

2022 Regular Session

SENATE BILL NO. 359

BY SENATOR JACKSON

SEIZURES/SALES. Provides for civil forfeiture reform. (8/1/22)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

AN ACT

To amend and reenact R.S. 40:2601(5), 2603, 2604, the introductory paragraph of 2605, 2608, 2610(A), 2611, 2612, and 2613, to enact R.S. 40:2606(E) and 2610.1, and to repeal R.S. 40:2608.1, relative to forfeiture; to provide relative to proceedings for the seizure and forfeiture of property for certain drug offenses; to provide that a conviction is required before property can be subject to forfeiture; to provide relative to definitions; to provide for damages; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:2601(5), 2603, 2604, the introductory paragraph of 2605, 2608, 2610(A), 2611, 2612, and 2613 are hereby amended and reenacted and R.S. 40:2606(E) and 2610.1 are hereby enacted to read as follows:

CHAPTER 26. SEIZURE AND CONTROLLED DANGEROUS

SUBSTANCES PROPERTY FORFEITURE ACT ~~OF 1989~~

§2601. Definitions

As used in this Chapter, the following words and phrases shall have the following meanings:

* * *

1 (5) "Seizure for forfeiture" means seizure of property by a law enforcement
2 officer designated by the district attorney accompanied by a written assertion by the
3 seizing agency or by a district attorney that the property is seized for forfeiture; and
4 either:

5 (a) There is an assertion by the district attorney that the property is
6 subject to forfeiture.

7 (b) The property has no evidentiary value.

8 * * *

9 §2603. Conduct giving rise to forfeiture

10 Any of the following conduct gives rise to forfeiture:

11 (1) ~~An~~ Conviction of act or omission punishable by confinement for more
12 than one year under R.S. 40:961 et seq. ~~whether or not there is a prosecution or~~
13 ~~conviction related to the act or omission~~ when the offense gave rise to the seizure
14 of the property.

15 (2) ~~An~~ Conviction of act or omission occurring outside this state, which
16 would be subject to prosecution in the place of occurrence and would be described
17 in Paragraph (1) of this Section if the act or omission occurred in this state, ~~whether~~
18 ~~or not it is prosecuted in any state~~ when the offense gave rise to the seizure of the
19 property.

20 (3) ~~Any~~ Conviction of any act or omission committed in furtherance of any
21 violation of R.S. 40:961 et seq. which is punishable by confinement with or without
22 hard labor, including any inchoate or preparatory offense, ~~regardless of whether there~~
23 ~~is a prosecution or conviction related to the act or omission~~ when the offense gave
24 rise to the seizure of the property.

25 §2604. Property subject to forfeiture

26 The A. Except as provided in Subsections B, C, and D of this Section,
27 ~~following property is subject to seizure and forfeiture as contraband, derivative~~
28 ~~contraband, or property related to contraband under the provision of Section 4 of~~
29 ~~Article I of the Constitution of Louisiana:~~ all property, including all interests in

1 the property, described in any provision of law providing for its forfeiture is
2 subject to forfeiture if both of the following apply:

3 ~~(1) All controlled substances, raw materials, or controlled substance~~
4 ~~analogues that have been manufactured, distributed, dispensed, possessed, or~~
5 ~~acquired in violation of R.S. 40:961 et seq.~~

6 (2) All property that is either:

7 ~~(a) Furnished or intended to be furnished by any person in exchange for a~~
8 ~~controlled substance in violation of R.S. 40:961 et seq.~~

9 ~~(b) Used or intended to be used in any manner to facilitate conduct giving rise~~
10 ~~to forfeiture, provided that a conveyance subject to forfeiture solely in connection~~
11 ~~with conduct in violation of R.S. 40:961 et seq. may be forfeited only pursuant to the~~
12 ~~provisions of this Chapter.~~

13 ~~(3) Proceeds of any conduct giving rise to forfeiture.~~

14 ~~(4) All weapons possessed, used, or available for use in any manner to~~
15 ~~facilitate conduct giving rise to forfeiture.~~

16 ~~(5) Any interest or security in, claim against, or property or contractual right~~
17 ~~of any kind affording a source of control over any enterprise that a person has~~
18 ~~established, operated, controlled, conducted, or participated in the conduct of through~~
19 ~~conduct giving rise to forfeiture.~~

20 (1) The owner is convicted of an offense to which forfeiture applies.

21 (2) The district attorney establishes by clear and convincing evidence
22 that the property is subject to forfeiture as provided in Subsection E of this
23 Section.

24 B. A vehicle used by any person as a common carrier in the transaction
25 of business as a common carrier may not be forfeited under the provisions of
26 this Chapter unless the district attorney proves by clear and convincing
27 evidence that the owner or other person in charge of the vehicle was a
28 consenting party or privy to the act or omission giving rise to forfeiture or knew
29 or had reason to know of it.

1 **C. A vehicle may not be forfeited under the provisions of this Chapter**
2 **following a conviction for any act or omission established by the owner to have**
3 **been committed or omitted by a person other than the owner while the vehicle**
4 **was unlawfully in the possession of a person other than the owner in violation**
5 **of the criminal laws of this state or of the United States.**

6 **D. Property may not be forfeited pursuant to R.S. 40:961 et seq. if the**
7 **conduct giving rise to the seizure both:**

8 **(1) Did not involve an amount of unlawful substance greater than the**
9 **statutory threshold amount.**

10 **(2) Was not committed for financial gain.**

11 **E. After a person is convicted of an offense for which forfeiture applies,**
12 **the court may order the person to forfeit any of the following:**

13 **(1) Property the person acquired through the commission of the offense.**

14 **(2) Property directly traceable to property acquired through the**
15 **commission of the offense.**

16 **(3) Any property or instrumentality the person used in the commission**
17 **of the offense or to facilitate the offense.**

18 **F. The court may waive the conviction requirement if the prosecuting**
19 **authority shows by clear and convincing evidence that there is no known owner**
20 **of the seized property, diligent efforts have been made to identify the owner of**
21 **the seized property, and no person has asserted an ownership interest in the**
22 **seized property or that, before conviction, the defendant:**

23 **(1) Died.**

24 **(2) No longer resides in the United States or was deported.**

25 **(3) Was granted immunity or reduced punishment in exchange for**
26 **testifying or assisting in a law enforcement investigation or prosecution.**

27 **(4) Fled the jurisdiction of this state.**

28 **(5) Abandoned the property.**

29 **G. This Section shall not prevent property from being forfeited by the**

1 terms of a plea agreement that is approved by a court or by any other
2 agreement of the parties in a criminal proceeding.

3 H. A person who claims to be an innocent owner has the burden of
4 producing evidence to show that the person either:

5 (1) Held a legal right, title, or interest in the property seized at the time
6 the illegal conduct that gave rise to the seizure of the property occurred.

7 (2) Acquired as a bona fide purchaser for value a legal right, title, or
8 interest in the property subject to forfeiture after the commission of the offense
9 that gave rise to the seizure of the property.

10 I. If a person establishes that he is an innocent owner pursuant to
11 Subsection H of this Section and the district attorney pursues a forfeiture
12 proceeding with respect to that person's property, the district attorney shall
13 prove by clear and convincing evidence that the innocent owner had actual
14 knowledge of the underlying offense that gave rise to the forfeiture.

15 J. If the district attorney is unable to prove that the person is not an
16 innocent owner as provided in Subsections H and I of this Section, the court
17 shall find that the person is an innocent owner and order the district attorney
18 to relinquish all claims of title to the property and return the property to the
19 innocent owner.

20 §2605. Exemptions

21 ~~A~~ In addition to any exemption provided in R.S. 40:2604, property interest
22 is exempt from forfeiture under this Chapter if its owner or holder establishes all of
23 the following:

24 * * *

25 §2606. Seizure of property

26 * * *

27 E. Notwithstanding any other provision of this Section, the presence or
28 possession of United States currency, debit cards, or credit cards, without other
29 indicia of an offense that subjects property to forfeiture, is insufficient probable

1 cause for seizure of United States currency, debit cards, or credit cards.

2 * * *

3 §2608. Commencement of forfeiture proceedings; notice of pending forfeiture;
4 property release requirements

5 A. Within sixty days after making a seizure for forfeiture or
6 simultaneously on filing a related criminal indictment, the district attorney shall
7 file a Notice of Pending Forfeiture or return the property to the person from
8 whom it was seized. A Notice of Pending Forfeiture shall include all of the
9 following:

10 (1) A description of the property seized.

11 (2) The date and place of seizure of the property.

12 (3) The name and address of the law enforcement agency making the
13 seizure.

14 (4) The specific statutory and factual grounds for the seizure.

15 B. If the property sought to be forfeited is immovable property, including
16 fixtures, the district attorney may file a lis pendens or a Notice of Pending
17 Forfeiture with respect to the property with the parish in which the property is
18 located, without a filing fee or other charge.

19 C. A Notice of Pending Forfeiture shall be delivered as follows:

20 (1) If the owner's or interest holder's name and current address are
21 known, by either:

22 (a) Personal service.

23 (b) Mailing a copy of the notice by certified mail, return receipt
24 requested, to the address.

25 (2) If the owner's or interest holder's interest is required by law to be on
26 record with the parish, the secretary of state, the office of motor vehicles, the
27 Department of Wildlife and Fisheries, or another state or federal licensing
28 agency in order to perfect an interest in the property, but his current address
29 is not known, shall mail a copy of the notice by certified mail, return receipt

1 requested, to any address on record.

2 (3) If the owner's or interest holder's address is not known, and is not on
3 record as provided in Paragraph (2) of this Subsection, or if his interest is not
4 known, the notice shall be published in one issue of a newspaper of general
5 circulation in the parish in which the seizure occurs.

6 D. The Notice of Pending Forfeiture shall also be served on the person's
7 attorney of record and all persons known or reasonably believed by the district
8 attorney to claim an interest in the property.

9 E. An owner of or interest holder in the property may file a claim against
10 the property at any time within sixty days after the notice or sixty days before
11 a criminal trial, whichever is later, requesting a hearing to adjudicate the
12 validity of the claimed interest in the property. An owner or interest holder
13 shall not be charged a filing fee or any other charge for filing the claim. Copies
14 of the claim shall be mailed to the district attorney.

15 F. The claim shall be signed by the claimant under penalty of perjury
16 and shall set forth all of the following:

17 (1) The caption of the proceeding as set forth on the Notice of Pending
18 Forfeiture or complaint and the name of the claimant.

19 (2) The address at which the claimant will accept future mailings from
20 the court or the district attorney.

21 (3) The nature and extent of the claimant's interest in the property.

22 (4) All facts supporting the claimant's claim in the property and its
23 return to the claimant.

24 (5) The precise relief sought.

25 G. Forfeiture proceedings shall be commenced as follows:

26 (1)(a) When the district attorney intends to forfeit property, pursuant to the
27 provisions of this Chapter, he shall provide the owner and interest holder with a
28 written assertion within forty-five days after actual or constructive seizure, except
29 in cases in which the property is held for evidentiary purpose, the district attorney

1 shall institute forfeiture proceedings within forty-five days after the final disposition
2 of all criminal proceedings associated with the conduct giving rise to forfeiture.

3 **(b)** If the district attorney fails to initiate forfeiture proceedings against
4 property seized for forfeiture by serving Notice of Pending Forfeiture within one
5 hundred twenty days after its seizure for forfeiture or if the state fails to pursue
6 forfeiture of the property upon which a timely claim has been properly served by
7 filing a Petition for Forfeiture proceeding within ninety days after Notice of Pending
8 Forfeiture, or if the district attorney fails to provide a written assertion, pursuant to
9 the provisions of this Paragraph, the property shall be released from its seizure for
10 forfeiture on the request of an owner or interest holder, pending further proceedings
11 pursuant to the provisions of this Chapter.

12 ~~(b)~~ **(c)** When no written assertion has been given to the claimant, within the
13 time delays provided herein, the claimant may file a Motion for Release of Seized
14 Property pursuant to the criminal jurisdiction of the court.

15 (2) If, after Notice of Pending Forfeiture, a claimant files a request for
16 stipulation of exemption **pursuant to R.S. 40:2609 or is granted an extension to**
17 **file a claim** pursuant to R.S. 40:2610, the district attorney may delay filing the
18 judicial forfeiture proceeding for a total of one hundred eighty days after the service
19 of Notice of Pending Forfeiture.

20 (3) Whenever Notice of Pending Forfeiture or service of an in rem petition
21 is required under the provisions of this Chapter, notice or service shall be given in
22 accordance with one of the following:

23 (a) If the owner's or interest holder's name and current address are known, by
24 either personal service or by mailing a copy of the notice by certified mail to that
25 address.

26 (b) If the owner's or interest holder's name and address are required by law
27 to be recorded with the parish clerk of court, the motor vehicle division of the
28 Department of Public Safety and Corrections, or another state or federal agency to
29 perfect an interest in the property, and the owner's or interest holder's current address

1 is not known, by mailing a copy of the notice by certified mail, return receipt
2 requested, to any address of record with any of the described agencies.

3 (c) If the owner's or interest holder's address is not known and is not on
4 record as provided in Subparagraph (b) of this Paragraph, or the owner or interest
5 holder's interest is not known, by publication in one issue of the official journal in
6 the parish in which the seizure occurs.

7 (4) Notice is effective upon personal service, publication, or the receipt
8 mailing of a written notice by certified mail, whichever is earlier, and shall include
9 a description of the property, the date and place of seizure, the conduct giving rise
10 to forfeiture or the violation of law alleged, and a summary of procedures and
11 procedural rights applicable to the forfeiture action.

12 ~~(5)(a) The district attorney may file, without a filing fee, a lien for the~~
13 ~~forfeiture of property upon the initiation of any civil or criminal proceeding under~~
14 ~~this Chapter or upon seizure for forfeiture. The filing constitutes notice to any person~~
15 ~~claiming an interest in the seized property or in property owned by the named~~
16 ~~person.~~

17 ~~(b) The lien notice shall set forth the following:~~

18 ~~(i) The name or alias of the person and, in the discretion of the lienor, the~~
19 ~~name of any alias, any corporation, partnership, trust, or other entity, including~~
20 ~~agents, that are owned entirely or in part, or controlled by the person.~~

21 ~~(ii) The description of the seized property or the criminal or civil proceeding~~
22 ~~that has been brought under this Chapter, the amount claimed by the lienor, the name~~
23 ~~of the district court where the proceeding or action has been brought, and the case~~
24 ~~number of the proceeding or action if known at the time of filing.~~

25 ~~(c) A lien filed pursuant to the provisions of this Paragraph applies to the~~
26 ~~described seized property or to one named person, any aliases, fictitious names, or~~
27 ~~other names, including the names of any corporation, partnership, trust, or other~~
28 ~~entity, owned entirely or in part, or controlled by the named person, and any interest~~
29 ~~in real property owned or controlled by the named person. A separate forfeiture lien~~

1 ~~shall be filed for each named person.~~

2 ~~(d) The lien creates, upon filing, a lien in favor of the lienor as it relates to the~~
3 ~~seized property or the named person or related entities. The lien secures the amount~~
4 ~~of potential liability for civil judgment, and, if applicable, the fair market value of~~
5 ~~seized property relating to all proceedings under this Chapter enforcing the lien. The~~
6 ~~notice of forfeiture lien referred to in this Paragraph shall be filed in accordance with~~
7 ~~the provisions of the laws of this state in accordance with the type of property that~~
8 ~~is subject to the lien. The validity and priority of the forfeiture lien shall be~~
9 ~~determined in accordance with applicable law pertaining to liens. The lienor may~~
10 ~~amend or release, in whole or in part, a lien filed under this Paragraph at any time by~~
11 ~~filing, without a filing fee, an amended lien in accordance with the provisions of this~~
12 ~~Paragraph, which identifies the lien amended. The lienor, as soon as practical after~~
13 ~~filing a lien, shall furnish to any person named in the lien a notice of the filing of the~~
14 ~~lien. Failure to furnish notice under the provisions of this Paragraph shall not~~
15 ~~invalidate or otherwise affect the lien.~~

16 ~~(e) Upon entry of judgment in its favor, the state may proceed to execute on~~
17 ~~the lien as provided by law.~~

18 ~~(f) A trustee, constructive or otherwise, who has notice that a forfeiture lien,~~
19 ~~or a Notice of Pending Forfeiture, or a civil forfeiture proceeding has been filed~~
20 ~~against the property or against any person or entity for whom the person holds title~~
21 ~~or appears as record owner, shall furnish within ten days, to the appropriate district~~
22 ~~attorney's office all of the following information:~~

23 ~~(i) The names and addresses of the person or entity for whom the property is~~
24 ~~held.~~

25 ~~(ii) The names and addresses of all other beneficiaries for whose benefit legal~~
26 ~~title to the seized property, or property of the named person or related entity, is held.~~

27 ~~(iii) A copy of the applicable trust agreement or other instrument, if any,~~
28 ~~under which the trustee or other person holds legal title or appears as record owner~~
29 ~~of the property.~~

1 ~~(g) A trustee, constructive or otherwise, who, with notice fails to comply with~~
2 ~~the provisions of this Paragraph may be fined not more than five hundred dollars per~~
3 ~~day for each day during which the failure to comply exists.~~

4 ~~(h) A trustee, constructive or otherwise, who with notice fails to comply with~~
5 ~~the provisions of this Paragraph shall be guilty of violating such provision and may,~~
6 ~~upon conviction, be sentenced to imprisonment for not less than two nor more than~~
7 ~~five years, with or without hard labor, and shall be fined not less than ten thousand~~
8 ~~dollars per day for each day compliance was not made.~~

9 **H. The district attorney shall determine whether it is probable that the**
10 **property is subject to forfeiture and, if so, may cause the commencement of**
11 **further judicial forfeiture proceedings against the property for which a Notice**
12 **of Pending Forfeiture has been filed and made by filing a complaint if a claim**
13 **has been filed. If, on inquiry and examination, the district attorney determines**
14 **that the proceedings probably cannot be sustained or that justice does not**
15 **require the institution of such proceedings, he shall notify the seizing agency**
16 **and immediately authorize the release of the seizure for forfeiture on the**
17 **property or on any specified interest in it.**

18 **I. The district attorney may not proceed with further forfeiture**
19 **proceedings before a criminal conviction for an offense to which forfeiture**
20 **applies unless no timely claim has been filed or a conviction is waived pursuant**
21 **to this Chapter.**

22 **J. If the district attorney fails to proceed with further forfeiture**
23 **proceedings against property seized for forfeiture by Notice of Pending**
24 **Forfeiture within sixty days after its seizure for forfeiture, or fails to pursue**
25 **forfeiture of the property on which a timely claim has been properly filed by**
26 **filing a complaint, information, or indictment within sixty days after Notice of**
27 **Pending Forfeiture or, if uncontested forfeiture has been made available, within**
28 **sixty days after a declaration of forfeiture, whichever is later, following a**
29 **person's conviction for an offense to which forfeiture applies and a claim has**

1 been filed, the seized property shall be released from its seizure for forfeiture
 2 to an owner or interest holder, pending further proceedings pursuant to this
 3 Chapter, which shall be commenced within seven years after actual discovery
 4 of the last act giving rise to forfeiture.

5 * * *

6 §2610. Claims

7 A. Only an owner of or interest holder in property seized for forfeiture may
 8 file a claim, and shall do so in the manner provided in this Section. The claim shall
 9 be mailed to the seizing agency and to the district attorney by certified mail, return
 10 receipt requested, within thirty days after Notice of Pending Forfeiture. ~~No extension~~
 11 ~~of time for the filing of a claim shall be granted.~~ The court may grant an extension
 12 for good cause shown. A motion requesting an extension shall be filed within
 13 sixty days after receipt of the Notice of Pending Forfeiture.

14 * * *

15 §2610.1. Postdeprivation hearing

16 A. After the seizure of property, the defendant in the related criminal
 17 matter or another person who claims an interest in the seized property, up to
 18 sixty days after the notice, may claim an interest in seized property by filing a
 19 motion with the district court in the parish where the property is located
 20 requesting an order for the release of the claimed property to the person's
 21 custody pending further forfeiture proceedings and orders pursuant to this
 22 Chapter. A motion filed pursuant to this Section shall include facts to support
 23 the person's alleged interest in the property. The district attorney may elect to
 24 not contest the motion and the release of the claimed property to the custody of
 25 the person who is claiming the interest in the seized property. The district
 26 attorney may request that the court issue a protective order that preserves the
 27 availability of released property pending further forfeiture proceedings.

28 B. The court shall hold a contradictory hearing on the motion before the
 29 resolution of any related criminal matter or forfeiture proceeding, within thirty

1 days after the date that the motion is filed.

2 C. At least ten days before a hearing on a motion filed pursuant to this
3 Section, the district attorney shall file an answer or responsive motion that
4 includes the reasons why the district attorney is entitled to retain possession of
5 the property.

6 D. The court shall grant the claimant's motion if the court finds that any
7 of the following apply:

8 (1) It is likely that the final judgment will require the district attorney
9 to return the property to the claimant.

10 (2) The property is not reasonably required to be held for evidentiary
11 reasons.

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

14 E. The court may order the return of money or property sufficient to
15 obtain legal counsel but less than the total amount seized, and the court may
16 require an accounting.

17 F. In lieu of ordering the return of property, the court may order:

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

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

22 §2611. Judicial forfeiture proceedings ~~generally;~~ damages

23 ~~A. A judicial forfeiture proceeding under this Chapter is subject to the~~
24 ~~provisions of this Section.~~

25 ~~B. The court, on application of the district attorney, may enter any restraining~~
26 ~~order or injunction, require the execution of satisfactory performance bonds, create~~
27 ~~receiverships, appoint conservators, appraisers, accountants, or trustees, or take any~~
28 ~~other action to seize, secure, maintain, or preserve the availability of property subject~~
29 ~~to forfeiture under this Chapter, including a writ of attachment or a warrant for its~~

1 seizure, whether before or after the filing of a Notice of Pending Forfeiture or
2 petition for forfeiture.

3 C. If property is seized for forfeiture or a forfeiture lien is filed without a
4 previous judicial determination of probable cause or order of forfeiture or a hearing
5 under the provisions of Section 2613 of this Chapter, the court, on an application
6 filed by an owner of or interest holder in the property, within ten days after notice
7 of its seizure for forfeiture or lien, or actual knowledge of it, whichever is earlier,
8 and after complying with the requirements for claims in Section 2610 of this
9 Chapter, after five days notice to the district attorney, may issue an order to show
10 cause to the seizing agency, for a hearing on the sole issue of whether probable cause
11 for forfeiture of the property then exists. The hearing shall be held within thirty days
12 of the order to show cause unless continued for good cause on motion of either party.
13 If the court finds that there is no probable cause for forfeiture of the property, the
14 property shall be released to the custody of the applicant or from the lien pending the
15 outcome of a judicial proceeding pursuant to this Section.

16 D. The court may order property which has been seized for forfeiture sold to
17 satisfy a specified interest of any interest holder, on motion of such party, and after
18 notice and a hearing, on all of the following conditions:

19 (1) That the interest holder has filed a proper claim and is a business
20 authorized to do business in this state under the jurisdiction of the commissioner of
21 financial institutions, the Department of Insurance, or the United States Securities
22 and Exchange Commission, or that the interest holder is such a business which or a
23 person who has an interest which the district attorney has stipulated is exempt from
24 forfeiture.

25 (2) That the interest holder shall dispose of the property by commercially
26 reasonable public sale and apply the proceeds to their interest and then to reasonable
27 expenses incurred in connection with the sale or disposal.

28 (3) That the balance of the proceeds, if any, be returned to the actual or
29 constructive custody of the court, in an interest bearing account, subject to further

1 ~~proceedings under this Chapter.~~

2 ~~E. A defendant convicted in any criminal proceeding is precluded from later~~
3 ~~denying the essential allegations of the criminal offense of which the defendant was~~
4 ~~convicted in any proceeding pursuant to this Section regardless of the pendency of~~
5 ~~an appeal from that conviction. However, evidence of the pendency of an appeal is~~
6 ~~admissible. For the purposes of this Section, a conviction results from a verdict or~~
7 ~~plea of guilty, including a plea of nolo contendere.~~

8 ~~F. In hearings and determinations pursuant to this Section, the court may~~
9 ~~receive and consider, in making any determination of probable cause or reasonable~~
10 ~~cause, all evidence admissible in determining probable cause at a preliminary~~
11 ~~hearing or by a judge pursuant to C.Cr.P. Art. 162 together with inferences~~
12 ~~therefrom.~~

13 ~~G. The fact that money or a negotiable instrument was found in proximity to~~
14 ~~contraband or an instrumentality of conduct giving rise to forfeiture shall give rise~~
15 ~~to the permissible inference that the money or negotiable instrument was the~~
16 ~~proceeds of conduct giving rise to forfeiture or was used or intended to be used to~~
17 ~~facilitate the conduct.~~

18 ~~H. There shall also be a rebuttable presumption that any property of a person~~
19 ~~is subject to forfeiture under this Section if the state establishes all of the following:~~

20 ~~(1) That the person has engaged in conduct giving rise to forfeiture.~~

21 ~~(2) That the property was acquired by the person during the period of the~~
22 ~~conduct giving rise to forfeiture or within a reasonable time after that period.~~

23 ~~(3) That there was no likely source for the property other than the conduct~~
24 ~~giving rise to forfeiture.~~

25 ~~I. All property declared forfeited under this Chapter vests in this state on the~~
26 ~~commission of the conduct giving rise to forfeiture together with the proceeds of the~~
27 ~~property after that time. Any such property or proceeds subsequently transferred to~~
28 ~~any person remain subject to forfeiture and thereafter shall be ordered forfeited~~
29 ~~unless the transferee claims and establishes in a hearing under the provisions of this~~

1 Chapter that the transferee is a bona fide purchaser for value and the transferee's
2 interest is exempt under Section 2605 of this Chapter.

3 J. An acquittal or dismissal in a criminal proceeding shall not preclude civil
4 proceedings under this Chapter; however, for good cause shown, on motion by the
5 district attorney, the court may stay civil forfeiture proceedings during the criminal
6 trial for a related criminal indictment or information alleging a violation of this
7 Chapter. Such a stay shall not be available pending an appeal.

8 K. Except as otherwise provided by this Chapter, all proceedings hereunder
9 shall be governed by the provisions of the Louisiana Code of Civil Procedure.
10 Additionally, any action under the provisions of this Chapter may be consolidated
11 with any other action or proceeding pursuant to the Chapter relating to the same
12 property on motion of the district attorney and may be consolidated on motion of an
13 interest holder.

14 L. If a claimant whose property has been seized for forfeiture is successful
15 in obtaining the return of the property in a civil proceeding, the court may award the
16 claimant reasonable attorney fees, to be paid by the seizing agency, and the claimant
17 shall also be exempt from any storage fees, or other costs incurred in the seizure,
18 preservation, storage, or return of such seized property. Any searched or seized
19 vehicle that is subsequently returned to a claimant, with or without court mandate,
20 shall be returned in substantially the same condition as when searched or seized,
21 together with any interest earned on monies or other negotiable instruments
22 deposited, held, or invested.

23 **A. A person who claims an interest in seized property shall file an answer**
24 **to the complaint of forfeiture within thirty days after service of the forfeiture**
25 **complaint. The answer must include facts to support the claimant's alleged**
26 **interest in the property. The clerk of court may not charge a person who claims**
27 **ownership or to be an interest holder a filing fee or any charge for filing the**
28 **answer.**

29 **B. A defendant convicted in any criminal proceeding shall be precluded**

1 from subsequently denying the essential allegations of the criminal offense of
2 which he was convicted in any proceeding pursuant to this Chapter. For the
3 purposes of this Chapter, a conviction may result from a verdict or plea
4 including a no contest plea.

5 C. In any judicial forfeiture hearing, determination, or other proceeding
6 pursuant to this Chapter, the applicant, petitioner, or claimant shall establish
7 by a preponderance of the evidence that he is an owner of or interest holder in
8 the property seized for forfeiture before other evidence is taken. The burden of
9 proving the standing of the claimant and the existence of the exemption is on the
10 claimant or party raising the claim, and it is not necessary to negate the
11 standing of any claimant or the existence of any exemption in any notice,
12 application, complaint, information, or indictment.

13 D. In hearings and determinations pursuant to this Chapter:

14 (1) The law of evidence relating to civil actions shall apply equally to all
15 parties, including the district attorney, an applicant, a petitioner, a claimant,
16 and a defendant, on all issues required to be established by a preponderance of
17 the evidence or clear and convincing evidence.

18 (2) The court shall receive and consider, in making any determination
19 of probable cause or reasonable cause, all evidence and information that would
20 be permissible in determining probable cause at a preliminary hearing, at a
21 grand jury, or by a magistrate, together with inferences from the evidence and
22 information.

23 E. The court shall enter a judgment of forfeiture and the seized property
24 shall be forfeited if the district attorney proves by clear and convincing evidence
25 that:

26 (1) The property is subject to forfeiture.

27 (2) The criminal prosecution related to the seized property resulted in
28 a conviction.

29 (3) There is no innocent owner or third party interest holder to whom the

1 property should be delivered.

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

4 (a) The pecuniary gain derived or sought to be derived by the offense.

5 (b) The pecuniary loss caused or sought to be caused by the offense.

6 (c) The value of the convicted owner's interest in the property.

7 F. A person is not jointly and severally liable for orders for forfeiture of
8 another person's property. If ownership of property is unclear, a court may
9 order each person to forfeit the person's property on a pro rata basis or by
10 another means that the court deems equitable.

11 G. All property, including all interests in the property, declared forfeited
12 under this Chapter vests in the state upon the commission of the act or omission
13 giving rise to forfeiture together with the proceeds of the property after that
14 time. Any property or proceeds subsequently transferred to any person are
15 subject to forfeiture and thereafter shall be ordered forfeited if the district
16 attorney proves by clear and convincing evidence that the transferee:

17 (1) Had actual knowledge that the property was subject to forfeiture.

18 (2) Was not a bona fide purchaser for value and not knowingly taking
19 part in an illegal transaction.

20 H. On the motion of a party and after notice to any persons who are
21 known to have an interest in the property and an opportunity to be heard, the
22 court may order property that has been seized for forfeiture sold, leased, rented,
23 or operated to satisfy an interest of any interest holder who has timely filed a
24 proper claim or to preserve the interests of any party. The court may order a
25 sale or any other disposition of the property if the property may perish, waste,
26 be foreclosed on or otherwise be significantly reduced in value or if the expenses
27 of maintaining the property are or will become greater than its fair market
28 value. If the court orders a sale, the court shall designate a third party or state
29 property manager to dispose of the property by public sale or other

1 commercially reasonable method and shall distribute the proceeds in the
2 following order of priority:

3 (1) Payment of reasonable expenses incurred in connection with the sale.

4 (2) Satisfaction of exempt interests in the order of their priority.

5 (3) Preservation of the balance, if any, in the actual or constructive
6 custody of the court in an interest bearing account, subject to further
7 proceedings under this Chapter.

8 I. If the property is disposed of pursuant to Subsection H of this Section,
9 a successful claimant may apply to the court for actual monetary damages
10 suffered, if any, as a result of the disposal of the property, but the state, a
11 political subdivision of the state, or an officer, employee, or agent of the state,
12 or a political subdivision of the state shall not be liable under this Chapter for
13 incidental or consequential damages or for damages either:

14 (1) That could have been avoided if the claimant had made full and
15 immediate disclosure to the district attorney of facts or evidence known or
16 available to the claimant.

17 (2) In excess of the fair market value of the property seized for forfeiture
18 at the time of its seizure plus interest from the time of its seizure for forfeiture.

19 J. No person claiming to be an owner of or interest holder in property
20 seized for forfeiture under this Chapter may commence or maintain any action
21 against the district attorney concerning the validity of the alleged interest, other
22 than as provided in this Chapter.

23 K. An injured person may submit a request for compensation from
24 forfeited property to the court at any time before the earlier of the entry of a
25 final judgment or an application for an order of the forfeiture of the property,
26 or if a hearing pursuant to Subsections M, N, or O of this Section is held, not
27 less than thirty days before the hearing. The request shall be signed by the
28 requestor under penalty of perjury and shall set forth all of the following:

29 (1) The caption of the proceeding as set forth on the Notice of Pending

1 forfeiture or complaint and the name of the requestor.

2 (2) The address at which the requestor will accept future mailings from
3 the court or parties to the action.

4 (3) The property subject to forfeiture from which the requestor seeks
5 compensation.

6 (4) The nature of the economic loss sustained by the requestor.

7 (5) All facts supporting each assertion set forth in the request.

8 (6) Any additional facts supporting the request.

9 (7) The amount of economic loss for which the requestor seeks
10 compensation.

11 L. If a proper request for compensation from forfeited property is timely
12 filed, the court shall hold a hearing to establish whether there is a factual basis
13 for the request. The requestor has the burden of establishing by a
14 preponderance of evidence that the requestor is an injured person who
15 sustained economic loss.

16 M. The hearing on the claim, to the extent practicable and consistent
17 with the interest of justice, shall be held sixty days after all parties have made
18 their disclosures of the matters provided for in Code of Civil Procedure Article
19 1551. The court may consolidate the hearing on the claim with a hearing on any
20 other claim concerning the same property.

21 N. At the hearing, the claimant may testify, present evidence and
22 witnesses on the claimant's own behalf, and cross-examine witnesses who
23 appear at the hearing. The district attorney may present evidence and witnesses
24 and cross-examine witnesses who appear at the hearing.

25 O. At the hearing, the district attorney has the burden of establishing by
26 clear and convincing evidence that the property is subject to forfeiture under
27 the provisions of this Chapter. Any claimant who has previously established by
28 a preponderance of the evidence that the claimant is an owner of or interest
29 holder in the property has the burden of establishing by a preponderance of the

1 evidence that the claimant's interest in the property is exempt from forfeiture
2 under the provisions of this Chapter.

3 P. After a hearing:

4 (1) The court shall order an interest in property returned or conveyed
5 to any claimant who has established by a preponderance of the evidence that the
6 claimant is an owner of or interest holder in the property if either of the
7 following applies:

8 (a) The district attorney has failed to establish by clear and convincing
9 evidence that the interest is subject to forfeiture under the provisions of this
10 Chapter.

11 (b) The claimant has established by a preponderance of the evidence that
12 the interest is exempt from forfeiture under the provisions of this Chapter.

13 (2) The court shall order all other property, including all interests in the
14 property, forfeited pursuant to R.S. 40: 2615 and 2616.

15 (3) If the court finds that a requestor is an injured person, it shall
16 determine the amount of the injured person's economic loss caused by the
17 conduct giving rise to the forfeiture of the designated property and shall require
18 the following:

19 (a) If the designated property is not contraband and is not altered or
20 designed for use in conduct giving rise to forfeiture, the property shall be sold
21 as provided in R.S. 40:2615 and shall apply the resulting balance to compensate
22 the injured person's economic loss in the amount found by the court.

23 (b) If the balance is insufficient to compensate the economic loss of all
24 injured persons the district attorney shall distribute the balance among the
25 injured persons according to a method determined by the court.

26 (c) After compensating all injured persons, the district attorney shall
27 transmit ten percent of the remaining balance, if any, to the state treasurer for
28 deposit in the Crime Victims Reparations Fund established by R.S. 46:1816.

29 §2612. In rem forfeiture proceedings

1 ~~A. A judicial in rem forfeiture proceeding brought by the district attorney~~
2 ~~pursuant to a Notice of Pending Forfeiture or verified petition for forfeiture is subject~~
3 ~~to the provisions of this Chapter. If authorized by law, a forfeiture shall be ordered~~
4 ~~by the court in the in rem action.~~

5 ~~B. An action in rem may be brought by the district attorney in addition to, or~~
6 ~~in lieu of, civil in personam forfeiture procedures. The state may serve the petition~~
7 ~~in the manner provided by Paragraph (3) of Section 2608 of this Chapter.~~

8 ~~C. Only an owner of or an interest holder in the property may file an answer~~
9 ~~asserting a claim against the property in an action in rem. For the purposes of this~~
10 ~~Section, an owner of or interest holder in property who has filed a claim and answer~~
11 ~~shall be referred to as a claimant.~~

12 ~~D. The answer shall be signed by the owner or interest holder under penalty~~
13 ~~of false swearing and shall be in accordance with C.C.P. Art. 1003 and shall set forth~~
14 ~~all of the following:~~

15 ~~(1) The caption of the proceedings as set forth on the Notice of Pending~~
16 ~~Forfeiture or petition and the name of the claimant.~~

17 ~~(2) The address where the claimant will accept mail.~~

18 ~~(3) The nature and extent of the claimant's interest in the property.~~

19 ~~(4) The date, identity of the transferor, and the circumstances of the~~
20 ~~claimant's acquisition of the interest in the property.~~

21 ~~(5) The specific provision of this Section relied on in asserting that it is not~~
22 ~~subject to forfeiture.~~

23 ~~(6) All essential facts supporting each assertion.~~

24 ~~(7) The precise relief sought.~~

25 ~~E. The answer shall be filed within fifteen days after service of the civil in~~
26 ~~rem petition. No claimant shall be required to pay court costs to contest a forfeiture~~
27 ~~proceeding, except in a final judgment.~~

28 ~~F. The state and any claimant who has timely answered the petition may, at~~
29 ~~the time of filing its pleadings, or at any other time not less than thirty days prior to~~

1 ~~the hearing, serve discovery requests on any other party, the answers or response to~~
2 ~~which shall be due within fifteen days of service. Discovery may include deposition~~
3 ~~of any person at any time after the expiration of fifteen days after the filing and~~
4 ~~service of the petition. Any party may move for a summary judgment at any time~~
5 ~~after an answer or responsive pleading is served and not less than thirty days prior~~
6 ~~to the hearing.~~

7 ~~G. The issue shall be determined by the court alone, and the hearing on the~~
8 ~~claim shall be held within sixty days after service of the petition unless continued for~~
9 ~~good cause. In a forfeiture case wherein no claim is timely filed pursuant to the~~
10 ~~provisions of this Chapter, the burden of proof to forfeit shall be probable cause. In~~
11 ~~a forfeiture case, wherein a claim is timely filed pursuant to the provisions of this~~
12 ~~Chapter, the burden of proof required to forfeit the defendant's property shall be a~~
13 ~~preponderance of the evidence.~~

14 ~~H. If the district attorney fails to show the existence of probable cause for~~
15 ~~forfeiture, or a claimant establishes by a preponderance of the evidence that the~~
16 ~~claimant has an interest that is exempt under the provisions of Section 2605 of this~~
17 ~~Chapter, the court shall order the interest in the property returned or conveyed to the~~
18 ~~claimant. The court shall order all other property forfeited to this state and conduct~~
19 ~~further proceedings pursuant to the provisions of Section 2615 and 2616 of this~~
20 ~~Chapter.~~

21 **A. If a forfeiture is authorized by law, it may be ordered by a court on**
22 **an action in rem brought by the district attorney pursuant to a Notice of**
23 **Pending Forfeiture or a verified complaint for forfeiture. The district attorney**
24 **may serve the complaint in the manner provided by R.S. 40:2608 or the Code**
25 **of Civil Procedure.**

26 **B. In rem forfeiture proceedings are in the nature of an action in rem**
27 **and are governed by the Code of Civil Procedure unless a different procedure**
28 **is provided by law. A civil in rem action may be brought by the district attorney**
29 **in addition to or in lieu of the civil and criminal in personam forfeiture**

1 procedures set forth in this Chapter. A civil in rem action may be brought if the
 2 district attorney shows by clear and convincing evidence that there is no known
 3 owner of the seized property, diligent efforts have been made to identify the
 4 owner of the seized property, and no person has asserted an ownership interest
 5 in the seized property or that, before or after the conviction, the defendant:

6 (1) Died.

7 (2) No longer resides in the United States or was deported.

8 (3) Was granted immunity or reduced punishment in exchange for
 9 testifying or assisting a law enforcement investigation or prosecution.

10 (4) Fled the jurisdiction of this state.

11 (5) Abandoned the property.

12 C. On the filing of a civil in rem action by the district attorney, the clerk
 13 of the court in which the action is filed shall provide, and the district attorney
 14 may provide, the Notice of Pending Forfeiture required by R.S. 40:2608, unless
 15 the files of the clerk of the court reflect that the notice has previously been
 16 made.

17 D. An owner of or interest holder in the property may file a claim against
 18 the property pursuant to R.S. 40:2608 within thirty days after the notice, for a
 19 hearing to adjudicate the validity of the owner's or interest holder's claimed
 20 interest in the property. The court shall hold the hearing without a jury. An
 21 owner or interest holder shall not be charged a filing fee or any other charge for
 22 filing the claim.

23 §2613. In personam **forfeiture** proceedings

24 ~~A.(1) A forfeiture may be ordered by a court on proceedings brought by the~~
 25 ~~district attorney on behalf of the state in an in personam civil action alleging conduct~~
 26 ~~giving rise to forfeiture if it is authorized by law. This action shall be in addition to~~
 27 ~~or in lieu of in rem forfeiture procedures.~~

28 (2) In any proceeding pursuant to this Chapter, the court, on application of
 29 the district attorney, may enter any order authorized by Section 2611 of this Chapter.

1 B. ~~The court may issue a temporary restraining order under the provisions of~~
2 ~~this Section on application of the district attorney, without notice or an opportunity~~
3 ~~for a hearing, if the state demonstrates that:~~

4 (1) ~~There is probable cause to believe that in the event of a final judgment or~~
5 ~~conviction, the property involved would be subject to forfeiture under the provisions~~
6 ~~of this Chapter.~~

7 (2) ~~Provision of notice would jeopardize the availability of the property for~~
8 ~~forfeiture.~~

9 C. ~~Notice of issuance of a temporary restraining order and an opportunity for~~
10 ~~a hearing shall be given to persons known to have an interest in the property. A~~
11 ~~hearing shall be held at the earliest possible date in accordance with the provisions~~
12 ~~of C.C.P. Arts. 3601 and 3603 et seq. and shall be limited to the issues of whether:~~

13 (1) ~~There is a probability that the state will prevail on the issue of forfeiture~~
14 ~~and that failure to enter the order will result in the property being destroyed,~~
15 ~~conveyed, alienated, encumbered, further encumbered, disposed of, purchased,~~
16 ~~received, removed from the jurisdiction of the court, concealed, or otherwise made~~
17 ~~unavailable for forfeiture.~~

18 (2) ~~The need to preserve the availability of property through the entry of the~~
19 ~~requested order outweighs the hardship on any owner or interest holder against~~
20 ~~whom the order is to be entered.~~

21 D. ~~On a determination of liability of a person for conduct giving rise to~~
22 ~~forfeiture under this Chapter, the court shall enter a judgment of forfeiture of the~~
23 ~~property described in the petition and shall also authorize the district attorney or his~~
24 ~~designee to seize all property ordered forfeited which was not previously seized or~~
25 ~~is not then under seizure. Following the entry of an order declaring the property~~
26 ~~forfeited, the court, on application of the district attorney, may enter any appropriate~~
27 ~~order to protect the interest of the state in the property ordered forfeited.~~

28 E. ~~Following the entry of an order of forfeiture under Subsection D of this~~
29 ~~Section, the district attorney may give Notice of Pending Forfeiture, in the manner~~

1 provided in Section 2608 of this Chapter, to all owners and interest holders who have
2 not previously been given notice.

3 F. ~~An owner of or interest holder in property that has been ordered forfeited
4 and whose claim is not precluded may file a claim as described in Section 2610 of
5 this Chapter within thirty days after initial Notice of Pending Forfeiture or after
6 notice under Subsection E of this Section, whichever is earlier. If the state does not
7 stipulate to the claim, the court shall hold the hearing and determine the claim
8 without a jury and in the manner provided for in rem judicial forfeiture actions, as
9 provided in Section 2612 of this Chapter.~~

10 G. ~~In accordance with findings made at the hearing, the court may amend the
11 order of forfeiture if it determines that any claimant has established by a
12 preponderance of the evidence that the claimant has an interest in the property and
13 that the claimant's interest is exempt under the provision of Section 2605 of this
14 Chapter.~~

15 H. ~~Except as provided in Section 2611 of this Chapter, no person claiming
16 an interest in property subject to forfeiture under this Chapter may intervene in a trial
17 or appeal of a criminal action or in an in personam civil action involving the
18 forfeiture of the property.~~

19 **A. Any complaint, information, or indictment alleging or charging one**
20 **or more offenses giving rise to forfeiture under this Chapter shall set forth with**
21 **reasonable particularity property that the state seeks to forfeit pursuant to this**
22 **Section in that action.**

23 **B. Notwithstanding any provision of Subsection C of this Section to the**
24 **contrary, a temporary restraining order under this Section may be entered on**
25 **application of the state without notice or an opportunity for a hearing if the**
26 **state demonstrates both that:**

27 **(1) The seizure is incident to a lawful arrest for a crime or a search**
28 **lawfully conducted pursuant to a search warrant, and the state has probable**
29 **cause to believe that the property with respect to which the order is sought**

1 would, in the event of final judgment or if a conviction occurs, be subject to
2 forfeiture and that the subject of the arrest or search warrant is an owner of the
3 property.

4 (2) Notice of Pending Forfeiture will jeopardize the availability of the
5 property for forfeiture. A temporary restraining order expires within ten days
6 after the date on which it is entered unless the party against whom it is entered
7 consents to an extension for a longer period or unless after a hearing, the court
8 enters, or is considering a preliminary injunction the state can demonstrate the
9 property is being held as evidence in a criminal case.

10 C. Notice of the entry of the restraining order and an opportunity for a
11 hearing shall be afforded to persons known to have an interest in the property,
12 whether or not a temporary restraining order is entered without notice. The
13 hearing is limited to the issues of whether:

14 (1) There is a probability that the state will prevail on the issue of
15 forfeiture and that failure to enter the order will result in the property being
16 destroyed, conveyed, encumbered, or further encumbered, removed from the
17 jurisdiction of the court, concealed, or otherwise made unavailable for
18 forfeiture.

19 (2) The need to preserve the availability of property through the entry
20 of the requested order outweighs the hardship on any owner, interest holder, or
21 defendant against whom the order is to be entered.

22 D. A hearing requested by any owner or interest holder concerning an
23 order entered under this Section shall be held at the earliest possible time and
24 before the expiration of a temporary order.

25 Section 2. R.S. 40:2608.1 is hereby repealed in its entirety.

The original instrument was prepared by Alden A. Clement, Jr. The following digest, which does not constitute a part of the legislative instrument, was prepared by Whitney Kauffeld.

DIGEST

SB 359 Engrossed

2022 Regular Session

Jackson

Present law provides relative to the seizure and forfeiture of property related to certain violations of present law (Uniform Controlled Dangerous Substances Law).

Present law defines "seizure for forfeiture" for purposes of present law as the seizure of property by a law enforcement officer designated by the district attorney, accompanied by a written assertion by the seizing agency or by a district attorney that the property is seized for forfeiture.

Proposed law retains present law and adds that there must also be an assertion by the district attorney that the property is subject to forfeiture and the property has no evidentiary value.

Present law provides that any of the following conduct gives rise to forfeiture:

- (1) An act or omission punishable by confinement for more than one year under the Uniform Controlled Dangerous Substances Law, whether or not there is a prosecution or conviction related to the act or omission.
- (2) An act or omission occurring outside this state that would be subject to prosecution in the place of occurrence and would be described in Item (1), if the act or omission occurred in this state, whether or not it is prosecuted in any state.
- (3) Any act or omission committed in furtherance of any violation the Uniform Controlled Dangerous Substances Law that is punishable by confinement with or without hard labor, including any inchoate or preparatory offense, regardless of whether there is a prosecution or conviction related to the act or omission.

Proposed law provides that in order to give rise to a forfeiture, the conduct must result in a conviction and the offense must have given rise to the seizure of the property.

Proposed law otherwise retains present law.

Present law provides that certain property is subject to seizure and forfeiture as contraband, derivative contraband, or property related to contraband.

Proposed law deletes present law and provides that all property, including all interests in the property, described in any provision of present law providing for its forfeiture is subject to forfeiture if both of the following apply:

- (1) The owner is convicted of an offense to which forfeiture applies.
- (2) The district attorney establishes by clear and convincing evidence that the property is subject to forfeiture pursuant to proposed law.

Proposed law provides that a vehicle used by any person as a common carrier in the transaction of business as a common carrier may not be forfeited unless the district attorney proves by clear and convincing evidence that 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 or knew or had reason to know of it.

Proposed law provides that a vehicle may not be forfeited following a conviction for any act

or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or of the U.S.

Proposed law provides that property may not be forfeited pursuant to the Uniform Controlled Dangerous Substances Law if the conduct giving rise to the seizure both:

- (1) Did not involve an amount of unlawful substance greater than the statutory threshold amount.
- (2) Was not committed for financial gain.

Proposed law provides that after a person is convicted of an offense for which forfeiture applies, the court may order the person to forfeit any of the following:

- (1) Property the person acquired through the commission of the offense.
- (2) Property directly traceable to property acquired through the commission of the offense.
- (3) Any property or instrumentality the person used in the commission of the offense or to facilitate the offense.

Proposed law authorizes the court to waive the conviction requirement if the prosecuting authority shows by clear and convincing evidence that there is no known owner of the seized property, diligent efforts have been made to identify the owner of the seized property, and no person has asserted an ownership interest in the seized property or that, before conviction, the defendant:

- (1) Died.
- (2) No longer resides in the U.S. or was deported.
- (3) Was granted immunity or reduced punishment in exchange for testifying or assisting a law enforcement investigation or prosecution.
- (4) Fled the jurisdiction of this state.
- (5) Abandoned the property.

Proposed law provides that proposed law does not prevent property from being forfeited by the terms of a plea agreement that is approved by a court or by other agreement of the parties in a criminal proceeding.

Proposed law provides that a person who claims to be an innocent owner has the burden of production to show that the person either:

- (1) Held a legal right, title, or interest in the property seized at the time the illegal conduct that gave rise to the seizure of the property occurred.
- (2) 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 offense that gave rise to the seizure of the property.

Proposed law provides that if a person establishes that he is an innocent owner and the district attorney pursues a forfeiture proceeding with respect to that person's property, the district attorney must prove by clear and convincing evidence that the innocent owner had actual knowledge of the underlying offense that gave rise to the forfeiture. Proposed law

further provides that if the district attorney is unable to prove that the person is not an innocent owner, the court must find that the person is an innocent owner and order the district attorney to relinquish all claims of title to the property and return the property to the innocent owner.

Present law provides for the seizure of property that is not evidence of a crime on probable cause to believe that the property is subject to forfeiture, with or without process issued by a court.

Proposed law retains present law but adds that the mere presence or possession of U.S. currency, debit cards, or credit cards, without indications of an offense that would subject the property to forfeiture, is insufficient probable cause for seizure of currency, debit cards, or credit cards.

Present law provides procedures for the commencement of forfeiture proceedings.

Proposed law deletes present law and provides that within 60 days after making a seizure for forfeiture or simultaneously on filing a related criminal indictment, the district attorney is to file a Notice of Pending Forfeiture or return the property to the person from whom it was seized. Proposed law provides that the Notice of Pending Forfeiture must include all of the following:

- (1) A description of the property seized.
- (2) The date and place of seizure of the property.
- (3) The name and address of the law enforcement agency making the seizure.
- (4) The specific statutory and factual grounds for the seizure.

Proposed law further provides that if the property sought to be forfeited is immovable property, including fixtures, the district attorney may file a lis pendens or a Notice of Pending Forfeiture with respect to the property with the parish in which the property is located, without a filing fee or other charge.

Proposed law further provides that a Notice of Pending Forfeiture is to be delivered as follows:

- (1) If the owner's or interest holder's name and current address are known, by either:
 - (a) Personal service.
 - (b) Mailing a copy of the notice by certified mail, return receipt requested, to the address.
- (2) If the owner's or interest holder's interest is required by present law to be on record with the parish, the secretary of state, the office of motor vehicles, the Dept. of Wildlife and Fisheries, or another state or federal licensing agency in order to perfect an interest in the property, but his current address is not known, then a copy of the notice is to be mailed by certified mail, return receipt requested, to any address on record.
- (3) If the owner's or interest holder's address is not known, and is not on record as provided in Item (2), or if his interest is not known, by publication in one issue of a newspaper of general circulation in the parish in which the seizure occurs.

Proposed law further provides that the Notice of Pending Forfeiture must also be served on the person's attorney of record and all persons known or reasonably believed by the district

attorney to claim an interest in the property.

Proposed law further provides that an owner of or interest holder in the property may file a claim against the property at any time within 60 days after the notice or 60 days before a criminal trial, whichever is later, requesting a hearing to adjudicate the validity of the claimed interest in the property. Proposed law further provides that an owner or interest holder cannot be charged a filing fee or any other charge for filing the claim. Proposed law further provides that copies of the claim are to be mailed to the district attorney.

Proposed law provides that the claim is to be signed by the claimant under penalty of perjury and must set forth all of the following:

- (1) The caption of the proceeding as set forth on the Notice of Pending Forfeiture or complaint and the name of the claimant.
- (2) The address at which the claimant will accept future mailings from the court or the district attorney.
- (3) The nature and extent of the claimant's interest in the property.
- (4) All facts supporting the claimant's claim in the property and its return to the claimant.
- (5) The precise relief sought.

Proposed law provides relative to the commencement of forfeiture proceedings. Proposed law provides that the district attorney is to determine whether it is probable that the property is subject to forfeiture and, if so, may cause the commencement of further judicial forfeiture proceedings against the property for which a Notice of Pending Forfeiture has been filed and made by filing a complaint if a claim has been filed. Proposed law further provides that if the district attorney determines that the proceedings probably cannot be sustained or that justice does not require the institution of such proceedings, he is to notify the seizing agency and immediately authorize the release of the seizure for forfeiture on the property or on any specified interest in it.

Proposed law further provides that the district attorney may not proceed with further forfeiture proceedings before a criminal conviction for an offense to which forfeiture applies unless no timely claim has been filed or a conviction is waived pursuant to proposed law.

Proposed law provides that if the district attorney fails to proceed with further forfeiture proceedings against property seized for forfeiture by Notice of Pending Forfeiture within 60 days after its seizure for forfeiture, or fails to pursue forfeiture of the property on which a timely claim has been properly filed by filing a complaint, information, or indictment within 60 days after Notice of Pending Forfeiture or, if uncontested forfeiture has been made available, within 60 days after a declaration of forfeiture, whichever is later, following a person's conviction for an offense to which forfeiture applies and a claim has been filed, the seized property is to be released from its seizure for forfeiture to an owner or interest holder, pending further proceedings pursuant to proposed law, which are to be commenced within seven years after actual discovery of the last act giving rise to forfeiture.

Present law provides that only an owner of or interest holder in property seized for forfeiture may file a claim, which must be mailed to the seizing agency and to the district attorney by certified mail, return receipt requested, within 30 days after Notice of Pending Forfeiture. Present law further provides that no extension of time for filing a claim can be granted.

Proposed law provides that the court may grant an extension of time to file a claim for good cause shown, which motion must be filed within 60 days after receipt of the Notice of Pending Forfeiture.

Proposed law otherwise retains present law.

Proposed law provides relative to post-deprivation hearings. Proposed law provides that after the seizure of property, the defendant in the related criminal matter or another person who claims an interest in the seized property, up to 60 days after the notice, may claim an interest in seized property by filing a motion with the district court in the parish where the property is located requesting an order for the release of the claimed property to the person's custody pending further forfeiture proceedings and orders. Proposed law further provides that the district attorney may elect to not contest the motion and the release of the claimed property to the custody of the person who is claiming the interest in the seized property. Proposed law provides that a person who timely files a motion for the return of property is entitled to a contradictory hearing on the motion before the resolution of any related criminal matter or forfeiture proceeding, within 30 days after the date that the motion is filed.

Proposed law further provides that the court is to grant the claimant's motion if the court finds that any of the following applies:

- (1) It is likely that the final judgment will require the district attorney to return the property to the claimant.
- (2) The property is not reasonably required to be held for evidentiary reasons.
- (3) The property is the only reasonable means for a defendant to pay for legal representation in a related criminal or forfeiture proceeding.

Proposed law further provides that the court may order the return of money or property sufficient to obtain legal counsel but less than the total amount seized, and the court may require an accounting.

Proposed law provides that in lieu of ordering the return of property, the court may order:

- (1) The district attorney to give security or written assurance for satisfaction of any judgment, including damages, that may be rendered in a related forfeiture action.
- (2) Any other relief that the court deems to be just.

Present law provides relative to judicial forfeiture proceedings in general.

Proposed law deletes present law and provides that a person who claims an interest in seized property must file an answer to the complaint of forfeiture within 30 days after service of the forfeiture complaint, including facts to support the claimant's alleged interest in the property, and cannot be charged a filing fee.

Proposed law further provides that a defendant convicted in any criminal proceeding is precluded from subsequently denying the essential allegations of the criminal offense of which he was convicted, from a verdict or plea including a no contest plea.

Proposed law further provides that in any judicial forfeiture hearing, determination, or other proceeding, the applicant, petitioner, or claimant must establish by a preponderance of the evidence that he is an owner of or interest holder in the property seized for forfeiture before other evidence is taken. Proposed law further provides that the burden of proving the standing of the claimant and the existence of the exemption is on the claimant or party raising the claim.

Proposed law further provides that in hearings and determinations:

- (1) The law of evidence relating to civil actions applies equally to all parties, including the district attorney, an applicant, a petitioner, a claimant, and a defendant, on all

issues required to be established by a preponderance of the evidence or clear and convincing evidence.

- (2) The court is to receive and consider, in making any determination of probable cause or reasonable cause, all evidence and information that would be permissible in determining probable cause at a preliminary hearing, at a grand jury, or by a magistrate, together with inferences from the evidence and information.

Proposed law further provides that the court is to enter a judgment of forfeiture and the seized property will be forfeited if the district attorney proves by clear and convincing evidence that:

- (1) The property is subject to forfeiture.
- (2) The criminal prosecution related to the seized property resulted in a conviction.
- (3) There is no innocent owner or third party interest holder to whom the property should be delivered.
- (4) The value of the property to be forfeited does not unreasonably exceed:
 - (a) The pecuniary gain derived or sought to be derived by the offense.
 - (b) The pecuniary loss caused or sought to be caused by the offense.
 - (c) The value of the convicted owner's interest in the property.

Proposed law further provides that all property, including all interests in such property, declared forfeited vests in the state upon the commission of the act or omission giving rise to forfeiture together with the proceeds of the property after such time. Proposed law further provides that any property or proceeds subsequently transferred to any person are subject to forfeiture and thereafter will be ordered forfeited if the district attorney proves by clear and convincing evidence that the transferee:

- (1) Had actual knowledge that the property was subject to forfeiture.
- (2) Was not a bona fide purchaser for value and not knowingly taking part in an illegal transaction.

Proposed law further provides that after notice to any persons who are known to have an interest in the property and an opportunity to be heard, the court may order property that has been seized for forfeiture sold, leased, rented or operated to satisfy an interest of any interest holder who has timely filed a proper claim or to preserve the interests of any party. Proposed law further provides that the court may order a sale or any other disposition of the property if the property may perish, waste, be foreclosed on or otherwise be significantly reduced in value or if the expenses of maintaining the property are or will become greater than its fair market value. Proposed law further provides that if the court orders a sale, the court is to designate a third party or state property manager to dispose of the property by public sale or other commercially reasonable method and shall distribute the proceeds in the following order of priority:

- (1) Payment of reasonable expenses incurred in connection with the sale.
- (2) Satisfaction of exempt interests in the order of their priority.
- (3) Preservation of the balance, if any, in the actual or constructive custody of the court in an interest bearing account, subject to further proceedings.

Proposed law further provides that if the property is disposed of pursuant to proposed law, a successful claimant may apply to the court for actual monetary damages suffered, if any, as a result of the disposal of the property, but the state, a political subdivision of the state, or an officer, employee, or agent of the state, or a political subdivision of the state cannot be held liable for incidental or consequential damages or for damages either:

- (1) That could have been avoided if the claimant had made full and immediate disclosure to the district attorney of facts or evidence known or available to the claimant.
- (2) In excess of the fair market value of the property seized for forfeiture at the time of its seizure plus interest from the time of its seizure for forfeiture.

Proposed law further provides that an injured person may submit a request for compensation from forfeited property to the court at any time before the earlier of the entry of a final judgment or an application for an order of the forfeiture of the property, or if a hearing pursuant to proposed law is held, not less than 30 days before the hearing. Proposed law further provides that after a hearing the court is to order an interest in property returned or conveyed to any claimant who has established by a preponderance of the evidence that the claimant is an owner of or interest holder in the property if either of the following applies:

- (1) The district attorney has failed to establish by clear and convincing evidence that the interest is subject to forfeiture.
- (2) The claimant has established by a preponderance of the evidence that the interest is exempt from forfeiture.

Proposed law further provides that if the court finds that a requestor is an injured person, it is to determine the amount of the injured person's economic loss caused by the conduct giving rise to the forfeiture of the designated property and require the following:

- (1) If the designated property is not contraband and is not altered or designed for use in conduct giving rise to forfeiture, the property is to be sold and the court will apply the resulting balance to compensate the injured person's economic loss in the amount found by the court.
- (2) If the balance is insufficient to compensate the economic loss of all injured persons the district attorney is to distribute the balance among the injured persons according to a method determined by the court.
- (3) After compensating all injured persons, the district attorney is to transmit 10% of the remaining balance, if any, to the state treasurer for deposit in the Crime Victims Reparations Fund established by present law.

Present law provides relative to in rem forfeiture proceedings.

Proposed law deletes present law and provides in rem forfeiture proceedings aligned with other provisions of proposed law relative to forfeiture.

Present law provides relative to in personam forfeiture proceedings.

Proposed law deletes present law and provides in personam forfeiture proceedings aligned with other provisions of proposed law relative to forfeiture.

Present law provides procedures for the sale of property pending forfeiture under certain circumstances.

Proposed law deletes these provisions of present law as proposed law requires a conviction

of the offense before property associated with the offense can be forfeited.

Effective August 1, 2022.

(Amends R.S. 40:2601(5), 2603, 2604, 2605(intro para), 2608, 2610(A), 2611, 2612, and 2613; adds R.S. 40:2606(E) and 2610.1; repeals R.S. 40:2608.1)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Add provision to permit an extension to be granted to file a forfeiture claim under present law.
2. Require notice to be effective upon receipt of the written notice by certified mail.
3. Add provision to permit a motion to request an extension be filed within 60 days after the receipt of the Notice of Pending Forfeiture.