



ARIZONA STATE SENATE

Fifty-Fifth Legislature, First Regular Session

FACT SHEET FOR H.B. 2810

civil asset forfeiture; conviction; procedures

Purpose

Requires a person to be convicted, with exceptions, before property that is seized and subject to forfeiture may be forfeited and makes corresponding changes to judicial proceedings.

Background

Racketeering is any act that is chargeable or indictable under the laws of the state or country, punishable by imprisonment for more than a year and includes such acts as homicide, robbery and extortion if committed for financial gain ([A.R.S. § 13-2301](#)). Statute also provides a method for the state to seek civil remedies. All proceeds traceable to a racketeering offense and other property used or intended to be used to facilitate the commission of the offense may be subject to a forfeiture proceeding ([A.R.S. § 13-2314](#)).

All interests in property are subject to forfeiture unless the owner can establish that he or she is within the enumerated exemptions ([A.R.S. § 13-4304](#)). A trial court may grant summary judgment or, if there are contested facts, conduct a hearing to determine by clear and convincing evidence whether the property is subject to forfeiture and whether the owner's interest is within one of the exemptions. An *in rem* action against the person's property may take place before a conviction for the offense that is linked to the property to be forfeited ([A.R.S. § 13-4311](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Anti-Racketeering Revolving Fund Uses and Reporting

1. Prohibits, beginning August 27, 2024, the Attorney General (AG) from using monies from the Anti-Racketeering Revolving Fund for salaries of full-time equivalent positions.
2. Requires the AG's and county attorney's report on monies received through forfeiture to include:
 - a) whether the claim was filed by an owner or interest holder, rather than whether it was a judicial or uncontested forfeiture; and
 - b) the net amount of proceeds received from the forfeiture.
3. Requires, rather than allows, the county attorney to deny an application that requests monies for a purpose that is not authorized by specified state or federal law.

Search Warrants and Seizures

4. Requires the person seeking a search warrant and the judicial officer issuing the warrant to have probable cause for believing grounds exist to issue the warrant.

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5. Requires the receipt an officer makes when taking property pursuant to a search warrant to be itemized.
6. Requires all property seized by law enforcement to be returned to the owner, if known, within 10 business days after seizure, unless:
 - a) the owner has been arrested and charged with a criminal offense subject to forfeiture;
 - b) the property is sought to be used as evidence;
 - c) the property is illegal for the owner to possess; or
 - d) the property was seized for forfeiture.
7. Requires a magistrate to deliver a copy of the inventory to a person whose property was taken and to the applicant of the warrant, rather than only upon request.
8. Adds property with no evidentiary value to the type of property that may be seized for forfeiture by a peace officer.

Civil Asset Forfeiture

9. Requires, to be subject to forfeiture, that the:
 - a) owner of the property is convicted of an offense in which forfeiture applies; and
 - b) state establishes by clear and convincing evidence that the property is subject to forfeiture.
10. Sets a clear and convincing standard that must be shown for a common carrier vehicle to be forfeited because the owner or other person in charge of the vehicle was a consenting party or privy to the act or omission giving rise to forfeiture.
11. Allows, after a person is convicted for an offense for which forfeiture applies, a court to order a person to forfeit:
 - a) property the person acquired through the commission of the offense;
 - b) property directly traceable to property acquired through the commission of the offense; and
 - c) any property or instrumentality the person used in the commission of the offense or to facilitate the offense.
12. Allows the court to waive the conviction requirement for forfeiture if the prosecutor shows by clear and convincing evidence that the defendant or alleged criminal:
 - a) died;
 - b) no longer resides in the United States or was deported;
 - c) was granted immunity or reduced punishment in exchange for testifying or assisting a law enforcement investigation or prosecution;
 - d) fled the jurisdiction of the state; or
 - e) abandoned the property.
13. Allows property to be forfeited by the terms of an approved plea agreement.

Innocent Owners

14. Prohibits the property of an innocent owner from forfeiture, with exceptions.

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15. Requires a person who claims to be an innocent owner to show that the person:
 - a) held a legal right, title or interest in the property seized at the time the illegal conduct that gave rise to the seizure occurred; or
 - b) acquired as a bona fide purchaser for value a legal right, title or interest in the property subject to forfeiture after the commission of the crime that gave rise to the seizure of the property.
16. Requires the state to prove, by clear and convincing evidence, that an established innocent owner had actual knowledge of the underlying crime that gave rise to the forfeiture in order to pursue a forfeiture proceeding for that person's property.
17. Requires the court to order the relinquishment of all claims of title to an innocent owner's property if the state cannot meet its burden.

Seizure of Property for Forfeiture

18. Requires, for an officer to make a warrantless seizure for forfeiture, that the officer specifically has probable cause to believe that the property is subject to forfeiture.
19. Requires, for an officer to make a warrantless seizure for forfeiture, that the delay of getting a court order would result in the removal or destruction of the property or otherwise frustrate the seizure.
20. Removes the ability to seize property for forfeiture by placing the property under constructive seizure.
21. Removes the inference that money or any other negotiable instrument found in proximity to contraband or to instrumentalities of an offense are proceeds of the contraband or intended to be used to facilitate the offense.
22. Establishes that the presence or possession of U.S. currency, debit cards or credit cards, without other indicia of a crime that subjects property to forfeiture, is insufficient probable cause for seizure of U.S. currency, debit cards or credit cards.
23. Removes the exemption for seized property that is subject to forfeiture to not be subject to replevin, conveyance, sequestration or attachment.
24. Prohibits a peace officer from requesting, requiring or inducing a person to execute a document that attempts to:
 - a) disclaim an interest in, or right to, property; or
 - b) relinquish an interest in, or right to, property.

Notice of Pending Forfeiture Proceedings

25. Requires the state, within 60 days of making a seizure for forfeiture or simultaneously on filing a related criminal indictment, to file a notice of pending forfeiture proceeding or return the property to the person from whom the property was seized.

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26. Requires a notice of pending forfeiture proceeding to include:
 - a) a description of the property being seized;
 - b) the date and place of seizure of the property;
 - c) the name and address of the law enforcement agency making the seizure; and
 - d) the specific statutory and factual grounds for the seizure.
27. Requires the notice of pending forfeiture proceeding to be served on the person's attorney of record and all persons known or reasonably believed by the state to claim an interest in the property.
28. Allows an owner of, or interest holder in, property in a pending forfeiture proceeding to file a claim against the property at any time within 60 days, rather than within 30 days, of the later of the notice of the pending forfeiture proceeding or criminal trial commencement.
29. Delineates what must be included in the property owner's or interest holder's claim.

Post-Deprivation Hearings

30. Prohibits the state from initiating forfeiture proceedings before a criminal conviction for an offense to which the forfeiture applies.
31. Allows a defendant in the criminal matter or another person claiming interest in seized property to claim an interest in seized property by filing a motion with the court requesting an order for the return of the property and requires the claim to be made within 60 days of the later of the notice of pending forfeiture proceeding or criminal trial commencement.
32. Affords a person who makes a timely motion for the return of seized property the right to a hearing within 30 days of filing the motion.
33. Requires the state to file its answer or responsive motion at least 10 days before a hearing filed by the defendant or other person claiming interest in the seized property.
34. Requires the court to grant the claimant's motion if it finds that:
 - a) the final judgment will likely require the state to return the property to the claimant;
 - b) the property is not reasonably required to be held for evidentiary reasons; or
 - c) the property is the only reasonable means for a defendant to pay for legal representation in a related criminal or forfeiture proceeding.
35. Allows the court to order the return of money or property that is enough to obtain legal counsel but less than the total amount seized.
36. Allows the court, instead of ordering the return of the property, to order:
 - a) the state to give security or written assurance for satisfaction of any judgement, including damages, that may be rendered in a related forfeiture action; or
 - b) any other relief that the court deems just.

Judicial Forfeiture Proceedings

37. Requires a person who claims an interest in seized property to file an answer to the complaint of forfeiture that includes supporting facts within 30 days after service of the forfeiture complaint.

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38. Requires the court to enter a judgment of forfeiture, whereby the seized property is forfeited to the state, if the state proves by clear and convincing evidence, that:
 - a) the property is subject to forfeiture;
 - b) the criminal prosecution related to the seized property resulted in a conviction;
 - c) there is no innocent owner or third-party interest holder to whom the property should be delivered; and
 - d) the value of the property to be forfeited does not unreasonably exceed:
 - i. the pecuniary gain delivered or sought to be derived by the crime;
 - ii. the pecuniary loss caused or sought to be caused by the crime; and
 - iii. the value of the convicted owner's interest in the property.
39. Stipulates that a person is not jointly and severally liable for orders for forfeiture of another person's property.
40. Allows a court to order each person to forfeit that person's property on a pro rata basis or by another equitable way if ownership of property is unclear.
41. Requires the state to prove by clear and convincing evidence, for subsequently transferred property to be forfeited, that a transferee:
 - a) had actual knowledge that the property was subject to forfeiture; and
 - b) was not a bona fide purchaser for value who unknowingly took part in an illegal transaction.
42. Removes inapplicable procedures for forfeiture proceedings that previously took place prior to conviction.
43. Moves procedures for injured persons to request compensation from forfeited property from in rem forfeiture proceedings to judicial forfeiture proceedings.
44. Allows, rather than requires, a court to order an action in rem if a forfeiture is authorized by law.
45. Requires, in order to bring a civil in rem action, the prosecutor to show by clear and convincing evidence that, before or after the conviction, the defendant or alleged criminal:
 - a) died;
 - b) no longer resides in the United States or was deported;
 - c) was granted immunity or reduced punishment in exchange for testifying or assisting a law enforcement investigation or prosecution;
 - d) fled the jurisdiction of the state; or
 - e) abandoned the property.

Miscellaneous

46. Defines *abandoned property*.
47. Specifies that property subject to seizure and forfeiture for a drug offense must be traceable to an offense that resulted in a criminal conviction.

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48. Prohibits a state attorney to transfer title of forfeited property to:

- a) an officer or employee of the agency that seized the property or a person who is related to the officer or employee by blood or marriage; or
- b) the attorney for the state or any individual working in the same office or any person related to the prosecuting authority or individual by blood or marriage.

49. Makes technical and conforming changes.

50. Becomes effective on the general effective date.

House Action

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