

CHAPTER 119

CRIMINAL LAW AND PROCEDURE

SENATE BILL 03-133

BY SENATOR(S) Dyer, Anderson, and Grossman;
also REPRESENTATIVE(S) Stengel, Mitchell, Madden, McFadyen, and Schultheis.

AN ACT

CONCERNING CIVIL FORFEITURE IN TITLE 16, COLORADO REVISED STATUTES.

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

SECTION 1. 16-13-303 (5.1) (a) and (5.1) (a.5), Colorado Revised Statutes, are amended to read:

16-13-303. Class 1 public nuisance. (5.1) (a) In any action to forfeit property pursuant to this part 3, the plaintiff, in addition to any other matter which must be proven in the plaintiff's case in chief, shall prove by clear and convincing evidence that possession of the property is unlawful or that the owner of the property was a party to the creation of the public nuisance. The plaintiff shall also prove by clear and convincing evidence that the property was instrumental in the commission or facilitation of a crime creating a public nuisance or the property constitutes traceable proceeds of the crime or related criminal activity. ~~Prior to an entry of judgment of forfeiture, the court shall make a finding based upon clear and convincing evidence that the value of the property to be forfeited is proportional to the crime or related criminal activity.~~

~~(a.5) Under proportionality review, the court shall ensure that the forfeiture meets the remedial purpose of the statute. The court shall be guided by objective criteria including:~~

~~(I) The severity of the offense or related criminal activity and the harm or risk of harm to the public;~~ THE DEFENDANT IN AN ACTION BROUGHT PURSUANT TO THIS PART 3 MAY PETITION THE COURT TO DETERMINE WHETHER A FORFEITURE WAS CONSTITUTIONALLY EXCESSIVE. UPON THE CONCLUSION OF A TRIAL RESULTING IN A JUDGMENT OF FORFEITURE IN AN ACTION BROUGHT PURSUANT TO THIS PART 3, IF THE EVIDENCE PRESENTED RAISES AN ISSUE OF PROPORTIONALITY UNDER THIS PARAGRAPH

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

(a.5), THE DEFENDANT MAY PETITION THE COURT TO SET A HEARING, OR THE COURT MAY ON ITS OWN MOTION SET A HEARING, TO DETERMINE WHETHER A FORFEITURE WAS CONSTITUTIONALLY EXCESSIVE. THIS DETERMINATION SHALL BE MADE PRIOR TO ANY SALE OR DISTRIBUTION OF FORFEITED PROPERTY.

~~(II) The financial gain derived or sought to be derived through commission of the offense or related criminal activity;~~ IN MAKING THIS DETERMINATION, THE COURT SHALL COMPARE THE FORFEITURE TO THE GRAVITY OF THE PUBLIC NUISANCE ACT GIVING RISE TO THE FORFEITURE AND RELATED CRIMINAL ACTIVITY.

~~(III) The actual or intended loss to victims due to commission of the offense or related criminal activity;~~ THE DEFENDANT SHALL HAVE THE BURDEN OF ESTABLISHING BY A PREPONDERANCE OF THE EVIDENCE THAT THE FORFEITURE IS GROSSLY DISPROPORTIONAL.

~~(IV) The extent of the property owner's involvement in the offense or related criminal activity;~~ IF THE COURT FINDS THAT THE FORFEITURE IS GROSSLY DISPROPORTIONAL TO THE PUBLIC NUISANCE ACT AND RELATED CRIMINAL ACTIVITY, IT SHALL REDUCE OR ELIMINATE THE FORFEITURE AS NECESSARY TO AVOID A VIOLATION OF THE EXCESSIVE FINES CLAUSE OF THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION OR ARTICLE II, SECTION 20 OF THE COLORADO CONSTITUTION.

~~(V) Whether the offense was part of an ongoing pattern of related criminal activity; and~~

~~(VI) The value of the owner's interest in the property.~~

SECTION 2. 16-13-504 (2.1) (a) and (2.1) (a.5), Colorado Revised Statutes, are amended to read:

16-13-504. Forfeiture of vehicle, fixtures and contents of building, personal property, or contraband article - exceptions. (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 clear and convincing 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. The plaintiff shall also prove by clear and convincing evidence that the property was instrumental in the commission or facilitation of the crime or the property constitutes traceable proceeds of the crime or related criminal activity. ~~Prior to an entry of judgment of forfeiture, the court shall make a finding based upon clear and convincing evidence that the value of the property to be forfeited is proportional to the crime or related criminal activity.~~

~~(a.5) Under proportionality review, the court shall ensure that the forfeiture meets the remedial purpose of the statute. The court shall be guided by objective criteria including:~~

~~(I) The severity of the offense or related criminal activity and the harm or risk of harm to the public;~~ THE CLAIMANT IN AN ACTION BROUGHT PURSUANT TO THIS PART 5 MAY PETITION THE COURT TO DETERMINE WHETHER A FORFEITURE WAS

CONSTITUTIONALLY EXCESSIVE. UPON THE CONCLUSION OF A TRIAL RESULTING IN A JUDGMENT OF FORFEITURE IN AN ACTION BROUGHT PURSUANT TO THIS PART 5, IF THE EVIDENCE PRESENTED RAISES AN ISSUE OF PROPORTIONALITY UNDER THIS PARAGRAPH (a.5), THE DEFENDANT MAY PETITION THE COURT TO SET A HEARING, OR THE COURT MAY ON ITS OWN MOTION SET A HEARING TO DETERMINE WHETHER A FORFEITURE WAS CONSTITUTIONALLY EXCESSIVE. THIS DETERMINATION SHALL BE MADE PRIOR TO ANY SALE OR DISTRIBUTION OF FORFEITED PROPERTY.

~~(II) The financial gain derived or sought to be derived through commission of the offense or related criminal activity;~~ IN MAKING THIS DETERMINATION, THE COURT SHALL COMPARE THE FORFEITURE TO THE GRAVITY OF THE PUBLIC NUISANCE ACT GIVING RISE TO THE FORFEITURE AND RELATED CRIMINAL ACTIVITY.

~~(III) The actual or intended loss to victims due to commission of the offense or related criminal activity;~~ THE DEFENDANT SHALL HAVE THE BURDEN OF ESTABLISHING BY A PREPONDERANCE OF THE EVIDENCE THAT THE FORFEITURE IS GROSSLY DISPROPORTIONAL.

~~(IV) The extent of the property owner's involvement in the offense or related criminal activity;~~ IF THE COURT FINDS THAT THE FORFEITURE IS GROSSLY DISPROPORTIONAL TO THE PUBLIC NUISANCE ACT AND RELATED CRIMINAL ACTIVITY, IT SHALL REDUCE OR ELIMINATE THE FORFEITURE AS NECESSARY TO AVOID A VIOLATION OF THE EXCESSIVE FINES CLAUSE OF THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION OR ARTICLE II, SECTION 20 OF THE COLORADO CONSTITUTION.

~~(V) Whether the offense was part of an ongoing pattern of related criminal activity or related criminal activity; and~~

~~(VI) The value of the owner's interest in the property.~~

SECTION 3. 16-13-308 (1) (f), Colorado Revised Statutes, is amended to read:

16-13-308. Temporary restraining order - preliminary injunction - when to issue. (1) (f) Any person with an ownership interest adversely affected by a temporary restraining order issued pursuant to this subsection (1) may file a motion to vacate the temporary restraining order. Such motion shall be filed within ten days of the time said person is served with or otherwise has notice of the temporary restraining order. The motion shall be set for hearing within ten days after its filing. At said hearing, the court shall determine whether the various provisions of the temporary restraining order should remain in effect pending final determination of the action. No part of the temporary restraining order shall be vacated unless the proponent of the motion demonstrates that there is no probable cause to believe that a public nuisance exists or that the public nuisance acts underlying the action occurred, or that the proponent has a reasonable likelihood of prevailing on the merits of the case with respect to the temporary seizure or closure of the property. NO ISSUE REGARDING THE FORFEITURE OF THE PROPERTY SHALL BE RAISED AT THE HEARING ON THE MOTION, EXCEPT THE COURT MAY CONSIDER AN INNOCENT OWNER DEFENSE PURSUANT TO SECTION 16-13-303 (5.2) BY A PROPONENT WHO HAS NOT BEEN CHARGED IN A PARALLEL CRIMINAL ACTION ARISING FROM THE SAME ACTIVITY GIVING RISE TO THE FORFEITURE PROCEEDINGS. WHEN THE INNOCENT

OWNER DEFENSE IS RAISED AS GROUNDS FOR VACATING THE ORDER, THE ISSUES AT THE HEARING SHALL BE LIMITED TO MODIFYING THE ORDER TO PROVIDE FOR THE USE OF THE PROPERTY DURING THE PENDENCY OF THE ACTION BY AN INNOCENT OWNER, BUT ONLY IF SUCH USE IS CONSISTENT WITH PRESERVING IT FOR FORFEITURE AS TO ANY OTHER INTEREST. SUCH A MODIFYING ORDER MAY INCLUDE, WITHOUT LIMITATION, REASONABLE PROVISIONS FOR THE CONTINUED OCCUPANCY OF A RESIDENCE, OR THE OPERATION OF A BUSINESS AND THE SALE OR DISPOSITION OF BUSINESS INVENTORY. HOWEVER, NO SUCH MODIFYING ORDER SHALL INCLUDE THE RELEASE OF CURRENCY. THE DETERMINATION OF THE FACTS BY THE COURT AT THE HEARING IS INDEPENDENT OF AND SHALL NOT BE CONSIDERED IN THE DETERMINATION OF THE SAME OR SIMILAR FACTS IN THE ADJUDICATION OF ANY CRIMINAL CHARGES ARISING OUT OF THE SAME OCCURRENCES. Any motion to vacate a temporary restraining order shall state specifically the factual and legal grounds upon which it is based, and only those grounds may be considered at the hearing. Until vacated, the temporary restraining order shall remain in full force and effect.

SECTION 4. 16-13-307 (1.5), (1.6), and (1.7), Colorado Revised Statutes, are amended to read:

16-13-307. Jurisdiction - venue - parties - process. (1.5) No judgment of forfeiture of property in any forfeiture proceeding shall be entered unless and until an owner of the property is convicted of an offense listed in section 16-13-301 or 16-13-303, OR A LESSER INCLUDED OFFENSE OF AN ELIGIBLE OFFENSE IF THE CONVICTION IS THE RESULT OF A NEGOTIATED GUILTY PLEA. Nothing in this section shall be construed to require the conviction to be obtained in the same jurisdiction as the jurisdiction in which the forfeiture action is brought. In the event criminal charges arising from the same activity giving rise to the forfeiture proceedings are filed against any individual claiming an interest in the property subject to the forfeiture proceeding, ~~such~~ THE TRIAL AND DISCOVERY PHASES OF THE forfeiture proceeding shall be stayed by the court until the disposition of the criminal charges. ~~Nothing in this section shall be construed to require that a stay~~ A STAY SHALL NOT be maintained during an appeal or post-conviction proceeding challenging a criminal conviction. Nothing in this section shall be construed to prohibit or prevent the parties from contemporaneously resolving criminal charges and a forfeiture proceeding arising from the same activity.

(1.6) Upon acquittal or dismissal of a criminal action against a person named in a forfeiture action related to the criminal action, unless the forfeiture action was brought pursuant to ~~paragraph (c) of~~ ONE OR MORE OF PARAGRAPHS (a) TO (f) OF subsection (1.7) of this section, the forfeiture ~~action~~ CLAIM shall be dismissed and the seized property shall be returned ~~to the owner~~ AS RESPECTS THE SUBJECT MATTER PROPERTY OR INTEREST THEREIN OF THAT PERSON, IF THE CASE HAS BEEN ADJUDICATED AS TO ALL OTHER CLAIMS, INTERESTS, AND OWNERS, unless possession of the property is illegal. If the forfeiture action is dismissed or judgment is entered in favor of the claimant, the claimant shall not be subject to any monetary charges by the state for storage of the property or expenses incurred in the preservation of the property, UNLESS AT THE TIME OF DISMISSAL THE PLAINTIFF SHOWS THAT THOSE EXPENSES WOULD HAVE BEEN INCURRED TO PREVENT WASTE OF THE PROPERTY EVEN IF IT HAD NOT BEEN SEIZED.

(1.7) Notwithstanding the provisions of subsection (1.5) of this section:

~~(a) (I) Following the filing of criminal charges, if a property owner fails to appear at a court hearing relating to such charges or is determined to be a fugitive to avoid criminal prosecution, the district attorney shall send notice to the fugitive's last known address that the forfeiture action will proceed thirty days after the date of the notice. If the fugitive appears in the criminal action or in the forfeiture action within the thirty-day period, this paragraph (a) shall not be available to the plaintiff. Thirty days after the date of the notice sent by the district attorney, if the fugitive has not appeared in the criminal action or in the forfeiture action, the forfeiture action may proceed and a judgment of forfeiture may be entered without a criminal conviction of the owner.~~ A PERSON SHALL LACK STANDING FOR AND SHALL BE DISALLOWED FROM PURSUIT OF A CLAIM OR DEFENSE IN A CIVIL FORFEITURE ACTION UPON A FINDING THAT A WARRANT OR OTHER PROCESS HAS BEEN ISSUED FOR THE APPREHENSION OF THE PERSON, AND, IN ORDER TO AVOID CRIMINAL PROSECUTION, THE PERSON:

(A) PURPOSELY LEAVES THE STATE; OR

(B) DECLINES TO ENTER OR REENTER THE STATE TO SUBMIT TO ITS JURISDICTION;
OR

(C) OTHERWISE EVADES THE JURISDICTION OF THE COURT IN WHICH A CRIMINAL CASE IS PENDING AGAINST THE PERSON OR FROM WHICH A WARRANT HAS BEEN ISSUED, BY FAILING TO APPEAR IN COURT OR SURRENDER ON A WARRANT; AND

(D) IS NOT KNOWN TO BE CONFINED OR HELD IN CUSTODY IN ANY OTHER JURISDICTION WITHIN THE UNITED STATES FOR COMMISSION OF CRIMINAL CONDUCT IN THAT JURISDICTION.

(II) IF A PERSON LACKS STANDING PURSUANT TO THIS PARAGRAPH (a), THE FORFEITURE ACTION MAY PROCEED AND A JUDGMENT OF FORFEITURE MAY BE ENTERED WITHOUT A CRIMINAL CONVICTION OF AN OWNER, UPON MOTION AND NOTICE AS PROVIDED IN THE RULES OF CIVIL PROCEDURE.

(b) If, following notice to all persons known to have an interest, or who have asserted an interest in the property subject to forfeiture, ~~no person claims~~ AN OWNER FAILS TO FILE AN ANSWER OR OTHER APPROPRIATE PLEADING WITH THE COURT CLAIMING an interest in the ~~seized~~ SUBJECT MATTER property, OR NO PERSON ESTABLISHES STANDING TO CONTEST THE FORFEITURE ACTION PURSUANT TO SECTION 16-13-303 (5), a forfeiture action may proceed and a judgment of forfeiture may be entered without a criminal conviction of ~~the~~ AN owner.

(c) If the plaintiff proves by clear and convincing evidence that the property was instrumental in the commission of an offense listed in section 16-13-303 (1) or that the property is traceable proceeds of the offense or related criminal activity by a nonowner and the plaintiff proves by clear and convincing evidence that ~~the~~ AN owner is not an innocent owner ~~as defined in~~ PURSUANT TO section 16-13-303 (5.2) (a), a judgment of forfeiture may be entered without a criminal conviction of ~~the~~ AN owner.

(d) ~~If the plaintiff proves by clear and convincing evidence that the property was instrumental in the commission of an offense listed in section 16-13-303 (1) or that the property is traceable proceeds of the offense or related criminal activity by a deceased owner and the plaintiff proves by clear and convincing evidence that the~~

~~deceased owner was not an innocent owner as defined in section 16-13-303 (5.2) (a), a judgment of forfeiture may be entered without a criminal conviction of the deceased owner.~~ IF AN OWNER OF THE PROPERTY WHO WAS INVOLVED IN THE PUBLIC NUISANCE ACT OR CONDUCT GIVING RISE TO THE CLAIM OF FORFEITURE SUBSEQUENTLY DIES, AND WAS NOT AN INNOCENT OWNER PURSUANT TO SECTION 16-13-303 (5.2) (a), A JUDGMENT OF FORFEITURE MAY BE ENTERED WITHOUT A CRIMINAL CONVICTION OF AN OWNER.

~~(e) If the plaintiff proves by clear and convincing evidence that the property was instrumental in the commission of an offense listed in section 16-13-303 (1) or that the property is traceable proceeds of the offense or related criminal activity and the AN owner received a deferred judgment, deferred sentence, or participated in a diversion program, or in the case of a juvenile a deferred adjudication OR deferred sentence or participated in a diversion program for the offense, a judgment of forfeiture may be entered without a criminal conviction.~~

~~(f) A DEFENDANT OR CLAIMANT SHALL BE PERMITTED TO WAIVE THE REQUIREMENT OF A CRIMINAL CONVICTION IN ORDER TO SETTLE A FORFEITURE ACTION.~~

SECTION 5. 16-13-505 (1.5), (1.6), and (1.7), Colorado Revised Statutes, are amended to read:

16-13-505. Forfeiture proceedings. (1.5) No judgment of forfeiture of property in any forfeiture proceeding shall be entered unless and until an owner of the property is convicted of an offense INVOLVING THE CONDUCT listed in section 16-13-503, OR A LESSER INCLUDED OFFENSE OF AN ELIGIBLE OFFENSE IF THE CONVICTION IS THE RESULT OF A NEGOTIATED GUILTY PLEA. Nothing in this section shall be construed to require the conviction to be obtained in the same jurisdiction as the jurisdiction in which the forfeiture action is brought. In the event criminal charges arising from the same activity giving rise to the forfeiture proceedings are filed against any individual claiming an interest in the property subject to the forfeiture proceeding, ~~such~~ THE TRIAL AND DISCOVERY PHASES OF THE forfeiture proceeding shall be stayed by the court until the disposition of the criminal charges. ~~Nothing in this section shall be construed to require that a stay~~ A STAY SHALL NOT be maintained during an appeal or post-conviction proceeding challenging a criminal conviction. Nothing in this section shall be construed to prohibit or prevent the parties from contemporaneously resolving criminal charges and a forfeiture proceeding arising from the same activity.

(1.6) Upon acquittal or dismissal of a criminal action against a person named in a forfeiture action related to the criminal action, unless the forfeiture action was brought pursuant to ~~paragraph (c) of~~ ONE OR MORE OF PARAGRAPHS (a) TO (f) OF subsection (1.7) of this section, the forfeiture ~~action~~ CLAIM shall be dismissed and the seized property shall be returned ~~to the owner~~ AS RESPECTS THE SUBJECT MATTER PROPERTY OR INTEREST THEREIN OF THAT PERSON, IF THE CASE HAS BEEN ADJUDICATED AS TO ALL OTHER CLAIMS, INTERESTS, AND OWNERS, unless possession of the property is illegal. If the forfeiture action is dismissed or judgment is entered in favor of the claimant, the claimant shall not be subject to any monetary charges by the state for storage of the property or expenses incurred in the preservation of the property, UNLESS AT THE TIME OF DISMISSAL THE PLAINTIFF SHOWS THAT THOSE EXPENSES WOULD HAVE BEEN INCURRED TO PREVENT WASTE OF THE PROPERTY EVEN IF IT HAD NOT BEEN SEIZED.

(1.7) Notwithstanding the provisions of subsection (1.5) of this section:

~~(a) (I) Following the filing of criminal charges, if a property owner fails to appear at a court hearing relating to such charges or is determined to be a fugitive to avoid criminal prosecution, the district attorney shall send notice to the fugitive's last known address that the forfeiture action will proceed thirty days after the date of the notice. If the fugitive appears in the criminal action or in the forfeiture action within the thirty-day period, this paragraph (a) shall not be available to the plaintiff. Thirty days after the date of the notice sent by the district attorney, if the fugitive has not appeared in the criminal action or in the forfeiture action, the forfeiture action may proceed and a judgment of forfeiture may be entered without a criminal conviction of the owner.~~ A PERSON SHALL LACK STANDING FOR AND SHALL BE DISALLOWED FROM PURSUIT OF A CLAIM OR DEFENSE IN A CIVIL FORFEITURE ACTION UPON A FINDING THAT A WARRANT OR OTHER PROCESS HAS BEEN ISSUED FOR THE APPREHENSION OF THE PERSON, AND, IN ORDER TO AVOID CRIMINAL PROSECUTION, THE PERSON:

(A) PURPOSELY LEAVES THE STATE; OR

(B) DECLINES TO ENTER OR REENTER THE STATE TO SUBMIT TO ITS JURISDICTION;
OR

(C) OTHERWISE EVADES THE JURISDICTION OF THE COURT IN WHICH A CRIMINAL CASE IS PENDING AGAINST THE PERSON OR FROM WHICH A WARRANT HAS BEEN ISSUED, BY FAILING TO APPEAR IN COURT OR SURRENDER ON THE WARRANT; AND

(D) IS NOT KNOWN TO BE CONFINED OR HELD IN CUSTODY IN ANY OTHER JURISDICTION WITHIN THE UNITED STATES FOR COMMISSION OF CRIMINAL CONDUCT IN THAT JURISDICTION.

(II) IF A PERSON LACKS STANDING PURSUANT TO THIS PARAGRAPH (a), THE FORFEITURE ACTION MAY PROCEED AND A JUDGMENT OF FORFEITURE MAY BE ENTERED WITHOUT A CRIMINAL CONVICTION OF AN OWNER, UPON MOTION AND NOTICE AS PROVIDED IN THE RULES OF CIVIL PROCEDURE.

(b) If, following notice to all persons known to have an interest or who have asserted an interest in the property subject to forfeiture, ~~no person claims~~ AN OWNER FAILS TO FILE AN ANSWER OR OTHER APPROPRIATE RESPONSE WITH THE COURT CLAIMING an interest in the ~~seized~~ SUBJECT MATTER property, OR NO PERSON ESTABLISHES STANDING TO CONTEST THE FORFEITURE ACTION PURSUANT TO SECTION 16-13-504 (2), a forfeiture action may proceed and a judgment of forfeiture may be entered without a criminal conviction of ~~the~~ AN owner.

(c) If the plaintiff proves by clear and convincing evidence that the property was instrumental in the commission of an offense listed in section 16-13-503 (1) or that the property is traceable proceeds of the offense or related criminal activity by a nonowner and the plaintiff proves by clear and convincing evidence that ~~the~~ AN owner is not an innocent owner ~~as defined in~~ PURSUANT TO section 16-13-504 (2.2), a judgment of forfeiture may be entered without a criminal conviction of ~~the~~ AN owner.

~~(d) If the plaintiff proves by clear and convincing evidence that the property was instrumental in the commission of an offense listed in section 16-13-503 (1) or that~~

~~the property is traceable proceeds of the offense or related criminal activity by a deceased owner and the plaintiff proves by clear and convincing evidence that the deceased owner was not an innocent owner as defined in section 16-13-504 (2.2), a judgment of forfeiture may be entered without a criminal conviction of the deceased owner.~~ IF AN OWNER OF THE PROPERTY WHO WAS INVOLVED IN THE PUBLIC NUISANCE ACT OR CONDUCT GIVING RISE TO THE CLAIM OF FORFEITURE SUBSEQUENTLY DIES, AND WAS NOT AN INNOCENT OWNER PURSUANT TO SECTION 16-13-504 (2.2), A JUDGMENT OF FORFEITURE MAY BE ENTERED WITHOUT A CRIMINAL CONVICTION OF AN OWNER.

(e) ~~If the plaintiff proves by clear and convincing evidence that the property was instrumental in the commission of an offense listed in section 16-13-303 (1) or that the property is traceable proceeds of the offense or related criminal activity and the~~ AN owner received a deferred judgment, deferred sentence, or participated in a diversion program, or in the case of a juvenile a deferred adjudication OR deferred sentence or participated in a diversion program for the offense, a judgment of forfeiture may be entered without a criminal conviction.

(f) A DEFENDANT OR CLAIMANT SHALL BE PERMITTED TO WAIVE THE REQUIREMENT OF A CRIMINAL CONVICTION IN ORDER TO SETTLE A FORFEITURE ACTION.

SECTION 6. The introductory portion to 16-13-303 (6), Colorado Revised Statutes, is amended, and the said 16-13-303 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

16-13-303. Class 1 public nuisance. (6) Whenever ~~the~~ CLEAR AND CONVINCING evidence adduced in an action pursuant to this part 3 shows a substantial connection between currency and the acts specified in subparagraph (I) of paragraph (c) of subsection (1) of this section, a rebuttable presumption shall arise that said currency is property subject to forfeiture. A substantial connection exists if:

(6.5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 3 TO THE CONTRARY, THE PLAINTIFF SHALL HAVE THE BURDEN OF PROVING, BY CLEAR AND CONVINCING EVIDENCE, ONLY THE FACTS THAT GIVE RISE TO THE PRESUMPTION THAT CURRENCY IS PROPERTY SUBJECT TO FORFEITURE PURSUANT TO SUBSECTION (6) OF THIS SECTION. HOWEVER, WHEN A PREPONDERANCE OF CREDIBLE EVIDENCE IS ADDUCED TO REBUT A PRESUMPTION THAT HAS ARISEN PURSUANT TO SUBSECTION (6) OF THIS SECTION, THE BURDEN OF PROOF SHALL REVERT TO THE PLAINTIFF TO PROVE, BY CLEAR AND CONVINCING EVIDENCE, THE ELEMENTS OF THE PLAINTIFF'S CASE WITH RESPECT TO THE CURRENCY.

SECTION 7. The introductory portion to 16-13-509 (1), Colorado Revised Statutes, is amended, and the said 16-13-509 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

16-13-509. Evidentiary presumption. (1) Whenever ~~the~~ CLEAR AND CONVINCING evidence adduced in an action pursuant to this part 5 shows a substantial connection between currency and the acts specified in section 16-13-503, a rebuttable presumption shall arise that said currency is contraband property. A substantial connection exists if:

(1.5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS PART 5 TO THE CONTRARY, THE PLAINTIFF SHALL HAVE THE BURDEN OF PROVING, BY CLEAR AND CONVINCING EVIDENCE, ONLY THE FACTS THAT GIVE RISE TO THE PRESUMPTION THAT CURRENCY IS CONTRABAND PROPERTY PURSUANT TO SUBSECTION (1) OF THIS SECTION. HOWEVER, WHEN A PREPONDERANCE OF CREDIBLE EVIDENCE IS ADDUCED TO REBUT A PRESUMPTION THAT HAS ARISEN PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE BURDEN OF PROOF SHALL REVERT TO THE PLAINTIFF TO PROVE, BY CLEAR AND CONVINCING EVIDENCE, THE ELEMENTS OF THE PLAINTIFF'S CASE WITH RESPECT TO THE CURRENCY.

SECTION 8. 16-13-307 (10) (a) and (10) (b), Colorado Revised Statutes, are amended to read:

16-13-307. Jurisdiction - venue - parties - process. (10) (a) Continuance of the trial of a public nuisance action shall be granted upon stipulation of the parties or upon good cause shown. ~~Good cause shall include, but shall not be limited to, the fact that there are pending criminal charges arising out of the same transaction alleged in the complaint 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 such charges. 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 public nuisance action. Any person who is granted a continuance of a trial pursuant to this part 3 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 public nuisance 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 public nuisance 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. A continuance granted pursuant to this subsection (10) shall constitute good cause for postponement of all civil discovery until after the conclusion of the criminal case.~~

~~(b) Any person against whom a public nuisance action has been filed shall be given written notice regarding such person's right to a continuance under the circumstances described in paragraph (a) of this subsection (10).~~

SECTION 9. 16-13-505 (5), Colorado Revised Statutes, is amended to read:

16-13-505. Forfeiture proceedings. (5) Continuance of the hearing on the merits shall be granted upon stipulation of the parties or upon good cause shown. ~~Good cause shall include the fact of pending criminal charges arising out of the same transaction alleged in the petition 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 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. 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.~~

SECTION 10. 16-13-303 (5), Colorado Revised Statutes, is amended to read:

16-13-303. Class 1 public nuisance. (5) (a) In any action seeking forfeiture of property pursuant to this part 3, any person contesting the forfeiture shall establish BY A PREPONDERANCE OF THE EVIDENCE such person's standing as a true owner of the property OR A TRUE OWNER WITH AN INTEREST IN THE PROPERTY.

(b) ~~The factors to be considered by the court in determining whether a person is a true owner, as described in paragraph (a) of this subsection (5), shall include, but shall not be limited to, the following:~~ TO ESTABLISH STANDING, THE PERSON SHALL FIRST PROVE THAT THE PERSON HAD A RECORDED OR REGISTERED INTEREST IN THE PROPERTY, OR A BONA FIDE MARITAL INTEREST IN THE PROPERTY, PRIOR TO TITLE-VESTING IN THE STATE, IF THE PROPERTY IS OF THE TYPE FOR WHICH INTERESTS CAN BE, AND CUSTOMARILY ARE, RECORDED OR REGISTERED IN A PUBLIC OFFICE.

~~(f) Whether the person was the primary user or possessor of the property;~~

~~(H) 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;~~

~~(HH) How much of the consideration paid for the purchase of the property was furnished by the person.~~

(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 (5) in order for the court to find that the person is a true owner.~~ THE PERSON SHALL ALSO PROVE THAT HE OR SHE IS A TRUE OWNER OF THE PROPERTY OR A TRUE OWNER OF AN INTEREST IN THE PROPERTY. THE FACTORS TO BE CONSIDERED BY THE COURT IN DETERMINING WHETHER A PERSON IS A TRUE OWNER SHALL INCLUDE, BUT NEED NOT BE LIMITED TO:

(I) WHETHER THE PERSON HAD THE PRIMARY USE, BENEFIT, POSSESSION, OR CONTROL OF THE PROPERTY;

(II) HOW MUCH OF THE CONSIDERATION FOR THE PURCHASE OR OWNERSHIP OF THE PROPERTY WAS FURNISHED BY THE PERSON, AND WHETHER THE PERSON FURNISHED

REASONABLY EQUIVALENT VALUE IN EXCHANGE FOR THE PROPERTY OR INTEREST;

(III) WHETHER THE TRANSACTION BY WHICH THE PERSON ACQUIRED THE PROPERTY OR INTEREST WAS SECRET, CONCEALED, UNDISCLOSED, HURRIED, OR NOT IN THE USUAL MODE OF DOING BUSINESS;

(IV) WHETHER THE TRANSACTION BY WHICH THE PERSON ACQUIRED THE PROPERTY OR INTEREST WAS CONDUCTED THROUGH THE USE OF A SHELL, ALTER EGO, NOMINEE, OR FICTITIOUS PARTY;

(V) WHETHER THE PERSON IS A RELATIVE, A CO-CONSPIRATOR, COMPLICITOR, OR AN ACCESSORY IN THE PUBLIC NUISANCE ACT OR ACTS OR OTHER CRIMINAL ACTIVITY, A BUSINESS ASSOCIATE IN A LEGAL OR ILLEGAL BUSINESS, ONE WHO MAINTAINS A SPECIAL OR CLOSE RELATIONSHIP WITH, OR AN INSIDER WITH RESPECT TO THE PERPETRATOR OF THE ALLEGED PUBLIC NUISANCE ACT OR ACTS;

(VI) WHETHER THE PERSON IS SILENT OR FAILS TO CALL PARTIES TO TESTIFY OR TO PRODUCE AVAILABLE EVIDENCE EXPLAINING THE ACQUISITION OF THE PROPERTY OR FACTORS WHICH MAY BE BADGES OF FRAUD OR DECEIT, OR SHOW LACK OF TRUE OWNERSHIP;

(VII) WHETHER THE TIMING OF THE TRANSACTION BY WHICH THE PERSON ACQUIRED THE PROPERTY WAS DURING THE PENDENCY OR THREAT OF LITIGATION, OR DURING ANY TIME WHEN THE PERSON KNEW, SHOULD HAVE KNOWN, OR HAD NOTICE OF THE PUBLIC NUISANCE ACT OR ACTS OR THE THREAT OF A FORFEITURE ACTION;

(VIII) WHETHER THE PLACING OF THE TITLE IN THE NAME OF, OR THE PUTATIVE OWNERSHIP IN, OR TRANSFER TO, THE PERSON WAS DONE WITH INTENT TO DELAY, HINDER, OR AVOID A FORFEITURE, OR FOR SOME PURPOSE OTHER THAN OWNERSHIP OF THE PROPERTY;

(IX) WHETHER THE PERPETRATOR OF THE ALLEGED PUBLIC NUISANCE ACT OR ACTS HAS ABSCONDED OR IS A FUGITIVE FROM JUSTICE AND THE CONVEYANCE OCCURRED AFTER THE FLIGHT, OR BEFORE THE FLIGHT, IN ANY OF THE CIRCUMSTANCES SET FORTH IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (c);

(X) WHETHER THE SUBJECT MATTER PROPERTY IS OF A KIND IN WHICH PROPERTY OR OWNERSHIP RIGHTS CAN LEGALLY EXIST;

(XI) ANY OTHER BADGE OR INDICIA OF FRAUD UNDER ARTICLE 8 OF TITLE 38, C.R.S., OR THE GENERAL LAW OF FRAUDULENT TRANSFERS OR CONVEYANCES.

(d) THE COURT SHALL CONSIDER THE TOTALITY OF THE CIRCUMSTANCES IN DETERMINING WHETHER A PERSON IS A TRUE OWNER. A PERSON CONTESTING THE FORFEITURE DOES NOT NECESSARILY HAVE TO SHOW THAT ALL OF THE FACTORS ENUMERATED IN PARAGRAPH (c) OF THIS SUBSECTION (5) SUPPORT THE CLAIM OF TRUE OWNERSHIP, NOR DOES THE PERSON NECESSARILY ESTABLISH TRUE OWNERSHIP BY SHOWING THE ABSENCE OF FRAUDULENT INTENT OR BADGES OF FRAUD.

(e) NO PRIVATE SALE OR CONVEYANCE OF A USED MOTOR VEHICLE SHALL BE DEEMED TO MAKE A PARTY ELIGIBLE TO ASSERT STANDING TO CONTEST THE

FORFEITURE THEREOF, UNLESS THE TITLE TO THE MOTOR VEHICLE, WITH TRANSFER DULY EXECUTED TO THE PARTY, HAS BEEN FILED WITH THE DIVISION OF MOTOR VEHICLES IN THE DEPARTMENT OF REVENUE PRIOR TO THE PHYSICAL SEIZURE OF THE VEHICLE AND THE RECORDING OF A NOTICE OF SEIZURE, OR THE PARTY ATTEMPTING TO ASSERT STANDING HAS EXCLUSIVE POSSESSION OF THE VEHICLE AT THE TIME OF SEIZURE. A PARTY ELIGIBLE TO ASSERT STANDING UNDER THIS PARAGRAPH (e) MUST NEVERTHELESS ESTABLISH THAT THE PARTY IS A TRUE OWNER OF THE VEHICLE OR HAS AN INTEREST THEREIN PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (5).

(f) UNLESS THE STANDING OF A PARTICULAR PARTY IS CONCEDED IN THE COMPLAINT INITIATING THE PUBLIC NUISANCE ACTION, A PARTY MUST ASSERT STANDING IN THE ANSWER AND FULLY DESCRIBE THE PARTY'S INTEREST IN THE PROPERTY WHICH IS THE SUBJECT MATTER OF THE ACTION, AND SUBMIT A VERIFIED STATEMENT, SUPPORTED BY ANY AVAILABLE DOCUMENTATION, OF THE PARTY'S OWNERSHIP OF OR INTEREST IN THE PROPERTY.

SECTION 11. 16-13-504 (2), Colorado Revised Statutes, is amended to read:

16-13-504. Forfeiture of vehicle, fixtures and contents of building, personal property, or contraband article - exceptions. (2) (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 BY A PREPONDERANCE OF THE EVIDENCE such person's standing as a true owner of the property or a ~~person~~ TRUE OWNER 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:~~ TO ESTABLISH STANDING, THE PERSON SHALL FIRST PROVE THAT THE PERSON HAS A RECORDED OR REGISTERED INTEREST IN THE PROPERTY, OR A BONA FIDE MARITAL INTEREST IN THE PROPERTY, IF THE PROPERTY IS OF A TYPE FOR WHICH INTERESTS CAN BE, AND CUSTOMARILY ARE, RECORDED OR REGISTERED IN A PUBLIC OFFICE.

~~(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.~~ THE PERSON SHALL ALSO PROVE THAT THE PERSON IS A TRUE OWNER OF THE PROPERTY OR A TRUE OWNER OF AN INTEREST IN THE PROPERTY. THE FACTORS TO BE CONSIDERED BY THE COURT IN DETERMINING WHETHER A PERSON IS A TRUE OWNER SHALL INCLUDE, BUT NEED

NOT BE LIMITED TO:

(I) WHETHER THE PERSON HAD THE PRIMARY USE, BENEFIT, POSSESSION, OR CONTROL OF THE PROPERTY;

(II) HOW MUCH OF THE CONSIDERATION FOR THE PURCHASE OR OWNERSHIP OF THE PROPERTY WAS FURNISHED BY THE PERSON, AND WHETHER THE PERSON FURNISHED REASONABLY EQUIVALENT VALUE IN EXCHANGE FOR THE PROPERTY OR INTEREST;

(III) WHETHER THE TRANSACTION BY WHICH THE PERSON ACQUIRED THE PROPERTY OR INTEREST WAS SECRET, CONCEALED, UNDISCLOSED, HURRIED, OR NOT IN THE USUAL MODE OF DOING BUSINESS;

(IV) WHETHER THE TRANSACTION BY WHICH THE PERSON ACQUIRED THE PROPERTY OR INTEREST WAS CONDUCTED THROUGH THE USE OF A SHELL, ALTER EGO, NOMINEE, OR FICTITIOUS PARTY;

(V) WHETHER THE PERSON IS A RELATIVE, A CO-CONSPIRATOR, COMPLICITOR, OR AN ACCESSORY IN THE PUBLIC NUISANCE ACT OR ACTS OR OTHER CRIMINAL ACTIVITY, A BUSINESS ASSOCIATE IN A LEGAL OR ILLEGAL BUSINESS, ONE WHO MAINTAINS A SPECIAL OR CLOSE RELATIONSHIP WITH, OR AN INSIDER WITH RESPECT TO THE PERPETRATOR OF THE ALLEGED PUBLIC NUISANCE ACT OR ACTS;

(VI) WHETHER THE PERSON IS SILENT OR FAILS TO CALL PARTIES TO TESTIFY OR TO PRODUCE AVAILABLE EVIDENCE EXPLAINING THE ACQUISITION OF THE PROPERTY OR FACTORS WHICH BE MAY BE BADGES OF FRAUD OR DECEIT, OR SHOW LACK OF TRUE OWNERSHIP;

(VII) WHETHER THE TIMING OF THE TRANSACTION BY WHICH THE PERSON ACQUIRED THE PROPERTY WAS DURING THE PENDENCY OR THREAT OF LITIGATION, OR DURING ANY TIME WHEN THE PERSON KNEW, SHOULD HAVE KNOWN, OR HAD NOTICE OF THE PUBLIC NUISANCE ACT OR ACTS OR THE THREAT OF A FORFEITURE ACTION;

(VIII) WHETHER THE PLACING OF THE TITLE IN THE NAME OF, OR THE PUTATIVE OWNERSHIP IN, OR TRANSFER TO, THE PERSON WAS DONE WITH INTENT TO DELAY, HINDER, OR AVOID A FORFEITURE, OR FOR SOME PURPOSE OTHER THAN OWNERSHIP OF THE PROPERTY;

(IX) WHETHER THE PERPETRATOR OF THE ALLEGED PUBLIC NUISANCE ACT OR ACTS HAS ABSCONDED OR IS A FUGITIVE FROM JUSTICE AND THE CONVEYANCE OCCURRED AFTER THE FLIGHT, OR BEFORE THE FLIGHT, IN ANY OF THE CIRCUMSTANCES SET FORTH IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (c);

(X) WHETHER THE SUBJECT MATTER PROPERTY IS OF A KIND IN WHICH PROPERTY OR OWNERSHIP RIGHTS CAN LEGALLY EXIST;

(XI) ANY OTHER BADGE OR INDICIA OF FRAUD UNDER ARTICLE 8 OF TITLE 38, C.R.S., OR THE GENERAL LAW OF FRAUDULENT TRANSFERS OR CONVEYANCES.

(d) THE COURT SHALL CONSIDER THE TOTALITY OF THE CIRCUMSTANCES IN DETERMINING WHETHER A PERSON IS A TRUE OWNER. A PERSON CONTESTING THE

FORFEITURE DOES NOT NECESSARILY HAVE TO SHOW THAT ALL OF THE FACTORS ENUMERATED IN PARAGRAPH (c) OF THIS SUBSECTION (2) SUPPORT THE CLAIM OF TRUE OWNERSHIP, NOR DOES THE PERSON NECESSARILY ESTABLISH TRUE OWNERSHIP BY SHOWING THE ABSENCE OF FRAUDULENT INTENT OR BADGES OF FRAUD.

(e) NO PRIVATE SALE OR CONVEYANCE OF A USED MOTOR VEHICLE SHALL BE DEEMED TO MAKE A PARTY ELIGIBLE TO ASSERT STANDING TO CONTEST THE FORFEITURE THEREOF, UNLESS THE TITLE TO THE MOTOR VEHICLE, WITH TRANSFER DULY EXECUTED TO THE PARTY, HAS BEEN FILED WITH THE DIVISION OF MOTOR VEHICLES IN THE DEPARTMENT OF REVENUE PRIOR TO THE PHYSICAL SEIZURE OF THE VEHICLE AND THE RECORDING OF A NOTICE OF SEIZURE, OR THE PARTY ATTEMPTING TO ASSERT STANDING HAS EXCLUSIVE POSSESSION OF THE VEHICLE AT THE TIME OF SEIZURE. A PARTY ELIGIBLE TO ASSERT STANDING UNDER THIS PARAGRAPH (e) MUST NEVERTHELESS ESTABLISH THAT THE PARTY IS A TRUE OWNER OF THE VEHICLE OR HAS AN INTEREST THEREIN PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (2).

(f) UNLESS THE STANDING OF A PARTICULAR PARTY IS CONCEDED IN THE COMPLAINT INITIATING THE PUBLIC NUISANCE ACTION, A PARTY MUST ASSERT STANDING IN THE ANSWER AND FULLY DESCRIBE THE PARTY'S INTEREST IN THE PROPERTY WHICH IS THE SUBJECT MATTER OF THE ACTION, AND SUBMIT A VERIFIED STATEMENT, SUPPORTED BY ANY AVAILABLE DOCUMENTATION, OF THE PARTY'S OWNERSHIP OF OR INTEREST IN THE PROPERTY.

SECTION 12. 16-13-303 (5.1) (b) (II) and (5.2) (a) (I), the introductory portion to 16-13-303 (5.2) (b), and 16-13-303 (5.2) (c), Colorado Revised Statutes, are amended, and the said 16-13-303 (5.2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

16-13-303. Class 1 public nuisance. (5.1) (b) As used in paragraph (a) of this subsection (5.1), an owner was a "party to the creation of the public nuisance" if it is established that:

(II) The owner knew of the public nuisance act or had notice of the acts creating the public nuisance OR PRIOR SIMILAR CONDUCT;

(5.2) (a) With respect to a partial or whole ownership interest in existence at the time the conduct constituting a public nuisance took place, "innocent owner" means any owner who:

(I) Did not have actual knowledge of the conduct constituting a public nuisance, or notice of an act or circumstance creating the public nuisance OR PRIOR SIMILAR CONDUCT, notice ~~is~~ BEING satisfied by, but not limited to, sending notice of an act or circumstance creating the public nuisance by certified mail; or

(b) With respect to a partial or whole ownership interest acquired after the conduct constituting a public nuisance has occurred, "innocent owner" means a person who, at the time he or she acquired the interest in the property, had no knowledge OR NOTICE that the illegal conduct subjecting the property to seizure had occurred or that the property had been seized for forfeiture, and:

(c) An innocent owner's interest in property shall not be forfeited under any

provision of state law. An innocent owner has the burden of proving by a preponderance of the evidence that he or she has an ownership interest in the subject property. ~~The prosecuting attorney shall have the burden of establishing by clear and convincing evidence that an individual is not an innocent owner.~~ OTHERWISE, THE BURDEN OF PROOF UNDER THIS SUBSECTION (5.2) SHALL BE AS PROVIDED IN SUBSECTION (5.1) OF THIS SECTION.

(d) A PERSON WHO IS CONVICTED OF A CRIMINAL OFFENSE ARISING FROM THE SAME ACTIVITY GIVING RISE TO THE FORFEITURE PROCEEDINGS IN ACCORDANCE WITH SECTION 16-13-307 (1.5) SHALL NOT BE ELIGIBLE TO ASSERT AN INNOCENT OWNER DEFENSE.

SECTION 13. 16-13-504 (2.1) (b) (I), (2.1) (b) (II), (2.2) (a) (I), and (2.2) (c), Colorado Revised Statutes, are amended, and the said 16-13-504 (2.2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

16-13-504. Forfeiture of vehicle, fixtures and contents of building, personal property, or contraband article - exceptions. (2.1) (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 of the subject act or had notice of the acts facilitating the criminal activity OR PRIOR SIMILAR CONDUCT and failed to take reasonable steps to prohibit or abate the illegal use of the property;

(2.2) (a) With respect to a partial or whole ownership interest in existence at the time the conduct subjecting the property to seizure took place, the term "innocent owner" means any owner who:

(I) Did not have actual knowledge of the conduct subjecting the property to seizure or notice of an act or circumstance facilitating the criminal activity OR PRIOR SIMILAR CONDUCT, notice is BEING satisfied by, but not limited to, sending notice of an act or circumstance facilitating the criminal activity by certified mail; or

(c) An innocent owner's interest in property shall not be forfeited under any provision of state law. An innocent owner has the burden of proving by a preponderance of the evidence that he or she has an ownership interest in the subject property. ~~The prosecuting attorney shall have the burden of establishing by clear and convincing evidence that an individual is not an innocent owner.~~ OTHERWISE, THE BURDEN OF PROOF UNDER THIS SUBSECTION (2.2) SHALL BE AS PROVIDED IN SUBSECTION (2.1) OF THIS SECTION.

(d) A PERSON WHO IS CONVICTED OF A CRIMINAL OFFENSE ARISING FROM THE SAME ACTIVITY GIVING RISE TO THE FORFEITURE PROCEEDINGS IN ACCORDANCE WITH SECTION 16-13-505 (1.5) SHALL NOT BE ELIGIBLE TO ASSERT AN INNOCENT OWNER DEFENSE.

SECTION 14. 16-13-301 (2.4) and (2.5), Colorado Revised Statutes, are amended, and the said 16-13-301 is further amended BY THE ADDITION OF A

NEW SUBSECTION, to read:

16-13-301. Definitions. As used in this part 3, unless the context otherwise requires:

(2.4) ~~"Public nuisance act" means any of the crimes, offenses, or violations set forth in section 16-13-303 (1) (a) to (1) (n), regardless of the location where the act occurred.~~ "PROCEEDS TRACEABLE" OR "TRACEABLE PROCEEDS" MEANS ALL PROPERTY, REAL AND PERSONAL, CORPOREAL AND INCORPOREAL, WHICH IS PROCEEDS ATTRIBUTABLE TO, DERIVED FROM, OR REALIZED THROUGH, DIRECTLY OR INDIRECTLY, A PUBLIC NUISANCE ACT, WHETHER PROVED BY DIRECT, CIRCUMSTANTIAL, OR DOCUMENTARY EVIDENCE. THERE SHALL BE NO REQUIREMENT OF SHOWING A TRAIL OF DOCUMENTARY EVIDENCE TO TRACE PROCEEDS PROVIDED THAT THE STANDARD OF PROOF BY CLEAR AND CONVINCING EVIDENCE IS MET.

(2.5) ~~"Real property" means all lands and franchises and interests in land located within this state, including water rights, mineral rights, oil and gas rights, space rights, condominium rights, and air rights, and any and all other things usually included within said term. "Real property" includes any and all interests in such property less than full title, such as easements, incorporeal hereditaments, and every estate, interest, or right, legal or equitable.~~ "PUBLIC NUISANCE ACT" MEANS ANY OF THE CRIMES, OFFENSES, OR VIOLATIONS SET FORTH IN SECTION 16-13-303 (1) (a) TO (1) (n), REGARDLESS OF THE LOCATION WHERE THE ACT OCCURRED.

(2.6) "REAL PROPERTY" MEANS ALL LANDS AND FRANCHISES AND INTERESTS IN LAND LOCATED WITHIN THIS STATE, INCLUDING WATER RIGHTS, MINERAL RIGHTS, OIL AND GAS RIGHTS, SPACE RIGHTS, CONDOMINIUM RIGHTS, AND AIR RIGHTS, AND ANY AND ALL OTHER THINGS USUALLY INCLUDED WITHIN SAID TERM. "REAL PROPERTY" INCLUDES ANY AND ALL INTERESTS IN SUCH PROPERTY LESS THAN FULL TITLE, SUCH AS EASEMENTS, INCORPOREAL HEREDITAMENTS, AND EVERY ESTATE, INTEREST, OR RIGHT, LEGAL OR EQUITABLE.

SECTION 15. 16-13-502, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

16-13-502. Definitions. As used in this part 5, unless the context otherwise requires:

(1.8) "PROCEEDS TRACEABLE" OR "TRACEABLE PROCEEDS" MEANS ALL PROPERTY, REAL AND PERSONAL, CORPOREAL AND INCORPOREAL, WHICH IS PROCEEDS ATTRIBUTABLE TO, DERIVED FROM, OR REALIZED THROUGH, DIRECTLY OR INDIRECTLY, A SUBJECT ACT DESCRIBED IN SECTION 16-13-503, WHETHER PROVED BY DIRECT, CIRCUMSTANTIAL, OR DOCUMENTARY EVIDENCE. THERE SHALL BE NO REQUIREMENT OF SHOWING OF A TRAIL OF DOCUMENTARY EVIDENCE TO TRACE PROCEEDS PROVIDED THAT THE STANDARD OF PROOF BY CLEAR AND CONVINCING EVIDENCE IS MET.

SECTION 16. The introductory portion to 16-13-311 (3) (a), Colorado Revised Statutes, is amended, and the said 16-13-311 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

16-13-311. Disposition of seized personal property. (3) (a) If the prosecution prevails in the forfeiture action, the court shall order the property forfeited. Such order shall perfect the state's right and interest in and title to such property and shall relate back to the date ~~the notice of seizure was placed on the record in the office of the clerk and recorder, in the county where the property is located~~ WHEN TITLE TO THE PROPERTY VESTED IN THE STATE PURSUANT TO SECTION 16-13-316. Except as otherwise provided in paragraph (c) of this subsection (3), the court shall also order such property to be sold at a public sale by the law enforcement agency in possession of the property in the manner provided for sales on execution, ~~The sale of forfeited property shall be conducted in a~~ OR IN ANOTHER commercially reasonable manner. Property forfeited under this section or proceeds therefrom shall be distributed or applied in the following order:

(3.5) INSTEAD OF LIENS AND ENCUMBRANCES ON REAL PROPERTY BEING SATISFIED FROM THE PROCEEDS OF SALE, REAL PROPERTY MAY BE SOLD SUBJECT TO ALL LIENS OR ENCUMBRANCES ON RECORD. THE PURCHASE OF THE PROPERTY BY THE SUCCESSFUL BIDDER UNDER THIS SUBSECTION (3.5) SHALL BE CONDITIONED ON THE BIDDER SATISFYING AND OBTAINING THE RELEASE OF THE FIRST AND SECOND PRIORITY LIENS WITHIN SIXTY DAYS OF THE SALE, OR OBTAINING WRITTEN AUTHORIZATION FROM THOSE LIEN HOLDERS FOR THE BIDDER TO RECEIVE THE SHERIFF'S DEED WHICH SHALL BE ISSUED AFTER SUCH SATISFACTION OR AUTHORIZATION. THE PURCHASER OF THE PROPERTY SHALL TAKE TITLE FREE OF ANY LIEN, ENCUMBRANCE, OR CLOUD ON THE TITLE RECORDED AFTER TITLE VESTS IN THE STATE PURSUANT TO SECTION 16-13-316.

SECTION 17. 16-13-316, Colorado Revised Statutes, is amended to read:

16-13-316. Prior liens not subject to forfeiture - vesting of title. (1) Nothing in this part 3 shall be construed in such manner as to destroy the validity of a bona fide lien upon real or personal property appearing of record prior to the seizure of personal property, PRIOR TO THE FILING OF A NOTICE OF SEIZURE, AS PROVIDED IN SUBSECTION (3) OF THIS SECTION, prior to the filing of a notice of lis pendens on real property, or prior to actual or constructive notice to the lienholder of the state's potential claim of public nuisance.

(2) Title to real or personal property subject to forfeiture pursuant to the provisions of this section shall vest in the state and the seizing agency at THE EARLIEST OF: FOR CURRENCY, THE TIME OF THE COMMISSION OF THE PUBLIC NUISANCE ACT; the time of the physical seizure of said property, EXCEPT FOR REAL PROPERTY; THE TIME OF FILING OF A NOTICE OF SEIZURE, AS PROVIDED IN SUBSECTION (3) OF THIS SECTION; THE TIME OF THE FILING OF A NOTICE OF LIS PENDENS ON REAL PROPERTY; or ~~at~~ the time of the issuance of court process for seizure of property, AS AGAINST ANYONE WITH PRIOR ACTUAL NOTICE THEREOF. ~~whichever is earlier.~~

(3) BEFORE OR AFTER THE COMMENCEMENT OF LITIGATION REGARDING A VEHICLE OR REAL PROPERTY FOR WHICH SEIZURE OR FORFEITURE IS SOUGHT, THE PROSECUTING ATTORNEY OR SEIZING AGENCY SHALL FILE A NOTICE OF SEIZURE WITH THE OFFICE OF THE CLERK AND RECORDER IN THE COUNTY WHERE THE PROPERTY IS LOCATED. A NOTICE OF SEIZURE FOR REAL PROPERTY SHALL EXPIRE WITHIN SEVENTY DAYS AFTER FILING UNLESS AN ACTION IS FILED IN COURT FOR ABATEMENT OR FORFEITURE, UNDER THIS PART 3 OR OTHER APPLICABLE LAW. A NOTICE OF SEIZURE SHALL CONTAIN: A

DESCRIPTION OF THE PROPERTY FOR WHICH SEIZURE OR FORFEITURE IS BEING SOUGHT, INCLUDING THE STREET ADDRESS AND LEGAL DESCRIPTION FOR REAL PROPERTY AND THE MAKE, MODEL, YEAR, LICENSE NUMBER, AND VEHICLE IDENTIFICATION NUMBER FOR A VEHICLE; THE DATE AND LOCATION OF THE SEIZURE IF THE PROPERTY HAS ALREADY BEEN SEIZED; THE IDENTITY OF THE SEIZING AGENCY AND PROSECUTING ATTORNEY; AND THE NAME OF ANY PERSON WHO IS AN OWNER OF RECORD OR REGISTERED OWNER OF THE PROPERTY OR WHO IS KNOWN TO HAVE, OR WHO HAS ASSERTED AN INTEREST IN, THE PROPERTY. THE NOTICE OF SEIZURE SHALL ALSO CONTAIN A STATEMENT GIVING NOTICE THAT SEIZURE OR FORFEITURE OF THE PROPERTY MAY BE SOUGHT PURSUANT TO THIS PART 3, OR OTHER APPLICABLE LAW, AND THAT ANY INTEREST ACQUIRED IN THE PROPERTY AFTER THE FILING OF THE NOTICE OF THE SEIZURE WILL BE SUBJECT TO THE FORFEITURE ACTION IN THE EVENT THE PROPERTY IS FORFEITED.

SECTION 18. 16-13-506 (1), Colorado Revised Statutes, is amended to read:

16-13-506. Final order - disposition of property. (1) If the prosecution prevails in the forfeiture action, the court shall order the property forfeited and perfect the state's right and interest in and title to such property. ~~and such order shall relate back to the date the notice of seizure was placed on the record in the office of the clerk and recorder, in the county where the property is located.~~ The court shall also order such property to be sold at public sale by the law enforcement agency in possession of the property in the manner provided for sales on execution OR IN ANOTHER COMMERCIALY REASONABLE MANNER. The proceeds of sale shall be applied in the manner and priority enumerated in section 16-13-311. THE ORDER FOR SALE SHALL PERFECT THE STATE'S RIGHT AND INTEREST IN AND TITLE TO THE PROPERTY AND SHALL RELATE BACK TO THE DATE WHEN TITLE TO THE PROPERTY VESTED IN THE STATE PURSUANT TO SECTION 16-13-316.

SECTION 19. 16-13-701 (1) and (4), Colorado Revised Statutes, are amended to read:

16-13-701. Reporting of forfeited property. (1) Any provision of law to the contrary notwithstanding, the elected district attorney for each judicial district shall file an annual forfeiture report on or before ~~January 31~~ APRIL 1 for the previous calendar year. Such report shall include:

(a) A description ~~and the value~~ of all property that was the subject of a forfeiture action filed in the judicial district, including the forfeiture case number;

(b) The criminal charges filed against the owner of the property and the criminal case number;

(c) Disposition or status of the criminal and forfeiture actions, including the value of the property forfeited OR THE AMOUNT OF PROCEEDS OF THE FORFEITURE, IF THE PROPERTY IS LIQUIDATED; AND

(d) A description and the value of any property seized by ~~local or state law enforcement agencies~~ THE DISTRICT ATTORNEY'S OFFICE that was transferred to the United States for forfeiture under federal law, including the federal forfeiture case number and the criminal case number, whether the criminal action was filed in state

or federal court, and the grounds for the transfer; and

(e) The total proceeds received by ~~all law enforcement agencies and~~ the district attorney in the judicial district from all federal forfeiture actions arising in the judicial district.

(4) The alcohol and drug abuse division in the department of human services shall prepare an annual accounting report of moneys received by the managed service organization pursuant to section 16-13-311 (3) (a) (VII) (B), including revenues, expenditures, beginning and ending balances, and services provided. The alcohol and drug abuse division shall provide this information in its annual ~~briefing to the joint budget committee~~ REPORT PURSUANT TO SECTION 25-1-210, C.R.S.

SECTION 20. 16-13-505 (4), Colorado Revised Statutes, is amended to read:

16-13-505. Forfeiture proceedings. (4) Except as otherwise provided in this part 5, the practice and procedure in an action to perfect title to contraband property shall be governed by the Colorado rules of civil procedure. ~~The discovery phase of such an action shall be governed by the Colorado rules of criminal procedure; except that the court may fashion reasonable time limits and adaptations consistent with the procedure set forth in this part 5.~~ ACTIONS TO PERFECT TITLE TO CONTRABAND PROPERTY SHALL BE INCLUDED IN THE CATEGORY OF "EXPEDITED PROCEEDINGS" SPECIFIED IN RULES 16 AND 26 OF THE COLORADO RULES OF CIVIL PROCEDURE; EXCEPT THAT EACH PARTY MAY CONDUCT LIMITED DISCOVERY AS PROVIDED FOR IN RULE 26 (b) (2) OF THE COLORADO RULES OF CIVIL PROCEDURE. IN ADDITION, EACH PARTY MAY MOVE THE COURT TO AUTHORIZE ADDITIONAL DISCOVERY UPON GOOD CAUSE SHOWN.

SECTION 21. Effective date - applicability. This act shall take effect July 1, 2003, and shall apply to actions in which the public nuisance act or the subject act on which the action is predicated occurs on or after said date.

SECTION 22. 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 7, 2003