

HOUSE BILL NO. 522  
INTRODUCED BY PECK, SANDS

IN THE HOUSE

January 28, 1985	Introduced and referred to Committee on Judiciary.
February 14, 1985	Committee recommend bill do pass as amended. Report adopted.
February 15, 1985	Bill printed and placed on members' desks.
February 16, 1985	Second reading, do pass.
February 18, 1985	Considered correctly engrossed.
February 19, 1985	Third reading, passed.  Transmitted to Senate.

IN THE SENATE

February 21, 1985	Introduced and referred to Committee on Judiciary.
March 7, 1985	Committee recommend bill be concurrent in as amended. Report adopted.
March 9, 1985	Second reading, concurred in.
March 12, 1985	Third reading, concurred in. Ayes, 50; Noes, 0.  Returned to House with amendments.

IN THE HOUSE

March 13, 1985	Received from Senate.
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April 8, 1985

Second reading, amendments  
concurrent in.

On motion, rules suspended and  
bill placed on third reading this  
day.

Third reading, amendments  
concurrent in.

Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 522  
2 INTRODUCED BY Reed Sands

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR LAWFUL  
5 SERVICE UPON CLAIMANTS OR OWNERS OF CERTAIN PROPERTY SUBJECT  
6 TO FORFEITURE; AMENDING SECTIONS 44-12-201 THROUGH  
7 44-12-203, 81-5-104, AND 81-5-106, MCA; AND REPEALING  
8 SECTION 81-5-105, MCA."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 44-12-201, MCA, is amended to read:

12 "~~44-12-201. Notice--of--seizure-and-intention~~ Petition  
13 to institute forfeiture proceedings -- summons -- service.

14 A peace officer or an officer of the-seizing an agency who  
15 that seizes any property other than controlled substances  
16 under the provisions of this chapter shall, within 45 days  
17 of the seizure, file a notice-of-the-seizure--and--intention  
18 petition to institute forfeiture proceedings with the clerk  
19 of the district court of the county in which the seizure  
20 occurs,--and--the. The clerk shall serve-notice-thereof-on  
21 issue a summons at the request of the petitioning party, who  
22 shall cause the same to be served upon all owners or  
23 claimants of the property by one of the following methods:  
24 (1)--upon-an-owner-or-claimant-whose-right,--title,--or  
25 interest--is-of-record-in-the-division-of-motor-vehicles,--by

1 ~~mailing-a-copy-of-the-notice-by-certified-or-registered-mail~~  
2 ~~to-the-address-on-the-records-of-the-division;~~

3 (2)(1) upon an owner or claimant whose name and  
4 address are known, by mailing personal service of a copy of  
5 the notice-by-certified-or-registered-mail-to-his-last-known  
6 address petition and summons as provided in the Montana  
7 Rules of Civil Procedure;

8 (3)(2) upon an owner or claimant whose address is  
9 unknown but who is believed to have an interest in the  
10 property, by publication of the summons in one issue of a  
11 newspaper of general circulation in the county where the  
12 seizure occurred or, if there is no such newspaper, by  
13 publication in one issue of a newspaper of general  
14 circulation in an adjoining county, and by mailing a copy of  
15 the petition and summons to the most recent address of such  
16 owner or claimant, if any, shown in the records of the  
17 division of motor vehicles."

18 Section 2. Section 44-12-202, MCA, is amended to read:

19 "44-12-202. Answer to allegations concerning use of  
20 property. Within 20 days after the mailing service of the  
21 petition and summons or publication of the notice summons,  
22 as provided in 44-12-201, the owner or claimant of the  
23 seized property shall file a verified answer to the  
24 allegations concerning the use of the property contained  
25 described in the notice-of-seizure-and-intention petition to



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

6 Section 3. Section 44-12-203, MCA, is amended to read:

7 "44-12-203. Presumption -- procedure following answer  
8 or expiration of time for answering. (1) There is a  
9 rebuttable presumption of forfeiture as to all property  
10 listed in 44-12-102.

11 (2) If a verified answer to the notice petition is not  
12 filed within 20 days after the mailing--or--publication  
13 service of the notice petition and summons, the court upon  
14 motion must order the property forfeited to the state.

15 (3) If a verified answer is filed within 20 days, the  
16 forfeiture proceedings shall be set for hearing without a  
17 jury not less than ~~30~~ 60 days after the answer is filed.  
18 Notice of the hearing shall be given in the manner provided  
19 for service of notice-of-seizure the petition and summons."

20 Section 4. Section 81-5-104, MCA, is amended to read:

21 "81-5-104. Stolen livestock -- seizure and  
22 confiscating forfeiture of vehicle used to transport. (1)  
23 The use of any vehicle for the transportation of any stolen  
24 mule, horse, mare, colt, foal, filly, sheep, lamb, cow,  
25 calf, heifer, steer, bull, hogs, poultry, or the products of

1 any thereof ~~shall be~~ is unlawful, and such vehicle shall be  
2 forfeited to ~~and confiscated by~~ the state. Any such vehicle  
3 found in such use or upon probable cause believed to be  
4 devoted wholly or in part to such use shall be seized and  
5 held ~~and upon conviction in a proceeding in the name of the~~  
6 ~~state of Montana against such vehicle or against such~~  
7 ~~vehicle and the owner before any district court or judge~~  
8 ~~thereof, shall be confiscated and sold.~~

9 (2) Within 45 days after the seizure, any peace  
10 officer or officer of the agency that seizes any property  
11 shall file a petition to institute forfeiture proceedings  
12 with the clerk of the district court of the county in which  
13 the seizure occurs. The clerk shall issue a summons at the  
14 request of the petitioning party, who shall cause the same  
15 to be served upon all owners or claimants of the property by  
16 one of the following methods:

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

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

1 county, and by mailing a copy of the petition and summons to  
 2 the most recent address of such owner or claimant, if any,  
 3 shown in the records of the division of motor vehicles.

4 ~~(2)(3) Such A vehicle shall is not be--confiscated--or~~  
 5 ~~subject to forfeiture under this section if the--same--be it~~  
 6 ~~is a stolen vehicle at the time it is used for such unlawful~~  
 7 ~~transportation and the owner thereof is not in collusion~~  
 8 ~~with the party or parties guilty of the theft."~~

9 NEW SECTION. Section 5. Answer to allegations  
 10 concerning use of property. Within 20 days after the service  
 11 of the petition and summons or publication of the summons,  
 12 as provided in 81-5-104, the owner or claimant of the seized  
 13 property shall file a verified answer to the allegations  
 14 concerning the use of the property contained in the petition  
 15 to institute forfeiture proceedings. No extension of the  
 16 time for filing the answer may be granted, and failure to  
 17 answer within 20 days bars the owner or claimants from  
 18 presenting evidence at any subsequent evidentiary hearing  
 19 unless extraordinary circumstances exist.

20 NEW SECTION. Section 6. Presumption -- hearing --  
 21 disposition of vehicle. (1) There is a rebuttable  
 22 presumption of forfeiture as to all property used for the  
 23 transportation of the livestock as provided in 81-5-104.

24 (2) If a verified answer to the petition is not filed  
 25 within 20 days after the service of the petition and

1 summons, the court upon motion shall order the property  
 2 forfeited to the state.

3 (3) If a verified answer is filed within 20 days, a  
 4 hearing on the petition for forfeiture must be set without a  
 5 jury not less than 60 days after the answer is filed. Notice  
 6 of the hearing must be given in the manner provided for  
 7 service of petition and summons.

8 (4) If the court finds a vehicle was not used for the  
 9 purpose charged or that it was used without the consent or  
 10 knowledge of the owner, it shall order the property released  
 11 to the owner of record on the date of the seizure. If the  
 12 court finds the vehicle was used for the purpose charged and  
 13 was used with the knowledge and consent of the owner, the  
 14 property must be ordered forfeited.

15 Section 7. Section 81-5-106, MCA, is amended to read:

16 "81-5-106. Sale at public auction. ~~Such--sale~~ Vehicles  
 17 forfeited under [section 6] shall be sold at public auction  
 18 ~~and--otherwise~~ in the manner of sales of personal property  
 19 under execution and may be ~~made~~ sold by any sheriff,  
 20 livestock inspector, or other peace officer."

21 NEW SECTION. Section 8. Codification instruction.  
 22 Sections 5 and 6 are intended to be codified as an integral  
 23 part of Title 81, chapter 5, part 1.

24 NEW SECTION. Section 9. Repealer. Section 81-5-105,  
 25 MCA, is repealed.

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

HOUSE BILL NO. 522

INTRODUCED BY PECK, SANDS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR LAWFUL SERVICE UPON CLAIMANTS OR OWNERS OF CERTAIN PROPERTY SUBJECT TO FORFEITURE; AMENDING SECTIONS 44-12-201 THROUGH 44-12-203, 81-5-104, AND 81-5-106, MCA; AND REPEALING SECTION 81-5-105, MCA."

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

Section 1. Section 44-12-201, MCA, is amended to read:

"44-12-201. ~~Notice--of--seizure-and-intention~~ Petition to institute forfeiture proceedings ~~-- summons -- service.~~

A peace officer or an officer of ~~the-seizing~~ an agency who ~~that~~ seizes any property other than controlled substances under the provisions of this chapter shall, within 45 days of the seizure, file a ~~notice-of-the-seizure--and--intention~~ petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs~~--and--the.~~ The clerk shall ~~serve-notice-thereof-on~~ issue a summons at the request of the petitioning party, who shall cause the same to be served upon all owners or claimants of the property by one of the following methods:

~~{1}--upon-an-owner-or-claimant-whose-right,-title,-or~~  
~~interest--is-of-record-in-the-division-of-motor-vehicles,-by~~

~~mailing-a-copy-of-the-notice-by-certified-or-registered-mail~~  
~~to-the-address-on-the-records-of-the-division;~~

~~{2}{1}~~ upon an owner or claimant whose name and address are known, by mailing personal service of a copy of the notice-by-certified-or-registered-mail-to-his-last-known address petition and summons as provided in the Montana Rules of Civil Procedure;

~~{3}{2}~~ upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county, and by mailing a copy of the petition and summons to the most recent address of such owner or claimant, if any, shown in the records of the division of motor vehicles."

Section 2. Section 44-12-202, MCA, is amended to read:

"44-12-202. Answer to allegations concerning use of property. Within 20 days after the mailing service of the petition and summons or publication of the notice summons, as provided in 44-12-201, the owner or claimant of the seized property shall file a verified answer to the allegations concerning the use of the property contained described in the notice-of-seizure-and-intention petition to

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

6 Section 3. Section 44-12-203, MCA, is amended to read:

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 12 filed within 20 days after the mailing--or--publication  
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 14 motion must order the property forfeited to the state.

15 (3) If a verified answer is filed within 20 days, the  
 16 forfeiture proceedings shall be set for hearing without a  
 17 jury not less than ~~30~~ 60 days after the answer is filed.  
 18 Notice of the hearing shall be given in the manner provided  
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20 Section 4. Section 81-5-104, MCA, is amended to read:

21 "81-5-104. Stolen livestock -- seizure and  
 22 confiscating forfeiture of vehicle used to transport. (1)  
 23 The use of any vehicle for the transportation of any stolen  
 24 mule, horse, mare, colt, foal, filly, sheep, lamb, cow,  
 25 calf, heifer, steer, bull, hogs, poultry, or the products of

1 any thereof ~~shall be~~ is unlawful, and such vehicle shall be  
 2 forfeited to ~~and confiscated by~~ the state. Any such vehicle  
 3 found in such use or upon probable cause believed to be  
 4 devoted wholly or in part to such use shall be seized and  
 5 held ~~and, upon conviction in a proceeding in the name of the~~  
 6 ~~state of Montana against such vehicle or against such~~  
 7 ~~vehicle and the owner before any district court or judge~~  
 8 ~~thereof, shall be confiscated and sold.~~

9 (2) Within 45 days after the seizure, any peace  
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 14 request of the petitioning party, who shall cause the same  
 15 to be served upon all owners or claimants of the property by  
 16 one of the following methods:

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 18 by personal service of a copy of the petition and summons as  
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 23 general circulation in the county where the seizure occurred  
 24 or, if there is no such newspaper, by publication in one  
 25 issue of a newspaper of general circulation in an adjoining

1 county, and by mailing a copy of the petition and summons to  
 2 the most recent address of such owner or claimant, if any,  
 3 shown in the records of the division of motor vehicles.

4 ~~{2}(3)~~ Such A vehicle shall ~~is not be--confiscated--or~~  
 5 subject to forfeiture under this section if ~~the same be it~~  
 6 is a stolen vehicle at the time it is used for such unlawful  
 7 transportation and the owner thereof is not in collusion  
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9 NEW SECTION. Section 5. Answer to allegations  
 10 concerning use of property. Within 20 days after the service  
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 19 evidence at any subsequent evidentiary hearing unless  
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 22 disposition of vehicle. (1) There is a rebuttable  
 23 presumption of forfeiture as to all property used for the  
 24 transportation of the livestock as provided in 81-5-104.

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 24 part of Title 81, chapter 5, part 1.

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HB 0522/02

1 MCA, is repealed.

-End-

## 1 HOUSE BILL NO. 522

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 22 publication of the summons in one issue of a newspaper of  
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 24 part of Title 81, chapter 5, part 1.

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HB 9522/02

1 MCA, is repealed.

-End-

# STANDING COMMITTEE REPORT

## SENATE

..... March 7 ..... 19 85 .....

MR. PRESIDENT

We, your committee on ..... JUDICIARY .....

having had under consideration ..... HOUSE BILL ..... No. 522 .....

third reading copy ( blue )  
color

(Senator Towe)

PROVIDING NOTICE TO CLAIMANTS OF CERTAIN PROPERTY SUBJECT TO FORFEITURE

Respectfully report as follows: That ..... HOUSE BILL ..... No. 522 .....

be amended as follows:

1. Page 5, line 5.

Following: "if"

Insert: ": (a)"

2. Page 5, line 7.

Following: "transportation"

Strike: "and"

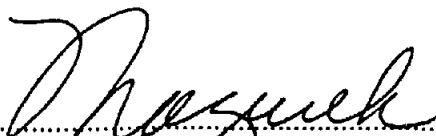
Insert: ", or (b)"

AND AS AMENDED

BE CONCURRED IN

~~REPASS~~

~~DO NOT PASS~~

.....  
  
.....  
Senator Joe Mazurek Chairman.

HOUSE BILL NO. 522

INTRODUCED BY PECK, SANDS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR LAWFUL SERVICE UPON CLAIMANTS OR OWNERS OF CERTAIN PROPERTY SUBJECT TO FORFEITURE; AMENDING SECTIONS 44-12-201 THROUGH 44-12-203, 81-5-104, AND 81-5-106, MCA; AND REPEALING SECTION 81-5-105, MCA."

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"44-12-201. ~~Notice--of--seizure-and-intention~~ Petition to institute forfeiture proceedings -- summons -- service.

A peace officer or an officer of the ~~seizing an~~ agency who that seizes any property other than controlled substances under the provisions of this chapter shall, within 45 days of the seizure, file a ~~notice-of-the-seizure--and--intention~~ petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs,--~~and--the.~~ The clerk shall ~~serve-notice-thereof-on~~ issue a summons at the request of the petitioning party, who shall cause the same to be served upon all owners or claimants of the property by one of the following methods:

~~{1}--upon-an-owner-or-claimant-whose-right,-title,-or-interest--is-of-record-in-the-division-of-motor-vehicles,-by~~

~~mailing-a-copy-of-the-notice-by-certified-or-registered-mail to-the-address-on-the-records-of-the-division;~~

~~{2}{1}~~ upon an owner or claimant whose name and address are known, by mailing personal service of a copy of the notice-by-certified-or-registered-mail-to-his-last-known address petition and summons as provided in the Montana Rules of Civil Procedure;

~~{3}{2}~~ upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county, and by mailing a copy of the petition and summons to the most recent address of such owner or claimant, if any, shown in the records of the division of motor vehicles."

Section 2. Section 44-12-202, MCA, is amended to read:

"44-12-202. Answer to allegations concerning use of property. Within 20 days after the mailing service of the petition and summons or publication of the notice summons, as provided in 44-12-201, the owner or claimant of the seized property shall file a verified answer to the allegations concerning the use of the property contained described in the notice-of-seizure-and-intention petition to



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

6 Section 3. Section 44-12-203, MCA, is amended to read:  
 7 "44-12-203. Presumption -- procedure following answer  
 8 or expiration of time for answering. (1) There is a  
 9 rebuttable presumption of forfeiture as to all property  
 10 listed in 44-12-102.

11 (2) If a verified answer to the notice petition is not  
 12 filed within 20 days after the mailing--or--publication  
 13 service of the notice petition and summons, the court upon  
 14 motion must order the property forfeited to the state.

15 (3) If a verified answer is filed within 20 days, the  
 16 forfeiture proceedings shall be set for hearing without a  
 17 jury not less than ~~30~~ 60 days after the answer is filed.  
 18 Notice of the hearing shall be given in the manner provided  
 19 for service of ~~notice-of-seizure~~ the petition and summons."

20 Section 4. Section 81-5-104, MCA, is amended to read:  
 21 "81-5-104. Stolen livestock -- seizure and  
 22 confiscating forfeiture of vehicle used to transport. (1)  
 23 The use of any vehicle for the transportation of any stolen  
 24 mule, horse, mare, colt, foal, filly, sheep, lamb, cow,  
 25 calf, heifer, steer, bull, hogs, poultry, or the products of

1 any thereof ~~shall be~~ is unlawful, and such vehicle shall be  
 2 forfeited to ~~and confiscated by~~ the state. Any such vehicle  
 3 found in such use or upon probable cause believed to be  
 4 devoted wholly or in part to such use shall be seized and  
 5 held ~~and, upon conviction in a proceeding in the name of the~~  
 6 ~~state of Montana against such vehicle or against such~~  
 7 ~~vehicle and the owner before any district court or judge~~  
 8 ~~thereof, shall be confiscated and sold.~~

9 (2) Within 45 days after the seizure, any peace  
 10 officer or officer of the agency that seizes any property  
 11 shall file a petition to institute forfeiture proceedings  
 12 with the clerk of the district court of the county in which  
 13 the seizure occurs. The clerk shall issue a summons at the  
 14 request of the petitioning party, who shall cause the same  
 15 to be served upon all owners or claimants of the property by  
 16 one of the following methods:

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

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



1 county, and by mailing a copy of the petition and summons to  
 2 the most recent address of such owner or claimant, if any,  
 3 shown in the records of the division of motor vehicles.

4 ~~(2)~~(3) Such A vehicle shall is not be--confiscated--or  
 5 subject to forfeiture under this section if:

6 (A) the--same-be it is a stolen vehicle at the time it  
 7 is used for such unlawful transportation and; OR

8 (B) the owner thereof is not in collusion with the  
 9 party or parties guilty of the theft."

10 NEW SECTION. Section 5. Answer to allegations  
 11 concerning use of property. Within 20 days after the service  
 12 of the petition and summons or publication of the summons,  
 13 as provided in 81-5-104, the owner or claimant of the seized  
 14 property shall file a verified answer to the allegations  
 15 concerning the use of the property contained in the petition  
 16 to institute forfeiture proceedings. No ONLY ONE 20-DAY  
 17 extension of the time for filing the answer may be granted,  
 18 and failure to answer within 20 days OR WITHIN THE 20-DAY  
 19 EXTENSION bars the owner or claimants from presenting  
 20 evidence at any subsequent evidentiary hearing unless  
 21 extraordinary circumstances exist.

22 NEW SECTION. Section 6. Presumption -- hearing --  
 23 disposition of vehicle. (1) There is a rebuttable  
 24 presumption of forfeiture as to all property used for the  
 25 transportation of the livestock as provided in 81-5-104.

1 (2) If a verified answer to the petition is not filed  
 2 within 20 days after the service of the petition and  
 3 summons, the court upon motion shall order the property  
 4 forfeited to the state.

5 (3) If a verified answer is filed within 20 days, a  
 6 hearing on the petition for forfeiture must be set without a  
 7 jury not less than 60 days after the answer is filed. Notice  
 8 of the hearing must be given in the manner provided for  
 9 service of petition and summons.

10 (4) If the court finds a vehicle was not used for the  
 11 purpose charged or that it was used without the consent or  
 12 knowledge of the owner, it shall order the property released  
 13 to the owner of record on the date of the seizure. If the  
 14 court finds the vehicle was used for the purpose charged and  
 15 was used with the knowledge and consent of the owner, the  
 16 property must be ordered forfeited.

17 Section 7. Section 81-5-106, MCA, is amended to read:

18 "81-5-106. Sale at public auction. Such-sale Vehicles  
 19 forfeited under [section 6] shall be sold at public auction  
 20 and-otherwise in the manner of sales of personal property  
 21 under execution and may be made sold by any sheriff,  
 22 livestock inspector, or other peace officer."

23 NEW SECTION. Section 8. Codification instruction.  
 24 Sections 5 and 6 are intended to be codified as an integral  
 25 part of Title 81, chapter 5, part 1.

1        NEW SECTION. Section 9. Repealer. Section 81-5-105,  
2        MCA, is repealed.

-End-