

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 23-0608.01 Jerry Barry x4341

HOUSE BILL 23-1086

HOUSE SPONSORSHIP

DeGraaf, Bradley, Soper

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING ENACTMENT OF THE "DUE PROCESS ASSET FORFEITURE**
102 **ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill replaces existing statutes on public abatement and instead enacts provisions concerning criminal forfeiture. The bill:

- Limits forfeiture so it can occur only when a defendant is convicted of a crime of unlawful distribution, manufacturing, dispensing, or selling a controlled substance;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

- Specifies that a forfeiture proceeding is not a separate civil proceeding but part of a defendant's criminal proceeding;
- Specifies when personal property may be seized with or without process;
- Establishes duties and procedures when property is seized;
- Establishes court procedures for various parties;
- Allows for the disposition of seized assets and proceeds consistent with prior law; and
- Establishes limitations on seizures involving the federal government.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 11 to article
3 13 of title 16 as follows:

4 PART 11

5 DUE PROCESS ASSET FORFEITURE ACT

6 **16-13-1101. Short title and application.** THE SHORT TITLE OF
7 THIS PART 11 IS THE "DUE PROCESS ASSET FORFEITURE ACT". THIS PART
8 11 APPLIES TO THE SEIZURE AND FORFEITURE OF PROPERTY USED IN AND
9 DERIVED DIRECTLY FROM THE UNLAWFUL DISTRIBUTION,
10 MANUFACTURING, DISPENSING, OR SALE OF CONTROLLED SUBSTANCES AS
11 DESCRIBED IN SECTION 18-18-405.

12 **16-13-1102. Legislative declaration.** (1) THE GENERAL
13 ASSEMBLY FINDS AND DECLARES THAT:

14 (a) THE FOURTEENTH AMENDMENT OF THE UNITED STATES
15 CONSTITUTION PROVIDES: "[N]OR SHALL ANY STATE DEPRIVE ANY PERSON
16 OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF THE LAW";

17 (b) CURRENTLY, THE DEPRIVATION OF LIFE OR LIBERTY IS ONLY
18 DETERMINED IN CRIMINAL COURT, WHILE THE DEPRIVATION OF PROPERTY
19 IS DETERMINED IN A PARALLEL CIVIL COURT PROCESS, CREATING
20 ADDITIONAL BURDEN ON THE COURT SYSTEM;

1 (c) PROPERTY SHOULD BE IN THE SAME CATEGORY AS LIFE AND
2 LIBERTY;

3 (d) A CRIMINAL COURT CAN MORE EFFICIENTLY DETERMINE ANY
4 FORFEITURE OF PROPERTY AT THE PENALTY PHASE OF A CRIMINAL TRIAL;
5 AND

6 (e) COMBINING ASSET FORFEITURE AND SENTENCING PRECLUDES
7 THE UNCONSTITUTIONAL TITLE TRANSFER OF PROPERTY WITHOUT A
8 CRIMINAL CONVICTION BY DUE PROCESS.

9 **16-13-1103. Definitions.** AS USED IN THIS PART 11, UNLESS THE
10 CONTEXT OTHERWISE REQUIRES:

11 (1) "ABANDONED PROPERTY" MEANS PERSONAL PROPERTY WHEN
12 ALL RIGHTS TO ITS OWNERSHIP OR CONTROL HAVE BEEN RELINQUISHED BY
13 THE OWNER. ABANDONED PROPERTY DOES NOT INCLUDE "REAL
14 PROPERTY".

15 (2) "ACTUAL KNOWLEDGE" MEANS A DIRECT AND CLEAR
16 AWARENESS OF INFORMATION, A FACT, OR A CONDITION.

17 (3) "CONTRABAND" MEANS GOODS THAT ARE POSSESSED
18 UNLAWFULLY, INCLUDING A SCHEDULED DRUG OBTAINED WITHOUT A
19 LAWFUL PRESCRIPTION OR A FIREARM THAT IS POSSESSED ILLEGALLY.

20 (4) "CONVEYANCE" MEANS A DEVICE USED FOR TRANSPORTATION,
21 INCLUDING A MOTOR VEHICLE, RECREATIONAL VEHICLE, SNOWMOBILE,
22 AIRPLANE, VESSEL, OR ANY EQUIPMENT ATTACHED TO ONE OF THESE
23 DEVICES, WHEN USED IN THE COMMISSION OF A CRIME; EXCEPT THAT
24 "CONVEYANCE" DOES NOT INCLUDE ANY SUCH DEVICE STOLEN IN
25 VIOLATION OF LAW.

26 (5) "INNOCENT OWNER" MEANS AN OWNER, CO-OWNER, HEIR, OR
27 PERSON WHO REGULARLY USES PROPERTY SUBJECT TO FORFEITURE BUT

1 WHO DOES NOT HAVE ACTUAL KNOWLEDGE THAT THE PROPERTY HAS BEEN
2 USED IN A CRIME THAT AUTHORIZES THE FORFEITURE OF THE PROPERTY.
3 "INNOCENT OWNER" DOES NOT INCLUDE A DEFENDANT OR A SECURED
4 INTEREST HOLDER.

5 (6) "INSTRUMENTALITY" MEANS PROPERTY THAT IS OTHERWISE
6 LAWFUL TO POSSESS BUT THAT IS USED IN A CRIME THAT AUTHORIZES THE
7 FORFEITURE OF THE PROPERTY AND INCLUDES LAND, BUILDINGS,
8 CONTAINERS, CONVEYANCES, EQUIPMENT, MATERIALS, PRODUCTS, TOOLS,
9 COMPUTERS, COMPUTER SOFTWARE, TELECOMMUNICATIONS DEVICES,
10 FIREARMS, AMMUNITION, AND AMMUNITION AND FIREARM ACCESSORIES.

11 (7) "LAW ENFORCEMENT AGENCY" MEANS ANY NONFEDERAL
12 POLICE FORCE, INCLUDING A LOCAL, COUNTY, OR STATE AGENCY THAT HAS
13 THE AUTHORITY PURSUANT TO COLORADO LAW TO ENGAGE IN SEIZURE
14 AND FORFEITURE.

15 (8) "PERSONAL PROPERTY" MEANS ANY MOVABLE OR INTANGIBLE
16 PROPERTY THAT IS SUBJECT TO OWNERSHIP AND NOT CLASSIFIED AS REAL
17 PROPERTY.

18 (9) "PROCEEDS" MEANS UNITED STATES CURRENCY, CURRENCY OF
19 ANOTHER NATION, DIGITAL AND CRYPTOCURRENCY, SECURITIES,
20 NEGOTIABLE INSTRUMENTS, OR OTHER MEANS OF EXCHANGE OBTAINED
21 FROM THE SALE OF PROPERTY OR CONTRABAND.

22 (10) "PROSECUTING AUTHORITY" MEANS A MUNICIPAL ATTORNEY,
23 SOLICITOR, DISTRICT ATTORNEY, ATTORNEY GENERAL, OR OTHER
24 GOVERNMENT OFFICIAL AUTHORIZED TO PROSECUTE A CRIME OR GIVE
25 NOTICE.

26 (11) "PUBLIC DEFENDER" MEANS AN ATTORNEY EMPLOYED BY OR
27 CONTRACTED WITH THE OFFICE OF THE PUBLIC DEFENDER CREATED

1 PURSUANT TO ARTICLE 1 OF TITLE 21, THE OFFICE OF ALTERNATE DEFENSE
2 COUNSEL CREATED PURSUANT TO ARTICLE 2 OF TITLE 21, OR ANY
3 MUNICIPAL PUBLIC DEFENDER.

4 (12) "REAL PROPERTY" MEANS IMMOVABLE PROPERTY, REAL
5 ESTATE, OR REALTY, AND INCLUDES LAND AND ANYTHING GROWING ON,
6 ATTACHED TO, OR ERECTED ON THE LAND, SUCH AS A BUILDING.

7 (13) "SECURED INTEREST HOLDER" MEANS A PERSON WHO IS A
8 SECURED CREDITOR, MORTGAGEE, LIENHOLDER, OR OTHER PERSON WHO
9 HAS A VALID CLAIM, SECURITY INTEREST, MORTGAGE, LIEN, LEASEHOLD,
10 OR OTHER INTEREST IN THE PROPERTY SUBJECT TO FORFEITURE. "SECURED
11 INTEREST HOLDER" DOES NOT INCLUDE A DEFENDANT OR AN INNOCENT
12 OWNER.

13 **16-13-1104. Purpose - forfeiture is disfavored.** (1) THE
14 PURPOSE OF THIS PART 11 IS TO:

- 15 (a) DETER CRIME BY REDUCING ITS ECONOMIC INCENTIVES;
- 16 (b) CONFISCATE PROPERTY USED IN THE VIOLATION OF THE LAW;
- 17 (c) DISINCENTIVIZE ILLEGAL CONDUCT; AND
- 18 (d) PROTECT THE DUE PROCESS RIGHTS OF PROPERTY OWNERS.

19 **16-13-1105. Jurisdiction.** (1) THERE IS NO CIVIL FORFEITURE
20 UNDER THIS PART 11.

21 (2) THE COURT WITH JURISDICTION IN A CRIMINAL MATTER
22 SUBJECT TO FORFEITURE HAS JURISDICTION OVER THE FORFEITURE
23 PROCEEDING PURSUANT TO THIS PART 11.

24 (3) A FORFEITURE PROCEEDING IS PART OF THE TRIAL OF THE
25 RELATED CRIME, AND THE FORFEITURE PROCEEDING MUST FOLLOW A
26 CONVICTION OR MAY BE CONDUCTED AT THE COURT'S DISCRETION. THE
27 COURT SHALL CONDUCT THE PROCEEDING WITHOUT A JURY.

1 (4) ALL FORFEITURE-RELATED PETITIONS MUST BE FILED IN THE
2 CRIMINAL COURT WITH JURISDICTION OVER THE CRIMINAL CASE AT THE
3 TIME OF FILING. IF AN INITIAL COURT TRANSFERS THE PROSECUTION OF THE
4 CRIMINAL CASE TO ANOTHER COURT, THE INITIAL COURT SHALL TRANSFER
5 THE PETITION ALONG WITH THE CRIMINAL CASE TO THE OTHER COURT. AT
6 ITS DISCRETION, THE INITIAL COURT MAY POSTPONE HEARING THE
7 PETITION AND TRANSFER THE PETITION TO ANOTHER COURT IN THE
8 INTERESTS OF JUSTICE AND EFFICIENT USE OF JUDICIAL RESOURCES.

9 **16-13-1106. Seizure of personal property with process.** AT THE
10 REQUEST OF THE PROSECUTING AUTHORITY, A COURT MAY ISSUE AN EX
11 PARTE ORDER TO ATTACH, SEIZE, OR SECURE PERSONAL PROPERTY FOR
12 WHICH FORFEITURE IS SOUGHT AND TO PROVIDE FOR ITS CUSTODY.
13 APPLICATION, ISSUANCE, EXECUTION, AND RETURN ARE SUBJECT TO THE
14 LAWS OF THIS STATE AND COURT RULES.

15 **16-13-1107. Seizure of personal property without process.**

16 (1) PERSONAL PROPERTY MAY BE SEIZED AS PART OF A LAWFUL SEARCH
17 WITHOUT A COURT ORDER IF:

18 (a) THE PERSONAL PROPERTY SUBJECT TO FORFEITURE IS SEIZED
19 INCIDENT TO A LAWFUL ARREST;

20 (b) THE STATE HAS PROBABLE CAUSE TO BELIEVE THE DELAY
21 NEEDED TO OBTAIN AN ORDER AUTHORIZING SEIZURE WOULD RESULT IN
22 THE REMOVAL OR DESTRUCTION OF THE PERSONAL PROPERTY THAT IS
23 FORFEITABLE PURSUANT TO THIS PART 11; OR

24 (c) THE PERSONAL PROPERTY IS THE SUBJECT OF A PRIOR AND
25 VALID JUDGMENT OF FORFEITURE IN FAVOR OF THE STATE.

26 **16-13-1108. Seizure or restraint of real property with process.**

27 (1) REAL PROPERTY MAY NOT BE SEIZED OR RESTRAINED WITHOUT A

1 COURT ORDER.

2 (2) A COURT MAY NOT ISSUE AN ORDER TO SEIZE OR RESTRAIN
3 REAL PROPERTY UNLESS THE DEFENDANT AND ANY OTHER PERSON WITH
4 A KNOWN INTEREST IN THE REAL PROPERTY RECEIVES PROPER NOTICE AND
5 THEY ARE GIVEN AN OPPORTUNITY FOR A CONTESTED HEARING TO
6 DETERMINE THE EXISTENCE OF PROBABLE CAUSE FOR THE SEIZURE.

7 (3) NOTICE MAY BE MADE BY PUBLICATION IF NOTICE BY
8 PERSONAL SERVICE IS NOT SUCCESSFUL AFTER REASONABLE ATTEMPTS.

9 (4) NOTHING IN THIS SECTION PROHIBITS THE PROSECUTING
10 AUTHORITY FROM SEEKING A LIS PENDENS OR RESTRAINING ORDER TO
11 HINDER THE SALE OR DESTRUCTION OF REAL PROPERTY. HOWEVER, IF THE
12 PROSECUTING AUTHORITY OBTAINS A LIS PENDENS OR RESTRAINING
13 ORDER, THE PROSECUTING AUTHORITY SHALL NOTIFY THE DEFENDANT
14 AND ANY OTHER PERSON WITH A KNOWN INTEREST IN THE PROPERTY
15 WITHIN THIRTY DAYS AFTER FILING THE LIS PENDENS.

16 (5) APPLICATION, FILING, ISSUANCE, EXECUTION, AND RETURN OF
17 ANY ORDER ARE SUBJECT TO THE LAWS OF THIS STATE AND COURT RULES.

18 **16-13-1109. Stolen property and contraband.** (1) A PROPERTY
19 RIGHT DOES NOT EXIST IN STOLEN PROPERTY OR CONTRABAND. STOLEN
20 PROPERTY AND CONTRABAND ARE SUBJECT TO SEIZURE.

21 (2) STOLEN PROPERTY MUST BE RETURNED AND CONTRABAND
22 MUST BE DISPOSED OF ACCORDING TO THE LAWS OF THIS STATE.

23 (3) NOTWITHSTANDING SUBSECTION (2) OF THIS SECTION, THE
24 COURT MAY IMPOSE REASONABLE CONDITIONS ON THE RETURN OF STOLEN
25 PROPERTY AND THE DISPOSAL OF CONTRABAND, INCLUDING THE USE OF
26 PHOTOGRAPHIC EVIDENCE, TO PRESERVE THE PROPERTY FOR LATER USE AS
27 EVIDENCE IN PROCEEDINGS PURSUANT TO THIS PART 11.

1 **16-13-1110. Storing seized property and depositing seized**

2 **currency.** (1) THE SEIZING AGENCY SHALL PROVIDE ADEQUATE STORAGE,
3 SECURITY, AND MAINTENANCE FOR ALL ASSETS IN ITS CUSTODY, UNLESS
4 ANOTHER AGENCY AGREES TO ACCEPT THE RESPONSIBILITY. THE
5 COMMANDER OF A MULTIJURISDICTIONAL TASK FORCE MAY ASSIGN THIS
6 RESPONSIBILITY TO ONE AGENCY.

7 (2) THE SEIZING AGENCY SHALL DEPOSIT SEIZED CURRENCY IN AN
8 INTEREST-BEARING ACCOUNT PENDING THE EXHAUSTION OF APPEALS OR
9 THE RECEIPT OF AN ORDER FROM THE COURT TO RETURN OR DISBURSE THE
10 SEIZED CURRENCY.

11 (3) NOTWITHSTANDING SUBSECTION (2) OF THIS SECTION, THE
12 SEIZING AGENCY MAY TAKE REASONABLE ACTIONS, INCLUDING THE USE OF
13 PHOTOGRAPHY, TO PRESERVE FOR LATER USE EVIDENCE OF THE CURRENCY
14 IN PROCEEDINGS PURSUANT TO THIS PART 11.

15 **16-13-1111. Receipt.** (1) WHEN PROPERTY IS SEIZED, THE LAW
16 ENFORCEMENT OFFICER WHO SEIZES THE PROPERTY SHALL GIVE AN
17 ITEMIZED RECEIPT TO THE PERSON WHO POSSESSES THE PROPERTY AT THE
18 TIME OF THE SEIZURE.

19 (2) THE RECEIPT MUST BE NUMBERED FOR FUTURE REFERENCE AND
20 CONSTITUTES NOTICE OF SEIZURE.

21 (3) IF THE PERSON WHO POSSESSES THE PROPERTY IS NOT PRESENT
22 WHEN THE LAW ENFORCEMENT OFFICER SEIZES THE PROPERTY, THE
23 OFFICER SHALL LEAVE A RECEIPT IN THE PLACE WHERE THE PROPERTY WAS
24 FOUND, IF POSSIBLE.

25 **16-13-1112. Property exempt from seizure and forfeiture.**

26 (1) EXCEPT AS DESCRIBED IN SUBSECTION (4) OF THIS SECTION, UNITED
27 STATES CURRENCY TOTALING FIVE HUNDRED DOLLARS OR LESS IS EXEMPT

1 FROM SEIZURE AND FORFEITURE, EXCLUDING SPECIFICALLY MARKED
2 CURRENCY USED IN THE CONTROLLED BUY OF A CONTROLLED SUBSTANCE.

3 (2) EXCEPT AS DESCRIBED IN SUBSECTION (4) OF THIS SECTION, A
4 MOTOR VEHICLE HAVING A MARKET VALUE OF FIVE THOUSAND DOLLARS
5 OR LESS IS EXEMPT FROM SEIZURE AND FORFEITURE.

6 (3) THE PROSECUTING AUTHORITY SHALL NOTIFY THE OFFICE OF
7 THE PUBLIC DEFENDER AND OTHER PERSONS OR ENTITIES, UPON REQUEST,
8 WHICH PUBLICATIONS THAT LAW ENFORCEMENT AGENCIES USE TO
9 ESTABLISH THE VALUE OF A MOTOR VEHICLE IN THE PROSECUTING
10 AUTHORITY'S JURISDICTION. THE PUBLICATIONS MAY INCLUDE THE
11 KELLEY BLUE BOOK AND THE J.D. POWER/NADA OFFICIAL USED CAR
12 GUIDE.

13 (4) NOTWITHSTANDING SUBSECTION (1) OR (2) OF THIS SECTION,
14 THE PROSECUTING AUTHORITY MAY ESTABLISH HIGHER VALUES FOR
15 SEIZURE OR FORFEITURE OF CURRENCY OR MOTOR VEHICLES IN THE
16 INTERESTS OF JUSTICE AND EFFICIENT USE OF GOVERNMENTAL RESOURCES.
17 THE HIGHER VALUES MUST BE BASED ON THE PROSECUTING AUTHORITY'S
18 EXCLUSIVE DETERMINATION OF:

19 (a) THE TYPE AND NUMBER OF OFFENSES THAT INCLUDE THE
20 SEIZURE OR FORFEITURE OF PROPERTY; AND

21 (b) THE AVERAGE VALUE OF SEIZED PROPERTY, LESS THE COSTS TO
22 SEIZE AND FORFEIT IT.

23 **16-13-1113. Waiver prohibition.** A LAW ENFORCEMENT OFFICER,
24 OTHER THAN THE PROSECUTING AUTHORITY, SHALL NOT REQUEST, INDUCE,
25 OR REQUIRE A PERSON TO WAIVE, FOR PURPOSE OF SEIZURE OR
26 FORFEITURE, THE PERSON'S INTEREST IN ANY REAL OR PERSONAL
27 PROPERTY. A DOCUMENT RESULTING FROM SUCH ACTION AND PURPORTING

1 TO WAIVE INTEREST OR RIGHTS IN SEIZED PROPERTY IS VOID AND
2 INADMISSIBLE IN COURT UNLESS THE PROSECUTING AUTHORITY OBTAINED
3 THE WAIVER.

4 **16-13-1114. Initial reporting.** (1) WITHIN TEN DAYS AFTER
5 SEIZING ANY REAL OR PERSONAL PROPERTY, A LAW ENFORCEMENT
6 AGENCY SHALL SUBMIT A REPORT TO THE APPROPRIATE PROSECUTING
7 AUTHORITY. IF MORE THAN ONE LAW ENFORCEMENT AGENCY MAKES THE
8 SEIZURE, FOR THE PURPOSES OF REPORTING WHEN ANY REAL OR PERSONAL
9 PROPERTY IS SEIZED, THE LAW ENFORCEMENT AGENCY INITIATING THE
10 INVESTIGATION IS CONSIDERED TO BE THE AGENCY MAKING THE SEIZURE.

11 (2) THE REPORT MUST PROVIDE THE FOLLOWING INFORMATION:

12 (a) A DESCRIPTION OF THE SEIZED PROPERTY;

13 (b) THE CIRCUMSTANCES OF THE SEIZURE;

14 (c) THE LOCATION WHERE THE SEIZURE OCCURRED;

15 (d) THE LOCATION WHERE THE SEIZED PROPERTY IS STORED AND
16 THE CUSTODIAN ASSIGNED THERETO;

17 (e) THE NAME OF THE OWNER OF THE SEIZED PROPERTY;

18 (f) THE NAME OF THE LIENHOLDER OF THE SEIZED PROPERTY, IF
19 ANY;

20 (g) THE NAME OF THE SEIZING LAW ENFORCEMENT AGENCY;

21 (h) THE TYPE AND QUANTITY OF THE CONTROLLED SUBSTANCE
22 INVOLVED, IF APPLICABLE; AND

23 (i) THE NAME AND CONTACT INFORMATION OF ANY INTERESTED
24 PARTY.

25 (3) IF THE PROPERTY IS A CONVEYANCE, THE REPORT MUST
26 INCLUDE:

27 (a) THE MAKE, MODEL, VEHICLE IDENTIFICATION NUMBER, AND

1 YEAR OF THE CONVEYANCE;

2 (b) THE PERSON IN WHOSE NAME THE CONVEYANCE IS REGISTERED;

3 AND

4 (c) THE NAMES OF ANY LIENHOLDERS OF THE CONVEYANCE.

5 (4) THE LAW ENFORCEMENT AGENCY ALSO SHALL PREPARE FOR
6 DISSEMINATION TO THE PUBLIC, UPON REQUEST, A REPORT PROVIDING THE
7 FOLLOWING INFORMATION ABOUT INDIVIDUAL SEIZURES:

8 (a) A DESCRIPTION OF THE AMOUNT AND NATURE OF THE
9 PROPERTY SEIZED;

10 (b) THE NAME OF THE SEIZING LAW ENFORCEMENT AGENCY;

11 (c) THE TYPE AND QUANTITY OF THE CONTROLLED SUBSTANCE
12 INVOLVED, IF APPLICABLE;

13 (d) THE MAKE, MODEL, AND YEAR OF ANY CONVEYANCE; AND

14 (e) THE LAW ENFORCEMENT AGENCY RESPONSIBLE FOR THE
15 PROPERTY SEIZED.

16 **16-13-1115. Title.** TITLE TO THE PROPERTY SUBJECT TO
17 FORFEITURE IS VESTED WITH THE STATE WHEN THE COURT ISSUES A
18 FORFEITURE JUDGMENT AND RELATES BACK TO THE TIME WHEN THE LAW
19 ENFORCEMENT AGENCY SEIZES OR RESTRAINS THE PROPERTY. TITLE TO
20 SUBSTITUTE ASSETS IS VESTED WHEN THE COURT ISSUES AN ORDER
21 FORFEITING SUBSTITUTE ASSETS.

22 **16-13-1116. Counsel.** (1) IF A PUBLIC DEFENDER OR COUNSEL
23 APPOINTED BY THE COURT REPRESENTS A CLAIMANT-DEFENDANT IN A
24 CRIMINAL MATTER, THE PUBLIC DEFENDER OR APPOINTED COUNSEL SHALL
25 REPRESENT THE DEFENDANT IN THE FORFEITURE PROCEEDING AND ANY
26 OTHER RELATED CRIMINAL PROCEEDING.

27 (2) IF THE DEFENDANT OR AN INNOCENT OWNER CLAIMANT

1 ENGAGES IN PRO SE REPRESENTATION IN THE FORFEITURE PROCEEDING
2 BEFORE A JUDGE, THE COURT MAY EXERCISE ITS DISCRETION IN APPLYING
3 THE RULES OF PLEADING, PROCEDURE, OR EVIDENCE.

4 **16-13-1117. Notice to other known owners.** (1) THE
5 PROSECUTING AUTHORITY SHALL PERFORM A REASONABLE SEARCH OF
6 VEHICLE REGISTRATIONS, PROPERTY RECORDS, AND OTHER PUBLIC
7 RECORDS TO IDENTIFY ANY PERSON, OTHER THAN THE DEFENDANT, WHO
8 HAS AN INTEREST IN THE PROPERTY THAT IS SUBJECT TO FORFEITURE.

9 (2) THE PROSECUTING AUTHORITY SHALL GIVE NOTICE TO ANY
10 PERSON IDENTIFIED AS HAVING AN INTEREST IN THE PROPERTY THAT IS
11 SUBJECT TO FORFEITURE BUT WHO IS NOT CHARGED OR INDICTED. THE
12 NOTICE SHALL INCLUDE THE SEIZURE RECEIPT NUMBER REQUIRED BY
13 SECTION 16-13-1111. THE PROSECUTING AUTHORITY MAY PROVIDE NOTICE
14 BY PUBLICATION IF NOTICE BY PERSONAL SERVICE IS NOT SUCCESSFUL
15 AFTER REASONABLE ATTEMPTS.

16 (3) THE FOLLOWING LANGUAGE MUST APPEAR CONSPICUOUSLY IN
17 THE NOTICE:

18 **WARNING: YOU MAY LOSE THE RIGHT TO BE HEARD IN COURT IF**
19 **YOU DO NOT FILE A SIMPLE STATEMENT OF INTEREST OR**
20 **OWNERSHIP PROMPTLY. YOU DO NOT HAVE TO PAY A FILING FEE TO**
21 **FILE YOUR NOTICE.**

22 (4) IF THE PROSECUTING AUTHORITY DOES NOT SERVE NOTICE BY
23 PERSONAL SERVICE OR BY PUBLICATION ON ANY PERSON APPEARING TO
24 HAVE AN INTEREST IN THE PROPERTY AND A TIME EXTENSION IS NOT
25 GRANTED OR THE EXTENSION PERIOD HAS EXPIRED, THE PROSECUTING
26 AUTHORITY OR COURT SHALL ORDER THE RETURN OF THE PROPERTY TO
27 THE INTERESTED PERSON UPON REQUEST BY THE INTERESTED PERSON OR

1 SUCH PERSON'S APPOINTEE; EXCEPT THAT CONTRABAND IS NOT RETURNED.

2 **16-13-1118. Prompt post-seizure hearing - return of seized**
3 **property to obtain counsel.** (1) FOLLOWING SEIZURE OF PROPERTY, A
4 DEFENDANT OR ANY OTHER PERSON WITH AN INTEREST IN THE PROPERTY
5 HAS A RIGHT TO A PROMPT POST-SEIZURE HEARING.

6 (2) A PERSON WITH AN INTEREST IN THE PROPERTY MAY PETITION
7 THE COURT FOR A HEARING. UPON RECEIPT OF A PETITION, THE COURT
8 SHALL HOLD A PROMPT POST-SEIZURE HEARING:

9 (a) AS A SEPARATE HEARING;

10 (b) AT THE SAME TIME AS A PROBABLE CAUSE DETERMINATION, A
11 POST-ARRAIGNMENT HEARING, A SUPPRESSION HEARING, AN OMNIBUS
12 HEARING, OR OTHER PRETRIAL HEARING; OR

13 (c) AT THE COURT'S DISCRETION.

14 (3) A PARTY, BY AGREEMENT OR FOR GOOD CAUSE, MAY MOVE FOR
15 ONE EXTENSION OF THE HEARING DATE. THE PARTY MAY SUPPORT ANY
16 MOTION WITH AFFIDAVITS OR OTHER SUBMISSIONS.

17 (4) THE COURT SHALL ORDER THE RETURN OF PROPERTY IF IT
18 FINDS:

19 (a) THE SEIZURE OF THE PROPERTY WAS INVALID;

20 (b) A CRIMINAL CHARGE WAS NOT FILED AND AN EXTENSION OF
21 THE FILING PERIOD IS NOT AVAILABLE; OR

22 (c) THE FINAL JUDGMENT WILL LIKELY BE IN FAVOR OF THE
23 DEFENDANT OR ANY OTHER PERSON WITH AN INTEREST IN THE PROPERTY.

24 (5) THE COURT, AT ITS DISCRETION, MAY ORDER THE RETURN OF
25 SUFFICIENT FUNDS FROM THE SEIZED PROPERTY TO THE DEFENDANT SO
26 THAT THE DEFENDANT MAY OBTAIN THE DEFENDANT'S COUNSEL OF
27 CHOICE, SO LONG AS THE AMOUNT OF FUNDS RETURNED TO THE

1 DEFENDANT IS LESS THAN THE TOTAL AMOUNT SEIZED.

2 (6) NOTWITHSTANDING SUBSECTIONS (4) AND (5) OF THIS SECTION,
3 THE COURT MAY IMPOSE REASONABLE CONDITIONS ON THE RETURN OF THE
4 SEIZED PROPERTY, INCLUDING REQUIRING PHOTOGRAPHIC EVIDENCE OF
5 THE SEIZED PROPERTY, TO PRESERVE THE PROPERTY FOR LATER USE AS
6 EVIDENCE IN PROCEEDINGS PURSUANT TO THIS PART 11.

7 (7) THIS SECTION DOES NOT APPLY TO CONTRABAND.

8 **16-13-1119. Notice of proposed forfeiture.** (1) IF THE STATE
9 SEEKS FORFEITURE OF PROPERTY, THE PROSECUTING AUTHORITY SHALL
10 FILE WITH THE COURT A NOTICE OF PROPOSED FORFEITURE. THE NOTICE
11 MUST BE A SEPARATE DOCUMENT. THE NOTICE MUST INCLUDE:

12 (a) A DESCRIPTION OF THE PROPERTY SEIZED;

13 (b) THE TIME, DATE, AND PLACE OF THE SEIZURE;

14 (c) THE SEIZURE RECEIPT NUMBER REQUIRED BY SECTION
15 16-13-1111; AND

16 (d) A DESCRIPTION OF HOW THE PROPERTY WAS USED IN OR
17 DERIVED FROM THE ALLEGED CRIME.

18 (2) THE PROSECUTING AUTHORITY MAY STATE IN THE NOTICE THAT
19 THE FORFEITURE OF PROPERTY MAY OCCUR AS A PROCESS AFTER THE
20 CONVICTION OF THE CRIME FOR WHICH THE DEFENDANT IS CHARGED OR AS
21 PART OF SENTENCING CONSIDERATION. THE COURT SHALL NOT READ THE
22 NOTICE TO THE JURY.

23 (3) THE PROSECUTING AUTHORITY SHALL SERVE THE NOTICE:

24 (a) WITH THE INITIAL CHARGING INSTRUMENT;

25 (b) SEPARATELY, BUT NOT LATER THAN NINETY DAYS AFTER THE
26 PRESENTMENT OF THE CHARGING INSTRUMENT FOR A MISDEMEANOR;

27 (c) NOT LATER THAN THE EARLIER OF NINETY DAYS AFTER

1 PRESENTMENT TO A GRAND JURY OR ONE HUNDRED EIGHTY DAYS AFTER
2 AN ARREST FOR A FELONY; OR

3 (d) AT THE COURT'S DISCRETION.

4 (4) AT THE COURT'S DISCRETION, THE COURT MAY ALLOW THE
5 PROSECUTING AUTHORITY TO AMEND THE NOTICE AS REQUIRED IN THE
6 INTEREST OF JUSTICE.

7 (5) THE COURT SHALL ORDER THE RETURN OF THE SEIZED
8 PROPERTY TO THE OWNER IF THE PROSECUTING AUTHORITY DOES NOT FILE
9 A CHARGING INSTRUMENT AS PROVIDED BY THE COURT'S RULES, THE
10 PERIOD OF AN EXTENSION EXPIRES, OR THE COURT DOES NOT GRANT AN
11 EXTENSION.

12 **16-13-1120. Discovery.** DISCOVERY RELATED TO THE FORFEITURE
13 PROCEEDING PURSUANT TO THIS PART 11 IS SUBJECT TO THE RULES OF
14 CRIMINAL PROCEDURE.

15 **16-13-1121. Trial - conviction required and standard of proof.**

16 (1) SEIZED PROPERTY MAY BE FORFEITED IF:

17 (a) THE STATE SECURES A CONVICTION FOR A CRIME DESCRIBED IN
18 SECTION 18-18-405, 18-18-406, 18-18-406.2, OR 18-18-406.9; AND

19 (b) THE STATE ESTABLISHES BY A PREPONDERANCE OF THE
20 EVIDENCE THAT THE SEIZED PROPERTY IS AN INSTRUMENTALITY OF, OR
21 CONSISTS OF PROCEEDS DERIVED DIRECTLY FROM, THE CRIME FOR WHICH
22 THE STATE SECURED A CONVICTION.

23 (2) AFTER THE DEFENDANT'S CONVICTION, THE COURT HAS THE
24 DISCRETION TO HOLD THE FORFEITURE PROCEEDING AS SOON AS
25 PRACTICABLE, INCLUDING CONCURRENT WITH SENTENCING. THE COURT
26 SHALL CONDUCT THE FORFEITURE PROCEEDING WITHOUT A JURY.

27 (3) EXCEPT AS REQUIRED BY SECTION 16-13-1112, NOTHING IN

1 THIS PART 11 PREVENTS PROPERTY FROM BEING FORFEITED BY CONSENT
2 ORDER APPROVED BY THE COURT, PROVIDED THAT ALL OWNERS, SECURED
3 INTEREST HOLDERS, AND OTHER PERSONS ENTITLED TO NOTICE PURSUANT
4 TO THIS PART 11 CONSENT TO THE FORFEITURE. PERSONS ENTITLED TO
5 NOTICE PURSUANT TO THIS PART 11 MAY CONSENT TO SOME ISSUES AND
6 HAVE THE COURT DETERMINE THE REMAINING ISSUES.

7 (4) THE CONSENT ORDER MAY REFLECT:

8 (a) A PLEA AGREEMENT;

9 (b) A DIVERSION AGREEMENT; OR

10 (c) A GRANT OF IMMUNITY OR REDUCED PUNISHMENT, WITH OR
11 WITHOUT THE FILING OF A CRIMINAL CHARGE, IN EXCHANGE FOR
12 TESTIFYING OR ASSISTING A LAW ENFORCEMENT AGENCY'S INVESTIGATION
13 OR PROSECUTION.

14 (5) TO EFFECTUATE SUBSECTION (4)(c) OF THIS SECTION, THE
15 PARTIES MAY FILE NOTICE, UNDER SEAL, WITH THE COURT IF THE
16 DEFENDANT IS REPRESENTED BY COUNSEL. IF THE DEFENDANT IS NOT
17 REPRESENTED BY COUNSEL, THE PROSECUTING AUTHORITY MAY FILE AN
18 EX PARTE NOTICE, UNDER SEAL, WITH THE COURT. THE NOTICE MUST
19 ADVISE THE COURT OF THE REASON THE PROSECUTING AUTHORITY IS
20 GRANTING IMMUNITY, REDUCING PUNISHMENT, OR NOT FILING A CHARGE.

21 (6) THE COURT MAY USE THE NOTICE DESCRIBED IN SUBSECTION
22 (5) OF THIS SECTION IN ITS CONSIDERATION OF AN ORDER TO TRANSFER
23 THE TITLE OF THE SEIZED PROPERTY TO THE STATE AND DISPOSE OF THE
24 PROPERTY ACCORDING TO SECTION 16-13-1133.

25 **16-13-1122. Exceptions to the conviction requirement.** (1) THE
26 COURT MAY WAIVE THE CONVICTION REQUIRED PURSUANT TO SECTION
27 16-13-1121 AND GRANT THE TITLE OF THE SEIZED PROPERTY TO THE STATE

1 IF THE PROSECUTING AUTHORITY FILES A MOTION NO FEWER THAN NINETY
2 DAYS AFTER SEIZURE AND SHOWS BY A PREPONDERANCE OF THE EVIDENCE
3 THAT THE DEFENDANT, BEFORE CONVICTION:

4 (a) DIED;

5 (b) WAS DEPORTED BY THE UNITED STATES GOVERNMENT;

6 (c) ABANDONED THE PROPERTY; OR

7 (d) FLED THE JURISDICTION.

8 (2) NOTWITHSTANDING SUBSECTION (1)(a) OF THIS SECTION, THE
9 DEFENDANT'S DEATH DOES NOT PRECLUDE THE DEFENDANT'S HEIR OR
10 LEGATEE FROM FILING AS AN INNOCENT OWNER A CLAIM FOR THE SEIZED
11 PROPERTY PURSUANT TO SECTION 16-13-1125.

12 **16-13-1123. Proportionality.** (1) THE DEFENDANT MAY PETITION
13 THE COURT TO DETERMINE WHETHER THE FORFEITURE IS
14 UNCONSTITUTIONALLY EXCESSIVE UNDER THE STATE CONSTITUTION OR
15 UNITED STATES CONSTITUTION.

16 (2) AT THE COURT'S DISCRETION, THE COURT MAY HOLD A
17 PROPORTIONALITY HEARING:

18 (a) AS A SEPARATE HEARING;

19 (b) AT THE SAME TIME AS A PROBABLE CAUSE DETERMINATION, A
20 POST-ARRAIGNMENT HEARING, A SUPPRESSION HEARING, AN OMNIBUS
21 HEARING, OR OTHER PRETRIAL HEARING;

22 (c) AT TRIAL; OR

23 (d) UPON CONVICTION.

24 (3) THE DEFENDANT HAS THE BURDEN OF ESTABLISHING THAT THE
25 PROPERTY FORFEITURE IS UNCONSTITUTIONALLY EXCESSIVE UNDER THE
26 STATE CONSTITUTION OR UNITED STATES CONSTITUTION BY A
27 PREPONDERANCE OF THE EVIDENCE AT A HEARING CONDUCTED BY THE

1 COURT WITHOUT A JURY.

2 (4) (a) AT A HEARING PRIOR TO CONVICTION, AS ALLOWED BY
3 SUBSECTION (2)(a), (2)(b), OR (2)(c) OF THIS SECTION, THE COURT FIRST
4 MUST DETERMINE, BY A PREPONDERANCE OF THE EVIDENCE, IF THE
5 PROSECUTING AUTHORITY WILL SECURE A CONVICTION. THE COURT THEN
6 MUST DETERMINE IF THE FORFEITURE IS UNCONSTITUTIONALLY EXCESSIVE
7 UNDER THE STATE CONSTITUTION OR UNITED STATES CONSTITUTION.

8 (b) AT ANY HEARING ALLOWED BY SUBSECTION (2) OF THIS
9 SECTION, THE COURT MAY CONSIDER ALL RELEVANT FACTORS TO
10 DETERMINE IF THE FORFEITURE IS UNCONSTITUTIONALLY EXCESSIVE
11 UNDER THE STATE CONSTITUTION OR UNITED STATES CONSTITUTION,
12 INCLUDING:

13 (I) THE SERIOUSNESS OF THE CRIME AND ITS IMPACT ON THE
14 COMMUNITY, INCLUDING THE DURATION OF THE ACTIVITY, USE OF A
15 FIREARM, AND HARM CAUSED BY THE DEFENDANT;

16 (II) THE EXTENT TO WHICH THE DEFENDANT PARTICIPATED IN THE
17 CRIME;

18 (III) THE EXTENT TO WHICH THE SEIZED PROPERTY WAS INTEGRAL
19 TO THE CRIME;

20 (IV) WHETHER THE CRIME WAS COMPLETED OR ATTEMPTED;

21 (V) THE SENTENCE OR FINE TO BE IMPOSED FOR COMMITTING THE
22 CRIME;

23 (VI) THE HARDSHIP TO THE DEFENDANT IF THE FORFEITURE OF A
24 MOTOR VEHICLE WOULD DEPRIVE THE DEFENDANT OF THE DEFENDANT'S
25 LIVELIHOOD; AND

26 (VII) ANY UNJUST HARDSHIP TO THE DEFENDANT'S FAMILY IF THE
27 SEIZED PROPERTY IS FORFEITED.

1 (5) IN DETERMINING THE VALUE OF THE REAL OR PERSONAL
2 PROPERTY SUBJECT TO FORFEITURE, THE COURT MAY CONSIDER ALL
3 RELEVANT FACTORS RELATED TO THE FAIR MARKET VALUE OF THE
4 PROPERTY, INCLUDING INFORMATION IN ANY PUBLICATION REFERENCED
5 BY THE PROSECUTING AUTHORITY PURSUANT TO SECTION 16-13-1112.

6 (6) THE COURT MAY NOT CONSIDER THE BENEFIT OR VALUE OF THE
7 SEIZED PROPERTY TO THE STATE IN DETERMINING WHETHER THE
8 FORFEITURE IS UNCONSTITUTIONALLY EXCESSIVE UNDER THE STATE
9 CONSTITUTION OR UNITED STATES CONSTITUTION.

10 **16-13-1124. Secured interest holder.** (1) SEIZED PROPERTY
11 ENCUMBERED BY A SECURED INTEREST HOLDER MUST NOT BE FORFEITED.
12 THE PROSECUTING AUTHORITY SHALL SUMMARILY RETURN PROPERTY TO
13 A SECURED INTEREST HOLDER, OTHER THAN THE DEFENDANT OR AN
14 INNOCENT OWNER, UP TO THE VALUE OF THE INTEREST; EXCEPT THAT
15 CONTRABAND IS NOT RETURNED.

16 (2) IF THE PROPERTY IS NOT SUMMARILY RETURNED, THE SECURED
17 INTEREST HOLDER MAY PETITION THE COURT AT ANY TIME BEFORE THE
18 COURT ENTERS JUDGMENT IN THE CRIMINAL PROSECUTION OR GRANTS THE
19 MOTION DESCRIBED IN SECTION 16-13-1122 FOR THE RETURN OF THE
20 PROPERTY. THE PETITION MAY INCLUDE THE SEIZURE RECEIPT NUMBER
21 REQUIRED BY SECTION 16-13-1111, IF AVAILABLE.

22 (3) THE COURT SHALL HEAR THE PETITION WITHIN THIRTY-FIVE
23 DAYS AFTER ITS FILING OR AT THE COURT'S DISCRETION. THE HEARING
24 MUST BE HELD BEFORE THE COURT ALONE, WITHOUT A JURY. THE COURT
25 MAY CONSOLIDATE THE HEARING ON THE PETITION WITH ANY OTHER
26 HEARING BEFORE THE COURT IN THE CASE.

27 (4) THE SECURED INTEREST HOLDER MUST ALLEGE THE VALIDITY

1 OF THE SECURITY INTEREST, MORTGAGE, LIEN, LEASEHOLD, LEASE, RENTAL
2 AGREEMENT, OR OTHER AGREEMENT.

3 (5) IF THE SECURED INTEREST HOLDER ALLEGES A VALID INTEREST
4 BUT THE PROSECUTING AUTHORITY SEEKS TO PROCEED, THE PROSECUTING
5 AUTHORITY SHALL PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT:

6 (a) THE INTEREST IS INVALID;

7 (b) THE INTEREST RESULTED FROM A FRAUDULENT TRANSFER;

8 (c) THE INTEREST IS HELD THROUGH A STRAW PURCHASE, TRUST,
9 OR OTHER MEANS FOR THE BENEFIT OF THE DEFENDANT; OR

10 (d) THE SECURED INTEREST HOLDER CONSENTED TO THE USE OF
11 THE SEIZED PROPERTY IN THE CRIME FOR WHICH THE DEFENDANT IS
12 CHARGED.

13 (6) IF THE STATE FAILS TO MEET ITS BURDEN PURSUANT TO
14 SUBSECTION (5) OF THIS SECTION, THE COURT SHALL ORDER THE STATE TO
15 RELINQUISH CLAIMS TO THE SEIZED PROPERTY, UP TO THE VALUE OF THE
16 INTEREST, AND RETURN THE INTEREST TO THE SECURED INTEREST HOLDER.

17 (7) NOTWITHSTANDING SUBSECTION (6) OF THIS SECTION, THE
18 COURT MAY IMPOSE REASONABLE CONDITIONS ON THE RETURN OF THE
19 SEIZED PROPERTY, INCLUDING REQUIRING PHOTOGRAPHIC EVIDENCE OF
20 THE SEIZED PROPERTY, TO PRESERVE THE PROPERTY FOR LATER USE AS
21 EVIDENCE IN PROCEEDINGS PURSUANT TO THIS PART 11.

22 **16-13-1125. Innocent owner.** (1) SEIZED PROPERTY OF AN
23 INNOCENT OWNER MUST NOT BE FORFEITED. THE PROSECUTING
24 AUTHORITY SHALL SUMMARILY RETURN PROPERTY TO AN INNOCENT
25 OWNER; EXCEPT THAT CONTRABAND IS NOT RETURNED.

26 (2) IF THE PROPERTY IS NOT SUMMARILY RETURNED, AN INNOCENT
27 OWNER CLAIMANT MAY PETITION THE COURT AT ANY TIME BEFORE THE

1 COURT ENTERS JUDGMENT IN THE CRIMINAL PROSECUTION OR GRANTS THE
2 MOTION DESCRIBED IN SECTION 16-13-1122 FOR THE RETURN OF THE
3 PROPERTY. THE PETITION MAY INCLUDE THE SEIZURE RECEIPT NUMBER
4 REQUIRED BY SECTION 16-13-1111, IF AVAILABLE.

5 (3) THE INNOCENT OWNER CLAIMANT MAY PETITION THE COURT BY
6 FILING A SIMPLE STATEMENT THAT ALLEGES AND SETS FORTH:

7 (a) THE CLAIMANT'S INTEREST OR REGULAR USE OF THE SEIZED
8 PROPERTY;

9 (b) ADDITIONAL FACTS SUPPORTING THE CLAIMANT'S CLAIM;

10 (c) THE RELIEF SOUGHT BY THE CLAIMANT; AND

11 (d) THE SEIZURE RECEIPT NUMBER REQUIRED BY SECTION
12 16-13-1111, IF AVAILABLE.

13 (4) THE FILING FEE FOR THE CLAIMANT'S PETITION FILED PURSUANT
14 TO THIS SECTION IS WAIVED.

15 (5) THE COURT SHALL HEAR THE CLAIMANT'S PETITION WITHIN
16 THIRTY-FIVE DAYS AFTER ITS FILING OR AT THE COURT'S DISCRETION. THE
17 HEARING MUST BE HELD BEFORE THE COURT ALONE, WITHOUT A JURY. THE
18 COURT MAY CONSOLIDATE THE HEARING ON THE CLAIMANT'S PETITION
19 WITH ANY OTHER HEARING BEFORE THE COURT IN THE CASE.

20 (6) THE PROSECUTING AUTHORITY SHALL PROVE BY A
21 PREPONDERANCE OF THE EVIDENCE THAT THE CLAIMANT IS NOT AN
22 INNOCENT OWNER BECAUSE:

23 (a) THE CLAIMANT'S INTEREST IN THE SEIZED PROPERTY IS
24 INVALID;

25 (b) THE CLAIMANT WAS NOT A BONA FIDE PURCHASER WITHOUT
26 NOTICE OF ANY DEFECT IN TITLE AND FOR VALUABLE CONSIDERATION;

27 (c) THE CLAIMANT WAS WILLFULLY UNAWARE OF THE CRIME FOR

1 WHICH THE DEFENDANT IS CHARGED;

2 (d) THE CLAIMANT DID NOT REGULARLY USE THE SEIZED PROPERTY
3 AS THE CLAIMANT CLAIMED; OR

4 (e) THE CLAIMANT HAD ACTUAL KNOWLEDGE OF THE CRIME AND
5 THE CLAIMANT DID NOT TAKE REASONABLE STEPS TO PREVENT THE USE OF
6 THE SEIZED PROPERTY IN THE CRIME FOR WHICH THE DEFENDANT IS
7 CHARGED; EXCEPT THAT THE CLAIMANT IS NOT REQUIRED TO TAKE STEPS
8 THE CLAIMANT REASONABLY BELIEVES WOULD SUBJECT THE CLAIMANT TO
9 PHYSICAL DANGER.

10 (7) IF THE PROSECUTING AUTHORITY FAILS TO MEET ITS BURDEN
11 PURSUANT TO SUBSECTION (6) OF THIS SECTION, THE COURT SHALL ORDER
12 THE STATE TO RELINQUISH ALL CLAIMS AND RETURN THE SEIZED PROPERTY
13 TO THE INNOCENT OWNER; EXCEPT THAT THE COURT MAY IMPOSE
14 REASONABLE CONDITIONS ON THE RETURN OF THE SEIZED PROPERTY,
15 INCLUDING REQUIRING PHOTOGRAPHIC EVIDENCE OF THE SEIZED
16 PROPERTY, TO PRESERVE THE PROPERTY FOR LATER USE AS EVIDENCE IN
17 PROCEEDINGS PURSUANT TO THIS PART 11.

18 (8) (a) INFORMATION IN THE CLAIMANT'S STATEMENT DESCRIBED
19 IN SUBSECTION (3) OF THIS SECTION MUST NOT BE USED AS EVIDENCE IN
20 THE CRIMINAL PORTION OF THE CASE.

21 (b) NOTHING IN THIS SECTION PROHIBITS THE CLAIMANT FROM
22 PROVIDING INFORMATION TO ANY PARTY OR TESTIFYING IN ANY TRIAL AS
23 TO FACTS THE CLAIMANT KNOWS.

24 (c) THE DEFENDANT OR CONVICTED OFFENDER MAY INVOKE THE
25 RIGHT AGAINST SELF-INCRIMINATION, THE SPOUSAL PRIVILEGE PURSUANT
26 TO SECTION 13-90-107 (1)(a)(I), OR THE CIVIL UNION PRIVILEGE PURSUANT
27 TO SECTION 13-90-107 (1)(a.5)(I) DURING THE FORFEITURE PROCEEDING.

1 THE TRIER OF FACT MAY DRAW AN ADVERSE INFERENCE FROM THE
2 INVOCATION OF THE RIGHT OR PRIVILEGE.

3 **16-13-1126. Judgment.** (1) IF THE PROSECUTING AUTHORITY
4 FAILS TO MEET ITS BURDEN IN THE CRIMINAL OR FORFEITURE PROCEEDING,
5 THE COURT SHALL ENTER A JUDGMENT DISMISSING THE FORFEITURE
6 PROCEEDING AND ORDERING THE RETURN OF SEIZED PROPERTY TO THE
7 RIGHTFUL OWNER, UNLESS THE OWNER'S POSSESSION OF THE SEIZED
8 PROPERTY IS ILLEGAL.

9 (2) (a) IF THE PROSECUTING AUTHORITY MEETS ITS BURDEN IN THE
10 CRIMINAL AND FORFEITURE PROCEEDINGS, THE COURT SHALL ENTER A
11 JUDGMENT FORFEITING THE SEIZED PROPERTY.

12 (b) A COURT MAY ENTER A JUDGMENT FOLLOWING A HEARING,
13 PURSUANT TO A STIPULATION OR PLEA AGREEMENT, OR AT THE COURT'S
14 DISCRETION.

15 **16-13-1127. Substitution of assets.** (1) UPON THE PROSECUTING
16 AUTHORITY'S MOTION FOLLOWING CONVICTION OR AT THE COURT'S
17 DISCRETION, THE COURT MAY ORDER THE FORFEITURE OF ANY SUBSTITUTE
18 PROPERTY OWNED SOLELY BY THE DEFENDANT UP TO THE VALUE OF
19 SEIZED PROPERTY THAT IS BEYOND THE COURT'S JURISDICTION OR THAT
20 CANNOT BE LOCATED THROUGH DUE DILIGENCE, ONLY IF THE STATE
21 PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT
22 INTENTIONALLY:

23 (a) DISSIPATED THE PROPERTY;

24 (b) TRANSFERRED, SOLD, OR DEPOSITED THE PROPERTY WITH A
25 THIRD PARTY TO AVOID FORFEITURE;

26 (c) DIMINISHED SUBSTANTIALLY THE VALUE OF THE PROPERTY; OR

27 (d) COMMINGLED PROPERTY WITH OTHER PROPERTY THAT CANNOT

1 BE DIVIDED WITHOUT DIFFICULTY.

2 **16-13-1128. No additional remedies.** THE STATE MAY NOT SEEK
3 PERSONAL MONEY JUDGMENTS OR OTHER REMEDIES RELATED TO THE
4 FORFEITURE OF PROPERTY NOT PROVIDED FOR IN THIS PART 11.

5 **16-13-1129. No joint-and-several liability.** A DEFENDANT IS NOT
6 JOINTLY AND SEVERALLY LIABLE FOR FORFEITURE AWARDS OWED BY
7 OTHER DEFENDANTS. WHEN OWNERSHIP IS UNCLEAR, A COURT MAY ORDER
8 EACH DEFENDANT TO FORFEIT PROPERTY ON A PRO RATA BASIS OR BY
9 ANOTHER MEANS THE COURT FINDS EQUITABLE.

10 **16-13-1130. Appeals.** (1) A PARTY TO A FORFEITURE
11 PROCEEDING, OTHER THAN THE DEFENDANT, MAY APPEAL THE COURT'S
12 ORDER CONCERNING THE DISPOSITION OF THE PROPERTY UPON THE
13 ISSUANCE OF THE ORDER PURSUANT TO THE COLORADO RULES OF CIVIL
14 PROCEDURE.

15 (2) THE DEFENDANT MAY APPEAL THE COURT'S DECISION
16 REGARDING THE SEIZURE OR FORFEITURE OF PROPERTY FOLLOWING FINAL
17 JUDGMENT IN THE FORFEITURE PROCEEDING.

18 **16-13-1131. Attorney fees.** (1) IN ANY PROCEEDING IN WHICH A
19 PROPERTY OWNER'S CLAIM PREVAILS AND THE PROPERTY OWNER
20 RECOVERS AT LEAST HALF, BY VALUE, OF THE PROPERTY OR CURRENCY
21 CLAIMED, THE COURT SHALL ORDER THE SEIZING AGENCY OR PROSECUTING
22 AUTHORITY AT FAULT TO PAY:

23 (a) REASONABLE ATTORNEY FEES AND OTHER LITIGATION COSTS
24 INCURRED BY THE CLAIMANT;

25 (b) POST-JUDGMENT INTEREST; AND

26 (c) IN CASES INVOLVING CURRENCY, OTHER NEGOTIABLE
27 INSTRUMENTS, OR THE PROCEEDS OF AN INTERLOCUTORY SALE, ANY

1 INTEREST ACTUALLY PAID FROM THE DATE OF SEIZURE.

2 **16-13-1132. Return of property - damages - costs.** (1) (a) IF
3 THE COURT ORDERS THE RETURN OF SEIZED PROPERTY, THE LAW
4 ENFORCEMENT AGENCY THAT HOLDS THE SEIZED PROPERTY SHALL RETURN
5 THE SEIZED PROPERTY TO THE RIGHTFUL OWNER WITHIN A REASONABLE
6 PERIOD OF TIME NOT TO EXCEED FIVE DAYS AFTER THE DATE OF THE
7 ORDER.

8 (b) THE RIGHTFUL OWNER OF THE SEIZED PROPERTY IS NOT
9 SUBJECT TO ANY EXPENSES RELATED TO TOWING, STORAGE, OR
10 PRESERVATION OF THE SEIZED PROPERTY.

11 (c) THE LAW ENFORCEMENT AGENCY THAT HOLDS THE SEIZED
12 PROPERTY IS RESPONSIBLE FOR ANY DAMAGES, STORAGE FEES, AND
13 RELATED COSTS APPLICABLE TO SEIZED PROPERTY RETURNED PURSUANT
14 TO THIS SECTION.

15 **16-13-1133. Disposition of property and proceeds.** (1) AT ANY
16 TIME WHEN CONTRABAND IS NO LONGER NEEDED AS EVIDENCE, THE COURT
17 MAY ORDER IT TO BE SOLD OR DESTROYED ACCORDING TO STATE LAW.

18 (2) EXCEPT AS REQUIRED BY SECTIONS 16-13-1124 AND
19 16-13-1125, THE COURT MAY ORDER SEIZED PROPERTY TO BE SOLD AT ANY
20 TIME WHEN THE SEIZED PROPERTY IS:

21 (a) NO LONGER NEEDED AS EVIDENCE; OR

22 (b) ABANDONED PROPERTY OR PROPERTY SEIZED FROM A
23 DEFENDANT WHO DIED, WAS DEPORTED, OR FLED THE JURISDICTION.

24 (3) IF THE FORFEITURE IS GRANTED, THE COURT SHALL ORDER THE
25 SALE OF FORFEITED PROPERTY OTHER THAN CURRENCY.

26 (4) WHEN ALL FORFEITED PROPERTY IS REDUCED TO PROCEEDS,
27 THE COURT MAY ORDER, UPON EXHAUSTION OF ALL APPEALS OR AT ITS

1 DISCRETION, THE DISTRIBUTION OF FORFEITED PROCEEDS TO:

2 (a) PAY RESTITUTION TO THE VICTIM OF THE CRIME;

3 (b) SATISFY RECORDED LIENS, MORTGAGES, OR FILED SECURITY
4 INTERESTS IN THE FORFEITED PROPERTY;

5 (c) PAY REASONABLE COSTS FOR THE TOWING, STORAGE,
6 MAINTENANCE, REPAIRS, ADVERTISING AND SALE, AND OTHER OPERATING
7 COSTS RELATED TO THE FORFEITED PROPERTY;

8 (d) REIMBURSE THE SEIZING LAW ENFORCEMENT AGENCY FOR
9 NON-PERSONNEL OPERATING COSTS, INCLUDING CONTROLLED-DRUG BUY
10 MONEY, RELATED TO THE INVESTIGATION OF THE CRIME;

11 (e) REIMBURSE THE PROSECUTING AUTHORITY, PUBLIC DEFENDER,
12 OR COURT-APPOINTED ATTORNEY FOR COSTS, INCLUDING FILING FEES,
13 SUBPOENAS, COURT REPORTERS, AND TRANSCRIPTS; AND

14 (f) PAY ONE PERCENT OF THE VALUE OF THE PROPERTY TO THE
15 CLERK OF THE COURT FOR ADMINISTRATIVE COSTS.

16 (5) AFTER DISBURSEMENTS MADE PURSUANT TO SUBSECTION (4)
17 OF THIS SECTION, THE BALANCE OF THE PROCEEDS FROM THE SALE OF
18 FORFEITED PROPERTY MUST BE DELIVERED, UPON ORDER OF THE COURT,
19 AS FOLLOWS:

20 (a) FIFTY PERCENT TO THE GENERAL FUND OF THE GOVERNMENTAL
21 BODY OR BODIES WITH BUDGETARY AUTHORITY OVER THE SEIZING
22 AGENCY FOR PUBLIC SAFETY PURPOSES OR, IF THE SEIZING AGENCY WAS A
23 MULTIJURISDICTIONAL TASK FORCE, FIFTY PERCENT TO BE DISTRIBUTED IN
24 ACCORDANCE WITH THE APPROPRIATE INTERGOVERNMENTAL AGREEMENT;

25 (b) TWENTY-FIVE PERCENT TO THE BEHAVIORAL HEALTH
26 ADMINISTRATIVE SERVICES ORGANIZATION CONTRACTING WITH THE
27 BEHAVIORAL HEALTH ADMINISTRATION IN THE DEPARTMENT OF HUMAN

1 SERVICES SERVING THE JUDICIAL DISTRICT WHERE THE FORFEITURE
2 PROCEEDING WAS PROSECUTED TO FUND DETOXIFICATION AND SUBSTANCE
3 USE DISORDER TREATMENT. MONEY APPROPRIATED TO THE BEHAVIORAL
4 HEALTH ADMINISTRATIVE SERVICES ORGANIZATION MUST BE IN ADDITION
5 TO, AND NOT BE USED TO SUPPLANT, OTHER FUNDING APPROPRIATED TO
6 THE BEHAVIORAL HEALTH ADMINISTRATION; AND

7 (c) TWENTY-FIVE PERCENT TO THE LAW ENFORCEMENT
8 COMMUNITY SERVICES GRANT PROGRAM FUND, CREATED PURSUANT TO
9 SECTION 24-32-124 (5).

10 **16-13-1134. Sale restrictions.** A LAW ENFORCEMENT AGENCY
11 SHALL NOT SELL FORFEITED PROPERTY DIRECTLY OR INDIRECTLY TO ANY
12 EMPLOYEE OF THE LAW ENFORCEMENT AGENCY, TO A PERSON RELATED TO
13 AN EMPLOYEE WITHIN THE THIRD DEGREE OF CONSANGUINITY OR
14 AFFINITY, OR TO ANOTHER LAW ENFORCEMENT AGENCY.

15 **16-13-1135. Preemption.** FORFEITURE IS A MATTER OF
16 STATEWIDE CONCERN. THIS PART 11 PREEMPTS LAWS BY AND LOCAL
17 GOVERNMENT IN THE STATE THAT REGULATE CIVIL AND CRIMINAL
18 FORFEITURE.

19 **16-13-1136. Limitation on federal adoption.** (1) A STATE OR
20 LOCAL LAW ENFORCEMENT AGENCY SHALL NOT TRANSFER OR OFFER FOR
21 ADOPTION PROPERTY SEIZED PURSUANT TO STATE LAW TO A FEDERAL
22 AGENCY FOR THE PURPOSE OF FORFEITURE PURSUANT TO 18 U.S.C.
23 CHAPTER 46 OR OTHER FEDERAL LAW UNLESS THE SEIZED PROPERTY
24 INCLUDES UNITED STATES CURRENCY THAT EXCEEDS FIFTY THOUSAND
25 DOLLARS.

26 (2) A STATE OR LOCAL LAW ENFORCEMENT AGENCY IS PROHIBITED
27 FROM ACCEPTING PAYMENT OF ANY KIND OR DISTRIBUTION OF FORFEITURE

1 PROCEEDS FROM THE FEDERAL GOVERNMENT IF THE STATE OR LOCAL LAW
2 ENFORCEMENT AGENCY VIOLATES SUBSECTION (1) OF THIS SECTION. ALL
3 SUCH PROCEEDS MUST BE DIRECTED TO THE STATE'S GENERAL FUND.

4 **16-13-1137. Limitation on state and federal joint task forces.**

5 (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, A JOINT
6 TASK FORCE OF A LAW ENFORCEMENT AGENCY AND A FEDERAL AGENCY
7 SHALL TRANSFER SEIZED PROPERTY TO THE PROSECUTING AUTHORITY FOR
8 FORFEITURE PURSUANT TO THIS PART 11.

9 (2) THE JOINT TASK FORCE MAY TRANSFER SEIZED PROPERTY TO
10 THE UNITED STATES DEPARTMENT OF JUSTICE FOR FORFEITURE PURSUANT
11 TO FEDERAL LAW IF THE SEIZED PROPERTY INCLUDES UNITED STATES
12 CURRENCY THAT EXCEEDS FIFTY THOUSAND DOLLARS.

13 (3) A LAW ENFORCEMENT AGENCY IS PROHIBITED FROM ACCEPTING
14 PAYMENT OR DISTRIBUTION OF ANY KIND FROM THE FEDERAL
15 GOVERNMENT IF THE FEDERAL GOVERNMENT REQUIRES THAT SEIZED
16 PROPERTY THAT INCLUDES UNITED STATES CURRENCY LESS THAN
17 TWENTY-FIVE THOUSAND DOLLARS BE TRANSFERRED TO THE FEDERAL
18 GOVERNMENT FOR FORFEITURE PURSUANT TO FEDERAL LAW.

19 (4) NOTHING IN SUBSECTION (1) OR (2) OF THIS SECTION SHALL BE
20 CONSTRUED TO PROHIBIT THE FEDERAL GOVERNMENT, ACTING ALONE,
21 FROM SEIZING PROPERTY AND SEEKING FORFEITURE PURSUANT TO
22 FEDERAL LAW.

23 **16-13-1138. Guidance.** (1) A PROSECUTING AUTHORITY, AFTER
24 CONSULTING WITH THE RESPONSIBLE UNITED STATES ATTORNEY, SHALL
25 ESTABLISH GUIDELINES FOR JOINT TASK FORCES AND
26 MULTIJURISDICTIONAL COLLABORATION IN THE PROSECUTING
27 AUTHORITY'S JURISDICTION. THE GUIDELINES MUST BE CONSISTENT WITH

1 FEDERAL SAFEGUARDS TO ENSURE THAT ACTIVITIES ARE CONDUCTED IN
2 COMPLIANCE WITH THE UNITED STATES DEPARTMENT OF JUSTICE'S
3 POLICIES.

4 (2) THE DEPARTMENT OF PUBLIC SAFETY, FROM TIME TO TIME, MAY
5 OFFER TRAINING ON SEIZURE AND FORFEITURE PURSUANT TO THIS PART 11.

6 **SECTION 2.** In Colorado Revised Statutes, **repeal** part 5 and part
7 6 of article 13 of title 16.

8 **SECTION 3.** In Colorado Revised Statutes, 13-80-103.8, **amend**
9 (1) introductory portion; **repeal** (1)(c); and **add** (1)(f) as follows:

10 **13-80-103.8. Limitation of civil forfeiture actions related to**
11 **criminal acts.** (1) The following actions ~~shall be commenced~~ MUST
12 COMMENCE within five years after the cause of action accrues, and not
13 thereafter:

14 (c) ~~All actions brought pursuant to part 5 of article 13 of title 16,~~
15 ~~C.R.S.;~~

16 (f) ALL ACTIONS BROUGHT PURSUANT TO PART 11 OF ARTICLE 13
17 OF TITLE 16.

18 **SECTION 4.** In Colorado Revised Statutes, 16-13-701, **repeal**
19 (2)(c)(I)(B), (2)(c)(I)(C), (3)(b), and (3)(c); and **add** (2)(c)(I)(C.5) and
20 (3)(c.5) as follows:

21 **16-13-701. Reports related to seizures and forfeitures -**
22 **legislative declaration - definitions.** (2) As used in this section, unless
23 the context otherwise requires:

24 (c) "Reporting agency" means:

25 (I) Any state or local governmental entity that employs a person,
26 other than a judge or magistrate, who is authorized to effectuate a
27 forfeiture of real or personal property, pursuant to:

1 (B) ~~Part 5 of this article 13, "Colorado Contraband Forfeiture~~
2 ~~Act";~~

3 (C) ~~Part 6 of this article 13, receipt of federally forfeited property;~~
4 ~~or~~

5 (C.5) PART 11 OF THIS ARTICLE 13; OR

6 (3) This section applies to property seized under the following:

7 (b) ~~Part 5 of this article 13, "Colorado Contraband Forfeiture~~
8 ~~Act";~~

9 (c) ~~Part 6 of this article 13, receipt of federally forfeited property;~~
10 (c.5) PART 11 OF THIS ARTICLE 13;

11 **SECTION 5.** In Colorado Revised Statutes, 18-17-106, **amend**
12 (5) as follows:

13 **18-17-106. Civil remedies.** (5) The attorney general or district
14 attorney may institute civil proceedings ~~under~~ PURSUANT TO this section.
15 Any action instituted ~~under~~ PURSUANT TO this section ~~shall~~ MUST conform
16 to the procedures set forth in part 3 ~~or part 5~~ of article 13 of title 16.
17 ~~C.R.S.~~ In any action brought ~~under~~ PURSUANT TO this section, the district
18 court shall proceed as soon as practicable to the hearing and
19 determination. Pending final determination, the district court may, at any
20 time, enter such injunctions, prohibitions, or restraining orders or take
21 such actions, including the acceptance of satisfactory performance bonds,
22 as the court may deem proper.

23 **SECTION 6.** In Colorado Revised Statutes, **amend** 24-33.5-225
24 as follows:

25 **24-33.5-225. Receipt of proceeds from forfeited property.** The
26 division of the Colorado state patrol is authorized to accept, receive, and
27 expend proceeds allocated to the division after sale of forfeited property

1 pursuant to ~~part 5~~ PART 11 of article 13 of title 16, ~~C.R.S.~~, and such funds
2 ~~shall be~~ ARE in addition to the ~~moneys~~ MONEY appropriated to the
3 division by the general assembly. The executive director shall submit an
4 annual report to the joint budget committee at the time the annual budget
5 request is submitted providing information on the amounts received ~~under~~
6 PURSUANT TO this section, if any, and the uses made thereof.

7 **SECTION 7.** In Colorado Revised Statutes, 24-33.5-522, **amend**
8 (1)(a), (1)(b) introductory portion, and (1)(b)(I)(A) as follows:

9 **24-33.5-522. Law enforcement assistance grant program -**
10 **reports.** (1) (a) There is created in the division the law enforcement
11 assistance grant program, referred to in this section as the "grant
12 program", to award grants to seizing agencies, as defined in section
13 16-13-301 (2.7) to reimburse them for money that the agency would have
14 received except for section 16-13-306.5, ~~or 16-13-504.5~~ 16-13-1136, OR
15 16-13-1137. The division shall administer the grant program pursuant to
16 this section. Subject to available appropriations, the division shall make
17 grant payments from money appropriated to the division by the general
18 assembly for the program.

19 (b) The executive director, or ~~his or her~~ THE EXECUTIVE
20 DIRECTOR'S designee, shall:

21 (I) Develop policies and procedures:

22 (A) For seizing agencies to apply for grants up to the amount of
23 money that the agency can establish that it would have received except for
24 section 16-13-306.5, ~~or 16-13-504.5~~ 16-13-1136, OR 16-13-1137;

25 **SECTION 8.** In Colorado Revised Statutes, 24-33.5-1214,
26 **amend** (5)(e) as follows:

27 **24-33.5-1214. Cigarettes - reduced ignition propensity**

1 **standards - repeal. (5) Penalties - forfeiture.** Effective July 31, 2009:

2 (e) Cigarettes that have been sold or offered for sale and that do
3 not comply with the performance standard required by subsection (2) of
4 this section ~~shall be~~ ARE subject to forfeiture as provided in the "~~Colorado~~
5 ~~Contraband Forfeiture Act~~", ~~part 5~~ "DUE PROCESS ASSET FORFEITURE
6 ACT", PART 11 of article 13 of title 16. ~~C.R.S.~~ Cigarettes forfeited
7 pursuant to this ~~paragraph (e)~~ shall SUBSECTION (5)(e) MUST be destroyed;
8 except that, before such destruction, the true holder of the trademark
9 rights in the cigarette brand ~~shall be~~ IS permitted to inspect the cigarettes
10 if desired.

11 **SECTION 9.** In Colorado Revised Statutes, 28-3-1303, **amend**
12 (2) as follows:

13 **28-3-1303. Drug interdiction and enforcement plan -**
14 **requirements.** (2) SUBJECT TO THE LIMITATIONS IN SECTIONS 16-13-1136
15 AND 16-13-1137 AND notwithstanding any other provision of law, when
16 participating in operations pursuant to the drug interdiction and
17 enforcement plan required by this part 13, the National Guard ~~shall be~~ IS
18 considered a law enforcement agency of the state for purposes of
19 accepting, receiving, disposing of, and expending the property and
20 proceeds from any property forfeited to the federal government and
21 allocated to the National Guard pursuant to ~~section 16-13-601.~~ C.R.S. 21
22 U.S.C. SEC. 881 (e).

23 **SECTION 10.** In Colorado Revised Statutes, **amend** 28-3-1305
24 as follows:

25 **28-3-1305. Department of military and veterans affairs**
26 **counterdrug program federal forfeiture fund - creation.** SUBJECT TO
27 THE LIMITATIONS IN SECTIONS 16-13-1136 AND 16-13-1137, any ~~moneys~~

1 MONEY accepted by the adjutant general pursuant to ~~section 16-13-601~~
2 ~~C.R.S., shall~~ 21 U.S.C. SEC. 881 (e) MUST be transmitted to the state
3 treasurer, who shall credit the same to the department of military and
4 veterans affairs counterdrug program federal forfeiture fund, which fund
5 is ~~hereby~~ created in the state treasury and referred to in this section as the
6 "fund". All interest and income derived from the investment and deposit
7 of ~~moneys~~ MONEY in the fund ~~shall be~~ IS credited to the fund. Any
8 unexpended and unencumbered ~~moneys~~ MONEY remaining in the fund at
9 the end of a fiscal year ~~shall remain~~ REMAINS in the fund and ~~shall not be~~
10 IS NOT credited or transferred to the general fund or another fund. ~~Moneys~~
11 MONEY in the fund ~~shall be~~ IS continuously appropriated to the
12 department for use by the adjutant general in compliance with state and
13 federal law.

14 **SECTION 11.** In Colorado Revised Statutes, 33-13-105, **amend**
15 (3)(b) as follows:

16 **33-13-105. Seizure of vessels by officers - repeal.**

17 (3) (b) (I) Any forfeiture proceeding initiated pursuant to this section
18 shall be conducted in conformance with ~~section 16-13-505, C.R.S.~~ PART
19 11 OF ARTICLE 13 OF TITLE 16.

20 (II) For purposes of applying ~~section 16-13-505, C.R.S.~~, PART 11
21 OF ARTICLE 13 OF TITLE 16 to a seizure hearing conducted pursuant to this
22 section, ~~"contraband"~~ "CONVEYANCE" includes any vessel seized in
23 accordance with this section.

24 **SECTION 12.** In Colorado Revised Statutes, 39-28-306, **amend**
25 (2) as follows:

26 **39-28-306. Penalties and other remedies. (2) Contraband and**
27 **seizure.** Any cigarettes that have been sold, offered for sale, or possessed

1 for sale in this state in violation of section 39-28-303 (3) ~~shall be deemed~~
2 ~~a contraband article as defined by section 16-13-502 (1), C.R.S. The~~
3 ~~cigarettes shall be~~ ARE subject to seizure and forfeiture as provided in the
4 "~~Colorado Contraband Forfeiture Act~~", ~~part 5~~ "DUE PROCESS ASSET
5 FORFEITURE ACT", PART 11 of article 13 of title 16, ~~C.R.S.~~, and any
6 cigarettes so seized and forfeited shall be destroyed and not resold.

7 **SECTION 13. Effective date - applicability.** This act takes
8 effect July 1, 2023, and applies to seizures occurring on or after said date.

9 **SECTION 14. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, or safety.