

HOUSE BILL NO. HB0058

Human trafficking-forfeiture of property.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to human trafficking; providing for
2 forfeiture and seizure of specified property; specifying
3 the procedures for forfeiture and seizure of property;
4 providing exceptions; specifying distribution of proceeds
5 from forfeited property; and providing for an effective
6 date.

7

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

9

10 **Section 1.** W.S. 6-2-711 is created to read:

11

12 **6-2-711. Asset forfeiture.**

13

14 (a) The following are subject to forfeiture as
15 permitted pursuant to subsections (c) through (j) of this
16 section:

1

2 (i) All assets subject to the jurisdiction of
3 the court:

4

5 (A) Of a person engaged in perpetrating an
6 act in this state which violates this article;

7

8 (B) Affording a person a source of
9 influence over a trafficked individual;

10

11 (C) Acquired or maintained by a person with
12 the intent to, and for the purpose of supporting,
13 conducting or concealing an act in this state which
14 violates this article; or

15

16 (D) Derived from, involved in or used or
17 intended to be used to commit an act in this state which
18 violates this article.

19

20 (ii) All books, records, products and materials
21 which are used or intended for use in violation of this
22 article;

23

1 (iii) All conveyances including aircraft,
2 vehicles or vessels, knowingly used or intended for use to
3 transport victims or in any manner to knowingly facilitate
4 transportation of victims for human trafficking in
5 violation of this article are subject to forfeiture,
6 provided:

7
8 (A) No conveyance used by any person as a
9 common carrier in the transaction of business as a common
10 carrier is subject to forfeiture under this section unless
11 it appears that the owner or corporate officer is a
12 consenting party or privy to a violation of this article;

13
14 (B) No conveyance is subject to forfeiture
15 under this section by reason of any act committed without
16 the knowledge or consent of the owner;

17
18 (C) A forfeiture of a conveyance encumbered
19 by a bona fide security interest is subject to the interest
20 if the secured party neither had knowledge of nor consented
21 to the act.

22

1 (iv) All buildings knowingly used or intended
2 for use to further human trafficking in violation of this
3 article if the owner has knowledge of or gives consent to
4 the act of violation. A forfeiture of property encumbered
5 by a bona fide security interest is subject to the interest
6 if the secured party neither had knowledge of nor consented
7 to the act;

8
9 (v) Any property or other thing of pecuniary
10 value furnished in exchange for human trafficking in
11 violation of this article including any proceeds, assets or
12 other property of any kind traceable to the exchange and
13 any money, securities or other negotiable instruments used
14 to facilitate a violation of this article. Property used or
15 furnished without the consent or knowledge of the owner is
16 not forfeitable under this section to the extent of the
17 owner's interest;

18
19 (vi) Overseas assets of persons convicted of
20 human trafficking under this article to the extent they can
21 be retrieved by the state.

22

1 (b) Property subject to forfeiture under this article
2 may be seized by any law enforcement officer of the state
3 upon process issued by any district or circuit court having
4 jurisdiction over the property. Seizure without process may
5 be made if:

6
7 (i) The seizure is incident to an arrest or a
8 search under a search warrant or an inspection under an
9 administrative inspection warrant; or

10
11 (ii) The property subject to seizure has been
12 the subject of a prior judgment in favor of the state in a
13 criminal, injunction or forfeiture proceeding based upon
14 this article.

15
16 (c) Any person convicted of a violation of this
17 article which is punishable by imprisonment for more than
18 one (1) year shall be subject to forfeiture of property
19 listed under subsection (a) of this section. The procedure
20 for forfeiture shall be as provided in subsections (d)
21 through (j) of this section.

22
23 (d) If the state seeks forfeiture of property:

1

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

6

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

11

12 (iii) After a verdict or finding of guilty, or
13 after an admission of guilt or a plea of guilty or nolo
14 contendere is accepted, the court shall conduct a
15 forfeiture hearing to determine if the property is subject
16 to forfeiture under this section. If the court finds under
17 a preponderance of evidence standard that property is
18 subject to forfeiture, the court shall enter a preliminary
19 order directing the forfeiture;

20

21 (iv) The court may include in the preliminary
22 order of forfeiture additional conditions reasonably

1 necessary to preserve the property's value pending any
2 appeal.

3

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

8

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

22

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

13

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

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

3

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

10

11 (i) With respect to a property interest in
12 existence at the time the violation of this article took
13 place, "innocent owner" means a person who held an interest
14 in the property who could not have reasonably known of the
15 conduct of the defendant related to the violation;

16

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

21

1 (A) Was a bona fide purchaser or seller for
2 value or a holder of a bona fide security interest in the
3 property; and
4

5 (B) Did not know and was reasonably without
6 cause to believe the property was used in connection with a
7 violation of this article.
8

9 (g) Property taken or detained under this section
10 shall not be subject to replevin, but is deemed to be in
11 the custody of and subject only to the orders and decrees
12 of the court having jurisdiction over the proceedings.
13 When property is seized under this section, the court shall
14 place the property under seal or otherwise assure the
15 property is maintained under conditions reasonably
16 necessary to preserve the property's value or may sell the
17 property for value and hold the proceeds thereof until the
18 forfeiture proceedings have become final as to all parties
19 and all rights of appeal have been exhausted.
20

21 (h) A person's interest in property is not subject to
22 forfeiture to the extent that the forfeiture is grossly
23 disproportionate to the gravity of the offense giving rise

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

5

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

8

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

12

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

15

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

18

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

21

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

1

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

4

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

7

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

11

12 (j) Within six (6) months after a final order of
13 forfeiture is affirmed on appeal or the deadline to appeal
14 passes without a notice of appeal being filed, the state
15 shall, by public sale or auction, liquidate forfeited
16 tangible property and distribute the total proceeds of the
17 forfeiture as follows:

18

19 (i) Costs of forfeiture proceedings and the sale
20 of forfeited property incurred by the state;

21

22 (ii) Costs of storing and maintaining the
23 forfeited property incurred by the court;

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2 (iii) The amount necessary to pay court ordered
3 restitution shall be applied to pay that restitution;

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(iv) Civil judgments entered against the
forfeiting defendant in favor of that defendant's victim,
already existing at the time proceeds are received, to the
extent that such judgments cannot be satisfied out of the
forfeiting defendant's assets;

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11 (v) If a remainder exists, to the crime victims
12 compensation account created by W.S. 1-40-114.

13

14 **Section 2.** This act is effective July 1, 2016.

15

16 (END)