

1 **DRAFT**

2 **Asset Forfeiture Process and Private Property Protection Act**
3 **To replace “ALEC Comprehensive Asset Forfeiture Act” (2000)**
4

5 ***Summary***
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7 Civil forfeiture laws represent one of the most serious assaults on private property rights
8 in the nation today. Under civil forfeiture, police and prosecutors can seize your car or
9 other property, sell it and use the proceeds to fund agency budgets—often without so
10 much as charging you with a crime. This model improves and expands upon ALEC’s
11 “Comprehensive Asset Forfeiture Act” (2000). The “Asset Forfeiture Process and Private
12 Property Protection Act” protects individual liberty and property rights by standardizing
13 forfeitures across all crimes, simplifying procedures, and addressing counterproductive
14 incentives in the law that distort policing priorities. Importantly, this model does not
15 change the authority of law enforcement to seize property suspected of being associated
16 with crime or limit in any way prosecutors’ ability to charge and prosecute suspected
17 criminals. Moreover, it ensures that those individuals proven guilty of a crime do not
18 keep the fruits of their crime. In doing so, it strikes the right balance between the
19 individual property rights and public safety.
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21 ***Model Legislation***
22

23 **Section 1. {Title}**
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25 This act may be cited as the “Asset Forfeiture Process and Private Property Protection
26 Act”
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28 **Section 2. {Definitions}** As used in this Act:
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30 (A) “Contraband” means goods that are unlawful to import, export or possess.
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32 (B) “Conveyance” means a device used for transportation and includes a motor vehicle,
33 trailer, snowmobile, airplane, and vessel and any equipment attached to it. The term does
34 not include property that is stolen or taken in violation of the law.
35

36 (C) “Instrumentality” means property otherwise lawful to possess that is used in an
37 offense. An “instrumentality” includes a tool, a firearm, a conveyance, a computer,
38 computer software, a telecommunications device, money, and other means of exchange.
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40 (D) A “law subject to forfeiture” is a State law that carries a felony penalty and that
41 explicitly includes forfeiture as a punishment or sanction for the offense.
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43 **Section 3. {Legislative Intent}**
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45 (A) This Act intends to:
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47 (1) deter criminal activity by reducing its economic incentives;

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(2) increase the pecuniary loss from criminal activity; and

(3) protect against the wrongful forfeiture of property.

Section 4. {Exclusivity}

(A) This Act sets out the exclusive process governing forfeitures in the state of {insert state} and supersedes any conflicting provisions in law.

Section 5. {Criminal Asset Forfeiture}

(A) When a person is convicted of violating a law subject to forfeiture, the court, consistent with this Act, shall order the person to forfeit:

(1) proceeds and property the person derived directly from the commission of the crime;

(2) proceeds and property directly traceable to proceeds and property derived directly from the commission of the crime; and

(3) instrumentalities the person used in the commission of the crime.

Section 6. {Conviction Required; Standard of Proof}

(A) Property used in or derived from the violation of a law is subject to forfeiture only if

(1) the violation is of a law subject to forfeiture and

(2) the violation is established by proof of a criminal conviction.

(b) The State shall establish that seized property is forfeitable under section (5) by clear and convincing evidence.

Section 7. {No Civil Asset Forfeiture}

(A) There is no civil asset forfeiture.

Section 8. {Rule of lenity}

(A) The court shall resolve any ambiguity in this chapter relating to the State taking property through asset forfeiture in favor of the property owner.

Section 9. {Court-appointed Counsel}

(A) If a court determines that a person opposing forfeiture is financially unable to obtain representation by counsel, the court, at the request of the person, shall insure that the

95 person is represented by an attorney at the State's expense. The attorney shall submit a
96 statement of reasonable fees and costs to the court in a manner directed by the court.
97

98 **Section 10. {Authorization to Use Forfeiture}**
99

100 (A) Except for federal forfeitures consistent with section 39, forfeiture may occur only
101 pursuant to an explicit grant of authority in State law. An ordinance enacted by a county,
102 municipality, or other unit of government authorizing forfeiture is not valid.
103

104 (B) A prosecutor having jurisdiction over a law subject to forfeiture has authority to
105 pursue forfeiture.
106

107 **Section 11. {Property Subject to Forfeiture; Contraband}**
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109 (A) Property subject to forfeiture is limited to:

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111 (1) land, buildings, containers, conveyances, equipment, materials, products,
112 money, securities, and negotiable instruments; and
113

114 (2) ammunition, firearms, and ammunition-and-firearm accessories found on
115 or in proximity to a person who violated a law subject to forfeiture or in a
116 conveyance used to violate a law subject to forfeiture.
117

118 (B) No property right exists in contraband, including scheduled drugs without a valid
119 prescription. Contraband is subject to seizure and must be disposed of according to State
120 law. Contraband is not subject to forfeiture under this chapter.
121

122 **Section 12. {Substitution of Assets for Unreachable Property}**
123

124 (A) Upon the State's motion following conviction, the court may order the forfeiture of
125 substitute property owned fully by the defendant up to the value of unreachable property
126 only if the State proves by a preponderance of the evidence that the defendant
127 intentionally transferred, sold, or deposited property with a third party to avoid the
128 court's jurisdiction.
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130 **Section 13. {No Additional Remedies}**
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132 (A) Except as otherwise provided in this chapter, the State may not seek additional
133 remedies including but not limited to personal money judgments.
134

135 **Section 14. {No Joint-and-Severall Liability; Pro Rata Forfeitures}**
136

137 (A) A defendant is not jointly and severally liable for forfeiture awards owed by other
138 defendants.
139

140 (B) When ownership is unclear, a court may order each defendant to forfeit property on a
141 pro rata basis proportional to the proceeds that each defendant personally received.

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143 **PROCESS**
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145 **Section 15. {Designating Property Subject to Forfeiture}**
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147 (A) Property subject to forfeiture must be identified by the State in an indictment of a
148 grand jury or by information in the court in any related criminal proceeding in which a
149 person with an interest in the property has been simultaneously charged with a violation
150 of a law subject to forfeiture.

151
152 (B) The indictment or information must specify the time and place of the violation,
153 identify the property, and particularly describe its use in the commission of the crime or
154 derivation from the commission of the crime.

155
156 (C) At any time prior to trial, the State, with the consent of the court and any defendant
157 with an interest in the property, may file an ancillary charge alleging that property is
158 subject to forfeiture.

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160 **Section 16. {Seizure with Process}**
161

162 (A) At the request of the State, a court may issue an ex parte preliminary order to seize or
163 secure property for which forfeiture is sought and to provide for its custody. Application,
164 issuance, execution, and return are subject to State law.

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166 **Section 17. {Seizure without Process}**
167

168 (A) Property subject to forfeiture may be seized without a court order if:

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170 (1) the seizure is incident to a lawful arrest or a lawful search;

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172 (2) the property subject to seizure has been the subject of a prior judgment in
173 favor of the State; or

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175 (3) the State has probable cause to believe that the delay occasioned by the
176 necessity to obtain process would result in the removal or destruction of the
177 property and that the property is forfeitable under section 5.

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179 **Section 18. {Receipt for Seized Property}**
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181 (A) When property is seized, the law enforcement officer shall give an itemized receipt to
182 the person in possession of the property; or in the absence of any person, leave a receipt
183 in the place where the property was found, if reasonably possible.

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185 **Section 19. {Bill of Particulars}**
186

187 (A) A motion for a bill of particulars may be made before arraignment, within 90 days
188 after arraignment, or at any later time that the court permits. A bill of particulars may be
189 amended at any time subject to conditions that justice requires.

190

191 **Section 20. {Title}**

192

193 (A) At the time of seizure or entry of a restraining order, the State acquires provisional
194 title to the seized property. Provisional title authorizes the State to hold and protect the
195 property.

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197 (B) Title to the property vests with the State when the trier of fact renders a final
198 forfeiture verdict and relates back to the time when the State acquired provisional title.
199 However, this title is subject to claims by third parties adjudicated under this chapter.

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201 **Section 21. {Storage}**

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203 (A) When property is seized, the State shall use reasonable diligence to secure the
204 property and prevent waste.

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206 **Section 22. {Records}**

207

208 (A) A State entity having custody of seized property that is subject to forfeiture shall
209 maintain the following records:

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- 211 (1) the exact kinds, quantities, and forms of the property;
- 212 (2) the date and from whom it received the property;
- 213 (3) the violation of law that subjected the property to seizure;
- 214 (4) the liens against the seized property;
- 215 (5) the make, model, and serial number of each seized firearm;
- 216 (6) to whom and when the notice of forfeiture was given;
- 217 (7) to whom it delivered the property; and
- 218 (8) the date and manner of destruction or disposition of the property.

220

221 (B) The records required under paragraph (A) are subject to the State's freedom of
222 information act.

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224 **Section 23. {Bond by Owner for Possession}**

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226 (A) If the owner of property that has been seized seeks its possession before the criminal
227 trial, the owner may post bond or give substitute property in an amount equal to the fair
228 value of the property.

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234 market value of the seized property at the time the bond amount is determined.

235

236 (B) On the posting of bond or the giving of substitute property, the State shall return the
237 seized property to the owner within a reasonable period of time not to exceed 3 business
238 days. The forfeiture action may then proceed against the bond or substitute property as if
239 it were the seized property.

240

241 (C) This section does not apply to property reasonably held for investigatory purposes.

242

243 **Section 24. {Petition for Remission or Mitigation}**

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245 (A) Prior to the entry of a court's order disposing of the forfeiture action, any person who
246 has an interest in seized property may file with the state's attorney general a petition for
247 remission or mitigation of the forfeiture. The attorney general shall remit or mitigate the
248 forfeiture upon terms and conditions the attorney general deems reasonable if the attorney
249 general finds that:

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251 (1) the petitioner did not intend to violate the law or

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253 (2) extenuating circumstances justify the remission or mitigation of the
254 forfeiture.

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256 **Section 25. {Pretrial Replevin Hearing}**

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258 (A) Following the seizure of property under this chapter, a defendant or third-party has a
259 right to a pretrial hearing to determine the validity of the seizure.

260

261 (B) The claimant may claim at any time prior to 60 days before trial of the related
262 criminal violation the right to possession of property by motion to the court to issue a writ
263 of replevin.

264

265 (C) The claimant shall file a motion establishing the validity of the alleged right, title, or
266 interest in the property.

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268 (D) The court shall hear the motion no more than 30 days after the motion is filed.

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270 (E) The State shall file an answer showing probable cause for the seizure, or cross-
271 motions at least 10 days before the hearing.

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273 (F) The court shall grant the motion if it finds that (1) it is likely the final judgment will
274 be that the State must return the property to the claimant or (2) the property is the only
275 reasonable means for a defendant to pay for legal representation in the forfeiture or
276 criminal proceeding.

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278 (G) In lieu of ordering the issuance of the writ, the court may order the State to give
279 security for satisfaction of any judgment, including damages, that may be rendered in the
280 action, or order other relief as may be just.

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Section 26. {Discovery}

(A) Discovery is subject to the rules of criminal procedure.

Section 27. {Right to Trial by Jury}

(A) Any party to a forfeiture action has a right to trial by jury.

Section 28. {Trial Proceedings}

(A) A trial related to the forfeiture of property must be held in a single proceeding together with the trial of the related alleged crime unless the defendant moves to bifurcate the trial.

(B) The court, upon motion of a defendant, shall separate the trial of the criminal matter against the defendant from the matter related to the forfeiture of property.

(C) The court, upon motion of a defendant, shall allow a defendant to waive the right to trial by jury related to the forfeiture of property while preserving the right to trial by jury of any crime alleged.

(D) If the court bifurcates the jury trial, the court shall first instruct and submit to the jury the issue of the guilt or innocence of the defendant to be determined by proof beyond a reasonable doubt and shall restrict argument of counsel to those issues.

(E) If the court bifurcates the jury trial, each party may introduce evidence in the forfeiture phase that was not introduced in the criminal phase.

(F) If the jury finds a defendant guilty of the related criminal offense and the defendant did not waive the right to trial by jury related to the forfeiture, the court shall instruct and submit to the jury the issue of the forfeiture. The court may use interrogatories to address the forfeiture issue.

Section 29. {Proportionality}

(A) Following determination by the trier of fact, the owner may petition the court to determine whether the forfeiture is unconstitutionally excessive under the State or U.S. constitution.

(B) The owner has the burden of establishing that the forfeiture is grossly disproportional to the seriousness of the offense by a preponderance of the evidence at a hearing conducted by the court without a jury.

(C) In determining whether the forfeiture of an instrumentality is constitutionally excessive, the court shall consider all relevant factors, including, but not limited to:

- 328 (1) the seriousness of the offense and its impact on the community, including
329 the duration of the activity and the harm caused by the person whose property
330 is subject to forfeiture;
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332 (2) the extent to which the person whose property is subject to forfeiture
333 participated in the offense;
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335 (3) the extent to which the property was used in committing the offense;
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337 (4) the sentence imposed for committing the crime subject to forfeiture; and
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339 (5) whether the offense was completed or attempted.
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341 (D) In determining the value of the instrumentality subject to forfeiture, the court shall
342 consider relevant factors, including, but not limited to:

- 343
344 (1) the fair market value of the property;
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346 (2) the value of the property to the person whose property is subject to
347 forfeiture including hardship to the owner if the forfeiture is realized; and
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349 (3) the hardship from the loss of a motor vehicle or other property to family
350 members or others if the property is forfeited assets.
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352 (e) The court may not consider the value of the instrumentality to the State in determining
353 whether the forfeiture of an instrumentality is constitutionally excessive.

354 355 **THIRD-PARTY INTERESTS**

356 357 **Section 30. {Secured Interest}**

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359 (A) A bona fide security interest is not subject to forfeiture unless the person claiming a
360 security interest had actual knowledge that the property was subject to forfeiture at the
361 time of the property was seized or restrained under this chapter.
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363 (B) A person claiming a security interest bears the burden of establishing that the validity
364 of the interest by a preponderance of the evidence.
365

366 367 **Section 31. {Ancillary Hearing of Third-Party Interests}**

368 (A) A person not charged in the indictment or information but who has an interest in
369 property subject to forfeiture may not intervene after the criminal trial has begun.
370

371 (B) Following the entry of a verdict of forfeiture of property pursuant to this chapter or
372 the entry of a guilty plea in court on the record, the State shall exercise reasonable
373 diligence to identify persons with a potential interest in the property and make reasonable
374 efforts to give notice to potential claimants. The State shall provide written notice of its

375 intent to dispose of the property to any person known or alleged to have an interest in the
376 property exempted from forfeiture under this chapter, including any person potentially
377 making claims for

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379 (1) court-ordered child support,

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381 (2) employment-related compensation or

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383 (3) payment of unsecured debts. The notice must also be made by publication in a
384 reasonable geographic area.

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386 (C) A person other than the defendant asserting a legal interest in the property, within 60
387 days of the date of the notice, may petition the court for a hearing to adjudicate the
388 validity of the alleged interest in the property. The request for the hearing must be signed
389 by the petitioner under penalty of perjury and state the nature and extent of the
390 petitioner's right, title, or interest in the property; the time and circumstances of the
391 petitioner's acquisition of the right, title, or interest; and any additional facts supporting
392 the petitioner's claim and the relief sought.

393

394 (D) Upon the filing of a petition, the court shall schedule the hearing as soon as
395 practicable but in no event later than 6 months after the sentencing of any defendant
396 convicted upon the same indictment. The court shall issue or amend a final order of
397 forfeiture in accordance with its determination if, after the hearing, the court determines
398 that:

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400 (1) the petitioner has a legal right, title, or interest in the property, and such right,
401 title or interest renders the order of forfeiture invalid in whole or in part because
402 the right, title or interest was vested in the petitioner rather the defendant or was
403 superior to any right, title or interest of the defendant at the time of the property
404 was seized or restrained under this chapter; or

405

406 (2) the petitioner is a bona fide purchaser for value of the right, title, or interest in
407 the property and was at the time of purchase without cause to believe that the
408 property was subject to forfeiture under this chapter. The State has the burden of
409 proof with respect to the issue of whether the petitioner was without cause to
410 believe that the property was subject to forfeiture at the time of purchase or other
411 acquisition of value.

412

413 (E) A qualified indigent who wishes to contest the forfeiture of property and appears to
414 have an exempt interest has a right to court-appointed counsel as provided in section 9. In
415 addition, the court shall waive the person's court fees.

416

417 **Section 32. {Innocent Partial or Joint Owner}**

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419 (A) The property of an innocent partial or joint owner may not be forfeited under any
420 forfeiture statute. The process for determining whether a person is an innocent partial or
421 joint owner is set out in this section.

422

423 (B) A person who has any form of partial or joint interest, including joint tenancy,
424 tenancy in common, or tenancy by the entirety, in property subject to forfeiture existing
425 at the time the illegal conduct giving rise to forfeiture occurred and who claims to be an
426 innocent partial or joint owner shall make a prima facie case that the person has a legal
427 right, title, or interest in the property seized or restrained under this chapter.

428

429 (C) If paragraph (B) is satisfied and the State seeks to proceed with the forfeiture against
430 the person's ownership interest, the State shall prove by a preponderance of the evidence
431 that the person had actual knowledge of the underlying crime giving rise to the forfeiture
432 or was willfully blind to its commission.

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434 (D) If paragraph (C) is satisfied and the person seeks to establish the person's innocent
435 owner status, the person shall show by a preponderance of the evidence that the person
436 did all that reasonably could be expected under the circumstances to prohibit, abate, or
437 terminate the illegal use of the property. The person may show that the person did all that
438 reasonably could be expected by demonstrating, among other things, that the person, to
439 the extent permitted by law:

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441 (1) gave timely notice to an appropriate law enforcement agency of information
442 that led the person to know the conduct giving rise to a forfeiture would occur or
443 had occurred; or

444

445 (2) in a timely fashion revoked or made a good-faith attempt to revoke permission
446 for those engaging in the illegal conduct to use the property or took reasonable
447 actions in consultation with a law enforcement agency to discourage or prevent
448 the illegal use of the property.

449

450 (3) A person is not required under this paragraph to take steps that the person
451 reasonably believes would be likely to subject the person to physical danger.

452

453 (E) If paragraph (D) is satisfied, the court shall find that the claimant was not a party to
454 the crime and is an innocent partial or joint owner.

455

456 (F) A person who acquired an ownership interest in property after the commission of a
457 crime giving rise to the forfeiture has occurred and who claims to be an innocent partial
458 or joint owner, shall make a prima facie case that the person legal right, title, or interest in
459 the property seized or restrained under this chapter.

460

461 (G) If paragraph (F) is satisfied and the State seeks to proceed with the forfeiture against
462 the person's ownership interest, the State shall prove by a preponderance of the evidence
463 that at the time the person acquired the property interest the person had actual knowledge
464 that the property was subject to forfeiture or was willfully blind to the commission of the
465 crime that subjected the property to forfeiture.

466

467 (H) If the State fails to meet its burden in paragraph (G), the court shall find that the
468 person was not a party to the crime and is an innocent partial or joint owner.

469

470 (I) An otherwise valid claim under paragraph (F) may not be denied on the grounds that
471 the person gave nothing of value in exchange for the property if:

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473 (1) the property is the person's primary residence;

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475 (2) depriving the person of the property would deprive the person of the means to
476 maintain reasonable shelter in the community for the person and all dependents
477 residing with the person;

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479 (3) the property is not, and is not traceable to, the proceeds of any criminal
480 offense; and

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482 (4) the person acquired interest in the property through marriage, divorce, or legal
483 separation, or the person was the spouse or legal dependent of someone whose
484 death resulted in the transfer of the property to the person through inheritance or
485 probate, except that the court shall limit the value of any real property interest for
486 which innocent ownership is recognized under this paragraph to the value
487 necessary to maintain reasonable shelter in the community for the person and all
488 dependents residing with the person.

489

490 (J) If the innocent joint or partial owner's claim is established under this section, the State
491 shall relinquish all claims of title to the property that may have vested with it.

492

493 (K) If the court determines that an innocent joint or partial owner has any form of partial
494 or joint interest in a conveyance subject to forfeiture related to operating a conveyance
495 while impaired, the court may order that the innocent joint or partial owner participate in
496 the ignition interlock device program under State law as a condition of ordering the
497 device be returned to the innocent owner.

498

499 (L) If the court determines that an innocent joint or partial owner has any form of partial
500 or joint interest in property, other than property described in paragraph (K), the court
501 shall enter an appropriate order reflecting the innocent owner's preference for:

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503 (1) severing the property;

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505 (2) transferring the property to the State with a provision that the State
506 compensate the innocent owner to the extent of the owner's ownership interest
507 once a final order of forfeiture has been entered and the property has been reduced
508 to liquid assets; or

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510 (3) permitting the innocent owner to retain the property subject to a lien in favor
511 of the State to the extent of the forfeitable interest in the property.

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513

POSTFORFEITURE

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Section 33. {Sale of Property}

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517 (A) If a trier of fact finds that property is to be forfeited, the court shall order the State to:

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(1) return stolen property to its owner;

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(2) sell all other firearms, ammunition and firearm accessories to licensed
firearms dealers in a commercially reasonable manner; and

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(3) sell other property in a commercially reasonable manner.

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Section 34. {Prohibition on Retaining Property; Sale Restrictions}

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(A) The law enforcement agency that seized property forfeited under this chapter may not
retain it for its own use or sell it directly or indirectly to any employee of the agency, to a
person related to an employee by blood or marriage, or to another law enforcement
agency.

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Section 35. {Disposition of Proceeds}

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(A) Proceeds seized and proceeds from the sale of forfeited assets may be distributed
only following a court order. The court shall order the funds be used to pay, in order of
priority, for the following purposes:

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(1) storage and sale expenses;

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(2) satisfaction of valid liens against the property;

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(3) restitution ordered to the victim of the criminal offense;

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(4) reimbursement of investigation costs excluding salaries that the law
enforcement agency incurred in the seizure of the assets subject to the
forfeiture action;

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(5) court-ordered child support obligations;

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(6) claims for compensation by the defendant's employees; and

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(7) claims for compensation by defendant's unsecured creditors.

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(B) All remaining funds must be deposited into the State's treasury and credited to the
general fund.

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Section 36. {Reporting}

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(A) For each forfeiture action occurring in the State regardless of the authority for it, the
participating law enforcement agency and prosecutor shall provide a written record of the
forfeiture incident to the State reporting agency.

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- 563
564 (B) The record must include the amount forfeited, the underlying crime or conduct, its
565 date, and whether the property had a lien against it. The record must also list the number
566 of firearms forfeited and the make, model, and serial number of each firearm forfeited.
567 The record must indicate how the property was disposed.
568
569 (C) The law enforcement agency and the prosecutor shall report to the State reporting
570 agency all instances in which property seized for forfeiture is returned to its owner either
571 because forfeiture is not pursued or for any other reason.
572
573 (D) For forfeitures resulting from the activities of multi-jurisdictional law enforcement
574 entities, each entity on its own behalf shall report the information required in this section.
575
576 (E) The State reporting agency may require information not specified in this section to be
577 reported as well.
578
579 (F) Reports must be made on a monthly basis in a manner prescribed by the State
580 reporting agency.
581
582 (G) The State reporting agency shall report annually to the legislature and the public on
583 the nature and extent of forfeitures.
584
585 (H) The State reporting agency shall include in its report required under paragraph (G)
586 recommended changes to forfeiture law to better ensure that forfeiture proceedings are
587 handled in a manner that is fair to innocent property owners, secured interest holders,
588 citizens, and taxpayers.
589
590 (I) The State reporting agency shall include in its report required under paragraph (G)
591 information on law enforcement agencies and prosecutorial offices not in compliance
592 with this section and shall order the State to withhold payment of any funds to those
593 agencies and offices until compliance is achieved.
594

MISCELLANEOUS PROVISIONS

Section 37. {Disposing of Property of a Person Deported}

- 598
599 (A) This section covers procedures for disposing of property when the owner is deported
600 from the United States to a foreign country.
601
602 (B) If the owner of property is deported after
603 (1) being convicted of a violation of a state law that is subject to forfeiture and
604
605 (2) the property is found to be an instrumentality or proceeds of the violation of
606 that state law, the court shall enter an order disposing of the property in
607 accordance with sections 33, 34, and 35.
608
609 (C) If the owner of property is deported but

610 (1) the owner is not convicted of violating a state law that is subject to forfeiture
611 or

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613 (2) the property is not found to be an instrumentality or proceeds from the
614 violation of a state law subject to forfeiture for which the owner of the property is
615 convicted, the property shall be returned to the next of kin of the person deported.
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617 (D) If the next of kin is not known or refuses the property, the State shall exercise
618 reasonable diligence to identify persons with a potential interest in the property and make
619 reasonable efforts to give notice to potential claimants. The State shall provide written
620 notice to persons known or alleged to have an interest in the property including other
621 family members and any person potentially making claims for court-ordered child
622 support, employment-related compensation, or payment of debts. The notice must also
623 be made by publication in a reasonable geographic area.
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625 (E) If no claim is made within 60 days of the notice's publication date, the court shall
626 enter an order disposing of the property in accordance with section 33, 34, and 35.
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628 (F) A person wanting to assert a legal claim to the property shall, within 60 days of the
629 date of the applicable notice in (D), petition the court for a hearing to adjudicate the
630 validity of the alleged interest in the property. The petition for the hearing must be
631 signed by the claimant under penalty of perjury. It must state the nature and extent of the
632 claimant's right, title, or interest in the property; the time and circumstances of the
633 claimant's acquisition of the right, title, or interest; and any additional facts supporting
634 the claim and the relief sought.
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636 (G) The court shall schedule a hearing as soon as practicable to determine if the claimant
637 has a legal right, title or interest in the property or is a bona fide purchaser for value of
638 the legal right, title or interest in the property.
639

640 **Section 38. {Return of Property, Damages, and Costs}**

641
642 (A) The State shall return property to the owner within a reasonable period of time not to
643 exceed 3 business days after a court finds that:
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645 (1) the owner had a bona fide security interest;

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647 (2) the owner was an innocent owner;

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649 (3) charges against the owner were dismissed; or

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651 (4) the owner was found not guilty of the criminal charge that is the basis for
652 the forfeiture action.
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654 (B) If property returned under paragraph (A) has been damaged, the owner may make a
655 claim in small claims court or court for the damages to the seized property against the
656 agency that seized the property.

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(C) The State is responsible for any storage fees and related costs applicable to property returned under paragraph (A).

Section 39. {Penalty for Violations}

(A) Any person acting under color of law, official title, or position who takes any action intending to conceal, transfer, withhold, retain, divert, or otherwise prevent any proceeds, conveyances, real property, or any things of value forfeited under the law of the State or the United States from being applied, deposited, used, or returned to the owner in accordance with this chapter is subject to a civil penalty in an amount of three times the value of the forfeited property concealed, transferred, withheld, retained, or diverted.

(B) Any taxpayer to the State has standing to challenge in court any action contrary to this Act.

Section 40. {Interaction with Federal Government}

(A) No unit of State government may transfer a criminal investigation or proceeding to the federal government to circumvent State forfeiture law.

(B) For a State government unit to transfer a criminal investigation or proceeding that includes forfeiture to the federal government, a State court shall affirmatively find that:

(1) the suspected criminal activity giving rise to the forfeiture is interstate in nature and sufficiently complex to justify the transfer; or

(2) the seized property is forfeitable only as a violation of federal law.

(C) All funds paid by the federal government must be deposited into the State's treasury. The State shall credit:

(1) the State government unit involved with the federal government sufficiently to reimburse it for investigation costs, excluding salaries, that the State government unit incurred related to the seizure of the assets subject to the forfeiture action and

(2) the remainder to the general fund.

(D) No unit of State government may accept from the federal government any instrumentality or payment of proceeds not permitted by paragraph (C).

(E) The State government unit shall report all transfers to the federal government of an investigation or criminal proceeding that involves forfeiture per the reporting requirements in section 36.

702 (F) Any taxpayer has standing to challenge in court the receipt of any proceeds or
703 instrumentality by a State government unit from the federal government contrary to
704 paragraphs (C) and (D).
705

706 **Section 41. {Attorneys' Fees}**
707

708 (A) In any forfeiture proceeding under this chapter in which the claimant prevails, the
709 State is liable for:

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- 711 (1) reasonable attorney fees and other litigation costs reasonably incurred by
712 the claimant;
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 - 714 (2) postjudgment interest; and
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 - 716 (3) in cases involving currency, other negotiable instruments, or the proceeds
717 of an interlocutory sale:
 - 718 (a) interest actually paid to the State from the date of seizure of the
719 property that resulted from the investment of the property in an
720 interest-bearing account or instrument; and
 - 721 (b) an imputed amount of interest that the currency, instruments, or
722 proceeds would have earned at the rate applicable to the 30-day
723 U.S. Treasury Bill, for any period during which no interest was
724 paid (not including any period when the property reasonably
725 was in use as evidence in an official proceeding or in
726 conducting scientific tests for the purpose of collecting
727 evidence), commencing 15 days after the property was seized
728 by a law enforcement agency.
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730 **Section 42. {Severability clause}**
731

732 **Section 43. {Repealer clause}**
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734 **Section 44. {Effective date}**