

SENATE BILL NO. 229

INTRODUCED BY

Burdick *Hargrove* *Hallgren* *Emerson Cole*

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF USE OR POSSESSION OF PROPERTY SUBJECT TO CRIMINAL FORFEITURE; PROVIDING FOR CRIMINAL FORFEITURE OF PROPERTY USED IN OR DERIVED FROM DRUG-RELATED CRIMES; SPECIFYING THE TYPES OF PROPERTY THAT ARE SUBJECT TO CRIMINAL FORFEITURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. **Use or possession of property subject to criminal forfeiture -- property subject to criminal forfeiture.** (1) A person commits the offense of use or possession of property subject to criminal forfeiture if the person possesses, owns, uses, or attempts to use property when the person knows that it is subject to criminal forfeiture under this section. A person convicted of the offense of use or possession of property subject to criminal forfeiture shall be imprisoned in the state prison for a term not to exceed 10 years. Upon conviction, the property subject to criminal forfeiture is forfeited to the state and must be disposed of in accordance with the provisions of 44-12-205 and 44-12-206.

(2) The following property is subject to criminal forfeiture under this section:

(a) money, raw materials, products, equipment, and other property of any kind that is used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting a dangerous drug in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(b) property used or intended for use as a container for property enumerated in subsection (2)(a);

(c) except as provided in subsection (3), a conveyance, including an aircraft, vehicle, or vessel, used or intended for use to facilitate a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(d) books, records, research products and materials, formulas, microfilm, tapes, and data used or intended for use in connection with a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(e) (i) everything of value furnished or intended to be furnished in exchange for a dangerous drug

1 in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a
2 violation of 45-9-101, 45-9-103, or 45-9-110; and

3 (ii) all proceeds traceable to such an exchange;

4 (f) money, negotiable instruments, securities, and weapons used or intended to be used to facilitate
5 a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a
6 violation of 45-9-101, 45-9-103, or 45-9-110;

7 (g) personal property constituting or derived from proceeds obtained directly or indirectly from a
8 violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a
9 violation of 45-9-101, 45-9-103, or 45-9-110; and

10 (h) real property, including any right, title, and interest in a lot or tract of land and any
11 appurtenances or improvements, that is directly used or intended to be used in any manner to facilitate a
12 violation of or that is derived from or maintained by proceeds resulting from a violation of 45-9-101,
13 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101,
14 45-9-103, or 45-9-110 . An owner's interest in real property is not subject to criminal forfeiture by reason
15 of an act or omission unless it is proved that the act or omission was the owner's or was with the owner's
16 express consent.

17 (3) A conveyance is not subject to criminal forfeiture under this section unless the owner or other
18 person in charge of the conveyance knowingly used the conveyance to violate or knowingly consented to
19 its use for the purpose of violating 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of
20 the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110.

21 (4) Criminal forfeiture under this section of property that is encumbered by a bona fide security
22 interest is subject to that interest if the secured party did not use or consent to the use of the property in
23 connection with a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the
24 conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110.

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29 45-9-103, or 45-9-110 may seize a conveyance obtained with proceeds of the violation or used to facilitate
30 the violation and shall immediately deliver the conveyance to the peace officer's law enforcement agency,

1 to be held as evidence until a criminal forfeiture is declared or release ordered.

2 (b) Property subject to criminal forfeiture under this section may be seized by a peace officer under
3 a search warrant issued by a court having jurisdiction over the property.

4 (c) Seizure without a warrant may be made if:

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

7 (ii) the property was the subject of a prior judgment in favor of the state in a criminal proceeding
8 or a criminal forfeiture proceeding based on this section or on Title 44, chapter 12;

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

11 (iv) a peace officer has probable cause to believe that the property was used or is intended to be
12 used in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy
13 is a violation of 45-9-101, 45-9-103, or 45-9-110.

14 (6) As used in this section, "dangerous drug" means a substance designated as a dangerous drug
15 under Title 50, chapter 32, parts 1 and 2.

16 (7) A prosecution under subsection (1) must be commenced within 45 days of the seizure of the
17 property involved.

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19 **NEW SECTION. Section 2. Codification instruction.** [Section 1] is intended to be codified as an
20 integral part of Title 45, and the provisions of Title 45 apply to [section 1].

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22 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

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-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0229, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill creating the offense of use or possession of property subject to criminal forfeiture; providing for criminal forfeiture of property used in or derived from drug-related crimes; and specifying the types of property that are subject to criminal forfeiture.

ASSUMPTIONS:

Crime Control Division:

1. The Crime Control Division does not anticipate a fiscal impact as a result of this bill.
2. Many of the drug task force subgrantees have been utilizing assets obtained from forfeiting seized property for several years.
3. The Crime Control Division helps fund ten drug task force teams around the state. The estimated value of property forfeited as a result of actions taken by these task forces during FY94 is as follows: vehicles, \$39,825; weapons, \$250; currency, \$446,825; and real property, \$62,233.

Department of Corrections and Human Services:

4. Probation and parole officers are not peace officers as defined in this bill.
5. The bill will have no impact on the corrections system population.

FISCAL IMPACT:

None.

Dave Lewis 1.30.95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Don Hargrove
DON HARGROVE, PRIMARY SPONSOR DATE

Fiscal Note for SB0229, as introduced

SB 229

SENATE BILL NO. 229

INTRODUCED BY HARGROVE, HALLIGAN, BAER, BENEDICT, CRIPPEN, EMERSON, COLE

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(2) The following property is subject to criminal forfeiture under this section:

(a) money, raw materials, products, equipment, and other property of any kind that is used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting a dangerous drug in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(b) property used or intended for use as a container for property enumerated in subsection (2)(a);

(c) except as provided in subsection (3), a conveyance, including an aircraft, vehicle, or vessel, used or intended for use to facilitate a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

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(e) (i) everything of value furnished or intended to be furnished in exchange for a dangerous drug

1 in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a
2 violation of 45-9-101, 45-9-103, or 45-9-110; and

3 (ii) all proceeds traceable to such an exchange;

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15 under Title 50, chapter 32, parts 1 and 2.

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-END-



HOUSE STANDING COMMITTEE REPORT

March 14, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 229 (third reading copy -- blue) be concurred in as amended.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Soft

And, that such amendments read:

1. Page 1, line 13.
Strike: "KNOWINGLY"
2. Page 1, line 14.
Following: "~~knows~~"
Insert: "when the person knows"
Following: "~~it~~"
Insert: "it"

-END-

SB 229

Committee Vote:
Yes 18, No 1.

HOUSE

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20 **NEW SECTION. Section 2. Codification instruction.** [Section 1] is intended to be codified as an
21 integral part of Title 45, and the provisions of Title 45 apply to [section 1].

22
23 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

24 -END-

Conference Committee
on SB 229
Report No. 1, April 6, 1995

Page 1 of 1

Mr. President and Mr. Speaker:

We, your Conference Committee on SB 229, met April 6, 1995, and considered:

House Committee on Judiciary Amendments to the third reading copy, dated March 14, 1995.

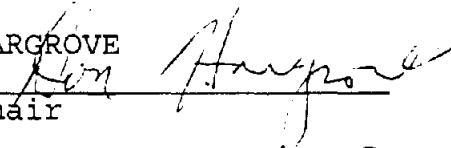
We recommend that SB 229 (reference copy - salmon) be amended as follows:

1. Page 1, line 13.
Following: "KNOWINGLY"
Insert: "knowingly"
2. Page 1, line 14.
Strike: "WHEN THE PERSON KNOWS"
Strike: "IT"

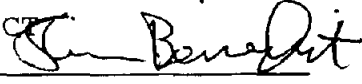
And that this Conference Committee report be adopted.

For the Senate:

HARGROVE


Chair

BENEDICT


Amd. Coord.

HALLIGAN

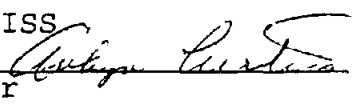

Sec. of Senate

SP

Sec. of Senate

For the House:

CURTISS


Chair

SOFT


Amd. Coord.

WYATT


Sec. of House

ADOPT

REJECT

SB 229

CCR #1

791705CC.SP.V

SENATE BILL NO. 229

INTRODUCED BY HARGROVE, HALLIGAN, BAER, BENEDICT, CRIPPEN, EMERSON, COLE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF USE OR POSSESSION OF PROPERTY SUBJECT TO CRIMINAL FORFEITURE; PROVIDING FOR CRIMINAL FORFEITURE OF PROPERTY USED IN OR DERIVED FROM DRUG-RELATED CRIMES; SPECIFYING THE TYPES OF PROPERTY THAT ARE SUBJECT TO CRIMINAL FORFEITURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. **Use or possession of property subject to criminal forfeiture -- property subject to criminal forfeiture.** (1) A person commits the offense of use or possession of property subject to criminal forfeiture if the person ~~KNOWINGLY~~ ~~KNOWINGLY~~ possesses, owns, uses, or attempts to use property ~~when the person knows~~ ~~WHEN THE PERSON KNOWS~~ that it ~~IT~~ is subject to criminal forfeiture under this section. A person convicted of the offense of use or possession of property subject to criminal forfeiture shall be imprisoned in the state prison for a term not to exceed 10 years. Upon conviction, the property subject to criminal forfeiture is forfeited to the state and must be disposed of in accordance with the provisions of 44-12-205 and 44-12-206.

(2) The following property is subject to criminal forfeiture under this section:

(a) money, raw materials, products, equipment, and other property of any kind that is used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting a dangerous drug in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(b) property used or intended for use as a container for property enumerated in subsection (2)(a);

(c) except as provided in subsection (3), a conveyance, including an aircraft, vehicle, or vessel, used or intended for use to facilitate a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(d) books, records, research products and materials, formulas, microfilm, tapes, and data used or intended for use in connection with a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

1 (e) (i) everything of value furnished or intended to be furnished in exchange for a dangerous drug
2 in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a
3 violation of 45-9-101, 45-9-103, or 45-9-110; and

4 (ii) all proceeds traceable to such an exchange;

5 (f) money, negotiable instruments, securities, and weapons used or intended to be used to facilitate
6 a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a
7 violation of 45-9-101, 45-9-103, or 45-9-110;

8 (g) personal property constituting or derived from proceeds obtained directly or indirectly from a
9 violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a
10 violation of 45-9-101, 45-9-103, or 45-9-110; and

11 (h) real property, including any right, title, and interest in a lot or tract of land and any
12 appurtenances or improvements, that is directly used or intended to be used in any manner to facilitate a
13 violation of or that is derived from or maintained by proceeds resulting from a violation of 45-9-101,
14 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101,
15 45-9-103, or 45-9-110 . An owner's interest in real property is not subject to criminal forfeiture by reason
16 of an act or omission unless it is proved that the act or omission was the owner's or was with the owner's
17 express consent.

18 (3) A conveyance is not subject to criminal forfeiture under this section unless the owner or other
19 person in charge of the conveyance knowingly used the conveyance to violate or knowingly consented to
20 its use for the purpose of violating 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of
21 the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110.

22 (4) Criminal forfeiture under this section of property that is encumbered by a bona fide security
23 interest is subject to that interest if the secured party did not use or consent to the use of the property in
24 connection with a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the
25 conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110.

26 (5) Property subject to criminal forfeiture under this section may be seized under the following
27 circumstances:

28 (a) A peace officer who has probable cause to make an arrest for a violation of 45-9-101,
29 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101,
30 45-9-103, or 45-9-110 may seize a conveyance obtained with proceeds of the violation or used to facilitate

1 the violation and shall immediately deliver the conveyance to the peace officer's law enforcement agency,
2 to be held as evidence until a criminal forfeiture is declared or release ordered.

3 (b) Property subject to criminal forfeiture under this section may be seized by a peace officer under
4 a search warrant issued by a court having jurisdiction over the property.

5 (c) Seizure without a warrant may be made if:

6 (i) the seizure is incident to an arrest or a search under a search warrant issued for another purpose
7 or an inspection under an administrative inspection warrant;

8 (ii) the property was the subject of a prior judgment in favor of the state in a criminal proceeding
9 or a criminal forfeiture proceeding based on this section or on Title 44, chapter 12;

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

12 (iv) a peace officer has probable cause to believe that the property was used or is intended to be
13 used in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy
14 is a violation of 45-9-101, 45-9-103, or 45-9-110.

15 (6) As used in this section, "dangerous drug" means a substance designated as a dangerous drug
16 under Title 50, chapter 32, parts 1 and 2.

17 (7) A prosecution under subsection (1) must be commenced within 45 days of the seizure of the
18 property involved.

19

20 **NEW SECTION. Section 2. Codification instruction.** [Section 1] is intended to be codified as an
21 integral part of Title 45, and the provisions of Title 45 apply to [section 1].

22

23 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

24

-END-