

HB 435 INTRODUCED BY BRANDEWIE, ET AL.
REVISE FORFEITURE IN CRIMINAL PROCEEDINGS

1/24	INTRODUCED		
1/24	REFERRED TO JUDICIARY		
1/24	FISCAL NOTE REQUESTED		
1/29	FISCAL NOTE RECEIVED		
2/02	HEARING		
2/06	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/10	2ND READING PASSED	91	7
2/11	3RD READING PASSED	80	15
	TRANSMITTED TO SENATE		
2/12	REFERRED TO JUDICIARY		
3/06	HEARING		
3/16	ADVERSE COMMITTEE REPORT ADOPTED	47	2
3/17	RETURNED TO HOUSE NOT CONCURRED		

1
 2 INTRODUCTION BY *House* BILL NO. *435*
 3 *Miller, Freund, J. Brown, Park, Spall*

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THINGS SUBJECT
 5 TO FORFEITURE IN A CRIMINAL PROCEEDING; REMOVING THE AMOUNT
 6 OF MARIJUANA REQUIRED IN ORDER TO SUBJECT PROPERTY TO
 7 FORFEITURE; MAKING REAL PROPERTY SUBJECT TO FORFEITURE; AND
 8 AMENDING SECTIONS 44-12-102 AND 44-12-205, MCA."

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

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

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

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

17 (b) all money, raw materials, products, and equipment
 18 of any kind that are used or intended for use in
 19 manufacturing, preparing, cultivating, compounding,
 20 processing, delivering, importing, or exporting any
 21 controlled substance in violation of Title 45, chapter 9;
 22 ~~except items used or intended for use in connection with~~
 23 ~~quantities of marijuana in amounts less than 250 grams;~~

24 (c) except as provided in subsection (2)(d), all
 25 property that is used or intended for use as a container for

1 anything enumerated in subsection (1)(a) or (1)(b);

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

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

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

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

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

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

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

24 (h) all real property owned by a person convicted of a
 25 violation of Title 45, chapter 9, where controlled



1 substances have been manufactured, distributed, prepared,
2 cultivated, compounded, processed, or possessed.

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

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

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

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

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

21 "44-12-205. Disposition of property following hearing.

22 (1) If the court finds that the property was not used for
23 the purpose charged or that the property listed in
24 44-12-102(1)(g) was used without the knowledge or consent of
25 the owner, it shall order the property released to the owner

1 of record as of the date of the seizure.

2 (2) If the court finds that the property was used for
3 the purpose charged and that the property listed in
4 44-12-102(1)(g) was used with the knowledge or consent of
5 the owner, the property shall be disposed of as follows:

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

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

24 (c) If a claimant who has presented proper proof of
25 his claim exists and the confiscating agency wishes to

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1 retain the property for its official use, it may do so
2 provided it compensates the claimant in the amount of the
3 security interest outstanding at the time of the seizure.

4 (3) Where the property seized and sold is real
5 property, as provided in 44-12-102(1)(h), the sheriff shall
6 issue a certificate of sale as provided in 25-13-711.
7 Forfeited real property is not subject to redemption."

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB435, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

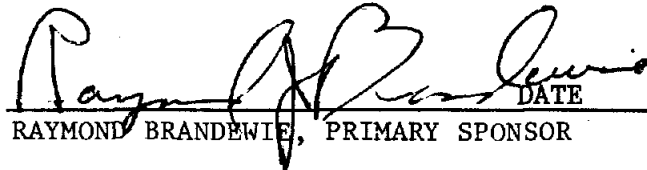
An act revising things subject to forfeiture in a criminal proceeding; removing the amount of marijuana required to order to subject property to forfeiture; making real property subject to forfeiture; and amending Sections 44-12-102 and 44-12-205, MCA.

ASSUMPTIONS:

None.

 DATE 1/29/87

DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

 DATE

RAYMOND BRANDEWIE, PRIMARY SPONSOR

Fiscal Note for HB435, as introduced.

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 435

INTRODUCED BY BRANDEWIE, MERCER, RAMIREZ, CAMPBELL,

MILLER, HANNAH, J. BROWN, PECK, SPAETH

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THINGS SUBJECT TO FORFEITURE IN A CRIMINAL PROCEEDING; REMOVING THE AMOUNT OF MARIJUANA REQUIRED IN ORDER TO SUBJECT PROPERTY TO FORFEITURE; MAKING REAL PROPERTY SUBJECT TO FORFEITURE; AND AMENDING SECTIONS 44-12-102 AND 44-12-205, 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;

(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 violation of Title 45, chapter 9; and

(h) all real property WHICH IS owned by a person

1 convicted of a violation of Title 45, chapter 9, where
 2 controlled substances have, WITH INTENT TO SELL, been
 3 manufactured, distributed, prepared, cultivated, compounded,
 4 processed, or possessed.

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

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

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

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

22 Section 2. Section 44-12-205, MCA, is amended to read:
 23 "44-12-205. Disposition of property following hearing.
 24 (1) If the court finds that the property was not used for
 25 the purpose charged or that the property listed in

1 44-12-102(1)(g) was used without the knowledge or consent of
 2 the owner, it shall order the property released to the owner
 3 of record as of the date of the seizure.

4 (2) If the court finds that the property was used for
 5 the purpose charged and that the property listed in
 6 44-12-102(1)(g) was used with the knowledge or consent of
 7 the owner, the property shall be disposed of as follows:

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

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

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

6 (3) Where the property seized and sold is real
7 property, as provided in 44-12-102(1)(h), the sheriff shall
8 issue a certificate of sale as provided in 25-13-711.
9 Forfeited real property is not subject to redemption."

-End-

1 HOUSE BILL NO. 435

2 INTRODUCED BY BRANDEWIE, MERCER, RAMIREZ, CAMPBELL,

3 MILLER, HANNAH, J. BROWN, PECK, SPAETH

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THINGS SUBJECT
6 TO FORFEITURE IN A CRIMINAL PROCEEDING; REMOVING THE AMOUNT
7 OF MARIJUANA REQUIRED IN ORDER TO SUBJECT PROPERTY TO
8 FORFEITURE; MAKING REAL PROPERTY SUBJECT TO FORFEITURE; AND
9 AMENDING SECTIONS 44-12-102 AND 44-12-205, MCA."

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

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

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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; or11 (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;17 (f) all drug paraphernalia as defined in 45-10-101;
18 and19 (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; and25 (h) all real property WHICH IS owned by a person

1 convicted of a violation of Title 45, chapter 9, where
 2 controlled substances have, WITH INTENT TO SELL, been
 3 manufactured, distributed, prepared, cultivated, compounded,
 4 processed, or possessed.

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

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

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

19 ~~{d}--No---conveyance---or---container---is---subject---to~~
 20 ~~forfeiture-under-this-section-if-it-was-used-or-intended-for~~
 21 ~~use-in-transporting-less-than-250-grams-of-marijuana."~~

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

23 "44-12-205. Disposition of property following hearing.

24 (1) If the court finds that the property was not used for
 25 the purpose charged or that the property listed in

1 44-12-102(1)(g) was used without the knowledge or consent of
 2 the owner, it shall order the property released to the owner
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 5 the purpose charged and that the property listed in
 6 44-12-102(1)(g) was used with the knowledge or consent of
 7 the owner, the property shall be disposed of as follows:

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 12 excess of the value of the property as of the date of
 13 seizure, it being the purpose of this chapter to forfeit
 14 only the right, title, or interest of the owner. If the
 15 amount due the holder of the security interest is less than
 16 the value of the property, the property must be sold at
 17 public auction by the sheriff of the county in which the
 18 seizure was made in the same manner provided by law for the
 19 sale of property under execution or the state may return the
 20 property to the holder of the security interest without
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 24 do so. If such property is not to be retained, it must be
 25 sold as provided in subsection (2)(a).

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2 his claim exists and the confiscating agency wishes to
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4 provided it compensates the claimant in the amount of the
5 security interest outstanding at the time of the seizure.

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7 property, as provided in 44-12-102(1)(h), the sheriff shall
8 issue a certificate of sale as provided in 25-13-711.
9 Forfeited real property is not subject to redemption."

-End-