

ASSEMBLY, No. 4970

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JANUARY 28, 2019

Sponsored by:

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District 31 (Hudson)

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District 35 (Bergen and Passaic)

Assemblywoman NANCY J. PINKIN

District 18 (Middlesex)

SYNOPSIS

Revises procedures for certain asset forfeiture proceedings and requires criminal conviction for forfeiture of certain seized property.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/8/2019)

1 AN ACT concerning asset forfeiture proceedings and amending
2 N.J.S.2C:64-3, N.J.S.2C:64-4, and N.J.S.2C:64-5.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. N.J.S.2C:64-3 is amended to read as follows:

8 2C:64-3. Forfeiture procedures. a. Whenever any property
9 other than prima facie contraband is subject to forfeiture under this
10 chapter, **[such]** the forfeiture may be enforced by a civil action,
11 instituted within 90 days of the seizure and commenced by the State
12 and against the property sought to be forfeited.

13 b. The complaint shall be verified on oath or affirmation. It
14 shall describe with reasonable particularity the property that is the
15 subject matter of the action and the value of the property, and shall
16 contain allegations setting forth the reason or reasons the article
17 sought to be or which has been seized is contraband.

18 c. Notice of the action shall be given to any person known to
19 have a property interest in the article. In addition, the notice
20 requirements of the Rules of Court for an in rem action shall be
21 followed.

22 d. The claimant of the property that is the subject of an action
23 under this chapter shall file and serve **[his]** the claim in the form of
24 an answer in accordance with the Rules of Court. The answer shall
25 be verified on oath or affirmation, and shall state the interest in the
26 property by virtue of which the claimant demands its restitution and
27 the right to defend the action. If the claim is made in behalf of the
28 person entitled to possession by an agent, bailee, or attorney, it shall
29 state that **[he]** the claimant is duly authorized to make the claim.

30 e. If no answer is filed and served within the applicable time,
31 the property seized shall be disposed of pursuant to N.J.S.2C:64-6.

32 f. If an answer is filed, the Superior **[or county district]** court
33 shall set the matter down for a summary hearing as soon as
34 practicable. Upon application of the State or claimant, if **[he be]**
35 the claimant is a defendant in a criminal proceeding arising out of
36 the seizure, the Superior **[or county district]** court may stay
37 proceedings in the forfeiture action until the criminal proceedings
38 have been concluded by an entry of final judgment.

39 g. Any person with a property interest in the seized property,
40 other than a defendant who is being prosecuted in connection with
41 the seizure of property may secure its release pending the forfeiture
42 action unless the article is dangerous to the public health, safety,
43 and welfare or the State can demonstrate that the property will
44 probably be lost or destroyed if released or employed in subsequent
45 criminal activity. Any person with **[such]** a property interest other

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 than a defendant who is being prosecuted, prior to the release of
2 **【said】** that property shall post a bond with the court in the amount
3 of the market value of the seized item.

4 h. The prosecuting agency with approval of the entity funding
5 **【such】** the agency, or any other entity, with the approval of the
6 prosecuting agency, where the other entity's law enforcement
7 agency participated in the surveillance, investigation or arrest which
8 is the subject of the forfeiture action, may apply to the Superior
9 Court for an order permitting use of seized property, pending the
10 disposition of the forfeiture action provided, however, that **【such】**
11 the property shall be used solely for law enforcement purposes.
12 Approval shall be liberally granted but shall be conditioned upon
13 the filing of a bond in an amount equal to the market value of the
14 item seized or a written guarantee of payment for property which
15 may be subject to return, replacement or compensation as to
16 reasonable value in the event that the forfeiture is refused or only
17 partial extinguishment of property rights is ordered by the court.

18 i. If the property is of such nature that substantial difficulty
19 may result in preserving its value during the pendency of the
20 forfeiture action, the Superior **【or county district】** court may
21 appoint a trustee to protect the interests of all parties involved in the
22 action.

23 j. **【Evidence】** Except in circumstances in which a conviction is
24 required for the forfeiture of seized property pursuant to this
25 chapter, evidence of a conviction of a criminal offense in which
26 seized property was either used or provided an integral part of the
27 State's proofs in the prosecution shall be considered in the forfeiture
28 proceeding as creating a rebuttable presumption that the property
29 was utilized in furtherance of an unlawful activity.

30 (cf: P.L.1989, c.279, s.1)

31

32 2. N.J.S.2C:64-4 is amended to read as follows:

33 a. Nothing in this chapter shall impair the right of the State to
34 retain evidence pending a criminal prosecution.

35 b. The fact that a prosecution involving seized property
36 terminates without a conviction **【does not】** shall preclude forfeiture
37 proceedings against **【the】** property **【 pursuant to this chapter】** with
38 a value of:

39 (1) \$1,000 or less in the case of property in the form of cash,
40 negotiable instruments, or other cash equivalents; or

41 (2) \$25,000 or less in the case of property other than cash,
42 negotiable instruments, or other cash equivalent.

43 (cf: P.L.1981, c.290, s.49)

44

45 3. N.J.S.2C:64-5 is amended to read as follows:

46 Seized Property; Rights of Owners and Others Holding Interests.

47 a. No forfeiture under this chapter shall affect the rights of any
48 lessor in the ordinary course of business or any person holding a

1 perfected security interest in property subject to seizure unless [it
2 shall appear that such] , in the case of property in the form of cash,
3 negotiable instruments, or other cash equivalents with a value of
4 greater than \$1,000, or in the case of property other than cash,
5 negotiable instruments, or other cash equivalent with a value of
6 greater than \$25,000, the State establishes, by clear and convincing
7 evidence, that the person had knowledge of or consented to any act
8 or omission upon which the right of forfeiture is based. [Such]
9 These rights are only to the extent of interest in the seized property
10 and at the option of the entity funding the prosecuting agency
11 involved may be extinguished by appropriate payment.

12 b. (1) Property other than prima facie contraband seized under
13 this chapter shall not be subject to forfeiture **[if]** unless a
14 prosecution involving property in the form of cash, negotiable
15 instruments, or other cash equivalents with a value of \$1,000 or
16 less, or property, other than cash, negotiable instruments, or other
17 cash equivalent valued at \$25,000 or less terminates with a
18 conviction; or

19 (2) Property other than prima facie contraband seized under this
20 chapter shall not be subject to forfeiture unless, in the case of seized
21 property in the form of cash, negotiable instruments, or other cash
22 equivalents with a value of greater than \$1,000, or in the case of
23 property other than cash, negotiable instruments, or other cash
24 equivalent valued at greater than \$25,000, the **[owner of the**
25 **property]** State establishes by **[a preponderance of the]** clear and
26 convincing evidence that the owner of the property was **[not]**
27 involved in or aware of the unlawful activity and that the owner had
28 done all that could reasonably be expected to prevent the proscribed
29 use of the property by an agent. A person who uses or possesses
30 property with the consent or knowledge of the owner is deemed to
31 be the agent of the owner for purposes of this chapter.

32 c. Property seized under this chapter shall not be subject to
33 forfeiture if the property is seized while entrusted to a person by the
34 owner or the agent of the owner when the property has been
35 entrusted to the person for repairs, restoration or other services to
36 be performed on the property, and that person, without the owner's
37 knowledge or consent, uses the property for unlawful purposes.

38 (cf: P.L. 1986, c.79, s.1)

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40 4. This act shall take effect immediately.

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STATEMENT

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45 This bill revises procedures related to certain asset forfeiture
46 proceedings and requires a criminal conviction for forfeiture of
47 certain seized property.

1 Under current law, a forfeiture action may be enforced by a civil
2 action for seized property, other than prima facie contraband.
3 Prima facie contraband refers to controlled dangerous substances,
4 firearms which are unlawfully possessed, carried, acquired or used,
5 illegally possessed gambling devices, untaxed or otherwise
6 contraband cigarettes or tobacco products, untaxed special fuel,
7 unlawful sound recordings and audiovisual works and items bearing
8 a counterfeit mark. This bill requires the complaint initiating the
9 action to include the value of the seized property.

10 Under current law, a prosecution involving seized property that
11 terminates without a conviction does not preclude forfeiture
12 proceedings against the property. Under the bill, seized property,
13 other than prima facie contraband, is not to be subject to forfeiture
14 unless a prosecution involving: (1) property in the form of cash,
15 negotiable instruments, or other cash equivalents with a value of
16 \$1,000 or less; or (2) property, other than cash, negotiable
17 instruments, or cash equivalent, valued at \$25,000 or less terminates
18 with a conviction. A criminal conviction is not required for other
19 seized property. However, consistent with current law, a conviction
20 creates a rebuttable presumption that the property was used in
21 furtherance of unlawful activity.

22 The bill further provides that seized property other than prima
23 facie contraband is not to be subject to forfeiture unless: (1) in the
24 case of seized property in the form of cash, negotiable instruments,
25 or other cash equivalents with a value of greater than \$1,000; or (2)
26 in the case of property other than cash, negotiable instruments, or
27 other cash equivalent, valued at greater than \$25,000, the State
28 establishes, by clear and convincing evidence, that the owner of the
29 property was involved in or aware of the unlawful activity and the
30 owner did all that could reasonably be expected to prevent the
31 unlawful use of the property. Current law places the burden on the
32 owner of the property rather than the State to establish, by a
33 preponderance of the evidence, that the owner was not involved in
34 or aware of the unlawful activity.