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## DIGEST

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HB 569 Original

2022 Regular Session

Emerson

**Abstract:** Provides that the legislative auditor shall establish a case tracking system and searchable public website and report on property seized and forfeited under the Seizure and Controlled Dangerous Substances Property Forfeiture Act.

Present law (R.S. 40:2601) defines "interest holder", "owner", "proceeds", "property", and "seizure for forfeiture".

Proposed law changes present law and defines "seizure", "forfeiture", "law enforcement agency", and "contraband".

Present law (R.S. 40:2605) provides for property interests that are exempt from forfeiture if the owner or holder establishes all of the following:

- (1) That the owner or holder is not legally accountable for the conduct giving rise to the property's forfeiture, did not consent to the conduct, and could not reasonable have known of the conduct or that it was likely to occur.
- (2) That the owner or holder had not acquired and did not stand to acquire substantial proceeds from the conduct other than as an interest holder in a bona fide commercial transaction.
- (3) For transportation conveyances only, that the owner or holder did not hold the property jointly, in common, or in community with the person whose conduct gave rise to its forfeiture.
- (4) That the owner or holder does not hold the property for the benefit of or as an agent of any person whose conduct gave rise to its forfeiture. If the owner or holder acquired the interest through any such person, it was acquired as a bona fide purchaser and the owner or holder did not knowingly take part in an illegal transaction.
- (5) That no person whose conduct gave rise to the forfeiture of the property had the authority to convey the interest to a bona fide purchaser at the time of the conduct.
- (6) That the owner or holder acquired the interest after the completion of the conduct giving rise to the property's forfeiture and the owner or holder acquired the interest under all the following:

- (a) As a bona fide purchaser who did not knowingly take part in an illegal transaction.
- (b) Before the filing of the forfeiture lien and before the effective date of the Notice of Pending Forfeiture relating to it and without notice of its seizure for forfeiture.
- (c) At the time the interest was acquired, there was no reasonable cause to believe that the property was or likely to become subject to forfeiture.

Proposed law retains present law and provides for two additional exemptions: (1) residential immovable property valued at less than \$100,000 according to the most recent property tax assessment, and (2) the property is valued at less than \$50,000.

Present law (R.S. 40:2616) provides for the allocation of forfeited property. Present law (R.S. 40:2616(D)) provides that the district attorney shall submit a report that lists the total amount of seized funds or estimated value of property seized and the amounts of funds or property distributed to any entity, agency, or fund. Present law provides that the report shall be submitted to the governor, president of the Senate, speaker of the House of Representatives, chief judge and clerk of court of the judicial district where the district attorney has jurisdiction, or, in the case for Orleans Parish, to the chief judge of the Orleans Parish Criminal District Court and the clerk of the court by March 1st of each year.

Proposed law changes present law and provides that the legislative auditor shall establish and maintain a case tracking system and searchable public website that includes information on property seized and forfeited. The information shall include:

- (1) Name of law enforcement agency or lead agency, if multijurisdictional, that seized the property.
- (2) Date, type, place, and estimated value of seizure.
- (3) State, or federal criminal offense alleged or suspected that led to the seizure.
- (4) Crime for which the suspect was charged, including case number and court that case was filed in.
- (5) Outcome of the suspect's case.
- (6) Forfeiture case number and court in which the case was filed.
- (7) If the property owner filed a claim or counterclaim and whether the claim was filed by a suspect, innocent owner, joint owner, or a third party owner.
- (8) Method of final forfeiture proceeding, including date of order and existence of a settlement agreement.

- (9) Disposition and date of disposition of the property.
- (10) Total value of the property forfeited under state law, including currency and proceeds from the sale of non-currency property.
- (11) Market value of property forfeited that was retained, destroyed, or donated.
- (12) Estimate of total costs related to storing, litigating, and selling or disposing of the property.
- (13) Amount of attorney fees awarded to property owners.
- (14) If retained by a law enforcement agency, the purpose of retaining the property.
- (15) The total value of seized and forfeited property held by the law enforcement agency, district attorney's office, and courts at the end of the reporting period.

Proposed law (R.S. 40:2616(E)) provides that law enforcement agencies, district attorneys' offices, and courts shall provide the legislative auditor with the information required for reporting.

Proposed law provides that if no seizures or forfeiture proceedings occurred during the previous year, the agency, office, or court shall file a report certifying that no seizures or forfeiture proceedings occurred.

Proposed law provides that the legislative auditor shall submit a written report to the governor, president of the Senate, speaker of the House of Representatives, members of the House Committee on the Administration of Criminal Justice and Senate Committee on Judiciary B, and the chief judge of each district court by March 1st of each year. The written report shall summarize activity in the state for the seizing of property and amount of proceeds received or expended at the state and local levels. The report shall include a categorized accounting of proceeds expended and the summary data on seizures, forfeiture, and expenditures shall be categorized by law enforcement agency, district attorney office, and court.

Proposed law provides that the legislative auditor shall post the report on its website.

Proposed law provides that the legislative auditor may include recommendations in its report.

Proposed law provides that the legislative auditor shall identify any agency, office, or court that failed to submit the required information in the annual report.

Proposed law provides that no expenditures from the proceeds of funds of forfeited property shall be made for the benefit of any reporting entity that failed to submit the required information.

Proposed law (R.S. 40:2616(F)) provides that the legislative auditor may audit any agency, office, or court pursuant to the generally accepted government auditing standards of records.

Proposed law (R.S. 40:2616(G)) provides that the legislative auditor shall consult with law enforcement agencies, district attorney offices, and courts to establish a uniform method of reporting on the expenditure of funds for the following: community prevention and other programs; victim reparations; investigative costs; expenses related to seized property; litigation costs; government personnel, travel, training, administrative, and capital expenditures; and other expenditures of forfeiture proceeds by Jan. 1, 2024.

Proposed law (R.S. 40:2616(H)) provides that the legislative auditor may adopt rules pursuant to the Administrative Procedures Act to implement proposed law.

Proposed law (R.S. 40:2616(I)) provides that any information, data, and reports compiled and prepared pursuant to proposed law shall be subject to the Public Records Act.

Effective Jan. 1, 2023.

(Amends R.S. 40:2601(5) and 2616(D); Adds R.S. 40:2601(6)-(8), 2605(7) and (8), and 2616(E)-(I))