

REFERENCE TITLE: **property seizure; forfeiture**

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SB 1574

Introduced by
Senator Borrelli

AN ACT

AMENDING SECTIONS 13-3413, 13-3920, 13-4301 AND 13-4305, 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 13-3413, Arizona Revised Statutes, is amended to
3 read:

4 13-3413. Forfeiture and disposition of drugs and evidence

5 A. The following items used or intended for use in violation of
6 this chapter are subject to seizure and forfeiture pursuant to chapter 39
7 of this title:

8 1. Property, equipment, containers, chemicals, materials, money,
9 books, records, research products, formulas, microfilm, tapes and data.

10 2. Vapor-releasing substances containing a toxic substance.

11 3. Vehicles to transport or in any manner facilitate the
12 transportation, sale or receipt of, or in which is contained or possessed,
13 any item or drug, except as provided in chapter 39 of this title.

14 B. The following property is subject to seizure and forfeiture
15 pursuant to chapter 39 of this title:

16 1. All proceeds traceable to an offense that is included in this
17 chapter, that is committed for financial gain and that resulted in a
18 criminal conviction **OR FOR WHICH THE CRIMINAL CONVICTION IS WAIVED**
19 **PURSUANT TO SECTION 13-4304, SUBSECTION F OR SECTION 13-4311,**
20 **SUBSECTION B.**

21 2. All proceeds seized in this state and traceable to an offense
22 that:

23 (a) Resulted in a criminal conviction under the laws of the state
24 in which the offense occurred and, if the offense occurred in a state
25 other than this state, would be chargeable or indictable under this
26 chapter if the offense occurred in this state.

27 (b) Is punishable by imprisonment for more than one year.

28 (c) Involves prohibited drugs, marijuana or other prohibited
29 chemicals or substances.

30 (d) Is committed for financial gain.

31 C. Peyote, dangerous drugs, prescription-only drugs, marijuana,
32 narcotic drugs and plants from which such drugs may be derived that are
33 seized in connection with any violation of this chapter or that come into
34 the possession of a law enforcement agency are summarily forfeited.

35 D. When seizures of marijuana are made in excess of ten pounds or
36 seizures of any other substance specified in subsection C of this section
37 are made in excess of one pound in connection with any violation of this
38 chapter the responsible law enforcement agency may retain ten pounds of
39 the marijuana or one pound of the other substance randomly selected from
40 the seized quantity for representation purposes as evidence. The agency
41 may destroy the remainder of the seized marijuana or substance. Before
42 any destruction is carried out, the responsible law enforcement agency
43 shall photograph the material seized with identifying case numbers or
44 other means of identification and prepare a report, identifying the seized
45 material. The responsible law enforcement agency shall notify in writing

1 any person arrested for a violation of this chapter or the attorney for
2 the person at least twenty-four hours in advance that the photography will
3 take place and that the person or the person's attorney may be present at
4 such photographing of the seized material. In addition to the amount of
5 marijuana or other substance retained for representation purposes as
6 evidence, all photographs and records made under this section and properly
7 identified are admissible in any court proceeding for any purpose for
8 which the seized marijuana or substance itself would be
9 admissible. Evidence retained after trial shall be disposed of pursuant
10 to rule 28, Arizona rules of criminal procedure.

11 E. If a seizure is made of chemicals used for the manufacture of a
12 narcotic drug or dangerous drug as defined in section 13-3401 in
13 connection with a violation of this title, the seizing agency may apply to
14 a magistrate or superior court judge in the application for the search
15 warrant or as soon as reasonable after the seizure for an order allowing
16 the proper disposal or destruction of the substances, on a showing to the
17 magistrate or superior court judge by affidavit of both of the following:

18 1. The substances pose a significant safety hazard to life or
19 property because of their explosive, flammable, poisonous or otherwise
20 toxic nature.

21 2. No adequate and safe storage facility is reasonably available to
22 the seizing agency.

23 F. On a proper showing pursuant to subsection E of this section,
24 the magistrate or superior court judge shall order the substances to be
25 properly destroyed if the containers are first photographed. In addition
26 the magistrate or superior court judge may order that the chemicals be
27 sampled and the samples preserved, unless the court finds either:

28 1. Sampling would be unnecessary or unsafe.

29 2. The chemicals are in labeled or factory sealed containers.

30 Sec. 2. Section 13-3920, Arizona Revised Statutes, is amended to
31 read:

32 13-3920. Retention of property

33 A. All property seized on a warrant shall be retained in the
34 custody of the seizing officer or agency that the officer represents,
35 subject to the order of the court in which the warrant was issued, or any
36 other court in which the property is sought to be used as evidence.

37 B. Notwithstanding section 13-3922, all property seized by a law
38 enforcement agency in this state at any time must be returned to the
39 owner, if known, within ten business days after the property's seizure
40 unless any of the following applies:

41 1. The owner has been arrested and charged with a criminal offense
42 subject to forfeiture.

43 2. The property is sought to be used as evidence.

44 3. It is illegal for the owner to possess the property.

1 4. The property was seized for forfeiture, in which case the
2 property may be returned as prescribed by chapter 39 of this title.

3 5. **THE PROPERTY HAS BEEN ABANDONED.**

4 Sec. 3. Section 13-4301, Arizona Revised Statutes, is amended to
5 read:

6 13-4301. Definitions

7 In this chapter, unless the context otherwise requires:

8 1. "Abandoned **THE** property":

9 (a) Means ~~personal property~~ that ~~the owner~~ **A PERSON** has
10 intentionally relinquished the right to ~~and~~ **OR** control over **THE PERSONAL**
11 **PROPERTY**.

12 (b) Does not include property that is obtained as a result of a
13 peace officer requesting, requiring or inducing a person to execute a
14 document that purports to disclaim an interest in or right to the property
15 or that relinquished interest in or rights to the property.

16 2. "Attorney for the state" means an attorney designated by the
17 attorney general, by a county attorney or by a city attorney to
18 investigate, commence and prosecute an action under this chapter.

19 3. "Commercially reasonable" means a sale or disposal that would be
20 commercially reasonable under title 47, chapter 9, article 6.

21 4. "Injured person" means a person who has sustained economic loss,
22 including medical loss, as a result of injury to his person, business or
23 property by the conduct giving rise to the forfeiture of property, and who
24 is not an owner of or an interest holder in the property. Injured person
25 does not include a person who is responsible for the conduct giving rise
26 to forfeiture or a person whose interest would not be exempt from
27 forfeiture if the person were an owner of or interest holder in the
28 property.

29 5. "Interest holder" means a person in whose favor there is a
30 security interest or who is the beneficiary of a perfected encumbrance
31 pertaining to an interest in property.

32 6. "Owner" means a person who is not a secured party as defined in
33 section 47-9102 and who has an interest in property, whether legal or
34 equitable. A person who holds property for the benefit of or as agent or
35 nominee for another is not an owner. A purported interest that is not in
36 compliance with any statute requiring its recordation or reflection in
37 public records in order to perfect the interest against a bona fide
38 purchaser for value shall not be recognized as an interest against this
39 state in an action pursuant to this chapter. An owner with power to
40 convey property binds other owners, and a spouse binds his spouse, by his
41 act or omission.

42 7. "Person known to have an interest" means a person whose interest
43 in property is reflected in the public records in which his interest is
44 required by law to be recorded or reflected in order to perfect his
45 interest. If a person's interest in property is not required by law to be

1 reflected in public records in order to perfect his interest in the
2 property, a person shall be known to have an interest only if his interest
3 can be readily ascertained at the time the forfeiture action commences
4 pursuant to this chapter.

5 8. "Personal property" includes all interests in property, as
6 defined in section 13-105, in whatever form, except real property and
7 fixtures as defined in section 47-9102.

8 9. "Seizing agency" means any department or agency of this state or
9 its political subdivisions that regularly employs peace officers and that
10 employs the peace officer who seizes property for forfeiture, or such
11 other agency as the seizing agency may designate in a particular case by
12 its chief executive officer or the chief executive officer's designee.

13 10. "Seizure for forfeiture" means seizure of property by a peace
14 officer and either:

15 (a) ~~There is an assertion by~~ The seizing agency or ~~by~~ an attorney
16 for the state **ASSERTS** that the property is subject to forfeiture.

17 (b) The property has no evidentiary value.

18 Sec. 4. Section 13-4305, Arizona Revised Statutes, is amended to
19 read:

20 **13-4305. Seizure of property**

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

23 1. On process issued pursuant to the Arizona rules of civil
24 procedure or this title, including a seizure warrant.

25 2. By making a seizure for forfeiture on property seized on process
26 issued pursuant to law, including sections 13-3911, 13-3912, 13-3913,
27 13-3914 and 13-3915.

28 3. By making a seizure for forfeiture without court process if the
29 officer has probable cause to believe that the property is subject to
30 forfeiture and any of the following is true:

31 (a) The seizure for forfeiture is of property seized incident to a
32 lawful arrest for a crime or a lawful search.

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

36 (c) The peace officer has probable cause to believe that the
37 property is subject to forfeiture and that the delay occasioned by the
38 need to obtain a court order would result in the removal or destruction of
39 the property or otherwise frustrate the seizure.

40 B. The court shall determine probable cause for seizure before real
41 property may be seized for forfeiture. The court may make its
42 determination ex parte if the state demonstrates that notice and an
43 opportunity to appear would create a risk of harm to the public safety or
44 welfare, including the risk of physical injury or the likelihood of
45 property damage or financial loss.

1 C. The court shall determine probable cause for seizure before
2 property may be seized for forfeiture as a substitute asset pursuant to
3 section 13-2314, subsection D or E, or pursuant to section 13-4313,
4 subsection A. The court may issue a seizure warrant for such property if
5 it determines that there is probable cause to believe that the property is
6 subject to forfeiture and is not available for seizure for forfeiture for
7 any reason described in section 13-4313, subsection A. The determinations
8 shall be made ex parte unless real property is to be seized and subsection
9 B of this section requires notice and an opportunity to appear.

10 D. In establishing probable cause for seizure, a rebuttable
11 presumption exists that the property of any person is subject to
12 forfeiture if the state establishes all of the following by clear and
13 convincing evidence:

14 1. Conduct giving rise to forfeiture occurred.

15 2. The person acquired the property during the period of the
16 conduct giving rise to forfeiture or within a reasonable time after that
17 period.

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

20 E. The presence or possession of United States currency, debit
21 cards or credit cards, ~~without other indicia of a crime that subjects~~
22 ~~property to forfeiture,~~ ALONE is insufficient probable cause for seizure
23 of United States currency, debit cards or credit cards BUT MAY BE
24 CONSIDERED AS PART OF THE TOTALITY OF THE CIRCUMSTANCES OF INDICIA OF A
25 CRIME IN ESTABLISHING PROBABLE CAUSE FOR SEIZURE UNDER SUBSECTION D OF
26 THIS SECTION.