

REFERENCE TITLE: **civil forfeiture; report information; remedies**

State of Arizona  
House of Representatives  
Fifty-third Legislature  
First Regular Session  
2017

## **HB 2477**

Introduced by  
Representatives Farnsworth E: Allen J, Grantham, Thorpe, Senator  
Petersen

**AN ACT**

**AMENDING SECTIONS 13-2314.01, 13-2314.03, 13-4305, 13-4306, 13-4310,  
13-4311, 13-4312 AND 13-4314, ARIZONA REVISED STATUTES; RELATING TO  
FORFEITURE.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-2314.01, Arizona Revised Statutes, is amended  
3 to read:

4 13-2314.01. Anti-racketeering revolving fund; use of fund;  
5 reports; audit

6 A. The anti-racketeering revolving fund is established. The  
7 attorney general shall administer the fund under the conditions and for  
8 the purposes provided by this section. Monies in the fund are exempt from  
9 the lapsing provisions of section 35-190.

10 B. Any prosecution and investigation costs, including attorney  
11 fees, recovered for the state by the attorney general as a result of  
12 enforcement of civil and criminal statutes pertaining to any offense  
13 included in the definition of racketeering in section 13-2301, subsection  
14 D, paragraph 4 or section 13-2312, whether by final judgment, settlement  
15 or otherwise, shall be deposited in the fund established by this section.

16 C. Any monies received by any department or agency of this state or  
17 any political subdivision of this state from any department or agency of  
18 the United States or another state as a result of participation in any  
19 investigation or prosecution, whether by final judgment, settlement or  
20 otherwise, shall be deposited in the fund established by this section or,  
21 if the recipient is a political subdivision of this state, may be  
22 deposited in the fund established ~~by~~ PURSUANT TO section 13-2314.03.

23 D. Any monies obtained as a result of a forfeiture by any  
24 department or agency of this state under this title or under federal law  
25 shall be deposited in the fund established by this section. Any monies or  
26 other property obtained as a result of a forfeiture by any political  
27 subdivision of this state or the federal government may be deposited in  
28 the fund established by this section. Monies deposited in the fund  
29 pursuant to this section or section 13-4315 shall accrue interest and  
30 shall be held for the benefit of the agency or agencies responsible for  
31 the seizure or forfeiture to the extent of their contribution.

32 E. Except as provided in subsections ~~F and~~ G AND H of this section,  
33 the monies and interest shall be distributed within thirty days of  
34 application to the agency or agencies responsible for the seizure or  
35 forfeiture. THE AGENCY OR AGENCIES APPLYING FOR MONIES MUST SUBMIT AN  
36 APPLICATION IN WRITING TO THE ATTORNEY GENERAL THAT INCLUDES A DESCRIPTION  
37 OF WHAT THE REQUESTED MONIES WILL BE USED FOR. THE ATTORNEY GENERAL MAY  
38 DENY AN APPLICATION THAT REQUESTS MONIES FOR A PURPOSE THAT IS NOT  
39 AUTHORIZED BY THIS SECTION, SECTION 13-4315 OR FEDERAL LAW. Monies in the  
40 fund used by the attorney general for capital projects in excess of one  
41 million dollars are subject to review by the joint committee on capital  
42 review.

43 ~~E.~~ F. Monies in the fund may be used for the following:

44 1. The funding of gang prevention programs, substance abuse  
45 prevention programs, substance abuse education programs, programs that

1 provide assistance to victims of a criminal offense that is listed in  
2 section 13-2301 and witness protection pursuant to section 41-196 or for  
3 any purpose permitted by federal law relating to the disposition of any  
4 property that is transferred to a law enforcement agency.

5 2. The investigation and prosecution of any offense included in the  
6 definition of racketeering in section 13-2301, subsection D, paragraph 4  
7 or section 13-2312, including civil enforcement.

8 3. The payment of the relocation expenses of any law enforcement  
9 officer and the officer's immediate family if the law enforcement officer  
10 is the victim of a bona fide threat that occurred because of the law  
11 enforcement officer's duties.

12 ~~F.~~ G. On or before January 15, April 15, July 15 and October 15 of  
13 each year, each department or agency of this state receiving monies  
14 pursuant to this section or section 13-2314.03 or 13-4315 or from any  
15 department or agency of the United States or another state as a result of  
16 participation in any investigation or prosecution shall file with the  
17 attorney general, the board of supervisors if the sheriff received the  
18 monies and the city or town council if the ~~city~~ CITY'S or town's  
19 department received the monies a report for the previous calendar quarter.  
20 The report shall be in a form that is prescribed by the Arizona criminal  
21 justice commission and approved by the director of the joint legislative  
22 budget committee. The report shall set forth the sources of all monies  
23 and all expenditures AS REQUIRED BY SUBSECTIONS J AND K OF THIS SECTION.  
24 The report shall not include any identifying information about specific  
25 investigations. If a department or agency of this state fails to file a  
26 report within forty-five days after the report is due and there is no good  
27 cause as determined by the Arizona criminal justice commission, the  
28 attorney general shall make no expenditures from the fund for the benefit  
29 of the department or agency until the report is filed. The attorney  
30 general is responsible for collecting all reports from departments and  
31 agencies of this state and transmitting the reports to the Arizona  
32 criminal justice commission at the time that the report required pursuant  
33 to subsection ~~F.~~ H of this section is submitted.

34 ~~G.~~ H. On or before January 25, April 25, July 25 and October 25 of  
35 each year, the attorney general shall file with the Arizona criminal  
36 justice commission a report for the previous calendar quarter. The report  
37 shall be in a form that is prescribed by the Arizona criminal justice  
38 commission and approved by the director of the joint legislative budget  
39 committee. The report shall set forth the sources of all monies and all  
40 expenditures AS REQUIRED BY SUBSECTIONS J AND K OF THIS SECTION. The  
41 report shall not include any identifying information about specific  
42 investigations. If the attorney general fails to file a report within  
43 sixty days after the report is due and there is no good cause as  
44 determined by the Arizona criminal justice commission, the attorney  
45 general shall make no expenditures from the fund for the benefit of the

1 attorney general until the report is filed. If a political subdivision of  
2 this state fails to file a report with the county attorney pursuant to  
3 section 13-2314.03 within forty-five days after the report is due and  
4 there is no good cause as determined by the Arizona criminal justice  
5 commission, the attorney general shall make no expenditures from the fund  
6 for the benefit of the political subdivision until the report is filed.

7 ~~H.~~ I. On or before September 30 of each year, the Arizona criminal  
8 justice commission shall compile the attorney general report and the  
9 reports of all departments and agencies of this state into a single  
10 comprehensive report and shall submit a copy of the report to the  
11 governor, the director of the department of administration, the president  
12 of the senate, the speaker of the house of representatives, the director  
13 of the joint legislative budget committee and the secretary of state.

14 J. THE REPORTS THAT ARE REQUIRED BY SUBSECTIONS G AND H OF THIS  
15 SECTION MUST INCLUDE ALL OF THE FOLLOWING INFORMATION IF MONIES WERE  
16 OBTAINED AS A RESULT OF A FORFEITURE:

- 17 1. THE NAME OF THE LAW ENFORCEMENT AGENCY THAT SEIZED THE PROPERTY.
- 18 2. THE DATE OF THE SEIZURE.
- 19 3. THE TYPE OF PROPERTY SEIZED AND A DESCRIPTION OF THE PROPERTY  
20 SEIZED, INCLUDING, IF APPLICABLE, THE MAKE, THE MODEL AND THE SERIAL  
21 NUMBER OF THE PROPERTY.
- 22 4. THE LOCATION OF THE SEIZURE, INCLUDING WHETHER IT WAS A HOME OR  
23 BUSINESS, AND THE STREET NAME AND, IF APPLICABLE, THE DIRECTION THE  
24 PROPERTY WAS MOVING.
- 25 5. THE ESTIMATED VALUE OF THE SEIZURE.
- 26 6. THE CRIMINAL OFFENSE ALLEGED THAT ALLOWED THE SEIZURE.
- 27 7. WHETHER ANY CRIMINAL CHARGES WERE FILED AND WHAT THE CHARGES  
28 WERE.
- 29 8. IF CRIMINAL CHARGES WERE FILED, THE CASE NUMBER AND THE OUTCOME  
30 OF THE CRIMINAL CHARGES.
- 31 9. IF THE FORFEITURE DID NOT PROCEED UNDER STATE LAW, THE REASON  
32 FOR THE FEDERAL TRANSFER.
- 33 10. THE FORFEITURE CASE NUMBER.
- 34 11. THE METHOD OF FINAL FORFEITURE PROCEEDING, INCLUDING WHETHER IT  
35 WAS CRIMINAL OR CIVIL, AND IF CIVIL, WHETHER THE CIVIL FORFEITURE WAS  
36 JUDICIAL OR ADMINISTRATIVE.
- 37 12. THE VENUE OF THE FORFEITURE ACTION.
- 38 13. WHETHER A PROPERTY OWNER FILED A CLAIM OR COUNTERCLAIM AND, IF  
39 FILED, WHETHER THE PERSON WAS A SUSPECT, A TITLED OWNER, A JOINT OWNER OR  
40 A THIRD-PARTY OWNER.
- 41 14. WHETHER THE PROPERTY OWNER WAS REPRESENTED BY AN ATTORNEY IN  
42 THE FORFEITURE CASE.
- 43 15. THE DATE OF THE FORFEITURE DECISION.
- 44 16. WHETHER THERE WAS A FORFEITURE SETTLEMENT AGREEMENT.

- 1           17. WHETHER THE PROPERTY WAS RETURNED TO THE OWNER, PARTIALLY
- 2 RETURNED TO THE OWNER, SOLD, DESTROYED OR RETAINED BY LAW ENFORCEMENT.
- 3           18. THE DATE OF THE PROPERTY DISPOSITION.
- 4           19. THE GROSS AMOUNT OF MONIES RECEIVED FROM THE FORFEITURE.
- 5           20. THE ESTIMATED ADMINISTRATIVE AND STORAGE COSTS AND ANY OTHER
- 6 COSTS, INCLUDING ANY COSTS OF LITIGATION.
- 7           21. THE AMOUNT OF ATTORNEY FEES AWARDED TO PROPERTY OWNERS, IF ANY.
- 8           K. THE REPORTS THAT ARE REQUIRED BY SUBSECTIONS G AND H OF THIS
- 9 SECTION MUST INCLUDE THE FOLLOWING INFORMATION WITH REGARD TO ALL
- 10 EXPENDITURES MADE FROM THE FUND FOR:
- 11           1. CRIME, GANG AND SUBSTANCE ABUSE PREVENTION PROGRAMS.
- 12           2. VICTIM REPARATIONS.
- 13           3. WITNESS PROTECTION.
- 14           4. INVESTIGATION COSTS, INCLUDING INFORMANT FEES AND BUY MONEY.
- 15           5. REGULAR-TIME SALARIES, OVERTIME PAY AND EMPLOYEE BENEFITS OF
- 16 PROSECUTORS.
- 17           6. REGULAR-TIME SALARIES, OVERTIME PAY AND EMPLOYEE BENEFITS OF
- 18 SWORN LAW ENFORCEMENT AGENCY PERSONNEL OTHER THAN PROSECUTORS.
- 19           7. REGULAR-TIME SALARIES, OVERTIME PAY AND EMPLOYEE BENEFITS OF
- 20 UNSWORN LAW ENFORCEMENT AGENCY PERSONNEL OTHER THAN PROSECUTORS.
- 21           8. PROFESSIONAL OR OUTSIDE SERVICES, INCLUDING SERVICES RELATED TO
- 22 AUDITING, OUTSIDE ATTORNEY FEES, COURT REPORTING, EXPERT WITNESSES AND
- 23 OTHER COURT COSTS.
- 24           9. MEMBERSHIP FEES PAID TO TRADE ASSOCIATIONS.
- 25           10. TRAVEL AND MEALS.
- 26           11. ENTERTAINMENT.
- 27           12. TRAINING.
- 28           13. CONFERENCES.
- 29           14. VEHICLES PURCHASED OR LEASED.
- 30           15. CANINES, FIREARMS AND RELATED EQUIPMENT, INCLUDING TACTICAL
- 31 GEAR.
- 32           16. OTHER CAPITAL EXPENDITURES, INCLUDING FURNITURE, COMPUTERS AND
- 33 OFFICE EQUIPMENT.
- 34           17. EXTERNAL PUBLICATIONS AND COMMUNICATIONS.
- 35           18. OTHER OPERATING EXPENSES, INCLUDING OFFICE SUPPLIES, POSTAGE
- 36 AND PRINTING. EXPENSES LISTED UNDER THIS PARAGRAPH MUST BE SEPARATELY
- 37 ITEMIZED.
- 38           L. THE ATTORNEY GENERAL SHALL ANNUALLY CAUSE A FINANCIAL AUDIT TO
- 39 BE MADE OF THE FUND. A CERTIFIED PUBLIC ACCOUNTANT SHALL CONDUCT THE
- 40 FINANCIAL AUDIT WITHIN ONE HUNDRED TWENTY DAYS AFTER THE END OF EACH
- 41 FISCAL YEAR. THE ATTORNEY GENERAL SHALL IMMEDIATELY FILE A CERTIFIED COPY
- 42 OF THE AUDIT WITH THE AUDITOR GENERAL. THE ATTORNEY GENERAL SHALL PAY ANY
- 43 FEES AND COSTS OF THE FINANCIAL AUDIT UNDER THIS SECTION FROM THE FUND.

1           Sec. 2. Section 13-2314.03, Arizona Revised Statutes, is amended to  
2 read:

3           13-2314.03. County anti-racketeering revolving fund; use of  
4                                   fund; reports

5           A. The board of supervisors of a county shall establish a county  
6 anti-racketeering revolving fund administered by the county attorney under  
7 the conditions and for the purposes provided by this section.

8           B. Any prosecution and investigation costs, including attorney  
9 fees, recovered for the county as a result of enforcement of civil and  
10 criminal statutes pertaining to any offense included in the definition of  
11 racketeering in section 13-2301, subsection D, paragraph 4 or section  
12 13-2312, whether by final judgment, settlement or otherwise, shall be  
13 deposited in the fund established by the board of supervisors.

14           C. Any monies received by any department or agency of this state or  
15 any political subdivision of this state from any department or agency of  
16 the United States or another state as a result of participation in any  
17 investigation or prosecution, whether by final judgment, settlement or  
18 otherwise, shall be deposited in the fund established ~~by~~ PURSUANT TO this  
19 section or in the fund established by section 13-2314.01.

20           D. Any monies obtained as a result of a forfeiture by the county  
21 attorney under this title or under federal law shall be deposited in the  
22 fund established ~~by~~ PURSUANT TO this section. Any monies or other  
23 property obtained as a result of a forfeiture by any political subdivision  
24 of this state or the federal government may be deposited in the fund  
25 established ~~by~~ PURSUANT TO this section or in the fund established by  
26 section 13-2314.01. Monies deposited in the fund pursuant to this section  
27 or section 13-4315 shall accrue interest and shall be held for the benefit  
28 of the agency or agencies responsible for the seizure or forfeiture to the  
29 extent of their contribution.

30           E. Except as provided in subsections ~~F and~~ G AND H of this section,  
31 the monies and interest shall be distributed to the agency or agencies  
32 responsible for the seizure or forfeiture within thirty days of  
33 application. THE AGENCY OR AGENCIES APPLYING FOR MONIES MUST SUBMIT AN  
34 APPLICATION IN WRITING TO THE COUNTY ATTORNEY THAT INCLUDES A DESCRIPTION  
35 OF WHAT THE REQUESTED MONIES WILL BE USED FOR. THE COUNTY ATTORNEY MAY  
36 DENY AN APPLICATION THAT REQUESTS MONIES FOR A PURPOSE THAT IS NOT  
37 AUTHORIZED BY THIS SECTION, SECTION 13-4315 OR FEDERAL LAW. EXCEPT IN AN  
38 EMERGENCY, BEFORE THE COUNTY ATTORNEY'S OFFICE MAY USE ANY MONIES FROM THE  
39 FUND, THE COUNTY ATTORNEY SHALL SUBMIT AN APPLICATION THAT INCLUDES A  
40 DESCRIPTION OF WHAT THE REQUESTED MONIES WILL BE USED FOR TO THE BOARD OF  
41 SUPERVISORS. THE BOARD OF SUPERVISORS SHALL APPROVE THE COUNTY ATTORNEY'S  
42 USE OF THE MONIES IF THE PURPOSE IS AUTHORIZED BY THIS SECTION, SECTION  
43 13-4315 OR FEDERAL LAW.

44           ~~E.~~ F. Monies in the fund may be used for the funding of gang  
45 prevention programs, substance abuse prevention programs, substance abuse

1 education programs, programs that provide assistance to victims of a  
 2 criminal offense that is listed in section 13-2301 and witness protection  
 3 pursuant to section 11-536 or for any purpose permitted by federal law  
 4 relating to the disposition of any property that is transferred to a law  
 5 enforcement agency. Monies in the fund may be used for the investigation  
 6 and prosecution of any offense included in the definition of racketeering  
 7 in section 13-2301, subsection D, paragraph 4 or section 13-2312,  
 8 including civil enforcement.

9 ~~F.~~ G. On or before January 25, April 25, July 25 and October 25 of  
 10 each year, the county attorney shall ~~cause to be filed~~ FILE with the  
 11 Arizona criminal justice commission a report for the previous calendar  
 12 quarter. The report shall be in a form that is prescribed by the Arizona  
 13 criminal justice commission and approved by the director of the joint  
 14 legislative budget committee. The report shall set forth the sources of  
 15 all monies and all expenditures AS REQUIRED BY SUBSECTIONS J AND K OF THIS  
 16 SECTION. The report shall not include any identifying information about  
 17 specific investigations. If the county attorney fails to file a report  
 18 within sixty days after it is due and there is no good cause as determined  
 19 by the Arizona criminal justice commission, the county attorney shall make  
 20 no expenditures from the fund for the benefit of the county attorney until  
 21 the report is filed.

22 ~~G.~~ H. On or before January 15, April 15, July 15 and October 15 of  
 23 each year, each political subdivision of this state receiving monies  
 24 pursuant to this section or section 13-2314.01 or 13-4315 or from any  
 25 department or agency of the United States or another state as a result of  
 26 participating in any investigation or prosecution shall ~~cause to be filed~~  
 27 FILE with the board of supervisors of the county in which the political  
 28 subdivision is located, each city or town council in which the political  
 29 subdivision is located and the county attorney of the county in which the  
 30 political subdivision is located a report for the previous calendar  
 31 quarter. The report shall be in a form that is prescribed by the Arizona  
 32 criminal justice commission and approved by the director of the joint  
 33 legislative budget committee. The report shall set forth the sources of  
 34 all monies and all expenditures AS REQUIRED BY SUBSECTIONS J AND K OF THIS  
 35 SECTION. The report shall not include any identifying information about  
 36 specific investigations. If a political subdivision of this state fails  
 37 to file a report within forty-five days after the report is due and there  
 38 is no good cause as determined by the Arizona criminal justice commission,  
 39 the county attorney shall make no expenditures from the fund for the  
 40 benefit of the political subdivision until the report is filed. The  
 41 county attorney shall be responsible for collecting all reports from  
 42 political subdivisions within that county and transmitting the reports to  
 43 the Arizona criminal justice commission at the time that the county report  
 44 required pursuant to subsection ~~F.~~ G of this section is submitted.

1           ~~H~~. I. On or before September 30 of each year, the Arizona criminal  
2 justice commission shall compile all county attorney reports into a single  
3 comprehensive report and all political subdivision reports into a single  
4 comprehensive report and submit a copy of each comprehensive report to the  
5 governor, the president of the senate, the speaker of the house of  
6 representatives, the director of the joint legislative budget committee  
7 and the secretary of state.

8           J. THE REPORTS THAT ARE REQUIRED BY SUBSECTIONS G AND H OF THIS  
9 SECTION MUST INCLUDE ALL OF THE FOLLOWING INFORMATION IF MONIES WERE  
10 OBTAINED AS A RESULT OF A FORFEITURE:

- 11           1. THE NAME OF THE LAW ENFORCEMENT AGENCY THAT SEIZED THE PROPERTY.
- 12           2. THE DATE OF THE SEIZURE.
- 13           3. THE TYPE OF PROPERTY SEIZED AND A DESCRIPTION OF THE PROPERTY  
14 SEIZED, INCLUDING, IF APPLICABLE, THE MAKE, THE MODEL AND THE SERIAL  
15 NUMBER OF THE PROPERTY.
- 16           4. THE LOCATION OF THE SEIZURE, INCLUDING WHETHER IT WAS A HOME OR  
17 BUSINESS, AND THE STREET NAME AND, IF APPLICABLE, THE DIRECTION THE  
18 PROPERTY WAS MOVING.
- 19           5. THE ESTIMATED VALUE OF THE SEIZURE.
- 20           6. THE CRIMINAL OFFENSE ALLEGED THAT ALLOWED THE SEIZURE.
- 21           7. WHETHER ANY CRIMINAL CHARGES WERE FILED AND WHAT THE CHARGES  
22 WERE.
- 23           8. IF CRIMINAL CHARGES WERE FILED, THE CASE NUMBER AND THE OUTCOME  
24 OF THE CRIMINAL CHARGES.
- 25           9. IF THE FORFEITURE DID NOT PROCEED UNDER STATE LAW, THE REASON  
26 FOR THE FEDERAL TRANSFER.
- 27           10. THE FORFEITURE CASE NUMBER.
- 28           11. THE METHOD OF FINAL FORFEITURE PROCEEDING, INCLUDING WHETHER IT  
29 WAS CRIMINAL OR CIVIL, AND IF CIVIL, WHETHER THE CIVIL FORFEITURE WAS  
30 JUDICIAL OR ADMINISTRATIVE.
- 31           12. THE VENUE OF THE FORFEITURE ACTION.
- 32           13. WHETHER A PROPERTY OWNER FILED A CLAIM OR COUNTERCLAIM AND, IF  
33 FILED, WHETHER THE PERSON WAS THE SUSPECT, A TITLED OWNER, A JOINT OWNER  
34 OR A THIRD-PARTY OWNER.
- 35           14. WHETHER THE PROPERTY OWNER WAS REPRESENTED BY AN ATTORNEY IN  
36 THE FORFEITURE CASE.
- 37           15. THE DATE OF THE FORFEITURE DECISION.
- 38           16. WHETHER THERE WAS A FORFEITURE SETTLEMENT AGREEMENT.
- 39           17. WHETHER THE PROPERTY WAS RETURNED TO THE OWNER, PARTIALLY  
40 RETURNED TO THE OWNER, SOLD, DESTROYED OR RETAINED BY LAW ENFORCEMENT.
- 41           18. THE DATE OF THE PROPERTY DISPOSITION.
- 42           19. THE GROSS AMOUNT OF MONIES RECEIVED FROM THE FORFEITURE.
- 43           20. THE ESTIMATED ADMINISTRATIVE AND STORAGE COSTS AND ANY OTHER  
44 COSTS, INCLUDING ANY COSTS OF LITIGATION.
- 45           21. THE AMOUNT OF ATTORNEY FEES AWARDED TO PROPERTY OWNERS, IF ANY.



1 K. THE REPORTS THAT ARE REQUIRED BY SUBSECTIONS G AND H OF THIS  
2 SECTION MUST INCLUDE THE FOLLOWING INFORMATION WITH REGARD TO ALL  
3 EXPENDITURES MADE FROM THE FUND FOR:

- 4 1. CRIME, GANG AND SUBSTANCE ABUSE PREVENTION PROGRAMS.
- 5 2. VICTIM REPARATIONS.
- 6 3. WITNESS PROTECTION.
- 7 4. INVESTIGATION COSTS, INCLUDING INFORMANT FEES AND BUY MONEY.
- 8 5. REGULAR-TIME SALARIES, OVERTIME PAY AND EMPLOYEE BENEFITS OF  
9 PROSECUTORS.
- 10 6. REGULAR-TIME SALARIES, OVERTIME PAY AND EMPLOYEE BENEFITS OF  
11 SWORN LAW ENFORCEMENT AGENCY PERSONNEL OTHER THAN PROSECUTORS.
- 12 7. REGULAR-TIME SALARIES, OVERTIME PAY AND EMPLOYEE BENEFITS OF  
13 UNSWORN LAW ENFORCEMENT AGENCY PERSONNEL OTHER THAN PROSECUTORS.
- 14 8. PROFESSIONAL OR OUTSIDE SERVICES, INCLUDING SERVICES RELATED TO  
15 AUDITING, OUTSIDE ATTORNEY FEES, COURT REPORTING, EXPERT WITNESSES AND  
16 OTHER COURT COSTS.
- 17 9. MEMBERSHIP FEES PAID TO TRADE ASSOCIATIONS.
- 18 10. TRAVEL AND MEALS.
- 19 11. ENTERTAINMENT.
- 20 12. TRAINING.
- 21 13. CONFERENCES.
- 22 14. VEHICLES PURCHASED OR LEASED.
- 23 15. CANINES, FIREARMS AND RELATED EQUIPMENT, INCLUDING TACTICAL  
24 GEAR.
- 25 16. OTHER CAPITAL EXPENDITURES, INCLUDING FURNITURE, COMPUTERS AND  
26 OFFICE EQUIPMENT.
- 27 17. EXTERNAL PUBLICATIONS AND COMMUNICATIONS.
- 28 18. OTHER OPERATING EXPENSES, INCLUDING OFFICE SUPPLIES, POSTAGE  
29 AND PRINTING. EXPENSES LISTED UNDER THIS PARAGRAPH MUST BE SEPARATELY  
30 ITEMIZED.

31 Sec. 3. Section 13-4305, Arizona Revised Statutes, is amended to  
32 read:

33 13-4305. Seizure of property

34 A. Property subject to forfeiture under this chapter may be seized  
35 for forfeiture by a peace officer:

- 36 1. On process issued pursuant to the ARIZONA rules of civil  
37 procedure or ~~the provisions of~~ this title, including a seizure warrant.
- 38 2. By making a seizure for forfeiture on property seized on process  
39 issued pursuant to law, including sections 13-3911, ~~through~~ 13-3912,  
40 13-3913, 13-3914 AND 13-3915.
- 41 3. By making a seizure for forfeiture without court process if any  
42 of the following is true:
  - 43 (a) The seizure for forfeiture is of property seized incident to an  
44 arrest or search.

1 (b) The property subject to seizure for forfeiture has been the  
2 subject of a prior judgment in favor of this state or any other state or  
3 the federal government in a forfeiture proceeding.

4 (c) The peace officer has probable cause to believe that the  
5 property is subject to forfeiture.

6 B. Property subject to forfeiture under this chapter may be seized  
7 for forfeiture by placing the property under constructive seizure.  
8 Constructive seizure may be made by posting notice of seizure for  
9 forfeiture on the property or by filing notice of seizure for forfeiture  
10 or notice of pending forfeiture in any appropriate public record relating  
11 to the property.

12 C. The court shall determine probable cause for seizure before real  
13 property may be seized for forfeiture, unless the seizure is pursuant to a  
14 constructive seizure or the filing of a racketeering lien or lis pendens.  
15 The court may make its determination ex parte if the state demonstrates  
16 that notice and an opportunity to appear would create a risk of harm to  
17 the public safety or welfare, including the risk of physical injury or the  
18 likelihood of property damage or financial loss.

19 D. The court shall determine probable cause for seizure before  
20 property may be seized for forfeiture as a substitute asset pursuant to  
21 section 13-2314, subsection D, E or G, or pursuant to section 13-4313,  
22 subsection A, unless the seizure is pursuant to a constructive seizure or  
23 the filing of a racketeering lien or lis pendens. The court may issue a  
24 seizure warrant for such property if it determines that there is probable  
25 cause to believe that the property is subject to forfeiture and is not  
26 available for seizure for forfeiture for any reason described in section  
27 13-4313, subsection A. The determinations shall be made ex parte unless  
28 real property is to be seized and subsection C of this section requires  
29 notice and an opportunity to appear.

30 E. In establishing ~~a preponderance of the~~ CLEAR AND CONVINCING  
31 evidence and in determining probable cause for seizure and for forfeiture,  
32 a rebuttable presumption exists that the property of any person is subject  
33 to forfeiture if the state establishes all of the following by the  
34 standard of proof applicable to that proceeding:

35 1. Conduct giving rise to forfeiture occurred.

36 2. The person acquired the property during the period of the  
37 conduct giving rise to forfeiture or within a reasonable time after that  
38 period.

39 3. There is no likely source for the property other than the  
40 conduct giving rise to forfeiture.

41 F. In establishing ~~a preponderance of the~~ CLEAR AND CONVINCING  
42 evidence and in determining probable cause for seizure and for forfeiture,  
43 the fact that money or any negotiable instrument was found in proximity to  
44 contraband or to instrumentalities of an offense gives rise to an

1 inference that the money or instrument was the proceeds of contraband or  
2 was used or intended to be used to facilitate commission of the offense.

3 Sec. 4. Section 13-4306, Arizona Revised Statutes, is amended to  
4 read:

5 13-4306. Powers and duties of peace officers and agencies

6 A. In the event of a seizure for forfeiture under section 13-4305,  
7 the property is not subject to replevin, conveyance, sequestration or  
8 attachment but is deemed to be in the custody of the law enforcement  
9 agency making the seizure for forfeiture. The seizing agency or the  
10 attorney for the state may authorize the release of the seizure for  
11 forfeiture of the property if forfeiture or retention is unnecessary, may  
12 transfer the property to any other state ~~or federal~~ agency or may transfer  
13 the action to another attorney for the state by discontinuing forfeiture  
14 proceedings in favor of forfeiture proceedings initiated by the other  
15 agency or attorney. **EXCEPT AS PROVIDED IN SUBSECTION I OF THIS SECTION,**  
16 **THE SEIZING AGENCY OR THE ATTORNEY FOR THE STATE MAY NOT TRANSFER OR REFER**  
17 **SEIZED PROPERTY TO A FEDERAL AGENCY.** An action pursuant to this chapter  
18 shall be consolidated with any other action or proceeding pursuant to this  
19 title relating to the same property on motion by the attorney for the  
20 state in either action.

21 B. If property is seized for forfeiture under section 13-4305,  
22 pending forfeiture and final disposition, the seizing agency may do any of  
23 the following:

24 1. Remove the property to a storage area for safekeeping or, if the  
25 property is a negotiable instrument or money, deposit it in an interest  
26 bearing account.

27 2. Remove the property to a place designated by the court.

28 3. Provide for another custodian or agency to take custody of the  
29 property and remove it to an appropriate location within the jurisdiction  
30 of the court.

31 C. As soon as practicable after seizure for forfeiture, the seizing  
32 agency shall conduct an inventory and estimate the value of the property  
33 seized. Within twenty days the seizing agency or the attorney for the  
34 state shall make reasonable efforts to provide notice of seizure for  
35 forfeiture to all persons known to have an interest in the seized  
36 property.

37 D. A person who acts in good faith and in a reasonable manner to  
38 comply with an order of the court or a request of a peace officer is not  
39 liable to any person for acts done in compliance with the order or  
40 request.

41 E. A possessory lien of a person from whose possession property is  
42 seized is not affected by the seizure.

43 F. In the event of a seizure for forfeiture under section 13-4305,  
44 the seizing agency shall send to an attorney for the state a written  
45 request for forfeiture within twenty days, which shall include a statement

1 of facts and circumstances of the seizure, including the names of  
2 witnesses then known, the appraised or estimated value of the property and  
3 a summary of the facts relied on for forfeiture.

4 G. An owner of property seized for forfeiture may obtain the  
5 release of the seized property by posting with the attorney for the state  
6 a surety bond or cash in an amount equal to the full fair market value of  
7 the property as determined by the attorney for the state. The state may  
8 refuse to release the property if any of the following applies:

- 9 1. The bond or cash tendered is inadequate.  
10 2. The property is retained as contraband or evidence.  
11 3. The property is particularly altered or designed for use in  
12 conduct giving rise to forfeiture.

13 H. If an owner of property posts a surety bond or cash and the  
14 property is forfeited the court shall forfeit the surety bond or cash in  
15 lieu of the property.

16 I. THE SEIZING AGENCY OR THE ATTORNEY FOR THE STATE MAY NOT ENTER  
17 INTO ANY AGREEMENT TO TRANSFER OR REFER SEIZED PROPERTY TO A FEDERAL  
18 AGENCY EITHER DIRECTLY, INDIRECTLY, BY ADOPTION, THROUGH AN  
19 INTERGOVERNMENTAL JOINT TASK FORCE OR BY ANY OTHER MEANS FOR THE PURPOSE  
20 OF FORFEITURE UNLESS THE SEIZED PROPERTY INCLUDES MORE THAN ONE HUNDRED  
21 THOUSAND DOLLARS IN UNITED STATES CURRENCY. IF THE SEIZED PROPERTY  
22 INCLUDES MORE THAN ONE HUNDRED THOUSAND DOLLARS IN UNITED STATES CURRENCY  
23 THE SEIZING AGENCY MAY, BUT IS NOT REQUIRED TO, TRANSFER OR REFER THE  
24 SEIZED PROPERTY TO A FEDERAL AGENCY FOR FORFEITURE PURSUANT TO FEDERAL  
25 LAW. THIS SUBSECTION DOES NOT RESTRICT A SEIZING AGENCY FROM  
26 COLLABORATING WITH A FEDERAL AGENCY TO SEIZE CONTRABAND OR PROPERTY THAT  
27 THE SEIZING AGENCY HAS PROBABLE CAUSE TO BELIEVE IS PROPERTY THAT IS  
28 SUBJECT TO FORFEITURE THROUGH AN INTERGOVERNMENTAL JOINT TASK FORCE.

29 Sec. 5. Section 13-4310, Arizona Revised Statutes, is amended to  
30 read:

31 13-4310. Judicial forfeiture proceedings; general

32 A. In any proceeding pursuant to this chapter, the court, on  
33 application of the state, may enter any restraining order or injunction,  
34 require the execution of satisfactory performance bonds, create  
35 receiverships, appoint conservators, appraisers, accountants or trustees  
36 or take any other action to seize, secure, maintain or preserve the  
37 availability of property subject to forfeiture under this title, including  
38 a warrant for its seizure, whether prior or subsequent to the filing of a  
39 notice of pending forfeiture, complaint, indictment or information.

40 B. If property is seized for forfeiture without a prior judicial  
41 determination of probable cause, an order of forfeiture or a hearing  
42 pursuant to section 13-4312, subsection D, the court, on an application  
43 filed by an owner of or interest holder in the property within fifteen  
44 days after notice of its seizure for forfeiture or actual knowledge of it,  
45 whichever is earlier, and complying with the requirements for claims in

1 section 13-4311, subsections E and F, may issue an order to show cause to  
2 the seizing agency for a hearing on the sole issue of whether probable  
3 cause for forfeiture of the property then exists. Notice of the order to  
4 show cause hearing must be served ~~upon~~ ON the attorney for the state at  
5 least five working days before the hearing is held. If the court finds  
6 that no probable cause for forfeiture of the property then exists or if  
7 the state elects not to contest the issue, the property seized for  
8 forfeiture from the applicant shall be released to the custody of the  
9 applicant pending the outcome of a judicial proceeding pursuant to this  
10 chapter. If the court finds that probable cause for the forfeiture of the  
11 property then exists, the court shall not order the property released,  
12 except as provided in section 13-4306, subsection G.

13 C. A defendant convicted in any criminal proceeding shall be  
14 precluded from subsequently denying the essential allegations of the  
15 criminal offense of which he was convicted in any proceeding pursuant to  
16 this chapter. For the purposes of this chapter, a conviction may result  
17 from a verdict or plea including a no contest plea.

18 D. In any judicial forfeiture hearing, determination or other  
19 proceeding pursuant to this chapter, the applicant, petitioner or claimant  
20 must establish by a preponderance of the evidence that he is an owner of  
21 or interest holder in the property seized for forfeiture before other  
22 evidence is taken. The burden of proving the standing of the claimant and  
23 the existence of the exemption is on the claimant or party raising  
24 the claim, and it is not necessary to negate the standing of any claimant  
25 or the existence of any exemption in any notice, application, complaint,  
26 information or indictment.

27 E. In hearings and determinations pursuant to this chapter:

28 1. The law of evidence relating to civil actions applies equally to  
29 all parties, including the state, an applicant, a petitioner, a claimant  
30 and a defendant, on all issues required to be established by a  
31 preponderance of the evidence OR CLEAR AND CONVINCING EVIDENCE.

32 2. The court shall receive and consider, in making any  
33 determination of probable cause or reasonable cause, all evidence and  
34 information that would be permissible in determining probable cause at a  
35 preliminary hearing, at a grand jury or by a magistrate pursuant to  
36 section 13-3913, together with inferences from the evidence and  
37 information.

38 ~~3. No evidence may be suppressed in any hearing pursuant to this~~  
39 ~~chapter on the ground that its acquisition by search or seizure violated~~  
40 ~~constitutional protections applicable in criminal cases relating to~~  
41 ~~unreasonable searches or seizures.~~

42 F. All property, including all interests in such property, declared  
43 forfeited under this title vests in this state on the commission of the  
44 act or omission giving rise to forfeiture under this title together with  
45 the proceeds of the property after such time. Any such property or

1 proceeds subsequently transferred to any person are subject to forfeiture  
2 and thereafter shall be ordered forfeited unless the transferee claims and  
3 establishes in a hearing pursuant to this chapter the showings set out in  
4 section 13-4304.

5 G. On the motion of a party and after notice to any persons who are  
6 known to have an interest in the property and an opportunity to be heard,  
7 the court may order property that has been seized for forfeiture sold,  
8 leased, rented or operated to satisfy an interest of any interest holder  
9 who has timely filed a proper claim or to preserve the interests of any  
10 party. The court may order a sale or any other disposition of the  
11 property if the property may perish, waste, be foreclosed on or otherwise  
12 be significantly reduced in value or if the expenses of maintaining the  
13 property are or will become greater than its fair market value. If the  
14 court orders a sale, the court shall designate a third party or state  
15 property manager to dispose of the property by public sale or other  
16 commercially reasonable method and shall distribute the proceeds in the  
17 following order of priority:

18 1. Payment of reasonable expenses incurred in connection with the  
19 sale.

20 2. Satisfaction of exempt interests in the order of their priority.

21 3. Preservation of the balance, if any, in the actual or  
22 constructive custody of the court in an interest bearing account, subject  
23 to further proceedings under this chapter.

24 H. If the property is disposed of pursuant to subsection G of this  
25 section, a successful claimant may apply to the court for actual monetary  
26 damages suffered, if any, as a result of the disposal of the property, but  
27 the state, a political subdivision of the state, or an officer, employee  
28 or agent of any of them shall not in any event be liable under this  
29 chapter for incidental or consequential damages or for damages either:

30 1. That could have been avoided if the claimant had made full and  
31 immediate disclosure to the attorney for the state of facts or evidence  
32 known or available to the claimant.

33 2. In excess of the fair market value of the property seized for  
34 forfeiture at the time of its seizure plus interest from the time of its  
35 seizure for forfeiture.

36 I. If an indictment or information is filed alleging the same  
37 conduct as the conduct giving rise to forfeiture in a civil forfeiture  
38 proceeding, the court in the civil proceeding may stay civil discovery  
39 against the criminal defendant and against the state in the civil  
40 proceeding until the defendant's criminal trial is completed. Before  
41 staying civil discovery, the court shall make adequate provision to  
42 prevent any loss or expense to any victim or party resulting from the  
43 delay, including loss or expense due to maintenance, management,  
44 insurance, storage or preservation of the availability of the property or  
45 due to depreciation in the value of the property.

1 J. No person claiming to be an owner of or interest holder in  
2 property seized for forfeiture under this chapter may commence or maintain  
3 any action against the state concerning the validity of the alleged  
4 interest other than as provided in this chapter.

5 Sec. 6. Section 13-4311, Arizona Revised Statutes, is amended to  
6 read:

7 13-4311. Judicial in rem forfeiture proceedings

8 A. If a forfeiture is authorized by law, it shall be ordered by a  
9 court on an action in rem brought by the state pursuant to a notice of  
10 pending forfeiture or a verified complaint for forfeiture. The state may  
11 serve the complaint in the manner provided by section 13-4307 or by the  
12 Arizona rules of civil procedure.

13 B. A civil in rem action may be brought by the state in addition to  
14 or in lieu of the civil and criminal in personam forfeiture procedures set  
15 forth in sections 13-4312 and 13-4313 or the uncontested civil forfeiture  
16 procedures set forth in section 13-4309. Judicial in rem forfeiture  
17 proceedings are in the nature of an action in rem and are governed by the  
18 Arizona rules of civil procedure unless a different procedure is provided  
19 by law.

20 C. On the filing of a civil in rem action by the state in superior  
21 court the clerk of the court in which the action is filed shall provide,  
22 and the attorney for the state may provide, the notice of pending  
23 forfeiture required by section 13-4307 unless the files of the clerk of  
24 the court reflect that such notice has previously been made.

25 D. An owner of or interest holder in the property may file a claim  
26 against the property, within thirty days after the notice, for a hearing  
27 to adjudicate the validity of his claimed interest in the property. The  
28 ~~COURT SHALL HOLD THE hearing shall be held by the court~~ without a jury.  
29 ~~AN OWNER OR INTEREST HOLDER MAY NOT BE CHARGED A FILING FEE OR ANY OTHER~~  
30 ~~CHARGE FOR FILING THE CLAIM.~~

31 E. The claim shall be signed by the claimant under penalty of  
32 perjury and shall set forth all of the following:

33 1. The caption of the proceeding as set forth on the notice of  
34 pending forfeiture or complaint and the name of the claimant.

35 2. The address at which the claimant will accept future mailings  
36 from the court or attorney for the state.

37 3. The nature and extent of the claimant's interest in the  
38 property.

39 4. The date, the identity of the transferor and the circumstances  
40 of the claimant's acquisition of the interest in the property.

41 5. The specific provisions of this chapter relied on in asserting  
42 that the property is not subject to forfeiture.

43 6. All facts supporting each such assertion.

44 7. Any additional facts supporting the claimant's claim.

45 8. The precise relief sought.

1 F. Copies of the claim shall be mailed to the seizing agency and to  
2 the attorney for the state. No extension of time for the filing of a  
3 claim may be granted.

4 G. Within twenty days after service of the complaint, the claimant  
5 shall file and serve the answer to the complaint and the answers to  
6 interrogatories and requests for admission if any were served with the  
7 complaint. The answer shall be signed by the owner or interest holder  
8 under penalty of perjury, shall comply with the Arizona rules of civil  
9 procedure relating to answers and shall comply with all of the  
10 requirements for claims. If no proper answer is timely filed, the  
11 attorney for the state shall proceed as provided in sections 13-4314 and  
12 13-4315 with ten days' notice to any person who has timely filed a claim  
13 that has not been stricken by the court.

14 H. At the time of filing its pleadings or at any other time not  
15 less than thirty days before the hearing, the state and any claimant who  
16 has timely answered the complaint may serve discovery requests on any  
17 other party, the answers or response to which shall be due in twenty days,  
18 and may take the deposition of any person at any time after the expiration  
19 of fifteen days after the filing and service of the complaint. Any party  
20 may move for summary judgment at any time after an answer or responsive  
21 pleading is served and not less than thirty days before the hearing. The  
22 state, as the party defending against the claim, may make offers of  
23 judgment at any time more than ten days before the hearing begins.

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

31 1. The caption of the proceeding as set forth on the notice of  
32 pending forfeiture or complaint and the name of the requestor.

33 2. The address at which the requestor will accept future mailings  
34 from the court or parties to the action.

35 3. The property subject to forfeiture from which the requestor  
36 seeks compensation.

37 4. The nature of the economic loss sustained by the requestor.

38 5. All facts supporting each such assertion.

39 6. Any additional facts supporting the request.

40 7. The amount of economic loss for which the requestor seeks  
41 compensation.

42 J. If a proper request for compensation from forfeited property is  
43 timely filed, the court shall hold a hearing to establish whether there is  
44 a factual basis for the request. The requestor has the burden of



1 establishing by a preponderance of the evidence that the requestor is an  
2 injured person who sustained economic loss.

3 K. The hearing on the claim, to the extent practicable and  
4 consistent with the interest of justice, shall be held sixty days after  
5 all parties have complied with the disclosure required by rule 26.1 of the  
6 Arizona rules of civil procedure. The court may consolidate the hearing  
7 on the claim with a hearing on any other claim concerning the same  
8 property.

9 L. At the hearing, the claimant may testify, present evidence and  
10 witnesses on the claimant's own behalf and cross-examine witnesses who  
11 appear at the hearing. The state may present evidence and witnesses and  
12 cross-examine witnesses who appear at the hearing.

13 M. At the hearing, the state has the burden of establishing by  
14 ~~a preponderance of the~~ CLEAR AND CONVINCING evidence that the property is  
15 subject to forfeiture under section 13-4304. Any claimant who has  
16 previously established by a preponderance of the evidence that the  
17 claimant is an owner of or interest holder in the property has the burden  
18 of establishing by a preponderance of the evidence that the claimant's  
19 interest in the property is exempt from forfeiture under section 13-4304.

20 N. In accordance with its findings at the hearing:

21 1. The court shall order an interest in property returned or  
22 conveyed to a claimant, if any, who has established by a preponderance of  
23 the evidence that the claimant is an owner of or interest holder in the  
24 property if either of the following applies:

25 (a) The state has failed to establish by ~~a preponderance of the~~  
26 CLEAR AND CONVINCING evidence that the interest is subject to forfeiture  
27 under section 13-4304.

28 (b) The claimant has established by a preponderance of the evidence  
29 that the interest is exempt from forfeiture under section 13-4304.

30 2. The court shall order all other property, including all  
31 interests in the property, forfeited to this state and proceed pursuant to  
32 sections 13-4314 and 13-4315.

33 3. If the court finds that a requestor is an injured person the  
34 court shall determine the amount of the injured person's economic loss  
35 caused by the conduct giving rise to the forfeiture of the designated  
36 property and shall require the following:

37 (a) If the designated property is not contraband and is not altered  
38 or designed for use in conduct giving rise to forfeiture, the attorney for  
39 the state shall sell the property as provided in section 13-4315,  
40 subsection A, paragraph 2, and shall apply the resulting balance to  
41 compensate the injured person's economic loss in the amount found by the  
42 court.

1 (b) If the balance is insufficient to compensate the economic loss  
2 of all injured persons the attorney for the state shall distribute the  
3 balance among the injured persons according to a method determined by the  
4 court.

5 (c) After compensation of all injured persons, the attorney for the  
6 state shall transmit ten ~~per cent~~ PERCENT of the remaining balance, if  
7 any, to the Arizona criminal justice commission for deposit in the victim  
8 compensation and assistance fund established by section 41-2407.

9 (d) The attorney for the state shall deposit the remainder of the  
10 balance, if any, in an appropriate anti-racketeering revolving fund  
11 established by section 13-2314.01 or 13-2314.03.

12 Sec. 7. Section 13-4312, Arizona Revised Statutes, is amended to  
13 read:

14 13-4312. Judicial in personam forfeiture proceedings

15 A. If a forfeiture is authorized by law, it shall be ordered by a  
16 court on proceedings by the state in an in personam civil or criminal  
17 action pursuant to section 13-2313 or 13-2314 or any other law providing  
18 for a forfeiture.

19 B. Any complaint, information or indictment alleging or charging  
20 one or more offenses included in section 13-2301, subsection D, paragraph  
21 4 or a violation of section 13-2312, or any other offense giving rise to  
22 forfeiture under this title, shall set forth with reasonable particularity  
23 property that the state seeks to forfeit pursuant to this section in that  
24 action, if any. The court shall allow the allegation that particular new  
25 or different or differently described property is subject to forfeiture in  
26 an in personam criminal or civil case to be made at any time prior to the  
27 date the case is actually tried unless the allegation is filed fewer than  
28 twenty days before the case is actually tried, and the court finds on the  
29 record that the defendant was in fact prejudiced by the untimely filing  
30 and states reasons for these findings, provided that when the allegation  
31 is filed, the state must make available to the defendant a copy of any  
32 material information concerning the allegation.

33 C. In any proceeding pursuant to this section, the court, on  
34 application of the state, may enter any order authorized by section  
35 13-4310, subsection A or take any other action to seize, secure, maintain  
36 or preserve the availability of property subject to forfeiture under this  
37 title, including a warrant for its seizure, whether before or after the  
38 filing of a complaint, indictment or information.

39 D. Notwithstanding subsection E of this section, a temporary  
40 restraining order under this section may be entered on application of the  
41 state without notice or an opportunity for a hearing if the state  
42 demonstrates both that:

43 1. There is probable cause to believe that the property with  
44 respect to which the order is sought would, in the event of final judgment  
45 or conviction, be subject to forfeiture under this title.

1           2. Provision of notice will jeopardize the availability of the  
2 property for forfeiture. A temporary restraining order expires within ten  
3 days after the date on which it is entered unless the party against whom  
4 it is entered consents to an extension for a longer period or unless after  
5 commencing a hearing the court enters or is considering a preliminary  
6 injunction.

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

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

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

20           F. A hearing requested by any owner or interest holder concerning  
21 an order entered under this section shall be held at the earliest possible  
22 time and before the expiration of a temporary order.

23           G. On a determination of liability or the conviction of a person  
24 for conduct giving rise to forfeiture under this title, the court shall  
25 enter a judgment of forfeiture of the property described in the forfeiture  
26 statute alleged and set out in the complaint, information or indictment,  
27 as amended, and shall also authorize the county attorney or attorney  
28 general, their agents or any peace officer to seize all property ordered  
29 forfeited that was not previously seized or is not then under seizure.  
30 Following the entry of an order declaring the property forfeited, the  
31 court, on application of the state, may enter any order authorized by  
32 section 13-4310, subsection A or take any other action to protect the  
33 interest of this state or a political subdivision in the property ordered  
34 forfeited. The filing of the order of forfeiture in the appropriate  
35 public records perfects the interest of the state in the property  
36 described in the order as of the earlier of the date of the act or  
37 omission giving rise to forfeiture or the date that a notice of seizure  
38 for forfeiture or notice of pending forfeiture or racketeering lien was  
39 first filed in the records, which entitles the state to all rights of a  
40 secured party as to that property in addition to any other rights or  
41 remedies of the state in relation to the property. Any income accruing  
42 to, or derived from, an enterprise or any interest in an enterprise or  
43 other property interest that is forfeited under this chapter is also  
44 forfeited from the time of the conduct giving rise to forfeiture. It may  
45 be used pending procedures subsequent to a verdict or finding of liability

1 to offset ordinary and necessary expenses of the enterprise or property as  
2 required by law or that are necessary to protect the interests of this  
3 state or a political subdivision.

4 H. Procedures subsequent to the verdict or finding of liability and  
5 order of forfeiture shall be as follows:

6 1. Following the entry of an order of forfeiture under this  
7 subsection the clerk of the court shall, and the attorney for the state  
8 may, give notice of pending forfeiture to all owners and interest holders  
9 who have not previously been given notice, if any, in the manner provided  
10 in section 13-4307.

11 2. An owner of or interest holder in property that has been ordered  
12 forfeited pursuant to such action whose claim is not precluded may file a  
13 claim as described in section 13-4311, subsections E and F in the court  
14 for a hearing to adjudicate the validity of his claimed interest in the  
15 property within thirty days after initial notice of pending forfeiture or  
16 after notice under paragraph 1 of this subsection, whichever is earlier.

17 3. The hearing on the claim, to the extent practicable and  
18 consistent with the interest of justice, shall be held within sixty days  
19 after the order of forfeiture. The court may consolidate the hearing on  
20 the claim with a hearing on any other claim filed by a person other than a  
21 party or defendant in the underlying action and concerning the same  
22 property.

23 4. The hearing shall be held by the court without a jury and  
24 conducted in the manner provided for in rem judicial forfeiture actions  
25 including the provisions of section 13-4311, subsections ~~J~~ L and ~~K~~ M.  
26 In addition to testimony and evidence presented at the hearing, the court  
27 shall consider the relevant portions of the record of the underlying civil  
28 or criminal action that resulted in the order of forfeiture.

29 5. In accordance with its findings at the hearing, the court may  
30 amend the order of forfeiture if it determines that any claimant has  
31 established by a preponderance of the evidence that the claimant is an  
32 owner of or interest holder in the property if either of the following  
33 applies:

34 (a) The state has failed to establish by ~~a preponderance of the~~  
35 CLEAR AND CONVINCING evidence that the interest is subject to forfeiture  
36 under section 13-4304.

37 (b) The claimant has established by a preponderance of the evidence  
38 that the interest is exempt from forfeiture under section 13-4304.

39 I. In order to facilitate the identification or location of  
40 property declared forfeited and to facilitate the disposition of filed or  
41 subsequent claims pursuant to subsection H, paragraph 2 of this section,  
42 the court, on application of the state, may order that the testimony of  
43 any witness relating to the property forfeited or alleged to be subject to  
44 forfeiture be taken by deposition and that any designated book, paper,  
45 document, record, recording, electronic or otherwise, or other material

1 which is not privileged be produced at the same time and place and in the  
2 same manner as that provided for the taking of depositions under the rules  
3 of civil procedure.

4 Sec. 8. Section 13-4314, Arizona Revised Statutes, is amended to  
5 read:

6 13-4314. Disposition by court

7 A. If no petitions for remission or mitigation or claims are timely  
8 filed or if no petitioner files a claim in the court within thirty days  
9 after the mailing of a declaration of forfeiture, the attorney for the  
10 state shall apply to the court for an order of forfeiture and allocation  
11 of forfeited property pursuant to section 13-4315. On the state's written  
12 application showing jurisdiction, notice and facts sufficient to  
13 demonstrate probable cause for forfeiture, and in cases brought pursuant  
14 to section 13-3413, subsection A, paragraph 1 or 3, probable cause to  
15 believe that the conduct giving rise to forfeiture involved an amount of  
16 unlawful substance greater than the statutory threshold amount as defined  
17 in section 13-3401 or was committed for financial gain, the court shall  
18 order the property forfeited to the state.

19 B. After the court's disposition of all claims timely filed under  
20 this chapter, the state has clear title to the forfeited property and the  
21 court shall so order. Title to the forfeited property and its proceeds is  
22 deemed to have vested in the state on the commission of the act or  
23 omission giving rise to the forfeiture under this title.

24 C. If, in his discretion, the attorney for the state has entered  
25 into a stipulation with an interest holder that the interest holder has an  
26 interest that is exempted from forfeiture, the court, on application of  
27 the attorney for the state, may release or convey forfeited personal  
28 property to the interest holder if all of the following are true:

29 1. The interest holder has an interest ~~which~~ **THAT** was acquired in  
30 the regular course of business as a financial institution within section  
31 13-2301, subsection D, paragraph 3.

32 2. The amount of the interest holder's encumbrance is readily  
33 determinable and it has been reasonably established by proof made  
34 available by the attorney for the state to the court.

35 3. The encumbrance held by the interest holder seeking possession  
36 is the only interest exempted from forfeiture and the order forfeiting the  
37 property to the state transferred all of the rights of the owner ~~prior to~~  
38 **BEFORE** forfeiture, including rights to redemption, to the state.

39 4. After the court's release or conveyance, the interest holder  
40 shall dispose of the property by a commercially reasonable public sale,  
41 and within ten days of disposition shall tender to the state the amount  
42 received at disposition less the amount of the interest holder's  
43 encumbrance and reasonable expense incurred by the interest holder in  
44 connection with the sale or disposal.

1           D. On order of the court forfeiting the subject property, the  
2 attorney for the state may transfer good and sufficient title to any  
3 subsequent purchaser or transferee, and the title shall be recognized by  
4 all courts, by this state and by all departments and agencies of this  
5 state and any political subdivision.

6           E. On entry of judgment for a claimant or claimants in any  
7 proceeding to forfeit property under this chapter such property or  
8 interest in property shall be returned or conveyed immediately to the  
9 claimant or claimants designated by the court. ~~If it appears that there  
10 was reasonable cause for the seizure for forfeiture or for the filing of  
11 the notice of pending forfeiture, complaint, information or indictment,  
12 the court shall cause a finding to be entered, and the claimant is not, in  
13 such case, entitled to costs or damages, nor is the person or seizing  
14 agency that made the seizure, nor is the attorney for the state liable to  
15 suit or judgment on account of such seizure, suit or prosecution.~~

16           F. The court ~~shall order any claimant who fails to establish that  
17 his entire interest is exempt from forfeiture under section 13-4304 to pay  
18 the costs of any claimant who establishes that his entire interest is  
19 exempt from forfeiture under section 13-4304 and the state's costs and  
20 expenses of the investigation and prosecution of the matter, including  
21 reasonable attorney fees~~ MAY AWARD REASONABLE ATTORNEY FEES, EXPENSES AND  
22 DAMAGES FOR LOSS OF THE USE OF THE PROPERTY TO ANY CLAIMANT WHO  
23 SUBSTANTIALLY PREVAILS BY AN ADJUDICATION ON THE MERITS OF A CLAIM.