

HB 463 – "AN ACT GENERALLY REVISING FORFEITURE LAWS; REQUIRING A CRIMINAL CONVICTION FOR FORFEITURE OF PROPERTY; REQUIRING NOTICE OF SEIZED PROPERTY; PROVIDING FOR A PRETRIAL HEARING TO DETERMINE THE VALIDITY OF THE SEIZURE; REQUIRING A HEARING UPON CRIMINAL CONVICTION TO DETERMINE WHETHER PROPERTY MUST BE FORFEITED; REQUIRING PROOF BY CLEAR AND CONVINCING EVIDENCE THAT SEIZED PROPERTY WAS USED IN CONNECTION WITH OR CONSTITUTES PROCEEDS FROM THE COMMISSION OF A CRIMINAL OFFENSE; PROVIDING EXCEPTIONS FOR INNOCENT OWNERS AND PERSONS WITH AN OWNERSHIP INTEREST IN SEIZED PROPERTY; APPLYING PRETRIAL HEARING AND INNOCENT OWNER PROVISIONS TO CRIMINAL FORFEITURE LAWS; CLARIFYING FORFEITURE PROCEEDINGS RELATED TO COMMONLY DOMESTICATED HOOFED ANIMALS AND MOTOR VEHICLES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; PROVIDING DEFINITIONS; AMENDING SECTIONS 44-12-101, 44-12-102, 44-12-103, 44-12-205, 45-6-328, 45-9-206, AND 61-8-421, MCA; REPEALING SECTIONS 44-12-201, 44-12-202, 44-12-203, AND 44-12-204, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE."

Proposed amendments prepared by Mary "Marty" Phippen, Lobbyist for the Montana Association of Clerks of District Court.

For Hearing on February 17, 2015, in House Judiciary Committee

Date of Preparation: February 15, 2015.

1. Page 2, Line 4

Strike: "instruct the clerk of the district court of the county in which the seizure occurred to"

2. Page 3, Line 13

Following: "the"

Strike: "clerk of the district court of the county in which the seizure occurred"

Insert: "peace officer"

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NEW SECTION. Section 2. Notice of seized property – itemized receipt – charging document. (1) Upon seizure of property, a peace officer shall:

(a) provide an itemized receipt of seized property pursuant to 44-12-103; and

~~(b) instruct the clerk of the district court of the county in which the seizure occurred to notify~~ all persons known to have an interest in the property in the same manner as provided in [section 4(2)].

(2) Property subject to forfeiture pursuant to 44-12-102 must be identified in the charging document filed by the prosecutor for the criminal offense providing for forfeiture of property upon conviction. The charging document must specify the time and place of the alleged violation, identify the property, and particularly describe the property's use in connection with the criminal offense.

NEW SECTION. Section 4. Forfeiture upon criminal conviction -- hearing. (1) Upon conviction of a defendant for a criminal offense providing for forfeiture of property upon conviction and upon notice to all persons known to have an interest in the property pursuant to subsection (2), the court shall hold a hearing to determine whether the property must be forfeited pursuant to [section 1] and disposed of as provided in 44-12-205 and 44-12-206 or, in the case of forfeiture for theft of commonly domesticated hoofed animals or illegal branding or altering or obscuring a brand, 45-6-329. Unless the defendant requests separate proceedings, a proceeding for the criminal offense providing for forfeiture of property must be held in conjunction with a proceeding for the forfeiture of the property.

(2) Pursuant to subsection (1), ~~the clerk of the district court of the county in which the seizure occurred~~ peace officer shall notify all persons known to have an interest in the property by one of the following methods:

(a) for a person whose address is known, by personal service of a copy of the notice; or

(b) for a person whose address is unknown, by publication in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county, and by mailing a copy of the notice to the most recent address of the person having an ownership interest in the property, if any, shown in the records of the department of justice.

(3) To establish that the seized property is subject to forfeiture under this chapter, a peace officer or an officer of an agency that seizes any property other than controlled substances must establish by clear and convincing evidence that the property was used in connection with or constitutes proceeds from the commission of the criminal offense.

(4) Seized property shall not be subject to forfeiture if an owner can establish that the owner is an innocent owner as provided in [section 5].

(5) A bona fide security interest is not subject to forfeiture unless the person claiming a security interest had actual knowledge that the property was subject to forfeiture at the time that the property was seized under this chapter. A person claiming a security interest bears the burden of production and must establish the validity of the interest by clear and convincing evidence.