HB 2477: civil forfeiture; report
information; remedies

PRIME SPONSOR: Representative Farnsworth E, LD 12

BILL STATUS: Chaptered

Abstract
Relating to civil asset forfeiture.

Provisions

**Forfeiture Proceedings and Remedies**

1) Increases the standard of evidence that the state must establish for civil asset seizure and forfeiture from *preponderance of evidence* to *clear and convincing evidence*.

2) Authorizes the court to award reasonable attorney fees, expenses and damages for loss of the use of property to any claimant who substantially prevails.

3) Removes the requirement that the court order a claimant who fails to establish that the entire claim or interest is exempt from forfeiture to:
   a) Pay the costs of any claimants who establish that their entire interests are exempt; and
   b) Pay the state’s costs and expenses of the investigation, prosecution and attorney fees.

4) Permits a claimant to receive costs or damages on the entry of judgment for the claimant.
   a) Current law prohibits a claimant from recovering costs or damages if the court enters a finding that there was reasonable cause for the forfeiture proceedings.

5) Prohibits fees from being charged to an owner or interest holder for filing a claim against property included in a notice of forfeiture.

6) Removes the prohibition against evidence suppression in forfeiture hearings on the grounds that its acquisition by search or seizure violated constitutional protections from unreasonable searches or seizures that apply in criminal cases.

7) States that the seizing agency, person making the seizure or the attorney for the state are not personally liable for a seizure unless the person or agency:
   a) Intended to cause injury, or
   b) Was grossly negligent.

8) Requires the court to award treble costs or damages if the court finds that:
   a) Reasonable cause did not exist for the seizure, forfeiture or the filing; and
   b) The seizing agency/attorney intended to cause injury or was grossly negligent.

9) Splits the payment of the award between the agency that made the seizure and the state or county attorney’s office.

**Allocation of Anti-Racketeering Revolving Fund Monies**

10) Requires any agency applying for monies from an ARRF to submit a written application with a description of how the money will be used to the AG or county attorney.
11) Authorizes the AG or county attorney to deny an application that requests monies for purposes not authorized by statute or federal law.

12) Allows the AG to use ARRF monies for to pay for reports, audits and application approvals required by law.

13) Requires the county attorney to submit an application that includes the intended use for ARRF monies to the BOS before the monies may be used, except in an emergency.

14) Instructs the BOS to approve any application that requests monies for purposes authorized by statute or federal law.

15) Permits the BOS to retain outside counsel to approve, review or ratify the county attorney's use of ARRF monies.

16) States that if monies are used in an emergency, the county attorney must submit the application to the BOS within a reasonable amount of time after the use of the monies.
   a) The BOS must review and ratify the application at the next meeting, if appropriate.

17) Allows the county attorney to use ARRF monies to pay for:
   a) Reports;
   b) Application and expenditure reviews; and
   c) Approvals.

Transfer of Property

18) Prohibits the seizing agency and state attorneys from entering into any agreement that would transfer or refer seized property to a federal agency if the seizure was part of an investigation:
   a) That did not involve a federal agency;
   b) Involving a state law violation and no federal violation is alleged.

19) Prohibits the transfer or referral of seized property from a joint investigation unless the gross estimated value of the property is greater than $75,000.

20) Specifies that this does not prohibit:
   a) The federal government or a federal agency from seizing property, seeking forfeiture under federal law and sharing forfeited property with state or local LEAs that participated in the joint investigation;
   b) A state or local LEA from participating in a joint investigation.

21) Defines a joint investigation.

Reporting Requirements

22) Specifies reporting requirements for the AG, county attorneys and entities that receive ARRF monies.
   a) County attorneys and the AG are responsible for reporting on revenues and expenditures from an ARRF;
   b) Other entities receiving ARRF monies are responsible for reporting on expenditures.

23) Requires the quarterly revenue and expenditure reports submitted by entities receiving ARRF monies to include:
   a) For forfeiture revenues:
      i. The name of the seizing LEA;
      ii. The date of the seizure for forfeiture;
      iii. The type and description of the seized property;
      iv. The location of the original seizure;
      v. The estimated value of the property seized;
vi. The alleged criminal statute that allowed the seizure;
vii. Criminal statute charged, if known
viii. Court case number, if known
ix. Outcome of criminal case
x. If seized property was submitted for state forfeiture but transferred to federal authorities for forfeiture proceedings;
xi. The reason for federal transfer
xii. The forfeiture case number;
xiii. The method of forfeiture proceeding;
xiv. The venue of the forfeiture action;
xv. Whether a person or entity filed to assert as an owner, interest holder or injured person.
xvi. If the owner, interest holder or injured person was assisted by an attorney in the forfeiture;
xvii. The date of the forfeiture decision;
xviii. If there was a forfeiture settlement agreement;
xix. The disposition of the property and date of disposition;
xx. The net amount of monies received from the forfeiture;
xxi. The total estimated costs; and
xxii. The amount of attorney fees, costs, expenses and damages awarded and who received the award.

b) For expenditures:
i. Crime, gang and substance abuse programs;
ii. Injured persons and witness protection;
iii. Investigation costs, informant fees and buy money;
iv. Regular-time salaries, overtime-pay and employee benefits of sworn and unsworn LEA personnel and prosecutors;
v. Professional or outside services;
vi. Travel and meals
vii. Training and conferences;
viii. The purchase or lease of vehicles;
ix. Vehicle maintenance;
x. Canines, firearms, tactical gear and related equipment;
xii. Other capital expenditures;
xiii. Any emergency use when monies were used from the fund before an application to use the monies was approved;
xiv. External publications and communications; and
xv. Other operating expenses, categorized.

24) Requires the OAG to conduct a performance and financial audit of the AG’s use of monies in the ARRF every other year, beginning in 2018.
a) The audit must include all expenditures made by the AG for the past two years.
b) Distribution requirements are outlined.
c) Fees and costs of the audits are paid by the AG from the ARRF.

25) Makes technical and conforming changes.

Current Law
Property is subject to seizure for forfeiture if the:
1) Property is subject to a seizure warrant;
2) Property is seized because of a search or an arrest;
3) Property is seized pursuant to a constructive seizure;
4) Property is the subject of a pending lawsuit (lis pendens);
5) Property is the subject of a racketeering lien; or
6) Police officer has probable cause to believe that the property is subject to forfeiture. (A.R.S. § 13-4305)

A.R.S. § 13-4304 outlines property that may not be seized for forfeiture purposes. The AG or county attorney must determine if it is probable that the property is subject to forfeiture. If the attorney determines that there is probable cause, the attorney may initiate either uncontested or judicial forfeiture proceedings. However, if the attorney determines the forfeiture proceedings cannot be sustained or that justice does not require the forfeiture proceedings, the seizing agency must immediately authorize the release of the property. (A.R.S. § 13-4308)

If the state fails to initiate forfeiture proceedings by providing notice of pending forfeiture within 60 days of seizure, or fails to pursue forfeiture after a timely claim has been filed, the property must be released on the request of an owner or interest holder. (A.R.S. § 13-4308)

If the court rules for the state, the forfeited property must be transferred to the state to be sold, leased, loaned, transferred, destroyed or used for investigative purposes. Revenues from forfeited property, after reimbursement of the costs for keeping and transferring the property, must be deposited in the state ARRF or county ARRF. (A.R.S. § 13-4315)

ARRF monies may be allocated by the AG or county attorney to pay for contract services and reimbursements for federal, state or local agencies for any expenditures to perform the functions of the seizing agency. (A.R.S. § 13-4315)

The AG and county attorney are required to file a quarterly report containing all the ARRF sources and expenditures with the ACJC. The ACJC is required to annually compile the reports and submit the final document to the Governor, ADOA, President of the Senate, Speaker of the House of Representatives, JLBC Director and the Secretary of State. (A.R.S. § 13-2314.01 and 13-2314.03)