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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.