 subsequent forfeitures of property seized after June 30,
2 2016.

3

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

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(END)