

CHAPTER NO. 529

SENATE BILL NO. 482

INTRODUCED BY B. BROWN

IN THE SENATE

|                   |   |
|-------------------|---|
| February 12, 1979 | Introduced and referred to Committee on Judiciary.  |
| February 21, 1979 | On motion ordered printed and placed on second reading.   |
| February 22, 1979 | Printed and placed on members' desks.   |
| February 23, 1979 | Second reading, do pass as amended.<br><br>Correctly engrossed.<br><br>On motion rules suspended. Bill placed on calendar for third reading this day.<br><br>Third reading, passed.<br>Transmitted to second house. |

IN THE HOUSE

|                   |  |
|-------------------|--|
| February 27, 1979 | Introduced and referred to Committee on Judiciary.                   |
| March 19, 1979    | Committee recommend bill be concurred in as amended. Report adopted. |
| March 20, 1979    | Second reading, concurred in.  |
| March 23, 1979    | Third reading, concurred in as amended.                              |

IN THE SENATE

|                |  |
|----------------|--|
| March 24, 1979 | Returned from second house. Concurred in as amended. |
| March 26, 1979 | Second reading, pass consideration until 3-28-79.    |

March 28, 1979

Second reading, amendments  
adopted.

March 29, 1979

Third reading, amendments  
adopted. Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *482*  
 2 INTRODUCED BY *Bob Brown*

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR SEIZURE  
 5 AND FORFEITURE OF CONTROLLED SUBSTANCES AND IMPLEMENTS AND  
 6 CONVEYANCES USED IN DANGEROUS DRUG VIOLATIONS."

7  
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Definition of controlled substance. As used  
 10 in [this act], "controlled substance" means any substance  
 11 designated as a dangerous drug pursuant to [Title 50,  
 12 chapter 32, parts 1 and 2].

13 Section 2. Things that are subject to forfeiture. (1)  
 14 The following are subject to forfeiture:

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

18 (b) all money, raw materials, products, and equipment  
 19 of any kind that are used or intended for use in  
 20 manufacturing, preparing, cultivating, compounding,  
 21 processing, delivering, importing, or exporting any  
 22 controlled substance in violation of Title 45, chapter 9;

23 (c) all property that is used or intended for use as a  
 24 container for anything enumerated in subsection (1)(a) or  
 25 (1)(b);

1 (d) except as provided in subsection (2), all  
 2 conveyances, including aircraft, vehicles, and vessels:

3 (i) which are used or intended for use in unlawfully  
 4 transporting or in any manner facilitating the  
 5 transportation of anything enumerated in subsection (1)(a)  
 6 or (1)(b) for the purpose of sale or receipt of such thing;

7 (ii) in which a controlled substance is unlawfully  
 8 kept, deposited, or concealed; or

9 (iii) in which a controlled substance is unlawfully  
 10 possessed by an occupant; and

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

15 (2) (a) No conveyance used by a person as a common  
 16 carrier in the transaction of business as a common carrier  
 17 is subject to forfeiture under this section unless it  
 18 appears that the owner or other person in charge of the  
 19 conveyance is a consenting party or privy to a violation of  
 20 Title 45, chapter 9.

21 (b) No conveyance is subject to forfeiture under this  
 22 section because of any act or omission established by the  
 23 owner of the conveyance to have been committed or omitted  
 24 without his knowledge or consent.

25 (c) A forfeiture of a conveyance encumbered by a bona

-2- *SB 482*  
 INTRODUCED BILL

1 fide security interest is subject to the interest of the  
2 secured party if he neither had knowledge of nor consented  
3 to any violation of Title 45, chapter 9.

4 Section 3. When property may be seized. (1) A peace  
5 officer who has probable cause to make an arrest for a  
6 violation of Title 45, chapter 9, probable cause to believe  
7 that a conveyance has been used or is intended to be used to  
8 unlawfully transport a controlled substance, or probable  
9 cause to believe that a conveyance has been used to keep,  
10 deposit, or conceal a controlled substance shall seize the  
11 conveyance so used or intended to be used or any conveyance  
12 in which a controlled substance is unlawfully possessed by  
13 an occupant. He shall immediately deliver a conveyance that  
14 he seizes to the sheriff of the county in which the seizure  
15 is made, to be held as evidence until forfeiture is declared  
16 or release ordered.

17 (2) All property subject to forfeiture under [section  
18 1] may be seized by a peace officer under a search warrant  
19 issued by a district court having jurisdiction over the  
20 property. Seizure without a warrant may be made if:

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

24 (b) the property subject to seizure has been the  
25 subject of a prior judgment in favor of the state in a

1 criminal proceeding or a forfeiture proceeding based on  
2 [this act];

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

6 (d) the peace officer has probable cause to believe  
7 that the property was used or is intended to be used in  
8 violation of Title 45, chapter 9.

9 Section 4. Summary forfeiture of certain controlled  
10 substances. Controlled substances that are possessed,  
11 transferred, offered for transfer, manufactured, prepared,  
12 cultivated, compounded, or processed in violation of Title  
13 45, chapter 9, and that are seized under the provisions of  
14 [this act] are contraband and shall be summarily forfeited  
15 to the state. Controlled substances which are seized or come  
16 into the possession of the state and the owners of which are  
17 unknown are contraband and shall be summarily forfeited to  
18 the state.

19 Section 5. Notice of seizure and intention to  
20 institute forfeiture proceedings. A peace officer or an  
21 officer of the seizing agency who seizes any property other  
22 than controlled substances under the provisions of [this  
23 act] shall, within 45 days of the seizure, file a notice of  
24 the seizure and intention to institute forfeiture  
25 proceedings with the clerk of the district court of the

1 county in which the seizure occurs, and the clerk shall  
2 serve notice thereof on all owners or claimants of the  
3 property by one of the following methods:

4 (1) upon an owner or claimant whose right, title, or  
5 interest is of record in the division of motor vehicles, by  
6 mailing a copy of the notice by certified or registered mail  
7 to the address on the records of the division;

8 (2) upon an owner or claimant whose name and address  
9 are known, by mailing a copy of the notice by certified or  
10 registered mail to his last-known address;

11 (3) upon an owner or claimant whose address is unknown  
12 but who is believed to have an interest in the property, by  
13 publication in one issue of a newspaper of general  
14 circulation in the county where the seizure occurred or, if  
15 there is no such newspaper, by publication in one issue of a  
16 newspaper of general circulation in an adjoining county.

17 Section 6. Answer to allegations concerning use of  
18 property. Within 20 days after the mailing or publication of  
19 the notice, the owner or claimant of the seized property  
20 shall file a verified answer to the allegations concerning  
21 the use of the property contained in the notice of seizure  
22 and intention to institute forfeiture proceedings. No  
23 extension of the time for filing the answer may be granted,  
24 and failure to answer within 20 days bars the owner or  
25 claimant from presenting evidence at any subsequent

1 evidentiary hearing unless extraordinary circumstances  
2 exist.

3 Section 7. Procedure following answer or expiration of  
4 time for answering. (1) If a verified answer to the notice  
5 is not filed within 20 days after the mailing or publication  
6 of the notice, the court shall hear evidence on the charge  
7 of unlawful use of the property and upon motion may order  
8 the property forfeited to the state.

9 (2) If a verified answer is filed within 20 days, the  
10 forfeiture proceedings shall be set for hearing without a  
11 jury not less than 30 days after the answer is filed. Notice  
12 of the hearing shall be given in the manner provided for  
13 service of notice of seizure.

14 Section 8. Proof required or permitted at hearing. (1)  
15 At the hearing any owner or claimant who has a verified  
16 answer on file may show by competent evidence that the  
17 property was not used for the purpose charged.

18 (2) A claimant of a security interest in the property  
19 may prove that his security interest is bona fide and that  
20 it was created after a reasonable investigation of the moral  
21 responsibility, character, and reputation of the purchaser  
22 and without knowledge that the property was being or was to  
23 be used for the purpose charged. However, no person who has  
24 a lien dependent upon possession for compensation to which  
25 he is legally entitled for making repairs or performing

1 labor upon, furnishing supplies or materials for, or  
 2 providing storage, repair, or safekeeping of any property  
 3 and no person doing business under any law of this state or  
 4 the United States relating to financial institutions, as  
 5 defined in 32-6-103, loan companies, or licensed pawnbrokers  
 6 or regularly engaged in the business of selling the property  
 7 or of purchasing conditional sales contracts for the  
 8 property may be required to prove that his security interest  
 9 was created after a reasonable investigation of the moral  
 10 responsibility, character, and reputation of the owner,  
 11 purchaser, or person in possession of the property when it  
 12 was brought to such person.

13 Section 9. Disposition of property following hearing.

14 (1) If the court finds that the property was not used for  
 15 the purpose charged, it shall order the property released to  
 16 the owner of record as of the date of the seizure.

17 (2) If the court finds that the property was used for  
 18 the purpose charged, the property shall be disposed of as  
 19 follows:

20 (a) If proper proof of his claim is presented at the  
 21 hearing by the holder of a security interest, the court  
 22 shall order the property released to the holder of the  
 23 security interest if the amount due him is equal to or in  
 24 excess of the value of the property as of the date of  
 25 seizure, it being the purpose of [this act] to forfeit only

1 the right, title, or interest of the owner. If the amount  
 2 due the holder of the security interest is less than the  
 3 value of the property, the property must be sold at public  
 4 auction by the sheriff of the county in which the seizure  
 5 was made in the same manner provided by law for the sale of  
 6 property under execution or the state may return the  
 7 property to the holder of the security interest without  
 8 proceeding with an auction.

9 (b) If no claimant exists and the confiscating agency  
 10 wishes to retain the property for its official use, it may  
 11 do so. If such property is not to be retained, it must be  
 12 sold as provided in subsection (2)(a).

13 (c) If a claimant who has presented proper proof of  
 14 his claim exists and the confiscating agency wishes to  
 15 retain the property for its official use, it may do so  
 16 provided it compensates the claimant in the amount of the  
 17 security interest outstanding at the time of the seizure.

18 Section 10. Disposition of proceeds of sale. Whenever  
 19 property is seized, forfeited, and sold under the provisions  
 20 of [this act], the net proceeds of the sale must be  
 21 distributed as follows:

22 (1) to the holders of security interests who have  
 23 presented proper proof of their claims, if any, up to the  
 24 amount of their interests in the property;

25 (2) the remainder, if any, to the county treasurer of

LC 1310/01

1 the county in which the property was seized, for deposit in  
2 the county general fund, except as provided in subsection  
3 (3);

4 (3) if the property was seized within the corporate  
5 limits of a city or town by a law enforcement agency of that  
6 city or town, the remainder, if any, to the city or town  
7 treasurer for deposit in the city or town general fund.

-End-

1 *Sen. Steve* BILL NO. *482*  
 2 INTRODUCED BY *Bob Brown*

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR SEIZURE  
 5 AND FORFEITURE OF CONTROLLED SUBSTANCES AND IMPLEMENTS AND  
 6 CONVEYANCES USED IN DANGEROUS DRUG VIOLATIONS."

7  
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Definition of controlled substance. As used  
 10 in [this act], "controlled substance" means any substance  
 11 designated as a dangerous drug pursuant to [Title 50,  
 12 chapter 32, parts 1 and 2].

13 Section 2. Things that are subject to forfeiture. (1)  
 14 The following are subject to forfeiture:

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

18 (b) all money, raw materials, products, and equipment  
 19 of any kind that are used or intended for use in  
 20 manufacturing, preparing, cultivating, compounding,  
 21 processing, delivering, importing, or exporting any  
 22 controlled substance in violation of Title 45, chapter 9;

23 (c) all property that is used or intended for use as a  
 24 container for anything enumerated in subsection (1)(a) or  
 25 (1)(b);

1 (d) except as provided in subsection (2), all  
 2 conveyances, including aircraft, vehicles, and vessels:

3 (i) which are used or intended for use in unlawfully  
 4 transporting or in any manner facilitating the  
 5 transportation of anything enumerated in subsection (1)(a)  
 6 or (1)(b) for the purpose of sale or receipt of such thing;

7 (ii) in which a controlled substance is unlawfully  
 8 kept, deposited, or concealed; or

9 (iii) in which a controlled substance is unlawfully  
 10 possessed by an occupant; and

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

15 (2) (a) No conveyance used by a person as a common  
 16 carrier in the transaction of business as a common carrier  
 17 is subject to forfeiture under this section unless it  
 18 appears that the owner or other person in charge of the  
 19 conveyance is a consenting party or privy to a violation of  
 20 Title 45, chapter 9.

21 (b) No conveyance is subject to forfeiture under this  
 22 section because of any act or omission established by the  
 23 owner of the conveyance to have been committed or omitted  
 24 without his knowledge or consent.

25 (c) A forfeiture of a conveyance encumbered by a bona



1 fide security interest is subject to the interest of the  
2 secured party if he neither had knowledge of nor consented  
3 to any violation of Title 45, chapter 9.

4 Section 3. When property may be seized. (1) A peace  
5 officer who has probable cause to make an arrest for a  
6 violation of Title 45, chapter 9, probable cause to believe  
7 that a conveyance has been used or is intended to be used to  
8 unlawfully transport a controlled substance, or probable  
9 cause to believe that a conveyance has been used to keep,  
10 deposit, or conceal a controlled substance shall seize the  
11 conveyance so used or intended to be used or any conveyance  
12 in which a controlled substance is unlawfully possessed by  
13 an occupant. He shall immediately deliver a conveyance that  
14 he seizes to the sheriff of the county in which the seizure  
15 is made, to be held as evidence until forfeiture is declared  
16 or release ordered.

17 (2) All property subject to forfeiture under [section  
18 1] may be seized by a peace officer under a search warrant  
19 issued by a district court having jurisdiction over the  
20 property. Seizure without a warrant may be made if:

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

24 (b) the property subject to seizure has been the  
25 subject of a prior judgment in favor of the state in a

1 criminal proceeding or a forfeiture proceeding based on  
2 [this act];

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

6 (d) the peace officer has probable cause to believe  
7 that the property was used or is intended to be used in  
8 violation of Title 45, chapter 9.

9 Section 4. Summary forfeiture of certain controlled  
10 substances. Controlled substances that are possessed,  
11 transferred, offered for transfer, manufactured, prepared,  
12 cultivated, compounded, or processed in violation of Title  
13 45, chapter 9, and that are seized under the provisions of  
14 [this act] are contraband and shall be summarily forfeited  
15 to the state. Controlled substances which are seized or come  
16 into the possession of the state and the owners of which are  
17 unknown are contraband and shall be summarily forfeited to  
18 the state.

19 Section 5. Notice of seizure and intention to  
20 institute forfeiture proceedings. A peace officer or an  
21 officer of the seizing agency who seizes any property other  
22 than controlled substances under the provisions of [this  
23 act] shall, within 45 days of the seizure, file a notice of  
24 the seizure and intention to institute forfeiture  
25 proceedings with the clerk of the district court of the

1 county in which the seizure occurs, and the clerk shall  
2 serve notice thereof on all owners or claimants of the  
3 property by one of the following methods:

4 (1) upon an owner or claimant whose right, title, or  
5 interest is of record in the division of motor vehicles, by  
6 mailing a copy of the notice by certified or registered mail  
7 to the address on the records of the division;

8 (2) upon an owner or claimant whose name and address  
9 are known, by mailing a copy of the notice by certified or  
10 registered mail to his last-known address;

11 (3) upon an owner or claimant whose address is unknown  
12 but who is believed to have an interest in the property, by  
13 publication in one issue of a newspaper of general  
14 circulation in the county where the seizure occurred or, if  
15 there is no such newspaper, by publication in one issue of a  
16 newspaper of general circulation in an adjoining county.

17 Section 6. Answer to allegations concerning use of  
18 property. Within 20 days after the mailing or publication of  
19 the notice, the owner or claimant of the seized property  
20 shall file a verified answer to the allegations concerning  
21 the use of the property contained in the notice of seizure  
22 and intention to institute forfeiture proceedings. No  
23 extension of the time for filing the answer may be granted,  
24 and failure to answer within 20 days bars the owner or  
25 claimant from presenting evidence at any subsequent

1 evidentiary hearing unless extraordinary circumstances  
2 exist.

3 Section 7. Procedure following answer or expiration of  
4 time for answering. (1) If a verified answer to the notice  
5 is not filed within 20 days after the mailing or publication  
6 of the notice, the court shall hear evidence on the charge  
7 of unlawful use of the property and upon motion may order  
8 the property forfeited to the state.

9 (2) If a verified answer is filed within 20 days, the  
10 forfeiture proceedings shall be set for hearing without a  
11 jury not less than 30 days after the answer is filed. Notice  
12 of the hearing shall be given in the manner provided for  
13 service of notice of seizure.

14 Section 8. Proof required or permitted at hearing. (1)  
15 At the hearing any owner or claimant who has a verified  
16 answer on file may show by competent evidence that the  
17 property was not used for the purpose charged.

18 (2) A claimant of a security interest in the property  
19 may prove that his security interest is bona fide and that  
20 it was created after a reasonable investigation of the moral  
21 responsibility, character, and reputation of the purchaser  
22 and without knowledge that the property was being or was to  
23 be used for the purpose charged. However, no person who has  
24 a lien dependent upon possession for compensation to which  
25 he is legally entitled for making repairs or performing

1 labor upon, furnishing supplies or materials for, or  
 2 providing storage, repairs or safekeeping of any property  
 3 and no person doing business under any law of this state or  
 4 the United States relating to financial institutions, as  
 5 defined in 32-6-103, loan companies, or licensed pawnbrokers  
 6 or regularly engaged in the business of selling the property  
 7 or of purchasing conditional sales contracts for the  
 8 property may be required to prove that his security interest  
 9 was created after a reasonable investigation of the moral  
 10 responsibility, character, and reputation of the owner,  
 11 purchaser, or person in possession of the property when it  
 12 was brought to such person.

13 Section 9. Disposition of property following hearing.

14 (1) If the court finds that the property was not used for  
 15 the purpose charged, it shall order the property released to  
 16 the owner of record as of the date of the seizure.

17 (2) If the court finds that the property was used for  
 18 the purpose charged, the property shall be disposed of as  
 19 follows:

20 (a) If proper proof of his claim is presented at the  
 21 hearing by the holder of a security interest, the court  
 22 shall order the property released to the holder of the  
 23 security interest if the amount due him is equal to or in  
 24 excess of the value of the property as of the date of  
 25 seizure, it being the purpose of [this act] to forfeit only

1 the right, title, or interest of the owner. If the amount  
 2 due the holder of the security interest is less than the  
 3 value of the property, the property must be sold at public  
 4 auction by the sheriff of the county in which the seizure  
 5 was made in the same manner provided by law for the sale of  
 6 property under execution or the state may return the  
 7 property to the holder of the security interest without  
 8 proceeding with an auction.

9 (b) If no claimant exists and the confiscating agency  
 10 wishes to retain the property for its official use, it may  
 11 do so. If such property is not to be retained, it must be  
 12 sold as provided in subsection (2)(a).

13 (c) If a claimant who has presented proper proof of  
 14 his claim exists and the confiscating agency wishes to  
 15 retain the property for its official use, it may do so  
 16 provided it compensates the claimant in the amount of the  
 17 security interest outstanding at the time of the seizure.

18 Section 10. Disposition of proceeds of sale. Whenever  
 19 property is seized, forfeited, and sold under the provisions  
 20 of [this act], the net proceeds of the sale must be  
 21 distributed as follows:

22 (1) to the holders of security interests who have  
 23 presented proper proof of their claims, if any, up to the  
 24 amount of their interests in the property;

25 (2) the remainder, if any, to the county treasurer of

LC 1310/01

1 the county in which the property was seized, for deposit in  
2 the county general fund, except as provided in subsection  
3 (3);  
4 (3) if the property was seized within the corporate  
5 limits of a city or town by a law enforcement agency of that  
6 city or town, the remainder, if any, to the city or town  
7 treasurer for deposit in the city or town general fund.

-End-

1 SENATE BILL NO. 482  
 2 INTRODUCED BY B. BROWN  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR SEIZURE  
 5 AND FORFEITURE OF CONTROLLED SUBSTANCES AND IMPLEMENTS AND  
 6 CONVEYANCES USED IN DANGEROUS DRUG VIOLATIONS."  
 7  
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 9 Section 1. Definition of controlled substance. As used  
 10 in [this act], "controlled substance" means any substance  
 11 designated as a dangerous drug pursuant to [Title 50,  
 12 chapter 32, parts 1 and 2].  
 13 Section 2. Things that are subject to forfeiture. (1)  
 14 The following are subject to forfeiture:  
 15 (a) all controlled substances that have been  
 16 manufactured, distributed, prepared, cultivated, compounded,  
 17 processed, or possessed in violation of Title 45, chapter 9;  
 18 (b) all money, raw materials, products, and equipment  
 19 of any kind that are used or intended for use in  
 20 manufacturing, preparing, cultivating, compounding,  
 21 processing, delivering, importing, or exporting any  
 22 controlled substance in violation of Title 45, chapter 9  
 23 EXCEPT ITEMS USED OR INTENDED FOR USE IN CONNECTION WITH  
 24 QUANTITIES OF MARIJUANA IN AMOUNTS LESS THAN 1 KILOGRAM;  
 25 (c) EXCEPT AS PROVIDED IN SUBSECTION (2)(D), all

1 property that is used or intended for use as a container for  
 2 anything enumerated in subsection (1)(a) or (1)(b);  
 3 (d) except as provided in subsection (2), all  
 4 conveyances, including aircraft, vehicles, and vessels:  
 5 (i) which are used or intended for use in unlawfully  
 6 transporting or in any manner facilitating the  
 7 transportation of anything enumerated in subsection (1)(a)  
 8 or (1)(b) for the purpose of sale or receipt of such thing;  
 9 (ii) in which a controlled substance is unlawfully  
 10 kept, deposited, or concealed; or  
 11 (iii) in which a controlled substance is unlawfully  
 12 possessed by an occupant; and  
 13 (e) all books, records, and research products and  
 14 materials, including formulas, microfilm, tapes, and data,  
 15 that are used or intended for use in violation of Title 45,  
 16 chapter 9.  
 17 (2) (a) No conveyance used by a person as a common  
 18 carrier in the transaction of business as a common carrier  
 19 is subject to forfeiture under this section unless it  
 20 appears that the owner or other person in charge of the  
 21 conveyance is a consenting party or privy to a violation of  
 22 Title 45, chapter 9.  
 23 (b) No conveyance is subject to forfeiture under this  
 24 section because of any act or omission established by the  
 25 owner of the conveyance to have been committed or omitted

1 without his knowledge or consent.

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

6 ~~(D) NO CONVEYANCE OR CONTAINER IS SUBJECT TO~~  
7 ~~FORFEITURE UNDER THIS SECTION IF IT WAS USED OR INTENDED FOR~~  
8 ~~USE IN TRANSPORTING LESS THAN 1 KILOGRAM OF MARIJUANA.~~

9 Section 3. When property may be seized. (1) A peace  
10 officer who has probable cause to make an arrest for a  
11 violation of Title 45, chapter 9, probable cause to believe  
12 that a conveyance has been used or is intended to be used to  
13 unlawfully transport a controlled substance, or probable  
14 cause to believe that a conveyance has been used to keep,  
15 deposit, or conceal a controlled substance shall seize the  
16 conveyance so used or intended to be used or any conveyance  
17 in which a controlled substance is unlawfully possessed by  
18 an occupant. He shall immediately deliver a conveyance that  
19 he seizes to the sheriff of the county in which the seizure  
20 is made, to be held as evidence until forfeiture is declared  
21 or release ordered.

22 (2) All property subject to forfeiture under [section  
23 1] may be seized by a peace officer under a search warrant  
24 issued by a district court having jurisdiction over the  
25 property. Seizure without a warrant may be made if:

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

4 (b) the property subject to seizure has been the  
5 subject of a prior judgment in favor of the state in a  
6 criminal proceeding or a forfeiture proceeding based on  
7 [this act];

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

11 (d) the peace officer has probable cause to believe  
12 that the property was used or is intended to be used in  
13 violation of Title 45, chapter 9.

14 Section 4. Summary forfeiture of certain controlled  
15 substances. Controlled substances that are possessed,  
16 transferred, offered for transfer, manufactured, prepared,  
17 cultivated, compounded, or processed in violation of Title  
18 45, chapter 9, and that are seized under the provisions of  
19 [this act] are contraband and shall be summarily forfeited  
20 to the state. Controlled substances which are seized or come  
21 into the possession of the state and the owners of which are  
22 unknown are contraband and shall be summarily forfeited to  
23 the state.

24 Section 5. Notice of seizure and intention to  
25 institute forfeiture proceedings. A peace officer or an

1 officer of the seizing agency who seizes any property other  
 2 than controlled substances under the provisions of [this  
 3 act] shall, within 45 days of the seizure, file a notice of  
 4 the seizure and intention to institute forfeiture  
 5 proceedings with the clerk of the district court of the  
 6 county in which the seizure occurs, and the clerk shall  
 7 serve notice thereof on all owners or claimants of the  
 8 property by one of the following methods:

9 {1} upon an owner or claimant whose right, title, or  
 10 interest is of record in the division of motor vehicles, by  
 11 mailing a copy of the notice by certified or registered mail  
 12 to the address on the records of the division;

13 {2} upon an owner or claimant whose name and address  
 14 are known, by mailing a copy of the notice by certified or  
 15 registered mail to his last-known address;

16 {3} upon an owner or claimant whose address is unknown  
 17 but who is believed to have an interest in the property, by  
 18 publication in one issue of a newspaper of general  
 19 circulation in the county where the seizure occurred or, if  
 20 there is no such newspaper, by publication in one issue of a  
 21 newspaper of general circulation in an adjoining county.

22 Section 6. Answer to allegations concerning use of  
 23 property. Within 20 days after the mailing or publication of  
 24 the notice, the owner or claimant of the seized property  
 25 shall file a verified answer to the allegations concerning

1 the use of the property contained in the notice of seizure  
 2 and intention to institute forfeiture proceedings. No  
 3 extension of the time for filing the answer may be granted,  
 4 and failure to answer within 20 days bars the owner or  
 5 claimant from presenting evidence at any subsequent  
 6 evidentiary hearing unless extraordinary circumstances  
 7 exist.

8 Section 7. Procedure following answer or expiration of  
 9 time for answering. {1} If a verified answer to the notice  
 10 is not filed within 20 days after the mailing or publication  
 11 of the notice, the court shall hear evidence on the charge  
 12 of unlawful use of the property and upon motion may order  
 13 the property forfeited to the state.

14 {2} If a verified answer is filed within 20 days, the  
 15 forfeiture proceedings shall be set for hearing without a  
 16 jury not less than 30 days after the answer is filed. Notice  
 17 of the hearing shall be given in the manner provided for  
 18 service of notice of seizure.

19 Section 8. Proof required or permitted at hearing. {1}  
 20 At the hearing any owner or claimant who has a verified  
 21 answer on file may show by competent evidence that the  
 22 property was not used for the purpose charged.

23 {2} A claimant of a security interest in the property  
 24 may prove that his security interest is bona fide and that  
 25 it was created after a reasonable investigation of the moral

1 responsibility, character, and reputation of the purchaser  
 2 and without knowledge that the property was being or was to  
 3 be used for the purpose charged. However, no person who has  
 4 a lien dependent upon possession for compensation to which  
 5 he is legally entitled for making repairs or performing  
 6 labor upon, furnishing supplies or materials for, or  
 7 providing storage, repair, or safekeeping of any property  
 8 and no person doing business under any law of this state or  
 9 the United States relating to financial institutions, as  
 10 defined in 32-6-103, loan companies, or licensed pawnbrokers  
 11 or regularly engaged in the business of selling the property  
 12 or of purchasing conditional sales contracts for the  
 13 property may be required to prove that his security interest  
 14 was created after a reasonable investigation of the moral  
 15 responsibility, character, and reputation of the owner,  
 16 purchaser, or person in possession of the property when it  
 17 was brought to such person.

18 Section 9. Disposition of property following hearing.

19 (1) If the court finds that the property was not used for  
 20 the purpose charged, it shall order the property released to  
 21 the owner of record as of the date of the seizure.

22 (2) If the court finds that the property was used for  
 23 the purpose charged, the property shall be disposed of as  
 24 follows:

25 (a) If proper proof of his claim is presented at the

1 hearing by the holder of a security interest, the court  
 2 shall order the property released to the holder of the  
 3 security interest if the amount due him is equal to or in  
 4 excess of the value of the property as of the date of  
 5 seizure, it being the purpose of [this act] to forfeit only  
 6 the right, title, or interest of the owner. If the amount  
 7 due the holder of the security interest is less than the  
 8 value of the property, the property must be sold at public  
 9 auction by the sheriff of the county in which the seizure  
 10 was made in the same manner provided by law for the sale of  
 11 property under execution or the state may return the  
 12 property to the holder of the security interest without  
 13 proceeding with an auction.

14 (b) If no claimant exists and the confiscating agency  
 15 wishes to retain the property for its official use, it may  
 16 do so. If such property is not to be retained, it must be  
 17 sold as provided in subsection (2)(a).

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

23 Section 10. Disposition of proceeds of sale. Whenever  
 24 property is seized, forfeited, and sold under the provisions  
 25 of [this act], the net proceeds of the sale must be



1 distributed as follows:

2 (1) to the holders of security interests who have  
3 presented proper proof of their claims, if any, up to the  
4 amount of their interests in the property;

5 (2) the remainder, if any, to the county treasurer of  
6 the county in which the property was seized, for deposit in  
7 the county general fund, except as provided in subsection  
8 (3);

9 (3) if the property was seized within the corporate  
10 limits of a city or town by a law enforcement agency of that  
11 city or town, the remainder, if any, to the city or town  
12 treasurer for deposit in the city or town general fund.

-End-

1                   SENATE BILL NO. 482  
 2                   INTRODUCED BY B. BROWN  
 3  
 4   A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR SEIZURE  
 5   AND FORFEITURE OF CONTROLLED SUBSTANCES AND IMPLEMENTS AND  
 6   CONVEYANCES USED IN DANGEROUS DRUG VIOLATIONS."

7  
 8   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9       Section 1. Definition of controlled substance. As used  
 10   in [this act], "controlled substance" means any substance  
 11   designated as a dangerous drug pursuant to [Title 50,  
 12   chapter 32, parts 1 and 2].

13       Section 2. Things that are subject to forfeiture. (1)  
 14   The following are subject to forfeiture:

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

18       (b) all money, raw materials, products, and equipment  
 19   of any kind that are used or intended for use in  
 20   manufacturing, preparing, cultivating, compounding,  
 21   processing, delivering, importing, or exporting any  
 22   controlled substance in violation of Title 45, chapter 9.  
 23   ~~EXCEPT ITEMS USED OR INTENDED FOR USE IN CONNECTION WITH~~  
 24   ~~QUANTITIES OF MARIJUANA IN AMOUNTS LESS THAN 1-KILOGRAM 250~~  
 25   ~~GRAMS;~~

1                   (c) ~~EXCEPT AS PROVIDED IN SUBSECTION (2)(D),~~ all  
 2   property that is used or intended for use as a container for  
 3   anything enumerated in subsection (1)(a) or (1)(b);

4                   (d) except as provided in subsection (2), all  
 5   conveyances, including aircraft, vehicles, and vessels:

6                   (i) which are used or intended for use in unlawfully  
 7   transporting or in any manner facilitating the  
 8   transportation of anything enumerated in subsection (1)(a)  
 9   or (1)(b) for the purpose of sale or receipt of such thing;

10                   (ii) in which a controlled substance is unlawfully  
 11   kept, deposited, or concealed; or

12                   (iii) in which a controlled substance is unlawfully  
 13   possessed by an occupant; and

14                   (e) all books, records, and research products and  
 15   materials, including formulas, microfilm, tapes, and data,  
 16   that are used or intended for use in violation of Title 45,  
 17   chapter 9.

18                   (2) (a) No conveyance used by a person as a common  
 19   carrier in the transaction of business as a common carrier  
 20   is subject to forfeiture under this section unless it  
 21   appears that the owner or other person in charge of the  
 22   conveyance is a consenting party or privy to a violation of  
 23   Title 45, chapter 9.

24                   (b) No conveyance is subject to forfeiture under this  
 25   section because of any act or omission established by the

1 owner of the conveyance to have been committed or omitted  
2 without his knowledge or consent.

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

7 ~~NO CONVEYANCE OR CONTAINER IS SUBJECT TO~~  
8 ~~FORFEITURE UNDER THIS SECTION IF IT WAS USED OR INTENDED FOR~~  
9 ~~USE IN TRANSPORTING LESS THAN ONE KILOGRAM 250 GRAMS OF~~  
10 ~~MARIJUANA.~~

11 Section 3. When property may be seized. (1) A peace  
12 officer who has probable cause to make an arrest for a  
13 violation of Title 45, chapter 9, probable cause to believe  
14 that a conveyance has been used or is intended to be used to  
15 unlawfully transport a controlled substance, or probable  
16 cause to believe that a conveyance has been used to keep,  
17 deposit, or conceal a controlled substance shall seize the  
18 conveyance so used or intended to be used or any conveyance  
19 in which a controlled substance is unlawfully possessed by  
20 an occupant. He shall immediately deliver a conveyance that  
21 he seizes to the sheriff of the county in which the seizure  
22 is made, to be held as evidence until forfeiture is declared  
23 or release ordered.

24 (2) All property subject to forfeiture under [section  
25 1] may be seized by a peace officer under a search warrant

1 issued by a district court having jurisdiction over the  
2 property. Seizure without a warrant may be made if:

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

6 (b) the property subject to seizure has been the  
7 subject of a prior judgment in favor of the state in a  
8 criminal proceeding or a forfeiture proceeding based on  
9 [this act];

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

13 (d) the peace officer has probable cause to believe  
14 that the property was used or is intended to be used in  
15 violation of Title 45, chapter 9.

16 Section 4. Summary forfeiture of certain controlled  
17 substances. Controlled substances that are possessed,  
18 transferred, offered for transfer, manufactured, prepared,  
19 cultivated, compounded, or processed in violation of Title  
20 45, chapter 9, and that are seized under the provisions of  
21 [this act] are contraband and shall be summarily forfeited  
22 to the state. Controlled substances which are seized or come  
23 into the possession of the state and the owners of which are  
24 unknown are contraband and shall be summarily forfeited to  
25 the state.

1 Section 5. Notice of seizure and intention to  
 2 institute forfeiture proceedings. A peace officer or an  
 3 officer of the seizing agency who seizes any property other  
 4 than controlled substances under the provisions of [this  
 5 act] shall, within 45 days of the seizure, file a notice of  
 6 the seizure and intention to institute forfeiture  
 7 proceedings with the clerk of the district court of the  
 8 county in which the seizure occurs, and the clerk shall  
 9 serve notice thereof on all owners or claimants of the  
 10 property by one of the following methods:

11 (1) upon an owner or claimant whose right, title, or  
 12 interest is of record in the division of motor vehicles, by  
 13 mailing a copy of the notice by certified or registered mail  
 14 to the address on the records of the division;

15 (2) upon an owner or claimant whose name and address  
 16 are known, by mailing a copy of the notice by certified or  
 17 registered mail to his last-known address;

18 (3) upon an owner or claimant whose address is unknown  
 19 but who is believed to have an interest in the property, by  
 20 publication in one issue of a newspaper of general  
 21 circulation in the county where the seizure occurred or, if  
 22 there is no such newspaper, by publication in one issue of a  
 23 newspaper of general circulation in an adjoining county.

24 Section 6. Answer to allegations concerning use of  
 25 property. Within 20 days after the mailing or publication of

1 the notice, the owner or claimant of the seized property  
 2 shall file a verified answer to the allegations concerning  
 3 the use of the property contained in the notice of seizure  
 4 and intention to institute forfeiture proceedings. No  
 5 extension of the time for filing the answer may be granted,  
 6 and failure to answer within 20 days bars the owner or  
 7 claimant from presenting evidence at any subsequent  
 8 evidentiary hearing unless extraordinary circumstances  
 9 exist.

10 Section 7. Procedure following answer or expiration of  
 11 time for answering. (1) If a verified answer to the notice  
 12 is not filed within 20 days after the mailing or publication  
 13 of the notice, the court shall hear evidence on the charge  
 14 of unlawful use of the property and upon motion may order  
 15 the property forfeited to the state.

16 (2) If a verified answer is filed within 20 days, the  
 17 forfeiture proceedings shall be set for hearing without a  
 18 jury not less than 30 days after the answer is filed. Notice  
 19 of the hearing shall be given in the manner provided for  
 20 service of notice of seizure.

21 Section 8. Proof required or permitted at hearing. (1)  
 22 At the hearing any owner or claimant who has a verified  
 23 answer on file may show by competent evidence that the  
 24 property was not used for the purpose charged.

25 (2) A claimant of a security interest in the property

1 may prove that his security interest is bona fide and that  
 2 it was created after a reasonable investigation of the moral  
 3 responsibility, character, and reputation of the purchaser  
 4 and without knowledge that the property was being or was to  
 5 be used for the purpose charged. However, no person who has  
 6 a lien dependent upon possession for compensation to which  
 7 he is legally entitled for making repairs or performing  
 8 labor upon, furnishing supplies or materials for, or  
 9 providing storage, repair, or safekeeping of any property  
 10 and no person doing business under any law of this state or  
 11 the United States relating to financial institutions, as  
 12 defined in 32-6-103, loan companies, or licensed pawnbrokers  
 13 or regularly engaged in the business of selling the property  
 14 or of purchasing conditional sales contracts for the  
 15 property may be required to prove that his security interest  
 16 was created after a reasonable investigation of the moral  
 17 responsibility, character, and reputation of the owner,  
 18 purchaser, or person in possession of the property when it  
 19 was brought to such person.

20 Section 9. Disposition of property following hearing.

21 (1) If the court finds that the property was not used for  
 22 the purpose charged, it shall order the property released to  
 23 the owner of record as of the date of the seizure.

24 (2) If the court finds that the property was used for  
 25 the purpose charged, the property shall be disposed of as

1 follows:

2 (a) If proper proof of his claim is presented at the  
 3 hearing by the holder of a security interest, the court  
 4 shall order the property released to the holder of the  
 5 security interest if the amount due him is equal to or in  
 6 excess of the value of the property as of the date of  
 7 seizure, it being the purpose of [this act] to forfeit only  
 8 the right, title, or interest of the owner. If the amount  
 9 due the holder of the security interest is less than the  
 10 value of the property, the property must be sold at public  
 11 auction by the sheriff of the county in which the seizure  
 12 was made in the same manner provided by law for the sale of  
 13 property under execution or the state may return the  
 14 property to the holder of the security interest without  
 15 proceeding with an auction.

16 (b) If no claimant exists and the confiscating agency  
 17 wishes to retain the property for its official use, it may  
 18 do so. If such property is not to be retained, it must be  
 19 sold as provided in subsection (2)(a).

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

25 Section 10. Disposition of proceeds of sale. Whenever

1 property is seized, forfeited, and sold under the provisions  
2 of [this act], the net proceeds of the sale must be  
3 distributed as follows:

4 (1) to the holders of security interests who have  
5 presented proper proof of their claims, if any, up to the  
6 amount of their interests in the property;

7 (2) the remainder, if any, to the county treasurer of  
8 the county in which the property was seized, for deposit in  
9 the county general fund, except as provided in subsection  
10 (3);

11 (3) if the property was seized within the corporate  
12 limits of a city or town by a law enforcement agency of that  
13 city or town, the remainder, if any, to the city or town  
14 treasurer for deposit in the city or town general fund.

-End-

1                   SENATE BILL NO. 482  
2                   INTRODUCED BY B. BROWN  
3  
4    A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR SEIZURE  
5    AND FORFEITURE OF CONTROLLED SUBSTANCES AND IMPLEMENTS AND  
6    CONVEYANCES USED IN DANGEROUS DRUG VIOLATIONS."  
7  
8    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
9            Section 1. Definition of controlled substance. As used  
10   in [this act], "controlled substance" means any substance  
11   designated as a dangerous drug pursuant to [Title 50,  
12   chapter 32, parts 1 and 2].  
13            Section 2. Things that are subject to forfeiture. (1)  
14   The following are subject to forfeiture:  
15            (a) all controlled substances that have been  
16   manufactured, distributed, prepared, cultivated, compounded,  
17   processed, or possessed in violation of Title 45, chapter 9;  
18            (b) all money, raw materials, products, and equipment  
19   of any kind that are used or intended for use in  
20   manufacturing, preparing, cultivating, compounding,  
21   processing, delivering, importing, or exporting any  
22   controlled substance in violation of Title 45, chapter 9,  
23   ~~EXCEPT ITEMS USED OR INTENDED FOR USE IN CONNECTION WITH~~  
24   ~~QUANTITIES OF MARIJUANA IN AMOUNTS LESS THAN 1-KILOGRAM 250~~  
25   GRAMS;

1            (c) ~~EXCEPT AS PROVIDED IN SUBSECTION (2)(D),~~ all  
2   property that is used or intended for use as a container for  
3   anything enumerated in subsection (1)(a) or (1)(b);  
4            (d) except as provided in subsection (2), all  
5   conveyances, including aircraft, vehicles, and vessels:  
6            (i) which are used or intended for use in unlawfully  
7   transporting or in any manner facilitating the  
8   transportation of anything enumerated in subsection (1)(a)  
9   or (1)(b) for the purpose of sale or receipt of such thing;  
10           (ii) in which a controlled substance is unlawfully  
11   kept, deposited, or concealed; or  
12           (iii) in which a controlled substance is unlawfully  
13   possessed by an occupant; and  
14            (e) all books, records, and research products and  
15   materials, including formulas, microfilm, tapes, and data,  
16   that are used or intended for use in violation of Title 45,  
17   chapter 9.  
18            (2) (a) No conveyance used by a person as a common  
19   carrier in the transaction of business as a common carrier  
20   is subject to forfeiture under this section unless it  
21   appears that the owner or other person in charge of the  
22   conveyance is a consenting party or privy to a violation of  
23   Title 45, chapter 9.  
24            (b) No conveyance is subject to forfeiture under this  
25   section because of any act or omission established by the

1 owner of the conveyance to have been committed or omitted  
2 without his knowledge or consent.

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

7 NO CONVEYANCE OR CONTAINER IS SUBJECT TO  
8 FORFEITURE UNDER THIS SECTION IF IT WAS USED OR INTENDED FOR  
9 USE IN TRANSPORTING LESS THAN ~~1~~-KILOGRAM 250 GRAMS OF  
10 MARIJUANA.

11 Section 3. When property may be seized. (1) A peace  
12 officer who has probable cause to make an arrest for a  
13 violation of Title 45, chapter 9, probable cause to believe  
14 that a conveyance has been used or is intended to be used to  
15 unlawfully transport a controlled substance, or probable  
16 cause to believe that a conveyance has been used to keep,  
17 deposit, or conceal a controlled substance shall seize the  
18 conveyance so used or intended to be used or any conveyance  
19 in which a controlled substance is unlawfully possessed by  
20 an occupant. He shall immediately deliver a conveyance that  
21 he seizes to the sheriff of the county in which the seizure  
22 is made, to be held as evidence until forfeiture is declared  
23 or release ordered.

24 (2) All property subject to forfeiture under [section  
25 1] may be seized by a peace officer under a search warrant

1 issued by a district court having jurisdiction over the  
2 property. Seizure without a warrant may be made if:

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

6 (b) the property subject to seizure has been the  
7 subject of a prior judgment in favor of the state in a  
8 criminal proceeding or a forfeiture proceeding based on  
9 [this act];

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

13 (d) the peace officer has probable cause to believe  
14 that the property was used or is intended to be used in  
15 violation of Title 45, chapter 9.

16 Section 4. Summary forfeiture of certain controlled  
17 substances. Controlled substances that are possessed,  
18 transferred, offered for transfer, manufactured, prepared,  
19 cultivated, compounded, or processed in violation of Title  
20 45, chapter 9, and that are seized under the provisions of  
21 [this act] are contraband and shall be summarily forfeited  
22 to the state. Controlled substances which are seized or come  
23 into the possession of the state and the owners of which are  
24 unknown are contraband and shall be summarily forfeited to  
25 the state.



1 Section 5. Notice of seizure and intention to  
 2 institute forfeiture proceedings. A peace officer or an  
 3 officer of the seizing agency who seizes any property other  
 4 than controlled substances under the provisions of [this  
 5 act] shall, within 45 days of the seizure, file a notice of  
 6 the seizure and intention to institute forfeiture  
 7 proceedings with the clerk of the district court of the  
 8 county in which the seizure occurs, and the clerk shall  
 9 serve notice thereof on all owners or claimants of the  
 10 property by one of the following methods:

11 (1) upon an owner or claimant whose right, title, or  
 12 interest is of record in the division of motor vehicles, by  
 13 mailing a copy of the notice by certified or registered mail  
 14 to the address on the records of the division;

15 (2) upon an owner or claimant whose name and address  
 16 are known, by mailing a copy of the notice by certified or  
 17 registered mail to his last-known address;

18 (3) upon an owner or claimant whose address is unknown  
 19 but who is believed to have an interest in the property, by  
 20 publication in one issue of a newspaper of general  
 21 circulation in the county where the seizure occurred or, if  
 22 there is no such newspaper, by publication in one issue of a  
 23 newspaper of general circulation in an adjoining county.

24 Section 6. Answer to allegations concerning use of  
 25 property. Within 20 days after the mailing or publication of

1 the notice, the owner or claimant of the seized property  
 2 shall file a verified answer to the allegations concerning  
 3 the use of the property contained in the notice of seizure  
 4 and intention to institute forfeiture proceedings. No  
 5 extension of the time for filing the answer may be granted,  
 6 and failure to answer within 20 days bars the owner or  
 7 claimant from presenting evidence at any subsequent  
 8 evidentiary hearing unless extraordinary circumstances  
 9 exist.

10 Section 7. Procedure following answer or expiration of  
 11 time for answering. (1) If a verified answer to the notice  
 12 is not filed within 20 days after the mailing or publication  
 13 of the notice, the court shall hear evidence on the charge  
 14 of unlawful use of the property and upon motion may order  
 15 the property forfeited to the state.

16 (2) If a verified answer is filed within 20 days, the  
 17 forfeiture proceedings shall be set for hearing without a  
 18 jury not less than 30 days after the answer is filed. Notice  
 19 of the hearing shall be given in the manner provided for  
 20 service of notice of seizure.

21 Section 8. Proof required or permitted at hearing. (1)  
 22 At the hearing any owner or claimant who has a verified  
 23 answer on file may show by competent evidence that the  
 24 property was not used for the purpose charged.

25 (2) A claimant of a security interest in the property

1 may prove that his security interest is bona fide and that  
 2 it was created after a reasonable investigation of the moral  
 3 responsibility, character, and reputation of the purchaser  
 4 and without knowledge that the property was being or was to  
 5 be used for the purpose charged. However, no person who has  
 6 a lien dependent upon possession for compensation to which  
 7 he is legally entitled for making repairs or performing  
 8 labor upon, furnishing supplies or materials for, or  
 9 providing storage, repair, or safekeeping of any property  
 10 and no person doing business under any law of this state or  
 11 the United States relating to financial institutions, as  
 12 defined in 32-6-103, loan companies, or licensed pawnbrokers  
 13 or regularly engaged in the business of selling the property  
 14 or of purchasing conditional sales contracts for the  
 15 property may be required to prove that his security interest  
 16 was created after a reasonable investigation of the moral  
 17 responsibility, character, and reputation of the owner,  
 18 purchaser, or person in possession of the property when it  
 19 was brought to such person.

20 Section 9. Disposition of property following hearing.

21 (1) If the court finds that the property was not used for  
 22 the purpose charged, it shall order the property released to  
 23 the owner of record as of the date of the seizure.

24 (2) If the court finds that the property was used for  
 25 the purpose charged, the property shall be disposed of as

1 follows:

2 (a) If proper proof of his claim is presented at the  
 3 hearing by the holder of a security interest, the court  
 4 shall order the property released to the holder of the  
 5 security interest if the amount due him is equal to or in  
 6 excess of the value of the property as of the date of  
 7 seizure, it being the purpose of [this act] to forfeit only  
 8 the right, title, or interest of the owner. If the amount  
 9 due the holder of the security interest is less than the  
 10 value of the property, the property must be sold at public  
 11 auction by the sheriff of the county in which the seizure  
 12 was made in the same manner provided by law for the sale of  
 13 property under execution or the state may return the  
 14 property to the holder of the security interest without  
 15 proceeding with an auction.

16 (b) If no claimant exists and the confiscating agency  
 17 wishes to retain the property for its official use, it may  
 18 do so. If such property is not to be retained, it must be  
 19 sold as provided in subsection (2)(a).

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

25 Section 10. Disposition of proceeds of sale. Whenever

1 property is seized, forfeited, and sold under the provisions  
2 of [this act], the net proceeds of the sale must be  
3 distributed as follows:

4 (1) to the holders of security interests who have  
5 presented proper proof of their claims, if any, up to the  
6 amount of their interests in the property;

7 (2) the remainder, if any, to the county treasurer of  
8 the county in which the property was seized, for deposit in  
9 the county general fund, except as provided in subsection  
10 (3);

11 (3) if the property was seized within the corporate  
12 limits of a city or town by a law enforcement agency of that  
13 city or town, the remainder, if any, to the city or town  
14 treasurer for deposit in the city or town general fund.

-End-

HOUSE OF REPRESENTATIVES  
March 16, 1979

Judiciary Committee amendments to Senate Bill 482, third reading copy, as follows:

1. Page 1, line 24.  
Following: "THAN"  
Strike: "1 KILOGRAM"  
Insert: "250 grams"
  
2. Page 3, line 8.  
Following: "THAN"  
Strike: "1 KILOGRAM"  
Insert: "250 grams"

AND AS AMENDED BE CONCURRED IN