

## HOUSE BILL NO. HB0316

Civil asset forfeiture reform.

Sponsored by: Representative(s) Olsen, Lindholm and Pelkey  
and Senator(s) Rothfuss

A BILL

for

1 AN ACT relating to the Wyoming Controlled Substance Act;  
2 amending the procedure 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. 35-7-1049.1 is created to read:

9

10 **35-7-1049.1. Forfeitures and seizures generally;**  
11 **property subject to forfeiture.**

12

13 (a) As permitted and limited by subsections (c) through  
14 (r) of this section, the following types of property are  
15 subject to forfeiture:

1

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

5

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

11

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

15

16 (iv) All books, records, research products and  
17 materials, including formulas, microfilm, tapes and data,  
18 which are used, or intended for use, in violation of this  
19 act;

20

21 (v) All conveyances including aircraft, vehicles  
22 or vessels knowingly used, or intended for use, to transport

1 or facilitate the transportation of property described in  
2 paragraph (i) or (ii) of this subsection, provided:

3

4 (A) No conveyance is subject to forfeiture  
5 under this subsection unless the transport was for the sale  
6 or receipt of property in violation of this act;

7

8 (B) 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 it  
11 appears that the owner or corporate officer is a consenting  
12 party or privy to a violation of this act;

13

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

17

18 (D) A conveyance is not subject to forfeiture  
19 for a violation of W.S. 35-7-1031(c);

20

21 (E) A forfeiture of a conveyance encumbered  
22 by a bona fide security interest is subject to the interest

1 if the secured party neither had knowledge of nor consented  
2 to the act of violation.

3

4 (vi) All "drug paraphernalia" as defined by W.S.  
5 35-7-1002(a)(xxvii);

6

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

14

15 (viii) Any property or other thing of pecuniary  
16 value furnished in exchange for a controlled substance in  
17 violation of this act including any proceeds, assets or other  
18 property of any kind traceable to the exchange and any money,  
19 securities or other negotiable instruments used to facilitate  
20 a violation of this act. Property used or furnished without  
21 the consent or knowledge of the owner is not forfeitable under  
22 this section to the extent of the owner's interest.

23

1           (b) Property subject to forfeiture under subsection (a)  
2 of this section may be seized by any law enforcement officer  
3 of the state upon process issued by any district court or  
4 district court commissioner having jurisdiction over the  
5 property. Seizure without process may be made if the board or  
6 commissioner has probable cause to believe that the property  
7 was used or is intended to be used in violation of this act.

8

9           (c) Any person convicted of a violation of this act  
10 punishable by imprisonment for more than one (1) year shall  
11 be subject to forfeiture of property listed under subsection  
12 (a) of this section. The procedure for forfeiture shall be as  
13 provided in subsections (d) through (m) of this section.

14

15           (d) Except for summary forfeiture under paragraph  
16 (h)(vi) and subsections (j) through (m) of this section, the  
17 court shall order forfeiture only as part of the defendant's  
18 sentence. If the state seeks to forfeit property:

19

20           (i) The indictment or information shall contain  
21 notice to the defendant that the state seeks forfeiture and  
22 shall specifically identify the property sought to be  
23 forfeited;

1

2           (ii) All property shall be returned to the person  
3 from whom it was seized unless there is a finding or verdict  
4 of guilt, an admission of guilt or a plea of nolo contendere  
5 to a felony under this act;

6

7           (iii) After a verdict or finding of guilty, or  
8 after a plea of guilty or nolo contendere is accepted, the  
9 court shall conduct a forfeiture hearing to determine if the  
10 property is subject to forfeiture under this section. If the  
11 court finds under a preponderance of evidence standard that  
12 property is subject to forfeiture, the court shall enter a  
13 preliminary order directing the forfeiture;

14

15           (iv) The court may include in the preliminary  
16 order of forfeiture additional conditions reasonably  
17 necessary to preserve the property's value pending any  
18 appeal.

19

20           (e) If the court makes a preliminary order of  
21 forfeiture of property, legal interests of persons other than  
22 a party to the criminal action shall be determined, subject  
23 to the following:

1

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

15

16 (ii) If a third party files a timely petition  
17 asserting an interest in the property, the court shall conduct  
18 a hearing. The court may permit the parties to conduct  
19 discovery in accordance with the Wyoming Rules of Civil  
20 Procedure if the court determines that discovery is necessary  
21 or desirable to resolve factual issues. After the hearing,  
22 the court shall enter a final order of forfeiture by amending  
23 the preliminary order as necessary to account for any third

1 party rights. If no third party files a timely petition, the  
2 preliminary order becomes the final order upon expiration of  
3 the time for filing a petition;

4

5 (iii) If a defendant appeals from a conviction or  
6 a preliminary order of forfeiture, the court may stay the  
7 preliminary order of forfeiture on terms appropriate to  
8 ensure that the property remains available pending appellate  
9 review. A stay shall not delay the ancillary hearing or the  
10 determination of a third party's rights or interests. If the  
11 court rules in favor of any third party while an appeal is  
12 pending, the court may amend the order of forfeiture but shall  
13 not transfer any property interest to a third party until the  
14 decision on appeal becomes final, unless the defendant  
15 consents in writing or on the record.

16

17 (f) An interest in property belonging to a third party  
18 shall not be forfeited to the extent that the third party  
19 establishes, by a preponderance of evidence, a perfected lien  
20 in the property, a perfected priority interest in the property  
21 or that he is an innocent owner. For purposes of this  
22 subsection:

23



1           (i) With respect to a property interest in  
2 existence at the time the violation of this act took place,  
3 "innocent owner" means a person who held an interest in the  
4 property who did not reasonably know of the conduct of the  
5 defendant related to the violation;

6

7           (ii) With respect to a property interest acquired  
8 after the violation of this act has taken place, the term  
9 "innocent owner" means a person who, at the time that person  
10 acquired the interest in the property:

11

12           (A) Was a bona fide purchaser or seller for  
13 value of goods or services or a holder of a bona fide security  
14 interest; and

15

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

18

19           (g) Property taken or detained under this section shall  
20 not be subject to replevin, but is deemed to be in the custody  
21 of the commissioner subject only to the orders and decrees of  
22 the court having jurisdiction over the proceedings. When  
23 property is seized under this act, the commissioner shall

1 place the property under seal or otherwise assure the property  
2 is maintained under conditions reasonably necessary to  
3 preserve the property's value or may sell the property and  
4 hold the proceeds thereof if the property is perishable or  
5 threatens to decline speedily in value until the forfeiture  
6 proceedings have become final as to all parties and all rights  
7 of appeal have been exhausted. In order to preserve the  
8 property, if cash, the commissioner may deposit funds into a  
9 demand deposit account at an institution located within the  
10 state of Wyoming.

11

12 (h) When property is forfeited under this act, the  
13 commissioner may:

14

15 (i) Retain it for official use, in which case it  
16 shall become the property of the state of Wyoming;

17

18 (ii) Sell the property or any portion of the  
19 property which is not required to be destroyed by law and  
20 which is not harmful to the public. The proceeds shall be  
21 used for payment of all proper expenses of the proceedings  
22 for forfeiture and sale, including expenses of seizure,  
23 maintenance of custody, advertising and court costs;

1

2           (iii) Require the board to take custody of the  
3 property and remove it for disposition in accordance with  
4 law;

5

6           (iv) Transfer ownership and control of the  
7 property to any municipality or political subdivision of the  
8 state for the transferee's official use; or

9

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

21

22           (A) The photographing and videotaping of the  
23 entire bulk amount of seized contraband controlled substances

1 to maintain its evidentiary value and to create exhibits for  
2 use in legal proceedings;

3

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

7

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

11

12 (D) The additional retention of:

13

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

17

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

20

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

23

1                   (IV) An amount sufficient for testing by  
2 experts shall be made available from the additionally  
3 retained sample for the purpose of defending criminal charges  
4 arising from the possession, use or sale of the controlled  
5 substance.

6  
7                   (vi) After testing and the retention of samples  
8 specified in paragraph (v) of this subsection, order the  
9 destruction of the bulk amount of the seized contraband  
10 controlled substance in excess of the representative sample  
11 and the additional retained samples of the seized contraband  
12 controlled substance;

13  
14                   (vii) Authorize any law enforcement officer, after  
15 the representative samples and the additional retained  
16 samples of the contraband controlled substance are no longer  
17 necessary for evidentiary purposes, to apply to the district  
18 court with jurisdiction for an order providing for the  
19 destruction of the remaining contraband controlled substance.

20  
21                   (j) Any controlled substance listed in Schedules I  
22 through V that is possessed, transferred, sold or offered for  
23 sale in violation of this act is contraband and shall be

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

5

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

11

12 (m) Upon demand by the commissioner or his authorized  
13 agent, the failure of a person in occupancy or in control of  
14 land or a premises upon which the species of plants described  
15 in subsection (k) of this section is growing or being stored  
16 to produce an appropriate registration, or proof that he is  
17 the holder thereof, constitutes authority for the seizure and  
18 forfeiture of the plants.

19

20 (n) Any law enforcement agency of this state may  
21 accept, receive, dispose of and expend the property or  
22 proceeds from any property forfeited to the federal  
23 government or any state and allocated to the agency by the

1 United States attorney general pursuant to 21 U.S.C. § 881(e)  
2 or any law of another state. The property or proceeds shall  
3 be in addition to funds appropriated to the law enforcement  
4 agency by the state legislature or any unit of local  
5 government. The property or proceeds may be credited to any  
6 lawfully created fund or account designated to receive  
7 proceeds of forfeitures.

8

9 (o) Any law enforcement agency of this state which  
10 receives property or proceeds pursuant to subsection (n) of  
11 this section shall report to the attorney general on forms to  
12 be prescribed by the attorney general:

13

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

16

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

20

21 (p) The attorney general shall submit an annual report  
22 to the joint appropriations committee and the joint judiciary  
23 interim committee not later than August 1 concerning

1 recipients and the amount of property and proceeds accepted,  
2 received, disposed of or expended during the prior calendar  
3 year under this section by law enforcement agencies, other  
4 than property subject to summary forfeiture under paragraph  
5 (h)(vi) and subsections (j) through (m) of this section.

6

7 (q) No law enforcement agency of this state shall  
8 accept property or proceeds pursuant to subsection (n) of  
9 this section if the tender of the property or proceeds is  
10 conditioned upon the state law enforcement agency's adoption  
11 of federal law enforcement practices and procedure.

12

13 (r) A law enforcement officer may not request, require  
14 or in any manner induce any person to execute a document  
15 purporting to waive, for purpose of forfeiture under this  
16 section, the person's interest in or rights to property  
17 seized, and provided:

18

19 (i) Any document obtained by a law enforcement  
20 officer purporting to waive a person's interest in or right  
21 to property seized under this section is null and void; and

22



1           (ii) Nothing in this subsection prohibits the  
2 commissioner, after a hearing and a finding of probable cause  
3 as required by subsection (c) of this section, from requesting  
4 a person to waive the person's interest in or rights to  
5 property.

6  
7           **Section 2.** W.S. 1-39-120(b) and 7-2-105(a)(intro) and  
8 (p)(intro) are amended to read:

9  
10           **1-39-120. Exclusions from waiver of immunity.**

11  
12           (b) Notwithstanding the waiver of immunity for tort  
13 liability provided by W.S. 1-39-105 through 1-39-112 or the  
14 waiver of immunity in actions based on contract provided by  
15 W.S. 1-39-104, a governmental entity and its public employees  
16 while acting within the scope of duties are immune from a  
17 civil action in tort, contract or otherwise alleging, in whole  
18 or in part, the improper seizure of property pursuant to W.S.  
19 ~~35-7-1049~~ 35-7-1049.1.

20  
21           **7-2-105. Disposition and appraisal of property seized**  
22 **or held; notice and order to show cause; judgment.**

23

1 (a) When personal property not subject to be summarily  
2 destroyed is seized or held by any peace officer pursuant to  
3 any law of this state, or when property seized by any peace  
4 officer is delivered to the appropriate law enforcement  
5 agency under provisions other than W.S. ~~35-7-1049~~  
6 35-7-1049.1, or property is taken into custody as lost,  
7 mislaid or abandoned, the head of the law enforcement agency  
8 shall forthwith ascertain as closely as practicable:

9  
10 (p) For purposes of this section, seized property that  
11 is not subject to W.S. ~~35-7-1049~~ 35-7-1049.1 may be summarily  
12 destroyed, provided the lawful owner has been contacted and  
13 has declined to take possession of the property, including:

14  
15 **Section 3.** W.S. 35-7-1049 is repealed.

16  
17 **Section 4.** This act shall apply to seizures of property  
18 which occur on or after July 1, 2019.

19  
20 **Section 5.** This act is effective July 1, 2019.

21  
22 (END)