

REFERENCE TITLE: forfeitures; allocation of monies

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

SB 1278

Introduced by
Senator Quezada; Representatives Andrade, Velasquez: Espinoza, Fernandez,
Mendez

AN ACT

AMENDING SECTIONS 13-2314.01, 13-2314.03 AND 13-4315, ARIZONA REVISED
STATUTES; RELATING TO FORFEITURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-2314.01, Arizona Revised Statutes, is amended to
3 read:

4 13-2314.01. Anti-racketeering revolving fund; use of fund;
5 reports

6 A. The anti-racketeering revolving fund is established. The attorney
7 general shall administer the fund under the conditions and for the purposes
8 provided by this section. Monies in the fund are exempt from the lapsing
9 provisions of section 35-190.

10 B. Any prosecution and investigation costs, including attorney fees,
11 recovered for the state by the attorney general as a result of enforcement of
12 civil and criminal statutes pertaining to any offense included in the
13 definition of racketeering in section 13-2301, subsection D, paragraph 4 or
14 section 13-2312, whether by final judgment, settlement or otherwise, shall be
15 deposited in the fund established by this section.

16 C. **NINETY PERCENT OF** any monies received by any department or agency
17 of this state or any political subdivision of this state from any department
18 or agency of the United States or another state as a result of participation
19 in any investigation or prosecution, whether by final judgment, settlement or
20 otherwise, shall be deposited in the fund established by this section or, if
21 the recipient is a political subdivision of this state, may be deposited in
22 the fund established ~~by~~ **PURSUANT TO** section 13-2314.03, **AND THE REMAINING TEN**
23 **PERCENT OF THE MONIES SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND**
24 **35-147, IN THE STATE GENERAL FUND.**

25 D. **NINETY PERCENT OF** any monies obtained as a result of a forfeiture
26 by any department or agency of this state under this title or under federal
27 law shall be deposited in the fund established by this section, **AND THE**
28 **REMAINING TEN PERCENT OF THE MONIES SHALL BE DEPOSITED IN THE STATE GENERAL**
29 **FUND. NINETY PERCENT OF** any monies or other property obtained as a result of
30 a forfeiture by any political subdivision of this state or the federal
31 government may be deposited in the fund established by this section **AND THE**
32 **REMAINING TEN PERCENT OF THE MONIES SHALL BE DEPOSITED, PURSUANT TO SECTIONS**
33 **35-146 AND 35-147, IN THE STATE GENERAL FUND.** Monies deposited in the fund
34 pursuant to this section or section 13-4315 shall accrue interest and shall
35 be held for the benefit of the agency or agencies responsible for the seizure
36 or forfeiture to the extent of their contribution. Except as provided in
37 subsections F and G of this section, the monies and interest shall be
38 distributed within thirty days of application to the agency or agencies
39 responsible for the seizure or forfeiture. Monies in the fund used by the
40 attorney general for capital projects in excess of one million dollars are
41 subject to review by the joint committee on capital review.

42 E. Monies in the fund may be used for the following:

43 1. The funding of gang prevention programs, substance abuse prevention
44 programs, substance abuse education programs, programs that provide
45 assistance to victims of a criminal offense that is listed in section 13-2301

1 and witness protection pursuant to section 41-196 or for any purpose
2 permitted by federal law relating to the disposition of any property that is
3 transferred to a law enforcement agency.

4 2. The investigation and prosecution of any offense included in the
5 definition of racketeering in section 13-2301, subsection D, paragraph 4 or
6 section 13-2312, including civil enforcement.

7 3. The payment of the relocation expenses of any law enforcement
8 officer and the officer's immediate family if the law enforcement officer is
9 the victim of a bona fide threat that occurred because of the law enforcement
10 officer's duties.

11 F. On or before January 15, April 15, July 15 and October 15 of each
12 year, each department or agency of this state receiving monies pursuant to
13 this section or section 13-2314.03 or 13-4315 or from any department or
14 agency of the United States or another state as a result of participation in
15 any investigation or prosecution shall file with the attorney general, the
16 board of supervisors if the sheriff received the monies and the city or town
17 council if the ~~city~~ CITY'S or town's department received the monies a report
18 for the previous calendar quarter. The report shall be in a form that is
19 prescribed by the Arizona criminal justice commission and approved by the
20 director of the joint legislative budget committee. The report shall set
21 forth the sources of all monies and all expenditures. The report shall not
22 include any identifying information about specific investigations. If a
23 department or agency of this state fails to file a report within forty-five
24 days after the report is due and there is no good cause as determined by the
25 Arizona criminal justice commission, the attorney general shall make no
26 expenditures from the fund for the benefit of the department or agency until
27 the report is filed. The attorney general is responsible for collecting all
28 reports from departments and agencies of this state and transmitting the
29 reports to the Arizona criminal justice commission at the time that the
30 report required pursuant to subsection G of this section is submitted.

31 G. On or before January 25, April 25, July 25 and October 25 of each
32 year, the attorney general shall file with the Arizona criminal justice
33 commission a report for the previous calendar quarter. The report shall be
34 in a form that is prescribed by the Arizona criminal justice commission and
35 approved by the director of the joint legislative budget committee. The
36 report shall set forth the sources of all monies and all expenditures. The
37 report shall not include any identifying information about specific
38 investigations. If the attorney general fails to file a report within sixty
39 days after the report is due and there is no good cause as determined by the
40 Arizona criminal justice commission, the attorney general shall make no
41 expenditures from the fund for the benefit of the attorney general until the
42 report is filed. If a political subdivision of this state fails to file a
43 report with the county attorney pursuant to section 13-2314.03 within
44 forty-five days after the report is due and there is no good cause as
45 determined by the Arizona criminal justice commission, the attorney general

1 shall make no expenditures from the fund for the benefit of the political
2 subdivision until the report is filed.

3 H. On or before September 30 of each year, the Arizona criminal
4 justice commission shall compile the attorney general report and the reports
5 of all departments and agencies of this state into a single comprehensive
6 report and shall submit a copy of the report to the governor, the director of
7 the department of administration, the president of the senate, the speaker of
8 the house of representatives, the director of the joint legislative budget
9 committee and the secretary of state.

10 Sec. 2. Section 13-2314.03, Arizona Revised Statutes, is amended to
11 read:

12 13-2314.03. County anti-racketeering revolving fund; use of
13 fund; reports

14 A. The board of supervisors of a county shall establish a county
15 anti-racketeering revolving fund administered by the county attorney under
16 the conditions and for the purposes provided by this section.

17 B. Any prosecution and investigation costs, including attorney fees,
18 recovered for the county as a result of enforcement of civil and criminal
19 statutes pertaining to any offense included in the definition of racketeering
20 in section 13-2301, subsection D, paragraph 4 or section 13-2312, whether by
21 final judgment, settlement or otherwise, shall be deposited in the fund
22 established by the board of supervisors.

23 C. **NINETY PERCENT OF** any monies received by any department or agency
24 of this state or any political subdivision of this state from any department
25 or agency of the United States or another state as a result of participation
26 in any investigation or prosecution, whether by final judgment, settlement or
27 otherwise, shall be deposited in the fund established ~~by~~ **PURSUANT TO** this
28 section or in the fund established by section 13-2314.01, **AND THE REMAINING**
29 **TEN PERCENT OF THE MONIES SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND**
30 **35-147, IN THE STATE GENERAL FUND.**

31 D. **NINETY PERCENT OF** any monies obtained as a result of a forfeiture
32 by the county attorney under this title or under federal law shall be
33 deposited in the fund established ~~by~~ **PURSUANT TO** this section, **AND THE**
34 **REMAINING TEN PERCENT OF THE MONIES SHALL BE DEPOSITED, PURSUANT TO SECTIONS**
35 **35-146 AND 35-147, IN THE STATE GENERAL FUND. NINETY PERCENT OF** any monies
36 or other property obtained as a result of a forfeiture by any political
37 subdivision of this state or the federal government may be deposited in the
38 fund established ~~by~~ **PURSUANT TO** this section or in the fund established by
39 section 13-2314.01 **AND THE REMAINING TEN PERCENT OF THE MONIES SHALL BE**
40 **DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE STATE GENERAL FUND.**
41 Monies deposited in the fund pursuant to this section or section 13-4315
42 shall accrue interest and shall be held for the benefit of the agency or
43 agencies responsible for the seizure or forfeiture to the extent of their
44 contribution. Except as provided in subsections F and G of this section, the

1 monies and interest shall be distributed to the agency or agencies
2 responsible for the seizure or forfeiture within thirty days of application.

3 E. Monies in the fund may be used for the funding of gang prevention
4 programs, substance abuse prevention programs, substance abuse education
5 programs, programs that provide assistance to victims of a criminal offense
6 that is listed in section 13-2301 and witness protection pursuant to section
7 11-536 or for any purpose permitted by federal law relating to the
8 disposition of any property that is transferred to a law enforcement agency.
9 Monies in the fund may be used for the investigation and prosecution of any
10 offense included in the definition of racketeering in section 13-2301,
11 subsection D, paragraph 4 or section 13-2312, including civil enforcement.

12 F. On or before January 25, April 25, July 25 and October 25 of each
13 year, the county attorney shall ~~cause to be filed~~ FILE with the Arizona
14 criminal justice commission a report for the previous calendar quarter. The
15 report shall be in a form that is prescribed by the Arizona criminal justice
16 commission and approved by the director of the joint legislative budget
17 committee. The report shall set forth the sources of all monies and all
18 expenditures. The report shall not include any identifying information about
19 specific investigations. If the county attorney fails to file a report
20 within sixty days after it is due and there is no good cause as determined by
21 the Arizona criminal justice commission, the county attorney shall make no
22 expenditures from the fund for the benefit of the county attorney until the
23 report is filed.

24 G. On or before January 15, April 15, July 15 and October 15 of each
25 year, each political subdivision of this state receiving monies pursuant to
26 this section or section 13-2314.01 or 13-4315 or from any department or
27 agency of the United States or another state as a result of participating in
28 any investigation or prosecution shall ~~cause to be filed~~ FILE with the board
29 of supervisors of the county in which the political subdivision is located,
30 each city or town council in which the political subdivision is located and
31 the county attorney of the county in which the political subdivision is
32 located a report for the previous calendar quarter. The report shall be in a
33 form that is prescribed by the Arizona criminal justice commission and
34 approved by the director of the joint legislative budget committee. The
35 report shall set forth the sources of all monies and all expenditures. The
36 report shall not include any identifying information about specific
37 investigations. If a political subdivision of this state fails to file a
38 report within forty-five days after the report is due and there is no good
39 cause as determined by the Arizona criminal justice commission, the county
40 attorney shall make no expenditures from the fund for the benefit of the
41 political subdivision until the report is filed. The county attorney shall
42 be responsible for collecting all reports from political subdivisions within
43 that county and transmitting the reports to the Arizona criminal justice
44 commission at the time that the county report required pursuant to subsection
45 F of this section is submitted.

1 H. On or before September 30 of each year, the Arizona criminal
2 justice commission shall compile all county attorney reports into a single
3 comprehensive report and all political subdivision reports into a single
4 comprehensive report and submit a copy of each comprehensive report to the
5 governor, the president of the senate, the speaker of the house of
6 representatives, the director of the joint legislative budget committee and
7 the secretary of state.

8 Sec. 3. Section 13-4315, Arizona Revised Statutes, is amended to read:
9 13-4315. Allocation of forfeited property

10 A. Any property, including all interests in property, forfeited to the
11 state under this title shall be transferred as requested by the attorney for
12 the state to the seizing agency or to the agency or political subdivision
13 employing the attorney for the state, which may do any of the following:

14 1. Sell, lease, lend or transfer the property to any local or state
15 government entity or agency or political subdivision, ~~ANY~~ law enforcement
16 agency or prosecutorial agency or any federal law enforcement agency ~~which~~
17 ~~THAT~~ operates within this state for official federal, state or political
18 subdivision use within this state, with expenses for keeping and transferring
19 such property to be paid by the recipient. Property may not be allocated for
20 official use if the fair market value of the property substantially exceeds
21 the agency's probable cost of purchasing other property equally suited for
22 the intended official use. Property that is allocated for official use may
23 not be assigned for use by any person who supervised or exercised discretion
24 in its forfeiture unless the use is approved in writing by the head of the
25 agency.

26 2. Sell forfeited property by public or otherwise commercially
27 reasonable sale with expenses of keeping and selling the property and the
28 amount of all valid interests established by claimants paid out of the
29 proceeds of the sale with ~~the~~ NINETY PERCENT OF THE balance paid into the
30 anti-racketeering REVOLVING fund of the state or of the county in which the
31 political subdivision seizing the property or prosecuting the action is
32 located AND THE REMAINING TEN PERCENT OF THE BALANCE PAID, PURSUANT TO
33 SECTIONS 35-146 AND 35-147, IN THE STATE GENERAL FUND. A sale of forfeited
34 property may not be made to any employee of the seizing agency, any person
35 who participated in the forfeiture, any employee of a contractor selling the
36 property on behalf of the seizing agency or any member of the immediate
37 family of any of these employees or persons.

38 3. Destroy or use for investigative purposes any illegal or controlled
39 substances or other contraband at any time more than twenty days after
40 seizure, on written approval of the attorney for the state, preserving only
41 such material as may be necessary for evidence.

42 4. Sell, use or destroy all raw materials, products and equipment of
43 any kind used or intended for use in manufacturing, compounding or processing
44 a controlled substance.

1 5. Compromise and pay claims against property forfeited pursuant to
2 any provision of this section.

3 6. Make any other disposition of forfeited property authorized by law
4 for the disposition of property of the state, government entity, agency or
5 political subdivision.

6 B. Notwithstanding subsection A of this section or any other ~~provision~~
7 ~~of~~ law to the contrary:

8 1. If the property forfeited is money, and a law enforcement agency
9 can specifically identify monies as being from its investigative funds or as
10 being exchanged for property from its investigative property, the monies
11 shall be remitted to the investigative fund. If there are additional
12 forfeited monies or monies tendered on satisfaction by an interest holder
13 ~~which~~ THAT cannot be specifically identified, the court shall order the
14 monies returned to each law enforcement agency that makes a showing of costs
15 or expenses ~~which~~ THAT it incurred in connection with the investigation and
16 prosecution of the matter and shall order **NINETY PERCENT OF** all excess monies
17 remaining after such returns deposited in the anti-racketeering **REVOLVING**
18 fund of this state or of the county in which the political subdivision
19 seizing the monies or prosecuting the action is located, established pursuant
20 to section 13-2314.01 or 13-2314.03, **AND THE REMAINING TEN PERCENT OF THE**
21 **MONIES DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE STATE**
22 **GENERAL FUND.**

23 2. If the property declared forfeited is an interest in a vehicle, the
24 court shall order it forfeited to the local, state or other law enforcement
25 agency seizing the vehicle for forfeiture or to the seizing agency.

26 C. Monies in any anti-racketeering **REVOLVING** fund established pursuant
27 to this title may be used, in addition to any other lawful use, for:

28 1. The payment of any expenses necessary to seize, detain, appraise,
29 inventory, protect, maintain, preserve the availability of, advertise or sell
30 property that is subject to forfeiture and that is seized, detained or
31 forfeited pursuant to this title or of any other necessary expenses incident
32 to the seizure, detention, preservation or forfeiture of the property. The
33 payments may include payments for contract services and payments to reimburse
34 any federal, state or local agency for any expenditures made to perform the
35 functions of the seizing agency.

36 2. The payment of awards for information or assistance leading to a
37 civil or criminal proceeding under this title.

38 3. The payment of compensation from forfeited property to injured
39 persons as provided in section 13-4311, subsection N, paragraph 3.

40 D. Each attorney for the state shall submit a copy of each forfeiture
41 judgment, including each order of forfeiture, to the Arizona criminal justice
42 commission within sixty days after the forfeiture judgment becomes final or
43 after the conclusion of appellate review, if any.