

Senate Engrossed House Bill
forfeiture; substitute assets; postdeprivation hearing

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HOUSE BILL 2695

AN ACT

AMENDING SECTIONS 13-4304 AND 13-4309, ARIZONA REVISED STATUTES; RELATING
TO CIVIL FORFEITURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-4304, Arizona Revised Statutes, is amended to
3 read:

4 13-4304. Property subject to forfeiture; exemptions; innocent
5 owner

6 A. Except as provided in subsections B, C and D of this section,
7 all property, including all interests in such property, described in a
8 statute providing for its forfeiture is subject to forfeiture if both of
9 the following apply:

10 1. The owner is convicted of an offense to which forfeiture
11 applies.

12 2. The state establishes by clear and convincing evidence that the
13 property is subject to forfeiture as provided in subsection E of this
14 section.

15 B. A vehicle used by any person as a common carrier in the
16 transaction of business as a common carrier may not be forfeited under
17 this chapter unless the state proves by clear and convincing evidence that
18 the owner or other person in charge of the vehicle was a consenting party
19 or privy to the act or omission giving rise to forfeiture or knew of it.

20 C. A vehicle may not be forfeited under this chapter following a
21 conviction for any act or for an omission committed or omitted by a person
22 other than the owner while the vehicle was unlawfully in the possession of
23 a person other than the owner in violation of the criminal laws of this
24 state or of the United States.

25 D. Property may not be forfeited pursuant to section 13-3413,
26 subsection A, paragraph 1 or 3 if the conduct giving rise to the seizure
27 both:

28 1. Did not involve an amount of unlawful substance greater than the
29 statutory threshold amount as defined in section 13-3401.

30 2. Was not committed for financial gain.

31 E. After a person is convicted of an offense for which forfeiture
32 applies, a court may order the person to forfeit any of the following:

33 1. Property the person acquired through the commission of the
34 offense.

35 2. Property **THAT IS** directly traceable to property acquired through
36 the commission of the offense.

37 3. Any property or instrumentality **THAT** the person used in the
38 commission of the offense or to facilitate the offense.

39 4. **SUBSTITUTE ASSETS AS PRESCRIBED IN SECTION 13-2314, SUBSECTION**
40 **D, PARAGRAPH 6, SUBDIVISION (d) AND IN ACCORDANCE WITH SECTION 13-4305,**
41 **SUBSECTION C.**

42 F. The court may waive the conviction requirement if the
43 prosecuting authority shows by clear and convincing evidence that there is
44 no known owner of the seized property, diligent efforts have been made to
45 identify the owner of the seized property and no person has asserted an

1 ownership interest in the seized property or that, before conviction, the
2 defendant or alleged criminal:

- 3 1. Died.
- 4 2. No longer resides in the United States or was deported.
- 5 3. Was granted immunity or reduced punishment in exchange for
6 testifying or assisting a law enforcement investigation or prosecution.
- 7 4. Fled the jurisdiction of this state.
- 8 5. Abandoned the property.

9 G. This section does not prevent property from being forfeited by
10 the terms of a plea agreement that is approved by a court or by other
11 agreement of the parties in a criminal proceeding.

12 H. A person who claims to be an innocent owner has the burden of
13 production to show that the person either:

- 14 1. Held a legal right, title or interest in the property seized at
15 the time the illegal conduct that gave rise to the seizure of the property
16 occurred.
- 17 2. Acquired as a bona fide purchaser for value a legal right, title
18 or interest in the property subject to forfeiture after the commission of
19 the crime that gave rise to the seizure of the property.

20 I. If a person establishes that the person is an innocent owner
21 pursuant to subsection H of this section and the state pursues a
22 forfeiture proceeding with respect to that person's property, other than
23 property described in section 13-3413 to successfully forfeit the
24 property, the state shall prove by clear and convincing evidence that the
25 innocent owner had actual knowledge of the underlying crime that gave rise
26 to the forfeiture.

27 J. If the state is unable to prove the person is not an innocent
28 owner as provided in subsections H and I of this section, the court shall
29 find that the person is an innocent owner and order the state to
30 relinquish all claims of title to the property and return the property to
31 the innocent owner.

32 Sec. 2. Section 13-4309, Arizona Revised Statutes, is amended to
33 read:

34 13-4309. Postdeprivation hearing

35 A. After the seizure of property, the defendant in the related
36 criminal matter or another person who claims an interest in the seized
37 property, up to sixty days after the notice, may claim an interest in
38 seized property by filing a motion with the superior court requesting an
39 order for the release of the claimed property to the person's custody
40 pending further forfeiture proceedings and orders pursuant to this
41 chapter. A motion filed pursuant to this section must include facts to
42 support the person's alleged interest in the property. The state may
43 elect to not contest the motion and the release of the claimed property to
44 the custody of the person who is claiming the interest in the seized
45 property. The state may request that the court issue a protective order

1 that preserves the availability of released property pending further
2 forfeiture proceedings.

3 B. A person who makes a timely motion for the return of property
4 has a right to a hearing on the motion before the resolution of any
5 related criminal matter or forfeiture proceeding and within thirty days
6 after the date that the motion is filed.

7 C. At least ten days before a hearing on a motion filed pursuant to
8 this section, the state shall file an answer or responsive motion that
9 includes the reasons why the state is entitled to retain possession of the
10 property.

11 D. The court shall grant the claimant's motion if the court finds
12 that any of the following applies:

13 1. It is likely that the final judgment will require the state to
14 return the property to the claimant.

15 2. The property is not reasonably required to be held for
16 evidentiary reasons.

17 3. The property is the only reasonable means for a defendant to pay
18 for legal representation in a related criminal or forfeiture
19 proceeding. THIS PARAGRAPH DOES NOT APPLY IF THE COURT FINDS BY
20 SUFFICIENT EVIDENCE, PRESENTED IN A HEARING ON A MOTION, ANSWER OR
21 RESPONSIVE MOTION, THAT ANOTHER PERSON HAS FILED A CLAIM TO THE SEIZED
22 PROPERTY AND THE OTHER PERSON IS THE VICTIM, AS DEFINED IN SECTION
23 13-4401, OF THE ALLEGED CRIME THAT GAVE RISE TO THE FORFEITURE.

24 E. The court may order the return of money or property sufficient
25 to obtain legal counsel but less than the total amount seized and the
26 court may require an accounting.

27 F. In lieu of ordering the return of property, the court may order:

28 1. The state to give security or written assurance for satisfaction
29 of any judgment, including damages, that may be rendered in a related
30 forfeiture action.

31 2. Any other relief that the court deems to be just.

32 G. THIS SECTION DOES NOT PREVENT EITHER OF THE FOLLOWING:

33 1. THE STATE FROM RETURNING ANY PROPERTY TO THE OWNER OF THE
34 PROPERTY.

35 2. THE FILING OF A RACKETEERING LIEN PURSUANT TO SECTION 13-2314.02
36 OR A RESTITUTION LIEN PURSUANT TO SECTION 13-806.