

1981 Assembly Bill 606

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CHAPTER 267 , Laws of 1981

AN ACT to amend 161.55 (1) (d) (intro.) and 4, (2) (intro.), (c) and (d), (3) and (5) (b) and 161.555 (2); and to create 161.55 (1) (f), 161.555 (2) (c) and 973.075 to 973.077 of the statutes, relating to forfeiture of property derived from or associated with crime.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 161.55 (1) (d) (intro.) and 4, (2) (intro.), (c) and (d), (3) and (5) (b) of the statutes are amended to read:

161.55 (1) (d) (intro.) All vehicles, as defined in s. 939.22 (44), which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in pars. (a) and (b) or for the purpose of transporting any property or weapon used or to be used or received in the commission of any felony under this chapter, but:

4. A forfeiture of a vehicle encumbered by a bona fide perfected security interest is subject to the interest of the secured party if he or she neither had knowledge of nor consented to the act or omission.

(2) (intro.) Property subject to forfeiture under this chapter may be seized by any officer or employe designated in s. 161.51 (1) or (2) or a law enforcement officer upon process issued by any court of record having jurisdiction over the property. Seizure without process may be made if:

(c) The officer or employe or a law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The officer or employe or a law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter, that the property was derived from or realized through a crime under this chapter or that the property is a vehicle which was used as described in sub. (1) (d).

(3) In the event of seizure pursuant to under sub. (2), proceedings under sub. (4) shall be instituted promptly. All dispositions and forfeitures under this section and ss. 161.555 and 161.56 shall be made with due provision for the rights of innocent persons. Any property seized but not forfeited shall be returned to its rightful owner. Any person claiming the right to possession of property seized may apply for its return to the circuit court for the county in which the property was seized. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property returned if:

(a) The property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b) All proceedings in which it might be required have been completed.

(5) (b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used agency may use 50% of the amount received for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs and the costs of investigation and prosecution reasonably incurred. The remainder shall be deposited in the school fund as proceeds of the forfeiture. If the property forfeited is money, all the money shall be deposited in the school fund;

SECTION 2. 161.55 (1) (f) of the statutes is created to read:

161.55 (1) (f) All property, real or personal, including money, directly or indirectly derived from or realized through the commission of any crime under this chapter.

SECTION 3. 161.555 (2) of the statutes is amended to read:

161.555 (2) (a) The district attorney of the county within which the property was seized shall commence the forfeiture action within ~~45~~ 30 days after the seizure of the property, except that the defendant may request that the forfeiture proceedings be adjourned until after adjudication of any charge concerning a crime which was the basis for the seizure of the property. The request shall be granted. The forfeiture action shall be commenced by filing a summons, complaint and affidavit of the person who seized the property with the clerk of circuit court and by serving authenticated copies of such papers upon the person from whom the property was seized and upon any person known to have a bona fide perfected security interest in the property. Service shall be made in accordance with ch. 801.

(b) Upon service of an answer, the action shall be set for hearing within 60 days of the service of the answer but may be continued for cause or upon stipulation of the parties.

SECTION 4. 161.555 (2) (c) of the statutes is created to read:

161.555 (2) (c) In counties having a population of 500,000 or more, the district attorney or corporation counsel may proceed under par. (a).

SECTION 5. 973.075 to 973.077 of the statutes are created to read:

973.075 Forfeiture of property derived from crime and certain vehicles. (1) The following are subject to seizure and forfeiture under ss. 973.075 to 973.077:

(a) All property, real or personal, including money, directly or indirectly derived from or realized through the commission of any crime.

(b) All vehicles, as defined in s. 939.22 (44), which are used to transport any property or weapon used or to be used or received in the commission of any felony, but:

1. No vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under ss. 973.075 to 973.077 unless it appears that the owner or other person in charge of the vehicle had knowledge of or consented to the commission of the felony;

2. No vehicle is subject to forfeiture under ss. 973.075 to 973.077 by reason of any act or omission established by the owner of the vehicle to have been committed or omitted without his or her knowledge or consent; and

3. A forfeiture of a vehicle encumbered by a bona fide perfected security interest is subject to the interest of the secured party if he or she neither had knowledge of nor consented to the act or omission.

(2) A law enforcement officer may seize property subject to this section upon process issued by any court of record having jurisdiction over the property. Seizure without process may be made under any of the following circumstances:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under any administrative or special inspection warrant.

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state.

(c) The officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety.

(d) The officer has probable cause to believe that the property was derived from or realized through a crime or that the property is a vehicle which was used to transport any property or weapon used or to be used or received in the commission of any felony.

(3) If there is a seizure under sub. (2), proceedings under s. 973.076 shall be instituted. Property seized under this section is not subject to replevin, but is deemed to be in the custody of the sheriff of the county in which the seizure was made subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this section, the person seizing the property may do any of the following:

(a) Place the property under seal.

(b) Remove the property to a place designated by it.

(c) Require the sheriff of the county in which the seizure was made to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(4) When property is forfeited under ss. 973.075 to 973.077, the agency seizing the property may sell the property that is not required by law to be destroyed or transferred to another agency. The agency may retain any vehicle for official use or sell the vehicle. The agency seizing the property may deduct 50% of the amount received for administrative expenses of seizure, maintenance of custody, advertising and court costs and the costs of investigation and prosecution reasonably incurred. The remainder shall be deposited in the school fund as the proceeds of the forfeiture. If the property forfeited under ss. 973.075 to 973.077 is money, all the money shall be deposited in the school fund.

(5) All forfeitures under ss. 973.075 to 973.077 shall be made with due provision for the rights of innocent persons. Any property seized but not forfeited shall be returned to its rightful owner. Any person claiming the right to possession of property seized may apply for its return to the circuit court for the county in which the property was seized. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to

hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property returned if:

(a) The property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b) All proceedings in which it might be required have been completed.

(6) Sections 973.075 to 973.077 do not apply to crimes committed under ch. 161.

973.076 Forfeiture proceedings. (1) **TYPE OF ACTION; WHERE BROUGHT.** An action brought to cause the forfeiture of any property specified in s. 973.075 (1) is an action in rem. The circuit court for the county in which the property was seized shall have exclusive jurisdiction over any proceedings regarding the property.

(2) **COMMENCEMENT.** (a) The district attorney of the county within which the property was seized or in which the defendant is convicted shall commence the forfeiture action within 30 days after the seizure of the property or the date of conviction, whichever is earlier, except that the defendant may request that the forfeiture proceedings be adjourned until after adjudication of any charge concerning a crime which was the basis for the seizure of the property. The request shall be granted. The forfeiture action shall be commenced by filing a summons, complaint and affidavit of the person who seized the property with the clerk of circuit court and by serving authenticated copies of such papers upon the person from whom the property was seized and upon any person known to have a bona fide perfected security interest in the property. Service shall be made in accordance with ch. 801.

(b) Upon service of an answer, the action shall be set for hearing within 60 days of the service of the answer but may be continued for cause or upon stipulation of the parties.

(c) In counties having a population of 500,000 or more, the district attorney or the corporation counsel may proceed under par. (a).

(3) **BURDEN OF PROOF.** The state shall have the burden of satisfying or convincing to a reasonable certainty by the greater weight of the credible evidence that the property is subject to forfeiture under s. 973.075 to 973.077.

973.077 Burden of proof; liabilities. (1) It is not necessary for the state to negate any exemption or exception regarding any crime in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under s. 973.076. The burden of proof of any exemption or exception is upon the person claiming it.

(2) In the absence of proof that a person is the duly authorized holder of an appropriate federal registration or order form, the person is presumed not to be the holder of the registration or form. The burden of proof is upon the person to rebut the presumption.

(3) No liability is imposed by ss. 973.075 to 973.077 upon any authorized law enforcement officer or employe engaged in the lawful performance of duties.
