

HOUSE BILL NO. HB0186

Human trafficking-forfeiture of property.

Sponsored by: Representative(s) Connolly, Berger, Halverson, Kroeker, Krone and Northrup and Senator(s) Burns, Craft and Rothfuss

A BILL

for

1 AN ACT relating to human trafficking; providing for
2 forfeiture and seizure of specified property; specifying
3 the procedures for forfeiture and seizure of property;
4 providing exceptions; specifying distribution of proceeds
5 from forfeited property; and providing for an effective
6 date.

7

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

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10 **Section 1.** W.S. 6-2-711 is created to read:

11

12 **6-2-711. Asset forfeiture.**

13

1 (a) The following are subject to forfeiture as
2 permitted pursuant to subsections (c) through (j) of this
3 section:

4

5 (i) All assets, foreign, domestic and within
6 this state:

7

8 (A) Of a person engaged in planning or
9 perpetrating an act in this state which violates this
10 article and all assets, foreign or domestic and within this
11 state, affording a person a source of influence over a
12 trafficked individual;

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14 (B) Acquired or maintained by a person with
15 the intent and for the purpose of supporting, planning,
16 conducting or concealing an act in this state which
17 violates this article; or

18

19 (C) Derived from, involved in or used or
20 intended to be used to commit an act in this state which
21 violates this article.

22

1 (ii) All books, records, products and materials
2 which are used or intended for use in violation of this
3 article;

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5 (iii) All conveyances including aircraft,
6 vehicles or vessels, knowingly used or intended for use to
7 transport or in any manner to knowingly facilitate
8 transportation for human trafficking in violation of this
9 article are subject to forfeiture, provided:

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11 (A) 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 article;

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

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21 (C) A forfeiture of a conveyance encumbered
22 by a bona fide security interest is subject to the interest

1 if the secured party neither had knowledge of nor consented
2 to the act.

3

4 (iv) All buildings knowingly used or intended
5 for use to further human trafficking in violation of this
6 article if the owner has knowledge of or gives consent to
7 the act of violation. A forfeiture of property encumbered
8 by a bona fide security interest is subject to the interest
9 if the secured party did not have knowledge of or give
10 consent to the act;

11

12 (v) Any property or other thing of pecuniary
13 value furnished in exchange for human trafficking in
14 violation of this article including any proceeds, assets or
15 other property of any kind traceable to the exchange and
16 any money, securities or other negotiable instruments used
17 to facilitate a violation of this article. Property used or
18 furnished without the consent or knowledge of the owner is
19 not forfeitable under this section to the extent of the
20 owner's interest;

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1 (vi) Overseas assets of persons convicted of
2 human trafficking under this article to the extent they can
3 be retrieved by the state.

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5 (b) Property subject to forfeiture under this article
6 may be seized by any law enforcement officer of the state
7 upon process issued by any district or circuit court having
8 jurisdiction over the property. Seizure without process may
9 be made if:

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11 (i) The seizure is incident to an arrest or a
12 search under a search warrant or an inspection under an
13 administrative inspection warrant;

14

15 (ii) The property subject to seizure has been
16 the subject of a prior judgment in favor of the state in a
17 criminal, injunction or forfeiture proceeding based upon
18 this article; or

19

20 (iii) There is probable cause to believe that
21 the property was used or is intended to be used in
22 violation of this article.

23

1 (c) Any person convicted of a violation of this
2 article which is punishable by imprisonment for more than
3 one (1) year shall be subject to forfeiture of property
4 listed under subsection (a) of this section. The procedure
5 for forfeiture shall be as provided in subsections (d)
6 through (j) of this section.

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8 (d) If the state seeks to forfeit property:

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10 (i) The indictment or information shall contain
11 notice to the defendant that the state seeks forfeiture and
12 shall specifically identify the property sought to be
13 forfeited;

14

15 (ii) After a verdict or finding of guilty, or
16 after a plea of guilty or nolo contendere is accepted, if
17 the forfeiture is contested, the court shall conduct a
18 forfeiture hearing. If the case is tried before a jury,
19 subsection (e) of this section shall apply to the hearing.
20 After the hearing, if the court finds that property is
21 subject to forfeiture, the court shall enter a preliminary
22 order directing the forfeiture;

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1 (iii) The court shall include in the preliminary
2 order of forfeiture conditions reasonably necessary to
3 preserve the property's value pending any appeal;

4
5 (iv) At sentencing, the preliminary forfeiture
6 order shall become final as to the defendant's interest in
7 forfeited property and shall remain preliminary as to third
8 party interests until an ancillary hearing is concluded
9 under subsection (f) of this section;

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11 (v) The court shall include the forfeiture order
12 in the judgment.

13
14 (e) In any case tried before a jury:

15
16 (i) The court shall determine before the jury
17 begins deliberating whether any party requests that the
18 jury be retained to determine the forfeitability of
19 property if it returns a guilty verdict;

20
21 (ii) If a party requests to have the jury
22 determine the forfeitability of property prior to the
23 jury's deliberations, the state shall submit a proposed

1 special verdict form listing each property subject to
2 forfeiture and asking the jury to determine whether the
3 state has established that the property is subject to
4 forfeiture under this section;

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6 (iii) If no party timely requests that the jury
7 be retained to determine the forfeitability of property,
8 the court shall determine whether the state has established
9 that the property is subject to forfeiture under this
10 section.

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12 (f) If the court orders the forfeiture of property,
13 third parties may assert a legal interest in the property
14 in an ancillary hearing as provided in this subsection:

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16 (i) Following an entry of a preliminary order of
17 forfeiture, the state shall publish notice of the order in
18 a newspaper of general circulation in the state once a week
19 for two (2) weeks and shall provide written notice to any
20 person who reasonably appears to be a potential claimant.
21 The notice shall describe the forfeited property and shall
22 advise that parties with a potential interest in the
23 property may contest the forfeiture by filing a petition

1 with the court not later than sixty (60) days after the
2 date of the second published notice;

3

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

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

1 third party while an appeal is pending, the court may amend
2 the order of forfeiture but shall not transfer any property
3 interest to a third party until the decision on appeal
4 becomes final, unless the defendant consents in writing or
5 on the record.

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7 (g) An interest in property belonging to a third
8 party shall not be forfeited if the third party establishes
9 by a preponderance of evidence that he is an innocent
10 owner. For purposes of this subsection:

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12 (i) With respect to a property interest in
13 existence at the time the violation of this article took
14 place, "innocent owner" means a person who held an interest
15 in the property who:

16

17 (A) Did not know and was reasonably without
18 cause to believe that a violation of this article took
19 place; or

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21 (B) Upon learning of the violation of this
22 article, did all that reasonably could be expected under
23 the circumstances to terminate use of the property which

1 would subject the property to forfeiture. A third party is
2 not required to take steps that the third party reasonably
3 believes would subject any person to physical danger.

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5 (ii) With respect to a property interest
6 acquired after the violation of this article has taken
7 place, the term "innocent owner" means a person who, at the
8 time that person acquired the interest in the property:

9

10 (A) Was a bona fide purchaser or seller for
11 value or a holder of a bona fide security interest in the
12 property; and

13

14 (B) Did not know and was reasonably without
15 cause to believe the property was used in connection with a
16 violation of this article.

17

18 (h) Property taken or detained under this section
19 shall not be subject to replevin, but is deemed to be in
20 the custody of and subject only to the orders and decrees
21 of the court having jurisdiction over the proceedings.
22 When property is seized under this section, the court shall
23 place the property under seal or otherwise assure the

1 property is maintained under conditions reasonably
2 necessary to preserve the property's value until the
3 forfeiture proceedings have become final as to all parties
4 and all rights of appeal have been exhausted.

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6 (j) The proceeds of a public sale or auction of
7 property forfeited pursuant to this section shall be
8 distributed as follows:

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10 (i) The amount necessary to pay court ordered
11 restitution shall be applied to pay that restitution;

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13 (ii) The amount necessary to pay any civil
14 judgment entered in favor of a forfeiting defendant's
15 victim at the time proceeds are received;

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17 (iii) If a remainder exists, to the crime
18 victims compensation account created by W.S. 1-40-114.

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20 **Section 2.** This act is effective July 1, 2015.

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(END)