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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

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A N A C T

RELATING TO FOOD AND DRUGS -- UNIFORM CONTROLLED SUBSTANCES ACT--  
POWERS OF ENFORCEMENT PERSONNEL -- CIVIL FORFEITURE PROCEDURE

Introduced By: Representatives Place, Batista, Newberry, Craven, Sanchez, Felix, and J.  
Lombardi

Date Introduced: March 27, 2024

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 21-28-5.04.2 of the General Laws in Chapter 21-28 entitled "Uniform  
2 Controlled Substances Act" is hereby amended to read as follows:

3 **21-28-5.04.2. Civil forfeiture procedure.**

4 (a) ~~In addition to or in lieu of~~ Except for the criminal forfeiture procedures of this chapter,  
5 as provided in § 21-28-5.04-1, any property described in § 21-28-5.04 except as designated in  
6 subsection (b) of this section, ~~is~~ shall not be subject to civil forfeiture to the state. ~~Civil forfeiture~~  
7 ~~proceedings shall be in the nature of an action in rem and shall be governed by the civil rules for in~~  
8 ~~rem proceedings.~~

9 (b) All property described in § 21-28-5.04 ~~is~~ shall not be subject to civil forfeiture but shall  
10 be subject to criminal forfeiture, except that:

11 (1) No conveyances used by any person as a common carrier in the transaction of business  
12 as a common carrier shall be forfeited under the provisions of this section unless it appears that the  
13 owner or other person in charge of the conveyance was a consenting party or privy to the covered  
14 offense charged and a criminal conviction has been obtained;

15 (2) No conveyance shall be forfeited under the provisions of this section by reason of any  
16 act or omission established by the owner of it to have been committed or omitted by any person  
17 other than the owner while the conveyance was unlawfully in the possession of a person other than  
18 the owner in violation of the criminal laws of this state or of the United States; and

1 (3) No property shall be forfeited under this section, to the extent of the interest of an  
2 owner, by reason of any act or omission established by that owner to have been committed or  
3 omitted without knowledge or consent of that owner, unless a criminal conviction has been  
4 obtained.

5 ~~(c) Property subject to forfeiture under this section may be seized by a law enforcement~~  
6 ~~officer:~~

7 ~~(1) Upon process issued pursuant to the Rules of Civil Procedure applicable to in rem~~  
8 ~~proceedings;~~

9 ~~(2) Upon process issued pursuant to a legally authorized search warrant; or~~

10 ~~(3) Without court process when:~~

11 ~~(i) The seizure is incident to a lawful arrest or search;~~

12 ~~(ii) The property subject to seizure has been the subject of a prior judgment in favor of the~~  
13 ~~state in a controlled substance act;~~

14 ~~(iii) The law enforcement officer has probable cause to believe that the property is directly~~  
15 ~~or indirectly dangerous to health or safety; or~~

16 ~~(iv) The law enforcement officer has probable cause to believe that the property is~~  
17 ~~forfeitable under § 21-28-5.04.~~

18 ~~(d)~~(c) In the event of a seizure under § 21-28-5.04 the property shall not be subject to  
19 sequestration or attachment but is deemed to be in the custody of the law enforcement agency  
20 making the seizure, subject only to the order of the court. When property is seized under this  
21 section, pending forfeiture and final disposition, the law enforcement agency making the seizure  
22 may:

23 (1) Place the property under seal;

24 (2) Remove the property to a storage area for safekeeping;

25 (3) Remove the property to a place designated by the court; or

26 (4) Request another agency authorized by law to take custody of the property and remove  
27 it to an appropriate location within the jurisdiction of the court.

28 ~~(d)~~(d) As soon as practicable after seizure, the seizing agency shall conduct an inventory  
29 upon and cause the appraisal of the property seized.

30 ~~(e)~~(e) In the event of a seizure under this section, the seizing agency shall within thirty (30)  
31 days send to the attorney general a written request for forfeiture, which shall include a statement of  
32 all facts and circumstances including the names of all witnesses then known, the appraised value  
33 of the property and the statutory provision relied upon for forfeiture.

34 ~~(e)~~(f) The attorney general shall immediately examine the facts and applicable law of the

1 cases referred to him or her pursuant to this section, and if it is probable that the property is subject  
2 to forfeiture shall immediately cause the initiation of administrative or judicial proceedings against  
3 the property. If, upon inquiry and examination, the attorney general determines that those  
4 proceedings probably cannot be sustained or that justice does not require the institution of the  
5 proceedings, he or she shall make a written report of those findings, transmit a copy to the seizing  
6 agency, and immediately authorize the release of the property.

7 ~~(h) If the value of any personal property seized does not exceed twenty thousand dollars~~  
8 ~~(\$20,000), the attorney general may forfeit the property administratively in the following manner:~~

9 ~~(1) The attorney general shall provide notice of intention to forfeit property~~  
10 ~~administratively by publication in a local newspaper of general circulation, one day per week for~~  
11 ~~three (3) consecutive weeks.~~

12 ~~(2) In addition, to the extent practicable, the attorney general shall provide notice by~~  
13 ~~registered mail of intent to forfeit the property administratively to all known interested parties and~~  
14 ~~all parties whose identity is reasonably subject to discovery who may have an interest in the~~  
15 ~~property seized.~~

16 ~~(3) Notice by publication and by mail shall include:~~

17 ~~(i) A description of the property;~~

18 ~~(ii) The appraised value of the property;~~

19 ~~(iii) The date and place of seizure;~~

20 ~~(iv) The violation of law alleged against the subject property;~~

21 ~~(v) The instructions for filing claim and cost bond or a petition for remission or mitigation;~~

22 ~~and~~

23 ~~(vi) A notice that the property will be forfeited to the state if a petition for remission or~~  
24 ~~mitigation or a claim and cost bond has not been timely filed.~~

25 ~~(4) Persons claiming an interest in the property may file petitions for remission or~~  
26 ~~mitigation of forfeiture or a claim and cost bond with the attorney general within thirty (30) days~~  
27 ~~of the final notice by publication or receipt of written notice, whichever is earlier.~~

28 ~~(5) The attorney general shall inquire into the facts and circumstances surrounding petitions~~  
29 ~~for remission or mitigation of forfeiture.~~

30 ~~(6) The attorney general shall provide the seizing agency and the petitioner a written~~  
31 ~~decision on each petition for remission or mitigation within sixty (60) days of receipt of the petition~~  
32 ~~unless the circumstances of the case require additional time, in which case the attorney general~~  
33 ~~shall notify the petitioner in writing and with specificity within the sixty (60) day period that the~~  
34 ~~circumstances of the case require additional time and further notify the petitioner of the expected~~

1 ~~decision date.~~

2 ~~(7) Any person claiming seized property under this subsection may institute de novo~~  
3 ~~judicial review of the seizure and proposed forfeiture by timely filing with the attorney general a~~  
4 ~~claim and bond to the state in the amount of ten percent (10%) of the appraised value of the property~~  
5 ~~or in the penal sum of two hundred fifty dollars (\$250), whichever is greater, with sureties to be~~  
6 ~~approved by the attorney general, upon condition that in the case of forfeiture the claimant shall~~  
7 ~~pay all costs and expenses of the proceedings at the discretion of the court. Upon receipt of the~~  
8 ~~claim and bond, or if he or she elects, the attorney general shall file with the court a complaint in~~  
9 ~~rem in accordance with the procedures set forth in this section. Any funds received by the attorney~~  
10 ~~general as cost bonds shall be placed in an escrow account pending final disposition of the case.~~

11 ~~(8) If no petitions or claims with bonds are timely filed, the attorney general shall prepare~~  
12 ~~a written declaration of forfeiture of the subject property to the state and dispose of the property in~~  
13 ~~accordance with this chapter.~~

14 ~~(9) If the petition is denied, the attorney general shall prepare a written declaration of~~  
15 ~~forfeiture to the state and dispose of the property in accordance with this chapter and the attorney~~  
16 ~~general's regulations, if any, pursuant to this chapter.~~

17 ~~(10) A written declaration of forfeiture signed by the attorney general pursuant to this~~  
18 ~~chapter shall be deemed to provide good and sufficient title to the forfeited property.~~

19 ~~(i) If the value of any personal property seized exceeds twenty thousand dollars (\$20,000),~~  
20 ~~the attorney general shall file a complaint in rem against the property within twenty (20) days of~~  
21 ~~the receipt of the report referred to in subsection (f) of this section and after this provide notice of~~  
22 ~~intention to forfeit by publication in a local newspaper of general circulation for a period of at least~~  
23 ~~once per week for three (3) consecutive weeks. The notice shall include:~~

24 ~~(1) A description of the property;~~

25 ~~(2) The appraised value of the property;~~

26 ~~(3) The date and place of seizure;~~

27 ~~(4) The violation of law alleged against the subject property.~~

28 ~~(j)(1) The case may be tried by a jury, if in the superior court, upon the request of either~~  
29 ~~party, otherwise by the court, and the cause of forfeiture alleged being proved, the court which shall~~  
30 ~~try the case shall enter upon judgment for the forfeiture and disposition of the property according~~  
31 ~~to law.~~

32 ~~(2) An appeal may be claimed by either party from any judgment of forfeiture rendered by~~  
33 ~~the district court, to be taken in like manner as by defendants in criminal cases within the~~  
34 ~~jurisdiction of the district court to try and determine, to the superior court for the same county in~~

1 ~~which the division of the district court rendering judgment is situated and like proceedings may be~~  
2 ~~had therein as in cases of informations for forfeitures originally filed in that court.~~

3 ~~(3) The judgment of the superior court shall be final in all cases of the forfeitures, whether~~  
4 ~~originally commenced in that court or brought there by appeal, unless a new trial is ordered, for~~  
5 ~~cause shown by the supreme court.~~

6 ~~(k) The in rem action shall be brought in the district court if the value of the property seized~~  
7 ~~is less than two hundred fifty thousand dollars (\$250,000), otherwise the in rem action shall be~~  
8 ~~brought in the superior court. The attorney general shall also, to the extent practicable, provide~~  
9 ~~written notice of the action in rem to all known interested parties and all persons whose identity is~~  
10 ~~reasonably subject to discovery who may have an interest in the property.~~

11 ~~(l) Persons claiming an interest in the property may file claims against the property within~~  
12 ~~thirty (30) days of the final notice by publication or receipt of written notice, whichever is earlier.~~  
13 ~~The claims shall be filed and adjudicated in the manner set forth for petitions in criminal~~  
14 ~~proceedings in § 21-28-5.04.1(f).~~

15 ~~(m) If the property sought to be forfeited is real property, the attorney general shall file a~~  
16 ~~complaint in rem in the superior court against the property. In addition to providing notice as~~  
17 ~~required by this chapter, the attorney general shall file a lis pendens with respect to the property~~  
18 ~~with the recorder of deeds in the city or town in which the property is located.~~

19 ~~(n) Upon order of the court forfeiting the subject property to the state, the state shall have~~  
20 ~~clear title to the forfeited property, and the attorney general may transfer good and sufficient title~~  
21 ~~to any subsequent purchaser or transferee. Title to the forfeited property shall be deemed to have~~  
22 ~~vested in the state upon the commission of the act giving rise to the forfeiture under this chapter.~~

23 ~~(o) Upon entry of judgment for the claimant in any proceeding to forfeit property under~~  
24 ~~this chapter, the property shall immediately be returned to the claimant. If it appears that there was~~  
25 ~~reasonable cause for the seizure or the filing of the complaint, the court shall cause a proper~~  
26 ~~certificate of that to be entered, and the claimant shall not, in that case, be entitled to costs or~~  
27 ~~damages, nor shall the person or agency who made the seizure, nor the attorney general nor the~~  
28 ~~prosecutor, be liable to suit or judgment on account of the seizure, suit, or prosecution.~~

29 ~~(p)~~(g) In any action brought under this section, the state shall have the initial burden of  
30 showing the existence of probable cause for seizure or arrest of the property. Upon that showing  
31 by the state, the claimant shall have the burden of showing by a preponderance of evidence that the  
32 property was not subject to forfeiture under this section.

1 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

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RELATING TO FOOD AND DRUGS -- UNIFORM CONTROLLED SUBSTANCES ACT--  
POWERS OF ENFORCEMENT PERSONNEL -- CIVIL FORFEITURE PROCEDURE

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- 1           This act would prohibit civil asset forfeiture regarding violations of the controlled
- 2 substances laws until a criminal conviction is obtained.
- 3           This act would take effect upon passage.

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