

SENATE FILE NO. SF0046

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; providing immunity
4 for forfeiture actions; conforming provisions; and
5 providing for an effective date.

6

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

8

9 **Section 1.** W.S. 1-39-104(a), 1-39-120 by creating a
10 new subsection (b) and 35-7-1049(a)(v)(intro), (vii),
11 (b)(iii), by creating a new subsection (c), by amending and
12 renumbering (c) and (d) as (d) and (e), by creating new
13 subsections (f) through (q), by renumbering (e) and (f) as
14 (r) and (s), by amending and renumbering (g) and (h) as (t)
15 and (u), by renumbering (h) through (k) as (u) through (y)

1 and by amending and renumbering (m) and (n) as (z) and (aa)
2 are amended to read:

3
4 **1-39-104. Granting immunity from tort liability;**
5 **liability on contracts; exceptions.**

6
7 (a) A governmental entity and its public employees
8 while acting within the scope of duties are granted
9 immunity from liability for any tort except as provided by
10 W.S. 1-39-105 through 1-39-112 and limited by W.S.
11 1-39-121. Any immunity in actions based on a contract
12 entered into by a governmental entity is waived except to
13 the extent provided by the contract if the contract was
14 within the powers granted to the entity and was properly
15 executed and except as provided in W.S. 1-39-120(b) and
16 1-39-121. The claims procedures of W.S. 1-39-113 apply to
17 contractual claims against governmental entities.

18
19 **1-39-120. Exclusions from waiver of immunity.**

20
21 (b) Notwithstanding the waiver of immunity for tort
22 liability provided by W.S. 1-39-105 through 1-39-112 or the
23 waiver of immunity in actions based on contract provided by

1 W.S. 1-39-104, a governmental entity and its public
2 employees while acting within the scope of duties are
3 immune from a civil action in tort, contract or otherwise
4 alleging, in whole or in part, the improper seizure of
5 property pursuant to W.S. 35-7-1049.

6
7 **35-7-1049. Forfeitures and seizures generally;**
8 **property subject to forfeiture.**

9
10 (a) The following are subject to forfeiture:

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

19
20
21 (vii) All buildings knowingly used or intended
22 for use to store, manufacture or distribute property
23 described under ~~paragraphs (a)~~ paragraph (i) or (ii) of

1 this ~~section~~ subsection if the owner has knowledge of or
2 gives consent to the act of violation. A forfeiture of
3 property encumbered by a bona fide security interest is
4 subject to the interest of the secured party if he did not
5 have knowledge of or give consent to the act;

6
7 (b) Property subject to forfeiture under this act may
8 be seized by any law enforcement officer of the state upon
9 process issued by any district court or district court
10 commissioner having jurisdiction over the property. Seizure
11 without process may be made if:

12
13 (iii) The board or commissioner has probable
14 cause to believe that the property was used or is intended
15 to be used in violation of this act. Prior to property
16 being seized by any law enforcement officer of the state
17 pursuant to this paragraph, the following procedures shall
18 be followed:

19
20 (A) The law enforcement officer shall
21 communicate with the commissioner regarding the facts and
22 circumstances involving the property to be seized. Based
23 upon the information provided, the commissioner shall

1 determine whether probable cause exists that the property
2 identified by the law enforcement officer was used or was
3 intended to be used in a violation of this act;
4

5 (B) If the commissioner determines there is
6 probable cause to seize the property, he shall direct the
7 officer to seize the property. At the time of the seizure,
8 the person or persons from whom the property was seized
9 shall be given written notice that the seized property is
10 subject to forfeiture. The notice shall include an
11 advisement that:
12

13 (I) The person has the right to attend
14 the hearing required by subsection (c) of this section, but
15 shall not have the right to present evidence or cross
16 examine any witness;
17

18 (II) The person will be given at least
19 fifteen (15) days' notice of the time, date and location of
20 the hearing; and
21

22 (III) The purpose of the hearing is
23 for a court to determine whether there was probable cause

1 to believe that the property was used or was intended to be
2 used in violation of this act.

3
4 (C) If the commissioner determines there is
5 no probable cause to seize the identified property, he
6 shall not authorize the seizure of any property based upon
7 that event or occurrence and the officer shall not seize
8 any property.

9
10 (c) Within thirty (30) days of the seizure, a
11 probable cause hearing shall be held in circuit court, in
12 the county where the property was seized to determine
13 whether probable cause existed to seize the property
14 pursuant to paragraph (b)(iii) of this section. One (1) or
15 more of the law enforcement officers who made the seizure
16 shall testify under oath regarding the facts and
17 circumstances which established probable cause to seize the
18 property. The hearing shall be recorded by sound,
19 sound-and-visual or stenographic means. If the court
20 determines, based upon the evidence presented, that at the
21 time of the seizure:

22

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

5
6 (ii) Probable cause existed to seize the
7 property, the court shall order that the commissioner may
8 file an action for the forfeiture of the property.

9
10 ~~(e)(d) Prompt institution of proceedings.~~ In the
11 event of seizure pursuant to subsection (b) of this
12 section, ~~proceedings under subsection (d) of~~ no action for
13 the forfeiture of property pursuant to this section shall
14 be instituted ~~promptly~~ unless it is brought within one
15 hundred twenty (120) days from the date of seizure or
16 within thirty (30) days following the completion of any
17 criminal prosecution relating to the seizure, whichever is
18 later. All forfeiture proceedings or actions shall be
19 brought by the commissioner.

20
21 ~~(d)(e) Seized property not repleviable; sealing or~~
22 ~~removal of seized property.~~ Property taken or detained
23 under this section shall not be subject to replevin, but is

1 deemed to be in the custody of the commissioner subject
2 only to the orders and decrees of the court having
3 jurisdiction over the ~~forfeiture~~ proceedings. When property
4 is seized under this act, the commissioner ~~may:~~ shall place
5 the property under seal or otherwise assure the property is
6 maintained under conditions reasonably necessary to
7 preserve the property's value or may sell the property and
8 hold the proceeds thereof if the property is perishable or
9 threatens to decline speedily in value until the forfeiture
10 proceedings have become final as to all parties and all
11 rights of appeal have been exhausted. In order to preserve
12 the property, if cash, the commissioner may deposit funds
13 into a demand deposit account at an institution located
14 within the state of Wyoming.

15
16 ~~(i) Place the property under seal;~~

17
18 ~~(ii) Remove the property to a place designated~~
19 ~~by him; or~~

20
21 ~~(iii) Require the board to take custody of the~~
22 ~~property and remove it to an appropriate location for~~
23 ~~disposition in accordance with law.~~

1
2 (f) Before a forfeiture action may be filed and no
3 later than thirty (30) days from the date of entry of an
4 order finding probable cause pursuant to subsection (c) of
5 this section, the commissioner shall serve a notice of
6 seizure and intended forfeiture upon any third party,
7 ascertained after reasonably diligent inquiry, known to
8 have an interest in the property. The notice shall describe
9 the date and location of the seizure, the property seized
10 and the statutory basis for the forfeiture. The notice
11 shall be served in accordance with the Wyoming Rules of
12 Civil Procedure except that service by publication shall
13 not be required. The notice requirements of this subsection
14 shall not apply to the party or parties from whom the
15 property was directly seized.

16
17 (g) A court shall not issue any forfeiture order
18 unless the notice under subsection (f) of this section has
19 been accomplished to the satisfaction of the court.

20
21 (h) After the commissioner is authorized by the court
22 or by this section to file a forfeiture action, the Wyoming

1 Rules of Civil Procedure shall govern the action unless in
2 conflict with subsections (j) through (n) of this section.

3
4 (j) The complaint to seek forfeiture of property
5 under this section shall describe with reasonable
6 particularity:

7
8 (i) The approximate value of the property;

9
10 (ii) The facts giving rise to the seizure or
11 custody;

12
13 (iii) The name and position of the person making
14 the seizure or taking the property into custody;

15
16 (iv) The name and address of the owners of the
17 property or those persons who were in possession of the
18 property at the time of the seizure; and

19
20 (v) The manner in which all parties reasonably
21 known to have an interest in the property seized were
22 served in accordance with subsection (f) of this section.
23

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

5
6 (m) Subsequent to the commissioner carrying his
7 burden of proof pursuant to subsection (k) of this section,
8 an interest in property belonging to a third party shall
9 not be forfeited to the extent the third party establishes
10 he has a perfected lien in the property, proves by a
11 preponderance of evidence that he has a perfected priority
12 interest in the property or that he is an innocent owner.
13 For purposes of this subsection:

14
15 (i) With respect to a property interest in
16 existence at the time the violation of this act took place,
17 "innocent owner" means a person who held an interest in the
18 property and neither had knowledge of nor consented to the
19 violation;

20
21 (ii) With respect to a property interest
22 acquired after the violation of this act has taken place,

1 "innocent owner" means a person who, at the time that
2 person acquired the interest in the property:

3
4 (A) Was a bona fide purchaser or seller for
5 value of goods or services or a holder of a bona fide
6 security interest; and

7
8 (B) Did not know and was reasonably without
9 cause to believe the property was subject to forfeiture.

10
11 (n) The right to trial by jury applies to forfeiture
12 proceedings under this section.

13
14 (o) A person's interest in property is not subject to
15 forfeiture to the extent that the forfeiture is grossly
16 disproportionate to the gravity of the offense giving rise
17 to the forfeiture. The commissioner shall have the burden
18 of demonstrating by a preponderance of the evidence that a
19 forfeiture is not grossly disproportionate. Proportionality
20 shall be decided by the court as follows:

21
22 (i) In determining whether a forfeiture is
23 grossly disproportionate, the court shall consider:

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(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;

(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.

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

4
5 (p) In any forfeiture proceeding under this section,
6 the court shall award a prevailing property owner
7 reasonable:

8
9 (i) Attorney fees and costs; and

10
11 (ii) Damages.

12
13 (q) The proceedings and judgment of forfeiture shall
14 be in rem and shall be against the property itself.

15
16 ~~(e)~~(r) When property is forfeited under this act, the
17 commissioner may:

18
19 (i) Retain it for official use; in which case it
20 shall become the property of the state of Wyoming;

21
22 (ii) Sell any such property which is not
23 required to be destroyed by law and which is not harmful to

1 the public. The proceeds shall be used for payment of all
2 proper expenses of the proceedings for forfeiture and sale,
3 including expenses of seizure, maintenance of custody,
4 advertising and court costs;

5
6 (iii) Require the board to take custody of the
7 property and remove it for disposition in accordance with
8 law;

9
10 (iv) Repealed by Laws 1983, ch. 160, § 2.

11
12 (v) Transfer ownership and control of the
13 property to any municipality or political subdivision of
14 the state for its official use; or

15
16 (vi) Authorize any law enforcement officer to
17 apply to the district court with jurisdiction for an order
18 providing for destruction of the contraband controlled
19 substances or paraphernalia if no longer necessary for
20 evidentiary purposes, provided, however, that a district
21 court order shall not be necessary for the division of
22 criminal investigation to destroy quantities of contraband
23 controlled substances after the division has tested random

1 samples. The division of criminal investigation shall
2 adopt rules necessary to operate a program to destroy bulk
3 quantities of contraband controlled substances, which shall
4 include:

5
6 (A) The photographing and videotaping of
7 the entire bulk amount of seized contraband controlled
8 substances to maintain its evidentiary value and to create
9 exhibits for use in legal proceedings;

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

14
15 (C) A weighing on properly calibrated
16 scales of both the bulk amount of seized contraband
17 controlled substances and the representative samples;

18
19 (D) The additional retention of:

20
21 (I) Five (5) ounces of organic
22 material if the controlled substance is marihuana or a
23 substance of similar organic composition;

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(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 substance are no longer necessary for evidentiary purposes,

1 any law enforcement officer, upon authorization from the
2 commissioner, may apply to the district court with
3 jurisdiction for an order providing for the destruction of
4 the remaining contraband controlled substance.

5
6 ~~(f)~~(s) Any controlled substance listed in Schedules I
7 through V that is possessed, transferred, sold or offered
8 for sale in violation of this act is contraband and shall
9 be seized and summarily forfeited to the state. Any
10 controlled substance listed in Schedules I through V which
11 is seized or comes into possession of the state and the
12 owner is unknown, is contraband and shall be summarily
13 forfeited to the state.

14
15 ~~(g)(t) Seizures and summary forfeiture of certain~~
16 ~~plants generally.~~ Species of plants from which controlled
17 substances in Schedules I and II may be derived which have
18 been planted or cultivated in violation of this act, or of
19 which the owners or cultivators are unknown, or which are
20 wild growths, may be seized and summarily forfeited to the
21 state.

22

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

9
10 ~~(j)~~(w) Any law enforcement agency of this state may
11 accept, receive, dispose of and expend the property or
12 proceeds from any property forfeited to the federal
13 government or any state and allocated to the agency by the
14 United States attorney general pursuant to 21 U.S.C. 881(e)
15 or any law of another state. The property or proceeds shall
16 be in addition to funds appropriated to the law enforcement
17 agency by the state legislature or any unit of local
18 government. The property or proceeds may be credited to
19 any lawfully created fund or account designated to receive
20 proceeds of forfeitures.

21

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

1 of this section shall report to the attorney general on
2 forms to be prescribed by the attorney general:

3
4 (i) The receipt of property or proceeds within
5 thirty (30) days from the receipt; and
6

7 (ii) The disposition or expenditure of any
8 property or proceeds within ninety (90) days from the
9 disposition or expenditure.
10

11 ~~(m)~~(z) The attorney general shall submit ~~a biennial~~
12 an annual report to the joint appropriations interim
13 committee and the joint judiciary interim committee not
14 later than August 1 concerning recipients and the amount of
15 property and proceeds accepted, received, disposed of or
16 expended during the prior calendar year under ~~subsection~~
17 ~~(j) of~~ this section by law enforcement agencies, other than
18 property subject to summary forfeiture.
19

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

1 adoption of federal law enforcement practices and
2 procedure.

3

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

8

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

10

11 (END)