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DELAWARE STATE SENATE  
149th GENERAL ASSEMBLY

SENATE BILL NO. 60

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO ASSET FORFEITURE PROCESS AND PRIVATE PROPERTY PROTECTION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Add new Chapter to Title 11 of the Delaware Code by making deletions as shown by strikethrough and  
2 insertions as shown by underline as follows:

3           Chapter 23A. Asset Forfeiture Process.

4           § 2301A. Title

5           This Act may be cited as the “Asset Forfeiture Process and Private Property Act”

6           §2302A. Definitions.

7           (a) “Contraband” means goods that are unlawful to import, export or possess.

8           (b) “Conveyance” means a device used for transportation and includes a motor vehicle, trailer, snowmobile,  
9 airplane, and vessel and any equipment attached to it. The term does not include property that is stolen or taken in violation  
10 of the law.

11           (c) “Instrumentality” means property otherwise lawful to possess that is used in an offense. An “instrumentality”  
12 includes a tool, a firearm, a conveyance, a computer, computer software, a telecommunications device, money, and other  
13 means of exchange.

14           (d) A “law subject to forfeiture” is a State law that carries a felony penalty and that explicitly includes forfeiture as  
15 a punishment or sanction for the offense.

16           §2303A. Legislative Intent.

17           (a) This Chapter intends to:

18           (1) deter criminal activity by reducing its economic incentives;

19           (2) increase the pecuniary loss from criminal activity; and

20           (3) protect against the wrongful forfeiture of property.

21           §2304A. Exclusivity.

22           (a) This Chapter sets out the exclusive process governing forfeitures in this State and supersedes any conflicting  
23 provisions in law.

24           §2305A. Criminal Asset Forfeiture.

25           (a) When a person is convicted of violating a law subject to forfeiture, the court, consistent with this Chapter, shall  
26 order the person to forfeit:

27                 (1) proceeds and property the person derived directly from the commission of the crime;

28                 (2) proceeds and property directly traceable to proceeds and property derived directly from the commission of the  
29 crime; and

30                 (3) instrumentalities the person used in the commission of the crime.

31           §2306A. Conviction Required; Standard of Proof.

32           (a) Property used in or derived from the violation of a law is subject to forfeiture only if:

33                 (1) the violation is of a law subject to forfeiture and

34                 (2) the violation is established by proof of a criminal conviction.

35           (b) The State shall establish that seized property is forfeitable under §2305A of this Chapter by clear and  
36 convincing evidence.

37           §2307A. No Civil Asset Forfeiture.

38           There is no civil asset forfeiture.

39           §2308A. Rule of lenity.

40           The court shall resolve any ambiguity in this Chapter relating to the State taking property through asset forfeiture  
41 in favor of the property owner.

42           §2309A. Court-appointed Counsel.

43           If a court determines that a person opposing forfeiture is financially unable to obtain representation by counsel, the  
44 court, at the request of the person, shall insure that the person is represented by an attorney at the State's expense. The  
45 attorney shall submit a statement of reasonable fees and costs to the court in a manner directed by the court.

46           §2310A. Authorization to Use Forfeiture.

47           (a) Except for federal forfeitures consistent with §2340A of this Chapter, forfeiture may occur only pursuant to an  
48 explicit grant of authority in State law. An ordinance enacted by a county, municipality, or other unit of government  
49 authorizing forfeiture is not valid.

50           (b) A prosecutor having jurisdiction over a law subject to forfeiture has authority to pursue forfeiture.

51           §2311A. Property Subject to Forfeiture; Contraband.

52 (a) Property subject to forfeiture is limited to:  
53 (1) land, buildings, containers, conveyances, equipment, materials, products, money, securities, and negotiable  
54 instruments; and

55 (2) ammunition, firearms, and ammunition-and-firearm accessories used in the furtherance or commission of, or  
56 obtained from the proceeds of, a violation of a law subject to forfeiture.

57 (b) No property right exists in contraband, including prescription drugs without a valid prescription. Contraband is  
58 subject to seizure and must be disposed of according to State law.

59 §2312A. Substitution of Assets for Unreachable Property.

60 Upon the State's motion following conviction, the court may order the forfeiture of substitute property owned fully  
61 by the defendant up to the value of unreachable property only if the State proves by a preponderance of the evidence that  
62 the defendant intentionally transferred, sold, or deposited property with a third party to avoid the court's jurisdiction.

63 §2313A. No Additional Remedies.

64 Except as otherwise provided in this Chapter, the State may not seek additional remedies including but not limited  
65 to personal money judgments.

66 §2314A. No Joint-and-Several Liability; Pro Rata Forfeitures.

67 (a) A defendant is not jointly and severally liable for forfeiture awards owed by other defendants.

68 (b) When ownership is unclear, a court may order each defendant to forfeit property on a pro rata basis  
69 proportional to the proceeds that each defendant personally received.

70 §2315A. Designating Property Subject to Forfeiture.

71 (a) Property subject to forfeiture must be identified by the State in an indictment of a grand jury or by information  
72 in the court in any related criminal proceeding in which a person with an interest in the property has been simultaneously  
73 charged with a violation of a law subject to forfeiture.

74 (b) The indictment or information must specify the time and place of the violation, identify the property, and  
75 particularly describe its use in the commission of the crime or derivation from the commission of the crime.

76 (c) At any time prior to trial, the State, with the consent of the court and any defendant with an interest in the  
77 property, may file an ancillary charge alleging that property is subject to forfeiture.

78 §2316A. Seizure with Process.

79 At the request of the State, a court may issue an ex parte preliminary order to seize or secure property for which  
80 forfeiture is sought and to provide for its custody. Application, issuance, execution, and return are subject to State law.

81 §2317A. Seizure without Process.

82 Property subject to forfeiture may be seized without a court order if:  
83 (1) the seizure is incident to a lawful arrest or a lawful search;  
84 (2) the property subject to seizure has been the subject of a prior judgment in favor of the State; or  
85 (3) the State has probable cause to believe that the delay occasioned by the necessity to obtain process would result  
86 in the removal or destruction of the property and that the property is forfeitable under §2305A of this Chapter.

87 §2318A. Receipt for Seized Property.

88 When property is seized, the law enforcement officer shall give an itemized receipt to the person in possession of  
89 the property; or in the absence of any person, leave a receipt in the place where the property was found, if reasonably  
90 possible.

91 §2319A. Bill of Particulars.

92 A motion for a bill of particulars may be made before arraignment, within 90 days after arraignment, or at any  
93 later time that the court permits. A bill of particulars may be amended at any time subject to conditions that justice requires.

94 §2320A. Title.

95 At the time of seizure or entry of a restraining order, the State acquires provisional title to the seized property.  
96 Provisional title authorizes the State to hold and protect the property.

97 (b) Title to the property vests with the State when the trier of fact renders a final forfeiture verdict and relates back  
98 to the time when the State acquired provisional title. However, this title is subject to claims by third parties adjudicated  
99 under this Chapter.

100 §2321A. Storage.

101 When property is seized, the State shall use reasonable diligence to secure the property and prevent waste.

102 §2322A. Records.

103 (a) A State entity having custody of seized property that is subject to forfeiture shall maintain the following  
104 records:

105 (1) the exact kinds, quantities, and forms of the property;

106 (2) the date and from whom it received the property;

107 (3) the violation of law that subjected the property to seizure;

108 (4) the liens against the seized property;

109 (5) the make, model, and serial number of each seized firearm;

110 (6) to whom and when the notice of forfeiture was given;

111 (7) to whom it delivered the property; and

112           (8) the date and manner of destruction or disposition of the property.

113           (b) The records required under subsection (a) of this section are subject to the State's Freedom Of Information Act.

114           §2323A. Bond by Owner for Possession.

115           (a) If the owner of property that has been seized seeks its possession before the criminal trial, the owner may post

116 bond or give substitute property in an amount equal to the fair market value of the seized property at the time the bond

117 amount is determined.

118           (b) On the posting of bond or the giving of substitute property, the State shall return the seized property to the

119 owner within a reasonable period of time not to exceed 3 business days. The forfeiture action may then proceed against the

120 bond or substitute property as if it were the seized property.

121           (c) This section does not apply to property reasonably held for investigatory purposes.

122           §2324A. Petition for Remission or Mitigation.

123           Prior to the entry of a court's order disposing of the forfeiture action, any person who has an interest in seized

124 property may file with the State Attorney General a petition for remission or mitigation of the forfeiture. The Attorney

125 General shall remit or mitigate the forfeiture upon terms and conditions the Attorney General deems reasonable if the

126 Attorney General finds that:

127           (1) the petitioner did not intend to violate the law or

128           (2) extenuating circumstances justify the remission or mitigation of the forfeiture.

129           §2325A. Pretrial Replevin Hearing

130           (a) Following the seizure of property under this Chapter, a defendant or third-party has a right to a pretrial hearing

131 to determine the validity of the seizure.

132           (b) The claimant may claim at any time prior to 60 days before trial of the related criminal violation the right to

133 possession of property by motion to the court to issue a writ of replevin.

134           (c) The claimant shall file a motion establishing the validity of the alleged right, title, or interest in the property.

135           (d) The court shall hear the motion no more than 30 days after the motion is filed.

136           (e) The State shall file an answer showing probable cause for the seizure, or cross-motions at least 10 days before

137 the hearing.

138           (f) The court shall grant the motion if it finds that (1) it is likely the final judgment will be that the State must

139 return the property to the claimant or (2) the property is the only reasonable means for a defendant to pay for legal

140 representation in the forfeiture or criminal proceeding.

141 (g) In lieu of ordering the issuance of the writ, the court may order the State to give security for satisfaction of any  
142 judgment, including damages, that may be rendered in the action, or order other relief as may be just.

143 §2326A. Discovery.

144 Discovery is subject to the rules of criminal procedure.

145 §2327A. Right to Trial by Jury.

146 Any party to a forfeiture action has a right to trial by jury.

147 §2328A. Trial Proceedings.

148 (a) A trial related to the forfeiture of property must be held in a single proceeding together with the trial of the  
149 related alleged crime unless the defendant moves to bifurcate the trial.

150 (b) The court, upon motion of a defendant, shall separate the trial of the criminal matter against the defendant from  
151 the matter related to the forfeiture of property.

152 (c) The court, upon motion of a defendant, shall allow a defendant to waive the right to trial by jury related to the  
153 forfeiture of property while preserving the right to trial by jury of any crime alleged.

154 (d) If the court bifurcates the jury trial, the court shall first instruct and submit to the jury the issue of the guilt or  
155 innocence of the defendant to be determined by proof beyond a reasonable doubt and shall restrict argument of counsel to  
156 those issues.

157 (e) If the court bifurcates the jury trial, each party may introduce evidence in the forfeiture phase that was not  
158 introduced in the criminal phase.

159 (f) If the jury finds a defendant guilty of the related criminal offense and the defendant did not waive the right to  
160 trial by jury related to the forfeiture, the court shall instruct and submit to the jury the issue of the forfeiture. The court may  
161 use interrogatories to address the forfeiture issue.

162 §2329A. Proportionality.

163 (a) Following determination by the trier of fact, the owner may petition the court to determine whether the  
164 forfeiture is unconstitutionally excessive under the State or U.S. Constitution.

165 (b) The owner has the burden of establishing that the forfeiture is grossly disproportional to the seriousness of the  
166 offense by a preponderance of the evidence at a hearing conducted by the court without a jury.

167 (c) In determining whether the forfeiture of an instrumentality is constitutionally excessive, the court shall  
168 consider all relevant factors, including, but not limited to:

169 (1) the seriousness of the offense and its impact on the community, including the duration of the activity and the  
170 harm caused by the person whose property is subject to forfeiture;

171 (2) the extent to which the person whose property is subject to forfeiture participated in the offense;  
172 (3) the extent to which the property was used in committing the offense;  
173 (4) the sentence imposed for committing the crime subject to forfeiture; and  
174 (5) whether the offense was completed or attempted.  
175 (d) In determining the value of the instrumentality subject to forfeiture, the court shall consider relevant factors,  
176 including, but not limited to:  
177 (1) the fair market value of the property;  
178 (2) the value of the property to the person whose property is subject to forfeiture including hardship to the owner  
179 if the forfeiture is realized; and  
180 (3) the hardship from the loss of a motor vehicle or other property to family members or others if the property is  
181 forfeited.  
182 (e) The court may not consider the value of the instrumentality to the State in determining whether the forfeiture of  
183 an instrumentality is constitutionally excessive.  
184 §2330A. Secured Interest.  
185 (a) A bona fide security interest is not subject to forfeiture unless the person claiming a security interest had actual  
186 knowledge that the property was subject to forfeiture at the time of the property was seized or restrained under this Chapter.  
187 (b) A person claiming a security interest bears the burden of establishing that the validity of the interest by a  
188 preponderance of the evidence.  
189 §2331A. Ancillary Hearing of Third-Party Interests.  
190 (a) A person not charged in the indictment or information but who has an interest in property subject to forfeiture  
191 may not intervene after the criminal trial has begun.  
192 (b) Following the entry of a verdict of forfeiture of property pursuant to this Chapter or the entry of a guilty plea in  
193 court on the record, the State shall exercise reasonable diligence to identify persons with a potential interest in the property  
194 and make reasonable efforts to give notice to potential claimants. The notice must be made by publication in a reasonable  
195 geographic area. The State shall also provide written notice of its intent to dispose of the property to any person known or  
196 alleged to have an interest in the property exempted from forfeiture under this Chapter, including any person potentially  
197 making claims for  
198 (1) court-ordered child support,  
199 (2) employment-related compensation or  
200 (3) payment of unsecured debts.

201           (c) A person other than the defendant asserting a legal interest in the property, within 60 days of the date of the  
202 notice, may petition the court for a hearing to adjudicate the validity of the alleged interest in the property. The request for  
203 the hearing must be signed by the petitioner under penalty of perjury and state the nature and extent of the petitioner's right,  
204 title, or interest in the property; the time and circumstances of the petitioner's acquisition of the right, title, or interest; and  
205 any additional facts supporting the petitioner's claim and the relief sought.

206           (d) Upon the filing of a petition, the court shall schedule the hearing as soon as practicable but in no event later  
207 than 6 months after the sentencing of any defendant convicted upon the same indictment. The court shall issue or amend a  
208 final order of forfeiture in accordance with its determination if, after the hearing, the court determines that:

209           (1) the petitioner has a legal right, title, or interest in the property, and such right, title or interest renders the order  
210 of forfeiture invalid in whole or in part because the right, title or interest was vested in the petitioner rather the defendant or  
211 was superior to any right, title or interest of the defendant at the time of the property was seized or restrained under this  
212 Chapter; or

213           (2) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the  
214 time of purchase without cause to believe that the property was subject to forfeiture under this Chapter. The State has the  
215 burden of proof with respect to the issue of whether the petitioner was without cause to believe that the property was  
216 subject to forfeiture at the time of purchase or other acquisition of value.

217           (e) A qualified indigent who wishes to contest the forfeiture of property and appears to have an exempt interest has  
218 a right to court-appointed counsel as provided in §2309 of this Chapter. In addition, the court shall waive the person's court  
219 fees.

220           §2332A. Innocent Partial or Joint Owner.

221           (a) The property of an innocent partial or joint owner may not be forfeited under any forfeiture statute. The  
222 process for determining whether a person is an innocent partial or joint owner is set out in this section.

223           (b) A person who has any form of partial or joint interest, including joint tenancy, tenancy in common, or tenancy  
224 by the entirety, in property subject to forfeiture existing at the time the illegal conduct giving rise to forfeiture occurred and  
225 who claims to be an innocent partial or joint owner shall make a prima facie case that the person has a legal right, title, or  
226 interest in the property seized or restrained under this Chapter.

227           (c) If subsection (b) of this section is satisfied and the State seeks to proceed with the forfeiture against the  
228 person's ownership interest, the State shall prove by a preponderance of the evidence that the person had actual knowledge  
229 of the underlying crime giving rise to the forfeiture or was willfully blind to its commission.



230 (d) If subsection (c) of this section is satisfied and the person seeks to establish the person's innocent owner status,  
231 the person shall show by a preponderance of the evidence that the person did all that reasonably could be expected under  
232 the circumstances to prohibit, abate, or terminate the illegal use of the property. The person may show that the person did  
233 all that reasonably could be expected by demonstrating, among other things, that the person, to the extent permitted by law:

234 (1) gave timely notice to an appropriate law enforcement agency of information that led the person to know the  
235 conduct giving rise to a forfeiture would occur or had occurred; or

236 (2) in a timely fashion revoked or made a good-faith attempt to revoke permission for those engaging in the illegal  
237 conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or  
238 prevent the illegal use of the property.

239 (e) A person is not required under subsection (d) of this section to take steps that the person reasonably believes  
240 would be likely to subject the person to physical danger.

241 (f) If subsection (d) of this section is satisfied, the court shall find that the claimant was not a party to the crime  
242 and is an innocent partial or joint owner.

243 (g) A person who acquired an ownership interest in property after the commission of a crime giving rise to the  
244 forfeiture has occurred and who claims to be an innocent partial or joint owner, shall make a prima facie case that the  
245 person legal right, title, or interest in the property seized or restrained under this Chapter.

246 (h) If subsection (f) of this section is satisfied and the State seeks to proceed with the forfeiture against the  
247 person's ownership interest, the State shall prove by a preponderance of the evidence that at the time the person acquired  
248 the property interest the person had actual knowledge that the property was subject to forfeiture or was willfully blind to the  
249 commission of the crime that subjected the property to forfeiture.

250 (i) If the State fails to meet its burden in subsection (h) of this section the court shall find that the person was not a  
251 party to the crime and is an innocent partial or joint owner.

252 (j) An otherwise valid claim under subsection (g) of this section may not be denied on the grounds that the person  
253 gave nothing of value in exchange for the property if:

254 (1) the property is the person's primary residence;

255 (2) depriving the person of the property would deprive the person of the means to maintain reasonable shelter in  
256 the community for the person and all dependents residing with the person;

257 (3) the property is not, and is not traceable to, the proceeds of any criminal offense; and

258 (4) the person acquired interest in the property through marriage, divorce, or legal separation, or the person was  
259 the spouse or legal dependent of someone whose death resulted in the transfer of the property to the person through

260 inheritance or probate, except that the court shall limit the value of any real property interest for which innocent ownership  
261 is recognized under this subsection to the value necessary to maintain reasonable shelter in the community for the person  
262 and all dependents residing with the person.

263 (k) If the innocent joint or partial owner's claim is established under this section, the State shall relinquish all  
264 claims of title to the property that may have vested with it.

265 (l) If the court determines that an innocent joint or partial owner has any form of partial or joint interest in a  
266 conveyance subject to forfeiture related to operating a conveyance while impaired, the court may order that the innocent  
267 joint or partial owner participate in the ignition interlock device program under State law as a condition of ordering the  
268 device be returned to the innocent owner.

269 (m) If the court determines that an innocent joint or partial owner has any form of partial or joint interest in  
270 property, other than property described in subsection (l) of this section, the court shall enter an appropriate order reflecting  
271 the innocent owner's preference for:

272 (1) severing the property;

273 (2) transferring the property to the State with a provision that the State compensate the innocent owner to the  
274 extent of the owner's ownership interest once a final order of forfeiture has been entered and the property has been reduced  
275 to liquid assets; or

276 (3) permitting the innocent owner to retain the property subject to a lien in favor of the State to the extent of the  
277 forfeitable interest in the property.

278 §2333A. Sale of Property.

279 (a) If a trier of fact finds that property is to be forfeited, the court shall order the State to:

280 (1) return stolen property to its owner;

281 (2) sell all other firearms, ammunition and firearm accessories to licensed firearms dealers in a commercially  
282 reasonable manner; and

283 (3) sell other property in a commercially reasonable manner.

284 §2334A. Prohibition on Retaining Property; Sale Restrictions.

285 The law enforcement agency that seized property forfeited under this Chapter may not retain it for its own use or  
286 sell it directly or indirectly to any employee of the agency, to a person related to an employee by blood or marriage, or to  
287 another law enforcement agency.

288 §2335A. Disposition of Proceeds.

289 (a) Proceeds seized and proceeds from the sale of forfeited assets may be distributed only following a court order.  
290 The court shall order the funds be used to pay, in order of priority, for the following purposes:  
291 (1) storage and sale expenses;  
292 (2) satisfaction of valid liens against the property;  
293 (3) restitution ordered to the victim of the criminal offense;  
294 (4) reimbursement of investigation costs excluding salaries that the law enforcement agency incurred in the  
295 seizure of the assets subject to the forfeiture action;  
296 (5) court-ordered child support obligations;  
297 (6) claims for compensation by the defendant's employees; and  
298 (7) claims for compensation by defendant's unsecured creditors.  
299 (b) All remaining funds must be deposited into the State's treasury and credited to the general fund.  
300 §2336A. Reporting.  
301 (a) For each forfeiture action occurring in the State regardless of the authority for it, the participating law  
302 enforcement agency and prosecutor shall provide a written record of the forfeiture incident to the State Auditor of  
303 Accounts.  
304 (b) The record must include the amount forfeited, the underlying crime or conduct, its date, and whether the  
305 property had a lien against it. The record must also list the number of firearms forfeited and the make, model, and serial  
306 number of each firearm forfeited. The record must indicate how the property was disposed.  
307 (c) The law enforcement agency and the prosecutor shall report to the State Auditor of Accounts all instances in  
308 which property seized for forfeiture is returned to its owner either because forfeiture is not pursued or for any other reason.  
309 (d) For forfeitures resulting from the activities of multi-jurisdictional law enforcement entities, each entity on its  
310 own behalf shall report the information required in this section.  
311 (e) The State Auditor of Accounts may require information not specified in this section to be reported as well.  
312 (f) Reports must be made on a monthly basis in a manner prescribed by the State Auditor of Accounts.  
313 (g) The State Auditor of Accounts shall report annually to the legislature and the public on the nature and extent of  
314 forfeitures.  
315 (h) The State Auditor of Accounts shall include in its report required under subsection (g) of this section  
316 recommended changes to forfeiture law to better ensure that forfeiture proceedings are handled in a manner that is fair to  
317 innocent property owners, secured interest holders, citizens, and taxpayers.

318 (i) The State Auditor of Accounts shall include in its report required under subsection (g) of this section  
319 information on law enforcement agencies and prosecutorial offices not in compliance with this section and shall order the  
320 State to withhold payment of any funds to those agencies and offices until compliance is achieved.

321 §2337A. Disposing of Property of a Person Deported.

322 (a) This section covers procedures for disposing of property when the owner is deported from the United States to  
323 a foreign country.

324 (b) If the owner of property is deported after

325 (1) being convicted of a violation of a state law that is subject to forfeiture and

326 (2) the property is found to be an instrumentality or proceeds of the violation of that state law, the court shall  
327 enter an order disposing of the property in accordance with sections §§ 2333A, 2334A, and 2335A of this Chapter.

328 (c) If the owner of property is deported but

329 (1) the owner is not convicted of violating a state law that is subject to forfeiture or

330 (2) the property is not found to be an instrumentality or proceeds from the violation of a state law subject to  
331 forfeiture for which the owner of the property is convicted, the property shall be returned to the next of kin of the person  
332 deported.

333 (d) If the next of kin is not known or refuses the property, the State shall exercise reasonable diligence to identify  
334 persons with a potential interest in the property and make reasonable efforts to give notice to potential claimants. The State  
335 shall provide written notice to persons known or alleged to have an interest in the property including other family members  
336 and any person potentially making claims for court-ordered child support, employment-related compensation, or payment  
337 of debts. The notice must also be made by publication in a reasonable geographic area.

338 (e) If no claim is made within 60 days of the notice's publication date, the court shall enter an order disposing of  
339 the property in accordance with §§ 2333A, 2334A, and 2335A of this Chapter.

340 (f) A person wanting to assert a legal claim to the property shall, within 60 days of the date of the applicable  
341 notice in subsection (d) of this section, petition the court for a hearing to adjudicate the validity of the alleged interest in the  
342 property. The petition for the hearing must be signed by the claimant under penalty of perjury. It must state the nature and  
343 extent of the claimant's right, title, or interest in the property; the time and circumstances of the claimant's acquisition of  
344 the right, title, or interest; and any additional facts supporting the claim and the relief sought.

345 (g) The court shall schedule a hearing as soon as practicable to determine if the claimant has a legal right, title or  
346 interest in the property or is a bona fide purchaser for value of the legal right, title or interest in the property.

347 §2338A. Return of Property, Damages, and Costs.

348 (a) The State shall return property to the owner within a reasonable period of time not to exceed 3 business days  
349 after a court finds that:

350 (1) the owner had a bona fide security interest;

351 (2) the owner was an innocent owner;

352 (3) charges against the owner were dismissed; or

353 (4) the owner was found not guilty of the criminal charge that is the basis for the forfeiture action.

354 (b) If property returned under subsection (a) of this section has been damaged, the owner may make a claim in  
355 court for the damages to the seized property against the agency that seized the property.

356 (c) The State is responsible for any storage fees and related costs applicable to property returned under subsection  
357 (a) of this section.

358 §2339A. Penalty for Violations.

359 (a) Any person acting under color of law, official title, or position who takes any action intending to conceal,  
360 transfer, withhold, retain, divert, or otherwise prevent any proceeds, conveyances, real property, or any things of value  
361 forfeited under the law of the State or the United States from being applied, deposited, used, or returned to the owner in  
362 accordance with this Chapter is subject to a civil penalty in an amount of three times the value of the forfeited property  
363 concealed, transferred, withheld, retained, or diverted.

364 (b) Any taxpayer to the State has standing to challenge in court any action contrary to this Chapter.

365 §2340A. Interaction with Federal Government.

366 (a) No unit of State government may transfer a criminal investigation or proceeding to the federal government to  
367 circumvent State forfeiture law.

368 (b) For a State government unit to transfer a criminal investigation or proceeding that includes forfeiture to the  
369 federal government, a State court shall affirmatively find that:

370 (1) the suspected criminal activity giving rise to the forfeiture is interstate in nature and sufficiently complex to  
371 justify the transfer; or

372 (2) the seized property is forfeitable only as a violation of federal law.

373 (c) All funds paid by the federal government must be deposited into the State's treasury. The State shall credit:

374 (1) the State government unit involved with the federal government sufficiently to reimburse it for investigation  
375 costs, excluding salaries, that the State government unit incurred related to the seizure of the assets subject to the forfeiture  
376 action and

377 (2) the remainder to the general fund.

378 (d) No unit of State government may accept from the federal government any instrumentality or payment of  
379 proceeds not permitted by subsection (c) of this section.

380 (e) The State government unit shall report all transfers to the federal government of an investigation or criminal  
381 proceeding that involves forfeiture per the reporting requirements in §2336 of this Chapter.

382 (f) Any taxpayer has standing to challenge in court the receipt of any proceeds or instrumentality by a State  
383 government unit from the federal government contrary to subsections (c) and (d) of this section.

384 §2341A. Attorneys' Fees.

385 (a) In any forfeiture proceeding under this Chapter in which the claimant prevails, the State is liable for:

386 (1) reasonable attorney fees and other litigation costs reasonably incurred by the claimant;

387 (2) postjudgment interest; and

388 (3) in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale:

389 a. interest actually paid to the State from the date of seizure of the property that resulted from the investment of  
390 the property in an interest-bearing account or instrument; and

391 b. an imputed amount of interest that the currency, instruments, or proceeds would have earned at the rate  
392 applicable to the 30-day U.S. Treasury Bill, for any period during which no interest was paid (not including any period  
393 when the property reasonably was in use as evidence in an official proceeding or in conducting scientific tests for the  
394 purpose of collecting evidence), commencing 15 days after the property was seized by a law enforcement agency.

395 Section 1. Effective Date.

396 This Act shall take effect 90 days after its enactment into law.

#### SYNOPSIS

Civil forfeiture laws represent one of the most serious assaults on private property rights in the nation today. Under civil forfeiture, police and prosecutors can seize your car or other property, sell it and use the proceeds to fund agency budgets—often without so much as charging you with a crime. This Act protects individual liberty and property rights by standardizing forfeitures across all crimes, simplifying procedures, and addressing counterproductive incentives in the law that distort policing priorities. Importantly, this Act does not change the authority of law enforcement to seize property suspected of being associated with crime or limit in any way prosecutors' ability to charge and prosecute suspected criminals. Moreover, it ensures that those individuals proven guilty of a crime do not keep the fruits of their crime. In doing so, it strikes the right balance between the individual property rights and public safety.

Author: Senator Bonini