

2003 SENATE BILL 403

January 21, 2004 – Introduced by Senators LEIBHAM and SCHULTZ, cosponsored by Representatives PETTIS, LADWIG, JESKEWITZ, MUSSER, SERATTI, OLSEN, PETROWSKI, HINES, MCCORMICK, OTT, VRAKAS, ALBERS, VAN ROY and TAYLOR. Referred to Committee on Judiciary, Corrections and Privacy.

1 **AN ACT** *to repeal* 973.075 (1) (b) 2m. c.; *to renumber and amend* 961.55 (1) (d)
2 (intro.), 961.55 (1) (d) 1., 961.55 (1) (d) 2., 961.55 (1) (d) 3. and 961.55 (1) (d) 4.;
3 **to amend** 961.55 (3) (intro.), 961.55 (5) (intro.), 968.20 (1) (intro.), 973.075 (1)
4 (b) 1m. (intro.), 973.075 (1) (bg), 973.075 (1) (bj), 973.075 (1) (bm), 973.075 (1)
5 (d), 973.075 (1) (e), 973.075 (4) and 973.075 (5) (intro.); and **to create** 961.55 (1)
6 (h), 961.55 (5) (am), 961.55 (5r), 973.075 (1) (f), 973.075 (1p) and 973.075 (5r)
7 of the statutes; **relating to:** seizure of a computer used to commit a crime and
8 providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the state or a local law enforcement agency may acquire certain property involved in the commission of crime through a forfeiture proceeding, which is generally initiated after the end of the criminal case to which it relates. The forfeiture law applies to all property directly or indirectly derived from the commission of a crime. It also covers certain other property related to the commission of a crime, including: 1) an illegal controlled substance and equipment used in committing a crime relating to a controlled substance; 2) a vehicle used to transport property used or received in committing a felony; 3) a vehicle used in committing a crime relating to prostitution; 4) property used in committing a stalking offense or

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a criminal violation of a domestic abuse, child abuse, or harassment restraining order or injunction; and 5) pirated, bootlegged, and counterfeit recordings and any equipment used to make them. Current law also permits the state or a local law enforcement agency to retain contraband that it has seized, which includes machines or materials (including computers) that are used to create other contraband items.

Under this bill, a computer that is used, with the knowledge and consent of its owner, in the commission of a crime is subject to forfeiture, regardless of whether it is contraband. If a computer is forfeited under the bill, the law enforcement agency that seized it may retain it for its own use, donate it to a nonprofit organization or another government agency, or sell it and retain 50% of the proceeds of the sale (with the remainder being deposited in the school fund).

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 961.55 (1) (d) (intro.) of the statutes is renumbered 961.55 (1) (d)
2 1m. and amended to read:

3 961.55 (1) (d) 1m. ~~All~~ Subject to sub. (1p) and except as provided in subd. 2m.,
4 all vehicles which are used, or intended for use, to transport, or in any manner to
5 facilitate the transportation, for the purpose of sale or receipt of property described
6 in pars. (a) and (b) or for the purpose of transporting any property or weapon used
7 or to be used or received in the commission of any felony under this chapter, ~~but,~~

8 **SECTION 2.** 961.55 (1) (d) 1. of the statutes is renumbered 961.55 (1) (d) 2m. a.
9 and amended to read:

10 961.55 (1) (d) 2m. a. No vehicle used by any person as a common carrier in the
11 transaction of business as a common carrier is subject to forfeiture under this section
12 unless it appears that the owner or other person in charge of the vehicle is a
13 consenting party or privy to a violation of this chapter;

14 **SECTION 3.** 961.55 (1) (d) 2. of the statutes is renumbered 961.55 (1) (d) 2m. b.
15 and amended to read:

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1 961.55 (1) (d) 2m. b. No vehicle is subject to forfeiture under this section by
2 reason of any act or omission established by the owner thereof to have been
3 committed or omitted without the owner's knowledge or consent. This subdivision
4 subd. 2m. b. does not apply to any vehicle owned by a person who is under 16 years
5 of age on the date that the vehicle is used, or is intended for use, in the manner
6 described under ~~par. (d) (intro.)~~ subd. 1m., unless the court determines that the
7 owner is an innocent bona fide owner;.

8 **SECTION 4.** 961.55 (1) (d) 3. of the statutes, as affected by 2003 Wisconsin Act
9 49, is renumbered 961.55 (1) (d) 2m. c. and amended to read:

10 961.55 (1) (d) 2m. c. A vehicle is not subject to forfeiture for a violation of s.
11 961.41 (3g) (b) to (g); ~~and.~~

12 **SECTION 5.** 961.55 (1) (d) 4. of the statutes is renumbered 961.55 (1p) and
13 amended to read:

14 961.55 (1p) If forfeiture of a ~~vehicle~~ property encumbered by a bona fide
15 perfected security interest occurs under sub. (1) (d) or (h), the holder of the security
16 interest shall be paid from the proceeds of the forfeiture if the security interest was
17 perfected prior to the date of the commission of the felony which forms the basis for
18 the forfeiture and he or she neither had knowledge of nor consented to the act or
19 omission.

20 **SECTION 6.** 961.55 (1) (h) of the statutes is created to read:

21 961.55 (1) (h) Subject to sub. (1p), any computer, as defined in s. 943.70 (1) (am),
22 used, with the knowledge and consent of its owner, in the commission of a crime
23 under this chapter.

24 **SECTION 7.** 961.55 (3) (intro.) of the statutes is amended to read:

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1 961.55 (3) (intro.) In the event of seizure under sub. (2), proceedings under sub.
2 (4) shall be instituted promptly. All dispositions and forfeitures under this section
3 and ss. 961.555 and 961.56 shall be made with due provision for the rights of innocent
4 persons under ~~sub. subs.~~ (1) (d) ~~1., 2., 2m. a. and b. and 4. Any (1p).~~ Subject to sub.
5 (5r), any property seized but not forfeited shall be returned to its rightful owner. Any
6 person claiming the right to possession of property seized may apply for its return
7 to the circuit court for the county in which the property was seized. The court shall
8 order such notice as it deems adequate to be given the district attorney and all
9 persons who have or may have an interest in the property and shall hold a hearing
10 to hear all claims to its true ownership. If the right to possession is proved to the
11 court's satisfaction, it shall order the property returned, subject to sub. (5r), if:

12 **SECTION 8.** 961.55 (5) (intro.) of the statutes is amended to read:

13 961.55 (5) (intro.) When property is forfeited under this chapter, the agency
14 whose officer or employee seized the property may, subject to sub. (5r):

15 **SECTION 9.** 961.55 (5) (am) of the statutes is created to read:

16 961.55 (5) (am) Donate it to a nonprofit organization or a unit of state or local
17 government, if the property is a computer forfeited under sub. (1) (h);

18 **SECTION 10.** 961.55 (5r) of the statutes is created to read:

19 961.55 (5r) Before selling or donating a computer seized under sub. (1) (h),
20 before returning it to its rightful owner, or before retaining it for its own use, the law
21 enforcement agency that seized it shall purge all data from the computer that are or
22 represent contraband or that were used in the commission of a crime and may purge
23 any other data or computer programs from the computer if the data or programs are
24 maintained or designed primarily to facilitate the commission of a crime.

25 **SECTION 11.** 968.20 (1) (intro.) of the statutes is amended to read:

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1 968.20 (1) (intro.) Any person claiming the right to possession of property
2 seized pursuant to a search warrant or seized without a search warrant may apply
3 for its return to the circuit court for the county in which the property was seized or
4 where the search warrant was returned. The court shall order such notice as it
5 deems adequate to be given the district attorney and all persons who have or may
6 have an interest in the property and shall hold a hearing to hear all claims to its true
7 ownership. ~~If Subject to ss. 961.55 (5r) and 973.075 (5r), if~~ the right to possession is
8 proved to the court's satisfaction, it shall order the property, other than contraband
9 or property covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or 968.205,
10 returned if:

11 **SECTION 12.** 973.075 (1) (b) 1m. (intro.) of the statutes is amended to read:

12 973.075 (1) (b) 1m. (intro.) ~~Except Subject to sub. (1p), and except~~ as provided
13 in subd. 2m., all vehicles, as defined in s. 939.22 (44), which are used in any of the
14 following ways:

15 **SECTION 13.** 973.075 (1) (b) 2m. c. of the statutes is repealed.

16 **SECTION 14.** 973.075 (1) (bg) of the statutes is amended to read:

17 973.075 (1) (bg) ~~Any Subject to sub. (1p), any~~ property used or to be used in the
18 commission of a crime under s. 943.75 (2) or (2m), ~~but if the property is encumbered~~
19 ~~by a bona fide perfected security interest that was perfected before the date of the~~
20 ~~commission of the current violation and the holder of the security interest neither~~
21 ~~had knowledge of nor consented to the commission of that violation, the holder of the~~
22 ~~security interest shall be paid from the proceeds of the forfeiture.~~

23 **SECTION 15.** 973.075 (1) (bj) of the statutes is amended to read:

24 973.075 (1) (bj) ~~Any Subject to sub. (1p), any~~ property used or to be used in the
25 commission of a crime under s. 943.74, ~~but if the property is encumbered by a bona~~

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1 ~~fide perfected security interest that was perfected before the date of the commission~~
2 ~~of the current violation and the holder of the security interest neither had knowledge~~
3 ~~of nor consented to the commission of that violation, the holder of the security~~
4 ~~interest shall be paid from the proceeds of the forfeiture.~~

5 **SECTION 16.** 973.075 (1) (bm) of the statutes is amended to read:

6 973.075 (1) (bm) Any Subject to sub. (1p), any property used in the commission
7 of a crime under s. 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 (2) or
8 940.32, ~~but if the property is encumbered by a bonafide perfected security interest~~
9 ~~that was perfected before the date of the commission of the current violation and the~~
10 ~~holder of the security interest neither had knowledge of nor consented to the~~
11 ~~commission of that violation, the holder of the security interest shall be paid from the~~
12 ~~proceeds of the forfeiture.~~

13 **SECTION 17.** 973.075 (1) (d) of the statutes is amended to read:

14 973.075 (1) (d) ~~A~~ Subject to sub. (1p), a tank vessel that violates s. 299.62 (2)
15 that is owned by a person who, within 5 years before the commission of the current
16 violation, was previously convicted of violating s. 299.62 (2), ~~but if the tank vessel is~~
17 ~~encumbered by a bona fide perfected security interest that was perfected before the~~
18 ~~date of the commission of the current violation and the holder of the security interest~~
19 ~~neither had knowledge of nor consented to the commission of that violation, the~~
20 ~~holder of the security interest shall be paid from the proceeds of the forfeiture.~~

21 **SECTION 18.** 973.075 (1) (e) of the statutes is amended to read:

22 973.075 (1) (e) Any recording, as defined in s. 943.206 (5), created, advertised,
23 offered for sale or rent, sold, rented, transported or possessed in violation of ss.
24 943.207 to 943.209 or s. 943.49 and, subject to sub. (1p), any electronic, mechanical
25 or other device for making a recording or for manufacturing, reproducing, packaging

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1 or assembling a recording that was used to facilitate a violation of ss. 943.207 to
2 943.209 or s. 943.49, regardless of the knowledge or intent of the person from whom
3 the recording or device is seized. ~~If a device subject to forfeiture under this paragraph
4 is encumbered by a bona fide perfected security interest that was perfected before the
5 date of the commission of the current violation and the holder of the security interest
6 neither had knowledge of nor consented to the commission of that violation, the
7 holder of the security interest shall be paid from the proceeds of the forfeiture.~~

8 **SECTION 19.** 973.075 (1) (f) of the statutes is created to read:

9 973.075 (1) (f) Subject to sub. (1p), any computer, as defined in s. 943.70 (1)
10 (am), used, with the knowledge and consent of its owner, in the commission of a
11 crime.

12 **SECTION 20.** 973.075 (1p) of the statutes is created to read:

13 973.075 (1p) If any property under sub. (1) (b), (bg), (bj), (bm), (d), or (f) or any
14 device under sub. (1) (e) is encumbered by a bona fide perfected security interest that
15 was perfected before the date of the commission of the current violation and the
16 holder of the security interest neither had knowledge of nor consented to the
17 commission of that violation, the holder of the security interest shall be paid from the
18 proceeds of the forfeiture.

19 **SECTION 21.** 973.075 (4) of the statutes is amended to read:

20 973.075 (4) When property is forfeited under ss. 973.075 to 973.077, the agency
21 seizing the property may sell the property that is not required by law to be destroyed
22 or transferred to another agency. The agency may retain any vehicle for official use
23 or sell the vehicle. Subject to sub. (5r), the agency may sell any computer forfeited
24 under sub. (1) (f) or, unless sub. (1p) applies, retain it for its own use or donate it to
25 a nonprofit organization or a unit of state or local government. The agency seizing

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1 the property may deduct 50% of the amount received for administrative expenses of
2 seizure, maintenance of custody, advertising and court costs and the costs of
3 investigation and prosecution reasonably incurred. The remainder shall be
4 deposited in the school fund as the proceeds of the forfeiture. If the property forfeited
5 under ss. 973.075 to 973.077 is money, all the money shall be deposited in the school
6 fund.

7 **SECTION 22.** 973.075 (5) (intro.) of the statutes is amended to read:

8 973.075 (5) (intro.) All forfeitures under ss. 973.075 to 973.077 shall be made
9 with due provision for the rights of innocent persons under ~~sub. subs.~~ (1) (b) 2m., ~~(bg)~~,
10 ~~(bm)~~, ~~(d)~~ and ~~(e)~~ (1p). Except as provided in sub. (5m) and subject to sub. (5r), any
11 property seized but not forfeited shall be returned to its rightful owner. Any person
12 claiming the right to possession of property seized may apply for its return to the
13 circuit court for the county in which the property was seized. The court shall order
14 such notice as it deems adequate to be given the district attorney and all persons who
15 have or may have an interest in the property and shall hold a hearing to hear all
16 claims to its true ownership. If the right to possession is proved to the court's
17 satisfaction, it shall order the property returned, subject to sub. (5r), if:

18 **SECTION 23.** 973.075 (5r) of the statutes is created to read:

19 973.075 (5r) Before selling or donating a computer seized under sub. (1) (f),
20 before returning it to its rightful owner, or before retaining it for its own use, the law
21 enforcement agency that seized it shall purge all data from the computer that are or
22 represent contraband or that were used in the commission of a crime and may purge
23 any other data or computer programs from the computer if the data or programs are
24 maintained or designed primarily to facilitate the commission of a crime.

25 **SECTION 24. Initial applicability.**

