

## CHAPTER 173

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**CRIMINAL LAW AND PROCEDURE**

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**SENATE BILL 93-94**

BY SENATORS Johnson, Bishop, Gallagher, Mutzebaugh, Norton, Pastore, Schroeder, and Wells;  
also REPRESENTATIVES Foster, Reeser, and Thiebaut.

**AN ACT**

**CONCERNING THE STATUTORY CHANGES NECESSARY TO BRING THE "COLORADO CONTRABAND FORFEITURE ACT" INTO COMPLIANCE WITH STATUTORY CHANGES MADE IN 1992 TO COLORADO STATUTES PERTAINING TO THE ABATEMENT OF PUBLIC NUISANCE.**

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

**SECTION 1.** 16-13-501.5, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**16-13-501.5. Legislative declaration.** (1) It is the intent of the general assembly that proceedings under this part 5 be remedial in nature and designed to benefit the public good by appropriating contraband property for use by law enforcement.

(2) IT IS ALSO THE POLICY OF THE GENERAL ASSEMBLY THAT ASSET FORFEITURE PURSUANT TO THIS PART 5 SHALL BE CARRIED OUT PURSUANT TO THE FOLLOWING:

(a) GENERATION OF REVENUE SHALL NOT BE THE PRIMARY PURPOSE OF ASSET FORFEITURE.

(b) NO PROSECUTOR'S OR LAW ENFORCEMENT OFFICER'S EMPLOYMENT OR LEVEL OF SALARY SHALL DEPEND UPON THE FREQUENCY OF SEIZURES OR FORFEITURES WHICH SUCH PERSON ACHIEVES.

(c) EACH SEIZING AGENCY SHALL HAVE POLICIES AND PROCEDURES FOR THE EXPEDITIOUS RELEASE OF SEIZED PROPERTY WHICH IS NOT SUBJECT TO FORFEITURE PURSUANT TO THIS PART 5, WHEN SUCH RELEASE IS APPROPRIATE.

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(d) EACH SEIZING AGENCY RETAINING FORFEITED PROPERTY FOR OFFICIAL LAW ENFORCEMENT USE SHALL ENSURE THAT THE PROPERTY IS SUBJECT TO CONTROLS CONSISTENT WITH CONTROLS WHICH ARE APPLICABLE TO PROPERTY ACQUIRED THROUGH THE NORMAL APPROPRIATIONS PROCESS.

(e) EACH SEIZING AGENCY WHICH RECEIVES FORFEITURE PROCEEDS SHALL CONFORM WITH REPORTING, AUDIT, AND DISPOSITION PROCEDURES ENUMERATED IN THIS ARTICLE.

(f) EACH SEIZING AGENCY SHALL PROHIBIT ITS EMPLOYEES FROM PURCHASING FORFEITED PROPERTY.

**SECTION 2.** 16-13-504 (2) and (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 16-13-504 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

**16-13-504. Forfeiture of vehicle, fixtures and contents of building, personal property, or contraband article - exceptions.** (2) ~~It shall be an affirmative defense in a forfeiture proceeding brought pursuant to this part 5 if the owner of such property establishes by a preponderance of the evidence:~~

~~(a) (I) That the property had been taken from him and used without his consent, express or implied; or~~

~~(II) That he was uninvolved in the acts listed in section 16-13-503 and neither knew nor reasonably should have known of those acts; and~~

~~(b) That he had done all that reasonably should have been done to prevent the use of the property in connection with said acts.~~ (a) IN ANY ACTION SEEKING FORFEITURE OF PROPERTY PURSUANT TO THIS PART 5, ANY PERSON, INCLUDING A LIENHOLDER, WHO SEEKS TO CONTEST THE FORFEITURE SHALL ESTABLISH SUCH PERSON'S STANDING AS A TRUE OWNER OF THE PROPERTY OR A PERSON WITH AN INTEREST IN THE PROPERTY.

(b) THE FACTORS TO BE CONSIDERED BY THE COURT IN DECIDING WHETHER A PERSON IS A TRUE OWNER, AS DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (2), SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, THE FOLLOWING:

(I) WHETHER THE PERSON WAS THE PRIMARY USER OR POSSESSOR OF THE PROPERTY;

(II) WHETHER THE PROPERTY IS TITLED IN THE PERSON, UNLESS THE PROPERTY WAS TITLED IN OR CONVEYED TO THE PERSON IN ORDER TO AVOID A FORFEITURE;

(III) HOW MUCH OF THE CONSIDERATION PAID FOR THE PURCHASE OF THE PROPERTY, OR AN INTEREST IN SUCH PROPERTY, WAS FURNISHED BY THE PERSON;

(IV) WHETHER THE LIEN OR INTEREST OF A LIENHOLDER WAS PERFECTED IN THE MANNER PRESCRIBED BY LAW PRIOR TO THE SEIZURE OF THE PROPERTY.

(c) THE COURT SHALL CONSIDER THE TOTALITY OF THE CIRCUMSTANCES IN

DETERMINING WHETHER A PERSON IS A TRUE OWNER, BUT IT IS NOT NECESSARY THAT A PERSON CONTESTING THE FORFEITURE ESTABLISH ALL OF THE FACTORS ENUMERATED IN PARAGRAPH (b) OF THIS SUBSECTION (2) IN ORDER FOR THE COURT TO FIND THAT THE PERSON IS A TRUE OWNER.

(2.1) (a) IN ANY ACTION TO FORFEIT PROPERTY PURSUANT TO THIS PART 5, THE PLAINTIFF, IN ADDITION TO ANY OTHER MATTER WHICH MUST BE PROVEN IN THE PLAINTIFF'S CASE IN CHIEF, SHALL PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT POSSESSION OF THE PROPERTY IS UNLAWFUL, OR THAT THE OWNER OF THE PROPERTY OR INTEREST THEREIN WAS INVOLVED IN OR KNEW OF THE SUBJECT ACT.

(b) AS USED IN PARAGRAPH (a) OF THIS SUBSECTION (2.1), AN OWNER WAS "INVOLVED IN OR KNEW OF THE SUBJECT ACT" IF IT IS ESTABLISHED THAT:

(I) THE OWNER WAS INVOLVED IN THE SUBJECT ACT; OR

(II) THE OWNER KNEW OR REASONABLY SHOULD HAVE KNOWN OF THE SUBJECT ACT.

(2.2) IT SHALL BE AN AFFIRMATIVE DEFENSE THAT, AND THE PROPERTY OF A PERSON WHO WAS NOT INVOLVED IN THE SUBJECT ACT OR ACTS SHALL NOT BE FORFEITED IF, THE PERSON ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT THE PERSON TOOK ALL REASONABLE STEPS TO ABATE THE SUBJECT ACT AND TOOK ALL REASONABLE STEPS TO PREVENT THE PROPERTY FROM BECOMING INVOLVED IN THE SUBJECT ACT AND SUBJECT TO BEING FORFEITED PURSUANT TO THIS PART 5.

(2.3) THE PROSECUTING ATTORNEY SHALL SET FORTH IN THE PETITION INITIATING THE FORFEITURE ACTION PURSUANT TO THIS PART 5 THE EXISTENCE OF ANY LIENS AND WHETHER FORFEITURE OF ANY LIENS WILL BE SOUGHT. IF FORFEITURE OF A LIEN IS NOT SOUGHT, THE LIENHOLDER DOES NOT NEED TO APPEAR TO PRESERVE ANY INTEREST IN THE PROPERTY WHICH IS THE SUBJECT OF THE FORFEITURE ACTION WHICH SUCH LIENHOLDER MAY POSSESS.

~~(3) No bona fide lienholder's interest shall be forfeited under the provisions of this part 5 if such lienholder establishes that he neither knew nor should have known after a reasonable inquiry that such property was being used or was likely to be used for any act specified in section 16-13-503, that such use was without his consent, express or implied, and that the lien had been perfected in the manner prescribed by law prior to such seizure. The prosecuting attorney shall set forth in the petition initiating the forfeiture action the existence of any liens and whether forfeiture of any liens will be sought. If forfeiture of a lien is not sought, the lienholder need not appear to preserve his interest. If it appears to the satisfaction of the court that a lienholder's interest satisfies the above requirements for exemption, such lienholder's interest shall be preserved by the court by ordering the lienholder's interest to be paid by the seizing agency or from such proceeds of the sale as provided in section 16-13-506.~~

**SECTION 3.** 16-13-505 (2), (3), (5), (7), (8), and (10), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

**16-13-505. Forfeiture proceedings.** (2) (a) The prosecuting attorney shall file

a petition in forfeiture to perfect title in seized contraband property no later than sixty days after the seizure. THE PROSECUTING ATTORNEY MAY FILE THE PETITION AFTER THE EXPIRATION OF SIXTY DAYS FROM THE DATE OF SEIZURE ONLY IF THE PETITION IS ACCOMPANIED BY A WRITTEN STATEMENT OF GOOD CAUSE FOR THE LATE FILING. THE SIXTY-DAY TIME LIMITATION ESTABLISHED BY THIS PARAGRAPH (a) SHALL NOT APPLY WHERE THE SEIZURE OF THE PROPERTY OCCURRED PURSUANT TO A WARRANT AUTHORIZING SUCH SEIZURE OR OTHERWISE UNDER ANY STATUTE OR RULE OF CRIMINAL PROCEDURE, IF THE PROPERTY IS HELD AS EVIDENCE IN A PENDING CRIMINAL INVESTIGATION OR IN A PENDING CRIMINAL CASE. The petition shall be accompanied by a supporting affidavit, and both shall describe the property seized with reasonable particularity and shall include a list of witnesses to be called in support of the claim for forfeiture, including the addresses and telephone numbers thereof.

(b) If the court finds from the petition and supporting affidavit that probable cause exists to believe that the seized property is contraband property as defined in this part 5, it shall, without delay, issue a citation directed to interested parties to show cause why the property should not be forfeited. The citation shall fix the date and time for a first appearance on the petition. The date fixed shall be no less than thirty days and no more than sixty days from the date of the issuance of the citation.

(c) At the first appearance on the petition, the court shall set a date and time for a hearing on the merits of the petition within forty-five days of the first appearance.

(d) The only responsive pleading shall be designated a response to petition and citation to show cause and shall be filed with the court at or before the first appearance on the petition and shall include:

(I) A statement admitting or denying the averments of the petition;

(II) A statement setting forth with particularity why the seized property should not be forfeited. The statement shall include specific factual and legal grounds supporting it and any affirmative defense to forfeiture as provided in this part 5.

(III) A list of witnesses whom the respondent intends to call at the hearing on the merits, including the addresses and telephone numbers thereof; and

(IV) A verified statement, supported by documentation, ~~of the ownership interest of~~ THAT the claimant IS THE TRUE OWNER OF THE PROPERTY OR AN INTEREST THEREIN.

(e) No claim for relief against the plaintiff shall be set forth in the response, except a request for return of the seized property.

(3) The citation specified in paragraph (b) of subsection (2) of this section shall:

(a) Describe the property;

(b) State the county, place, and date of seizure;

(c) State the name of the agency holding the seized property;

(d) State the date and time of the first appearance and the court in which it will be held; ~~and~~

(e) State that judgment in favor of the plaintiff shall enter forthwith against any party who fails to file a response pursuant to paragraph (d) of subsection (2) of this section or who fails to appear personally or by counsel at the first appearance before the court; AND

(f) ADVISE THE DEFENDANT OF THE RIGHT TO CONTINUE THE ACTION UNDER THE CIRCUMSTANCES STATED IN SUBSECTION (5) OF THIS SECTION.

(5) ~~No~~ Continuance of the hearing on the merits shall be granted ~~except~~ upon stipulation of the parties or upon good cause shown. Good cause shall ~~not~~ include the fact of pending criminal charges arising out of the same transaction alleged in the petition ~~nor any~~ AND THAT THERE EXISTS A privilege AGAINST SELF-INCRIMINATION UNDER THE CONSTITUTION OF THE UNITED STATES OR THE CONSTITUTION OF THE STATE OF COLORADO associated with ~~said~~ SUCH charges; EXCEPT THAT THIS SUBSECTION (5) SHALL NOT BE CONSTRUED TO ALLOW THE CLAIMANT A BASIS FOR FAILING TO FILE A RESPONSE TO THE PETITION IN THE MANNER REQUIRED BY PARAGRAPH (d) OF SUBSECTION (2) OF THIS SECTION. ~~Stipulations for continuance shall not be effective unless and until approved by the court.~~ ANY CONTINUANCE GRANTED DUE TO PENDING CRIMINAL CHARGES SHALL EXTEND UNTIL RESOLUTION OF SUCH CRIMINAL CHARGES BUT SHALL NOT EXTEND TO THE TIME PERIOD OF AN APPEAL OF A CONVICTION FOR SUCH CRIMINAL CHARGES. AT THE TIME THE COURT GRANTS A CONTINUANCE BECAUSE OF PENDING CRIMINAL CHARGES, THE COURT SHALL SET A NEW DATE FOR TRIAL OF THE ACTION. ANY DEFENDANT WHO IS GRANTED A CONTINUANCE OF A TRIAL PURSUANT TO THIS PART 5 BECAUSE OF PENDING CRIMINAL CHARGES, WHO DELAYS THE RESOLUTION OF THE PENDING CRIMINAL CASE BY DISOBEYING AN ORDER OF THE COURT TO APPEAR AT A PROCEEDING IN THE CRIMINAL CASE FOR WHICH THE CONTINUANCE OF THE CONTRABAND FORFEITURE ACTION WAS GRANTED, SHALL BE DENIED ANY ADDITIONAL CONTINUANCE IF THE DELAY CAUSED IN THE CRIMINAL CASE WAS OF SUCH DURATION THAT IT PREVENTED THE CRIMINAL CASE FROM BEING RESOLVED PRIOR TO THE TRIAL OF THE CONTRABAND FORFEITURE ACTION; EXCEPT THAT AN ADDITIONAL CONTINUANCE MAY BE GRANTED IF THE DEFENDANT ESTABLISHES, AND THE COURT FINDS, THAT THE DELAY WAS DUE TO UNAVOIDABLE CIRCUMSTANCES OR DUE TO ANY OTHER REASON WHICH IS SHOWN TO BE GOOD CAUSE.

(7) If the seized property is of a type for which title or registration is required by law, or if the owner of the property and his address are known in fact, or if the seized property is subject to a perfected security interest, the prosecuting attorney shall give notice of the forfeiture action to the claimant, either by personal service of the petition, supporting affidavit, and citation upon him or by sending copies of such documents by certified mail, return receipt requested, to the last-known address of such claimant. If the documents are properly mailed to an address which the prosecutor has reasonable grounds to believe is the last-known address of the potential claimant, said documents shall be deemed served whether or not the claimant responds to the notice to claim them at the post office. Unknown persons who may claim any interest in the property, persons whose addresses are unknown, and persons upon whom the prosecutor has been unable to effect service as otherwise provided in this subsection (7) despite diligent good faith efforts may be served

PURSUANT TO A COURT ORDER by publishing a copy of the citation twice in a newspaper of general circulation in the county in which the proceeding is instituted. The fact of such publication shall be conclusively established by the publisher's affidavit of publication. The first publication shall be more than ten days and the last publication not less than five days before the first appearance date on the citation.

(8) If any claimant to the property subject to a forfeiture action, including a claimant unknown to the plaintiff, is properly served with the citation according to the procedures specified in subsection ~~(5)~~ (7) of this section and fails to appear personally or by counsel on the first appearance date or fails to file a response as required by this section, the court shall forthwith find said person in default and enter an order forfeiting said person's interest in the property and distributing the proceeds of forfeiture as provided in this part 5. A default order of forfeiture entered pursuant to this section shall only be set aside upon an express finding by the court that a claimant was improperly served through no fault of ~~his own~~ SUCH CLAIMANT and had no notice of the first appearance on the citation or was prevented from appearing and responding due to an emergency situation caused by events beyond ~~his~~ SUCH CLAIMANT'S control when ~~he~~ SUCH CLAIMANT had made diligent, good faith, and reasonable efforts to prepare a response and appear.

(10) The evidentiary burdens at a forfeiture hearing brought pursuant to this part 5 shall be as follows:

(a) ~~The prosecution shall first make a showing of probable cause why the property should be forfeited, by affidavit or otherwise~~ CLAIMANT SHALL FIRST PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT SUCH CLAIMANT IS THE TRUE OWNER OF THE PROPERTY.

(b) ~~Once probable cause has been established,~~ IF the claimant ESTABLISHES THAT SUCH CLAIMANT IS THE TRUE OWNER OF THE PROPERTY SOUGHT TO BE FORFEITED, THE PROSECUTING ATTORNEY shall have the burden of going forward with the evidence and ~~showing his ownership interest in the property~~ PROVING THE ALLEGATIONS OF THE PETITION BY A PREPONDERANCE OF THE EVIDENCE. The claimant shall ~~also make a prima facie showing that the property is not contraband property or~~ establish an ANY affirmative defense to the forfeiture BY A PREPONDERANCE OF THE EVIDENCE.

(c) ~~Thereafter, the prosecution shall have the burden of proving the allegations in the petition, and the claimant shall have the burden of proving his standing and any affirmative defense he has raised. Said burdens of proof shall be by a preponderance of the evidence.~~

**SECTION 4. Effective date - applicability.** This act shall take effect July 1, 1993, and shall apply to forfeiture actions filed on or after said date.

**SECTION 5. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 30, 1993