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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO FOOD AND DRUGS -- UNIFORM CONTROLLED SUBSTANCES ACT

Introduced By: Senators Mendes, Calkin, Valverde, Mack, and Acosta

Date Introduced: March 26, 2021

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 21-28-5.04 of the General Laws in Chapter 21-28 entitled "Uniform
2 Controlled Substances Act" is hereby amended to read as follows:

3 **21-28-5.04. Forfeiture of property and money.**

4 (a) Any property, real or personal, including, but not limited to, vessels, vehicles, or
5 aircraft, and money or negotiable instruments, securities, or other things of value or any property
6 constituting, or derived from any proceeds, furnished, or intended to be furnished, by any person
7 for the transportation of, or in exchange for, a controlled substance and that has been, or is being
8 used, in violation of § 21-28-4.01(a) or 21-28-4.01(b) or in, upon, or by means of which any
9 violation of §§ 21-28-4.01(a) or 21-28-4.01(b) or §§ 21-28-4.01.1 or 21-28-4.01.2 or 21-28-4.08
10 has taken, or is taking place, and all real property including any right, title, and interest in the whole
11 of any lot or tract of land and any appurtenances or improvements that is used in the commission
12 of a violation of §§ 21-28-4.01(a) or 21-28-4.01(b) or §§ 21-28-4.01.1 or 21-28-4.01.2 or 21-28-
13 4.08, or that was purchased with funds obtained as a result of the commission of a violation of §§
14 21-28-4.01(a) or §§ 21-28-4.01(b) or §§ 21-28-4.01.1 or 21-28-4.01.2 or 21-28-4.08, shall be
15 subject to seizure and forfeiture pursuant to chapter 33 of title 12. ~~seized and forfeited; provided~~
16 ~~that no property or money, as enumerated in this subsection, used by any person shall be forfeited~~
17 ~~under the provisions of this chapter unless it shall appear that the owner of the property or money~~
18 ~~had knowledge, actual or constructive, and was a consenting party to the alleged illegal act. All~~
19 ~~moneys, coin and currency, found in close proximity to forfeitable controlled substances, to~~

1 ~~forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the~~
2 ~~importation, manufacture, or distribution of controlled substances, are presumed to be unlawfully~~
3 ~~furnished in exchange for a controlled substance or used in violation of this chapter. The burden of~~
4 ~~proof is upon claimants of the property to rebut this presumption.~~

5 ~~(b) Property taken or detained under this section shall not be repleviable, but shall be~~
6 ~~deemed to be in the custody of the law enforcement agency making the seizure and whenever~~
7 ~~property or money is forfeited under this chapter it shall be utilized as follows:~~

8 ~~(1) Where the seized property is a vessel, vehicle, aircraft, or other personal property it~~
9 ~~may be retained and used by the law enforcement agency that seized the property where the use of~~
10 ~~the property is reasonably related to the law enforcement duties of the seizing agency. If the seized~~
11 ~~property is a motor vehicle that is inappropriate for use by the law enforcement agency due to style,~~
12 ~~size, or color, the seizing agency shall be allowed to apply the proceeds of sale or the trade-in value~~
13 ~~of the vehicle towards the purchase of an appropriate vehicle for use in activities reasonably related~~
14 ~~to law enforcement duties.~~

15 ~~(2) The law enforcement agency may sell any forfeited property not required by this chapter~~
16 ~~to be destroyed and not harmful to the public. The proceeds from the sale are to be distributed in~~
17 ~~accordance with subdivision (3) of this subsection.~~

18 ~~(3) As to the proceeds from the sale of seized property as referred to in subdivision (2) of~~
19 ~~this subsection, and as to moneys, coin and currency, negotiable instruments, securities, or other~~
20 ~~things of value as referred to in subsection (a) of this section, the distribution shall be as follows:~~

21 ~~(i) (A) All proceeds of the forfeiture of real or personal property shall be distributed as~~
22 ~~follows: All costs of advertising administrative forfeitures shall first be deducted from the amount~~
23 ~~forfeited. Of the remainder, twenty percent (20%) of the proceeds shall be provided to the attorney~~
24 ~~general's department to be used for further drug-related law enforcement activities including, but~~
25 ~~not limited to, investigations, prosecutions, and the administration of this chapter; seventy percent~~
26 ~~(70%) of the proceeds shall be divided among the state and local law enforcement agencies~~
27 ~~proportionately based upon their contribution to the investigation of the criminal activity related to~~
28 ~~the asset being forfeited; and ten percent (10%) of the proceeds shall be provided to the department~~
29 ~~of health for distribution to substance abuse treatment programs.~~

30 ~~(B) The law enforcement agencies involved in the investigation, with the assistance of the~~
31 ~~attorney general, shall by agreement determine the respective proportionate share to be received by~~
32 ~~each agency. If the agencies are unable to reach agreement, application shall be made by one or~~
33 ~~more of the agencies involved to the presiding justice of the superior court who shall determine the~~
34 ~~respective proportionate share attributable to each law enforcement agency. The proceeds from all~~

1 ~~forfeitures shall be held by the general treasurer in a separate account until such time as an~~
2 ~~allocation is determined by agreement of the agencies or by the presiding justice. It shall be the~~
3 ~~duty and responsibility of the general treasurer to disburse the allocated funds from the separate~~
4 ~~account to the respective law enforcement agencies.~~

5 ~~(ii) Each state or local law enforcement agency shall be entitled to keep the forfeited money~~
6 ~~or the proceeds from sales of forfeited property. The funds shall be used for law enforcement~~
7 ~~purposes and investigations of violations of this chapter. The funds received by a state law~~
8 ~~enforcement agency shall be maintained in a separate account by the general treasurer. The funds~~
9 ~~received by a local law enforcement agency shall be maintained in a separate account by the local~~
10 ~~agency's city or town treasurer.~~

11 ~~(e) (1) There is established in the state's treasury a special fund to be known as the asset~~
12 ~~forfeiture fund in which shall be deposited the excess proceeds of forfeitures arising out of criminal~~
13 ~~acts occurring before July 1, 1987. The asset forfeiture fund shall be used to fund drug related law~~
14 ~~enforcement activity and the treatment and rehabilitation of victims of drug abuse. The fund shall~~
15 ~~be administered through the office of the general treasurer. The presiding justice of the superior~~
16 ~~court shall have the authority to determine the feasibility and amount of disbursement to those state~~
17 ~~or local law enforcement agencies that have made application.~~

18 ~~(2) Upon the application of any law enforcement agency of the state of Rhode Island, when~~
19 ~~a special need exists concerning the enforcement of the provisions of this chapter, the attorney~~
20 ~~general, or his or her designee, may apply to the presiding justice of the superior court for the~~
21 ~~release from the general treasury of sums of money. When the presiding justice upon consideration~~
22 ~~of the reasons set forth by that agency deems them to be reasonable and necessary to the~~
23 ~~accomplishment of a goal within the powers and duties of that law enforcement agency, he or she~~
24 ~~may issue an order ex parte providing for the release of the funds.~~

25 ~~(d) Each law enforcement agency making any seizure(s) that result(s) in a forfeiture~~
26 ~~pursuant to this section shall certify and file with the state treasurer between January 1 and January~~
27 ~~30 an annual report detailing the property or money forfeited during the previous calendar year and~~
28 ~~the use or disposition of the property or money. The report shall be made in the form and manner~~
29 ~~as may be provided or specified by the treasurer and these annual law enforcement agency reports~~
30 ~~shall be provided to the local governmental body governing the agency and to the house and senate~~
31 ~~judiciary committees.~~

32 ~~(e) Any law enforcement agency whose duty it is to enforce the laws of this state relating~~
33 ~~to controlled substances is empowered to authorize designated officers or agents to carry out the~~
34 ~~seizure provisions of this chapter. It shall be the duty of any officer or agent authorized or~~

1 ~~designated, or authorized by law, whenever he or she shall discover any property or monies that~~
2 ~~have been, or are being, used in violation of any of the provisions of this chapter, or in, upon, or by~~
3 ~~means of which any violation of this chapter has taken or is taking place, to seize the property or~~
4 ~~monies and to place it in the custody of the person as may be authorized or designated for that~~
5 ~~purpose by the respective law enforcement agency pursuant to those provisions.~~

6 ~~(f) For purposes of this section and § 30-14-2 only, the Rhode Island national guard shall~~
7 ~~be deemed a law enforcement agency eligible to participate in the forfeiture of money and assets~~
8 ~~seized through counterdrug operations in which members of the guard support federal, state or~~
9 ~~municipal efforts.~~

10 SECTION 2. Sections 21-28-5.04.1 and 21-28-5.04.2 of the General Laws in Chapter 21-
11 28 entitled "Uniform Controlled Substances Act" are hereby repealed.

12 **21-28-5.04.1. Criminal forfeiture procedures.**

13 ~~(a) Any criminal complaint, information, or indictment charging one or more covered~~
14 ~~offenses shall set forth with reasonable particularity property that the attorney general seeks to~~
15 ~~forfeit pursuant to this section.~~

16 ~~(b) The court may, upon application of the attorney general, enter a restraining order or~~
17 ~~injunction, require any person claiming any interest in the subject property to execute a satisfactory~~
18 ~~performance bond to the state, or take any other action to preserve the availability of property~~
19 ~~subject to forfeiture described in § 21-28-5.04, whether prior or subsequent to the filing of a~~
20 ~~complaint, indictment, or information. Written notice and an opportunity for a hearing shall be~~
21 ~~afforded to persons appearing to have an interest in the property, the hearing to be limited to the~~
22 ~~issues of whether:~~

23 ~~(1) There is a substantial probability that the state will prevail on the issue of forfeiture and~~
24 ~~that failure to enter the order will result in the property being destroyed, conveyed, encumbered or~~
25 ~~further encumbered, removed from the jurisdiction of the court, or made unavailable for forfeitures;~~
26 ~~and~~

27 ~~(2) The need to preserve the availability of property through the entry of the requested~~
28 ~~order outweighs the hardship on any party against whom the order is to be entered.~~

29 ~~(c) (1) A temporary restraining order under this section may be entered upon application~~
30 ~~of the attorney general without notice or opportunity for a hearing when a complaint, information,~~
31 ~~or indictment has not yet been filed with respect to the property if the attorney general demonstrates~~
32 ~~that there is probable cause to believe that the property with respect to which the order is sought~~
33 ~~would, in the event of conviction, be subject to forfeiture under § 21-28-5.04 and that provision of~~
34 ~~notice will jeopardize the availability of the property for forfeiture. The temporary restraining order~~

1 ~~shall expire within ten (10) days of the date on which it is entered unless extended for good cause~~
2 ~~shown or unless the party against whom it is entered consents to an extension for a longer period.~~

3 ~~(2) A hearing requested by any party in interest concerning an order entered under this~~
4 ~~subsection shall be held at the earliest possible time and prior to the expiration of the temporary~~
5 ~~order.~~

6 ~~(3) The court may receive and consider, at the hearing held pursuant to this subsection,~~
7 ~~evidence and information that would be inadmissible in court.~~

8 ~~(d) Upon conviction of a person for a covered offense the court shall enter a judgment of~~
9 ~~forfeiture of the property described in § 21-28-5.04 to the state and shall also authorize the attorney~~
10 ~~general to seize all property ordered forfeited upon any terms and conditions that the court shall~~
11 ~~deem proper. Following the entry of an order declaring the property forfeited, the court may, upon~~
12 ~~application of the attorney general, enter any appropriate restraining orders or injunctions, require~~
13 ~~the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers,~~
14 ~~accountants, or trustees, or take any other action to protect the interest of the state in the property~~
15 ~~ordered forfeited. Any income accruing to or derived from an enterprise or an interest in an~~
16 ~~enterprise that has been ordered forfeited under this section may be used to offset ordinary and~~
17 ~~necessary expenses of the enterprise as required by law or that are necessary to protect the interest~~
18 ~~of the state or innocent third parties.~~

19 ~~(e) All right, title, and interest in property described in § 21-28-5.04 vests in the state upon~~
20 ~~the commission of the act giving rise to forfeiture under this chapter. Any property that is~~
21 ~~subsequently transferred to any person may be the subject of a special verdict of forfeiture and after~~
22 ~~this shall be ordered forfeited to the state, unless the transferee establishes in a hearing pursuant to~~
23 ~~subsection (f) of this section that he or she is a bona fide purchaser for value of the property who~~
24 ~~at the time of purchase was reasonably without cause to believe that the property was subject for~~
25 ~~forfeiture.~~

26 ~~(f) Procedures subsequent to the special verdict of forfeiture shall be as follows:~~

27 ~~(1) Following the entry of an order of forfeiture under this section, the state shall publish~~
28 ~~notice of the order and of its intent to dispose of the property once per week for at least three (3)~~
29 ~~weeks in the manner that the attorney general may provide by regulation. The attorney general shall~~
30 ~~also, to the extent practicable, provide written notice to all parties known to have an interest in the~~
31 ~~property and all parties whose identity is reasonably subject to discovery and who may have an~~
32 ~~interest in the forfeited property.~~

33 ~~(2) Any person, other than the defendant, asserting any interest in property that has been~~
34 ~~ordered forfeited to the state pursuant to this section may, within one hundred eighty (180) days of~~

1 ~~the final publication of notice or his or her receipt of notice under subdivision (1) of this subsection,~~
2 ~~whichever is earlier, petition the court for a hearing to adjudicate the validity of his or her alleged~~
3 ~~interest in the property.~~

4 ~~(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth~~
5 ~~the nature and extent of the petitioner's right, title, or interest in the property; and additional facts~~
6 ~~supporting the petitioner's claim; and the relief sought.~~

7 ~~(4) The hearing on the petition shall, to the extent practicable and consistent with the~~
8 ~~interest of justice, be held within thirty (30) days of the filing of the petition. The court may~~
9 ~~consolidate the hearing on the petition with a hearing on any other petition filed by a person other~~
10 ~~than the defendant and concerning the same property.~~

11 ~~(5) At a hearing, the petitioner may testify and present evidence and witnesses on his own~~
12 ~~behalf, and cross-examine witnesses who appear at the hearing. The state may present evidence~~
13 ~~and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses~~
14 ~~who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court~~
15 ~~shall consider the relevant portions of the record of the criminal case that resulted in the order of~~
16 ~~forfeiture.~~

17 ~~(6) In accordance with its findings at the hearing, the court shall amend the order of~~
18 ~~forfeiture if it determines that the petitioner has established by a preponderance of the evidence~~
19 ~~that:~~

20 ~~(i) The petitioner has a right, title, or interest in the property, and the right, title or interest~~
21 ~~was vested in the petitioner rather than the defendant or was superior to any right, title, or interest~~
22 ~~of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the~~
23 ~~property under this section; or~~

24 ~~(ii) The petitioner is a bona fide purchaser for value of any right, title, or interest in the~~
25 ~~property and was at the time of purchase reasonably without cause to believe that the property was~~
26 ~~subject to forfeiture under this section.~~

27 ~~(7) Following the court's disposition of all petitions filed under this section, or if no such~~
28 ~~petitions are filed, following the expiration of the period provided in § 21-28-5.04 for the filing of~~
29 ~~the petitions, the state shall have clear title to property that is the subject of the order of forfeiture~~
30 ~~and shall transfer good and sufficient title to any subsequent purchaser, transferee, or fund as~~
31 ~~provided in this chapter.~~

32 ~~(8) Except as provided in this section, no party claiming an interest in property subject to~~
33 ~~forfeiture under this section may:~~

34 ~~(i) Intervene in a trial or appeal of a criminal case involving the forfeiture of the property;~~

1 or

2 ~~(ii) Commence any action against the state concerning the validity of the alleged interest.~~

3 ~~(g) In order to facilitate the identification or location of property declared forfeited and to~~
4 ~~facilitate the disposition of petitions filed pursuant to § 21-28-5.04 after the entry of an order~~
5 ~~declaring forfeited property to the state, the court may, upon application of the attorney general,~~
6 ~~order that the testimony of any witness relating to the property forfeited be taken by deposition and~~
7 ~~that any designated book, paper, document, record, recording (electronic or otherwise), or other~~
8 ~~material not privileged, be produced at the same time and place, in the same manner as provided~~
9 ~~for the taking of depositions under the Rules of Civil Procedure.~~

10 ~~(h) If any of the property described in § 21-28-5.04: (1) cannot be located; (2) has been~~
11 ~~transferred to, sold to or deposited with a third party; (3) has been placed beyond the jurisdiction~~
12 ~~of the court; (4) has been substantially diminished in value by any act or omission of the defendant;~~
13 ~~or (5) has been commingled with other property which cannot be divided without difficulty; the~~
14 ~~court shall order the forfeiture of any other property of the defendant up to the value of the subject~~
15 ~~property.~~

16 ~~(i) The court shall have jurisdiction to enter orders as provided in this section without~~
17 ~~regard to the location of any property that may be subject to forfeiture under this section or that has~~
18 ~~been ordered forfeited under this section.~~

19 **21-28-5.04.2. Civil forfeiture procedure.**

20 ~~(a) In addition to or in lieu of the criminal forfeiture procedures of this chapter, any property~~
21 ~~described in § 21-28-5.04 except as designated in subsection (b) of this section, is subject to civil~~
22 ~~forfeiture to the state. Civil forfeiture proceedings shall be in the nature of an action in rem and~~
23 ~~shall be governed by the civil rules for in rem proceedings.~~

24 ~~(b) All property described in § 21-28-5.04 is subject to civil forfeiture except that:~~

25 ~~(1) No conveyances used by any person as a common carrier in the transaction of business~~
26 ~~as a common carrier shall be forfeited under the provisions of this section unless it appears that the~~
27 ~~owner or other person in charge of the conveyance was a consenting party or privy to the covered~~
28 ~~offense charged;~~

29 ~~(2) No conveyance shall be forfeited under the provisions of this section by reason of any~~
30 ~~act or omission established by the owner of it to have been committed or omitted by any person~~
31 ~~other than the owner while the conveyance was unlawfully in the possession of a person other than~~
32 ~~the owner in violation of the criminal laws of this state or of the United States; and~~

33 ~~(3) No property shall be forfeited under this section, to the extent of the interest of an~~
34 ~~owner, by reason of any act or omission established by that owner to have been committed or~~

1 ~~omitted without knowledge or consent of that owner.~~

2 ~~(c) Property subject to forfeiture under this section may be seized by a law enforcement~~
3 ~~officer:~~

4 ~~(1) Upon process issued pursuant to the Rules of Civil Procedure applicable to in rem~~
5 ~~proceedings;~~

6 ~~(2) Upon process issued pursuant to a legally authorized search warrant; or~~

7 ~~(3) Without court process when:~~

8 ~~(i) The seizure is incident to a lawful arrest or search;~~

9 ~~(ii) The property subject to seizure has been the subject of a prior judgment in favor of the~~
10 ~~state in a controlled substance act;~~

11 ~~(iii) The law enforcement officer has probable cause to believe that the property is directly~~
12 ~~or indirectly dangerous to health or safety; or~~

13 ~~(iv) The law enforcement officer has probable cause to believe that the property is~~
14 ~~forfeitable under § 21-28-5.04.~~

15 ~~(d) In the event of a seizure under § 21-28-5.04 the property shall not be subject to~~
16 ~~sequestration or attachment but is deemed to be in the custody of the law enforcement agency~~
17 ~~making the seizure, subject only to the order of the court. When property is seized under this~~
18 ~~section, pending forfeiture and final disposition, the law enforcement agency making the seizure~~
19 ~~may:~~

20 ~~(1) Place the property under seal;~~

21 ~~(2) Remove the property to a storage area for safekeeping;~~

22 ~~(3) Remove the property to a place designated by the court; or~~

23 ~~(4) Request another agency authorized by law to take custody of the property and remove~~
24 ~~it to an appropriate location within the jurisdiction of the court.~~

25 ~~(e) As soon as practicable after seizure, the seizing agency shall conduct an inventory upon~~
26 ~~and cause the appraisal of the property seized.~~

27 ~~(f) In the event of a seizure under this section, the seizing agency shall within thirty (30)~~
28 ~~days send to the attorney general a written request for forfeiture, which shall include a statement of~~
29 ~~all facts and circumstances including the names of all witnesses then known, the appraised value~~
30 ~~of the property and the statutory provision relied upon for forfeiture.~~

31 ~~(g) The attorney general shall immediately examine the facts and applicable law of the~~
32 ~~cases referred to him or her pursuant to this section, and if it is probable that the property is subject~~
33 ~~to forfeiture shall immediately cause the initiation of administrative or judicial proceedings against~~
34 ~~the property. If, upon inquiry and examination, the attorney general determines that those~~

1 ~~proceedings probably cannot be sustained or that justice does not require the institution of the~~
2 ~~proceedings, he or she shall make a written report of those findings, transmit a copy to the seizing~~
3 ~~agency, and immediately authorize the release of the property.~~

4 ~~(h) If the value of any personal property seized does not exceed twenty thousand dollars~~
5 ~~(\$20,000), the attorney general may forfeit the property administratively in the following manner:~~

6 ~~(1) The attorney general shall provide notice of intention to forfeit property~~
7 ~~administratively by publication in a local newspaper of general circulation, one day per week for~~
8 ~~three (3) consecutive weeks.~~

9 ~~(2) In addition, to the extent practicable, the attorney general shall provide notice by~~
10 ~~registered mail of intent to forfeit the property administratively to all known interested parties and~~
11 ~~all parties whose identity is reasonably subject to discovery who may have an interest in the~~
12 ~~property seized.~~

13 ~~(3) Notice by publication and by mail shall include:~~

14 ~~(i) A description of the property;~~

15 ~~(ii) The appraised value of the property;~~

16 ~~(iii) The date and place of seizure;~~

17 ~~(iv) The violation of law alleged against the subject property;~~

18 ~~(v) The instructions for filing claim and cost bond or a petition for remission or mitigation;~~

19 ~~and~~

20 ~~(vi) A notice that the property will be forfeited to the state if a petition for remission or~~
21 ~~mitigation or a claim and cost bond has not been timely filed.~~

22 ~~(4) Persons claiming an interest in the property may file petitions for remission or~~
23 ~~mitigation of forfeiture or a claim and cost bond with the attorney general within thirty (30) days~~
24 ~~of the final notice by publication or receipt of written notice, whichever is earlier.~~

25 ~~(5) The attorney general shall inquire into the facts and circumstances surrounding petitions~~
26 ~~for remission or mitigation of forfeiture.~~

27 ~~(6) The attorney general shall provide the seizing agency and the petitioner a written~~
28 ~~decision on each petition for remission or mitigation within sixty (60) days of receipt of the petition~~
29 ~~unless the circumstances of the case require additional time, in which case the attorney general~~
30 ~~shall notify the petitioner in writing and with specificity within the sixty (60) day period that the~~
31 ~~circumstances of the case require additional time and further notify the petitioner of the expected~~
32 ~~decision date.~~

33 ~~(7) Any person claiming seized property under this subsection may institute de novo~~
34 ~~judicial review of the seizure and proposed forfeiture by timely filing with the attorney general a~~

1 claim and bond to the state in the amount of ten percent (10%) of the appraised value of the property
2 or in the penal sum of two hundred fifty dollars (\$250), whichever is greater, with sureties to be
3 approved by the attorney general, upon condition that in the case of forfeiture the claimant shall
4 pay all costs and expenses of the proceedings at the discretion of the court. Upon receipt of the
5 claim and bond, or if he or she elects, the attorney general shall file with the court a complaint in
6 rem in accordance with the procedures set forth in this section. Any funds received by the attorney
7 general as cost bonds shall be placed in an escrow account pending final disposition of the case.

8 (8) ~~If no petitions or claims with bonds are timely filed, the attorney general shall prepare~~
9 ~~a written declaration of forfeiture of the subject property to the state and dispose of the property in~~
10 ~~accordance with this chapter.~~

11 (9) ~~If the petition is denied, the attorney general shall prepare a written declaration of~~
12 ~~forfeiture to the state and dispose of the property in accordance with this chapter and the attorney~~
13 ~~general's regulations, if any, pursuant to this chapter.~~

14 (10) ~~A written declaration of forfeiture signed by the attorney general pursuant to this~~
15 ~~chapter shall be deemed to provide good and sufficient title to the forfeited property.~~

16 (i) ~~If the value of any personal property seized exceeds twenty thousand dollars (\$20,000),~~
17 ~~the attorney general shall file a complaint in rem against the property within twenty (20) days of~~
18 ~~the receipt of the report referred to in subsection (f) of this section and after this provide notice of~~
19 ~~intention to forfeit by publication in a local newspaper of general circulation for a period of at least~~
20 ~~once per week for three (3) consecutive weeks. The notice shall include:~~

21 (1) ~~A description of the property;~~

22 (2) ~~The appraised value of the property;~~

23 (3) ~~The date and place of seizure;~~

24 (4) ~~The violation of law alleged against the subject property.~~

25 (j) (1) ~~The case may be tried by a jury, if in the superior court, upon the request of either~~
26 ~~party, otherwise by the court, and the cause of forfeiture alleged being proved, the court which shall~~
27 ~~try the case shall enter upon judgment for the forfeiture and disposition of the property according~~
28 ~~to law.~~

29 (2) ~~An appeal may be claimed by either party from any judgment of forfeiture rendered by~~
30 ~~the district court, to be taken in like manner as by defendants in criminal cases within the~~
31 ~~jurisdiction of the district court to try and determine, to the superior court for the same county in~~
32 ~~which the division of the district court rendering judgment is situated and like proceedings may be~~
33 ~~had therein as in cases of informations for forfeitures originally filed in that court.~~

34 (3) ~~The judgment of the superior court shall be final in all cases of the forfeitures, whether~~

1 ~~originally commenced in that court or brought there by appeal, unless a new trial is ordered, for~~
2 ~~cause shown by the supreme court.~~

3 ~~(k) The in rem action shall be brought in the district court if the value of the property seized~~
4 ~~is less than two hundred fifty thousand dollars (\$250,000), otherwise the in rem action shall be~~
5 ~~brought in the superior court. The attorney general shall also, to the extent practicable, provide~~
6 ~~written notice of the action in rem to all known interested parties and all persons whose identity is~~
7 ~~reasonably subject to discovery who may have an interest in the property.~~

8 ~~(l) Persons claiming an interest in the property may file claims against the property within~~
9 ~~thirty (30) days of the final notice by publication or receipt of written notice, whichever is earlier.~~
10 ~~The claims shall be filed and adjudicated in the manner set forth for petitions in criminal~~
11 ~~proceedings in § 21-28-5.04.1(f).~~

12 ~~(m) If the property sought to be forfeited is real property, the attorney general shall file a~~
13 ~~complaint in rem in the superior court against the property. In addition to providing notice as~~
14 ~~required by this chapter, the attorney general shall file a lis pendens with respect to the property~~
15 ~~with the recorder of deeds in the city or town in which the property is located.~~

16 ~~(n) Upon order of the court forfeiting the subject property to the state, the state shall have~~
17 ~~clear title to the forfeited property, and the attorney general may transfer good and sufficient title~~
18 ~~to any subsequent purchaser or transferee. Title to the forfeited property shall be deemed to have~~
19 ~~vested in the state upon the commission of the act giving rise to the forfeiture under this chapter.~~

20 ~~(o) Upon entry of judgment for the claimant in any proceeding to forfeit property under~~
21 ~~this chapter, the property shall immediately be returned to the claimant. If it appears that there was~~
22 ~~reasonable cause for the seizure or the filing of the complaint, the court shall cause a proper~~
23 ~~certificate of that to be entered, and the claimant shall not, in that case, be entitled to costs or~~
24 ~~damages, nor shall the person or agency who made the seizure, nor the attorney general nor the~~
25 ~~prosecutor, be liable to suit or judgment on account of the seizure, suit, or prosecution.~~

26 ~~(p) In any action brought under this section, the state shall have the initial burden of~~
27 ~~showing the existence of probable cause for seizure or arrest of the property. Upon that showing~~
28 ~~by the state, the claimant shall have the burden of showing by a preponderance of evidence that the~~
29 ~~property was not subject to forfeiture under this section.~~

30 SECTION 3. Title 12 of the General Laws entitled "CRIMINAL PROCEDURE" is hereby
31 amended by adding thereto the following chapter:

32 CHAPTER 33

33 FORFEITURE ACT

34 12-33-1. Short title.

1 This chapter shall be known and may be cited as the "Forfeiture Act."

2 **12-33-2. Legislative purpose.**

3 (a) The purpose of this chapter is to:

4 (1) Make uniform the standards and procedures for the seizure and forfeiture of property
5 subject to forfeiture;

6 (2) Protect the constitutional rights of persons whose property is subject to forfeiture and
7 of innocent owners holding interests in property subject to forfeiture;

8 (3) Deter criminal activity by reducing its economic incentives;

9 (4) Increase the pecuniary loss from criminal activity;

10 (5) Protect against the wrongful forfeiture of property; and

11 (6) Ensure that only criminal forfeiture is allowed in this state.

12 (b) The provisions of this chapter:

13 (1) Apply to seizures, forfeitures and dispositions of property subject to forfeiture pursuant
14 to laws that specifically apply this chapter; and

15 (2) Does not apply to contraband, which is subject to seizure pursuant to applicable laws,
16 but is not subject to forfeiture pursuant to this chapter.

17 **12-33-3. Definitions.**

18 As used in this chapter:

19 (1) "Abandoned property":

20 (i) Means personal property the rights to which and the control of which an owner has
21 intentionally relinquished; and

22 (ii) Does not mean real property;

23 (2) "Actual knowledge" means a direct and clear awareness of information, a fact or a
24 condition;

25 (3) "Contraband" means goods that may not be lawfully imported, exported or possessed,
26 including drugs that are listed in Schedule I, II, III, IV or V of the Uniform Controlled Substances
27 Act and that are possessed without a valid prescription;

28 (4) "Conveyance" means a device used for transportation and:

29 (i) Includes a motor vehicle, trailer, snowmobile, airplane, vessel and any equipment
30 attached to the conveyance; but

31 (ii) Does not include property that is stolen or taken in violation of a law;

32 (5) "Conviction" or "convicted" means that a person has been found guilty of a crime in a
33 trial court whether by a plea of guilty or nolo contendere or otherwise and whether the sentence is
34 deferred or suspended;

1 (6) "Crime" means a violation of a criminal statute for which property of the offender is
2 subject to seizure and forfeiture;

3 (7) "Instrumentality" means all property that is otherwise lawful to possess that is used in
4 the furtherance or commission of an offense to which forfeiture applies and includes land, a
5 building, a container, a conveyance, equipment, materials, a product, a computer, computer
6 software, a telecommunications device, a firearm, ammunition, a tool, money, a security and a
7 negotiable instrument and other devices used for exchange of property;

8 (8) "Law enforcement agency" means the employer of a law enforcement officer that is
9 authorized to seize or has seized property pursuant to this chapter;

10 (9) "Law enforcement officer" means:

11 (i) A state or municipal police officer, environmental police officer, or other state employee
12 authorized by state law to enforce criminal statutes; but

13 (ii) Shall not mean a correctional officer;

14 (10) "Owner" means a person who has a legal or equitable ownership interest in property;

15 (11) "Property" means tangible or intangible personal property or real property;

16 (12) "Property subject to forfeiture" means property or an instrumentality described and
17 declared to be subject to forfeiture pursuant to this chapter or a state law; and

18 (13) "Secured party" means a person with a security or other protected interest in property,
19 whether the interest arose by mortgage, security agreement, lien, lease or otherwise; the purpose of
20 which interest is to secure the payment of a debt or protect a potential debt owed to the secured
21 party.

22 **12-33-4. Forfeiture -- Conviction required -- Seizure of property -- With process --**
23 **Without process.**

24 (a) A person's property is subject to forfeiture if:

25 (1) The person was arrested for an offense to which forfeiture applies;

26 (2) The person is convicted by a criminal court of the offense; and

27 (3) The state establishes by clear and convincing evidence that the property is subject to
28 forfeiture as provided in subsection (b) of this section.

29 (b) Following a person's conviction for an offense to which forfeiture applies, a court may
30 order the person to forfeit:

31 (1) Property the person acquired through commission of the offense;

32 (2) Property directly traceable to property acquired through the commission of the offense;

33 and

34 (3) Any instrumentality the person used in the commission of the offense.

1 (c) Nothing in this section shall prevent property from being forfeited by the terms of a
2 plea agreement that is approved by a court or by other agreement of the parties to a criminal
3 proceeding.

4 (d) Subject to the provisions of § 12-33-5 at any time, at the request of the state, a court
5 may issue an ex parte preliminary order to seize property that is subject to forfeiture and for which
6 forfeiture is sought and to provide for the custody of the property. The execution on the order to
7 seize the property and the return of the property, if applicable, are subject to this chapter and other
8 applicable state laws. Before issuing an order pursuant to this subsection, the court shall make a
9 determination that:

10 (1) There is a substantial probability that:

11 (i) The property is subject to forfeiture;

12 (ii) The state will prevail on the issue of forfeiture; and

13 (iii) Failure to enter the order will result in the property being destroyed, removed from the
14 state or otherwise made unavailable for forfeiture; and

15 (2) The need to preserve the availability of the property through the entry of the requested
16 order outweighs the hardship to the owner and other parties known to be claiming interests in the
17 property.

18 (e) Property subject to forfeiture may be seized at any time, without a prior court order, if:

19 (1) The seizure is incident to a lawful arrest for a crime or a search lawfully conducted
20 pursuant to a search warrant and the law enforcement officer making the arrest or executing the
21 search has probable cause to believe the property is subject to forfeiture and that the subject of the
22 arrest or search warrant is an owner of the property;

23 (2) The property subject to seizure is the subject of a previous judgment in favor of the
24 state; or

25 (3) The law enforcement officer making the seizure has probable cause to believe the
26 property is subject to forfeiture and that the delay occasioned by the need to obtain a court order
27 would result in the removal or destruction of the property or otherwise frustrate the seizure.

28 **12-33-5. Receipt for seized property -- Replevin hearing.**

29 (a) When a law enforcement officer seizes property that is subject to forfeiture, the officer
30 shall provide an itemized receipt to the person possessing the property or, in the absence of a person
31 to whom the receipt could be given, shall leave the receipt in the place where the property was
32 found, if possible.

33 (b) Following the seizure of property, the defendant in the related criminal matter or
34 another person who claims an interest in seized property may, at any time before sixty (60) days

1 prior to a related criminal trial, claim an interest in seized property by a motion to the court to issue
2 a writ of replevin. A motion filed pursuant to this section shall include facts to support the person's
3 alleged interest in the property.

4 (c) A person who makes a timely motion pursuant to this section shall have a right to a
5 hearing on the motion before the resolution of any related criminal matter or forfeiture proceeding
6 and within thirty (30) days of the date on which the motion is filed.

7 (d) At least ten (10) days before a hearing on a motion filed pursuant to this section, the
8 state shall file an answer or responsive motion that shows probable cause for the seizure.

9 (e) A court shall grant a claimant's motion if the court finds that:

10 (1) It is likely that the final judgment will require the state to return the property to the
11 claimant;

12 (2) The property is not reasonably required to be held for investigatory reasons; or

13 (3) The property is the only reasonable means for a defendant to pay for legal representation
14 in a related criminal or forfeiture proceeding.

15 (f) In its discretion, the court may order the return of funds or property sufficient to obtain
16 legal counsel but less than the total amount seized, and it may require an accounting.

17 (g) In lieu of ordering the issuance of the writ of replevin, a court may order:

18 (1) The state to give security or written assurance for satisfaction of any judgment,
19 including damages, that may be rendered in a related forfeiture action; or

20 (2) Any other relief the court deems to be just.

21 **12-33-6. Complaint of forfeiture -- Service of process.**

22 (a) Within thirty (30) days of making a seizure of property or simultaneously upon filing a
23 related criminal indictment, the state shall file a complaint of ancillary forfeiture proceedings or
24 return the property to the person from whom it was seized. A complaint of ancillary forfeiture
25 proceedings shall include:

26 (1) A description of the property seized;

27 (2) The date and place of seizure of the property;

28 (3) The name and address of the law enforcement agency making the seizure;

29 (4) The specific statutory and factual grounds for the seizure;

30 (5) Whether the property was seized pursuant to an order of seizure, and if the property
31 was seized without an order of seizure, an affidavit from a law enforcement officer stating the legal
32 and factual grounds why an order of seizure was not required; and

33 (6) In the complaint caption and in the complaint, the names of persons known to the state
34 who may claim an interest in the property and the basis for each person's alleged interest.

1 (b) The complaint shall be served upon the person from whom the property was seized, the
2 person's attorney of record and all persons known or reasonably believed by the state to claim an
3 interest in the property. A copy of the complaint shall also be published at least three (3) times in a
4 newspaper of general circulation in the district of the court having jurisdiction or on the sunshine
5 portal until the forfeiture proceeding is resolved.

6 **12-33-7. Forfeiture proceedings -- Determination -- Substitution of property --**
7 **Constitutionality-- Appeal.**

8 (a) A person who claims an interest in seized property shall file an answer to the complaint
9 of forfeiture within thirty (30) days of the date of service of the complaint. The answer shall include
10 facts to support the claimant's alleged interest in the property.

11 (b) The district courts have jurisdiction over forfeiture proceedings, and venue for a
12 forfeiture proceeding is in the same court in which venue lies for the criminal matter related to the
13 seized property.

14 (c) The forfeiture proceeding shall begin after the conclusion of the trial for the related
15 criminal matter in an ancillary proceeding that relates to a defendant's property before the same
16 judge and jury, if applicable, and the court, and the jury, if applicable, may consider the forfeiture
17 of property seized from other persons at the same time or in a later proceeding. If the criminal
18 defendant in the related criminal matter is represented by the office of the public defender, the
19 Rhode Island Public Defender may authorize department representation of the defendant in the
20 forfeiture proceeding.

21 (d) Discovery conducted in an ancillary forfeiture proceeding is subject to the rules of
22 criminal procedure.

23 (e) An ancillary forfeiture proceeding that relates to the forfeiture of property valued at less
24 than twenty thousand dollars (\$20,000) shall be held before a judge only.

25 (f) If the state fails to prove, by clear and convincing evidence, that a person whose property
26 is alleged to be subject to forfeiture is an owner of the property:

27 (1) The forfeiture proceeding shall be dismissed and the property shall be delivered to the
28 owner, unless the owner's possession of the property is illegal; and

29 (2) The owner shall not be subject to any charges by the state for storage of the property or
30 expenses incurred in the preservation of the property.

31 (g) The court shall enter a judgment of forfeiture and the seized property shall be forfeited
32 to the state if the state proves by clear and convincing evidence that:

33 (1) The property is subject to forfeiture;

34 (2) The criminal prosecution of the owner of the seized property resulted in a conviction;

1 and

2 (3) The value of the property to be forfeited does not unreasonably exceed:

3 (i) The pecuniary gain derived or sought to be derived by the crime;

4 (ii) The pecuniary loss caused or sought to be caused by the crime; or

5 (iii) The value of the convicted owner's interest in the property.

6 (h) A court shall not accept a plea agreement or other arrangement by which a defendant
7 contributes or donates property to a person, charity or other organization in full or partial fulfillment
8 of responsibility established in the court's proceeding.

9 (i) Following a person's conviction, the state may make a motion for forfeiture of substitute
10 property owned by the person that is equal to but does not exceed the value of property that is
11 subject to forfeiture but that the state is unable to seize. The court shall order the forfeiture of
12 substitute property only if the state proves by a preponderance of the evidence that the person
13 intentionally transferred, sold or deposited property with a third party to avoid the court's
14 jurisdiction and the forfeiture of the property.

15 (j) A person is not jointly and severally liable for orders for forfeiture of another person's
16 property. When ownership of property is unclear, a court may order each person to forfeit the
17 person's property on a pro rata basis or by another means the court deems equitable.

18 (k) At any time following the conclusion of a forfeiture proceeding, the person whose
19 property was forfeited may petition the court to determine whether the forfeiture was
20 unconstitutionally excessive pursuant to the state or federal constitution.

21 (l) At a non-jury hearing on the petition, the petitioner has the burden of establishing by a
22 preponderance of the evidence that the forfeiture was grossly disproportional to the seriousness of
23 the criminal offense for which the person was convicted.

24 (m) In determining whether the forfeiture is unconstitutionally excessive, the court may
25 consider all relevant factors, including:

26 (1) The seriousness of the criminal offense and its impact on the community, the duration
27 of the criminal activity and the harm caused by the defendant;

28 (2) The extent to which the defendant participated in the offense;

29 (3) The extent to which the property was used in committing the offense;

30 (4) The sentence imposed for the commission of the crime that relates to the property that
31 is subject to forfeiture; and

32 (5) Whether the criminal offense was completed or attempted.

33 (n) In determining the value of the property subject to forfeiture, the court may consider
34 relevant factors, including the:

- 1 (1) Fair market value of the property;
2 (2) Value of the property to the defendant, including hardship that the defendant will suffer
3 if the forfeiture is realized; and
4 (3) Hardship from the loss of a primary residence, motor vehicle or other property to the
5 defendant's family members or others if the property is forfeited.
6 (o) The court shall not consider the value of the property to the state when it determines
7 whether the forfeiture of property is constitutionally excessive.
8 (p) A party to a forfeiture proceeding may appeal a district court's decision regarding the
9 seizure, forfeiture and distribution of property pursuant to this chapter.

10 **12-33-8. Title to seized property -- Disposition of forfeited property and proceeds.**

11 (a) The state acquires provisional title to seized property at the time the property was used
12 or acquired in connection with an offense that subjects the property to forfeiture. Provisional title
13 authorizes the state to hold and protect the property. Title to the property shall vest with the state
14 when a trier of fact renders a final forfeiture verdict and the title relates back to the time when the
15 state acquired provisional title; provided, that the title is subject to claims by third parties that are
16 adjudicated pursuant to this chapter.

17 (b) Unless possession of the property is illegal or a different disposition is specifically
18 provided for by law and except as provided in this section, forfeited property that is not currency
19 shall be delivered along with any abandoned property to the state treasurer for disposition at a
20 public auction. Forfeited currency and all sale proceeds of the sale of forfeited or abandoned
21 property shall be deposited in the general fund.

22 (c) Proceeds from the sale of forfeited property received by the state from another
23 jurisdiction shall be deposited in the general fund.

24 (d) A property interest forfeited to the state pursuant to this chapter is subject to the interest
25 of a secured party unless, in the forfeiture proceeding, the state proves by clear and convincing
26 evidence that the secured party had actual knowledge of the crime that relates to the seizure of the
27 property.

28 **12-33-8.1. Innocent owners.**

29 (a) The property of an innocent owner, as provided in this section, shall not be forfeited.

30 (b) A person who claims to be an innocent owner has the burden of production to show
31 that the person:

32 (1) Holds a legal right, title or interest in the property seized; and

33 (2) Held an ownership interest in the seized property at the time the illegal conduct that
34 gave rise to the seizure of the property occurred or was a bona fide purchaser for fair value.

1 (c) The state shall immediately return property to an established innocent owner who has
2 an interest in homesteaded property, a motor vehicle valued at less than ten thousand dollars
3 (\$10,000) or a conveyance that is encumbered by a security interest that was perfected pursuant to
4 state law or that is subject to a lease or rental agreement, unless the secured party or lessor had
5 actual knowledge of the criminal act upon which the forfeiture was based.

6 (d) If a person establishes that the person is an innocent owner pursuant to § 12-33-8.1(b)
7 and the state pursues a forfeiture proceeding with respect to that person's property, other than
8 property described in § 12-33-8(d), to successfully forfeit the property, the state shall prove by clear
9 and convincing evidence that the innocent owner had actual knowledge of the underlying crime
10 giving rise to the forfeiture.

11 (e) A person who acquired an ownership interest in property subject to forfeiture after the
12 commission of a crime that gave rise to the forfeiture and who claims to be an innocent owner has
13 the burden of production to show that the person has legal right, title or interest in the property
14 seized under this section.

15 (f) If a person establishes that the person is an innocent owner as provided in subsection
16 (b) of this section and the state pursues a forfeiture proceeding against the person's property, to
17 successfully forfeit the property, the state shall prove by clear and convincing evidence that at the
18 time the person acquired the property, the person:

19 (1) Had actual knowledge that the property was subject to forfeiture; or

20 (2) Was not a bona fide purchaser who was without notice of any defect in title and who
21 gave valuable consideration.

22 (g) If the state fails to meet its burdens as provided in subsections (c) and (d) of this section,
23 the court shall find that the person is an innocent owner and shall order the state to relinquish all
24 claims of title to the innocent owner's property.

25 **12-33-9. Safekeeping of seized property pending disposition -- Selling or retaining**
26 **seized property prohibited.**

27 (a) Seized currency alleged to be subject to forfeiture shall be deposited with the clerk of
28 the district court in an interest-bearing account.

29 (b) Seized property other than currency or real property, not required by federal or state
30 law to be destroyed, shall be:

31 (1) Placed under seal; and

32 (2) Removed to a place designated by the district court; or

33 (3) Held in the custody of a law enforcement agency.

34 (c) Seized property shall be kept by the custodian in a manner to protect it from theft or

1 damage and, if ordered by the district court, insured against those risks.

2 (d) A law enforcement agency shall not retain forfeited or abandoned property.

3 **12-33-10. Reporting.**

4 (a) Every law enforcement agency shall prepare an annual report of the agency's seizures
5 and forfeitures conducted pursuant to the forfeiture act, and seizures and forfeitures conducted
6 pursuant to federal forfeiture law, and the report shall include:

7 (1) The total number of seizures of currency and the total amount of currency seized in
8 each seizure;

9 (2) The total number of seizures of property and the number and types of items seized in
10 each seizure;

11 (3) The market value of each item of property seized; and

12 (4) The total number of occurrences of each class of crime that resulted in the agency's
13 seizure of property.

14 (b) A law enforcement agency shall submit its annual reports to the department of public
15 safety and to the district attorney's office in the agency's district. An agency that did not engage in
16 seizure or forfeiture pursuant to the forfeiture act or federal forfeiture law, or both, shall report that
17 fact in its annual report.

18 (c) The department of public safety shall compile the reports submitted by each law
19 enforcement agency and issue an aggregate report of all forfeitures in the state.

20 (d) By April 1 of each year, the department of public safety shall publish on its website the
21 department's aggregate report and individual law enforcement agency reports submitted for the
22 previous year.

23 **12-33-11. Return of property -- Damages -- Costs.**

24 (a) A law enforcement agency that holds seized property shall return the seized property to
25 the owner of the property within a reasonable period of time that does not exceed five (5) days
26 after:

27 (1) A court finds that a person had a bona fide security interest in the property;

28 (2) A court finds that the owner was an innocent owner;

29 (3) The acquittal of or dismissal of related criminal charges against the owner of the
30 property; or

31 (4) The disposal of the criminal charge that was the basis of the forfeiture proceedings by
32 nolle prosequi.

33 (b) A law enforcement agency that holds seized property is responsible for any damages,
34 storage fees and related costs applicable to property that is returned to an owner pursuant to this

1 section.

2 **12-33-12. Transfer of forfeitable property to the federal government.**

3 (a) A law enforcement agency shall not directly or indirectly transfer seized property to a
4 federal law enforcement authority or other federal agency unless:

5 (1) The value of the seized property exceeds fifty thousand dollars (\$50,000), excluding
6 the potential value of the sale of contraband; and

7 (2) The law enforcement agency determines that the criminal conduct that gave rise to the
8 seizure is interstate in nature and sufficiently complex to justify the transfer of the property; or

9 (3) The seized property may only be forfeited under federal law.

10 (b) The law enforcement agency shall not transfer property to the federal government if the
11 transfer would circumvent the protections of the forfeiture act that would otherwise be available to
12 a putative interest holder in the property.

13 **12-33-13. Permit required for excavation of archaeological sites -- Penalty.**

14 (a) It is unlawful for a person or the person's agent or employee to excavate with the use of
15 mechanical earthmoving equipment an archaeological site for the purpose of collecting or removing
16 objects of antiquity if the archaeological site is located on private land in this state, unless the person
17 has first obtained a permit issued pursuant to the provisions of this section for the excavation. As
18 used in this section, "archaeological site" means a location where there exists material evidence of
19 the past life and culture of human beings in this state but excludes the sites of burial of human
20 beings.

21 (b) Permits for excavation pursuant to subsection (a) of this section may be issued by the
22 committee upon approval by the state archaeologist and the state historic preservation officer if the
23 applicant:

24 (1) Submits written authorization for the excavation from the owner of the land;

25 (2) Furnishes satisfactory evidence of being qualified to perform the archaeological
26 excavation by experience, training and knowledge;

27 (3) Submits a satisfactory plan of excavation for the archaeological site and states in the
28 plan the method by which excavation will be undertaken; and

29 (4) Agrees in writing, upon the completion of the excavation, to submit a summary report
30 to the committee of the excavation, which report shall contain relevant maps, documents, drawings
31 and photographs, together with a description of the archaeological specimens removed as a result
32 of the excavation. Failure to file the summary report shall be grounds for refusing issuance of a
33 future permit to the person.

34 (c) All archaeological specimens collected or removed from the archaeological site as a

1 result of excavation pursuant to subsections (a) and (b) of this section shall be the property of the
2 person owning the land on which the site is located.

3 (d) Nothing in this section shall be deemed to limit or prohibit the use of the land on which
4 the archaeological site is located by the owner of the land or to require the owner to obtain a permit
5 for personal excavation on the owner's own land; provided, that no transfer of ownership is made
6 with the intent of excavating archaeological sites as prohibited in this section; and provided further,
7 that this exemption does not apply to marked or unmarked burial grounds.

8 (e) A person convicted of violating the provisions of this section is guilty of a misdemeanor
9 and shall be punished by a fine not to exceed one thousand dollars (\$1,000) and, in accordance with
10 the provisions of the forfeiture act, shall forfeit to the state all equipment used in committing the
11 violation for which the person is convicted.

12 **12-33-14. Permit required for excavation of unmarked burials -- Penalty.**

13 (a) Each human burial in the state interred in any unmarked burial ground is accorded the
14 protection of law and shall receive appropriate and respectful treatment and disposition.

15 (b) A person who knowingly, willfully and intentionally excavates, removes, disturbs or
16 destroys any human burial buried, entombed or sepulchered in any unmarked burial ground in the
17 state, or any person who knowingly, willfully and intentionally procures or employs any other
18 person to excavate, remove, disturb or destroy any human burial buried, entombed or sepulchered
19 in any unmarked burial ground in the state, except by authority of a permit issued by the state
20 medical investigator or by the committee with the concurrence of the state archaeologist and state
21 historic preservation officer, is guilty of a fourth degree felony and shall be punished by a fine not
22 to exceed five thousand dollars (\$5,000) or by imprisonment for a definite term of eighteen months
23 or both. The offender shall upon conviction forfeit to the state all objects, artifacts and human
24 burials excavated or removed from an unmarked burial ground in violation of this section, and any
25 proceeds from the sale by the offender of any of the foregoing shall also be forfeited. The provisions
26 of the forfeiture act shall apply to a forfeiture provided for in this section. As used in this section:

27 (1) "Unmarked burial ground" means a location where there exists a burial of any human
28 being that is not visibly marked on the surface of the ground in any manner traditionally or
29 customarily used for marking burials and includes any funerary object, material object or artifact
30 associated with the burial; and

31 (2) "Human burial" means a human body or human skeletal remains and includes any
32 funerary object, material object or artifact buried, entombed or sepulchered with that human body
33 or skeletal remains.

34 (c) Any person who discovers a human burial in any unmarked burial ground shall cease

1 any activity that may disturb that burial or any object or artifact associated with that burial and shall
2 notify the local law enforcement agency having jurisdiction in the area. The local law enforcement
3 agency shall notify the state medical investigator and the state historic preservation officer.

4 (d) The state medical investigator may, consistent with the statutes governing medical
5 investigations, have authority over or take possession of any human burial discovered in the state,
6 in which case the provisions of subsections (e) and (f) of this section shall not apply.

7 (e) Permits for excavation of a human burial discovered in an unmarked burial ground shall
8 be issued by the committee within sixty (60) days of receipt of application when the applicant:

9 (1) Submits written authorization for that excavation from the owner of the land on which
10 the human burial is located or the applicant is the owner of the land;

11 (2) Demonstrates appropriate efforts to determine the age of the human burial and to
12 identify and consult with any living person who may be related to the human burial interred in the
13 unmarked burial ground;

14 (3) Complies with permit procedures and requirements established by regulations
15 authorized in this section to ensure the complete removal of the human burial and the collection of
16 all pertinent scientific information in accordance with proper archaeological methods; and

17 (4) Provides for the lawful disposition or reinterment of the human burial either in the
18 original or another appropriate location and of any objects or artifacts associated with that human
19 burial, consistent with regulations issued by the state historic preservation officer, except that the
20 committee shall not require, as a condition of issuance of a permit, reinterment or disposition, any
21 action that unduly interferes with the owner's use of the land.

22 (f) Permits for the excavation of any human burial discovered in the course of construction
23 or other land modification may be issued by the committee with the concurrence of the state
24 archaeologist and the state historic preservation officer on an annual basis to professional
25 archaeological consultants or organizations.

26 (g) Except when the committee requires as a condition of the permit that any object or
27 artifact associated with a human burial be reinterred or disposed of with that burial, that object or
28 artifact shall be the property of the person owning the land on which that burial is located.

29 (h) Any object or artifact and any human burial excavated or removed from an unmarked
30 burial ground in violation of this section shall be forfeited to the state and shall be lawfully disposed
31 of or reinterred in accordance with regulations issued by the state historic preservation officer;
32 provided that no object or artifact so forfeited shall ever be sold by the state; and provided further
33 that any object or artifact removed from the land without the owner's consent and in violation of
34 this section shall be returned to the lawful owner consistent with subsection (g) of this section.

1 (i) The state historic preservation officer shall issue regulations with the concurrence of the
2 state medical investigator for the implementation of this section.

3 **12-33-15. Forfeitures -- Property subject.**

4 (a) The following are subject to the provisions of this chapter;

5 (1) All equipment, devices or articles that have been produced, reproduced, manufactured,
6 distributed, dispensed or acquired in violation of the unauthorized recording act;

7 (2) All devices, materials, products and equipment of any kind that are used or intended
8 for use in producing, reproducing, manufacturing, processing, delivering, importing or exporting
9 any item set forth in and in violation of the unauthorized recording act;

10 (3) All books, business records, materials and other data that are used or intended for use
11 in violation of the unauthorized recording act; and

12 (4) Money or negotiable instruments that are the fruit or instrumentality of the crime.

13 (5) All raw materials, products and equipment of any kind, including firearms that are used
14 or intended for use in manufacturing, compounding, processing, delivering, importing or exporting
15 any controlled substance or controlled substance analog in violation of the uniform controlled
16 substances act;

17 (6) All property that is used or intended for use as a container for property described in
18 subsection (a) of this section;

19 (7) All conveyances, including aircraft, vehicles or vessels that are used or intended for use
20 to transport or in any manner to facilitate the transportation for the purpose of sale of property
21 described in subsection (a)(1) of this section;

22 (8) All books, records and research products and materials, including formulas, microfilm,
23 tapes and data that are used or intended for use in violation of the uniform controlled substances
24 act;

25 (9) Narcotics paraphernalia or money that is a fruit or instrumentality of the crime;

26 (10) Notwithstanding subsection (a)(3) of this section and the provisions of this chapter:

27 (i) A conveyance used by a person as a common carrier in the transaction of business as a
28 common carrier shall not be subject to forfeiture pursuant to this section unless it appears that the
29 owner or other person in charge of the conveyance is a consenting party or privy to a violation of
30 the uniform controlled substances act;

31 (ii) A conveyance shall not be subject to forfeiture pursuant to this section by reason of an
32 act or omission established for the owner to have been committed or omitted without the owner's
33 knowledge or consent;

34 (iii) A conveyance is not subject to forfeiture for a violation of law the penalty for which

1 is a misdemeanor; and

2 (iv) A forfeiture of a conveyance encumbered by a bona fide security interest shall be
3 subject to the interest of a secured party if the secured party neither had knowledge of nor consented
4 to the act or omission; and

5 (11) All drug paraphernalia as defined in § 21-28.5-1.

6 **12-33-17. Forfeiture -- Procedure.**

7 The provisions of this chapter apply to the seizure, forfeiture and disposal of property
8 subject to forfeiture and disposal pursuant to the uniform controlled substances act.

9 **12-33-18. Forfeiture -- Additional property subject to forfeiture.**

10 (a) All raw materials, products and equipment of any kind that are used in the
11 manufacturing, compounding or processing of any imitation controlled substance in violation of
12 the imitation controlled substances act;

13 (b) All property that is used or intended for use as a container for property described in
14 subsection (a) of this section; and

15 (c) All books, records and research products and materials, including formulas, microfilm,
16 tapes and data that are used or intended for use as limitations in violation of this chapter.

17 **12-33-19. Prohibited activities -- Penalties.**

18 (a) It is unlawful for a person who has received proceeds derived, directly or indirectly,
19 from a pattern of racketeering activity in which the person has participated, to use or invest, directly
20 or indirectly, any part of the proceeds or the proceeds derived from the investment or use in the
21 acquisition of an interest in, or the establishment or operation of, an enterprise. Whoever violates
22 this subsection is guilty of a second degree felony.

23 (b) It is unlawful for a person to engage in a pattern of racketeering activity in order to
24 acquire or maintain, directly or indirectly, an interest in or control of an enterprise. Whoever
25 violates this subsection is guilty of a second degree felony.

26 (c) It is unlawful for a person employed by or associated with an enterprise to conduct or
27 participate, directly or indirectly, in the conduct of the enterprise's affairs by engaging in a pattern
28 of racketeering activity. Whoever violates this subsection is guilty of a second degree felony.

29 (d) It is unlawful for a person to conspire to violate the provisions of subsections (a) through
30 (c) of this section. Whoever violates this subsection is guilty of a third degree felony.

31 (e) Whoever is convicted of a violation of subsection (a), (b), (c) or (d) of this section in
32 addition to the prescribed penalties shall forfeit to the state of Rhode Island:

33 (1) Any interest acquired or maintained in violation of the racketeering act; and

34 (2) Any interest in, security of, claim against or property or contractual right of any kind

1 affording a source of influence over an enterprise that the person has established, operated,
2 controlled, conducted or participated in the conduct of in violation of chapter 15 of title 7.

3 (f) The provisions of the forfeiture act apply to the seizure, forfeiture and disposal of
4 property described in subsection (e) of this section.

5 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO FOOD AND DRUGS -- UNIFORM CONTROLLED SUBSTANCES ACT

- 1 This act would provide for standardized procedures for asset forfeitures across all crimes.
- 2 This act would take effect upon passage.

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