

ENROLLED ACT NO. 45, HOUSE OF REPRESENTATIVES

SIXTY-THIRD LEGISLATURE OF THE STATE OF WYOMING
2016 BUDGET SESSION

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

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

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

6-2-711. Asset forfeiture.

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

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

(A) Used by a person while engaged in perpetrating a violation of this article;

(B) Affording a person a source of influence over a trafficked individual in violation of this article;

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

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

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

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

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

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

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

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

(v) Any property or other thing of pecuniary value furnished in exchange for human trafficking in violation of this article including any proceeds, assets or

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other property of any kind traceable to the exchange and any money, securities or other negotiable instruments used to facilitate a violation of this article. Property used or furnished without the consent or knowledge of the owner is not forfeitable under this paragraph to the extent of the owner's interest;

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

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

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

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

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

(d) If the state seeks forfeiture of property:

(i) The indictment or information shall contain notice to the defendant that the state seeks forfeiture and

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shall specifically identify the property sought to be forfeited;

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

(iii) After a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere to a felony under this act is accepted, the court shall conduct a forfeiture hearing to determine if the property is subject to forfeiture under this section. If the court finds under a preponderance of evidence standard that property is subject to forfeiture, the court shall enter a preliminary order directing the forfeiture;

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

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

(i) Following an entry of a preliminary order of forfeiture, the state shall publish notice of the order in a newspaper of general circulation in the state once a week for two (2) weeks and shall provide written notice by first class mail to the last known address of any person who, after reasonable inquiry, appears to be a potential owner or lien holder in the property. The notice shall describe the forfeited property and shall advise that parties with a potential interest in the property may contest the forfeiture by filing a petition with the court not later

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than sixty (60) days after the date of the second published notice or, if notice is mailed under this paragraph, not later than thirty (30) days after mailing written notice;

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

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

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

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(i) With respect to a property interest in existence at the time the violation of this article took place, "innocent owner" means a person who held an interest in the property who neither had knowledge of nor consented to the violation;

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

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

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

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

(h) A person's interest in property is not subject to forfeiture to the extent that the forfeiture is grossly disproportionate to the gravity of the offense giving rise to the forfeiture. The state shall have the burden of demonstrating by a preponderance of the evidence that a

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forfeiture is not grossly disproportionate. Proportionality shall be decided by the court as follows:

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

(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.

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

(j) Within six (6) months after a final order of forfeiture is affirmed on appeal or the deadline to appeal passes without a notice of appeal being filed, the state shall, by public sale or auction, liquidate forfeited

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tangible property and distribute the total proceeds of the forfeiture as follows:

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

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

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

(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;

(v) If a remainder exists, to the public school fund of the respective counties as provided by article 7, section 5 of the Wyoming constitution.

ORIGINAL HOUSE
BILL NO. HB0058

ENGROSSED

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

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk