

HOUSE BILL NO. 775

INTRODUCED BY R. JORE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROVISIONS RELATED TO FORFEITURES FOR CRIMINAL ACTS; PROVIDING FOR A PROCEDURE FOR FORFEITURE OF PROPERTY; REQUIRING PROCEEDS OF CRIMINAL FORFEITURE PROCEEDINGS TO BE DEPOSITED IN THE PUBLIC DEFENDER ACCOUNT; AMENDING SECTIONS 2-9-305, 3-10-601, 15-70-357, 16-6-105, 16-11-105, 16-11-131, 16-11-132, 16-11-141, 16-11-144, 16-11-155, 16-11-504, 16-11-509, 17-7-502, 30-13-145, 44-12-102, 44-13-102, 45-6-301, 45-9-206, 46-5-308, 46-5-312, 46-18-235, 47-1-110, 61-8-421, AND 81-5-104, MCA; AND REPEALING SECTIONS 16-11-147, 16-11-158, 16-11-159, 44-12-103, 44-12-104, 44-12-201, 44-12-202, 44-12-203, 44-12-204, 44-12-205, 44-12-206, 81-5-108, 81-5-109, 81-5-110, AND 81-5-111, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Forfeiture of property for commission of criminal offense -- procedure -- disposition. (1) Money, real property, vehicles and other conveyances, or tangible and intangible personal property of any kind that is used in connection with or that constitutes proceeds from the commission of a criminal offense provided for in the Montana statutes is not subject to forfeiture unless it is owned by a person convicted of a criminal offense, it is ordered forfeited as part of the sentence imposed upon conviction, and a section of Montana law specifically provides for forfeiture as part of the sentence imposed upon conviction. A civil forfeiture proceeding may not be used to proceed against property that is suspected of being used in connection with or that constitutes proceeds from the commission of a criminal offense.

(2) Unless another section of Montana statute specifically provides a procedure for disposition of property forfeited as part of the sentence imposed upon conviction of a criminal offense specified in that section, the forfeited property must be disposed of as provided in this section.

(3) The sheriff shall seize the forfeited property within 10 days after the conviction.

(4) Forfeiture of property encumbered by a security interest is subject to the secured party's interest if the secured party did not know and could not have reasonably known of the unlawful possession, use, or other act in connection with the commission of the crime or if the secured party, upon learning of the illegal conduct, did all that reasonably could be expected under the circumstances to terminate the use of the property.

(5) If proper proof of a security interest is presented to the sheriff, the sheriff shall release the property to the secured party if the amount due the person is equal to or greater than the value of the property.

(6) Property that is not released to a secured party under subsection (5) must, except as provided in subsection (7), be sold by the sheriff at a public auction in the same manner as provided by law for the sale of property under execution. The property may not be sold to an officer or employee of a law enforcement agency. The net proceeds of the sale must be distributed first to a secured party who has presented proper proof of the security interest to the sheriff, and any remaining proceeds must be deposited in the public defender account established in 47-1-110.

(7) Property that is unlawful to produce or possess must be destroyed by the sheriff if it cannot be sold to a person or entity that can lawfully possess it.

NEW SECTION. Section 2. Action for illegal forfeiture -- procedure. (1) It is the purpose of this section to create in state law a civil action that is similar to the form of action created in federal law by 42 U.S.C. 1983 and by *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

(2) A public official or employee of the state or of a local government who unlawfully seizes, holds, disposes of, or takes any other action in regard to property that a court may order forfeited as part of the sentence imposed upon a conviction of a criminal offense does so as a private person and not as a public official or employee, and the act is not an official act. The public official or employee is subject to a civil action by the owner of the property for compensatory and punitive damages. An action against a public official or employee is against the public official or employee as a private person acting outside of the public official's or employee's official capacity. Public funds may not be used to pay any costs of legal defense for or damages awarded against the public official or employee.

(3) A public official or employee who orders or directs another public official or employee or other person to unlawfully seize, hold, dispose of, or take any other action with regard to property that a court may order forfeited as part of the sentence imposed upon a conviction of a criminal offense is accountable for the act of the ordered or directed public official or employee or other person as if the ordering or directing public official or employee committed the act.

(4) A person who attempts to cover up an act that is actionable under this section or to obstruct an action under this section is accountable for the act giving rise to the action as if the person had committed the act.

(5) This section does not apply to:

(a) a peace officer making an arrest if the peace officer has probable cause to believe that the person being arrested has committed a crime or to a peace officer serving a warrant if the peace officer has reasonable cause to believe that the warrant has been issued with probable cause, due process, and proper authority;

(b) a judicial officer acting in a normal and usual judicial capacity; or

(c) a circumstance that included full compliance with due process of law.

(6) Either party to an action under this section must be granted a jury trial upon demand.

(7) In an action under this section, the prevailing party is entitled to be awarded reasonable court costs and attorney fees.

(8) In an action under this section, the jury or, in the absence of a jury, the court shall determine the damages.

Section 3. Section 2-9-305, MCA, is amended to read:

"2-9-305. Immunization, defense, and indemnification of employees. (1) It is the purpose of this section to provide for the immunization, defense, and indemnification of public officers and employees civilly sued for their actions taken within the course and scope of their employment.

(2) ~~In~~ Except as provided in [section 2], and subsection (6) of this section in any noncriminal action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission, including alleged violations of civil rights pursuant to 42 U.S.C. 1983, or other actionable conduct of the employee committed while acting within the course and scope of the employee's office or employment, the governmental entity employer, ~~except as provided in subsection (6),~~ shall defend the action on behalf of the employee and indemnify the employee.

(3) Upon receiving service of a summons and complaint in a noncriminal action against ~~him~~ the employee, the employee shall give written notice to ~~his~~ the employee's supervisor requesting that a defense to the action be provided by the governmental entity employer. If the employee is an elected state official or other employee ~~having no~~ who does not have a supervisor, the employee shall give notice of the action to the legal officer or agency of the governmental entity defending the entity in legal actions of that type. Except as provided in [section 2] and subsection (6) of this section, the employer shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the employer. The employer shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the employer refuses or is unable to provide a direct defense, the defendant employee may retain other counsel. Except as

provided in [section 2] and subsection (6) of this section, the employer shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may be otherwise payable under this section.

(4) In ~~any~~ a noncriminal action in which a governmental entity employee is a party defendant, the employee ~~shall~~ must be indemnified by the employer for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in [section 2] or subsection (6) of this section.

(5) ~~Recovery~~ Except as provided in [section 2], recovery against a governmental entity under the provisions of parts 1 through 3 of this chapter constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In any ~~such~~ action against a governmental entity, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment, unless the claim constitutes an exclusion provided in ~~(b) through (d) of subsection (6)~~ [section 2] or subsections (6)(b) through (6)(d) of this section.

(6) In a noncriminal action in which a governmental entity employee is a party defendant, the employee may not be defended or indemnified by the employer for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if the action is under [section 2] or a judicial determination is made that:

(a) the conduct upon which the claim is based constitutes oppression, fraud, or malice, or for any other reason does not arise out of the course and scope of the employee's employment;

(b) the conduct of the employee constitutes a criminal offense as defined in Title 45, chapters 4 through 7;

(c) the employee compromised or settled the claim without the consent of the government entity employer; or

(d) the employee failed or refused to cooperate reasonably in the defense of the case.

(7) If ~~no~~ a judicial determination has not been made applying the judicial exclusions provided in subsection (6), the governmental entity employer may determine whether those exclusions apply. However, if

1 there is a dispute as to whether the judicial exclusions of subsection (6) apply and the governmental entity
2 employer concludes it should clarify its obligation to the employee arising under this section by commencing a
3 declaratory judgment action or other legal action, the employer is obligated to provide a defense or assume the
4 cost of the defense of the employee until a final judgment is rendered in ~~such the~~ action holding that the employer
5 had no obligation to defend the employee. The governmental entity employer has no obligation to provide a
6 defense to the employee in a declaratory judgment action or other legal action brought against the employee by
7 the employer under this subsection."

8
9 **Section 4.** Section 3-10-601, MCA, is amended to read:

10 **"3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Except as
11 provided in 61-8-726 and 75-7-123, a justice's court shall collect the fees prescribed by law for justices' courts
12 and shall pay them into the county treasury of the county in which the justice of the peace holds office, on or
13 before the 10th day of each month, to be credited to the general fund of the county.

14 (2) Except as provided in 61-8-726, 75-7-123, and subsection (4) of this section, all fines, penalties, and
15 forfeitures that are required to be imposed, collected, or paid in a justice's court must, for each calendar month,
16 be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in
17 which the justice's court is situated, ~~except that they may be distributed as provided in 44-12-206 if imposed,~~
18 ~~collected, or paid for a violation of Title 45, chapter 9 or 10.~~

19 (3) Except as provided in 46-18-236(7), 61-8-726, and 75-7-123, the county treasurer shall, as provided
20 in 15-1-504, distribute money received under subsection (2) as follows:

21 (a) 50% to the department of revenue for deposit in the state general fund; and

22 (b) 50% to the county general fund.

23 (4) (a) The justice's court may contract with a private person or entity for the collection of any final
24 judgment that requires a payment to the justice's court.

25 (b) ~~In the event that~~ If a private person or entity is retained to collect a judgment, the justice's court may
26 assign the judgment to the private person or entity and the private person or entity may, as an assignee, institute
27 a suit or other lawful collection procedure and other postjudgment remedies in its own name.

28 (c) The justice's court may pay the private person or entity a reasonable fee for collecting the judgment.
29 The fee incurred by the justice's court must be added to the judgment amount."

1 **Section 5.** Section 15-70-357, MCA, is amended to read:

2 **"15-70-357. Improperly imported fuel -- seizure.** (1) As used in this section, the following definitions
3 apply:

4 (a) "conveyance" means a tank car, vehicle, or vessel that is used to transport fuel;

5 (b) "department" means the department of transportation; and

6 (c) "peace officer" means an employee of the department of transportation designated or appointed as
7 a peace officer under 61-10-154 or 61-12-201.

8 (2) Pursuant to 61-12-206(5), a peace officer may:

9 (a) stop and search a conveyance in the state if the peace officer has reasonable cause to believe that
10 the conveyance is being used to carry improperly imported fuel and is intentionally avoiding fuel tax
11 responsibilities; and

12 (b) seize without a warrant imported fuel for which the distributor or transporter has not obtained a valid
13 Montana gasoline or special fuel distributor license as required in 15-70-202 and 15-70-341.

14 (3) The peace officer shall obtain authorization from the director of the department of transportation or
15 the director's designee before seizing fuel.

16 (4) Upon seizing the fuel that the peace officer believes to be improperly imported, the peace officer may:

17 (a) direct the rerouting or transfer of the fuel to a location designated by the department. The department
18 shall reimburse the carrier for transportation costs from the point of seizure to the location designated by the
19 department.

20 (b) unload the fuel; and

21 (c) take three samples of the fuel from the cargo tank for examination.

22 (5) Within 48 hours after seizure of the improperly imported fuel, the department shall issue a notice of
23 right to file claim for the return of interest or title to the fuel. The notice must be issued to:

24 (a) the original owner of the fuel;

25 (b) the owner of the transportation company that conveyed the fuel; and

26 (c) any other interested party.

27 (6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest or title
28 to the fuel within 30 days after the date of seizure. If a claim is filed for interest or title to the seized fuel, the
29 department shall:

30 (a) provide the opportunity for a hearing;

(b) if requested, conduct the hearing within 5 days after receiving the claim;

(c) make a final determination of the party to take interest or title to the fuel within 2 working days after the hearing; and

(d) mail notice of the department's determination to interested parties.

~~(7) (a) The department may determine that the seized fuel be forfeited by the original owner and may:~~

~~—— (i) sell the fuel to the licensed Montana distributor predetermined through a bidding process established in department administrative rule; or~~

~~—— (ii) use the forfeited fuel for a public purpose determined by the department.~~

~~—— (b) The department shall issue a certificate of sale to the licensed distributor who purchases the seized fuel:~~

~~—— (c) The net proceeds from the sale of the fuel must be deposited in the general fund, less:~~

~~—— (i) the applicable taxes, fees, and penalties, which the department shall deposit in a highway revenue account in the state special revenue fund, as required in 15-70-101; and~~

~~—— (ii) the administrative costs incurred in conjunction with the seizure and disposal of the improperly imported fuel.~~

~~(8)(7)~~ If the department determines that the original owner of the fuel may reclaim interest or title to the fuel, the department may:

(a) return to the owner money, less tax and penalty, equal to the wholesale value of the fuel on the day of the seizure; or

(b) return the fuel.

~~(9)(8)~~ A person forfeits the interest, right, and title to improperly imported fuel if the person:

~~—— (a) fails to file a claim for the seized fuel within the time allowed in subsection ~~(5)~~ (6); or~~

~~—— (b) is determined to be guilty of violating fuel tax laws.~~

~~(10)(9)~~ A person whose fuel is seized under this section is not relieved of any penalties imposed for illegal fuel importation in Title 15, chapter 70."

Section 6. Section 16-6-105, MCA, is amended to read:

"16-6-105. Seizure and forfeiture of alcoholic beverage and conveyance. ~~Whenever~~ If an investigator or any peace officer in making or attempting to make a search under and in pursuance of authority of law ~~shall find in any motor vehicle, vessel, boat, canoe, or conveyance of any description~~ finds an alcoholic

1 beverage ~~which that~~ is unlawfully kept or had or kept or held for unlawful purposes contrary to the provisions of
2 this code, ~~he the investigator or peace officer~~ may ~~forthwith~~ immediately seize the alcoholic beverage and
3 ~~packages package~~ in which ~~the same is it is~~ contained and the motor vehicle, vessel, boat, canoe, or conveyance
4 in which the alcoholic beverage is found. Upon the conviction of ~~the occupant or a person in charge of the motor~~
5 ~~vehicle, vessel, boat, canoe, or conveyance, or of any other person,~~ for having or keeping such the alcoholic
6 ~~beverages beverage~~ contrary to any of the provisions of this code in ~~any such vehicle, vessel, boat, canoe, or~~
7 ~~conveyance,~~ the court in which the conviction of any such person is had may, in addition to the sentence imposed
8 under authority of law, declare all or part of the seized alcoholic beverage ~~or any part thereof so seized~~ and the
9 package in which ~~the same it~~ is contained to be forfeited to the state of Montana. ~~The court may in and by decree~~
10 ~~further declare the motor vehicle, vessel, boat, canoe, or conveyance seized to be forfeited to the state of~~
11 ~~Montana. The forfeited property must be disposed of as provided in [section 11]."~~

12
13 **Section 7.** Section 16-11-105, MCA, is amended to read:

14 **"16-11-105. Rulemaking authority of department of justice.** The department of justice may adopt
15 rules to implement 16-11-103, 16-11-118, 16-11-124, 16-11-141, 16-11-142, ~~16-11-147,~~ and 16-11-149."
16

17 **Section 8.** Section 16-11-131, MCA, is amended to read:

18 **"16-11-131. Transporting tobacco products without compliance a misdemeanor -- invoices and**
19 **delivery tickets required -- stop and inspection authorized.** (1) It is unlawful for a person to transport into,
20 receive, carry, or move from place to place within this state, except in the course of interstate commerce, any
21 tobacco products that do not comply with the requirements of this chapter.

22 (2) (a) When transporting unstamped cigarettes or roll-your-own tobacco, a person shall possess
23 invoices or delivery tickets for the cigarettes or roll-your-own tobacco that show the name and address of the
24 consignor or seller, the name of the consignee or purchaser, and the quantity and brands of the cigarettes or
25 roll-your-own tobacco being transported.

26 (b) The cigarettes or roll-your-own tobacco transported ~~are contraband and are subject to seizure,~~
27 ~~forfeiture, destruction, and sale as provided in 16-11-141, 16-11-147, 16-11-158, 16-11-159, 16-11-509, and this~~
28 ~~section if:~~

29 ~~—— (i) there are no invoices or delivery tickets;~~

30 ~~—— (ii) the name or address of the consignee or purchaser is falsified;~~

1 ~~—— (iii) the consignee or purchaser is not authorized to possess unstamped cigarettes or roll-your-own~~
2 ~~tobacco; or~~

3 ~~—— (iv) the cigarettes or roll-your-own tobacco are intended for sale in this state and are not on the directory~~
4 ~~may, as part of the sentence imposed upon conviction, be ordered forfeited upon a conviction of the person under~~
5 ~~this section. The forfeited cigarettes or roll-your-own tobacco must be disposed of as provided in [section 1].~~

6 (3) Transportation of cigarettes or roll-your-own tobacco from a point outside the state to a point in
7 another state is not a violation of this section if the person transporting the unstamped cigarettes or cigarettes
8 or roll-your-own tobacco that is not on the directory possesses adequate invoices or delivery tickets that give the
9 name and address of the out-of-state consignor or seller and the out-of-state consignee or purchaser.

10 (4) If the department, its authorized agent, the department of justice, or a peace officer of the state has
11 knowledge or reasonable grounds to believe that a vehicle is transporting tobacco products in violation of this
12 chapter, the department, its agent, the department of justice, or a peace officer may stop and inspect the vehicle.

13 (5) When a person engaged in the business of selling tobacco products ships or causes to be shipped
14 any tobacco products to any person in this state that are not in the tobacco product manufacturer's original
15 container or wrapping, the container or wrapping must be plainly and visibly marked with the words "tobacco
16 products".

17 (6) A person violating the provisions of this section is guilty of a misdemeanor and is subject to the
18 penalties in 16-11-148."

19
20 **Section 9.** Section 16-11-132, MCA, is amended to read:

21 **"16-11-132. Unlawful to sell tobacco products without valid license -- exceptions.** (1) Unless
22 approved by the department, a person may not sell, offer to sell, or possess with intent to sell any tobacco
23 products, at wholesale or retail, unless the person's license is current and valid under the provisions of this part.

24 (2) A person may not sell, offer to sell, or possess with intent to sell any tobacco products, at wholesale
25 or retail, to a resident or nonresident wholesaler, subjobber, tobacco product vendor, or retailer who is not
26 licensed under this part or who is not licensed by the state in which the person sells, offers to sell, or intends to
27 sell tobacco products. However, a wholesaler, subjobber, tobacco product vendor, or retailer licensed under the
28 provisions of this chapter may sell cigarettes to any person, wholesaler, subjobber, tobacco product vendor, or
29 retailer not licensed under this chapter if:

30 (a) the person, wholesaler, subjobber, tobacco product vendor, or retailer is exempt from state tobacco

1 product taxation provisions;

2 (b) the person, wholesaler, subjobber, tobacco product vendor, or retailer furnishes documentary
3 evidence of exemption from state tobacco product taxation provisions; and

4 (c) the person, wholesaler, subjobber, tobacco product vendor, or retailer signs a receipt of purchase
5 for any tobacco products evidencing an exemption from state tobacco product taxation provisions.

6 (3) A person convicted of violating the provisions of this section shall be punished as provided in
7 16-11-148, and the court shall order all tobacco products in the person's possession must to be seized; and
8 forfeited, and destroyed pursuant to 16-11-147, 16-11-158, and 16-11-159. The forfeited tobacco products must
9 be disposed of as provided in [section 1]."

10
11 **Section 10.** Section 16-11-141, MCA, is amended to read:

12 **"16-11-141. Powers of arrest -- search and seizure.** (1) The department of justice is a criminal justice
13 agency. Designated agents of the department of justice have peace officer status and may arrest any person
14 violating any provision of this chapter, enter a complaint before any court of competent jurisdiction, and lawfully
15 search and seize and use as evidence contraband found in the possession of any person or in any place.

16 (2) Any investigator or peace officer who finds a tobacco product that the investigator or peace officer
17 has reasonable cause to believe is contraband may seize and remove the contraband and the packages in which
18 the contraband is kept. The contraband and all packages containing the contraband must, in addition to any other
19 penalty prescribed by this chapter, be forfeited to the state of Montana and disposed of as provided in ~~16-11-159~~
20 ~~and destroyed as provided in 16-11-158~~ [section 1]. "

21
22 **Section 11.** Section 16-11-144, MCA, is amended to read:

23 **"16-11-144. Revocation or suspension of license.** (1) The department may revoke or suspend the
24 license of ~~any a~~ wholesaler, subjobber, tobacco product vendor, retailer, or person licensed under 16-11-303 for
25 failure to comply with ~~any a~~ provision of The Montana Cigarette Sales Act (Title 16, chapter 10), this chapter, or
26 ~~with any lawful a~~ rule of the department made pursuant to those laws.

27 (2) A person aggrieved by a revocation or suspension may apply to the department for a hearing, which
28 must be open to the public. If the person is aggrieved by the decision of the department, the person may further
29 appeal to the court.

30 (3) When a license has been revoked, a license may not be issued to the licensee for a period of 1 year

1 after revocation. When a license has been suspended, the suspension may be for any period not to exceed 1
2 year.

3 (4) A person ~~who sells~~ convicted of selling tobacco products after the person's license has been revoked
4 or suspended is guilty of a misdemeanor and is subject to the penalties in ~~16-11-148 this part~~, and the court shall
5 order all tobacco products in the person's possession must to be seized and forfeited ~~to the state~~. The forfeited
6 tobacco products must be disposed of as provided in [section 1]."

7
8 **Section 12.** Section 16-11-155, MCA, is amended to read:

9 **"16-11-155. Definitions.** As used in 16-11-111, 16-11-155, and 16-11-156, ~~and 16-11-158~~, the following
10 definitions apply:

11 (1) "Indian reservation" means lands declared to be a reservation for an Indian tribe or tribes:

12 (a) by a treaty between the tribe and a territorial government, a state government, or the United States;

13 (b) through an act of the United States congress; or

14 (c) through an executive order of the United States.

15 (2) "Quota" means 150% of the national average individual consumption of cigarettes multiplied by the
16 enrolled tribal member population of an Indian reservation on which the cigarette sales are made or any other
17 formula or amount agreed to in a state-tribal cooperative agreement."

18
19 **Section 13.** Section 16-11-504, MCA, is amended to read:

20 **"16-11-504. Directory of cigarettes approved for stamping and sale.** (1) ~~Not later than July 16, 2003,~~
21 ~~the~~ The attorney general shall develop and publish on the attorney general's website a directory listing all tobacco
22 product manufacturers that have provided current and accurate certifications conforming to the requirements of
23 16-11-503 and all brand families that are listed in the certifications, except as otherwise provided in this section.

24 (2) The attorney general may not include or retain in the directory the name or brand families of any
25 nonparticipating manufacturer that has failed to provide the required certification or whose certification the
26 attorney general determines is not in compliance with 16-11-503, unless the attorney general has determined that
27 the violation has been cured to the satisfaction of the attorney general.

28 (3) Neither a tobacco product manufacturer nor a brand family may be included or retained in the
29 directory if the attorney general concludes, in the case of a nonparticipating manufacturer that:

30 (a) an escrow payment required pursuant to 16-11-403 for any period for any brand family, whether or

1 not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by
2 a qualified escrow agreement that has been approved by the attorney general; or

3 (b) an outstanding final judgment, including interest on the judgment, for a violation of 16-11-403 has
4 not been fully satisfied for the brand family or the manufacturer.

5 (4) The attorney general shall update the directory as necessary in order to correct mistakes and to add
6 or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the
7 requirements of this part. The attorney general shall post in the directory and transmit by electronic mail and
8 certified mail, return receipt requested, to each wholesaler notice of the intended removal from the directory of
9 a tobacco product manufacturer or brand family no less than 30 days prior to the removal. During that period,
10 cigarettes of the tobacco product manufacturer or brand family subject to the notice are contraband ~~under~~
11 ~~16-11-147~~ and are subject to forfeiture as provided in [section 1] and the affixing of tax insignia to or the sale or
12 possession for sale of the cigarettes is unlawful as provided in 16-11-505, except that, notwithstanding the
13 provisions of ~~16-11-147~~ and 16-11-505 and [section 1]:

14 (a) a wholesaler may affix tax insignia to, possess for sale, or sell at wholesale cigarettes of any tobacco
15 product manufacturer or brand family subject to notice of removal under this subsection (4) if the cigarettes were
16 shipped to the wholesaler on or before the date of issuance of the notice and if the total number of the cigarettes
17 sold by the wholesaler following issuance of the notice of removal and prior to reinstatement of the tobacco
18 product manufacturer or brand family in the directory does not exceed a number that is the average of the number
19 of cigarettes of the tobacco product manufacturer or brand family sold by the wholesaler during each of the 3
20 months preceding the issuance of the notice; and

21 (b) a licensed seller at retail may possess and sell cigarettes of a tobacco product manufacturer or brand
22 family that the attorney general has removed from the directory or that is subject to notice of removal if the
23 cigarettes were lawfully shipped to the retailer before the issuance of the notice of removal or after the issuance
24 of notice of removal but before the attorney general removes the tobacco product manufacturer or brand family
25 from the directory. A contract with a tobacco product manufacturer that has been removed from the directory that
26 purports to require, contemplate, or provide for delivery of cigarettes or tobacco products in any applicable brand
27 family after the date of removal from the directory is not valid or enforceable.

28 (5) Every wholesaler shall provide and update as necessary an electronic mail address to the attorney
29 general for the purpose of receiving any notifications required by this part. (Certain provisions void on occurrence
30 of contingency--sec. 16, Ch. 397, L. 2003.)"

1
2 **Section 14.** Section 16-11-509, MCA, is amended to read:

3 **"16-11-509. Penalties and other remedies.** (1) In addition to any other civil or criminal remedy provided
4 by law, upon a determination that a wholesaler has violated 16-11-505 or any rule adopted pursuant to that
5 section, the department may revoke or suspend the license of the wholesaler in the manner provided by
6 16-11-144 in a proceeding initiated by the department or at the request of the attorney general. For each violation
7 of 16-11-505, a civil penalty in the amount of \$250 for the first full or partial pack and \$10 for each additional full
8 or partial pack to which a tax insignia is affixed or that is sold, offered for sale, or possessed for sale in violation
9 of 16-11-505 may be imposed. Each tax insignia affixed, each offer to sell cigarettes, and each pack sold, offered
10 for sale, or possessed for sale in violation of 16-11-505 constitutes a separate violation. The penalty may be
11 imposed in the manner provided by 16-11-143(2) in a proceeding brought by the department or the attorney
12 general.

13 (2) Any cigarettes that have been sold, offered for sale, or possessed for sale in this state in violation
14 of 16-11-505 may be considered contraband ~~under 16-11-147~~ and subject to forfeiture as provided in [section
15 1]. The cigarettes are subject to seizure and forfeiture as provided in ~~16-11-147~~ [section 1], and all cigarettes
16 seized and forfeited must be destroyed and not resold.

17 (3) The attorney general may seek an injunction to restrain a threatened or actual violation of 16-11-505
18 or 16-11-507(1) or (4) by a wholesaler and to compel the wholesaler to comply with those sections.

19 (4) (a) In any action brought pursuant to this part, the prevailing party is entitled to recover the costs of
20 the action and reasonable attorney fees calculated as provided in 16-11-404. If the state is the prevailing party,
21 its recoverable costs must include the state's costs of investigation of the violation.

22 (b) In cases in which the state is the prevailing party and outside counsel represents the attorney
23 general, the attorney fees awarded must equal the outside counsel charges reasonably incurred by the attorney
24 general's office for attorney fees and expenses in prosecuting the action. In all other cases in which the state is
25 the prevailing party, the state's attorney fees must be calculated by reference to the hourly rate charged by the
26 agency legal services bureau of the department for the provision of legal services to state agencies, multiplied
27 by the number of attorney hours devoted to the prosecution of the action, plus the actual cost of any expenses
28 reasonably incurred in the prosecution of the action.

29 (5) (a) It is unlawful for a person to:

30 (i) sell, offer for sale, or distribute cigarettes that the person knows or should know are intended for

1 distribution or sale in the state in violation of 16-11-505; or

2 (ii) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person
3 knows or should know are intended for distribution or sale in the state in violation of 16-11-505.

4 (b) A violation of this section is a misdemeanor punishable as provided in 16-11-148.

5 (6) If a court determines that a person has violated this part, the court shall order any profits, gain, gross
6 receipts, or other benefit from the violation to be paid to the state treasurer for deposit in the trust fund created
7 by Article XII, section 4, of the Montana constitution.

8 (7) Penalties, investigation expenses, attorney fees, and costs recovered under parts 4 and 5 of this
9 chapter are allocated to the department of justice for deposit in the major litigation account and may be used for
10 any purpose for which funds deposited in that account may be used. The funds are statutorily appropriated, as
11 provided in 17-7-502, to the department of justice.

12 (8) Unless otherwise expressly provided, the remedies or penalties provided by this part are cumulative
13 to each other and to the remedies or penalties available under all other laws of this state. (Certain provisions void
14 on occurrence of contingency--sec. 16, Ch. 397, L. 2003.)"

15
16 **Section 15.** Section 17-7-502, MCA, is amended to read:

17 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
18 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the
19 need for a biennial legislative appropriation or budget amendment.

20 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
21 of the following provisions:

22 (a) The law containing the statutory authority must be listed in subsection (3).

23 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
24 appropriation is made as provided in this section.

25 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407;
26 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121;
27 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369;
28 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319;
29 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107;
30 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306;

23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504;
~~44-12-206~~; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870;
75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161;
87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 16. Section 30-13-145, MCA, is amended to read:

"30-13-145. Forfeiture. ~~Any~~ Upon a conviction for a violation of 30-13-142 through 30-13-144, the court may order a lawfully seized article produced in violation of 30-13-142 through 30-13-144 and any equipment used to produce it are subject to forfeiture to and destruction to be forfeited and to be destroyed by the an appropriate law enforcement agency."

Section 17. Section 44-12-102, MCA, is amended to read:

"44-12-102. Things subject to forfeiture. (1) ~~The following are subject to forfeiture items owned by a convicted person may, as part of the sentence imposed upon conviction, be ordered forfeited by the court, to be disposed of as provided in [section 1]:~~

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, or processing, ~~delivering, importing, or exporting~~ any controlled substance in violation of Title 45, chapter 9, except items used or intended for use in connection with quantities of marijuana in amounts less than 60 grams;

(c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

~~(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels, that are used or intended for use in any manner to facilitate the commission of a violation of Title 45, chapter 9;~~

~~(e)~~(d) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9;

~~(f)~~(e) all drug paraphernalia as defined in 45-10-101;

~~(g)~~(f) everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of Title 45, chapter 9; all proceeds traceable to such an exchange; and all money, negotiable instruments, and securities used or intended to be used to facilitate a violation of Title 45, chapter 9;

~~(h)~~(g) any personal property constituting or derived from proceeds obtained directly or indirectly from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison; and

~~(i)~~(h) real property, including any right, title, and interest in any lot or tract of land and any appurtenances or improvements, that is ~~directly used or intended to be used in any manner or part to commit or facilitate the commission of or that is solely~~ derived from or maintained by the proceeds resulting from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison. An owner's interest in real property is not subject to forfeit by reason of any act or omission unless it is proved that the act or omission was the owner's or was with ~~his~~ the owner's actual knowledge or express consent.

(2) (a) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9, and unless the conveyance constitutes or is solely derived from proceeds obtained directly or indirectly from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison.

(b) A conveyance is not subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without ~~his~~ the owner's knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if ~~he~~ the secured party neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(d) ~~No~~ A conveyance or container is subject to forfeiture under this section if it was used or intended for use in transporting less than 60 grams of marijuana."

Section 18. Section 44-13-102, MCA, is amended to read:

"44-13-102. Federal Deposit of federal forfeitures deposited in account. Except as provided in 46-23-1032, property and money forfeited under federal law and provided to the state or local law enforcement agencies by the federal government to support state and local law enforcement programs must be deposited to the special law enforcement assistance account established in 44-13-101. An amount up to \$125,000 each fiscal year is statutorily appropriated, as provided in 17-7-502, to the attorney general for the support of state and local law enforcement programs. Any ~~expenditure receipts~~ in excess of \$125,000 each fiscal year ~~requires approval through budget amendment, as provided in Title 17, chapter 7, part 4~~ must be deposited in the public defender account established in 47-1-110."

Section 19. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment

1 probably will deprive the owner of the property.

2 (3) A person commits the offense of theft when the person purposely or knowingly obtains control over
3 stolen property knowing the property to have been stolen by another and:

4 (a) has the purpose of depriving the owner of the property;

5 (b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the
6 owner of the property; or

7 (c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment
8 probably will deprive the owner of the property.

9 (4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts
10 unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county
11 agency, regardless of the original source of assistance, by means of:

12 (a) a knowingly false statement, representation, or impersonation; or

13 (b) a fraudulent scheme or device.

14 (5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or
15 helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter
16 71, by means of:

17 (a) a knowingly false statement, representation, or impersonation; or

18 (b) deception or other fraudulent action.

19 (6) (a) A person commits the offense of theft when the person purposely or knowingly commits insurance
20 fraud as provided in 33-1-1202 or 33-1-1302;

21 (b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102;
22 or

23 (c) purposely or knowingly receives small business health insurance premium incentive payments or
24 premium assistance payments or tax credits under Title 33, chapter 22, part 20, to which the person is not
25 entitled.

26 (7) A person commits the offense of theft of property by embezzlement when, with the purpose to deprive
27 the owner of the property, the person:

28 (a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer
29 or over property entrusted to the person; or

30 (b) purposely or knowingly obtains by deception control over property of the person's employer or over

property entrusted to the person.

(8) (a) Except as provided in subsection (8)(b), a person convicted of the offense of theft of property not exceeding \$1,000 in value shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined \$1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) Except as provided in subsection (8)(c), a person convicted of the offense of theft of property exceeding \$1,000 in value, theft of any commonly domesticated hoofed animal, or theft of any amount of anhydrous ammonia for the purpose of manufacturing dangerous drugs shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both, and if the conviction is for theft of a commonly domesticated hoofed animal, the court may order any money, equipment, vehicle, or other personal property owned by the person and used to commit the theft forfeited. Forfeited property must be disposed of as provided in [section 1].

(c) A person convicted of the offense of theft of property exceeding \$10,000 in value by embezzlement shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined an amount not to exceed \$50,000. The court may, in its discretion, place the person on probation with the requirement that restitution be made under terms set by the court. If the terms are not met, the required prison term may be ordered.

(9) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 20. Section 45-9-206, MCA, is amended to read:

"45-9-206. Use or possession of property subject to criminal forfeiture -- property subject to criminal forfeiture. (1) A person commits the offense of use or possession of property subject to criminal forfeiture if the person knowingly possesses, owns, uses, or attempts to use property that is subject to criminal forfeiture under this section. A person convicted of the offense of use or possession of property subject to criminal forfeiture shall be imprisoned in the state prison for a term not to exceed 10 years. Upon conviction, the property subject to criminal forfeiture is forfeited ~~to the state~~ if it is owned by the convicted person and must be disposed of in accordance with the provisions of ~~44-12-205 and 44-12-206~~ [section 1].

(2) The following property is subject to criminal forfeiture under this section:

(a) money, raw materials, products, and equipment, ~~and other property of any kind that is used or intended for use in manufacturing, preparing, cultivating, compounding, or processing, delivering, importing, or exporting a dangerous drug in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;~~

(b) property used or intended for use as a container for property enumerated in subsection (2)(a);

~~(c) except as provided in subsection (3), a conveyance, including an aircraft, vehicle, or vessel, used or intended for use to facilitate a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;~~

~~(d)~~(c) books, records, research products and materials, formulas, microfilm, tapes, and data used or intended for use in connection with a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

~~(e)~~(d) (i) everything of value furnished or intended to be furnished in exchange for a dangerous drug in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110; and

(ii) all proceeds traceable to ~~such an~~ the exchange;

~~(f)~~(e) money, negotiable instruments, securities, and weapons used or intended to be used to facilitate a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

~~(g)~~(f) personal property constituting or derived from proceeds obtained directly or indirectly from a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110; and

~~(h)~~(g) real property, including any right, title, and interest in a lot or tract of land and any appurtenances or improvements, that is ~~directly used or intended to be used in any manner to facilitate a violation of or that is solely~~ derived from or maintained by proceeds resulting from a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110. ~~An owner's interest in real property is not subject to criminal forfeiture by reason of an act or omission unless it is proved that the act or omission was the owner's or was with the owner's express consent.~~

(3) ~~A conveyance is not subject to criminal forfeiture under this section unless the owner or other person in charge of the conveyance knowingly used the conveyance to violate or knowingly consented to its use for the~~

~~purpose of violating 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110.~~

~~(4)(3)~~ Criminal forfeiture under this section of property that is encumbered by a bona fide security interest is subject to that interest if the secured party did not use or consent to the use of the property in connection with a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110.

~~(5)(4)~~ Property subject to criminal forfeiture under this section may be seized under the following circumstances:

(a) A peace officer who has probable cause to make an arrest for a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110 may seize a conveyance obtained with proceeds of the violation ~~or used to facilitate the violation~~ and shall immediately deliver the conveyance to the peace officer's law enforcement agency, to be held as evidence until a criminal forfeiture is declared or release ordered.

(b) Property subject to criminal forfeiture under this section may be seized by a peace officer under a search warrant issued by a court having jurisdiction over the property.

(c) Seizure without a warrant may be made if:

(i) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(ii) the property was the subject of a prior judgment in favor of the state in a criminal proceeding or a criminal forfeiture proceeding based on this section ~~or on Title 44, chapter 12;~~

(iii) a peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(iv) a peace officer has probable cause to believe that the property was used or is intended to be used in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy is a violation of 45-9-101, 45-9-103, or 45-9-110.

~~(6)(5)~~ As used in this section, "dangerous drug" means a substance designated as a dangerous drug under Title 50, chapter 32, parts 1 and 2.

~~(7)(6)~~ A prosecution under subsection (1) must be commenced within 45 days of the seizure of the property involved."

1 **Section 21.** Section 46-5-308, MCA, is amended to read:

2 **"46-5-308. Order.** (1) The court may enter an order providing for the destruction or disposition of the
3 evidence. If a victim of the offense wishes to be heard on the petition, the court shall schedule a hearing on the
4 petition and shall allow the victim to be heard in open court. The court shall consider the victim's statements prior
5 to issuing an order under this section. A proposed order must be presented by the petitioner to the court and may
6 include:

7 (a) authorization to destroy all contraband listed in the petition, the method of destruction, and the time
8 within which the destruction must be accomplished;

9 (b) if certain contraband is requested by the petitioner for training or law enforcement purposes,
10 authorization to use the items and a description of each;

11 (c) if the petition requests training or law enforcement use of noncontraband items, authorization to retain
12 the items by the law enforcement agency and a description of the items;

13 (d) if the evidence is money and the owner cannot be ascertained ~~and no civil forfeiture action is pending,~~
14 authorization to deposit the money ~~to the appropriate city, county, or state drug forfeiture fund~~ in the public
15 defender account established in 47-1-110;

16 (e) if the petition requests, authorization to sell noncontraband property at public sale or auction and to
17 deposit the proceeds ~~to the appropriate city, county, or state drug forfeiture fund~~ in the public defender account
18 established in 47-1-110; or

19 (f) authorization to destroy all items not otherwise provided for.

20 (2) The order must specify the time period in which destruction or sale must occur. Within 10 days
21 following the destruction or sale, a return must be filed with the court, listing the property destroyed or sold and
22 the date and method of disposition."

23
24 **Section 22.** Section 46-5-312, MCA, is amended to read:

25 **"46-5-312. Return of property seized -- right to possess.** (1) A person claiming the right to possession
26 of property seized as evidence may apply to the judge for its return. The judge shall give written notice as the
27 judge considers adequate to the prosecutor and all persons who have or may have an interest in the property
28 and shall, within 2 weeks of the filing of the application for return of the property, hold a hearing to determine the
29 right to possession.

30 (2) If the right to possession is established, the judge shall order the property, other than contraband,

1 returned if:

2 (a) the property is not needed as evidence;

3 (b) the property is needed and satisfactory arrangements can be made for its return for subsequent use
4 as evidence; or

5 (c) all proceedings in which the property might be required have been completed."
6

7 **Section 23.** Section 46-18-235, MCA, is amended to read:

8 **"46-18-235. Disposition of money collected as fines and costs.** Except as provided in 61-8-726, the
9 money collected by a court as a result of the imposition of fines or assessment of costs under the provisions of
10 46-18-231 and 46-18-232 must be paid:

11 (1) by the clerk of district court to:

12 (a) the department of revenue for deposit into the state general fund; or

13 (b) if the fine was imposed for a violation of Title 45, chapter 9 or 10, ~~and at the court's discretion, the~~
14 ~~drug forfeiture account maintained under 44-12-206 for the law enforcement agency that made the arrest from~~
15 ~~which the conviction and fine arose~~ the public defender account established in 47-1-110; and

16 (2) by a justice's court pursuant to 3-10-601."
17

18 **Section 24.** Section 47-1-110, MCA, is amended to read:

19 **"47-1-110. Public defender account.** (1) There is a public defender account in the state special revenue
20 fund. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the
21 account may be used only for the operation of the system.

22 (2) ~~Beginning July 1, 2006, money~~ Money to be deposited in the account also includes:

23 (a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a
24 sentence in a criminal case;

25 (b) payments for public defender costs ordered pursuant the Montana Youth Court Act; ~~and~~

26 (c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as
27 payment for public defender costs pursuant to 53-9-104; and

28 (d) money received from criminal forfeiture proceedings under 44-13-102, 46-5-308, 46-18-235, and
29 [section 1]."
30

1 **Section 25.** Section 61-8-421, MCA, is amended to read:

2 **"61-8-421. Forfeiture procedure.** ~~(1) A motor vehicle forfeited under 61-8-733 must be seized by the~~
3 ~~arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2.~~
4 ~~Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.~~

5 ~~——— (2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within 20 days~~
6 ~~after the seizure of the motor vehicle.~~

7 ~~——— (3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner~~
8 ~~of the motor vehicle may rebut the presumption by proving a defense under 61-8-733(2) or by proving that the~~
9 ~~owner was not convicted of a second or subsequent offense under 61-8-401 or 61-8-406. It is not a defense that~~
10 ~~the convicted person owns the motor vehicle jointly with another person.~~

11 ~~——— (4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed first~~
12 ~~to the holders of security interests who have presented proper proof of their claims, up to the amount of the~~
13 ~~interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the~~
14 ~~arresting agency.~~

15 ~~——— (b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle~~
16 ~~to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the~~
17 ~~motor vehicle.~~

18 ~~——— (5) Actions the court may take under 44-12-205(3) [section 1]. In order to protect the rights of innocent~~
19 ~~persons include, the court may order the return of the motor vehicle without a sale to an owner who is unable to~~
20 ~~present an adequate defense under this section but is found by the court to be without fault."~~

21
22 **Section 26.** Section 81-5-104, MCA, is amended to read:

23 **"81-5-104. Stolen livestock -- seizure and forfeiture of vehicle and certain other property used in**
24 **theft or transportation.** (1) The use of a vehicle, money, equipment, or personalty for the theft or transportation
25 of a stolen mule, horse, mare, colt, foal, filly, sheep, lamb, cow, calf, heifer, steer, bull, llama, alpaca, bison, hogs,
26 poultry, ostrich, rhea, emu, or the products of stolen livestock is unlawful. Any vehicle, money, equipment, or
27 personalty used for the theft or unlawful transportation or upon probable cause believed to be devoted wholly or
28 in part to the theft or unlawful transportation ~~must~~ may be seized and held as evidence in a criminal prosecution.

29 ~~(2) Within 45 days after the seizure, a peace officer or officer of the agency that seizes the property shall~~
30 ~~file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure~~

occurs. The clerk shall issue a summons at the request of the petitioning party, who shall serve the summons upon all owners or claimants of the property by one of the following methods:

—— (a) upon an owner or claimant whose address is known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure;

—— (b) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no newspaper of general county circulation, by publication in one issue of a newspaper of general circulation in an adjoining county and by mailing a copy of the petition and summons to the most recent address of the owner or claimant, if any, shown in the records of the division of motor vehicles.

(3)(2) A vehicle is not subject to forfeiture under this section if:

(a) it is a stolen vehicle at the time it is used for unlawful transportation; or

(b) the vehicle owner is not in collusion with the party or parties guilty of the theft."

NEW SECTION. Section 27. Repealer. Sections 16-11-147, 16-11-158, 16-11-159, 44-12-103, 44-12-104, 44-12-201, 44-12-202, 44-12-203, 44-12-204, 44-12-205, 44-12-206, 81-5-108, 81-5-109, 81-5-110, and 81-5-111, MCA, are repealed.

NEW SECTION. Section 28. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 44, and the provisions of Title 44 apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, part 7, apply to [section 2].

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