

2022 Regular Session

HOUSE BILL NO. 820

BY REPRESENTATIVE VILLIO

CRIMINAL/FORFEITURE: Provides relative to civil forfeiture

1 AN ACT

2 To enact R.S. 14:230.1, relative to forfeiture; to provide for definitions; to provide relative
3 to seizure and forfeiture; to provide relative to criminal offenses; to provide for
4 exceptions; to provide for court proceedings; to provide relative to actions of law
5 enforcement; to provide relative to court judgments; to provide for certain time
6 periods; to provide relative to the applicability of remedies; to provide for the
7 allocation of proceeds; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 14:230.1 is hereby enacted to read as follows:

10 §230.1. Civil remedies

11 A. As used in this Section:

12 (1) "Commingled funds" means the combination of legitimate funds and
13 proceeds derived from criminal activity.

14 (2) "Criminal activity" means any of the offenses listed in Subsection B of
15 this Section, including conspiracy, principals, and attempts to commit any of the
16 listed offenses that are classified as a felony under the laws of this state or of the
17 United States.

18 (3) "Facilitating property" means any property used to commit the offense.

19 (4) "Proceeds" means funds acquired or derived directly or indirectly from
20 or produced or realized through an act.

1 B. All facilitating property, proceeds, and commingled funds, without
2 limitation to commingled funds of persons who knowingly or should have
3 reasonably known of the foregoing criminal activity, shall be subject to seizure and
4 forfeiture if involved in or derived from any of the following offenses:

5 (1) Identity theft (R.S. 14:67.16).

6 (2) Access device fraud (R.S. 14:70.4).

7 (3) Illegal transmission of monetary funds (R.S. 14:70.8).

8 (4) Bank fraud (R.S. 14:71.1).

9 (5) Monetary instrument abuse (R.S. 14:72.2).

10 (6) Computer fraud (R.S. 14:73.5).

11 (7) Money laundering; transactions involving proceeds derived from
12 criminal activity (R.S. 14:230).

13 C.(1) Any facilitating property, proceeds, and commingled funds subject to
14 forfeiture under this Section may be seized under process issued by any court of
15 record having jurisdiction over the facilitating property, proceeds, and commingled
16 funds except that seizure without such process may be made when either of the
17 following exists:

18 (a) The seizure is incident to an arrest with probable cause or a search under
19 a valid search warrant or with probable cause or an inspection under valid
20 administrative inspection warrant.

21 (b) The facilitating property, proceeds, and commingled funds subject to
22 seizure have been the subject of a prior judgment in favor of the state in a criminal
23 injunction or forfeiture proceeding under this Section.

24 (2)(a) All forfeitures or dispositions under this Section shall be made with
25 due provisions for the rights of factually innocent persons. No mortgage, lien,
26 privilege, or other security interest recognized under the laws of Louisiana and no
27 ownership interest in indivision shall be affected by a forfeiture if the owner of such
28 mortgage, lien, privilege, or other security interest, or owner in indivision establishes

1 that he is a factually innocent person. No forfeiture or disposition under this Section
2 shall affect the rights of factually innocent persons.

3 (b) Notwithstanding any provision of law the contrary, a mortgage, lien, or
4 security interest held by a federally-insured financial institution shall not be affected
5 by the seizure and forfeiture provisions of this Section.

6 (c) Notice of pending forfeiture or disposition shall be provided by the
7 district attorney in accordance with the requirements of R.S. 40:2608(3) or R.S.
8 14:90.1(B)(3).

9 D. In the event of a seizure under Subsection C of this Section, a forfeiture
10 proceeding shall be instituted promptly. Any facilitating property, proceeds, and
11 commingled funds taken or detained under this Section shall not be subject to
12 sequestration or attachment but are deemed to be in the custody of the law
13 enforcement officer making the seizure, subject only to the order of the court. When
14 property is seized under this Section, pending forfeiture and final disposition, the law
15 enforcement officer making the seizure may do any of the following:

16 (1) Place the property under seal.

17 (2) Remove the property to a place designated by the court.

18 (3) Request another agency authorized by law to take custody of the property
19 and remove it to an appropriate location.

20 E. The district attorney may institute civil proceedings under this Section.
21 In any action brought under this Section, the district court shall proceed as soon as
22 practicable to the hearing and determination following conviction or agreement
23 between the parties. Pending final determination, the court may at any time enter
24 such injunctions or restraining orders or take such actions, including the acceptance
25 of satisfactory performance bonds, as the court may deem proper.

26 F. A final judgment or decree rendered in favor of the state in any criminal
27 proceeding shall preclude the defendant from denying the essential facts established
28 in that proceeding in any subsequent civil action.

1 G. Notwithstanding any other provision of law, a criminal or civil action or
2 proceeding under this Chapter may be commenced at any time within five years after
3 the conduct in violation of a provision of this Chapter terminates or the cause of
4 action accrues. If a criminal prosecution or civil action is brought under the
5 provisions of this Chapter, the running of the period prescribed by this Section with
6 respect to any cause of action arising under Subsection E of this Section which is
7 based in whole or in part upon any matter complained of in any such prosecution or
8 action shall be suspended during the pendency of such prosecution or action and for
9 two years following its termination.

10 H. The application of one civil remedy under any provision of this Section
11 shall not preclude the application of any other remedy, civil or criminal, under any
12 other provision of law. Civil remedies under this Section are supplemental and not
13 mutually exclusive.

14 I. The allocation of proceeds from forfeitures or dispositions under this
15 Section shall be determined by the court in accordance with each law enforcement
16 entity's participation in the investigation, seizure, and forfeiture process. Proceeds
17 shall be distributed in the following order of priority:

18 (1) Satisfaction of any bona fide security interest or lien.

19 (2) Payment of all proper expenses of the proceedings for forfeiture and sale,
20 including expenses of seizure, maintenance of custody, advertising, and court costs.

21 (3) The remaining funds shall be allocated as follows:

22 (a) Sixty percent to the law enforcement agency or agencies making the
23 seizure.

24 (b) Twenty percent to the criminal court fund.

25 (c) Twenty percent to the district attorney's office pursuing the forfeiture.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 820 Reengrossed

2022 Regular Session

Villio

Abstract: Provides relative to civil forfeiture of funds and property used in theft and monetary offenses.

Proposed law provides definitions for "commingled funds", "criminal activity", "facilitating property", and "proceeds".

Proposed law provides that all facilitating property, proceeds, and commingled funds, without limitation to commingled funds of persons who knowingly or should have reasonably known of the foregoing criminal activity, shall be subject to seizure and forfeiture if involved in or derived from any of the following offenses:

- (1) Identity theft (R.S. 14:67.16).
- (2) Access device fraud (R.S. 14:70.4).
- (3) Illegal transmission of monetary funds (R.S. 14:70.8).
- (4) Bank fraud (R.S. 14:71.1).
- (5) Monetary instrument abuse (R.S. 14:72.2).
- (6) Computer fraud (R.S. 14:73.5).
- (7) Money laundering; transactions involving proceeds derived from criminal activity (R.S. 14:230).

Proposed law provides that any facilitating property, proceeds, and commingled funds subject to forfeiture under proposed law may be seized under process issued by any court of record having jurisdiction over the facilitating property, proceeds, and commingled funds.

Proposed law provides that seizure without such process may be made when either of the following exists:

- (1) The seizure is incident to an arrest with probable cause or a search under a valid search warrant or with probable cause or an inspection under valid administrative inspection warrant.
- (2) The facilitating property, proceeds, and commingled funds subject to seizure have been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under proposed law.

Proposed law provides that all forfeitures or dispositions under proposed law shall be made with due provisions for the rights of factually innocent persons and that no forfeiture or disposition shall affect the rights of factually innocent persons.

Proposed law provides that no mortgage, lien, privilege, or other security interest recognized under the laws of La. and no ownership interest in indivision shall be affected by a forfeiture if the owner of such mortgage, lien, privilege, or other security interest, or owner in indivision establishes that he is a factually innocent person.

Proposed law provides that a mortgage, lien, or security interest held by a federally-insured financial institution shall not be affected by the seizure and forfeiture provisions of proposed law.

Proposed law provides that notice of pending forfeiture or disposition shall be provided by the district attorney in accordance with the requirements of present law (R.S. 40:2608(3) or R.S. 14:90.1(B)(3)).

Proposed law provides that in an event of a seizure under proposed law, a forfeiture proceeding shall be instituted promptly. Provides that any facilitating property, proceeds, and commingled funds taken or detained under proposed law shall not be subject to sequestration or attachment but is deemed to be in the custody of the law enforcement officer making the seizure, subject only to a court order.

Proposed law provides that when property is seized under proposed law, pending forfeiture and final disposition, the law enforcement officer making the seizure may do any of the following:

- (1) Place the property under seal.
- (2) Remove the property to a place designated by the court.
- (3) Request another agency authorized by law to take custody of the property and remove it to an appropriate location.

Proposed law provides that the district attorney may institute civil proceedings under proposed law. Provides that in any action brought under proposed law, the district court shall proceed as soon as practicable to the hearing and determination following conviction or agreement between the parties. Provides that pending final determination, the court may at any time enter such injunctions or restraining orders or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper.

Proposed law provides that a final judgment or decree rendered in favor of the state in any criminal proceeding shall preclude the defendant from denying the essential facts established in that proceeding in any subsequent civil action.

Proposed law provides that a criminal or civil action or proceeding under proposed law may be commenced at any time within five years after the conduct in violation of proposed law terminates or the cause of action accrues.

Proposed law provides that if a criminal prosecution or civil action is brought under proposed law, the running of the period prescribed by proposed law with respect to any cause of action arising under proposed law which is based in whole or in part upon any matter complained of in any such prosecution or action shall be suspended during the pendency of such prosecution or action and for two years following its termination.

Proposed law provides that the application of one civil remedy under proposed law shall not preclude the application of any other remedy, civil or criminal, under any other provision of law. Provides that civil remedies under proposed law are supplemental and not mutually exclusive.

Proposed law provides that the allocation of proceeds from forfeitures or dispositions under proposed law shall be determined by the court in accordance with each law enforcement entity's participation in the investigation, seizure, and forfeiture process. Provides that proceeds shall be distributed in the following order of priority:

- (1) Satisfaction of any bona fide security interest or lien.

- (2) Payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs.
- (3) The remaining funds shall be allocated as follows:
 - (a) 60% to the law enforcement agency or agencies making the seizure.
 - (b) 20% to the criminal court fund.
 - (c) 20% to the district attorney's office pursuing the forfeiture.

(Adds R.S. 14:230.1)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Remove the crime of theft from the list of offenses that subject facilitating property, proceeds, and commingled funds to seizure and forfeiture.
2. Make technical changes.
3. Provide that the seizure and forfeiture provisions of proposed law shall not affect a mortgage, lien, or security interest held by a federally-insured financial institution.
4. Specify that notice of pending forfeiture or disposition shall be provided by the district attorney in accordance with the requirements of present law (R.S. 40:2608(3) or R.S. 14:90.1(B)(3)).

The House Floor Amendments to the engrossed bill:

1. Specify that the district court shall proceed as soon as practicable to the forfeiture hearing and determination following conviction or agreement between the parties.