

HOUSE BILL NO. HB0186

Human trafficking-forfeiture of property.

Sponsored by: Representative(s) Connolly, Berger,
Halverson, Kroeker, Krone and Northrup and
Senator(s) Burns, Craft and Rothfuss

A BILL

for

1 AN ACT relating to human trafficking; providing for
2 forfeiture and seizure of specified property; specifying
3 the procedures for forfeiture and seizure of property;
4 providing exceptions; specifying distribution of proceeds
5 from forfeited property; and providing for an effective
6 date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 6-2-711 is created to read:

11

12 **6-2-711. Asset forfeiture.**

13

1 (a) The following are subject to forfeiture as
2 permitted pursuant to subsections (c) through (h) of this
3 section:

4

5 (i) All assets subject to the jurisdiction of
6 the court:

7

8 (A) Of a person engaged in planning or
9 perpetrating an act in this state which violates this
10 article;

11

12 (B) Affording a person a source of
13 influence over a trafficked individual;

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15 (C) Acquired or maintained by a person with
16 the intent to, and for the purpose of supporting, planning,
17 conducting or concealing an act in this state which
18 violates this article; or

19

20 (D) Derived from, involved in or used or
21 intended to be used to commit an act in this state which
22 violates this article.

23

1 (ii) All books, records, products and materials
2 which are used or intended for use in violation of this
3 article;

4

5 (iii) All conveyances including aircraft,
6 vehicles or vessels, knowingly used or intended for use to
7 transport victims or in any manner to knowingly facilitate
8 transportation of victims for human trafficking in
9 violation of this article are subject to forfeiture,
10 provided:

11

12 (A) No conveyance used by any person as a
13 common carrier in the transaction of business as a common
14 carrier is subject to forfeiture under this section unless
15 it appears that the owner or corporate officer is a
16 consenting party or privy to a violation of this article;

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18 (B) No conveyance is subject to forfeiture
19 under this section by reason of any act committed without
20 the knowledge or consent of the owner;

21

22 (C) A forfeiture of a conveyance encumbered
23 by a bona fide security interest is subject to the interest

1 if the secured party neither had knowledge of nor consented
2 to the act.

3

4 (iv) All buildings knowingly used or intended
5 for use to further human trafficking in violation of this
6 article if the owner has knowledge of or gives consent to
7 the act of violation. A forfeiture of property encumbered
8 by a bona fide security interest is subject to the interest
9 if the secured party did not have knowledge of or give
10 consent to the act;

11

12 (v) Any property or other thing of pecuniary
13 value furnished in exchange for human trafficking in
14 violation of this article including any proceeds, assets or
15 other property of any kind traceable to the exchange and
16 any money, securities or other negotiable instruments used
17 to facilitate a violation of this article. Property used or
18 furnished without the consent or knowledge of the owner is
19 not forfeitable under this section to the extent of the
20 owner's interest;

21

1 (vi) Overseas assets of persons convicted of
2 human trafficking under this article to the extent they can
3 be retrieved by the state.

4
5 (b) Property subject to forfeiture under this article
6 may be seized by any law enforcement officer of the state
7 upon process issued by any district or circuit court having
8 jurisdiction over the property. Seizure without process may
9 be made if:

10
11 (i) The seizure is incident to an arrest or a
12 search under a search warrant or an inspection under an
13 administrative inspection warrant; or

14
15 (ii) The property subject to seizure has been
16 the subject of a prior judgment in favor of the state in a
17 criminal, injunction or forfeiture proceeding based upon
18 this article.

19
20 (c) Any person convicted of a violation of this
21 article which is punishable by imprisonment for more than
22 one (1) year shall be subject to forfeiture of property
23 listed under subsection (a) of this section. The procedure

1 for forfeiture shall be as provided in subsections (d)
2 through (h) of this section.

3

4 (d) If the state seeks to forfeit property:

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6 (i) The indictment or information shall contain
7 notice to the defendant that the state seeks forfeiture and
8 shall specifically identify the property sought to be
9 forfeited;

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11 (ii) All property shall be returned to the
12 person from whom it was seized unless there is a finding or
13 verdict of guilt, an admission of guilt or a plea of nolo
14 contendere to a felony under this act;

15

16 (iii) After a verdict or finding of guilty, or
17 after a plea of guilty or nolo contendere is accepted, the
18 court shall conduct a forfeiture hearing to determine if
19 the property is subject to forfeiture under this section.
20 If the court finds under a preponderance of evidence
21 standard that property is subject to forfeiture, the court
22 shall enter a preliminary order directing the forfeiture;

1 (iv) The court may include in the preliminary
2 order of forfeiture additional conditions reasonably
3 necessary to preserve the property's value pending any
4 appeal.

5

6 (e) If the court makes a preliminary order of
7 forfeiture of property, legal interests of persons other
8 than a party to the criminal action shall be determined,
9 subject to the following:

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11 (i) Following an entry of a preliminary order of
12 forfeiture, the state shall publish notice of the order in
13 a newspaper of general circulation in the state once a week
14 for two (2) weeks and shall provide written notice by first
15 class mail to the last known address of any person who,
16 after reasonable inquiry, appears to be a potential owner
17 or lien holder in the property. The notice shall describe
18 the forfeited property and shall advise that parties with a
19 potential interest in the property may contest the
20 forfeiture by filing a petition with the court not later
21 than sixty (60) days after the date of the second published
22 notice or, if notice is mailed under this paragraph, not
23 later than thirty (30) days after mailing written notice;

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2 (ii) If a third party files a timely response
3 asserting an interest in property subject to a preliminary
4 order of forfeiture, the court shall conduct a hearing. The
5 court may permit the parties to conduct discovery in
6 accordance with the Wyoming rules of civil procedure if the
7 court determines that discovery is necessary or desirable
8 to resolve factual issues. After the hearing, the court
9 shall enter a final order of forfeiture by amending the
10 preliminary order as necessary to account for any third
11 party rights. If no third party files a timely petition,
12 the preliminary order shall become the final order upon
13 expiration of the time for filing a petition;

14

15 (iii) If a defendant appeals from a conviction
16 or a preliminary or final order of forfeiture, the court
17 may stay the preliminary or final order of forfeiture on
18 terms appropriate to ensure that the property remains
19 available pending appellate review. A stay shall not delay
20 a hearing or a determination of a third party's rights or
21 interests. If the court rules in favor of any third party
22 while an appeal is pending, the court may amend the order
23 of forfeiture but shall not transfer any property interest

1 to a third party until the decision on appeal becomes
2 final, unless the defendant consents in writing or on the
3 record.

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5 (f) An interest in property belonging to a third
6 party shall not be forfeited to the extent that the third
7 party establishes it has a perfected lien in the property
8 or proves by a preponderance of evidence that he has a
9 perfected security interest in the property or proves he is
10 an innocent owner. For purposes of this subsection:

11

12 (i) With respect to a property interest in
13 existence at the time the violation of this article took
14 place, "innocent owner" means a person who held an interest
15 in the property who could not have reasonably known of the
16 conduct of the defendant related to the violation;

17

18 (ii) With respect to a property interest
19 acquired after the violation of this article has taken
20 place, the term "innocent owner" means a person who, at the
21 time that person acquired the interest in the property:

22

1 (A) Was a bona fide purchaser or seller for
2 value or a holder of a bona fide security interest in the
3 property; and

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5 (B) Did not know and was reasonably without
6 cause to believe the property was used in connection with a
7 violation of this article.

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9 (g) Property taken or detained under this section
10 shall not be subject to replevin, but is deemed to be in
11 the custody of and subject only to the orders and decrees
12 of the court having jurisdiction over the proceedings.
13 When property is seized under this section, the court shall
14 place the property under seal or otherwise assure the
15 property is maintained under conditions reasonably
16 necessary to preserve the property's value or may sell the
17 property for value and hold the proceeds thereof until the
18 forfeiture proceedings have become final as to all parties
19 and all rights of appeal have been exhausted.

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21 (h) Within six (6) months after a final order of
22 forfeiture is affirmed on appeal or the deadline to appeal
23 passes without a notice of appeal being filed, the state

1 shall, by public sale or auction, liquidate forfeited
2 tangible property and distribute the total proceeds of the
3 forfeiture as follows:

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5 (i) The amount necessary to pay court ordered
6 restitution shall be applied to pay that restitution;

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8 (ii) Civil judgments entered against the
9 forfeiting defendant in favor of that defendant's victim,
10 already existing at the time proceeds are received, to the
11 extent that such judgments cannot be satisfied out of the
12 forfeiting defendant's assets;

13

14 (iii) Costs of storing and maintaining the
15 forfeited property incurred by the court;

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17 (iv) Costs of forfeiture proceedings and the
18 sale of forfeited property incurred by the state;

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20 (v) If a remainder exists, to the crime victims
21 compensation account created by W.S. 1-40-114.

22

1 **Section 2.** This act is effective July 1, 2015.

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(END)