

HOUSE BILL NO. 709

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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE CRIME OF HUMAN SMUGGLING; PROVIDING PENALTIES; PROVIDING TAX PENALTIES FOR CERTAIN ENTITIES; PROVIDING FOR FORFEITURE OF PROPERTY; AMENDING SECTIONS 15-6-201 AND 15-31-102, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Human smuggling. (1) A person who ~~purposely or~~ knowingly ~~and willfully~~ transports into or within this state or harbors an individual whom the person knows, or reasonably should know, has entered the United States in violation of law or has not complied with the conditions of the person's immigration status that were set at the time of the person's entry into the United States by the United States department of homeland security commits the offense of human smuggling.

(2) (a) A person convicted of human smuggling shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years, fined in the amount of \$400,000, or both.

(b) An entity that is convicted of human smuggling under subsection (1) is not eligible for tax exemptions as provided in 15-6-201 and 15-31-102.

(3) (a) Property is subject to criminal forfeiture if it is used or intended for use in violation of subsection (1).

(b) The following property is subject to criminal forfeiture under this section:

(i) money, raw materials, products, equipment, and other property of any kind;

(ii) property used or intended for use as a container for property enumerated in subsection

(3)(b)(i);

(iii) except as provided in subsection (4), a conveyance, including an aircraft, vehicle, or vessel;

(iv) books, records, research products and materials, formulas, microfilm, tapes, and data;

(v) anything of value furnished or intended to be furnished in exchange for human smuggling in violation of subsection (1) and all proceeds traceable to the exchange;

(vi) negotiable instruments, securities, and weapons; and

(vii) personal property constituting or derived from proceeds obtained directly or indirectly from human smuggling in violation of subsection (1).

(4) A conveyance is not subject to criminal forfeiture under this section unless the owner or other person in charge of the conveyance knowingly used the conveyance or knowingly consented to its use for the purposes described in subsection (3)(a).

(5) Criminal forfeiture under this section of property that is encumbered by a bona fide security interest is subject to that interest if the secure party did not use or consent to the use of the property for the purposes described in subsection (3)(a).

(6) Property subject to criminal forfeiture under this section may be seized under the following circumstances:

(a) A peace officer who has probable cause to make an arrest for a violation as described in subsection (3)(a) may seize a conveyance obtained with the proceeds of the violation or used to facilitate the violation and shall immediately deliver the conveyance to the peace officer's law enforcement agency to be held as evidence until a criminal forfeiture is declared or a release is ordered.

(b) Property subject to criminal forfeiture under this section may be seized by a peace officer under a search warrant issued by a court having jurisdiction over the property.

(c) Seizure without a warrant may be made if:

(i) the seizure is incident to an arrest or a search under a search warrant issued for another purpose;

(ii) the property was the subject of a prior judgment in favor of the state in a criminal proceeding or a criminal forfeiture proceeding under the provisions of Title 44, chapter 12, or this section;

(iii) a peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(iv) a peace officer has probable cause to believe that the property was used or is intended to be

used under the circumstances described in subsection (3)(a).

(7) A forfeiture proceeding under subsection (3) must be commenced within 45 days of the seizure of the property involved.

(8) The procedure for forfeiture proceedings in Title 44, chapter 12, part 2, applies to property seized pursuant to this section.

(9) Upon conviction, the property subject to criminal forfeiture is forfeited to the state and proceeds from the sale of property seized under this section must be distributed to the holders of security interests who have presented proper proof of their claims up to the amount of their interests in the property. The remainder, if any, must be deposited in the crime victims compensation account provided for in 53-9-113.

Section 2. Section 15-6-201, MCA, is amended to read:

"15-6-201. Governmental, charitable, and educational categories -- exempt property. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operated for gain or profit;

(iv) municipal corporations;

(v) public libraries;

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(vii) special districts created pursuant to Title 7, chapter 11, part 10; and

(viii) subject to subsection (2), federally recognized Indian tribes in the state if the property is located entirely within the exterior boundaries of the reservation of the tribe that owns the property and the property is used exclusively by the tribe for essential government services. Essential government services are tribal government administration, fire, police, public health, education, recreation, sewer, water, pollution control,