

2022 -- S 2389

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

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A N A C T

RELATING TO FOOD AND DRUGS - UNIFORM CONTROLLED SUBSTANCES ACT

Introduced By: Senators Mendes, Calkin, Anderson, and Mack

Date Introduced: February 15, 2022

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 21-28-5.04, 21-28-5.04.1 and 21-28-5.04.2 of the General Laws in
2 Chapter 21-28 entitled "Uniform Controlled Substances Act" are hereby repealed.

3 ~~**21-28-5.04. Forfeiture of property and money.**~~

4 ~~(a) Any property, real or personal, including, but not limited to, vessels, vehicles, or~~
5 ~~aircraft, and money or negotiable instruments, securities, or other things of value or any property~~
6 ~~constituting, or derived from any proceeds, furnished, or intended to be furnished, by any person~~
7 ~~for the transportation of, or in exchange for, a controlled substance and that has been, or is being~~
8 ~~used, in violation of § 21-28-4.01(a) or 21-28-4.01(b) or in, upon, or by means of which any~~
9 ~~violation of §§ 21-28-4.01(a) or 21-28-4.01(b) or §§ 21-28-4.01.1 or 21-28-4.01.2 or 21-28-4.08~~
10 ~~has taken, or is taking place, and all real property including any right, title, and interest in the whole~~
11 ~~of any lot or tract of land and any appurtenances or improvements that is used in the commission~~
12 ~~of a violation of §§ 21-28-4.01(a) or 21-28-4.01(b) or §§ 21-28-4.01.1 or 21-28-4.01.2 or 21-28-~~
13 ~~4.08, or that was purchased with funds obtained as a result of the commission of a violation of §§~~
14 ~~21-28-4.01(a) or §§ 21-28-4.01(b) or §§ 21-28-4.01.1 or 21-28-4.01.2 or 21-28-4.08, shall be seized~~
15 ~~and forfeited; provided that no property or money, as enumerated in this subsection, used by any~~
16 ~~person shall be forfeited under the provisions of this chapter unless it shall appear that the owner~~
17 ~~of the property or money had knowledge, actual or constructive, and was a consenting party to the~~
18 ~~alleged illegal act. All moneys, coin and currency, found in close proximity to forfeitable controlled~~
19 ~~substances, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records~~

1 ~~of the importation, manufacture, or distribution of controlled substances, are presumed to be~~
2 ~~unlawfully furnished in exchange for a controlled substance or used in violation of this chapter.~~
3 ~~The burden of proof is upon claimants of the property to rebut this presumption.~~

4 ~~(b) Property taken or detained under this section shall not be repleviable, but shall be~~
5 ~~deemed to be in the custody of the law enforcement agency making the seizure and whenever~~
6 ~~property or money is forfeited under this chapter it shall be utilized as follows:~~

7 ~~(1) Where the seized property is a vessel, vehicle, aircraft, or other personal property it~~
8 ~~may be retained and used by the law enforcement agency that seized the property where the use of~~
9 ~~the property is reasonably related to the law enforcement duties of the seizing agency. If the seized~~
10 ~~property is a motor vehicle that is inappropriate for use by the law enforcement agency due to style,~~
11 ~~size, or color, the seizing agency shall be allowed to apply the proceeds of sale or the trade-in value~~
12 ~~of the vehicle towards the purchase of an appropriate vehicle for use in activities reasonably related~~
13 ~~to law enforcement duties.~~

14 ~~(2) The law enforcement agency may sell any forfeited property not required by this chapter~~
15 ~~to be destroyed and not harmful to the public. The proceeds from the sale are to be distributed in~~
16 ~~accordance with subdivision (3) of this subsection.~~

17 ~~(3) As to the proceeds from the sale of seized property as referred to in subdivision (2) of~~
18 ~~this subsection, and as to moneys, coin and currency, negotiable instruments, securities, or other~~
19 ~~things of value as referred to in subsection (a) of this section, the distribution shall be as follows:~~

20 ~~(i)(A) All proceeds of the forfeiture of real or personal property shall be distributed as~~
21 ~~follows: All costs of advertising administrative forfeitures shall first be deducted from the amount~~
22 ~~forfeited. Of the remainder, twenty percent (20%) of the proceeds shall be provided to the attorney~~
23 ~~general's department to be used for further drug-related law enforcement activities including, but~~
24 ~~not limited to, investigations, prosecutions, and the administration of this chapter; seventy percent~~
25 ~~(70%) of the proceeds shall be divided among the state and local law enforcement agencies~~
26 ~~proportionately based upon their contribution to the investigation of the criminal activity related to~~
27 ~~the asset being forfeited; and ten percent (10%) of the proceeds shall be provided to the department~~
28 ~~of health for distribution to substance abuse treatment programs.~~

29 ~~(B) The law enforcement agencies involved in the investigation, with the assistance of the~~
30 ~~attorney general, shall by agreement determine the respective proportionate share to be received by~~
31 ~~each agency. If the agencies are unable to reach agreement, application shall be made by one or~~
32 ~~more of the agencies involved to the presiding justice of the superior court who shall determine the~~
33 ~~respective proportionate share attributable to each law enforcement agency. The proceeds from all~~
34 ~~forfeitures shall be held by the general treasurer in a separate account until such time as an~~

1 ~~allocation is determined by agreement of the agencies or by the presiding justice. It shall be the~~
2 ~~duty and responsibility of the general treasurer to disburse the allocated funds from the separate~~
3 ~~account to the respective law enforcement agencies.~~

4 ~~(ii) Each state or local law enforcement agency shall be entitled to keep the forfeited money~~
5 ~~or the proceeds from sales of forfeited property. The funds shall be used for law enforcement~~
6 ~~purposes and investigations of violations of this chapter. The funds received by a state law~~
7 ~~enforcement agency shall be maintained in a separate account by the general treasurer. The funds~~
8 ~~received by a local law enforcement agency shall be maintained in a separate account by the local~~
9 ~~agency's city or town treasurer.~~

10 ~~(e)(1) There is established in the state's treasury a special fund to be known as the asset~~
11 ~~forfeiture fund in which shall be deposited the excess proceeds of forfeitures arising out of criminal~~
12 ~~acts occurring before July 1, 1987. The asset forfeiture fund shall be used to fund drug related law~~
13 ~~enforcement activity and the treatment and rehabilitation of victims of drug abuse. The fund shall~~
14 ~~be administered through the office of the general treasurer. The presiding justice of the superior~~
15 ~~court shall have the authority to determine the feasibility and amount of disbursement to those state~~
16 ~~or local law enforcement agencies that have made application.~~

17 ~~(2) Upon the application of any law enforcement agency of the state of Rhode Island, when~~
18 ~~a special need exists concerning the enforcement of the provisions of this chapter, the attorney~~
19 ~~general, or his or her designee, may apply to the presiding justice of the superior court for the~~
20 ~~release from the general treasury of sums of money. When the presiding justice upon consideration~~
21 ~~of the reasons set forth by that agency deems them to be reasonable and necessary to the~~
22 ~~accomplishment of a goal within the powers and duties of that law enforcement agency, he or she~~
23 ~~may issue an order ex parte providing for the release of the funds.~~

24 ~~(d) Each law enforcement agency making any seizure(s) that result(s) in a forfeiture~~
25 ~~pursuant to this section shall certify and file with the state treasurer between January 1 and January~~
26 ~~30 an annual report detailing the property or money forfeited during the previous calendar year and~~
27 ~~the use or disposition of the property or money. The report shall be made in the form and manner~~
28 ~~as may be provided or specified by the treasurer and these annual law enforcement agency reports~~
29 ~~shall be provided to the local governmental body governing the agency and to the house and senate~~
30 ~~judiciary committees.~~

31 ~~(e) Any law enforcement agency whose duty it is to enforce the laws of this state relating~~
32 ~~to controlled substances is empowered to authorize designated officers or agents to carry out the~~
33 ~~seizure provisions of this chapter. It shall be the duty of any officer or agent authorized or~~
34 ~~designated, or authorized by law, whenever he or she shall discover any property or monies that~~

1 ~~have been, or are being, used in violation of any of the provisions of this chapter, or in, upon, or by~~
2 ~~means of which any violation of this chapter has taken or is taking place, to seize the property or~~
3 ~~monies and to place it in the custody of the person as may be authorized or designated for that~~
4 ~~purpose by the respective law enforcement agency pursuant to those provisions.~~

5 ~~(f) For purposes of this section and § 30-14-2 only, the Rhode Island national guard shall~~
6 ~~be deemed a law enforcement agency eligible to participate in the forfeiture of money and assets~~
7 ~~seized through counterdrug operations in which members of the guard support federal, state or~~
8 ~~municipal efforts.~~

9 ~~**21-28-5.04.1. Criminal forfeiture procedures.**~~

10 ~~(a) Any criminal complaint, information, or indictment charging one or more covered~~
11 ~~offenses shall set forth with reasonable particularity property that the attorney general seeks to~~
12 ~~forfeit pursuant to this section.~~

13 ~~(b) The court may, upon application of the attorney general, enter a restraining order or~~
14 ~~injunction, require any person claiming any interest in the subject property to execute a satisfactory~~
15 ~~performance bond to the state, or take any other action to preserve the availability of property~~
16 ~~subject to forfeiture described in § 21-28-5.04, whether prior or subsequent to the filing of a~~
17 ~~complaint, indictment, or information. Written notice and an opportunity for a hearing shall be~~
18 ~~afforded to persons appearing to have an interest in the property, the hearing to be limited to the~~
19 ~~issues of whether:~~

20 ~~(1) There is a substantial probability that the state will prevail on the issue of forfeiture and~~
21 ~~that failure to enter the order will result in the property being destroyed, conveyed, encumbered or~~
22 ~~further encumbered, removed from the jurisdiction of the court, or made unavailable for forfeitures;~~
23 ~~and~~

24 ~~(2) The need to preserve the availability of property through the entry of the requested~~
25 ~~order outweighs the hardship on any party against whom the order is to be entered.~~

26 ~~(c)(1) A temporary restraining order under this section may be entered upon application of~~
27 ~~the attorney general without notice or opportunity for a hearing when a complaint, information, or~~
28 ~~indictment has not yet been filed with respect to the property if the attorney general demonstrates~~
29 ~~that there is probable cause to believe that the property with respect to which the order is sought~~
30 ~~would, in the event of conviction, be subject to forfeiture under § 21-28-5.04 and that provision of~~
31 ~~notice will jeopardize the availability of the property for forfeiture. The temporary restraining order~~
32 ~~shall expire within ten (10) days of the date on which it is entered unless extended for good cause~~
33 ~~shown or unless the party against whom it is entered consents to an extension for a longer period.~~

34 ~~(2) A hearing requested by any party in interest concerning an order entered under this~~

1 ~~subsection shall be held at the earliest possible time and prior to the expiration of the temporary~~
2 ~~order.~~

3 ~~(3) The court may receive and consider, at the hearing held pursuant to this subsection,~~
4 ~~evidence and information that would be inadmissible in court.~~

5 ~~(d) Upon conviction of a person for a covered offense the court shall enter a judgment of~~
6 ~~forfeiture of the property described in § 21-28-5.04 to the state and shall also authorize the attorney~~
7 ~~general to seize all property ordered forfeited upon any terms and conditions that the court shall~~
8 ~~deem proper. Following the entry of an order declaring the property forfeited, the court may, upon~~
9 ~~application of the attorney general, enter any appropriate restraining orders or injunctions, require~~
10 ~~the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers,~~
11 ~~accountants, or trustees, or take any other action to protect the interest of the state in the property~~
12 ~~ordered forfeited. Any income accruing to or derived from an enterprise or an interest in an~~
13 ~~enterprise that has been ordered forfeited under this section may be used to offset ordinary and~~
14 ~~necessary expenses of the enterprise as required by law or that are necessary to protect the interest~~
15 ~~of the state or innocent third parties.~~

16 ~~(e) All right, title, and interest in property described in § 21-28-5.04 vests in the state upon~~
17 ~~the commission of the act giving rise to forfeiture under this chapter. Any property that is~~
18 ~~subsequently transferred to any person may be the subject of a special verdict of forfeiture and after~~
19 ~~this shall be ordered forfeited to the state, unless the transferee establishes in a hearing pursuant to~~
20 ~~subsection (f) of this section that he or she is a bona fide purchaser for value of the property who~~
21 ~~at the time of purchase was reasonably without cause to believe that the property was subject for~~
22 ~~forfeiture.~~

23 ~~(f) Procedures subsequent to the special verdict of forfeiture shall be as follows:~~

24 ~~(1) Following the entry of an order of forfeiture under this section, the state shall publish~~
25 ~~notice of the order and of its intent to dispose of the property once per week for at least three (3)~~
26 ~~weeks in the manner that the attorney general may provide by regulation. The attorney general shall~~
27 ~~also, to the extent practicable, provide written notice to all parties known to have an interest in the~~
28 ~~property and all parties whose identity is reasonably subject to discovery and who may have an~~
29 ~~interest in the forfeited property.~~

30 ~~(2) Any person, other than the defendant, asserting any interest in property that has been~~
31 ~~ordered forfeited to the state pursuant to this section may, within one hundred eighty (180) days of~~
32 ~~the final publication of notice or his or her receipt of notice under subdivision (1) of this subsection,~~
33 ~~whichever is earlier, petition the court for a hearing to adjudicate the validity of his or her alleged~~
34 ~~interest in the property.~~

1 ~~(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth~~
2 ~~the nature and extent of the petitioner's right, title, or interest in the property; and additional facts~~
3 ~~supporting the petitioner's claim; and the relief sought.~~

4 ~~(4) The hearing on the petition shall, to the extent practicable and consistent with the~~
5 ~~interest of justice, be held within thirty (30) days of the filing of the petition. The court may~~
6 ~~consolidate the hearing on the petition with a hearing on any other petition filed by a person other~~
7 ~~than the defendant and concerning the same property.~~

8 ~~(5) At a hearing, the petitioner may testify and present evidence and witnesses on his own~~
9 ~~behalf, and cross-examine witnesses who appear at the hearing. The state may present evidence~~
10 ~~and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses~~
11 ~~who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court~~
12 ~~shall consider the relevant portions of the record of the criminal case that resulted in the order of~~
13 ~~forfeiture.~~

14 ~~(6) In accordance with its findings at the hearing, the court shall amend the order of~~
15 ~~forfeiture if it determines that the petitioner has established by a preponderance of the evidence~~
16 ~~that:~~

17 ~~(i) The petitioner has a right, title, or interest in the property, and the right, title or interest~~
18 ~~was vested in the petitioner rather than the defendant or was superior to any right, title, or interest~~
19 ~~of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the~~
20 ~~property under this section; or~~

21 ~~(ii) The petitioner is a bona fide purchaser for value of any right, title, or interest in the~~
22 ~~property and was at the time of purchase reasonably without cause to believe that the property was~~
23 ~~subject to forfeiture under this section.~~

24 ~~(7) Following the court's disposition of all petitions filed under this section, or if no such~~
25 ~~petitions are filed, following the expiration of the period provided in § 21-28-5.04 for the filing of~~
26 ~~the petitions, the state shall have clear title to property that is the subject of the order of forfeiture~~
27 ~~and shall transfer good and sufficient title to any subsequent purchaser, transferee, or fund as~~
28 ~~provided in this chapter.~~

29 ~~(8) Except as provided in this section, no party claiming an interest in property subject to~~
30 ~~forfeiture under this section may:~~

31 ~~(i) Intervene in a trial or appeal of a criminal case involving the forfeiture of the property;~~

32 ~~or~~

33 ~~(ii) Commence any action against the state concerning the validity of the alleged interest.~~

34 ~~(g) In order to facilitate the identification or location of property declared forfeited and to~~

1 ~~facilitate the disposition of petitions filed pursuant to § 21-28-5.04 after the entry of an order~~
2 ~~declaring forfeited property to the state, the court may, upon application of the attorney general,~~
3 ~~order that the testimony of any witness relating to the property forfeited be taken by deposition and~~
4 ~~that any designated book, paper, document, record, recording (electronic or otherwise), or other~~
5 ~~material not privileged, be produced at the same time and place, in the same manner as provided~~
6 ~~for the taking of depositions under the Rules of Civil Procedure.~~

7 ~~(h) If any of the property described in § 21-28-5.04: (1) cannot be located; (2) has been~~
8 ~~transferred to, sold to or deposited with a third party; (3) has been placed beyond the jurisdiction~~
9 ~~of the court; (4) has been substantially diminished in value by any act or omission of the defendant;~~
10 ~~or (5) has been commingled with other property which cannot be divided without difficulty; the~~
11 ~~court shall order the forfeiture of any other property of the defendant up to the value of the subject~~
12 ~~property.~~

13 ~~(i) The court shall have jurisdiction to enter orders as provided in this section without~~
14 ~~regard to the location of any property that may be subject to forfeiture under this section or that has~~
15 ~~been ordered forfeited under this section.~~

16 **21-28-5.04.2. Civil forfeiture procedure.**

17 ~~(a) In addition to or in lieu of the criminal forfeiture procedures of this chapter, any property~~
18 ~~described in § 21-28-5.04 except as designated in subsection (b) of this section, is subject to civil~~
19 ~~forfeiture to the state. Civil forfeiture proceedings shall be in the nature of an action in rem and~~
20 ~~shall be governed by the civil rules for in rem proceedings.~~

21 ~~(b) All property described in § 21-28-5.04 is subject to civil forfeiture except that:~~

22 ~~(1) No conveyances used by any person as a common carrier in the transaction of business~~
23 ~~as a common carrier shall be forfeited under the provisions of this section unless it appears that the~~
24 ~~owner or other person in charge of the conveyance was a consenting party or privy to the covered~~
25 ~~offense charged;~~

26 ~~(2) No conveyance shall be forfeited under the provisions of this section by reason of any~~
27 ~~act or omission established by the owner of it to have been committed or omitted by any person~~
28 ~~other than the owner while the conveyance was unlawfully in the possession of a person other than~~
29 ~~the owner in violation of the criminal laws of this state or of the United States; and~~

30 ~~(3) No property shall be forfeited under this section, to the extent of the interest of an~~
31 ~~owner, by reason of any act or omission established by that owner to have been committed or~~
32 ~~omitted without knowledge or consent of that owner.~~

33 ~~(c) Property subject to forfeiture under this section may be seized by a law enforcement~~
34 ~~officer:~~

1 ~~(1) Upon process issued pursuant to the Rules of Civil Procedure applicable to in rem~~
2 ~~proceedings;~~

3 ~~(2) Upon process issued pursuant to a legally authorized search warrant; or~~

4 ~~(3) Without court process when:~~

5 ~~(i) The seizure is incident to a lawful arrest or search;~~

6 ~~(ii) The property subject to seizure has been the subject of a prior judgment in favor of the~~
7 ~~state in a controlled substance act;~~

8 ~~(iii) The law enforcement officer has probable cause to believe that the property is directly~~
9 ~~or indirectly dangerous to health or safety; or~~

10 ~~(iv) The law enforcement officer has probable cause to believe that the property is~~
11 ~~forfeitable under § 21-28-5.04.~~

12 ~~(d) In the event of a seizure under § 21-28-5.04 the property shall not be subject to~~
13 ~~sequestration or attachment but is deemed to be in the custody of the law enforcement agency~~
14 ~~making the seizure, subject only to the order of the court. When property is seized under this~~
15 ~~section, pending forfeiture and final disposition, the law enforcement agency making the seizure~~
16 ~~may:~~

17 ~~(1) Place the property under seal;~~

18 ~~(2) Remove the property to a storage area for safekeeping;~~

19 ~~(3) Remove the property to a place designated by the court; or~~

20 ~~(4) Request another agency authorized by law to take custody of the property and remove~~
21 ~~it to an appropriate location within the jurisdiction of the court.~~

22 ~~(e) As soon as practicable after seizure, the seizing agency shall conduct an inventory upon~~
23 ~~and cause the appraisal of the property seized.~~

24 ~~(f) In the event of a seizure under this section, the seizing agency shall within thirty (30)~~
25 ~~days send to the attorney general a written request for forfeiture, which shall include a statement of~~
26 ~~all facts and circumstances including the names of all witnesses then known, the appraised value~~
27 ~~of the property and the statutory provision relied upon for forfeiture.~~

28 ~~(g) The attorney general shall immediately examine the facts and applicable law of the~~
29 ~~cases referred to him or her pursuant to this section, and if it is probable that the property is subject~~
30 ~~to forfeiture shall immediately cause the initiation of administrative or judicial proceedings against~~
31 ~~the property. If, upon inquiry and examination, the attorney general determines that those~~
32 ~~proceedings probably cannot be sustained or that justice does not require the institution of the~~
33 ~~proceedings, he or she shall make a written report of those findings, transmit a copy to the seizing~~
34 ~~agency, and immediately authorize the release of the property.~~

1 ~~(h) If the value of any personal property seized does not exceed twenty thousand dollars~~
2 ~~(\$20,000), the attorney general may forfeit the property administratively in the following manner:~~

3 ~~(1) The attorney general shall provide notice of intention to forfeit property~~
4 ~~administratively by publication in a local newspaper of general circulation, one day per week for~~
5 ~~three (3) consecutive weeks.~~

6 ~~(2) In addition, to the extent practicable, the attorney general shall provide notice by~~
7 ~~registered mail of intent to forfeit the property administratively to all known interested parties and~~
8 ~~all parties whose identity is reasonably subject to discovery who may have an interest in the~~
9 ~~property seized.~~

10 ~~(3) Notice by publication and by mail shall include:~~

11 ~~(i) A description of the property;~~

12 ~~(ii) The appraised value of the property;~~

13 ~~(iii) The date and place of seizure;~~

14 ~~(iv) The violation of law alleged against the subject property;~~

15 ~~(v) The instructions for filing claim and cost bond or a petition for remission or mitigation;~~

16 ~~and~~

17 ~~(vi) A notice that the property will be forfeited to the state if a petition for remission or~~
18 ~~mitigation or a claim and cost bond has not been timely filed.~~

19 ~~(4) Persons claiming an interest in the property may file petitions for remission or~~
20 ~~mitigation of forfeiture or a claim and cost bond with the attorney general within thirty (30) days~~
21 ~~of the final notice by publication or receipt of written notice, whichever is earlier.~~

22 ~~(5) The attorney general shall inquire into the facts and circumstances surrounding petitions~~
23 ~~for remission or mitigation of forfeiture.~~

24 ~~(6) The attorney general shall provide the seizing agency and the petitioner a written~~
25 ~~decision on each petition for remission or mitigation within sixty (60) days of receipt of the petition~~
26 ~~unless the circumstances of the case require additional time, in which case the attorney general~~
27 ~~shall notify the petitioner in writing and with specificity within the sixty (60) day period that the~~
28 ~~circumstances of the case require additional time and further notify the petitioner of the expected~~
29 ~~decision date.~~

30 ~~(7) Any person claiming seized property under this subsection may institute de novo~~
31 ~~judicial review of the seizure and proposed forfeiture by timely filing with the attorney general a~~
32 ~~claim and bond to the state in the amount of ten percent (10%) of the appraised value of the property~~
33 ~~or in the penal sum of two hundred fifty dollars (\$250), whichever is greater, with sureties to be~~
34 ~~approved by the attorney general, upon condition that in the case of forfeiture the claimant shall~~

1 ~~pay all costs and expenses of the proceedings at the discretion of the court. Upon receipt of the~~
2 ~~claim and bond, or if he or she elects, the attorney general shall file with the court a complaint in~~
3 ~~rem in accordance with the procedures set forth in this section. Any funds received by the attorney~~
4 ~~general as cost bonds shall be placed in an escrow account pending final disposition of the case.~~

5 ~~(8) If no petitions or claims with bonds are timely filed, the attorney general shall prepare~~
6 ~~a written declaration of forfeiture of the subject property to the state and dispose of the property in~~
7 ~~accordance with this chapter.~~

8 ~~(9) If the petition is denied, the attorney general shall prepare a written declaration of~~
9 ~~forfeiture to the state and dispose of the property in accordance with this chapter and the attorney~~
10 ~~general's regulations, if any, pursuant to this chapter.~~

11 ~~(10) A written declaration of forfeiture signed by the attorney general pursuant to this~~
12 ~~chapter shall be deemed to provide good and sufficient title to the forfeited property.~~

13 ~~(i) If the value of any personal property seized exceeds twenty thousand dollars (\$20,000),~~
14 ~~the attorney general shall file a complaint in rem against the property within twenty (20) days of~~
15 ~~the receipt of the report referred to in subsection (f) of this section and after this provide notice of~~
16 ~~intention to forfeit by publication in a local newspaper of general circulation for a period of at least~~
17 ~~once per week for three (3) consecutive weeks. The notice shall include:~~

18 ~~(1) A description of the property;~~

19 ~~(2) The appraised value of the property;~~

20 ~~(3) The date and place of seizure;~~

21 ~~(4) The violation of law alleged against the subject property.~~

22 ~~(j)(1) The case may be tried by a jury, if in the superior court, upon the request of either~~
23 ~~party, otherwise by the court, and the cause of forfeiture alleged being proved, the court which shall~~
24 ~~try the case shall enter upon judgment for the forfeiture and disposition of the property according~~
25 ~~to law.~~

26 ~~(2) An appeal may be claimed by either party from any judgment of forfeiture rendered by~~
27 ~~the district court, to be taken in like manner as by defendants in criminal cases within the~~
28 ~~jurisdiction of the district court to try and determine, to the superior court for the same county in~~
29 ~~which the division of the district court rendering judgment is situated and like proceedings may be~~
30 ~~had therein as in cases of informations for forfeitures originally filed in that court.~~

31 ~~(3) The judgment of the superior court shall be final in all cases of the forfeitures, whether~~
32 ~~originally commenced in that court or brought there by appeal, unless a new trial is ordered, for~~
33 ~~cause shown by the supreme court.~~

34 ~~(k) The in rem action shall be brought in the district court if the value of the property seized~~

1 ~~is less than two hundred fifty thousand dollars (\$250,000), otherwise the in rem action shall be~~
2 ~~brought in the superior court. The attorney general shall also, to the extent practicable, provide~~
3 ~~written notice of the action in rem to all known interested parties and all persons whose identity is~~
4 ~~reasonably subject to discovery who may have an interest in the property.~~

5 ~~(l) Persons claiming an interest in the property may file claims against the property within~~
6 ~~thirty (30) days of the final notice by publication or receipt of written notice, whichever is earlier.~~
7 ~~The claims shall be filed and adjudicated in the manner set forth for petitions in criminal~~
8 ~~proceedings in § 21-28-5.04.1(f).~~

9 ~~(m) If the property sought to be forfeited is real property, the attorney general shall file a~~
10 ~~complaint in rem in the superior court against the property. In addition to providing notice as~~
11 ~~required by this chapter, the attorney general shall file a lis pendens with respect to the property~~
12 ~~with the recorder of deeds in the city or town in which the property is located.~~

13 ~~(n) Upon order of the court forfeiting the subject property to the state, the state shall have~~
14 ~~clear title to the forfeited property, and the attorney general may transfer good and sufficient title~~
15 ~~to any subsequent purchaser or transferee. Title to the forfeited property shall be deemed to have~~
16 ~~vested in the state upon the commission of the act giving rise to the forfeiture under this chapter.~~

17 ~~(o) Upon entry of judgment for the claimant in any proceeding to forfeit property under~~
18 ~~this chapter, the property shall immediately be returned to the claimant. If it appears that there was~~
19 ~~reasonable cause for the seizure or the filing of the complaint, the court shall cause a proper~~
20 ~~certificate of that to be entered, and the claimant shall not, in that case, be entitled to costs or~~
21 ~~damages, nor shall the person or agency who made the seizure, nor the attorney general nor the~~
22 ~~prosecutor, be liable to suit or judgment on account of the seizure, suit, or prosecution.~~

23 ~~(p) In any action brought under this section, the state shall have the initial burden of~~
24 ~~showing the existence of probable cause for seizure or arrest of the property. Upon that showing~~
25 ~~by the state, the claimant shall have the burden of showing by a preponderance of evidence that the~~
26 ~~property was not subject to forfeiture under this section.~~

27 SECTION 2. This act shall take effect upon passage.

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LC004284
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO FOOD AND DRUGS - UNIFORM CONTROLLED SUBSTANCES ACT

1 This act would repeal §§ 28-5.04, 28-5.04.1 and 28-5.04.2 of title 21 regarding forfeiture
2 of property, and money, criminal and civil forfeiture proceedings.

3 This act would take effect upon passage.

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LC004284
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