

SENATE BILL NO. 236

INTRODUCED BY CRIPPEN

IN THE SENATE

January 20, 1983	Introduced and referred to Committee on Judiciary.
February 2, 1983	Committee recommend bill do pass as amended. Report adopted.
February 3, 1983	Bill printed and placed on members' desks.
February 5, 1983	Second reading, do pass as amended.
February 7, 1983	Correctly engrossed.
February 8, 1983	Third reading, passed. Ayes, 48; Noes, 2. Transmitted to House.

IN THE HOUSE

February 9, 1983	Introduced and referred to Committee on Judiciary.
March 9, 1983	Committee recommend bill be concurred in. Report adopted.
March 10, 1983	Second reading, concurred in.
March 11, 1983	Third reading, concurred in.

IN THE SENATE

March 12, 1983

Returned to Senate. Sent
to enrolling.

Reported correctly
enrolled.

1 *Agate* BILL NO. *236*
2 INTRODUCED BY *Casper*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADD TO THE LIST OF
5 ITEMS THAT MAY BE FORFEITED WHEN USED IN CONNECTION WITH A
6 VIOLATION OF THE DANGEROUS DRUGS LAWS; TO PROVIDE FOR THE
7 DISPOSITION OF DRUG OFFENSE FINES AND OF PROCEEDS OF THE
8 SALE OF FORFEITED ITEMS; AMENDING SECTIONS 44-12-102,
9 44-12-205, 44-12-206, AND 46-18-235, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 44-12-102, MCA, is amended to read:

13 "44-12-102. Things subject to forfeiture. (1) The
14 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 250 grams;

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;

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; and

17 (f) all drug paraphernalia as defined in 45-10-101;
18 and

19 (g) everything of value furnished or intended to be
20 furnished in exchange for a controlled substance in
21 violation of Title 45, chapter 9; all proceeds traceable to
22 such an exchange; and all money, negotiable instruments, and
23 securities used or intended to be used to facilitate any
24 violation of Title 45, chapter 9.

25 (2) (a) No conveyance used by a person as a common

1 carrier in the transaction of business as a common carrier
2 is subject to forfeiture under this section unless it
3 appears that the owner or other person in charge of the
4 conveyance is a consenting party or privy to a violation of
5 Title 45, chapter 9.

6 (b) No conveyance is subject to forfeiture under this
7 section because of any act or omission established by the
8 owner of the conveyance to have been committed or omitted
9 without his knowledge or consent.

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

14 (d) No conveyance or container is subject to
15 forfeiture under this section if it was used or intended for
16 use in transporting less than 250 grams of marijuana."

17 Section 2. Section 44-12-205, MCA, is amended to read:

18 "44-12-205. 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 chapter to forfeit
6 only the right, title, or interest of the owner. If the
7 amount due the holder of the security interest is less than
8 the value of the property, the property must be sold at
9 public auction by the sheriff of the county in which the
10 seizure was made in the same manner provided by law for the
11 sale of 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) No property referred to in 44-12-102(1)(c) may be
15 forfeited to the extent of the interest of an owner by
16 reason of any act or omission established by such owner to
17 have been committed or omitted without his knowledge or
18 consent. All money found in close proximity to forfeitable
19 controlled substances, to forfeitable drug manufacturing or
20 distributing paraphernalia, or to forfeitable records of the
21 importation, manufacture, or distribution of controlled
22 substances is presumed to be forfeitable. The burden is on
23 the owner of the property to rebut this presumption.

24 (b)(c) If no claimant exists and the confiscating
25 agency wishes to retain the property for its official use,

1 it may do so. If such property is not to be retained, it
2 must be sold as provided in subsection (2)(a).

3 ~~(c)~~(d) If a claimant who has presented proper proof of
4 his claim exists and the confiscating agency wishes to
5 retain the property for its official use, it may do so
6 provided it compensates the claimant in the amount of the
7 security interest outstanding at the time of the seizure."

8 Section 3. Section 44-12-206, MCA, is amended to read:

9 "44-12-206. Disposition of proceeds of sale. (1)
10 Whenever property is seized, forfeited, and sold under the
11 provisions of this chapter, the net proceeds of the sale
12 must be distributed as follows:

13 (1)(a) to the holders of security interests who have
14 presented proper proof of their claims, if any, up to the
15 amount of their interests in the property;

16 (2)(b) the remainder, if any, to the county treasurer
17 of the county in which the property was seized, ~~for deposit~~
18 ~~in the county general fund who shall establish and maintain~~
19 ~~a drug forfeiture fund and deposit the remainder into the~~
20 ~~fund,~~ except as provided in subsection ~~(3)~~ (1)(c);

21 (3)(c) if the property was seized within the corporate
22 limits of a city or town by a law enforcement agency of that
23 city or town, the remainder, if any, to the city or town
24 treasurer, ~~for deposit in the city or town general fund who~~
25 ~~shall establish and maintain a drug forfeiture fund and~~

1 ~~deposit the remainder into the fund.~~

2 (2) All proceeds from any source that are deposited
3 into a drug forfeiture fund must in each fiscal year be
4 appropriated to and remain available until expended by the
5 confiscating agency for drug enforcement and education."

6 Section 4. Section 46-18-235, MCA, is amended to read:

7 "46-18-235. Disposition of money collected as fines
8 and costs. The money collected by a court as a result of the
9 imposition of fines or assessment of costs under the
10 provisions of 46-18-231 and 46-18-232 shall be paid to the
11 county general fund of the county in which the court is
12 held, except that if the fine was imposed for a violation of
13 Title 45, chapter 9, the court may order the money paid into
14 the drug forfeiture fund maintained under 44-12-206 for the
15 law enforcement agency which made the arrest from which the
16 conviction and fine arose."

-End-

Approved by Committee
on Judiciary

SENATE BILL NO. 236
INTRODUCED BY CRIPPEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADD TO THE LIST OF ITEMS THAT MAY BE FORFEITED WHEN USED IN CONNECTION WITH A VIOLATION OF THE DANGEROUS DRUGS LAWS; ~~TO CREATE A REBUTTABLE PRESUMPTION OF FORFEITURE; TO PROVIDE THE MEANS BY WHICH THE PRESUMPTION MUST BE REBUTTED;~~ TO PROVIDE FOR THE DISPOSITION OF DRUG OFFENSE FINES AND OF PROCEEDS OF THE SALE OF FORFEITED ITEMS; AMENDING SECTIONS 44-12-102, ~~44-12-203 THROUGH 44-12-205,~~ 44-12-206, AND 46-18-235, MCA."

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

Section 1. Section 44-12-102, MCA, is amended to read:

"44-12-102. Things subject to forfeiture. (1) The following are subject to forfeiture:

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

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

quantities of marijuana in amounts less than 250 grams;

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

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

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

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

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

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

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

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

1 violation of Title 45, chapter 9.

2 (2) (a) No conveyance used by a person as a common
3 carrier in the transaction of business as a common carrier
4 is subject to forfeiture under this section unless it
5 appears that the owner or other person in charge of the
6 conveyance is a consenting party or privy to a violation of
7 Title 45, chapter 9.

8 (b) No conveyance is subject to forfeiture under this
9 section because of any act or omission established by the
10 owner of the conveyance to have been committed or omitted
11 without his knowledge or consent.

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

16 (d) No conveyance or container is subject to
17 forfeiture under this section if it was used or intended for
18 use in transporting less than 250 grams of marijuana."

19 SECTION 2. SECTION 44-12-203, MCA, IS AMENDED TO READ:

20 "44-12-203. Procedure Presumption -- procedure
21 following answer or expiration of time for answering. (1)
22 There is a rebuttable presumption of forfeiture as to all
23 property listed in 44-12-102.

24 ~~(1)(2)~~ If a verified answer to the notice is not filed
25 within 20 days after the mailing or publication of the

1 notice, the court shall ~~hear evidence on the charge of~~
2 ~~unlawful use of the property and~~ upon motion may ~~must~~ order
3 the property forfeited to the state.

4 ~~(2)(2)~~ If a verified answer is filed within 20 days,
5 the forfeiture proceedings shall be set for hearing without
6 a jury not less than 30 days after the answer is filed.
7 Notice of the hearing shall be given in the manner provided
8 for service of notice of seizure."

9 SECTION 3. SECTION 44-12-204, MCA, IS AMENDED TO READ:

10 "44-12-204. Proof required or permitted at hearing.
11 ~~(1) At the hearing any owner or claimant who has a verified~~
12 ~~answer on file may show by competent evidence that the~~
13 ~~property was not used for the purpose charged. In order to~~
14 ~~rebut the presumption of forfeiture:~~

15 (1) an owner of property who has a verified answer on
16 file must prove that the property was not used for the
17 purpose charged;

18 (2) an owner of property listed in 44-12-102(1) who
19 has a verified answer on file may prove in the alternative
20 that the use of the property occurred without his knowledge
21 or consent;

22 ~~(2)(3)~~ * a claimant of a security interest in the
23 property who has a verified answer on file may ~~must~~ prove
24 that his security interest is bona fide and that it was
25 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 4. Section 44-12-205, MCA, is amended to read:

19 "44-12-205. Disposition of property following hearing.

20 (1) If the court finds that the property was not used for
 21 the purpose charged, AND THAT THE PROPERTY LISTED IN
 22 44-12-102(1)(G) WAS USED WITH THE KNOWLEDGE OR CONSENT OF
 23 THE OWNER, it shall order the property released to the owner
 24 of record as of the date of the seizure.

25 (2) If the court finds that the property was used for

1 the purpose charged, AND THAT THE PROPERTY LISTED IN
 2 44-12-102(1)(G) WAS USED WITH THE KNOWLEDGE OR CONSENT OF
 3 THE OWNER, the property shall be disposed of as follows:

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

18 ~~this No property referred to in 44-12-102(1)(G) may be~~
 19 ~~forfeited to the extent of the interest of an owner by~~
 20 ~~reason of any act or omission established by such owner to~~
 21 ~~have been committed or omitted without his knowledge or~~
 22 ~~consent; all owners found in close proximity to forfeitable~~
 23 ~~controlled substances to forfeitable drug manufacturing or~~
 24 ~~distributing paraphernalia or to forfeitable records of the~~
 25 ~~importation, manufacture or distribution of controlled~~

~~substances is presumed to be forfeitable, the burden is on the owner of the property to rebut this presumption.~~

~~(b)(1)(B)~~ If no claimant exists and the confiscating agency wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold as provided in subsection (2)(a).

~~(c)(1)(C)~~ If a claimant who has presented proper proof of his claim exists and the confiscating agency wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure."

Section 5. Section 44-12-206, MCA, is amended to read:

"44-12-206. Disposition of proceeds of sale. (1) Whenever property is seized, forfeited, and sold under the provisions of this chapter, the net proceeds of the sale must be distributed as follows:

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

(2)(b) the remainder, if any, to the county treasurer of the county in which the property was seized, for--deposit in--the-county-general-fund who shall establish and maintain a drug forfeiture fund and deposit the remainder into the fund, except as provided in subsection (3) (1)(c);

(3)(c) if the property was seized within the corporate

limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer, for deposit in the city or town general fund who shall establish and maintain a drug forfeiture fund and deposit the remainder into the fund.

(2) All proceeds from any source that are deposited into a drug forfeiture fund must in each fiscal year be appropriated to and remain available until expended by the confiscating agency for drug enforcement and education."

Section 6. Section 46-18-235, MCA, is amended to read:

"46-18-235. Disposition of money collected as fines and costs. The money collected by a court as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 shall be paid to the county general fund of the county in which the court is held, except that if the fine was imposed for a violation of Title 45, Chapter 9, the court may order the money paid into the drug forfeiture fund maintained under 44-12-206 for the law enforcement agency which made the arrest from which the conviction and fine arose."

-End-

SENATE BILL NO. 236
INTRODUCED BY CRIPPEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADD TO THE LIST OF ITEMS THAT MAY BE FORFEITED WHEN USED IN CONNECTION WITH A VIOLATION OF THE DANGEROUS DRUGS LAWS; ~~TO CREATE A REBUTTABLE PRESUMPTION OF FORFEITURE; TO PROVIDE THE MEANS BY WHICH THE PRESUMPTION MUST BE REBUTTED;~~ TO PROVIDE FOR THE DISPOSITION OF DRUG OFFENSE FINES AND OF PROCEEDS OF THE SALE OF FORFEITED ITEMS; AMENDING SECTIONS 44-12-102, ~~44-12-203 THROUGH 44-12-205,~~ 44-12-206, AND 46-18-235, MCA."

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

Section 1. Section 44-12-102, MCA, is amended to read:

"44-12-102. Things subject to forfeiture. (1) The following are subject to forfeiture:

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

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

quantities of marijuana in amounts less than 250 grams;

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

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

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

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

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

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

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

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

1 violation of Title 45, chapter 9.

2 (2) (a) No conveyance used by a person as a common
3 carrier in the transaction of business as a common carrier
4 is subject to forfeiture under this section unless it
5 appears that the owner or other person in charge of the
6 conveyance is a consenting party or privy to a violation of
7 Title 45, chapter 9.

8 (b) No conveyance is subject to forfeiture under this
9 section because of any act or omission established by the
10 owner of the conveyance to have been committed or omitted
11 without his knowledge or consent.

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

16 (d) No conveyance or container is subject to
17 forfeiture under this section if it was used or intended for
18 use in transporting less than 250 grams of marijuana."

19 SECTION 2. SECTION 44-12-203, MCA, IS AMENDED TO READ:

20 "44-12-203. Procedure Presumption-----procedure
21 following answer or expiration of time for answering. 111
22 There is a rebuttable presumption of forfeiture as to all
23 property listed in 44-12-102.

24 {2}{2} If a verified answer to the notice is not filed
25 within 20 days after the mailing or publication of the

1 notice, the court shall ~~hear evidence on the charge of~~
2 ~~unlawful use of the property and~~ upon motion may must order
3 the property forfeited to the state.

4 {2}{3} If a verified answer is filed within 20 days,
5 the forfeiture proceedings shall be set for hearing without
6 a jury not less than 30 days after the answer is filed.
7 Notice of the hearing shall be given in the manner provided
8 for service of notice of seizure."

9 SECTION 3. SECTION 44-12-204, MCA, IS AMENDED TO READ:

10 "44-12-204. Proof required or permitted at hearing.

11 {1}--At the hearing any owner or claimant who has a verified
12 answer on file may show by competent evidence that the
13 property was not used for the purpose charged. In order to
14 rebut the presumption of forfeiture:

15 {11} an owner of property who has a verified answer on
16 file must prove that the property was not used for the
17 purpose charged;

18 {2} an owner of property listed in 44-12-102(1) who
19 has a verified answer on file may prove in the alternative
20 that the use of the property occurred without his knowledge
21 or consent;

22 {2}{3} A claimant of a security interest in the
23 property who has a verified answer on file may must prove
24 that his security interest is bona fide and that it was
25 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 4. Section 44-12-205, MCA, is amended to read:

19 "44-12-205. Disposition of property following hearing.

20 (1) If the court finds that the property was not used for
 21 the purpose charged, ~~AND OR THAT THE PROPERTY LISTED IN~~
 22 ~~44-12-102(1)(G) WAS USED WITH WITHOUT THE KNOWLEDGE OR~~
 23 ~~CONSENT OF THE OWNER,~~ it shall order the property released
 24 to the owner of record as of the date of the seizure.

25 (2) If the court finds that the property was used for

1 the purpose charged, ~~AND THAT THE PROPERTY LISTED IN~~
 2 ~~44-12-102(1)(G) WAS USED WITH THE KNOWLEDGE OR CONSENT OF~~
 3 ~~THE OWNER,~~ the property shall be disposed of as follows:

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

18 ~~this No property referred to in 44-12-102(1)(G) may be~~
 19 ~~forfeited to the extent of the interest of an owner by~~
 20 ~~reason of any act or omission established by such owner to~~
 21 ~~have been committed or omitted without his knowledge or~~
 22 ~~consent. All money found in close proximity to forfeitable~~
 23 ~~controlled substances to forfeitable drug manufacturing or~~
 24 ~~distributing paraphernalia or to forfeitable records of the~~
 25 ~~importation, manufacture, or distribution of controlled~~

~~substances is presumed to be forfeitable. The burden is on the owner of the property to rebut this presumption.~~

~~(b)(1)~~ If no claimant exists and the confiscating agency wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold as provided in subsection (2)(a).

~~(c)(1)~~ If a claimant who has presented proper proof of his claim exists and the confiscating agency wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure."

Section 5. Section 44-12-206, MCA, is amended to read:

"44-12-206. Disposition of proceeds of sale. (1) Whenever property is seized, forfeited, and sold under the provisions of this chapter, the net proceeds of the sale must be distributed as follows:

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

(b) the remainder, if any, to the county treasurer of the county in which the property was seized, ~~for deposit in the county general fund who shall establish and maintain a drug forfeiture fund and deposit the remainder into the fund,~~ except as provided in subsection (3) (1)(c);

(3)(c) if the property was seized within the corporate

limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer, ~~for deposit in the city or town general fund who shall establish and maintain a drug forfeiture fund and deposit the remainder into the fund.~~

(2) All proceeds from any source that are deposited into a drug forfeiture fund must in each fiscal year be appropriated to and remain available until expended by the confiscating agency for drug enforcement and education."

Section 6. Section 46-18-235, MCA, is amended to read:

"46-18-235. Disposition of money collected as fines and costs. The money collected by a court as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 shall be paid to the county general fund of the county in which the court is held, ~~except that if the fine was imposed for a violation of Title 45, chapter 9, the court may order the money paid into the drug forfeiture fund maintained under 44-12-206 for the law enforcement agency which made the arrest from which the conviction and fine arose.~~"

-End-

SENATE BILL NO. 236

INTRODUCED BY CRIPPEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADD TO THE LIST OF ITEMS THAT MAY BE FORFEITED WHEN USED IN CONNECTION WITH A VIOLATION OF THE DANGEROUS DRUGS LAWS; ~~TO CREATE A REBUTTABLE PRESUMPTION OF FORFEITURE; TO PROVIDE THE MEANS BY WHICH THE PRESUMPTION MUST BE REBUTTED;~~ TO PROVIDE FOR THE DISPOSITION OF DRUG OFFENSE FINES AND OF PROCEEDS OF THE SALE OF FORFEITED ITEMS; AMENDING SECTIONS 44-12-102, ~~44-12-203 THROUGH 44-12-205,~~ 44-12-206, AND 46-18-235, MCA."

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

Section 1. Section 44-12-102, MCA, is amended to read:

"44-12-102. Things subject to forfeiture. (1) The following are subject to forfeiture:

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

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

quantities of marijuana in amounts less than 250 grams;

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

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

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

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

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

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

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

~~(1) everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of Title 45, chapter 9; all proceeds traceable to such an exchange; and all money, negotiable instruments, and securities used or intended to be used to facilitate any~~

1 violation of Title 45, chapter 9.

2 (2) (a) No conveyance used by a person as a common
3 carrier in the transaction of business as a common carrier
4 is subject to forfeiture under this section unless it
5 appears that the owner or other person in charge of the
6 conveyance is a consenting party or privy to a violation of
7 Title 45, chapter 9.

8 (b) No conveyance is subject to forfeiture under this
9 section because of any act or omission established by the
10 owner of the conveyance to have been committed or omitted
11 without his knowledge or consent.

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

16 (d) No conveyance or container is subject to
17 forfeiture under this section if it was used or intended for
18 use in transporting less than 250 grams of marijuana."

19 SECTION 2. SECTION 44-12-203, MCA, IS AMENDED TO READ:

20 "44-12-203. Procedure Presumption --- procedure
21 following answer or expiration of time for answering. (1)
22 There is a rebuttable presumption of forfeiture as to all
23 property listed in 44-12-102.

24 (1)(2) If a verified answer to the notice is not filed
25 within 20 days after the mailing or publication of the

1 notice, the court shall hear evidence on the charge of
2 unlawful use of the property and upon motion may must order
3 the property forfeited to the state.

4 (2)(3) If a verified answer is filed within 20 days,
5 the forfeiture proceedings shall be set for hearing without
6 a jury not less than 30 days after the answer is filed.
7 Notice of the hearing shall be given in the manner provided
8 for service of notice of seizure."

9 SECTION 3. SECTION 44-12-204, MCA, IS AMENDED TO READ:

10 "44-12-204. Proof required or permitted at hearing.
11 (1) ~~At the hearing any owner or claimant who has a verified~~
12 ~~answer on file may show by competent evidence that the~~
13 ~~property was not used for the purpose charged. In order to~~
14 ~~rebut the presumption of forfeiture:~~

15 (1) an owner of property who has a verified answer on
16 file must prove that the property was not used for the
17 purpose charged;

18 (2) an owner of property listed in 44-12-102(1) who
19 has a verified answer on file may prove in the alternative
20 that the use of the property occurred without his knowledge
21 or consent;

22 (2)(3) * a claimant of a security interest in the
23 property who has a verified answer on file may must prove
24 that his security interest is bona fide and that it was
25 created after a reasonable investigation of the moral

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

Section 4. Section 44-12-205, MCA, is amended to read:

"44-12-205. Disposition of property following hearing.

(1) If the court finds that the property was not used for the purpose charged, AND OR THAT THE PROPERTY LISTED IN 44-12-102(1)(G) WAS USED WITH WITHOUT THE KNOWLEDGE OR CONSENT OF THE OWNER, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for

the purpose charged, AND THAT THE PROPERTY LISTED IN 44-12-102(1)(G) WAS USED WITH THE KNOWLEDGE OR CONSENT OF THE OWNER, the property shall be disposed of as follows:

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

~~(b) No property referred to in 44-12-102(1)(g) may be forfeited to the extent of the interest of an owner by reason of any act or omission established by such owner to have been committed or omitted without his knowledge or consent. All money found in close proximity to forfeitable controlled substance or to forfeitable drug manufacturing or distributing operation or to forfeitable records of the importation, manufacture, or distribution of controlled~~

1 ~~substances is presumed to be forfeitable. The burden is on~~
 2 ~~the owner of the property to rebut this presumption.~~

3 ~~(b)(1)~~ If no claimant exists and the confiscating
 4 agency wishes to retain the property for its official use,
 5 it may do so. If such property is not to be retained, it
 6 must be sold as provided in subsection (2)(a).

7 ~~(c)(1)~~ If a claimant who has presented proper proof
 8 of his claim exists and the confiscating agency wishes to
 9 retain the property for its official use, it may do so
 10 provided it compensates the claimant in the amount of the
 11 security interest outstanding at the time of the seizure."

12 Section 5. Section 44-12-206, MCA, is amended to read:

13 "44-12-206. Disposition of proceeds of sale. ~~(1)~~
 14 Whenever property is seized, forfeited, and sold under the
 15 provisions of this chapter, the net proceeds of the sale
 16 must be distributed as follows:

17 ~~(1)(a)~~ to the holders of security interests who have
 18 presented proper proof of their claims, if any, up to the
 19 amount of their interests in the property;

20 ~~(1)(b)~~ the remainder, if any, to the county treasurer
 21 of the county in which the property was seized, for deposit
 22 ~~in the county general fund who shall establish and maintain~~
 23 ~~a drug forfeiture fund and deposit the remainder into the~~
 24 ~~fund, except as provided in subsection (3)(1)(c);~~

25 ~~(3)(c)~~ if the property was seized within the corporate

1 limits of a city or town by a law enforcement agency of that
 2 city or town, the remainder, if any, to the city or town
 3 treasurer, for deposit in the city or town general fund who
 4 shall establish and maintain a drug forfeiture fund and
 5 deposit the remainder into the fund.

6 ~~(2)~~ All proceeds from any source that are deposited
 7 into a drug forfeiture fund must in each fiscal year be
 8 appropriated to and remain available until expended by the
 9 confiscating agency for drug enforcement and education."

10 Section 6. Section 46-18-235, MCA, is amended to read:

11 "46-18-235. Disposition of money collected as fines
 12 and costs. The money collected by a court as a result of the
 13 imposition of fines or assessment of costs under the
 14 provisions of 46-18-231 and 46-18-232 shall be paid to the
 15 county general fund of the county in which the court is
 16 held, except that if the fine was imposed for a violation of
 17 Title 45, chapter 9, the court may order the money paid into
 18 the drug forfeiture fund maintained under 44-12-206 for the
 19 law enforcement agency which made the arrest from which the
 20 conviction and fine arose."

-End-