

IN THE SENATE

APRIL 2, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 3, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 *Senate* BILL NO. *241*
 2 INTRODUCED BY *Kevin Spiker*
 3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING
 6 WHAT ITEMS ARE SUBJECT TO FORFEITURE BECAUSE OF THEIR
 7 CONNECTION TO DANGEROUS DRUG OFFENSES; PROVIDING FOR
 8 DISPOSITION TO THE ATTORNEY GENERAL, FOR DRUG LAWS
 9 ENFORCEMENT AND EDUCATION PURPOSES, OF THE NET PROCEEDS OF
 10 THE SALE OF ITEMS SEIZED THROUGH THE EFFORTS OF STATE
 11 EMPLOYEES; AND AMENDING SECTIONS 17-7-502, 44-12-102, AND
 12 44-12-206, MCA."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 44-12-102, MCA, is amended to read:
 16 "44-12-102. Things subject to forfeiture. (1) The
 17 following are subject to forfeiture:

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

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

1 except items used or intended for use in connection with
 2 quantities of marijuana in amounts less than 250 grams;

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

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

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

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

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

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

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

22 (g) ~~everything-of-value-furnished-or-intended-to-be~~
 23 ~~furnished-in-exchange-for-a-controlled-substance-in~~
 24 ~~violation-of-Title-45,chapter-9;-all-proceeds-traceable-to~~
 25 ~~such-an-exchange;-and-all-money;-negotiable-instruments;-and~~

1 ~~securities--used--or--intended--to--be--used--to--facilitate--any~~
 2 ~~violation--of--Title--45--chapter--9;~~ any real or personal
 3 property acquired, maintained, or produced by means of or as
 4 a result of a violation of Title 45, chapter 9;

5 (h) any real or personal property constituting or
 6 derived from proceeds obtained directly or indirectly by
 7 violation of Title 45, chapter 9; and

8 (i) any real or personal property that assisted,
 9 facilitated, or was used or intended for use in the
 10 commission of a violation of Title 45, chapter 9.

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

17 (b) No conveyance is subject to forfeiture under this
 18 section because of any act or omission established by the
 19 owner of the conveyance to have been committed or omitted
 20 without his knowledge or consent.

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

25 (d) No conveyance or container is subject to

1 forfeiture under this section if it was used or intended for
 2 use in transporting less than 250 grams of marijuana."

3 Section 2. Section 44-12-206, MCA, is amended to read:
 4 "44-12-206. Disposition of proceeds of sale. (1)
 5 Whenever property is seized, forfeited, and sold under the
 6 provisions of this chapter, the net proceeds of the sale
 7 must be distributed as follows:

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

11 (b) the remainder, if any, to the county treasurer of
 12 the county in which the property was seized, who shall
 13 establish and maintain a drug forfeiture fund account and
 14 deposit the remainder into the fund account, except as
 15 provided in ~~subsection~~ subsections (1)(c) through (1)(e);

16 (c) if the property was seized within the corporate
 17 limits of a city or town by a law enforcement agency of that
 18 city or town, the remainder, if any, to the city or town
 19 treasurer, who shall establish and maintain a drug
 20 forfeiture fund account and deposit the remainder into the
 21 fund, account, except as provided in subsections (1)(d) and
 22 (1)(e);

23 (d) if the property was seized by an employee of the
 24 state, the remainder, if any, to the account established in
 25 subsection (3), except as provided in subsection (1)(e); and

1 (e) if the property was seized as a result of the
 2 efforts of more than one law enforcement agency, the
 3 remainder, if any, to the accounts required by this
 4 subsection (1), pro rata in the proportions represented by
 5 the agencies' expenses of investigation, as determined by
 6 the attorney general.

7 (2) All proceeds from any source that are deposited
 8 into a county, city, or town drug forfeiture fund account
 9 must in each fiscal year be appropriated to, and remain
 10 available until expended by, the confiscating agency for
 11 drug laws enforcement and education concerning drugs.

12 (3) There is an account in the state special revenue
 13 fund. Net proceeds deposited in the account under
 14 subsections (1)(d) and (1)(e) because the property sold was
 15 seized by an employee of the state are appropriated, as
 16 provided in 17-7-502, to the attorney general for drug laws
 17 enforcement and education concerning drugs."

18 Section 3. Section 17-7-502, MCA, is amended to read:

19 "17-7-502. Statutory appropriations -- definition --
 20 requisites for validity. (1) A statutory appropriation is an
 21 appropriation made by permanent law that authorizes spending
 22 by a state agency without the need for a biennial
 23 legislative appropriation or budget amendment.

24 (2) Except as provided in subsection (4), to be
 25 effective, a statutory appropriation must comply with both

1 of the following provisions:

2 (a) The law containing the statutory authority must be
 3 listed in subsection (3).

4 (b) The law or portion of the law making a statutory
 5 appropriation must specifically state that a statutory
 6 appropriation is made as provided in this section.

7 (3) The following laws are the only laws containing
 8 statutory appropriations:

- 9 (a) 2-9-202;
 10 (b) 2-17-105;
 11 (c) 2-18-812;
 12 (d) 10-3-203;
 13 (e) 10-3-312;
 14 (f) 10-3-314;
 15 (g) 10-4-301;
 16 (h) 13-37-304;
 17 (i) 15-31-702;
 18 (j) 15-36-112;
 19 (k) 15-70-101;
 20 (l) 16-1-404;
 21 (m) 16-1-410;
 22 (n) 16-1-411;
 23 (o) 17-3-212;
 24 (p) 17-5-404;
 25 (q) 17-5-424;

1 (r) 17-5-804;
 2 (s) 19-8-504;
 3 (t) 19-9-702;
 4 (u) 19-9-1007;
 5 (v) 19-10-205;
 6 (w) 19-10-305;
 7 (x) 19-10-506;
 8 (y) 19-11-512;
 9 (z) 19-11-513;
 10 (aa) 19-11-606;
 11 (bb) 19-12-301;
 12 (cc) 19-13-604;
 13 (dd) 20-6-406;
 14 (ee) 20-8-111;
 15 (ff) 23-5-612;
 16 (gg) 37-51-501;
 17 (hh) 44-12-206;
 18 ~~(hh)~~(ii) 53-24-206;
 19 ~~(ii)~~(jj) 75-1-1101;
 20 ~~(jj)~~(kk) 75-7-305;
 21 ~~(kk)~~(ll) 80-2-103;
 22 ~~(ll)~~(mm) 80-2-228;
 23 ~~(mm)~~(nn) 90-3-301;
 24 ~~(nn)~~(oo) 90-3-302;
 25 ~~(oo)~~(pp) 90-15-103; and

1 ~~(pp)~~(qq) Sec. 13, HB 861, L. 1985.
 2 (4) There is a statutory appropriation to pay the
 3 principal, interest, premiums, and costs of issuing, paying,
 4 and securing all bonds, notes, or other obligations, as due,
 5 that have been authorized and issued pursuant to the laws of
 6 Montana. Agencies that have entered into agreements
 7 authorized by the laws of Montana to pay the state
 8 treasurer, for deposit in accordance with 17-2-101 through
 9 17-2-107, as determined by the state treasurer, an amount
 10 sufficient to pay the principal and interest as due on the
 11 bonds or notes have statutory appropriation authority for
 12 such payments."
 13 NEW SECTION. Section 4. Extension of authority. Any
 14 existing authority of the department of justice to make
 15 rules on the subject of the provisions of this act is
 16 extended to the provisions of this act.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

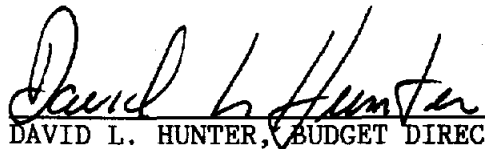
In compliance with a written request, there is hereby submitted a Fiscal Note for SB241, as introduced.

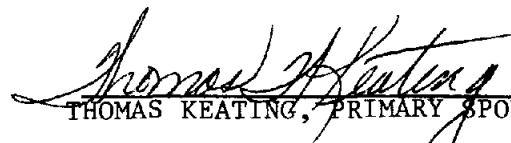
DESCRIPTION OF PROPOSED LEGISLATION:

An act revising and clarifying what items are subject to forfeiture because of their connection to dangerous drug offenses, providing for disposition to the Attorney General for drug laws enforcement and education purposes of the net proceeds of the sale of items seized through the efforts of state employees.

FISCAL IMPACT:

Due to many variables that can not be accurately determined a fiscal impact can not be presented.

 DATE 2/2/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

 DATE 2-3-87
THOMAS KEATING, PRIMARY SPONSOR
Fiscal Note for SB241, as introduced.

APPROVED BY COMMITTEE
ON JUDICIARY

1 SENATE BILL NO. 241
 2 INTRODUCED BY KEATING, SANDS, GAGE, MERCER
 3 BY REQUEST OF THE DEPARTMENT OF JUSTICE
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING
 6 WHAT ITEMS ARE SUBJECT TO FORFEITURE BECAUSE OF THEIR
 7 CONNECTION TO DANGEROUS DRUG OFFENSES; PROVIDING FOR
 8 DISPOSITION TO THE ATTORNEY GENERAL, FOR DRUG LAWS
 9 ENFORCEMENT AND--EDUCATION PURPOSES, OF THE NET PROCEEDS OF
 10 THE SALE OF ITEMS SEIZED THROUGH THE EFFORTS OF STATE
 11 EMPLOYEES; AND AMENDING SECTIONS ~~17-7-502~~, 44-12-102,
 12 44-12-205, AND 44-12-206, MCA."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 Section 1. Section 44-12-102, MCA, is amended to read:
 16 "44-12-102. Things subject to forfeiture. (1) The
 17 following are subject to forfeiture:
 18 (a) all controlled substances that have been
 19 manufactured, distributed, prepared, cultivated, compounded,
 20 processed, or possessed in violation of Title 45, chapter 9;
 21 (b) all money, raw materials, products, and equipment
 22 of any kind that are used or intended for use in
 23 manufacturing, preparing, cultivating, compounding,
 24 processing, delivering, importing, or exporting any
 25 controlled substance in violation of Title 45, chapter 9,

1 except items used or intended for use in connection with
 2 quantities of marijuana in amounts less than 250 grams;
 3 (c) except as provided in subsection (2)(d), all
 4 property that is used or intended for use as a container for
 5 anything enumerated in subsection (1)(a) or (1)(b);
 6 (d) except as provided in subsection (2), all
 7 conveyances, including aircraft, vehicles, and vessels:
 8 (i) which are used or intended for use in unlawfully
 9 transporting or in any manner facilitating the
 10 transportation of anything enumerated in subsection (1)(a)
 11 or (1)(b) for the purpose of sale or receipt of such thing;
 12 (ii) in which a controlled substance is unlawfully
 13 kept, deposited, or concealed; or
 14 (iii) in which a controlled substance is unlawfully
 15 possessed by an occupant;
 16 (e) all books, records, and research products and
 17 materials, including formulas, microfilm, tapes, and data,
 18 that are used or intended for use in violation of Title 45,
 19 chapter 9;
 20 (f) all drug paraphernalia as defined in 45-10-101;
 21 and
 22 (g) ~~everything-of-value-furnished-or-intended-to-be~~
 23 ~~furnished-in-exchange-for-a-controlled-substance-in~~
 24 ~~violation-of-Title-45,chapter-9,all-proceeds-traceable-to~~
 25 ~~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;~~ any real or personal
property acquired, maintained, or produced by means of or as
a result of a violation of Title 45, chapter 9;

(h) any real or personal property constituting or
derived from proceeds obtained directly or indirectly by
violation of Title 45, chapter 9; and

(i) any real or personal property that assisted,
facilitated, or was used or intended for use in the
commission of a violation of Title 45, chapter 9.

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

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

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

(d) No conveyance or container is subject to

forfeiture under this section if it was used or intended for use in transporting less than 250 grams of marijuana."

SECTION 2. 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 or that the property listed in 44-12-102(1)(g) was used 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

1 property to the holder of the security interest without
2 proceeding with an auction.

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

7 (c) If a claimant who has presented proper proof of
8 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 (3) In making a disposition of property under this
13 chapter, the court may take any action to protect the rights
14 of innocent persons."

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

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

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

23 (b) the remainder, if any, to the county treasurer of
24 the county in which the property was seized, who shall
25 establish and maintain a drug forfeiture fund account and

1 deposit the remainder into the fund account, except as
2 provided in ~~subsection~~ subsections (1)(c) through (1)(e);

3 (c) if the property was seized within the corporate
4 limits of a city or town by a law enforcement agency of that
5 city or town, the remainder, if any, to the city or town
6 treasurer, who shall establish and maintain a drug
7 forfeiture fund account and deposit the remainder into the
8 fund account, except as provided in subsections (1)(d) and
9 (1)(e);

10 (d) if the property was seized by an employee of the
11 state, the remainder, if any, to the account established in
12 subsection (3), except as provided in subsection (1)(e); and

13 (e) if the property was seized as a result of the
14 efforts of more than one law enforcement agency, the
15 remainder, if any, to the accounts required by this
16 subsection (1), pro rata in the proportions represented by
17 the agencies' expenses of investigation, as determined by
18 the attorney general.

19 (2) All proceeds from any source that are deposited
20 into a county, city, or town drug forfeiture fund account
21 must in each fiscal year be appropriated to, and remain
22 available until expended by, the confiscating agency for
23 drug laws enforcement and education concerning drugs.

24 (3) ~~There is~~ NET PROCEEDS RECEIVED UNDER SUBSECTIONS
25 (1)(D) AND (1)(E) MUST BE DEPOSITED IN an account in the

1 ~~state special revenue fund; Net proceeds deposited in the~~
 2 ~~account under subsections (d) and (e) because the~~
 3 ~~property sold was seized by an employee of the state are~~
 4 ~~appropriated, as provided in 17-7-502, to the attorney~~
 5 ~~general for drug laws enforcement and education concerning~~
 6 ~~drugs; TO THE CREDIT OF THE DEPARTMENT OF JUSTICE. THE~~
 7 ~~DEPARTMENT MAY EXPEND THE MONEY IN THE ACCOUNT, AS~~
 8 ~~APPROPRIATED BY THE LEGISLATURE, ONLY FOR PURPOSES OF~~
 9 ~~ENFORCEMENT OF DRUG LAWS."~~

10 Section 3. Section 17-7-502, MCA, is amended to read:
 11 "17-7-502. Statutory appropriations—definition—
 12 requisites for validity. (1) A statutory appropriation is
 13 an appropriation made by permanent law that authorizes
 14 spending by a state agency without the need for a biennial
 15 legislative appropriation or budget amendment.

16 (2) Except as provided in subsection (4), to be
 17 effective, a statutory appropriation must comply with both
 18 of the following provisions:

19 (a) The law containing the statutory authority must be
 20 listed in subsection (3).

21 (b) The law or portion of the law making a statutory
 22 appropriation must specifically state that a statutory
 23 appropriation is made as provided in this section.

24 (3) The following laws are the only laws containing
 25 statutory appropriations:

- 1 (a) 2-9-202;
- 2 (b) 2-17-105;
- 3 (c) 2-10-812;
- 4 (d) 10-3-203;
- 5 (e) 10-3-312;
- 6 (f) 10-3-314;
- 7 (g) 10-4-301;
- 8 (h) 13-37-304;
- 9 (i) 15-31-702;
- 10 (j) 15-36-112;
- 11 (k) 15-70-101;
- 12 (l) 16-1-404;
- 13 (m) 16-1-410;
- 14 (n) 16-1-411;
- 15 (o) 17-3-212;
- 16 (p) 17-5-404;
- 17 (q) 17-5-424;
- 18 (r) 17-5-804;
- 19 (s) 19-8-504;
- 20 (t) 19-9-702;
- 21 (u) 19-9-1007;
- 22 (v) 19-10-205;
- 23 (w) 19-10-305;
- 24 (x) 19-10-506;
- 25 (y) 19-11-512;

1 {z}-19-11-513;
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 3 {bb}-19-12-301;
 4 {cc}-19-13-604;
 5 {dd}-20-6-406;
 6 {ee}-20-8-111;
 7 {ff}-23-5-612;
 8 {gg}-37-51-501;
 9 {hh}-44-12-206;
 10 {hh}{ii}-53-24-206;
 11 {ii}{jj}-75-1-1101;
 12 {jj}{kk}-75-7-305;
 13 {kk}{ll}-80-2-103;
 14 {ll}{mm}-80-2-220;
 15 {mm}{nn}-90-3-301;
 16 {nn}{oo}-90-3-302;
 17 {oo}{pp}-90-15-103;-and
 18 {pp}{qq}-See-137-HB-8617-L-1985-

19 {4}-There-is-a-statutory-appropriation-to-pay-the
 20 principal, interest, premiums, and costs of issuing, paying,
 21 and securing all bonds, notes, or other obligations, as due,
 22 that have been authorized and issued pursuant to the laws of
 23 Montana--Agencies--that--have--entered--into--agreements
 24 authorized--by--the--laws--of--Montana--to--pay--the--state
 25 treasurer, for deposit in accordance with 17-2-101 through

1 17-2-107, as determined by the state treasurer, an amount
 2 sufficient to pay the principal and interest as due on the
 3 bonds or notes have statutory appropriation authority for
 4 such payments."

5 NEW SECTION. Section 4. Extension of authority. Any
 6 existing authority of the department of justice to make
 7 rules on the subject of the provisions of this act is
 8 extended to the provisions of this act.

-End-

SENATE BILL NO. 241

INTRODUCED BY KEATING, SANDS, GAGE, MERCER
BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING WHAT ITEMS ARE SUBJECT TO FORFEITURE BECAUSE OF THEIR CONNECTION TO DANGEROUS DRUG OFFENSES; PROVIDING FOR DISPOSITION TO THE ATTORNEY GENERAL, FOR DRUG LAWS ENFORCEMENT AND--EDUCATION PURPOSES, OF THE NET PROCEEDS OF THE SALE OF ITEMS SEIZED THROUGH THE EFFORTS OF STATE EMPLOYEES; AND AMENDING SECTIONS 17-7-502, 44-12-102, 44-12-205, AND 44-12-206, 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



1 ~~securities--used--or--intended--to--be--used--to--facilitate--any~~
 2 ~~violation--of--Title--45--chapter--9.~~ any real or personal
 3 property acquired, maintained, or produced by means of or as
 4 a result of a violation of Title 45, chapter 9;

5 (h) any real or personal property constituting or
 6 derived from proceeds obtained directly or indirectly by
 7 violation of Title 45, chapter 9; and

8 (i) any real or personal property that assisted,
 9 facilitated, or was used or intended for use in the
 10 commission of a violation of Title 45, chapter 9.

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

17 (b) No conveyance is subject to forfeiture under this
 18 section because of any act or omission established by the
 19 owner of the conveyance to have been committed or omitted
 20 without his knowledge or consent.

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

25 (d) No conveyance or container is subject to

1 forfeiture under this section if it was used or intended for
 2 use in transporting less than 250 grams of marijuana."

3 SECTION 2. SECTION 44-12-205, MCA, IS AMENDED TO READ:

4 "44-12-205. Disposition of property following hearing.

5 (1) If the court finds that the property was not used for
 6 the purpose charged or that the property listed in
 7 44-12-102(1)(g) was used without the knowledge or consent of
 8 the owner, it shall order the property released to the owner
 9 of record as of the date of the seizure.

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

14 (a) If proper proof of his claim is presented at the
 15 hearing by the holder of a security interest, the court
 16 shall order the property released to the holder of the
 17 security interest if the amount due him is equal to or in
 18 excess of the value of the property as of the date of
 19 seizure, it being the purpose of this chapter to forfeit
 20 only the right, title, or interest of the owner. If the
 21 amount due the holder of the security interest is less than
 22 the value of the property, the property must be sold at
 23 public auction by the sheriff of the county in which the
 24 seizure was made in the same manner provided by law for the
 25 sale of property under execution or the state may return the

1 property to the holder of the security interest without
2 proceeding with an auction.

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

7 (c) If a claimant who has presented proper proof of
8 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 (3) In making a disposition of property under this
13 chapter, the court may take any action to protect the rights
14 of innocent persons."

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

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

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

23 (b) the remainder, if any, to the county treasurer of
24 the county in which the property was seized, who shall
25 establish and maintain a drug forfeiture fund account and

1 deposit the remainder into the fund account, except as
2 provided in subsection subsections (1)(c) through (1)(e);

3 (c) if the property was seized within the corporate
4 limits of a city or town by a law enforcement agency of that
5 city or town, the remainder, if any, to the city or town
6 treasurer, who shall establish and maintain a drug
7 forfeiture fund account and deposit the remainder into the
8 fund- account, except as provided in subsections (1)(d) and
9 (1)(e);

10 (d) if the property was seized by an employee of the
11 state, the remainder, if any, to the account established in
12 subsection (3), except as provided in subsection (1)(e); and

13 (e) if the property was seized as a result of the
14 efforts of more than one law enforcement agency, the
15 remainder, if any, to the accounts required by this
16 subsection (1), pro rata in the proportions represented by
17 the agencies' expenses of investigation, as determined by
18 the attorney general.

19 (2) All proceeds from any source that are deposited
20 into a county, city, or town drug forfeiture fund account
21 must in each fiscal year be appropriated to, and remain
22 available until expended by, the confiscating agency for
23 drug laws enforcement and education concerning drugs.

24 (3) There--is NET PROCEEDS RECEIVED UNDER SUBSECTIONS
25 (1)(D) AND (1)(E) MUST BE DEPOSITED IN an account in the

1 state special revenue fund; Net proceeds deposited in the
 2 account under subsections (d) and (e) because the
 3 property sold was seized by an employee of the state are
 4 appropriated, as provided in 17-7-502, to the attorney
 5 general for drug laws enforcement and education concerning
 6 drugs; TO THE CREDIT OF THE DEPARTMENT OF JUSTICE. THE
 7 DEPARTMENT MAY EXPEND THE MONEY IN THE ACCOUNT, AS
 8 APPROPRIATED BY THE LEGISLATURE, ONLY FOR PURPOSES OF
 9 ENFORCEMENT OF DRUG LAWS."

10 Section 3. Section 17-7-502, MCA, is amended to read:

11 "17-7-502. Statutory appropriations--definition--
 12 requisites for validity. (1) A statutory appropriation is
 13 an appropriation made by permanent law that authorizes
 14 spending by a state agency without the need for a biennial
 15 legislative appropriation or budget amendment.

16 (2) Except as provided in subsection (4), to be
 17 effective, a statutory appropriation must comply with both
 18 of the following provisions:

19 (a) The law containing the statutory authority must be
 20 listed in subsection (3).

21 (b) The law or portion of the law making a statutory
 22 appropriation must specifically state that a statutory
 23 appropriation is made as provided in this section.

24 (3) The following laws are the only laws containing
 25 statutory appropriations:

- 1 (a) 2-9-202;
- 2 (b) 2-17-105;
- 3 (c) 2-10-012;
- 4 (d) 10-3-203;
- 5 (e) 10-3-312;
- 6 (f) 10-3-314;
- 7 (g) 10-4-301;
- 8 (h) 13-37-304;
- 9 (i) 15-31-702;
- 10 (j) 15-36-112;
- 11 (k) 15-70-101;
- 12 (l) 16-1-404;
- 13 (m) 16-1-410;
- 14 (n) 16-1-411;
- 15 (o) 17-3-212;
- 16 (p) 17-5-404;
- 17 (q) 17-5-424;
- 18 (r) 17-5-804;
- 19 (s) 19-8-504;
- 20 (t) 19-9-702;
- 21 (u) 19-9-1007;
- 22 (v) 19-10-205;
- 23 (w) 19-10-305;
- 24 (x) 19-10-506;
- 25 (y) 19-11-512;

1 ~~{z}-19-11-513;~~
2 ~~{aa}-19-11-606;~~
3 ~~{bb}-19-12-301;~~
4 ~~{cc}-19-13-604;~~
5 ~~{dd}-20-6-406;~~
6 ~~{ee}-20-8-111;~~
7 ~~{ff}-23-5-612;~~
8 ~~{gg}-37-51-501;~~
9 ~~{hh}-44-12-206;~~
10 ~~{hh}{ii}-53-24-206;~~
11 ~~{ii}{jj}-75-1-1101;~~
12 ~~{jj}{kk}-75-7-305;~~
13 ~~{kk}{ll}-00-2-103;~~
14 ~~{ll}{mm}-00-2-220;~~
15 ~~{mm}{nn}-90-3-301;~~
16 ~~{nn}{oo}-90-3-302;~~
17 ~~{oo}{pp}-90-15-103;-and~~
18 ~~{pp}{qq}-Sec-13;-HB-0617;-br-1985;~~
19 ~~{4}-There-is-a-statutory-appropriation-to-pay-the~~
20 ~~principal;-interest;-premiums;-and-costs-of-issuing;-paying;~~
21 ~~and-securing-all-bonds;-notes;-or-other-obligations;-as-due;~~
22 ~~that-have-been-authorized-and-issued-pursuant-to-the-laws-of~~
23 ~~Montana;-Agencies-that-have-entered-into-agreements~~
24 ~~authorized-by-the-laws-of-Montana-to-pay-the-state~~
25 ~~treasury-for-deposit-in-accordance-with-17-2-101-through~~

1 ~~17-2-107;-as-determined-by-the-state-treasurer;-an-amount~~
2 ~~sufficient-to-pay-the-principal-and-interest-as-due-on-the~~
3 ~~bonds-or-notes-have-statutory-appropriation-authority-for~~
4 ~~such-payments."~~
5 ~~NEW SECTION. Section 4. Extension of authority. Any~~
6 ~~existing authority of the department of justice to make~~
7 ~~rules on the subject of the provisions of this act is~~
8 ~~extended to the provisions of this act.~~

-End-

HOUSE

READING COMMITTEE REPORT

MARCH 23, 19 87

JUDICIARY

report We, the committee on SENATE BILL NO. 241

- do pass, do not pass, be concurred in, be not concurred in, as amended, statement of intent attached

Earl Long Chairman

- 1. Page 3, lines 2 through 4. Strike: "any" on line 2 through "a result of" on line 4. Insert: "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"
2. Page 3, line 4. Following: "chapter 9;" Insert: "and"
3. Page 3, line 6. Strike: "by" Insert: "from sale of a controlled substance in"
4. Page 3, lines 7 through 10. Strike: "; and" on line 7 through "chapter 9" on line 10
5. Page 6, line 24. Following: "RECEIVED" Insert: "by the state"

