

# 2011 -- H 5073 SUBSTITUTE A

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LC00425/SUB A  
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## STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

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A N A C T

RELATING TO FOOD AND DRUGS

Introduced By: Representatives Gallison, Fellela, Azzinaro, Messier, and Martin

Date Introduced: January 19, 2011

Referred To: House Veterans` Affairs

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 21-28-5.04 of the General Laws in Chapter 21-28 entitled "Uniform  
2   Controlled Substances Act" is hereby amended to read as follows:

3           **21-28-5.04. Forfeiture of property and money.** -- (a) Any property, real or personal,  
4   including, but not limited to, vessels, vehicles, or aircraft, and money or negotiable instruments,  
5   securities, or other things of value or any property constituting, or derived from any proceeds,  
6   furnished or intended to be furnished by any person for the transportation of or in exchange for a  
7   controlled substance and which has been or is being used in violation of section 21-28-4.01(a) or  
8   (b) or in, upon or by means of which any violation of section 21-28-4.01(a) or (b) or section 21-  
9   28-4.01.1 or 21-28-4.01.2 has taken or is taking place, and all real property including any right,  
10   title, and interest in the whole of any lot or tract of land and any appurtenances or improvements  
11   which is used in the commission of a violation of section 21-28-4.01(a) or (b) or section 21-28-  
12   4.01.1 or 21-28-4.01.2, or which was purchased with funds obtained as a result of the commission  
13   of a violation of section 21-28-4.01(a) or (b) or section 21-28-4.01.1 or 21-28-4.01.2, shall be  
14   seized and forfeited; provided that no property or money, as enumerated in this subsection, used  
15   by any person shall be forfeited under the provisions of this chapter unless it shall appear that the  
16   owner of the property or money had knowledge, actual or constructive, and was a consenting  
17   party to the alleged illegal act. All moneys, coin and currency, found in close proximity to  
18   forfeitable controlled substances, to forfeitable drug manufacturing or distributing paraphernalia,  
19   or to forfeitable records of the importation, manufacture, or distribution of controlled substances,

1 are presumed to be unlawfully furnished in exchange for a controlled substance or used in  
2 violation of this chapter. The burden of proof is upon claimants of the property to rebut this  
3 presumption.

4 (b) Property taken or detained under this section shall not be repleviable, but shall be  
5 deemed to be in the custody of the law enforcement agency making the seizure and whenever  
6 property or money is forfeited under this chapter it shall be utilized as follows:

7 (1) Where the seized property is a vessel, vehicle, aircraft, or other personal property it  
8 may be retained and used by the law enforcement agency that seized the property where the use  
9 of the property is reasonably related to the law enforcement duties of the seizing agency. If the  
10 seized property is a motor vehicle that is inappropriate for use by the law enforcement agency due  
11 to style, size, or color, the seizing agency shall be allowed to apply the proceeds of sale or the  
12 trade in value of the vehicle towards the purchase of an appropriate vehicle for use for activities  
13 reasonably related to law enforcement duties.

14 (2) The law enforcement agency may sell any forfeited property, which is not required  
15 by this chapter to be destroyed and which is not harmful to the public. The proceeds from the sale  
16 are to be distributed in accordance with subdivision (3) of this subsection.

17 (3) As to the proceeds from the sale of seized property as referred to in subdivision (2) of  
18 this subsection and as to moneys, coin and currency, negotiable instruments, securities, or other  
19 things of value as referred to in subsection (a) of this section, the distribution shall be as follows:

20 (i) (A) All proceeds of the forfeiture of real or personal property shall be distributed as  
21 follows: All costs of advertising administrative forfeitures shall first be deducted from the amount  
22 forfeited. Of the remainder, twenty percent (20%) of the proceeds shall be provided to the  
23 attorney general's department to be used for further drug-related law enforcement activities  
24 including, but not limited to, investigations, prosecutions and the administration of this chapter;  
25 seventy percent (70%) of the proceeds shall be divided among the state and local law  
26 enforcement agencies proportionately based upon their contribution to the investigation of the  
27 criminal activity related to the asset being forfeited; and ten percent (10%) of the proceeds shall  
28 be provided to the department of health for distribution to substance abuse treatment programs.

29 (B) The law enforcement agencies involved in the investigation with the assistance of the  
30 attorney general shall by agreement determine the respective proportionate share to be received  
31 by each agency. If the agencies are unable to reach agreement, application shall be made by one  
32 or more of the agencies involved to the presiding justice of the superior court, who shall  
33 determine the respective proportionate share attributable to each law enforcement agency. The  
34 proceeds from all forfeitures shall be held by the general treasurer in a separate account until such

1 time as an allocation is determined by agreement of the agencies or by the presiding justice. It  
2 shall be the duty and responsibility of the general treasurer to disburse the allocated funds from  
3 the separate account to the respective law enforcement agencies.

4 (ii) Each state or local law enforcement agency shall be entitled to keep the forfeited  
5 money or the proceeds from sales of forfeited property. The funds shall be used for law  
6 enforcement purposes and investigations of violations of this chapter. The funds received by a  
7 state law enforcement agency shall be maintained in a separate account by the general treasurer.  
8 The funds received by a local law enforcement agency shall be maintained in a separate account  
9 by the local agency's city or town treasurer.

10 (c) (1) There is established in the state's treasury a special fund to be known as the asset  
11 forfeiture fund in which shall be deposited the excess proceeds of forfeitures arising out of  
12 criminal acts occurring before July 1, 1987. The asset forfeiture fund shall be used to fund drug-  
13 related law enforcement activity and the treatment and rehabilitation of victims of drug abuse.  
14 The fund shall be administered through the office of the general treasurer. The presiding justice of  
15 the superior court shall have the authority to determine the feasibility and amount of disbursement  
16 to those state or local law enforcement agencies which have made application.

17 (2) Upon the application of any law enforcement agency of the state of Rhode Island  
18 when a special need exists concerning the enforcement of the provisions of this chapter, the  
19 attorney general or his or her designee may apply to the presiding justice of the superior court for  
20 the release from the general treasury of sums of money. When the presiding justice upon  
21 consideration of the reasons set forth by that agency deems them to be reasonable and necessary  
22 to the accomplishment of a goal within the powers and duties of that law enforcement agency, he  
23 or she may issue an order ex parte providing for the release of the funds.

24 (d) Each law enforcement agency making any seizure(s) which result(s) in a forfeiture  
25 pursuant to this section shall certify and file with the state treasurer between January 1 and  
26 January 30 an annual report detailing the property or money forfeited during the previous  
27 calendar year and the use or disposition of the property or money. The report shall be made in the  
28 form and manner as may be provided or specified by the treasurer and these annual law  
29 enforcement agency reports shall be provided to the local governmental body governing the  
30 agency and to the house and senate judiciary committees.

31 (e) Any law enforcement agency whose duty it is to enforce the laws of this state relating  
32 to controlled substances is empowered to authorize designated officers or agents to carry out the  
33 seizure provisions of this chapter. It shall be the duty of any officer or agent authorized or  
34 designated or authorized by law, whenever he or she shall discover any property or monies which

1 have been or are being used in violation of any of the provisions of this chapter, or in, upon or by  
2 means of which any violation of this chapter has taken or is taking place, to seize the property or  
3 monies and to place it in the custody of the person as may be authorized or designated for that  
4 purpose by the respective law enforcement agency pursuant to those provisions.

5 (f) For purposes of this section and section 30-14-2 only, the Rhode Island national guard  
6 shall be deemed a law enforcement agency eligible to participate in the forfeiture of money and  
7 assets seized through counterdrug operations in which members of the guard support federal, state  
8 or municipal efforts.

9 SECTION 2. Section 30-14-2 of the General Laws in Chapter 30-14 entitled "General  
10 Provisions" is hereby amended to read as follows:

11 **30-14-2. Federal and state funds.** – (a) No funds received from the United States shall  
12 be expended under chapters 1 -- 14 of this title for any purpose not authorized by federal law or  
13 regulations and all other expenditures under those chapters shall be made from funds appropriated  
14 by the state.

15 (b) Notwithstanding the foregoing, and for purposes of this section and section 21-28-  
16 5.04 only, the Rhode Island national guard shall be deemed a law enforcement agency eligible to  
17 participate in the forfeiture of money and assets seized through federal, state or municipal  
18 counterdrug operations in which members of the guard support said operations; and any money or  
19 assets so acquired may be used by the guard in support of its counterdrug program.

20 SECTION 3. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO FOOD AND DRUGS

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1           This act would allow the Rhode Island National Guard to participate in the forfeiture of  
2 money and assets seized through counterdrug operations in which members of the Guard support  
3 federal, state or municipal efforts.

4           This act would take effect upon passage.

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