

[Third Reprint]

**ASSEMBLY, No. 4970**

**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

INTRODUCED JANUARY 28, 2019

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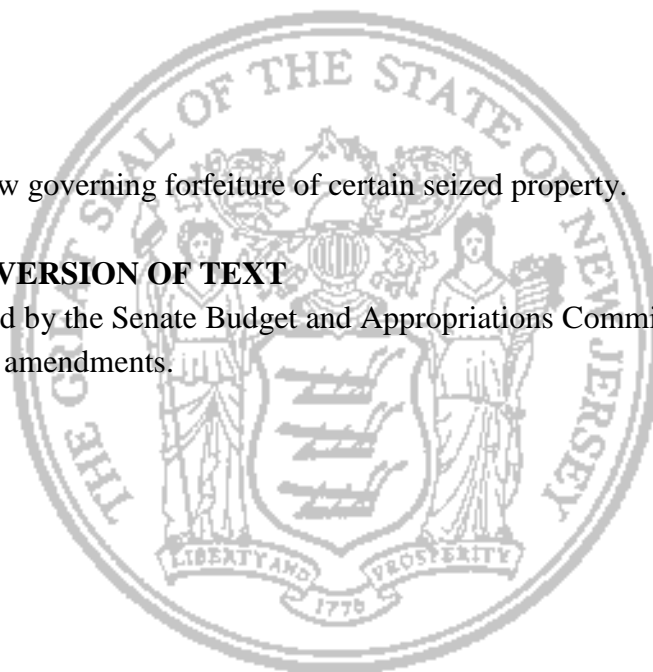
**Assemblywoman Lopez, Assemblyman Tully and Assemblywoman Swain**

**SYNOPSIS**

Revises law governing forfeiture of certain seized property.

**CURRENT VERSION OF TEXT**

As reported by the Senate Budget and Appropriations Committee on January 9, 2020, with amendments.



**(Sponsorship Updated As Of: 1/14/2020)**

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 <sup>2</sup>[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

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly ALP committee amendments adopted February 7, 2019.

<sup>2</sup>Senate SLP committee amendments adopted December 9, 2019.

<sup>3</sup>Senate SBA committee amendments adopted January 9, 2020.

1 criminal activity. Any person with **[such]** a property interest other  
2 than a defendant who is being prosecuted, prior to the release of  
3 **[said]** that property shall post a bond with the court in the amount  
4 of the market value of the seized item.

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

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

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

31 (cf: P.L.1989, c.279, s.1)]<sup>2</sup>

32

33 <sup>1</sup>1. N.J.S.2C:64-3 is amended to read as follows:

34 2C:64-3. Forfeiture procedures. a. Whenever any property  
35 other than prima facie contraband is subject to forfeiture under this  
36 chapter, **[such]** the forfeiture may be enforced by a civil action,  
37 instituted within 90 days of the seizure and commenced by the State  
38 and against the property sought to be forfeited.

39 b. The complaint shall be verified on oath or affirmation. It  
40 shall describe with reasonable particularity the property that is the  
41 subject matter of the action and shall contain allegations setting  
42 forth the reason or reasons the article sought to be or which has  
43 been seized is contraband.

44 c. Notice of the action shall be given to any person known to  
45 have a property interest in the article. In addition, the notice  
46 requirements of the Rules of Court for an in rem action shall be  
47 followed.

1 d. The claimant of the property that is the subject of an action  
2 under this chapter shall file and serve **his** the claim in the form of  
3 an answer in accordance with the Rules of Court. The answer shall  
4 be verified on oath or affirmation, and shall state the interest in the  
5 property by virtue of which the claimant demands its restitution and  
6 the right to defend the action. If the claim is made in behalf of the  
7 person entitled to possession by an agent, bailee, or attorney, it shall  
8 state that **he** the claimant is duly authorized to make the claim.

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

11 f. If an answer is filed, the Superior **or county district** court  
12 shall set the matter down for a summary hearing as soon as  
13 practicable. **Upon** <sup>3</sup>Prior to the filing of an answer, upon **Upon**<sup>3</sup>  
14 application of the State or claimant, if **he be** the claimant is a  
15 defendant in a criminal proceeding arising out of the seizure, the  
16 Superior **or county district** court may stay proceedings in the  
17 forfeiture action until the criminal proceedings have been concluded  
18 by an entry of final judgment.

19 g. Any person with a property interest in the seized property,  
20 other than a defendant who is being prosecuted in connection with  
21 the seizure of property may secure its release pending the forfeiture  
22 action unless the article is dangerous to the public health, safety,  
23 and welfare or the State can demonstrate that the property will  
24 probably be lost or destroyed if released or employed in subsequent  
25 criminal activity. Any person with **such** a property interest other  
26 than a defendant who is being prosecuted, prior to the release of  
27 **said** that property shall post a bond with the court in the amount  
28 of the market value of the seized item.

29 h. The prosecuting agency with approval of the entity funding  
30 **such** the agency, or any other entity, with the approval of the  
31 prosecuting agency, where the other entity's law enforcement  
32 agency participated in the surveillance, investigation or arrest which  
33 is the subject of the forfeiture action, may apply to the Superior  
34 Court for an order permitting use of seized property, pending the  
35 disposition of the forfeiture action provided, however, that **such**  
36 the property shall be used solely for law enforcement purposes.  
37 Approval shall be liberally granted but shall be conditioned upon  
38 the filing of a bond in an amount equal to the market value of the  
39 item seized or a written guarantee of payment for property which  
40 may be subject to return, replacement or compensation as to  
41 reasonable value in the event that the forfeiture is refused or only  
42 partial extinguishment of property rights is ordered by the court.

43 i. If the property is of **such** the nature that substantial  
44 difficulty may result in preserving its value during the pendency of  
45 the forfeiture action, the Superior **or county district** court may  
46 appoint a trustee to protect the interests of all parties involved in the  
47 action.

1 j. Evidence of a conviction of a criminal offense in which  
2 seized property was either used or provided an integral part of the  
3 State's proofs in the prosecution shall be considered in the forfeiture  
4 proceeding as creating a rebuttable presumption that the property  
5 was utilized in furtherance of an unlawful activity.

6 k. Seized property other than prima facie contraband shall not  
7 be subject to forfeiture pursuant to the provisions of this chapter if  
8 there are no criminal charges arising out of or related to the  
9 property seizure or a criminal prosecution arising out of or related  
10 to the property seizure terminates with no criminal culpability  
11 unless:

12 (1) there is no known owner of the seized property and no  
13 person credibly asserts an ownership interest in the seized property;

14 or

15 (2) the State establishes by a preponderance of the evidence, in  
16 the case of seized property in the form of cash, negotiable  
17 instruments, or other cash equivalents, that the property has a value  
18 of greater than \$1,000, or in the case of seized property other than  
19 cash, negotiable instruments, or other cash equivalent, that the  
20 property has a value of greater than \$10,000.

21 l. For the purposes of this section, a criminal prosecution  
22 arising out of or related to the property seizure terminates with no  
23 criminal culpability if, with respect to all criminal charges  
24 involving the seized property, the prosecution resulted in:

25 (1) an acquittal;

26 (2) a dismissal with prejudice, excluding a dismissal with  
27 prejudice in which the defendant was admitted into a program of  
28 supervisory treatment pursuant to the provisions of N.J.S.2C:43-12  
29 through N.J.S.2C:43-22 or any other law or functionally equivalent  
30 program of another state or the United States pursuant to which an  
31 offense was dismissed or a felony conviction avoided or eliminated  
32 from the record when the defendant successfully completed the  
33 program; or

34 (3) a finding of not guilty by reason of insanity.<sup>1</sup>

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

36  
37 <sup>2</sup>[2. N.J.S.2C:64-4 is amended to read as follows:

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

40 b. <sup>1</sup>【The fact that a】 A<sup>1</sup> prosecution involving seized property  
41 <sup>1</sup>that terminates without a conviction **【does not】** shall preclude  
42 forfeiture proceedings against **【the】** property **【** pursuant to this  
43 chapter**】** with a value of:

44 (1) \$1,000 or less in the case of property in the form of cash,  
45 negotiable instruments, or other cash equivalents; or

46 (2) \$25,000 or less in the case of property other than cash,  
47 negotiable instruments, or other cash equivalent.

48 (cf: P.L.1981, c.290, s.49)】<sup>2</sup>

1           <sup>1</sup>2. N.J.S.2C:64-4 is amended to read as follows:

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

4           b. The fact that a prosecution involving seized property other than  
5 prima facie contraband terminates **【without a conviction does not】**  
6 with no criminal culpability shall preclude forfeiture proceedings  
7 against the property pursuant to this chapter if the State fails to  
8 establish by a preponderance of evidence that the seized property has a  
9 value of more than \$1,000 in the case of property in the form of cash,  
10 negotiable instruments, or other cash equivalents or more than \$10,000  
11 in the case of property other than cash, negotiable instruments, or other  
12 cash equivalent; otherwise, the fact that a prosecution involving seized  
13 property other than prima facie contraband terminates with no criminal  
14 culpability shall not preclude forfeiture proceedings against the  
15 property pursuant to this chapter.

16           c. For the purposes of this section, a criminal prosecution arising  
17 out of or related to the property seizure terminates with no criminal  
18 culpability if, with respect to all criminal charges involving the seized  
19 property, the prosecution resulted in:

20           (1) an acquittal;

21           (2) a dismissal with prejudice, excluding a dismissal with  
22 prejudice in which the defendant was admitted into a program of  
23 supervisory treatment pursuant to the provisions of N.J.S.2C:43-12  
24 through N.J.S.2C:43-22 or any other law or functionally equivalent  
25 program of another state or the United States pursuant to which an  
26 offense was dismissed or a felony conviction avoided or eliminated  
27 from the record when the defendant successfully completed the  
28 program; or

29           (3) a finding of not guilty by reason of insanity.<sup>1</sup>

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

31

32           <sup>2</sup>3. N.J.S.2C:64-5 is amended to read as follows:

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

34           a. No forfeiture under this chapter shall affect the rights of any  
35 lessor in the ordinary course of business or any person holding a  
36 perfected security interest in property subject to seizure unless [it  
37 shall appear that such] , in the case of property in the form of cash,  
38 negotiable instruments, or other cash equivalents with a value of  
39 greater than \$1,000, or in the case of property other than cash,  
40 negotiable instruments, or other cash equivalent with a value of  
41 greater than \$25,000, the State establishes, by clear and convincing  
42 evidence, that the person had knowledge of or consented to any act  
43 or omission upon which the right of forfeiture is based. [Such]  
44 These rights are only to the extent of interest in the seized property  
45 and at the option of the entity funding the prosecuting agency  
46 involved may be extinguished by appropriate payment.

47           b. (1) Property other than prima facie contraband seized  
48 under this chapter shall not be subject to forfeiture **【if】** unless a

1 prosecution involving property in the form of cash, negotiable  
2 instruments, or other cash equivalents with a value of \$1,000 or  
3 less, or property, other than cash, negotiable instruments, or other  
4 cash equivalent valued at \$25,000 or less terminates with a  
5 conviction; or

6 (2) Property other than prima facie contraband seized under this  
7 chapter shall not be subject to forfeiture unless, in the case of seized  
8 property in the form of cash, negotiable instruments, or other cash  
9 equivalents with a value of greater than \$1,000, or in the case of  
10 property other than cash, negotiable instruments, or other cash  
11 equivalent valued at greater than \$25,000, the [owner of the  
12 property] State establishes by [a preponderance of the] clear and  
13 convincing evidence that the owner of the property was [not]  
14 involved in or aware of the unlawful activity and that the owner had  
15 done all that could reasonably be expected to prevent the proscribed  
16 use of the property by an agent. A person who uses or possesses  
17 property with the consent or knowledge of the owner is deemed to  
18 be the agent of the owner for purposes of this chapter.

19 c. Property seized under this chapter shall not be subject to  
20 forfeiture if the property is seized while entrusted to a person by the  
21 owner or the agent of the owner when the property has been  
22 entrusted to the person for repairs, restoration or other services to  
23 be performed on the property, and that person, without the owner's  
24 knowledge or consent, uses the property for unlawful purposes.  
25 (cf: P.L.1986, c.79, s.1)]<sup>2</sup>

26

27 <sup>1</sup>3. N.J.S.2C:64-5 is amended to read as follows:

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

29 a. [No forfeiture under] Forfeiture pursuant to this chapter shall  
30 not affect the rights of any lessor in the ordinary course of business or  
31 any person holding a perfected security interest in property subject to  
32 seizure unless it shall appear that [such] the person had knowledge of  
33 or consented to any act or omission upon which the right of forfeiture  
34 is based. [Such] These rights are only to the extent of interest in the  
35 seized property and at the option of the entity funding the prosecuting  
36 agency involved may be extinguished by appropriate payment.

37 b. Property seized under this chapter shall not be subject to  
38 forfeiture if:

39 (1) the [owner of the property establishes] prosecutor fails to  
40 establish by a preponderance of the evidence that the owner of the  
41 property was [not] involved in or aware of the unlawful activity  
42 [and]; or

43 (2) the prosecutor establishes by a preponderance of the  
44 evidence that the owner of the property was involved in or aware of  
45 the unlawful activity, but the owner establishes by a preponderance  
46 of the evidence that the owner had done all that could reasonably be  
47 expected to prevent the proscribed use of the property by an agent. A

1 person who uses or possesses property with the consent or knowledge  
2 of the owner is deemed to be the agent of the owner for purposes of  
3 this chapter.

4 c. Property seized under this chapter shall not be subject to  
5 forfeiture if the property is seized while entrusted to a person by the  
6 owner or the agent of the owner when the property has been entrusted  
7 to the person for repairs, restoration or other services to be performed  
8 on the property, and that person, without the owner's knowledge or  
9 consent, uses the property for unlawful purposes.<sup>1</sup>

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

11

12 4. This act shall take effect immediately.