
DIGEST

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HB 894 Original

2022 Regular Session

Jordan

Abstract: Provides relative to forfeiture of property and seizures that include United States currency exceeding \$150,000.

Proposed law provides that the provisions of the Seizure and Controlled Dangerous Substances Property Forfeiture Act of 1989 shall only apply to seizures that include United States currency that exceeds \$150,000 and subsequent forfeitures related to these seizures.

Proposed law provides for a citation as the Louisiana Criminal Forfeiture Process Act. Provides that proposed law shall apply to the seizure and forfeiture of property used in and derived directly from an act or omission punishable by confinement for more than one year under present law (R.S. 40:961 et seq).

Proposed law provides for definitions of "abandoned property", "actual knowledge", "contraband", "conveyance", "innocent owner", "instrumentality", "law enforcement agency", "proceeds", "prosecuting authority", "real property", "secured interest holder", and "state".

Proposed law provides for the purpose as follows:

- (1) Deter crime by reducing its economic incentives.
- (2) Confiscate property used in the violation of the law.
- (3) Disgorge the fruit of illegal conduct.
- (4) Protect the due process rights of property owners.

Proposed law provides for jurisdiction. Provides that all of the following shall apply to a forfeiture proceeding:

- (1) It shall be part of the trial of the related crime.
- (2) It shall follow a finding of the defendant's guilt or be conducted at the court's discretion.
- (3) It shall be conducted by the court without a jury.

Proposed law provides that a court may issue an ex parte order to attach, seize, or secure personal

property for which forfeiture is sought and to provide for its custody at the request of the prosecuting authority.

Proposed law provides that except as provided in proposed law (R.S. 40:2633), personal property may be seized, as part of a lawful search, without a court order if any of the following circumstances exist:

- (1) The personal property subject to forfeiture is seized incident to a lawful arrest.
- (2) There is probable cause to believe the delay caused by the necessity of obtaining process would result in the removal or destruction of the personal property that is subject to forfeiture under proposed law.
- (3) The personal property is the subject of a prior and valid judgment of forfeiture in favor of the state.

Proposed law provides that real property shall not be seized or restrained without a court order. Provides that a court shall not issue an order unless the defendant and any other person with a known interest in the property receive proper notice and are given an opportunity for a contested hearing to determine the existence of probable cause for the seizure. Provides that notice may be made by publication if personal service has not been realized after reasonable attempts.

Proposed law provides that the prosecuting authority is not prohibited from seeking a lis pendens or restraining order to hinder the sale or destruction of real property. Provides that if the prosecuting authority obtains a lis pendens or restraining order, the prosecuting authority shall notify the defendant and any other person with a known interest in the property within 30 days.

Proposed law provides that no property right exists in stolen property or contraband and that such property is subject to seizure. Provides that stolen property shall be returned, and contraband shall be disposed of in accordance with state law.

Proposed law provides that the court may impose reasonable conditions on the release of stolen property and the disposal of contraband, including the use of photographic evidence, to preserve the property for later use as evidence in proceedings under proposed law.

Proposed law provides that the seizing agency shall deposit seized currency in an interest-bearing account pending the exhaustion of appeals or receiving an order from the court to return or distribute the seized currency. Provides that the seizing agency may take reasonable actions, including the use of photography, to preserve the property for later use as evidence in proceedings under proposed law.

Proposed law provides that when property is seized, the law enforcement officer shall give an itemized receipt to the person possessing the property at the time of the seizure. Provides that when practicable, the receipt shall be numbered for future reference and shall constitute notice of seizure. Provides that the seizing officer shall leave a receipt in the place where the property was found, if reasonably possible, if the person possessing the property is not present.

Proposed law provides that both of the following shall be exempt from seizure and forfeiture:

- (1) United States currency totaling \$200 or less.
- (2) A motor vehicle of \$2,000 or less in market value is exempt from seizure and forfeiture.

Proposed law provides that the prosecuting authority shall advise law enforcement agencies on the industry-accepted publications that may be used to establish the value of a motor vehicle in the prosecuting authority's jurisdiction. Provides that the prosecuting authority may establish higher values than those provided in proposed law in the interests of justice and efficient use of governmental resources.

Proposed law provides that the higher values shall be based on the prosecuting authority's exclusive determination of both of the following:

- (1) The type and number of occurrences of offenses that include the seizure of property.
- (2) The average value of seized property is less than the costs to seize and forfeit it.

Proposed law provides that a law enforcement officer, other than the prosecuting authority, may not request, induce, or require a person to waive, for purpose of seizure or forfeiture, the person's interest in property. Provides that a document purporting to waive interest or rights in seized property is void and inadmissible in court unless the prosecuting authority obtained the waiver.

Proposed law provides that title to the property subject to forfeiture vests with the state when the court issues a forfeiture judgment and relates back to the time when the state seizes or restrains the property. Provides that title to substitute assets vests when the court issues an order forfeiting substitute assets.

Proposed law provides that if a defendant in a criminal matter is represented by a public defender or counsel appointed by the court, the public defender or appointed counsel shall represent the defendant in the forfeiture proceeding.

Proposed law provides that if the defendant or an innocent owner petitioner engages in pro se representation in the forfeiture proceeding before a judge, the court may exercise its discretion applying the rules of pleading, procedure, or evidence.

Proposed law provides that the prosecuting authority shall perform a reasonable search of vehicle registrations, property records, and other public records to identify any person, other than the defendant, known to have an interest in the property subject to forfeiture.

Proposed law provides that the prosecuting authority shall give notice to any person identified to have an interest in the property subject to forfeiture, who is not charged or indicted. Provides that the notice shall include the seizure receipt number provided in proposed law, if available. Notice may be made by publication if personal service has not been realized after reasonable attempts.

Proposed law provides that the following language shall substantially and conspicuously appear in the notice:

"WARNING: You may lose the right to be heard in court if you do not file promptly a statement of interest or ownership. You do not have to pay a filing fee to file your notice."

Proposed law provides that if notice is not served on any persons appearing to have an interest in the property and no time extension is granted or the extension period has expired, the prosecuting authority or court shall order the return of the property to the person who makes a request. Provides that contraband shall not be returned.

Proposed law provides that following seizure, a defendant or any other person with an interest in the property has a right to a prompt post-seizure hearing. Provides that a person with an interest in the property may petition the court for a hearing.

Proposed law provides that at the court's discretion, the court may hold a prompt post-seizure hearing in any of the following manners:

- (1) As a separate hearing.
- (2) At the same time as a probable cause determination, a post-arraignment hearing, a suppression hearing, or other pretrial hearing.

Proposed law provides that a party, by agreement or for good cause, may move for one extension of the hearing date. Any motion may be supported by affidavits or other submissions. Provides that the court shall order the return of property if it finds any of the following:

- (1) The seizure was invalid.
- (2) A criminal charge has not been filed and no extension of the filing period is available.
- (3) The final judgment likely shall be in favor of the defendant or any other person with an interest in the property.

Proposed law provides that the court, at its discretion, may order the return of sufficient funds to the defendant that are less than the total amount seized and are not needed as evidence for the defendant to obtain counsel of choice.

Proposed law provides that the court may impose reasonable conditions on the return of the property, including the use of photographic evidence, to preserve the property for later use as evidence in proceedings under proposed law.

Proposed law provides that in a case where the state seeks forfeiture of property, the prosecuting authority shall file with the court a Notice of Proposed Forfeiture. Provides that the notice shall be a separate document, may accompany the initial charging instrument, or may be filed later. Provides

that the Notice of Proposed Forfeiture shall include all of the following information:

- (1) A description of the property seized.
- (2) The time, date, and place of the seizure.
- (3) The seizure receipt number as provided in R.S. 40:2632, if available.
- (4) A description of how the property was used in or derived from the alleged crime.

Proposed law provides that, in the notice, the prosecuting authority may allege the forfeiture of property as a sanction related to the crime for which the defendant is charged or as part of sentencing consideration. Provides that the notice shall not be read to the jury.

Proposed law provides for services of the notice in any of the following methods:

- (1) With the initial charging instrument.
- (2) Separately but not later than ninety days after the presentment of the charging instrument for a misdemeanor.
- (3) The earlier of 90 days after presentment to a grand jury or 180 days after an arrest for a felony.
- (4) At the court's discretion.

Proposed law provides that at the court's discretion, the court may allow the prosecuting authority to amend the notice as required in the interest of justice.

Proposed law provides that the court shall order the return of the property to the owner if the prosecuting authority does not file a charging instrument as provided by the court's rules, the period of an extension expires, or the court does not grant an extension.

Proposed law provides for discovery.

Proposed law provides that property may be forfeited if both of the following occur:

- (1) The state secures a conviction of a crime as provided in proposed law.
- (2) The state establishes by a preponderance of the evidence that the property is an instrumentality of or proceeds derived directly from the crime for which the state secured a conviction.

Proposed law provides that after the defendant's conviction, the court has the discretion to hold the forfeiture proceeding as soon as practicable, including concurrent with sentencing. Provides that the

court shall conduct the forfeiture proceeding without a jury.

Proposed law provides that nothing shall prevent property from being forfeited as part of any plea agreement, diversion agreement, or a grant of immunity or reduced punishment, with or without the filing of a criminal charge, in exchange for testifying or assisting a law enforcement investigation or prosecution.

Proposed law provides that the parties may file notice, under seal, with the court if the person is represented by counsel for the purposes of effectuating a forfeiture pursuant to proposed law. Provides that if the person is not represented by counsel, the prosecuting authority may file an ex parte notice, under seal, with the court. Provides that the ex parte notice shall advise the court of the reason for granting immunity, reducing punishment, or not filing a charge.

Proposed law provides that the court may use the ex parte notice in its consideration of an order to transfer of title to the property to the state and dispose the property pursuant to proposed law.

Proposed law provides that the court may waive the conviction requirement provided in proposed law and grant title to the property to the state if the prosecuting authority files a motion no fewer than 90 days after seizure and shows by a preponderance of the evidence that any of the following occurred before conviction:

- (1) The defendant died.
- (2) The defendant was deported by the U.S. government.
- (3) The defendant abandoned the property.
- (4) The defendant fled the jurisdiction.

Proposed law provides that the death of the defendant does not preclude any heir or legatee of the defendant from filing a claim for recovery of the seized property. Provides that the prosecuting authority shall attempt to notify any heir or legatee of the defendant's seized property upon the defendant's death.

Proposed law provides that the defendant may petition the court to determine whether the forfeiture is unconstitutionally excessive under the state or U.S. Constitution. Provides that the court may, at its discretion, hold a proportionality hearing in any of the following manners:

- (1) As a separate hearing.
- (2) At the same time as a probable-cause determination, a post-arraignment hearing, a suppression hearing, or other pretrial hearing.
- (3) At trial.

(4) Upon conviction.

Proposed law provides that the defendant has the burden of establishing that the forfeiture is unconstitutionally excessive by a preponderance of the evidence at a hearing conducted by the court without a jury.

Proposed law provides that when the hearing is held prior to conviction, the court shall determine, by a preponderance of the evidence, the likelihood of the prosecuting attorney will secure a conviction. Provides that the court shall then determine if the forfeiture is unconstitutionally excessive.

Proposed law provides that at a hearing at any time, the court may consider all of the following relevant factors to determine if the forfeiture is unconstitutionally excessive:

- (1) The seriousness of the crime and its impact on the community, including the duration of the activity, use of a firearm, and harm caused by the defendant.
- (2) The extent to which the defendant participated in the crime.
- (3) The extent to which the property was used in committing the crime.
- (4) Whether the crime was completed or attempted.
- (5) The sentence or fine to be imposed for committing the crime.
- (6) The hardship to the defendant if the forfeiture of a motor vehicle would deprive the defendant of the defendant's livelihood.
- (7) An unjust hardship to the defendant's family if the property is forfeited.

Proposed law provides that the court may consider all relevant factors related to the fair market value of the property in determining the value of the instrumentality subject to forfeiture, including any publication advised by the prosecuting authority as provided proposed law.

Proposed law provides that the court may not consider the value of the property to the state in determining whether the forfeiture is unconstitutionally excessive.

Proposed law provides that property encumbered by a security interest shall not be forfeited. Provides that the prosecuting authority shall return property to a secured interest holder, other than the defendant or an innocent owner, up to the value of the interest.

Proposed law provides that if the property is not summarily returned, the secured interest holder may petition the court at any time before the court enters judgment in the criminal prosecution or grants the motion filed pursuant to proposed law. Provides that the petition may include the seizure receipt number as provided in proposed law, if available.

Proposed law provides that the court shall hear the petition within 30 days after its filing or at the court's discretion. Provides that the hearing shall be held before the court without a jury and that the court may consolidate the hearing on the petition with any other hearing before the court in the case.

Proposed law provides that the secured interest holder shall establish by a preponderance of the evidence the validity of the security interest, mortgage, lien, leasehold, lease, rental agreement, or other agreement.

Proposed law provides that if the secured interest holder alleges a valid interest but the prosecuting authority seeks to proceed, the prosecuting authority shall prove by a preponderance of the evidence any of the following:

- (1) The interest is invalid.
- (2) The interest resulted from a fraudulent conveyance.
- (3) The interest is held through a straw purchase, trust, or otherwise for the benefit of the defendant.
- (4) The secured interest holder consented to the use of the property in the crime for which the defendant is charged.

Proposed law provides that if the state fails to meet its burden provided in proposed law, the court shall order the state to relinquish claims to the property, up to the value of the interest, and return the interest to the secured interest holder.

Proposed law provides that the court may impose reasonable conditions on the return of the property, including the use of photographic evidence, to preserve the property for later use as evidence in proceedings under proposed law.

Proposed law provides that property of an innocent owner shall not be forfeited. Provides that the prosecuting authority shall return property to an innocent owner without a court order.

Proposed law provides that if the property is not returned, the innocent owner may petition the court at any time before the court enters judgment in the criminal prosecution or grants the motion filed pursuant to proposed law.

Proposed law provides that the petitioner shall file with the court a simple statement that sets forth all of the following:

- (1) The petitioner's interest or regular use of the property.
- (2) Additional facts supporting the petitioner's claim.
- (3) The relief sought by the petitioner.

- (4) The seizure receipt number provided in proposed law, if available.

Proposed law provides for waiver of the filing fee for the statement under proposed law.

Proposed law provides that the court shall hear the petition within 30 days after its filing or at the court's discretion. Provides that the hearing shall be held before the court without a jury and that the court may consolidate the hearing on the petition with any other hearing before the court in the case.

Proposed law provides that the petitioner shall establish the validity of interest or regular use of the property by a preponderance of the evidence. Provides that if the provisions of proposed law are satisfied and the prosecuting authority seeks to proceed, the prosecuting authority shall prove by a preponderance of the evidence that the petitioner is not an innocent owner based on any of the following:

- (1) The petitioner's interest in the property is invalid.
- (2) The petitioner did not regularly use the property.
- (3) The petitioner had actual knowledge the property was used in or derived directly from the crime for which the defendant is charged.
- (4) The petitioner was willfully blind to the crime of which the defendant is charged.
- (5) The petitioner was not a bona fide purchaser without notice of any defect in title and for valuable consideration.

Proposed law provides that the court shall order the state to relinquish all claims and return the property to the innocent owner if the prosecuting authority fails to meet its burden.

Proposed law provides that the court may impose reasonable conditions on the return of the property, including the use of photographic evidence, to preserve the property for later use as evidence in proceedings under proposed law.

Proposed law provides that no information contained in the petitioner's statement provided in proposed law shall be used as evidence in the criminal portion of the case. Provides that nothing shall prohibit the petitioner from providing information to any party or testifying in any trial as to facts the petitioner knows.

Proposed law provides that the defendant or convicted offender may invoke the right against self-incrimination or the marital privilege during the forfeiture proceeding. Provides that the trier of fact may draw an adverse inference from the invocation of the right or privilege.

Proposed law provides that if the prosecuting authority fails to meet its burden in the criminal or forfeiture proceeding, the court shall enter judgment dismissing the forfeiture proceeding and ordering the return of property to the rightful owner, unless the owner's possession of the property

is illegal.

Proposed law provides that the court shall enter judgment forfeiting the property if the prosecuting authority meets its burden in the criminal and forfeiture proceeding. Provides that a court may enter judgment following a hearing, pursuant to a stipulation or plea agreement, or at the court's discretion.

Proposed law provides that upon the prosecuting authority's motion following conviction or at the court's discretion, the court may order the forfeiture of substitute property owned solely by the defendant up to the value of property that is beyond the court's jurisdiction or unable to be located through due diligence, only if the state proves by a preponderance of the evidence that the defendant intentionally did any of the following:

- (1) Dissipated the property.
- (2) Transferred, sold, or deposited property with a third party to avoid forfeiture.
- (3) Substantially diminished the value of property.
- (4) Commingled property with other property that cannot be divided without difficulty.

Proposed law provides that the state shall not seek personal money judgments or other remedies related to the forfeiture of property not provided for in proposed law.

Proposed law provides that a defendant is not jointly and severally liable for forfeiture awards owed by other defendants. Provides that a court may order each defendant to forfeit property on a pro rata basis or by another means the court finds equitable when ownership is unclear.

Proposed law provides that a party to a forfeiture proceeding, other than the defendant, may appeal the court's order concerning the disposition of the property upon the issuance of the order. Provides that the defendant may appeal the court's decision regarding the seizure or forfeiture of property following final judgment in the forfeiture proceeding.

Proposed law provides that in any proceeding in which a property owner's claims prevail by recovering at least half of the value of the property or currency claimed, the court shall order the seizing agency or prosecuting authority at fault to pay all of the following costs:

- (1) Reasonable attorney fees and other litigation costs incurred by the petitioner.
- (2) Post-judgment interest.
- (3) Any interest actually paid from the date of seizure in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale,

Proposed law provides that the law enforcement agency that holds the property shall return the property to the rightful owner within a reasonable period not to exceed five days after the date of a court order to return the property. Provides that the rightful owner shall not be subject to any

expenses related to towing, storage or preservation of the property. Provides that the law enforcement agency that holds the property is responsible for any damages, storage fees, and related costs applicable to property returned under proposed law.

Proposed law provides that the court may order contraband to be destroyed when it is no longer needed as evidence. Provides for the sale of abandoned property or property seized from a defendant who died, was deported, or fled the jurisdiction when it is no longer needed as evidence.

Proposed law provides that if the forfeiture is granted, the court shall order the sale of forfeited property other than currency. Provides that the court may order, upon exhaustion of all appeals or at its discretion, the distribution of forfeited currency and sale proceeds to as follows in order of preference:

- (1) Restitution to the victim of the crime.
- (2) Satisfaction of recorded liens, mortgages, or filed security interests in the forfeited property.
- (3) Payment of reasonable costs for the towing, storage, maintenance, repairs, advertising and sale, and other operating costs related to the forfeited property.
- (4) Reimbursement to the seizing law enforcement agency for non-personnel operating costs, including the value of any assets used to stage drug transactions, related to the investigation of the crime.
- (5) Reimbursement to the prosecuting authority, public defender, or court-appointed attorney for non-personnel court costs, including filing fees, subpoenas, court reporters, and transcripts.

Proposed law provides that after disbursements have been made pursuant to proposed law, the court may order the remaining funds be disbursed as follows:

- (1) One-third of the total to the state general fund.
- (2) Two-thirds of the total to the Pre-K to Prosperity Literacy Fund.

Proposed law provides for the creation of the Pre-K to Prosperity Literacy Fund. Provides that the monies in the fund shall be invested by the state treasurer in the same manner as monies in the state general fund, and interest earned on the investment of these monies shall be credited to the fund following compliance with the requirements of present constitution.

Proposed law provides that 50% of the monies in the fund shall be used by the Dept. of Education for literacy programs for students in pre-kindergarten through third grade. Provides that the remaining 50% of monies in the fund shall be used by the La. Commission on Law Enforcement to supplement for statewide grants to law enforcement agencies for purchase of equipment.

Proposed law provides that all unexpended and unencumbered monies in the fund at the end of the

fiscal year shall remain in the fund.

Proposed law provides that no law enforcement agency may sell forfeited property directly or indirectly to any employee of the law enforcement agency, to a person related to an employee within the third degree of consanguinity or affinity, or to another law enforcement agency.

Proposed law preempts laws by villages, municipalities, parishes, and other governments in the state which regulate civil and criminal forfeiture.

Proposed law provides that a state or local law enforcement agency shall not transfer or offer for adoption property, seized under state law, to a federal agency for the purpose of forfeiture under federal law (18 U.S.C. Chapter 46).

Proposed law provides that seizure by state or local law enforcement agencies is pursuant to their own authority under state law and does not involve the federal government.

Proposed law provides that the state or local law enforcement is prohibited from accepting payment of any kind or distribution of forfeiture proceeds from the federal government if the state or local law enforcement agencies violates proposed law. Provides that all such proceeds should be directed to the state's general fund.

Proposed law provides that a joint task force of a law enforcement agency and a federal agency shall transfer seized property to the prosecuting authority for forfeiture under proposed law.

Proposed law provides that the joint task force may transfer seized property to the U.S. Dept. of Justice for forfeiture under federal law if the seized property includes U.S. currency that exceeds \$150,000.

Proposed law provides that a law enforcement agency is prohibited from accepting payment or distribution of any kind from the federal government if the federal government requires seized property that includes U.S. currency of \$150,000 or less to be transferred to the federal government for forfeiture under federal law.

Proposed law provides that a prosecuting authority, after consulting with the responsible attorney with the U.S. Dept. of Justice, shall establish guidelines for joint task forces and multi-jurisdictional collaboration, based on federal guidelines to safeguard against the circumvention of state law in the prosecuting authority's jurisdiction.

(Adds R.S. 40:2623-2658)