

## HOUSE BILL NO. HB0180

Freedom from government seizure act.

Sponsored by: Representative(s) Provenza, Andrew, Brown,  
Olsen, Singh and Western and Senator(s)  
Barlow, Case, Driskill and Rothfuss

A BILL

for

1 AN ACT relating to controlled substances; amending the  
2 procedures and requirements for the forfeiture and seizure  
3 of property under the Wyoming Controlled Substances Act;  
4 providing definitions; requiring reporting; making  
5 conforming amendments; repealing conflicting provisions;  
6 specifying applicability; and providing for an effective  
7 date.

8

9 *Be It Enacted by the Legislature of the State of Wyoming:*

10

11 **Section 1.** W.S. 35-7-1049.1 is created to read:

12

13 **35-7-1049.1. Forfeitures and seizures generally;**  
14 **property subject to forfeiture.**

15

1           (a) As permitted and limited by subsections (c)  
2 through (r) of this section, the following types of  
3 property are subject to forfeiture:

4

5           (i) All controlled substances that have been  
6 manufactured, distributed, dispensed or acquired in  
7 violation of this act;

8

9           (ii) All raw materials, products and equipment  
10 of any kind that are used, or intended for use, in  
11 manufacturing, compounding, processing, delivering,  
12 importing or exporting any controlled substance in  
13 violation of this act;

14

15           (iii) All property that is used as a container  
16 for property described in paragraph (i) or (ii) of this  
17 subsection;

18

19           (iv) All books, records, research products and  
20 materials, including formulas, microfilm, tapes and data,  
21 that are used, or intended for use, in violation of this  
22 act;

23

1           (v) All conveyances including aircraft, vehicles  
2 or vessels knowingly used, or intended for use, to  
3 transport or facilitate the transportation of property  
4 described in paragraph (i) or (ii) of this subsection,  
5 provided that:

6

7           (A) No conveyance is subject to forfeiture  
8 under this paragraph unless the conveyance was used to  
9 transport or receive property in violation of this act;

10

11           (B) No conveyance used by any person as a  
12 common carrier in the transaction of business as a common  
13 carrier is subject to forfeiture under this section unless  
14 it appears that the owner or corporate officer is a  
15 consenting party or privy to a violation of this act;

16

17           (C) No conveyance is subject to forfeiture  
18 under this paragraph by reason of any act committed without  
19 the knowledge or consent of the owner;

20

21           (D) A conveyance is not subject to  
22 forfeiture for a violation of W.S. 35-7-1031(c);

23

1                   (E) A forfeiture of a conveyance encumbered  
2 by a bona fide security interest is subject to the security  
3 interest if the secured party neither had knowledge of nor  
4 consented to the act of violation.

5

6                   (vi) All drug paraphernalia as defined by W.S.  
7 35-7-1002(a)(xxvii);

8

9                   (vii) All buildings knowingly used or intended  
10 for use to store, manufacture or distribute property  
11 described under paragraph (i) or (ii) of this subsection if  
12 the owner has knowledge of or gives consent to the act of  
13 the violation. A forfeiture of a building encumbered by a  
14 bona fide security interest is subject to the security  
15 interest of the secured party if that party did not have  
16 knowledge of or give consent to the act;

17

18                   (viii) Any property or other thing of pecuniary  
19 value furnished in exchange for a controlled substance in  
20 violation of this act, including any proceeds, assets or  
21 other property of any kind traceable to the exchange and  
22 any money, securities or other negotiable instruments used  
23 to facilitate a violation of this act. Property used or

1 furnished without the consent or knowledge of the owner is  
2 not forfeitable under this section to the extent of the  
3 owner's interest.

4

5 (b) Property subject to forfeiture under subsection  
6 (a) of this section may be seized by any law enforcement  
7 officer of the state upon process issued by any district  
8 court or district court commissioner having jurisdiction  
9 over the property. Seizure without process may be made if  
10 the board or commissioner has probable cause to believe  
11 that the property was used or is intended to be used in  
12 violation of this act.

13

14 (c) Any person convicted of a violation of this act  
15 punishable by imprisonment for more than one (1) year shall  
16 be subject to forfeiture of property listed under  
17 subsection (a) of this section. The procedure for  
18 forfeiture shall be as provided in subsections (d) through  
19 (m) of this section.

20

21 (d) Except for summary forfeiture under paragraph  
22 (h)(vi) and subsections (j) through (m) of this section,  
23 the court shall order forfeiture only as part of the

1 defendant's sentence. If the state seeks to forfeit  
2 property:

3

4 (i) The indictment or information shall contain  
5 notice to the defendant that the state seeks forfeiture and  
6 shall specifically identify the property sought to be  
7 forfeited;

8

9 (ii) All property shall be returned to the  
10 person from whom it was seized unless there is a finding or  
11 verdict of guilt, an admission of guilt or a plea of nolo  
12 contendere to a felony under this act;

13

14 (iii) After a verdict or finding of guilty, or  
15 after a plea of guilty or nolo contendere is accepted, the  
16 court shall conduct a forfeiture hearing to determine if  
17 the property is subject to forfeiture under this section.  
18 If the court finds by a preponderance of evidence that  
19 property is subject to forfeiture, the court shall enter a  
20 preliminary order directing the forfeiture;

21

22 (iv) The court may include in the preliminary  
23 order of forfeiture additional conditions reasonably

1 necessary to preserve the property's value pending any  
2 appeal.

3

4 (e) If the court makes a preliminary order of  
5 forfeiture of property, the legal interests of persons  
6 other than a party to the criminal action shall be  
7 determined, subject to the following:

8

9 (i) Following an entry of a preliminary order of  
10 forfeiture, the state shall publish notice of the order in  
11 a newspaper of general circulation in the state once a week  
12 for two (2) weeks and shall provide written notice by first  
13 class mail to the last known address of any person who,  
14 after reasonable inquiry, appears to be a potential owner  
15 or lien holder in the property. The notice shall describe  
16 the forfeited property and shall advise that parties with a  
17 potential interest in the property may contest the  
18 forfeiture by filing a petition with the court not later  
19 than sixty (60) days after the date of the second public  
20 notice or, if notice is mailed under this paragraph, not  
21 later than thirty (30) days after the written notice is  
22 mailed;

23

1           (ii) If a third party files a timely petition  
2 asserting an interest in the property, the court shall  
3 conduct a hearing. The court may permit the parties to  
4 conduct discovery in accordance with the Wyoming Rules of  
5 Civil Procedure if the court determines that discovery is  
6 necessary or desirable to resolve factual issues. After the  
7 hearing, the court shall enter a final order of forfeiture  
8 by amending the preliminary order as necessary to account  
9 for any third party rights. If no third party files a  
10 timely petition, the preliminary order shall become the  
11 final order upon expiration of the time for filing a  
12 petition;

13

14           (iii) If a defendant appeals from a conviction  
15 or a preliminary order of forfeiture, the court may stay  
16 the preliminary order of forfeiture on terms appropriate to  
17 ensure that the property remains available pending  
18 appellate review. A stay shall not delay the ancillary  
19 hearing or the determination of a third party's rights or  
20 interests. If the court rules in favor of any third party  
21 while an appeal is pending, the court may amend the order  
22 of forfeiture but shall not transfer any property interest  
23 to a third party until the decision on appeal becomes



1 final, unless the defendant consents in writing or on the  
2 record.

3

4 (f) An interest in property belonging to a third  
5 party shall not be forfeited to the extent that the third  
6 party establishes, by a preponderance of evidence, a  
7 perfected lien in the property, a perfected priority  
8 interest in the property or that he is an innocent owner.  
9 For purposes of this subsection:

10

11 (i) With respect to a property interest in  
12 existence at the time the violation of this act took place,  
13 "innocent owner" means a person who held an interest in the  
14 property who did not reasonably know of the conduct of the  
15 defendant related to the violation;

16

17 (ii) With respect to a property interest  
18 acquired after the violation of this act has taken place,  
19 the term "innocent owner" means a person who, at the time  
20 that person acquired the interest in the property:

21

1                   (A) Was a bona fide purchaser or seller for  
2 value of the property or a holder of a bona fide security  
3 interest; and

4

5                   (B) Did not know and was reasonably without  
6 cause to believe the property was subject to forfeiture.

7

8           (g) Property taken or detained under this section  
9 shall not be subject to replevin, but is deemed to be in  
10 the custody of the commissioner subject only to the orders  
11 and decrees of the court having jurisdiction over the  
12 proceedings. When property is seized under this act, the  
13 commissioner shall place the property under seal or  
14 otherwise assure the property is maintained under  
15 conditions reasonably necessary to preserve the property's  
16 value or may sell the property and hold the proceeds  
17 thereof if the property is perishable or threatens to  
18 decline speedily in value until the forfeiture proceedings  
19 have become final as to all parties and all rights of  
20 appeal have been exhausted. In order to preserve the  
21 property, if cash, the commissioner may deposit funds into  
22 a demand deposit account at an institution located within  
23 the state of Wyoming.

1

2 (h) When property is forfeited under this act, the  
3 commissioner may:

4

5 (i) Retain it for official use, in which case it  
6 shall become the property of the state of Wyoming;

7

8 (ii) Sell the property or any portion of the  
9 property that is not required to be destroyed by law and  
10 that is not harmful to the public. The proceeds shall be  
11 used for payment of all proper expenses of the proceedings  
12 for forfeiture and sale, including expenses of seizure,  
13 maintenance of custody, advertising and court costs;

14

15 (iii) Require the board to take custody of the  
16 property and remove it for disposition in accordance with  
17 law;

18

19 (iv) Transfer ownership and control of the  
20 property to any municipality or political subdivision of  
21 the state for the transferee's official use; or

22

1           (v) Authorize any law enforcement officer to  
2 apply to the district court for an order providing for  
3 destruction of the property if it is contraband controlled  
4 substances or paraphernalia and is no longer necessary for  
5 evidentiary purposes, provided that a district court order  
6 shall not be necessary for the division of criminal  
7 investigation to destroy quantities of contraband  
8 controlled substances after the division has tested random  
9 samples. The division of criminal investigation shall  
10 adopt rules necessary to operate a program to destroy bulk  
11 quantities of contraband controlled substances, which shall  
12 include:

13

14           (A) The photographing and videotaping of  
15 the entire bulk amount of seized contraband controlled  
16 substances to maintain its evidentiary value and to create  
17 exhibits for use in legal proceedings;

18

19           (B) The extraction of ten (10) random  
20 samples from the entire bulk amount of seized contraband  
21 controlled substances for laboratory analysis;

22

1                   (C) A weighing on properly calibrated  
2 scales of both the bulk amount of seized contraband  
3 controlled substances and the representative samples;

4

5                   (D) The additional retention of:

6

7                   (I) Five (5) ounces of organic  
8 material if the controlled substance is marijuana or a  
9 substance of similar organic composition;

10

11                   (II) Five (5) grams of a controlled  
12 substance in powdered or crystalline form;

13

14                   (III) Five-tenths (0.5) of a gram of a  
15 controlled substance in liquid form;

16

17                   (IV) An amount sufficient for testing  
18 by experts shall be made available from the additionally  
19 retained sample for the purpose of defending criminal  
20 charges arising from the possession, use or sale of the  
21 controlled substance.

22

1           (vi) After testing and the retention of samples  
2 specified in paragraph (v) of this subsection, order the  
3 destruction of the bulk amount of the seized contraband  
4 controlled substance in excess of the representative sample  
5 and the additional retained samples of the seized  
6 contraband controlled substance;

7

8           (vii) Authorize any law enforcement officer,  
9 after the representative samples and the additional  
10 retained samples of the contraband controlled substance are  
11 no longer necessary for evidentiary purposes, to apply to  
12 the district court with jurisdiction for an order providing  
13 for the destruction of the remaining contraband controlled  
14 substance.

15

16           (j) Any controlled substance listed in Schedules I  
17 through V that is possessed, transferred, sold or offered  
18 for sale in violation of this act is contraband and shall  
19 be seized and summarily forfeited to the state. Any  
20 controlled substance listed in Schedules I through V that  
21 is seized or comes into possession of the state and the  
22 owner is unknown, is contraband and shall be summarily  
23 forfeited to the state.

1

2 (k) Species of plants from which controlled  
3 substances in Schedules I and II may be derived that have  
4 been planted or cultivated in violation of this act, or of  
5 which the owners or cultivators are unknown, or that are  
6 wild growths, may be seized and summarily forfeited to the  
7 state.

8

9 (m) Upon demand by the commissioner or the  
10 commissioner's authorized agent, the failure of a person in  
11 occupancy or in control of land or a premises upon which  
12 the species of plants described in subsection (k) of this  
13 section is growing or being stored to produce an  
14 appropriate registration, or proof that he is the holder  
15 thereof, constitutes authority for the seizure and  
16 forfeiture of the plants.

17

18 (n) Any law enforcement agency of this state may  
19 accept, receive, dispose of and expend the property or  
20 proceeds from any property forfeited to the federal  
21 government or any state and allocated to the agency by the  
22 United States attorney general pursuant to 21 U.S.C. §  
23 881(e) or any law of another state. The property or

1 proceeds shall be in addition to funds appropriated to the  
2 law enforcement agency by the state legislature or any unit  
3 of local government. The property or proceeds may be  
4 credited to any lawfully created fund or account designated  
5 to receive proceeds of forfeitures.

6

7 (o) Any law enforcement agency of this state that  
8 receives property or proceeds pursuant to subsection (n) of  
9 this section shall report to the attorney general on forms  
10 to be prescribed by the attorney general:

11

12 (i) The receipt of property or proceeds within  
13 thirty (30) days from the receipt; and

14

15 (ii) The disposition or expenditure of any  
16 property or proceeds within ninety (90) days from the  
17 disposition or expenditure.

18

19 (p) Not later than August 1 of each year, the  
20 attorney general shall submit an annual report to the joint  
21 appropriations committee and the joint judiciary interim  
22 committee concerning recipients and the amount of property  
23 and proceeds accepted, received, disposed of or expended



1 during the prior calendar year under this section by law  
2 enforcement agencies, other than property subject to  
3 destruction or summary forfeiture under paragraph (h)(vi)  
4 and subsections (j) through (m) of this section.

5

6 (q) No law enforcement agency of this state shall  
7 accept property or proceeds pursuant to subsection (n) of  
8 this section if the tender of the property or proceeds is  
9 conditioned upon the state law enforcement agency's  
10 adoption of federal law enforcement practices and  
11 procedure.

12

13 (r) No law enforcement officer shall request, require  
14 or in any manner induce any person to execute a document  
15 purporting to waive, for purpose of forfeiture under this  
16 section, the person's interest in or rights to property  
17 seized. Except as otherwise provided in this subsection,  
18 any document obtained by a law enforcement officer  
19 purporting to waive a person's interest in or right to  
20 property seized under this section is null and void.  
21 Nothing in this subsection prohibits the commissioner,  
22 after a hearing and a finding of probable cause as required

1 by subsection (c) of this section, from requesting a person  
2 to waive the person's interest in or rights to property.

3

4 **Section 2.** W.S. 1-39-120(b) and 7-2-105(a)(intro) and  
5 (p)(intro) are amended to read:

6

7 **1-39-120. Exclusions from waiver of immunity.**

8

9 (b) Notwithstanding the waiver of immunity for tort  
10 liability provided by W.S. 1-39-105 through 1-39-112 or the  
11 waiver of immunity in actions based on contract provided by  
12 W.S. 1-39-104, a governmental entity and its public  
13 employees while acting within the scope of duties are  
14 immune from a civil action in tort, contract or otherwise  
15 alleging, in whole or in part, the improper seizure of  
16 property pursuant to W.S. ~~35-7-1049~~35-7-1049.1.

17

18 **7-2-105. Disposition and appraisal of property seized**  
19 **or held; notice and order to show cause; judgment.**

20

21 (a) When personal property not subject to be  
22 summarily destroyed is seized or held by any peace officer  
23 pursuant to any law of this state, or when property seized

1 by any peace officer is delivered to the appropriate law  
2 enforcement agency under provisions other than W.S.  
3 ~~35-7-1049~~ 35-7-1049.1, or property is taken into custody as  
4 lost, mislaid or abandoned, the head of the law enforcement  
5 agency shall forthwith ascertain as closely as practicable:  
6

7 (p) For purposes of this section, seized property  
8 that is not subject to W.S. ~~35-7-1049~~ 35-7-1049.1 may be  
9 summarily destroyed, provided the lawful owner has been  
10 contacted and has declined to take possession of the  
11 property, including:  
12

13 **Section 3.** W.S. 35-7-1049 is repealed.  
14

15 **Section 4.** This act shall apply to all seizures of  
16 property under the Wyoming Controlled Substances Act on and  
17 after July 1, 2024.  
18

19 **Section 5.** This act is effective July 1, 2024.  
20

21 (END)