

2015 -- H 5631

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO FOOD AND DRUGS -- UNIFORM CONTROLLED SUBSTANCES ACT

Introduced By: Representatives Newberry, Filippi, Regunberg, Slater, and Blazejewski

Date Introduced: February 25, 2015

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 21-28-5.04.2 of the General Laws in Chapter 21-28 entitled
2 "Uniform Controlled Substances Act" is hereby amended to read as follows:

3 **21-28-5.04.2. Civil forfeiture procedure.** -- (a) In addition to or in lieu of the criminal
4 forfeiture procedures of this chapter, any property described in § 21-28-5.04 except as designated
5 in subsection (b) of this section, is subject to civil forfeiture to the state. Civil forfeiture
6 proceedings shall be in the nature of an action in rem and shall be governed by the civil rules for
7 in rem proceedings.

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

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

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

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

1 (c) Property subject to forfeiture under this section may be seized by a law enforcement
2 officer:

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

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

6 (3) Without court process when:

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

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

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

12 (iv) ~~The law enforcement officer has probable cause to believe that the property is~~
13 ~~forfeitable under § 21-28-5.04.~~ Another exception to the warrant requirements of the United
14 States Constitution or the Rhode Island Constitution would apply.

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

20 (1) Place the property under seal;

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

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

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

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

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

31 (g) The attorney general shall immediately examine the facts and applicable law of the
32 cases referred to him or her pursuant to this section, and if it is probable that the property is
33 subject to forfeiture shall immediately cause the initiation of administrative or judicial
34 proceedings against the property. If, upon inquiry and examination, the attorney general

1 determines that those proceedings probably cannot be sustained or that justice does not require
2 the institution of the proceedings, he or she shall make a written report of those findings, transmit
3 a copy to the seizing agency, and immediately authorize the release of the property.

4 (h) If the value of any personal property seized does not exceed twenty thousand dollars
5 (\$20,000), the attorney general may forfeit the property administratively in the following manner:

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

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

13 (3) Notice by publication and by mail shall include:

14 (i) A description of the property;

15 (ii) The appraised value of the property;

16 (iii) The date and place of seizure;

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

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

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

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

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

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

33 (7) Any person claiming seized property under this subsection may institute de novo
34 judicial review of the seizure and proposed forfeiture by timely filing with the attorney general a

1 claim ~~and bond to the state in the amount of ten percent (10%) of the appraised value of the~~
2 ~~property or in the penal sum of two hundred fifty dollars (\$250), whichever is greater, with~~
3 ~~sureties to be approved by the attorney general,~~ upon condition that in the case of forfeiture the
4 claimant shall pay all costs and expenses of the proceedings at the discretion of the court. Upon
5 receipt of the claim ~~and bond~~, or if he or she elects, the attorney general shall file with the court a
6 complaint in rem in accordance with the procedures set forth in this section. ~~Any funds received~~
7 ~~by the attorney general as cost bonds shall be placed in an escrow account pending final~~
8 ~~disposition of the case.~~

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

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

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

17 (i) If the value of any personal property seized exceeds twenty thousand dollars
18 (\$20,000), the attorney general shall file a complaint in rem against the property within twenty
19 (20) days of the receipt of the report referred to in subsection (f) of this section and after this
20 provide notice of intention to forfeit by publication in a local newspaper of general circulation for
21 a period of at least once per week for three (3) consecutive weeks. The notice shall include:

- 22 (1) A description of the property;
- 23 (2) The appraised value of the property;
- 24 (3) The date and place of seizure;
- 25 (4) The violation of law alleged against the subject property.

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

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

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

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

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

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

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

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

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

31 (q) A petitioner may seek a court determination as to whether the forfeiture is
32 disproportionately excessive to the gravity of the offense giving rise to the forfeiture. If the court
33 finds that the forfeiture is grossly disproportional to the offense, it shall reduce or eliminate the
34 forfeiture as it deems appropriate in the interests of justice.

1 (r) Any proceedings under this chapter shall be deemed "adjudicative proceedings" for
2 the purposes of chapter 92 of title 42, equal access to justice for small businesses and individuals.
3 SECTION 2. This act shall take effect upon passage.

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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 eliminate the bond requirements in civil forfeiture cases, and would allow
2 a petitioner to request that the court determine if a forfeiture is disproportionately excessive, and
3 may be reduced or eliminated as it deems appropriate.

4 This act would take effect upon passage.

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