

HOUSE BILL NO. 463

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A BILL FOR AN ACT ENTITLED: "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."

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

**NEW SECTION. Section 1. Forfeiture of property for commission of criminal offense.** (1) Except

for controlled substances as provided in 44-12-104, a court may not order forfeiture of real or personal property of any kind pursuant to this chapter, including money, vehicles and other conveyances, and tangible and intangible personal property, unless:

- (a) the owner of the property has been convicted of a criminal offense;
- (b) the criminal offense specifically provides for forfeiture of property upon conviction; and
- (c) the property has been found by clear and convincing evidence to have been used in connection with or to constitute proceeds from the criminal offense.

(2) This section does not prohibit property from being forfeited pursuant to a plea agreement between

1 the prosecutor and the defendant subject to NOTICE TO THE COURT OR the approval of the court.

2 (3) SUBSECTION (1)(A) DOES NOT APPLY IF THE OWNER OF THE PROPERTY DIES, IS DEPORTED, OR IS UNKNOWN  
 3 OR IF THE OWNER OF THE PROPERTY FLEES AFTER THE PROSECUTION IS COMMENCED AND IS NOT APPREHENDED WITHIN  
 4 12 MONTHS AFTER THE PROSECUTION IS COMMENCED. IF THE OWNER OF THE PROPERTY APPEARS OR IS APPREHENDED  
 5 WITHIN 12 MONTHS AFTER THE PROSECUTION IS COMMENCED, THE OWNER OF THE PROPERTY SHALL PAY A STORAGE FEE  
 6 OF \$100 PER MONTH FOR EACH MONTH THE PROPERTY IS HELD.

7  
 8 **NEW SECTION. Section 2. Notice of seized property -- itemized receipt -- charging document.**

9 (1) Upon seizure of property, a peace officer shall:

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

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

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

17  
 18 **NEW SECTION. Section 3. Pretrial hearing.** (1) Following the seizure of property in a proceeding  
 19 under this chapter, a defendant who has been charged with a criminal offense providing for forfeiture of property  
 20 upon conviction or a person claiming an interest in the property allegedly used in or derived from the commission  
 21 of a criminal offense may make a written request for a pretrial hearing to determine the validity of the seizure.

22 (2) The request for a hearing pursuant to this section must be filed with the court in which the criminal  
 23 proceeding is pending within 15 days of receiving notice of the seized property pursuant to [section 2(1)(b)]. If  
 24 more than one person receives notice pursuant to [section 2(1)(b)], the 15-day request period for a hearing begins  
 25 from the date the last notice was received. The court shall hold a hearing on the request as soon as practicable  
 26 but no later than 30 days after the request is filed.

27 (3) The claimant has the burden of demonstrating a lawful ownership interest or right of possession in  
 28 the property.

29 (4) At least 10 days prior to a hearing on the request, a statement demonstrating probable cause for the  
 30 seizure made pursuant to 44-12-103 must be filed with the court and provided to the claimant.

- 1 (5) The court shall order that the property be returned to the claimant if the court finds that:
- 2 (a) it is likely the final judgment in the criminal proceeding will result in the state being ordered to return
- 3 the property;
- 4 (b) it is not reasonably necessary for the property to be held for investigatory reasons; or
- 5 (c) the property is the only reasonable means for the claimant to pay the costs of legal representation in
- 6 the forfeiture or criminal proceeding. The court may order the return of a portion of the total amount of property
- 7 seized sufficient to pay the costs of legal representation and may require an accounting of the remaining property.
- 8 (6) In lieu of ordering the return of the property, the court may order the law enforcement agency to
- 9 provide security or other written assurances for satisfaction of any judgment that may be rendered in the forfeiture
- 10 proceeding or criminal proceeding, including any damages sustained as a result of retaining the property.

11

12 **NEW SECTION. Section 4. Forfeiture upon criminal conviction -- hearing.** (1) Upon conviction of

13 a defendant for a criminal offense providing for forfeiture of property upon conviction and upon notice to all

14 persons known to have an interest in the property pursuant to subsection (2), the court shall hold a hearing to

15 determine whether the property must be forfeited pursuant to [section 1] and disposed of as provided in

16 44-12-205 and 44-12-206 or, in the case of forfeiture for theft of commonly domesticated hoofed animals or illegal

17 branding or altering or obscuring a brand, 45-6-329. Unless the defendant requests separate proceedings, a

18 proceeding for the criminal offense providing for forfeiture of property must be held in conjunction with a

19 proceeding for the forfeiture of the property.

20 (2) Pursuant to subsection (1), ~~the clerk of the district court of the county in which the seizure occurred~~

21 A PEACE OFFICER OR AN OFFICER OF THE AGENCY THAT SEIZED THE PROPERTY shall notify all persons known to have

22 an interest in the property by one of the following methods:

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

29 (3) To establish that the seized property is subject to forfeiture under this chapter, a peace officer or an

30 officer of an agency that seizes any property other than controlled substances must establish by clear and

1 convincing evidence that the property was used in connection with or constitutes proceeds from the commission  
2 of the criminal offense.

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

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

9

10 **NEW SECTION. Section 5. Innocent owner -- ownership interest in property subject to forfeiture.**

11 (1) The property of an innocent owner is not subject to forfeiture under [sections 1 through 4].

12 (2) A property owner or person with an ownership interest in property subject to forfeiture must be  
13 declared an innocent owner if:

14 (a) the property owner or person with an ownership interest in the property can establish a legal right,  
15 title, or interest in the seized property; and

16 (b) the state is unable to prove by clear and convincing evidence that the owner or person with an  
17 ownership interest in the property had actual knowledge of the crime associated with a forfeiture proceeding.

18

19 **Section 6.** Section 44-12-101, MCA, is amended to read:

20 **~~"44-12-101. Definition of controlled substance~~ Definitions.** As used in this chapter, the following  
21 definitions apply:

22 (1) "Actual knowledge" means direct and clear awareness of information.

23 (2) ~~"controlled "~~"Controlled substance" means any substance designated as a dangerous drug pursuant  
24 to Title 50, chapter 32, parts 1 and 2."

25

26 **Section 7.** Section 44-12-102, MCA, is amended to read:

27 **~~"44-12-102. Things subject to forfeiture.~~ (1) ~~The following are subject to forfeiture~~ A court may order,  
28 as part of the sentence imposed upon conviction, that the following property be forfeited as provided in [sections  
29 1 through 5]:**

30 (a) all controlled substances that have been manufactured, distributed, prepared, cultivated,

1 compounded, processed, or possessed in violation of Title 45, chapter 9;

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

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

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

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

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

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

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

18 (i) real property, including any right, title, and interest in any lot or tract of land and any appurtenances  
19 or improvements, that is directly used or intended to be used in any manner or part to commit or facilitate the  
20 commission of or that is derived from or maintained by the proceeds resulting from a violation of Title 45, chapter  
21 9, that is punishable by more than 5 years in prison. An owner's interest in real property is not subject to forfeiture  
22 by reason of any act or omission unless it is proved that the act or omission was the owner's or was with the  
23 owner's actual knowledge, as defined in 44-12-101, or express consent.

24 (2) ~~(a) A conveyance used by a person as a common carrier in the transaction of business as a common  
25 carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge  
26 of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.~~

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

30 ~~—— (c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of~~

1 the secured party if the secured party neither had knowledge of nor consented to any violation of Title 45, chapter  
2 9:

3 ~~———(d)~~ A conveyance or container is not subject to forfeiture under this section if it was used or intended for  
4 use in transporting less than 60 grams of marijuana, but this exception does not apply to synthetic cannabinoids  
5 listed as dangerous drugs in 50-32-222."

6

7 **Section 8.** Section 44-12-103, MCA, is amended to read:

8 **"44-12-103. When property may be seized.** (1) A peace officer who has probable cause to make an  
9 arrest for a violation of Title 45, chapter 9, probable cause to believe that a conveyance has been used or is  
10 intended to be used to unlawfully transport a controlled substance, or probable cause to believe that a  
11 conveyance has been used to keep, deposit, or conceal a controlled substance shall seize the conveyance used  
12 or intended to be used or any conveyance in which a controlled substance is unlawfully possessed by an  
13 occupant. A peace officer shall:

14 (a) provide an itemized receipt to the person in possession of the property or, if reasonably practicable,  
15 leave a receipt in the place where the property was found if no person is present; and

16 (b) immediately deliver a conveyance that the officer seizes to the offices of the officer's law enforcement  
17 agency, to be held as evidence until forfeiture is declared or release ordered.

18 (2) All property subject to forfeiture under 44-12-102 may be seized by a peace officer under a search  
19 warrant issued by a district court having jurisdiction over the property. Seizure without a warrant may be made  
20 if:

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

23 (b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a  
24 criminal proceeding or a forfeiture proceeding based on this chapter;

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

27 (d) the peace officer has probable cause to believe that the property was used or is intended to be used  
28 in violation of Title 45, chapter 9, or in violation of Title 45, chapter 10, part 1."

29

30 **Section 9.** Section 44-12-205, MCA, is amended to read:

1           **"44-12-205. Disposition of property following hearing.** (1) If the court finds that the property was not  
 2 used for the purpose charged or that the property listed in 44-12-102(1)(g) was used without the knowledge or  
 3 consent of the owner, it provisions of [section 1] are not established or the property owner is an innocent owner  
 4 as provided in [section 5], the court shall order that the property be released to the owner of record as of the date  
 5 of the seizure.

6           (2) If the court finds that the property was used for the purpose charged and that the property listed in  
 7 ~~44-12-102(1)(g) was used with the knowledge or consent of the owner~~ provisions of [section 1] are established  
 8 and the property owner is not an innocent owner as provided in [section 5], the property must be disposed of as  
 9 follows:

10           (a) If proper proof of a claim is presented at the hearing by the holder of a security interest, the court shall  
 11 order that the property be released to the holder of the security interest if the amount due to the holder is equal  
 12 to or in excess of the value of the property as of the date of seizure because the purpose of this chapter is to  
 13 forfeit only the right, title, or interest of the owner. If the amount due the holder of the security interest is less than  
 14 the value of the property, the property, if it is sold, must be sold at public auction by the law enforcement agency  
 15 that seized the property in the same manner provided by law for the sale of property under execution or the law  
 16 enforcement agency may return the property to the holder of the security interest without proceeding with an  
 17 auction. The property may not be sold to an officer or employee of the law enforcement agency that seized the  
 18 property or to a person related to an officer or employee by blood or marriage.

19           (b) If a claimant does not exist and the confiscating agency wishes to retain the property for its official  
 20 use, it may do so. If the property is not to be retained, it must be sold as provided in subsection (2)(a).

21           (c) If a claimant who has presented proper proof of a claim exists and the confiscating agency wishes  
 22 to retain the property for its official use, it may do so if it compensates the claimant in the amount of the security  
 23 interest outstanding at the time of the seizure.

24           (3) In making a disposition of property under this chapter, the court may take any action to protect the  
 25 rights of innocent persons."  
 26

27           **Section 10.** Section 45-6-328, MCA, is amended to read:

28           **"45-6-328. Forfeiture for theft of commonly domesticated hoofed animal or illegal branding or**  
 29 **altering or obscuring of brand.** (1) The following property is subject to criminal forfeiture under this section:

30           (a) money, raw materials, products, equipment, and other property of any kind that is used or intended

1 for use in the theft of a commonly domesticated hoofed animal or illegal branding or altering or obscuring a brand  
2 in violation of 45-6-301 or 45-6-327;

3 (b) property used or intended for use as a container for property enumerated in subsection (1)(a);

4 (c) except as provided in subsection (2), a conveyance, including an aircraft, vehicle, or vessel, used  
5 or intended for use to facilitate the theft of a commonly domesticated hoofed animal or illegal branding or altering  
6 or obscuring a brand in violation of 45-6-301 or 45-6-327;

7 (d) books, records, research products and materials, formulas, microfilm, tapes, and data used or  
8 intended for use in connection with the theft of a commonly domesticated hoofed animal or illegal branding or  
9 altering or obscuring a brand in violation of 45-6-301 or 45-6-327;

10 (e) everything of value furnished or intended to be furnished in exchange for a commonly domesticated  
11 hoofed animal in violation of 45-6-301 or 45-6-327 and all proceeds traceable to the exchange;

12 (f) money, negotiable instruments, securities, and weapons used or intended to be used to facilitate a  
13 violation of 45-6-301 or 45-6-327; and

14 (g) personal property constituting or derived from proceeds obtained directly or indirectly from theft of  
15 a commonly domesticated hoofed animal or from illegal branding or altering or obscuring a brand in violation of  
16 45-6-301 or 45-6-327.

17 (2) A conveyance is not subject to criminal forfeiture under this section unless the owner or other person  
18 in charge of the conveyance knowingly used the conveyance or knowingly consented to its use for the purpose  
19 of theft of a commonly domesticated hoofed animal or illegal branding or altering or obscuring a brand in violation  
20 of 45-6-301 or 45-6-327.

21 ~~(3) Criminal forfeiture under this section of property that is encumbered by a bona fide security interest~~  
22 ~~is subject to that interest if the secured party did not use or consent to the use of the property in connection with~~  
23 ~~the theft of a commonly domesticated hoofed animal or illegal branding or altering or obscuring a brand in~~  
24 ~~violation of 45-6-301 or 45-6-327.~~

25 ~~(4)~~(3) Property subject to criminal forfeiture under this section may be seized under the following  
26 circumstances:

27 (a) A peace officer who has probable cause to make an arrest for the theft of a commonly domesticated  
28 hoofed animal or for illegal branding or altering or obscuring a brand in violation of 45-6-301 or 45-6-327 may  
29 seize a conveyance obtained with proceeds derived from the violation or used to facilitate the violation and shall  
30 immediately deliver the conveyance to the peace officer's law enforcement agency to be held as evidence until

1 a criminal forfeiture is declared or a release is ordered.

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

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

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

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

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

11 (iv) a peace officer has probable cause to believe that the property was used or is intended to be used  
12 during the theft of a commonly domesticated hoofed animal or illegal branding or altering or obscuring a brand  
13 in violation of 45-6-301 or 45-6-327.

14 ~~(5)(4)~~ A forfeiture proceeding under subsection (1) must be commenced within 45 days of the seizure  
15 of the property involved.

16 ~~(6)(5)~~ The procedure for forfeiture proceedings in ~~44-12-201 through 44-12-204~~ applies [sections 1  
17 through 5] apply to property seized pursuant to this section.

18 ~~(7)(6)~~ Upon conviction, the property subject to criminal forfeiture is forfeited to the state and must be  
19 disposed of in accordance with the provisions of 45-6-329."

20

21 **Section 11.** Section 45-9-206, MCA, is amended to read:

22 **"45-9-206. Use or possession of property subject to criminal forfeiture -- property subject to**  
23 **criminal forfeiture.** (1) A person commits the offense of use or possession of property subject to criminal  
24 forfeiture if the person knowingly possesses, owns, uses, or attempts to use property that is subject to criminal  
25 forfeiture under this section. A person convicted of the offense of use or possession of property subject to criminal  
26 forfeiture shall be imprisoned in the state prison for a term not to exceed 10 years. Upon conviction, the property  
27 subject to criminal forfeiture is forfeited to the state and must be disposed of in accordance with the provisions  
28 of 44-12-205 and 44-12-206.

29 (2) A person charged with an offense pursuant to this section may request a pretrial forfeiture hearing  
30 pursuant to [section 3].

- 1           ~~(2)~~(3) The following property is subject to criminal forfeiture under this section:
- 2           (a) money, raw materials, products, equipment, and other property of any kind that is used or intended  
3 for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting a  
4 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  
5 was a violation of 45-9-101, 45-9-103, or 45-9-110;
- 6           (b) property used or intended for use as a container for property enumerated in subsection (2)(a);
- 7           (c) except as provided in subsection (3), a conveyance, including an aircraft, vehicle, or vessel, used  
8 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  
9 the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;
- 10          (d) books, records, research products and materials, formulas, microfilm, tapes, and data used or  
11 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  
12 of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;
- 13          (e) (i) everything of value furnished or intended to be furnished in exchange for a dangerous drug in  
14 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  
15 45-9-101, 45-9-103, or 45-9-110; and
- 16          (ii) all proceeds traceable to such an exchange;
- 17          (f) money, negotiable instruments, securities, and weapons used or intended to be used to facilitate a  
18 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  
19 45-9-101, 45-9-103, or 45-9-110;
- 20          (g) personal property constituting or derived from proceeds obtained directly or indirectly from a violation  
21 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,  
22 45-9-103, or 45-9-110; and
- 23          (h) real property, including any right, title, and interest in a lot or tract of land and any appurtenances or  
24 improvements, that is directly used or intended to be used in any manner to facilitate a violation of or that is  
25 derived from or maintained by proceeds resulting from a violation of 45-9-101, 45-9-103, or 45-9-110 or of  
26 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  
27 interest in real property is not subject to criminal forfeiture by reason of an act or omission unless it is proved that  
28 the act or omission was the owner's or was with the owner's express consent.~~
- 29          ~~(3) A conveyance is not subject to criminal forfeiture under this section unless the owner or other person  
30 in charge of the conveyance knowingly used the conveyance to violate or knowingly consented to its use for the~~

1 ~~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~~  
 2 ~~violation of 45-9-101, 45-9-103, or 45-9-110.~~

3 ~~———(4) Criminal forfeiture under this section of property that is encumbered by a bona fide security interest~~  
 4 ~~is subject to that interest if the secured party did not use or consent to the use of the property in connection with~~  
 5 ~~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~~  
 6 ~~of 45-9-101, 45-9-103, or 45-9-110.~~

7 ~~(5)(4)~~ Property subject to criminal forfeiture under this section may be seized under the following  
 8 circumstances:

9 (a) A peace officer who has probable cause to make an arrest for a violation of 45-9-101, 45-9-103, or  
 10 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  
 11 seize a conveyance obtained with proceeds of the violation or used to facilitate the violation and shall immediately  
 12 deliver the conveyance to the peace officer's law enforcement agency, to be held as evidence until a criminal  
 13 forfeiture is declared or release ordered.

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

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

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

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

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

23 (iv) a peace officer has probable cause to believe that the property was used or is intended to be used  
 24 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  
 25 45-9-101, 45-9-103, or 45-9-110.

26 ~~(6)(5)~~ As used in this section, "dangerous drug" means a substance designated as a dangerous drug  
 27 under Title 50, chapter 32, parts 1 and 2.

28 ~~(7)(6)~~ A prosecution under subsection (1) must be commenced within 45 days of the seizure of the  
 29 property involved.

30 (7) A bona fide security interest is not subject to forfeiture unless the person claiming a security interest

1 had actual knowledge, as defined in 44-12-101, that the property was subject to forfeiture at the time that the  
 2 property was seized under this chapter. A person claiming a security interest bears the burden of production and  
 3 must establish the validity of the interest by clear and convincing evidence.

4 (8) The property of an innocent owner is not subject to forfeiture under this section. A property owner or  
 5 person with an ownership interest in property subject to forfeiture must be declared an innocent owner if:

6 (a) the property owner or person with an ownership interest in the property can establish a legal right,  
 7 title, or interest in the seized property; and

8 (b) the state is unable to prove by clear and convincing evidence that the owner or person with an  
 9 ownership interest in the property had actual knowledge, as defined in 44-12-101, of the crime associated with  
 10 a forfeiture proceeding."

11

12 **Section 12.** Section 61-8-421, MCA, is amended to read:

13 **"61-8-421. Forfeiture procedure.** (1) A motor vehicle forfeited under 61-8-733 must be seized by the  
 14 arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2.  
 15 Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

16 (2) Forfeiture proceedings under ~~44-12-201(4)~~ [sections 1 through 5] must be instituted by the arresting  
 17 agency within 20 days after the seizure of the motor vehicle.

18 ~~(3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner~~  
 19 ~~of the motor vehicle may rebut the presumption by proving a defense under 61-8-733(2) or by proving that the~~  
 20 ~~owner was not convicted of a second or subsequent offense under 61-8-401, 61-8-406, or 61-8-411. It is not a~~  
 21 ~~defense that the convicted person owns the motor vehicle jointly with another person.~~

22 ~~(4)~~(3) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed  
 23 first to the holders of security interests who have presented proper proof of their claims, up to the amount of the  
 24 interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the  
 25 arresting agency.

26 (b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle  
 27 to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the  
 28 motor vehicle.

29 ~~(5)~~(4) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons include  
 30 return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this

1 section but is found by the court to be without fault."

2

3 **NEW SECTION. Section 13. Repealer.** The following sections of the Montana Code Annotated are  
4 repealed:

5 44-12-201. Petition to institute forfeiture proceedings -- summons -- service.

6 44-12-202. Answer to allegations concerning use of property.

7 44-12-203. Presumption -- procedure following answer or expiration of time for answering.

8 44-12-204. Proof required or permitted at hearing.

9

10 **NEW SECTION. Section 14. Codification instruction.** [Sections 1 through 5] are intended to be  
11 codified as an integral part of Title 44, chapter 12, and the provisions of Title 44, chapter 12, apply to [sections  
12 1 through 5].

13

14 **NEW SECTION. Section 15. Saving clause.** [This act] does not affect rights and duties that matured,  
15 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

16

17 **NEW SECTION. Section 16. Severability.** If a part of [this act] is invalid, all valid parts that are  
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
19 the part remains in effect in all valid applications that are severable from the invalid applications.

20

21 **NEW SECTION. Section 17. Applicability.** [This act] applies to forfeiture proceedings begun on or after  
22 [the effective date of this act].

23

24 **NEW SECTION. Section 18. Effective date.** [This act] is effective July 1, 2015.

25

- END -