

Senate Engrossed House Bill

FILED

MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-third Legislature
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CHAPTER 149
HOUSE BILL 2477

AN ACT

AMENDING SECTIONS 13-2314, 13-2314.01, 13-2314.03, 13-4305, 13-4306, 13-4310, 13-4311, 13-4312 AND 13-4314, 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 13-2314, Arizona Revised Statutes, is amended to
3 read:

4 13-2314. Racketeering; civil remedies by this state; definitions

5 A. The attorney general or a county attorney may file an action in
6 superior court on behalf of a person who sustains injury to his person,
7 business or property by racketeering as defined by section 13-2301,
8 subsection D, paragraph 4 or by a violation of section 13-2312 for the
9 recovery of treble damages and the costs of the suit, including reasonable
10 attorney fees, or to prevent, restrain, or remedy racketeering as defined
11 by section 13-2301, subsection D, paragraph 4 or a violation of section
12 13-2312. If the person against whom a racketeering claim has been
13 asserted, including a forfeiture action or lien, prevails on that claim,
14 the person may be awarded costs and reasonable attorney fees incurred in
15 defense of that claim. In actions filed by the state or a county, awards
16 of costs and reasonable attorney fees are to be assessed against and paid
17 from monies acquired pursuant to sections 13-2314.01 and 13-2314.03.

18 B. The superior court has jurisdiction to prevent, restrain, and
19 remedy racketeering as defined by section 13-2301, subsection D, paragraph
20 4 or a violation of section 13-2312 after making provision for the rights
21 of any person who sustained injury to his person, business or property by
22 the racketeering conduct and after a hearing or trial, as appropriate, by
23 issuing appropriate orders.

24 C. ~~Prior to~~ BEFORE a determination of liability ~~such~~ THE orders may
25 include, ~~but are not limited to,~~ issuing seizure warrants, entering
26 findings of probable cause for in personam or in rem forfeiture, entering
27 restraining orders or prohibitions or taking such other actions, including
28 the acceptance of satisfactory performance bonds, the creation of
29 receiverships and the enforcement of constructive trusts, in connection
30 with any property or other interest subject to forfeiture, damages or
31 other remedies or restraints pursuant to this section as the court deems
32 proper.

33 D. Following a determination of liability ~~such~~ THE orders may
34 include, ~~but are not limited to:~~

35 1. Ordering any person to divest himself of any interest, direct or
36 indirect, in any enterprise.

37 2. Imposing reasonable restrictions on the future activities or
38 investments of any person, including prohibiting any person from engaging
39 in the same type of endeavor as the enterprise engaged in, the activities
40 of which affect the laws of this state, to the extent the constitutions of
41 the United States and this state permit.

42 3. Ordering dissolution or reorganization of any enterprise.

43 4. Ordering the payment of treble damages to those persons injured
44 by racketeering as defined by section 13-2301, subsection D, paragraph 4
45 or a violation of section 13-2312.

1 5. Ordering the payment of all costs and expenses of the
2 prosecution and investigation of any offense included in the definition of
3 racketeering in section 13-2301, subsection D, paragraph 4 or a violation
4 of section 13-2312, civil and criminal, including reasonable attorney
5 fees, to be paid to the general fund of the state or the county which
6 brings the action.

7 6. In personam forfeiture pursuant to chapter 39 of this title to
8 the general fund of the state or county, as appropriate, to the extent
9 that forfeiture is not inconsistent with protecting the rights of any
10 person who sustained injury to his person, business or property by the
11 racketeering conduct, of the interest of a person in:

12 (a) Any property or interest in property acquired or maintained by
13 the person in violation of section 13-2312.

14 (b) Any interest in, security of, claims against or property,
15 office, title, license or contractual right of any kind affording a source
16 of influence over any enterprise or other property ~~which~~ THAT the person
17 has acquired or maintained an interest in or control of, conducted or
18 participated in the conduct of in violation of section 13-2312.

19 (c) All proceeds traceable to an offense included in the definition
20 of racketeering in section 13-2301, subsection D, paragraph 4 and held by
21 the person and all monies, negotiable instruments, securities and other
22 property used or intended to be used by the person in any manner or part
23 to facilitate commission of the offense and that the person either owned
24 or controlled for the purpose of that use.

25 (d) Any other property up to the value of the subject property
26 described in subdivision (a), (b) or (c) of this paragraph.

27 7. Payment to the general fund of the state or county as
28 appropriate of an amount equal to the gain that was acquired or maintained
29 through an offense included in the definition of racketeering in section
30 13-2301, subsection D, paragraph 4 or a violation of section 13-2312 or
31 that any person is liable for under this section.

32 E. A person who is liable for conduct described in subsection D,
33 paragraph 6, subdivision (a), (b) or (c) of this section is liable for the
34 total value of all interests in property described in those
35 subdivisions. The court shall enter an order of forfeiture against the
36 person in the amount of the total value of all those interests less the
37 value of any interests that are forfeited before or at the time of the
38 entry of the final judgment.

39 F. A person or enterprise that acquires any property through an
40 offense included in the definition of racketeering in section 13-2301,
41 subsection D, paragraph 4 or through a violation of section 13-2312 is an
42 involuntary trustee. The involuntary trustee and any other person or
43 enterprise, except a bona fide purchaser for value who is reasonably
44 without notice of the unlawful conduct and who is not knowingly taking
45 part in an illegal transaction, hold the property, its proceeds and its

1 fruits in constructive trust for the benefit of persons entitled to
2 remedies under this section.

3 G. In addition to ~~or in lieu of~~ an action under this section the
4 attorney general or a county attorney may file an in rem action pursuant
5 to chapter 39 of this title for forfeiture, to the extent that forfeiture
6 is not inconsistent with protecting the rights of any person who sustained
7 injury to his person, business or property by the racketeering conduct,
8 of:

9 1. Any property or interest in property acquired or maintained by a
10 person in violation of section 13-2312.

11 2. Any interest in, security of, claims against or property,
12 office, title, license or contractual right of any kind affording a source
13 of influence over any enterprise or other property ~~which~~ THAT a person has
14 acquired or maintained an interest in or control of, conducted or
15 participated in the conduct of in violation of section 13-2312.

16 3. All proceeds traceable to an offense included in the definition
17 of racketeering in section 13-2301, subsection D, paragraph 4 and all
18 monies, negotiable instruments, securities and other property used or
19 intended to be used in any manner or part to facilitate the commission of
20 the offense.

21 H. A defendant convicted in any criminal proceeding shall be
22 precluded from subsequently denying the essential allegations of the
23 criminal offense of which he was convicted in any civil proceeding. For
24 the purposes of this subsection, a conviction may result from a verdict or
25 plea including a no contest plea.

26 I. Notwithstanding any law creating a lesser period, the initiation
27 of civil proceedings related to violations of any offense included in the
28 definition of racketeering in section 13-2301, subsection D, paragraph 4
29 or a violation of section 13-2312, including procedures pursuant to
30 chapter 39 of this title, shall be commenced within seven years after
31 actual discovery of the violation.

32 J. In any civil action brought pursuant to this section, the
33 attorney general or a county attorney may file with the clerk of the
34 superior court a certificate stating that the case is of special public
35 importance. A copy of that certificate shall be furnished immediately by
36 such clerk to the chief judge or presiding chief judge of the superior
37 court in the county in which such action is pending, and, upon receipt of
38 such copy, the judge shall immediately designate a judge to hear and
39 determine the action. The judge so designated shall promptly assign such
40 action for hearing, participate in the hearings and determination and
41 cause the action to be expedited.

42 K. The standard of proof in actions brought pursuant to this
43 section is the preponderance of the evidence test, EXCEPT THAT THE
44 STANDARD OF PROOF FOR AN ORDER UNDER SUBSECTION D, PARAGRAPH 6 OF THIS
45 SECTION IS THE STANDARD OF PROOF THAT IS APPLICABLE FOR AN IN PERSONAM

1 FORFEITURE AS SET FORTH IN CHAPTER 39 OF THIS TITLE AND THE STANDARD OF
2 PROOF FOR AN IN REM FORFEITURE UNDER SUBSECTION G OF THIS SECTION IS THE
3 STANDARD OF PROOF THAT IS APPLICABLE TO AN IN REM FORFEITURE AS SET FORTH
4 IN CHAPTER 39 OF THIS TITLE.

5 L. A civil action authorized by this section, including proceedings
6 pursuant to chapter 39 of this title, is remedial and not punitive and
7 does not limit and is not limited by any other previous or subsequent
8 civil or criminal action under this title or any other provision of
9 law. Civil remedies provided under this title are supplemental and not
10 mutually exclusive.

11 M. The attorney general may appear as amicus curiae in any
12 proceeding in which a claim under this section has been asserted,
13 including proceedings pursuant to chapter 39 of this title, or in which
14 the court is interpreting this chapter or chapter 39 of this title. A
15 party who files a notice of appeal from a civil action brought under this
16 chapter or chapter 39 of this title shall serve the notice and one copy of
17 the appellant's brief on the attorney general at the time the person files
18 the appellant's brief with the court. This requirement is jurisdictional.

19 N. ~~IN~~ FOR THE PURPOSES OF this section and section 13-2312:

20 1. "Acquire" means for a person to do any of the following:

21 (a) Possess.

22 (b) Act so as to exclude other persons from using their property
23 except on his own terms.

24 (c) Bring about or receive the transfer of any interest in
25 property, whether to himself or to another person, or to secure
26 performance of a service.

27 2. "Gain" means any benefit, interest or property of any kind
28 without reduction for expenses of acquiring or maintaining it or incurred
29 for any other reason.

30 3. "Proceeds" includes any interest in property of any kind
31 acquired through or caused by an act or omission, or derived from the act
32 or omission, directly or indirectly, and any fruits of this interest, in
33 whatever form.

34 Sec. 2. Section 13-2314.01, Arizona Revised Statutes, is amended to
35 read:

36 13-2314.01. Anti-racketeering revolving fund; use of fund;
37 reports; audit

38 A. The anti-racketeering revolving fund is established. The
39 attorney general shall administer the fund under the conditions and for
40 the purposes provided by this section. Monies in the fund are exempt from
41 the lapsing provisions of section 35-190.

42 B. Any prosecution and investigation costs, including attorney
43 fees, recovered for the state by the attorney general as a result of
44 enforcement of civil and criminal statutes pertaining to any offense
45 included in the definition of racketeering in section 13-2301, subsection

1 D, paragraph 4 or section 13-2312, whether by final judgment, settlement
2 or otherwise, shall be deposited in the fund established by this section.

3 C. Any monies received by any department or agency of this state or
4 any political subdivision of this state from any department or agency of
5 the United States or another state as a result of participation in any
6 investigation or prosecution, whether by final judgment, settlement or
7 otherwise, shall be deposited in the fund established by this section or,
8 if the recipient is a political subdivision of this state, may be
9 deposited in the fund established by PURSUANT TO section 13-2314.03.

10 D. Any monies obtained as a result of a forfeiture by any
11 department or agency of this state under this title or under federal law
12 shall be deposited in the fund established by this section. Any monies or
13 other property obtained as a result of a forfeiture by any political
14 subdivision of this state or the federal government may be deposited in
15 the fund established by this section. Monies deposited in the fund
16 pursuant to this section or section 13-4315 shall accrue interest and
17 shall be held for the benefit of the agency or agencies responsible for
18 the seizure or forfeiture to the extent of their contribution.

19 E. Except as provided in subsections ~~F~~ and G AND H of this section,
20 the monies and interest shall be distributed within thirty days of
21 application to the agency or agencies responsible for the seizure or
22 forfeiture. THE AGENCY OR AGENCIES APPLYING FOR MONIES MUST SUBMIT AN
23 APPLICATION IN WRITING TO THE ATTORNEY GENERAL THAT INCLUDES A DESCRIPTION
24 OF WHAT THE REQUESTED MONIES WILL BE USED FOR. THE ATTORNEY GENERAL MAY
25 DENY AN APPLICATION THAT REQUESTS MONIES FOR A PURPOSE THAT IS NOT
26 AUTHORIZED BY THIS SECTION, SECTION 13-4315 OR FEDERAL LAW. Monies in the
27 fund used by the attorney general for capital projects in excess of one
28 million dollars are subject to review by the joint committee on capital
29 review.

30 ~~E~~. F. Monies in the fund may be used for the following:

31 1. The funding of gang prevention programs, substance abuse
32 prevention programs, substance abuse education programs, programs that
33 provide assistance to victims of a criminal offense that is listed in
34 section 13-2301 and witness protection pursuant to section 41-196 or for
35 any purpose permitted by federal law relating to the disposition of any
36 property that is transferred to a law enforcement agency.

37 2. The investigation and prosecution of any offense included in the
38 definition of racketeering in section 13-2301, subsection D, paragraph 4
39 or section 13-2312, including civil enforcement.

40 3. The payment of the relocation expenses of any law enforcement
41 officer and the officer's immediate family if the law enforcement officer
42 is the victim of a bona fide threat that occurred because of the law
43 enforcement officer's duties.

44 4. THE COSTS OF THE REPORTS, AUDITS AND APPLICATION APPROVALS THAT
45 ARE REQUIRED BY THIS SECTION.

1 ~~F.~~ G. On or before January 15, April 15, July 15 and October 15 of
2 each year, each department or agency of this state receiving monies
3 pursuant to this section or section 13-2314.03 or 13-4315 or from any
4 department or agency of the United States or another state as a result of
5 participation in any investigation or prosecution shall file with the
6 attorney general, the board of supervisors if the sheriff received the
7 monies and the city or town council if the ~~city~~ CITY'S or town's
8 department received the monies a report for the previous calendar quarter.
9 The report shall be in a form that is prescribed by the Arizona criminal
10 justice commission and approved by the director of the joint legislative
11 budget committee. The report shall set forth the sources of all monies
12 and all expenditures AS REQUIRED BY SUBSECTION K OF THIS SECTION. The
13 report shall not include any identifying information about specific
14 investigations. If a department or agency of this state fails to file a
15 report within forty-five days after the report is due and there is no good
16 cause as determined by the Arizona criminal justice commission, the
17 attorney general shall make no expenditures from the fund for the benefit
18 of the department or agency until the report is filed. The attorney
19 general is responsible for collecting all reports from departments and
20 agencies of this state and transmitting the reports to the Arizona
21 criminal justice commission at the time that the report required pursuant
22 to subsection ~~G.~~ H of this section is submitted.

23 ~~G.~~ H. On or before January 25, April 25, July 25 and October 25 of
24 each year, the attorney general shall file with the Arizona criminal
25 justice commission a report for the previous calendar quarter. The report
26 shall be in a form that is prescribed by the Arizona criminal justice
27 commission and approved by the director of the joint legislative budget
28 committee. The report shall set forth the sources of all monies and all
29 expenditures AS REQUIRED BY SUBSECTIONS J AND K OF THIS SECTION. The
30 report shall not include any identifying information about specific
31 investigations. If the attorney general fails to file a report within
32 sixty days after the report is due and there is no good cause as
33 determined by the Arizona criminal justice commission, the attorney
34 general shall make no expenditures from the fund for the benefit of the
35 attorney general until the report is filed. If a political subdivision of
36 this state fails to file a report with the county attorney pursuant to
37 section 13-2314.03 within forty-five days after the report is due and
38 there is no good cause as determined by the Arizona criminal justice
39 commission, the attorney general shall make no expenditures from the fund
40 for the benefit of the political subdivision until the report is filed.

41 ~~H.~~ I. On or before September 30 of each year, the Arizona criminal
42 justice commission shall compile the attorney general report and the
43 reports of all departments and agencies of this state into a single
44 comprehensive report and shall submit a copy of the report to the
45 governor, the director of the department of administration, the president

1 of the senate, the speaker of the house of representatives, the director
2 of the joint legislative budget committee and the secretary of state.

3 J. THE REPORT THAT IS REQUIRED BY SUBSECTION H OF THIS SECTION MUST
4 INCLUDE ALL OF THE FOLLOWING INFORMATION IF MONIES WERE OBTAINED AS A
5 RESULT OF A FORFEITURE:

6 1. THE NAME OF THE LAW ENFORCEMENT AGENCY THAT SEIZED THE PROPERTY.

7 2. THE DATE OF THE SEIZURE FOR FORFEITURE.

8 3. THE TYPE OF PROPERTY SEIZED AND A DESCRIPTION OF THE PROPERTY
9 SEIZED, INCLUDING, IF APPLICABLE, THE MAKE, THE MODEL AND THE SERIAL
10 NUMBER OF THE PROPERTY.

11 4. THE LOCATION OF THE ORIGINAL SEIZURE BY LAW ENFORCEMENT.

12 5. THE ESTIMATED VALUE OF THE PROPERTY SEIZED FOR FORFEITURE, NOT
13 EXCLUDING ENCUMBRANCES.

14 6. THE CRIMINAL STATUTE THAT ALLOWED THE SEIZURE FOR FORFEITURE.

15 7. THE CRIMINAL STATUTE CHARGED IN ANY CRIMINAL CASE THAT IS
16 RELATED TO THE FORFEITURE CASE, IF KNOWN AT THE TIME OF THE REPORT.

17 8. THE COURT CASE NUMBER OF ANY CRIMINAL CASE THAT IS RELATED TO
18 THE FORFEITURE CASE, IF KNOWN AT THE TIME OF THE REPORT.

19 9. THE OUTCOME OF ANY CRIMINAL CASE THAT IS RELATED TO THE
20 FORFEITURE CASE, IF KNOWN AT THE TIME OF THE REPORT.

21 10. IF THE PROPERTY WAS SEIZED BY A STATE AGENCY AND SUBMITTED FOR
22 STATE FORFEITURE PROCEEDINGS BUT WAS TRANSFERRED TO FEDERAL AUTHORITIES
23 FOR FORFEITURE PROCEEDINGS, THE REASON FOR THE FEDERAL TRANSFER.

24 11. THE FORFEITURE CASE NUMBER.

25 12. THE METHOD OF FORFEITURE PROCEEDING, INCLUDING WHETHER IT WAS
26 CRIMINAL OR CIVIL, AND IF CIVIL, WHETHER THE CIVIL FORFEITURE WAS JUDICIAL
27 OR UNCONTESTED PURSUANT TO SECTION 13-4309.

28 13. THE VENUE OF THE FORFEITURE ACTION.

29 14. WHETHER A PERSON OR ENTITY FILED A CLAIM OR COUNTERCLAIM OR
30 SUBMITTED A PETITION ASSERTING AN INTEREST IN THE PROPERTY AS AN OWNER,
31 INTEREST HOLDER OR INJURED PERSON.

32 15. WHETHER THE OWNER, INTEREST HOLDER OR INJURED PERSON WAS
33 ASSISTED BY AN ATTORNEY IN THE FORFEITURE CASE.

34 16. THE DATE OF THE FORFEITURE DECISION.

35 17. WHETHER THERE WAS A FORFEITURE SETTLEMENT AGREEMENT.

36 18. WHETHER THE PROPERTY WAS AWARDED OR PARTIALLY AWARDED TO THE
37 OWNER, PARTIAL OWNER OR INJURED PERSON OR IF THE PROPERTY WAS FORFEITED TO
38 THE STATE.

39 19. WHETHER THE PROPERTY WAS SOLD, DESTROYED OR RETAINED BY LAW
40 ENFORCEMENT.

41 20. THE EARLIEST DATE THAT THE PROPERTY WAS DISPOSED OF OR SENT FOR
42 DISPOSITION.

43 21. THE NET AMOUNT OF MONIES RECEIVED FROM THE FORFEITURE.

44 22. THE ESTIMATED ADMINISTRATIVE AND STORAGE COSTS AND ANY OTHER
45 COSTS, INCLUDING ANY COSTS OF LITIGATION.

1 23. THE AMOUNT OF ATTORNEY FEES, COSTS, EXPENSES AND DAMAGES
2 AWARDED AND TO WHOM THE FEES, COSTS, EXPENSES OR DAMAGES WERE AWARDED.
3 K. THE REPORTS THAT ARE REQUIRED BY SUBSECTIONS G AND H OF THIS
4 SECTION MUST INCLUDE THE FOLLOWING INFORMATION WITH REGARD TO ALL
5 EXPENDITURES MADE FROM THE FUND FOR:
6 1. CRIME, GANG AND SUBSTANCE ABUSE PREVENTION PROGRAMS.
7 2. ANY INJURED PERSON AS DEFINED IN SECTION 13-4301.
8 3. WITNESS PROTECTION.
9 4. INVESTIGATION COSTS, INCLUDING INFORMANT FEES AND BUY MONEY.
10 5. REGULAR-TIME SALARIES, OVERTIME PAY AND EMPLOYEE BENEFITS OF
11 PROSECUTORS.
12 6. REGULAR-TIME SALARIES, OVERTIME PAY AND EMPLOYEE BENEFITS OF
13 SWORN LAW ENFORCEMENT AGENCY PERSONNEL OTHER THAN PROSECUTORS.
14 7. REGULAR-TIME SALARIES, OVERTIME PAY AND EMPLOYEE BENEFITS OF
15 UNSWORN LAW ENFORCEMENT AGENCY PERSONNEL OTHER THAN PROSECUTORS.
16 8. PROFESSIONAL OR OUTSIDE SERVICES, INCLUDING SERVICES RELATED TO
17 AUDITING, OUTSIDE ATTORNEY FEES, COURT REPORTING, EXPERT WITNESSES AND
18 OTHER COURT COSTS.
19 9. TRAVEL AND MEALS.
20 10. TRAINING.
21 11. CONFERENCES.
22 12. VEHICLES PURCHASED OR LEASED.
23 13. VEHICLE MAINTENANCE.
24 14. CANINES, FIREARMS AND RELATED EQUIPMENT, INCLUDING TACTICAL
25 GEAR.
26 15. OTHER CAPITAL EXPENDITURES, INCLUDING FURNITURE, COMPUTERS AND
27 OFFICE EQUIPMENT.
28 16. EXTERNAL PUBLICATIONS AND COMMUNICATIONS.
29 17. OTHER OPERATING EXPENSES, INCLUDING OFFICE SUPPLIES, POSTAGE
30 AND PRINTING. EXPENSES LISTED UNDER THIS PARAGRAPH MUST BE SEPARATELY
31 CATEGORIZED.
32 L. BEGINNING IN 2018 AND EVERY OTHER YEAR THEREAFTER, THE AUDITOR
33 GENERAL SHALL CONDUCT A PERFORMANCE AUDIT, AS DEFINED IN SECTION 41-1278,
34 AND A FINANCIAL AUDIT OF THE ATTORNEY GENERAL'S USE OF MONIES IN THE FUND.
35 THE AUDITS MUST INCLUDE ALL EXPENDITURES THAT WERE MADE BY THE ATTORNEY
36 GENERAL'S OFFICE FROM THE FUND FOR THE PREVIOUS TWO YEARS. THE AUDITOR
37 GENERAL SHALL SUBMIT COPIES OF THE PERFORMANCE AND FINANCIAL AUDITS TO THE
38 PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND
39 THE CHAIRPERSONS OF THE SENATE JUDICIARY COMMITTEE AND THE HOUSE OF
40 REPRESENTATIVES JUDICIARY AND PUBLIC SAFETY COMMITTEE, OR THEIR SUCCESSOR
41 COMMITTEES. THE ATTORNEY GENERAL SHALL PAY ANY FEES AND COSTS OF THE
42 AUDITS UNDER THIS SECTION FROM THE FUND.

1 BOARD OF SUPERVISORS WITHIN A REASONABLE AMOUNT OF TIME AFTER THE MONIES
2 ARE USED. THE BOARD OF SUPERVISORS, AT ITS NEXT MEETING, SHALL REVIEW AND
3 RATIFY, IF APPROPRIATE, THE COUNTY ATTORNEY'S USE OF THE MONIES. THE
4 BOARD OF SUPERVISORS MAY RETAIN OUTSIDE COUNSEL, IF NECESSARY, TO APPROVE,
5 REVIEW OR RATIFY THE COUNTY ATTORNEY'S USE OF THE MONIES.

6 ~~F.~~ F. Monies in the fund may be used for the funding of gang
7 prevention programs, substance abuse prevention programs, substance abuse
8 education programs, programs that provide assistance to victims of a
9 criminal offense that is listed in section 13-2301 and witness protection
10 pursuant to section 11-536 or for any purpose permitted by federal law
11 relating to the disposition of any property that is transferred to a law
12 enforcement agency. Monies in the fund may be used for the investigation
13 and prosecution of any offense included in the definition of racketeering
14 in section 13-2301, subsection D, paragraph 4 or section 13-2312,
15 including civil enforcement, AND FOR THE COSTS OF THE REPORTS AND
16 APPLICATION AND EXPENDITURE REVIEWS AND APPROVALS THAT ARE REQUIRED BY
17 THIS SECTION.

18 ~~F.~~ G. On or before January 25, April 25, July 25 and October 25 of
19 each year, the county attorney shall ~~cause to be filed~~ FILE with the
20 Arizona criminal justice commission a report for the previous calendar
21 quarter. The report shall be in a form that is prescribed by the Arizona
22 criminal justice commission and approved by the director of the joint
23 legislative budget committee. The report shall set forth the sources of
24 all monies and all expenditures AS REQUIRED BY SUBSECTIONS J AND K OF THIS
25 SECTION. The report shall not include any identifying information about
26 specific investigations. If the county attorney fails to file a report
27 within sixty days after it is due and there is no good cause as determined
28 by the Arizona criminal justice commission, the county attorney shall make
29 no expenditures from the fund for the benefit of the county attorney until
30 the report is filed.

31 ~~F.~~ H. On or before January 15, April 15, July 15 and October 15 of
32 each year, each political subdivision of this state receiving monies
33 pursuant to this section or section 13-2314.01 or 13-4315 or from any
34 department or agency of the United States or another state as a result of
35 participating in any investigation or prosecution shall ~~cause to be filed~~
36 FILE with the board of supervisors of the county in which the political
37 subdivision is located, each city or town council in which the political
38 subdivision is located and the county attorney of the county in which the
39 political subdivision is located a report for the previous calendar
40 quarter. The report shall be in a form that is prescribed by the Arizona
41 criminal justice commission and approved by the director of the joint
42 legislative budget committee. The report shall set forth the sources of
43 all monies and all expenditures AS REQUIRED BY SUBSECTION K OF THIS
44 SECTION. The report shall not include any identifying information about
45 specific investigations. If a political subdivision of this state fails

1 to file a report within forty-five days after the report is due and there
2 is no good cause as determined by the Arizona criminal justice commission,
3 the county attorney shall make no expenditures from the fund for the
4 benefit of the political subdivision until the report is filed. The
5 county attorney shall be responsible for collecting all reports from
6 political subdivisions within that county and transmitting the reports to
7 the Arizona criminal justice commission at the time that the county report
8 required pursuant to subsection ~~F~~ G of this section is submitted.

9 ~~H~~. I. On or before September 30 of each year, the Arizona criminal
10 justice commission shall compile all county attorney reports into a single
11 comprehensive report and all political subdivision reports into a single
12 comprehensive report and submit a copy of each comprehensive report to the
13 governor, the president of the senate, the speaker of the house of
14 representatives, the director of the joint legislative budget committee
15 and the secretary of state.

16 J. THE REPORT THAT IS REQUIRED BY SUBSECTION G OF THIS SECTION MUST
17 INCLUDE ALL OF THE FOLLOWING INFORMATION IF MONIES WERE OBTAINED AS A
18 RESULT OF A FORFEITURE:

- 19 1. THE NAME OF THE LAW ENFORCEMENT AGENCY THAT SEIZED THE PROPERTY.
- 20 2. THE DATE OF THE SEIZURE FOR FORFEITURE.
- 21 3. THE TYPE OF PROPERTY SEIZED AND A DESCRIPTION OF THE PROPERTY
22 SEIZED, INCLUDING, IF APPLICABLE, THE MAKE, THE MODEL AND THE SERIAL
23 NUMBER OF THE PROPERTY.
- 24 4. THE LOCATION OF THE ORIGINAL SEIZURE BY LAW ENFORCEMENT.
- 25 5. THE ESTIMATED VALUE OF THE PROPERTY SEIZED FOR FORFEITURE, NOT
26 EXCLUDING ENCUMBRANCES.
- 27 6. THE CRIMINAL STATUTE THAT ALLOWED THE SEIZURE FOR FORFEITURE.
- 28 7. THE CRIMINAL STATUTE CHARGED IN ANY CRIMINAL CASE THAT IS
29 RELATED TO THE FORFEITURE CASE, IF KNOWN AT THE TIME OF THE REPORT.
- 30 8. THE COURT CASE NUMBER OF ANY CRIMINAL CASE THAT IS RELATED TO
31 THE FORFEITURE CASE, IF KNOWN AT THE TIME OF THE REPORT.
- 32 9. THE OUTCOME OF ANY CRIMINAL CASE THAT IS RELATED TO THE
33 FORFEITURE CASE, IF KNOWN AT THE TIME OF THE REPORT.
- 34 10. IF THE PROPERTY WAS SEIZED BY A STATE AGENCY AND SUBMITTED FOR
35 STATE FORFEITURE PROCEEDINGS BUT WAS TRANSFERRED TO FEDERAL AUTHORITIES
36 FOR FORFEITURE PROCEEDINGS, THE REASON FOR THE FEDERAL TRANSFER.
- 37 11. THE FORFEITURE CASE NUMBER.
- 38 12. THE METHOD OF FORFEITURE PROCEEDING, INCLUDING WHETHER IT WAS
39 CRIMINAL OR CIVIL, AND IF CIVIL, WHETHER THE CIVIL FORFEITURE WAS JUDICIAL
40 OR UNCONTESTED PURSUANT TO SECTION 13-4309.
- 41 13. THE VENUE OF THE FORFEITURE ACTION.
- 42 14. WHETHER A PERSON OR ENTITY FILED A CLAIM OR COUNTERCLAIM OR
43 SUBMITTED A PETITION ASSERTING AN INTEREST IN THE PROPERTY AS AN OWNER,
44 INTEREST HOLDER OR INJURED PERSON.

- 1 15. WHETHER THE OWNER, INTEREST HOLDER OR INJURED PERSON WAS
- 2 ASSISTED BY AN ATTORNEY IN THE FORFEITURE CASE.
- 3 16. THE DATE OF THE FORFEITURE DECISION.
- 4 17. WHETHER THERE WAS A FORFEITURE SETTLEMENT AGREEMENT.
- 5 18. WHETHER THE PROPERTY WAS AWARDED OR PARTIALLY AWARDED TO THE
- 6 OWNER, PARTIAL OWNER OR INJURED PERSON OR IF THE PROPERTY WAS FORFEITED TO
- 7 THE STATE.
- 8 19. WHETHER THE PROPERTY WAS SOLD, DESTROYED OR RETAINED BY LAW
- 9 ENFORCEMENT.
- 10 20. THE EARLIEST DATE THAT THE PROPERTY WAS DISPOSED OF OR SENT FOR
- 11 DISPOSITION.
- 12 21. THE NET AMOUNT OF MONIES RECEIVED FROM THE FORFEITURE.
- 13 22. THE ESTIMATED ADMINISTRATIVE AND STORAGE COSTS AND ANY OTHER
- 14 COSTS, INCLUDING ANY COSTS OF LITIGATION.
- 15 23. THE AMOUNT OF ATTORNEY FEES, COSTS, EXPENSES AND DAMAGES
- 16 AWARDED AND TO WHOM THE FEES, COSTS, EXPENSES OR DAMAGES WERE AWARDED.
- 17 K. THE REPORTS THAT ARE REQUIRED BY SUBSECTIONS G AND H OF THIS
- 18 SECTION MUST INCLUDE THE FOLLOWING INFORMATION WITH REGARD TO ALL
- 19 EXPENDITURES MADE FROM THE FUND FOR:
- 20 1. CRIME, GANG AND SUBSTANCE ABUSE PREVENTION PROGRAMS.
- 21 2. ANY INJURED PERSON AS DEFINED IN SECTION 13-4301.
- 22 3. WITNESS PROTECTION.
- 23 4. INVESTIGATION COSTS, INCLUDING INFORMANT FEES AND BUY MONEY.
- 24 5. REGULAR-TIME SALARIES, OVERTIME PAY AND EMPLOYEE BENEFITS OF
- 25 PROSECUTORS.
- 26 6. REGULAR-TIME SALARIES, OVERTIME PAY AND EMPLOYEE BENEFITS OF
- 27 SWORN LAW ENFORCEMENT AGENCY PERSONNEL OTHER THAN PROSECUTORS.
- 28 7. REGULAR-TIME SALARIES, OVERTIME PAY AND EMPLOYEE BENEFITS OF
- 29 UNSWORN LAW ENFORCEMENT AGENCY PERSONNEL OTHER THAN PROSECUTORS.
- 30 8. PROFESSIONAL OR OUTSIDE SERVICES, INCLUDING SERVICES RELATED TO
- 31 AUDITING, OUTSIDE ATTORNEY FEES, COURT REPORTING, EXPERT WITNESSES AND
- 32 OTHER COURT COSTS.
- 33 9. TRAVEL AND MEALS.
- 34 10. TRAINING.
- 35 11. CONFERENCES.
- 36 12. VEHICLES PURCHASED OR LEASED.
- 37 13. VEHICLE MAINTENANCE.
- 38 14. CANINES, FIREARMS AND RELATED EQUIPMENT, INCLUDING TACTICAL
- 39 GEAR.
- 40 15. OTHER CAPITAL EXPENDITURES, INCLUDING FURNITURE, COMPUTERS AND
- 41 OFFICE EQUIPMENT.
- 42 16. EXTERNAL PUBLICATIONS AND COMMUNICATIONS.
- 43 17. OTHER OPERATING EXPENSES, INCLUDING OFFICE SUPPLIES, POSTAGE
- 44 AND PRINTING. EXPENSES LISTED UNDER THIS PARAGRAPH MUST BE SEPARATELY
- 45 CATEGORIZED.

1 18. ANY EMERGENCY USE WHEN MONIES WERE USED FROM THE FUND BEFORE AN
2 APPLICATION TO USE THE MONIES WAS APPROVED.

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

5 13-4305. Seizure of property

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

8 1. On process issued pursuant to the ARIZONA rules of civil
9 procedure or ~~the provisions of~~ this title, including a seizure warrant.

10 2. By making a seizure for forfeiture on property seized on process
11 issued pursuant to law, including sections 13-3911, ~~through~~ 13-3912,
12 13-3913, 13-3914 AND 13-3915.

13 3. By making a seizure for forfeiture without court process if any
14 of the following is true:

15 (a) The seizure for forfeiture is of property seized incident to an
16 arrest or search.

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

20 (c) The peace officer has probable cause to believe that the
21 property is subject to forfeiture.

22 B. Property subject to forfeiture under this chapter may be seized
23 for forfeiture by placing the property under constructive seizure.
24 Constructive seizure may be made by posting notice of seizure for
25 forfeiture on the property or by filing notice of seizure for forfeiture
26 or notice of pending forfeiture in any appropriate public record relating
27 to the property.

28 C. The court shall determine probable cause for seizure before real
29 property may be seized for forfeiture, unless the seizure is pursuant to a
30 constructive seizure or the filing of a racketeering lien or lis pendens.
31 The court may make its determination ex parte if the state demonstrates
32 that notice and an opportunity to appear would create a risk of harm to
33 the public safety or welfare, including the risk of physical injury or the
34 likelihood of property damage or financial loss.

35 D. The court shall determine probable cause for seizure before
36 property may be seized for forfeiture as a substitute asset pursuant to
37 section 13-2314, subsection D, E or G, or pursuant to section 13-4313,
38 subsection A, unless the seizure is pursuant to a constructive seizure or
39 the filing of a racketeering lien or lis pendens. The court may issue a
40 seizure warrant for such property if it determines that there is probable
41 cause to believe that the property is subject to forfeiture and is not
42 available for seizure for forfeiture for any reason described in section
43 13-4313, subsection A. The determinations shall be made ex parte unless
44 real property is to be seized and subsection C of this section requires
45 notice and an opportunity to appear.

1 E. In establishing ~~a preponderance of the~~ CLEAR AND CONVINCING
2 evidence and in determining probable cause for seizure and for forfeiture,
3 a rebuttable presumption exists that the property of any person is subject
4 to forfeiture if the state establishes all of the following by the
5 standard of proof applicable to that proceeding:

- 6 1. Conduct giving rise to forfeiture occurred.
7 2. The person acquired the property during the period of the
8 conduct giving rise to forfeiture or within a reasonable time after that
9 period.
10 3. There is no likely source for the property other than the
11 conduct giving rise to forfeiture.

12 F. In establishing ~~a preponderance of the~~ CLEAR AND CONVINCING
13 evidence and in determining probable cause for seizure and for forfeiture,
14 the fact that money or any negotiable instrument was found in proximity to
15 contraband or to instrumentalities of an offense gives rise to an
16 inference that the money or instrument was the proceeds of contraband or
17 was used or intended to be used to facilitate commission of the offense.

18 Sec. 5. Section 13-4306, Arizona Revised Statutes, is amended to
19 read:

20 13-4306. Powers and duties of peace officers and agencies:
21 definition

22 A. In the event of a seizure for forfeiture under section 13-4305,
23 the property is not subject to replevin, conveyance, sequestration or
24 attachment but is deemed to be in the custody of the law enforcement
25 agency making the seizure for forfeiture. The seizing agency or the
26 attorney for the state may authorize the release of the seizure for
27 forfeiture of the property if forfeiture or retention is unnecessary, may
28 transfer the property to any other state ~~or federal~~ agency or may transfer
29 the action to another attorney for the state by discontinuing forfeiture
30 proceedings in favor of forfeiture proceedings initiated by the other
31 agency or attorney. EXCEPT AS PROVIDED IN SUBSECTIONS I AND J OF THIS
32 SECTION, THE SEIZING AGENCY OR THE ATTORNEY FOR THE STATE MAY NOT TRANSFER
33 OR REFER SEIZED PROPERTY TO A FEDERAL AGENCY. An action pursuant to this
34 chapter shall be consolidated with any other action or proceeding pursuant
35 to this title relating to the same property on motion by the attorney for
36 the state in either action.

37 B. If property is seized for forfeiture under section 13-4305,
38 pending forfeiture and final disposition, the seizing agency may do any of
39 the following:

- 40 1. Remove the property to a storage area for safekeeping or, if the
41 property is a negotiable instrument or money, deposit it in an interest
42 bearing account.
43 2. Remove the property to a place designated by the court.

1 3. Provide for another custodian or agency to take custody of the
2 property and remove it to an appropriate location within the jurisdiction
3 of the court.

4 C. As soon as practicable after seizure for forfeiture, the seizing
5 agency shall conduct an inventory and estimate the value of the property
6 seized. Within twenty days the seizing agency or the attorney for the
7 state shall make reasonable efforts to provide notice of seizure for
8 forfeiture to all persons known to have an interest in the seized
9 property.

10 D. A person who acts in good faith and in a reasonable manner to
11 comply with an order of the court or a request of a peace officer is not
12 liable to any person for acts done in compliance with the order or
13 request.

14 E. A possessory lien of a person from whose possession property is
15 seized is not affected by the seizure.

16 F. In the event of a seizure for forfeiture under section 13-4305,
17 the seizing agency shall send to an attorney for the state a written
18 request for forfeiture within twenty days, which shall include a statement
19 of facts and circumstances of the seizure, including the names of
20 witnesses then known, the appraised or estimated value of the property and
21 a summary of the facts relied on for forfeiture.

22 G. An owner of property seized for forfeiture may obtain the
23 release of the seized property by posting with the attorney for the state
24 a surety bond or cash in an amount equal to the full fair market value of
25 the property as determined by the attorney for the state. The state may
26 refuse to release the property if any of the following applies:

27 1. The bond or cash tendered is inadequate.

28 2. The property is retained as contraband or evidence.

29 3. The property is particularly altered or designed for use in
30 conduct giving rise to forfeiture.

31 H. If an owner of property posts a surety bond or cash and the
32 property is forfeited the court shall forfeit the surety bond or cash in
33 lieu of the property.

34 I. THE SEIZING AGENCY OR THE ATTORNEY FOR THE STATE MAY NOT ENTER
35 INTO ANY AGREEMENT TO TRANSFER OR REFER SEIZED PROPERTY TO A FEDERAL
36 AGENCY FOR THE PURPOSE OF FORFEITURE IF THE PROPERTY WAS SEIZED PURSUANT
37 TO AN INVESTIGATION THAT EITHER:

38 1. DID NOT INVOLVE A FEDERAL AGENCY.

39 2. INVOLVES A VIOLATION OF A STATE LAW AND NO VIOLATION OF A
40 FEDERAL LAW IS ALLEGED.

41 J. PROPERTY THAT IS SEIZED IN A JOINT INVESTIGATION MAY NOT BE
42 TRANSFERRED OR REFERRED TO A FEDERAL AGENCY FOR THE PURPOSE OF FORFEITURE
43 UNLESS THE GROSS ESTIMATED VALUE OF THE SEIZED PROPERTY IS MORE THAN
44 SEVENTY-FIVE THOUSAND DOLLARS.

45 K. THIS SECTION DOES NOT PROHIBIT:

1 1. THE FEDERAL GOVERNMENT OR ANY OF ITS AGENCIES FROM SEIZING
2 PROPERTY, SEEKING FORFEITURE PURSUANT TO FEDERAL LAW AND SHARING PROPERTY
3 THAT IS FORFEITED PURSUANT TO FEDERAL LAW WITH A STATE OR LOCAL LAW
4 ENFORCEMENT AGENCY THAT PARTICIPATES IN A JOINT INVESTIGATION.

5 2. A STATE OR LOCAL LAW ENFORCEMENT AGENCY FROM PARTICIPATING IN A
6 JOINT INVESTIGATION.

7 L. FOR THE PURPOSES OF THIS SECTION, "JOINT INVESTIGATION" MEANS AN
8 INVESTIGATION IN WHICH A STATE OR LOCAL LAW ENFORCEMENT AGENCY DIRECTLY
9 PARTICIPATES IN THE INVESTIGATION OR ENFORCEMENT OF A FEDERAL CRIMINAL LAW
10 WITH A FEDERAL AGENCY AND THE INVESTIGATION OR ENFORCEMENT RESULTS IN A
11 SEIZURE.

12 Sec. 6. Section 13-4310, Arizona Revised Statutes, is amended to
13 read:

14 13-4310. Judicial forfeiture proceedings; general

15 A. In any proceeding pursuant to this chapter, the court, on
16 application of the state, may enter any restraining order or injunction,
17 require the execution of satisfactory performance bonds, create
18 receiverships, appoint conservators, appraisers, accountants or trustees
19 or take any other action to seize, secure, maintain or preserve the
20 availability of property subject to forfeiture under this title, including
21 a warrant for its seizure, whether prior or subsequent to the filing of a
22 notice of pending forfeiture, complaint, indictment or information.

23 B. If property is seized for forfeiture without a prior judicial
24 determination of probable cause, an order of forfeiture or a hearing
25 pursuant to section 13-4312, subsection D, the court, on an application
26 filed by an owner of or interest holder in the property within fifteen
27 days after notice of its seizure for forfeiture or actual knowledge of it,
28 whichever is earlier, and complying with the requirements for claims in
29 section 13-4311, subsections E and F, may issue an order to show cause to
30 the seizing agency for a hearing on the sole issue of whether probable
31 cause for forfeiture of the property then exists. Notice of the order to
32 show cause hearing must be served ~~upon~~ ON the attorney for the state at
33 least five working days before the hearing is held. If the court finds
34 that no probable cause for forfeiture of the property then exists or if
35 the state elects not to contest the issue, the property seized for
36 forfeiture from the applicant shall be released to the custody of the
37 applicant pending the outcome of a judicial proceeding pursuant to this
38 chapter. If the court finds that probable cause for the forfeiture of the
39 property then exists, the court shall not order the property released,
40 except as provided in section 13-4306, subsection G.

41 C. A defendant convicted in any criminal proceeding shall be
42 precluded from subsequently denying the essential allegations of the
43 criminal offense of which he was convicted in any proceeding pursuant to
44 this chapter. For the purposes of this chapter, a conviction may result
45 from a verdict or plea including a no contest plea.

1 D. In any judicial forfeiture hearing, determination or other
2 proceeding pursuant to this chapter, the applicant, petitioner or claimant
3 must establish by a preponderance of the evidence that he is an owner of
4 or interest holder in the property seized for forfeiture before other
5 evidence is taken. The burden of proving the standing of the claimant and
6 the existence of the exemption is on the claimant or party raising
7 the claim, and it is not necessary to negate the standing of any claimant
8 or the existence of any exemption in any notice, application, complaint,
9 information or indictment.

10 E. In hearings and determinations pursuant to this chapter:

11 1. The law of evidence relating to civil actions applies equally to
12 all parties, including the state, an applicant, a petitioner, a claimant
13 and a defendant, on all issues required to be established by a
14 preponderance of the evidence OR CLEAR AND CONVINCING EVIDENCE.

15 2. The court shall receive and consider, in making any
16 determination of probable cause or reasonable cause, all evidence and
17 information that would be permissible in determining probable cause at a
18 preliminary hearing, at a grand jury or by a magistrate pursuant to
19 section 13-3913, together with inferences from the evidence and
20 information.

21 ~~3. No evidence may be suppressed in any hearing pursuant to this~~
22 ~~chapter on the ground that its acquisition by search or seizure violated~~
23 ~~constitutional protections applicable in criminal cases relating to~~
24 ~~unreasonable searches or seizures.~~

25 F. All property, including all interests in such property, declared
26 forfeited under this title vests in this state on the commission of the
27 act or omission giving rise to forfeiture under this title together with
28 the proceeds of the property after such time. Any such property or
29 proceeds subsequently transferred to any person are subject to forfeiture
30 and thereafter shall be ordered forfeited unless the transferee claims and
31 establishes in a hearing pursuant to this chapter the showings set out in
32 section 13-4304.

33 G. On the motion of a party and after notice to any persons who are
34 known to have an interest in the property and an opportunity to be heard,
35 the court may order property that has been seized for forfeiture sold,
36 leased, rented or operated to satisfy an interest of any interest holder
37 who has timely filed a proper claim or to preserve the interests of any
38 party. The court may order a sale or any other disposition of the
39 property if the property may perish, waste, be foreclosed on or otherwise
40 be significantly reduced in value or if the expenses of maintaining the
41 property are or will become greater than its fair market value. If the
42 court orders a sale, the court shall designate a third party or state
43 property manager to dispose of the property by public sale or other
44 commercially reasonable method and shall distribute the proceeds in the
45 following order of priority:

1 1. Payment of reasonable expenses incurred in connection with the
2 sale.

3 2. Satisfaction of exempt interests in the order of their priority.

4 3. Preservation of the balance, if any, in the actual or
5 constructive custody of the court in an interest bearing account, subject
6 to further proceedings under this chapter.

7 H. If the property is disposed of pursuant to subsection G of this
8 section, a successful claimant may apply to the court for actual monetary
9 damages suffered, if any, as a result of the disposal of the property, but
10 the state, a political subdivision of the state, or an officer, employee
11 or agent of any of them shall not in any event be liable under this
12 chapter for incidental or consequential damages or for damages either:

13 1. That could have been avoided if the claimant had made full and
14 immediate disclosure to the attorney for the state of facts or evidence
15 known or available to the claimant.

16 2. In excess of the fair market value of the property seized for
17 forfeiture at the time of its seizure plus interest from the time of its
18 seizure for forfeiture.

19 I. If an indictment or information is filed alleging the same
20 conduct as the conduct giving rise to forfeiture in a civil forfeiture
21 proceeding, the court in the civil proceeding may stay civil discovery
22 against the criminal defendant and against the state in the civil
23 proceeding until the defendant's criminal trial is completed. Before
24 staying civil discovery, the court shall make adequate provision to
25 prevent any loss or expense to any victim or party resulting from the
26 delay, including loss or expense due to maintenance, management,
27 insurance, storage or preservation of the availability of the property or
28 due to depreciation in the value of the property.

29 J. No person claiming to be an owner of or interest holder in
30 property seized for forfeiture under this chapter may commence or maintain
31 any action against the state concerning the validity of the alleged
32 interest other than as provided in this chapter.

33 Sec. 7. Section 13-4311, Arizona Revised Statutes, is amended to
34 read:

35 13-4311. Judicial in rem forfeiture proceedings

36 A. If a forfeiture is authorized by law, it shall be ordered by a
37 court on an action in rem brought by the state pursuant to a notice of
38 pending forfeiture or a verified complaint for forfeiture. The state may
39 serve the complaint in the manner provided by section 13-4307 or by the
40 Arizona rules of civil procedure.

41 B. A civil in rem action may be brought by the state in addition to
42 or in lieu of the civil and criminal in personam forfeiture procedures set
43 forth in sections 13-4312 and 13-4313 or the uncontested civil forfeiture
44 procedures set forth in section 13-4309. Judicial in rem forfeiture
45 proceedings are in the nature of an action in rem and are governed by the

1 Arizona rules of civil procedure unless a different procedure is provided
2 by law.

3 C. On the filing of a civil in rem action by the state in superior
4 court the clerk of the court in which the action is filed shall provide,
5 and the attorney for the state may provide, the notice of pending
6 forfeiture required by section 13-4307 unless the files of the clerk of
7 the court reflect that such notice has previously been made.

8 D. An owner of or interest holder in the property may file a claim
9 against the property, within thirty days after the notice, for a hearing
10 to adjudicate the validity of his claimed interest in the property. The
11 COURT SHALL HOLD THE hearing ~~shall be held by the court~~ without a jury.
12 AN OWNER OR INTEREST HOLDER MAY NOT BE CHARGED A FILING FEE OR ANY OTHER
13 CHARGE FOR FILING THE CLAIM.

14 E. The claim shall be signed by the claimant under penalty of
15 perjury and shall set forth all of the following:

16 1. The caption of the proceeding as set forth on the notice of
17 pending forfeiture or complaint and the name of the claimant.

18 2. The address at which the claimant will accept future mailings
19 from the court or attorney for the state.

20 3. The nature and extent of the claimant's interest in the
21 property.

22 4. The date, the identity of the transferor and the circumstances
23 of the claimant's acquisition of the interest in the property.

24 5. The specific provisions of this chapter relied on in asserting
25 that the property is not subject to forfeiture.

26 6. All facts supporting each such assertion.

27 7. Any additional facts supporting the claimant's claim.

28 8. The precise relief sought.

29 F. Copies of the claim shall be mailed to the seizing agency and to
30 the attorney for the state. No extension of time for the filing of a
31 claim may be granted.

32 G. Within twenty days after service of the complaint, the claimant
33 shall file and serve the answer to the complaint and the answers to
34 interrogatories and requests for admission if any were served with the
35 complaint. The answer shall be signed by the owner or interest holder
36 under penalty of perjury, shall comply with the Arizona rules of civil
37 procedure relating to answers and shall comply with all of the
38 requirements for claims. If no proper answer is timely filed, the
39 attorney for the state shall proceed as provided in sections 13-4314 and
40 13-4315 with ten days' notice to any person who has timely filed a claim
41 that has not been stricken by the court.

42 H. At the time of filing its pleadings or at any other time not
43 less than thirty days before the hearing, the state and any claimant who
44 has timely answered the complaint may serve discovery requests on any
45 other party, the answers or response to which shall be due in twenty days,

1 and may take the deposition of any person at any time after the expiration
2 of fifteen days after the filing and service of the complaint. Any party
3 may move for summary judgment at any time after an answer or responsive
4 pleading is served and not less than thirty days before the hearing. The
5 state, as the party defending against the claim, may make offers of
6 judgment at any time more than ten days before the hearing begins.

7 I. An injured person may submit a request for compensation from
8 forfeited property to the court at any time before the earlier of the
9 entry of a final judgment or an application for an order of the forfeiture
10 of the property, or if a hearing pursuant to subsections K, L and M of
11 this section is held, not less than thirty days before the hearing. The
12 request shall be signed by the requestor under penalty of perjury and
13 shall set forth all of the following:

14 1. The caption of the proceeding as set forth on the notice of
15 pending forfeiture or complaint and the name of the requestor.

16 2. The address at which the requestor will accept future mailings
17 from the court or parties to the action.

18 3. The property subject to forfeiture from which the requestor
19 seeks compensation.

20 4. The nature of the economic loss sustained by the requestor.

21 5. All facts supporting each such assertion.

22 6. Any additional facts supporting the request.

23 7. The amount of economic loss for which the requestor seeks
24 compensation.

25 J. If a proper request for compensation from forfeited property is
26 timely filed, the court shall hold a hearing to establish whether there is
27 a factual basis for the request. The requestor has the burden of
28 establishing by a preponderance of the evidence that the requestor is an
29 injured person who sustained economic loss.

30 K. The hearing on the claim, to the extent practicable and
31 consistent with the interest of justice, shall be held sixty days after
32 all parties have complied with the disclosure required by rule 26.1 of the
33 Arizona rules of civil procedure. The court may consolidate the hearing
34 on the claim with a hearing on any other claim concerning the same
35 property.

36 L. At the hearing, the claimant may testify, present evidence and
37 witnesses on the claimant's own behalf and cross-examine witnesses who
38 appear at the hearing. The state may present evidence and witnesses and
39 cross-examine witnesses who appear at the hearing.

40 M. At the hearing, the state has the burden of establishing by
41 ~~a preponderance of the~~ CLEAR AND CONVINCING evidence that the property is
42 subject to forfeiture under section 13-4304. Any claimant who has
43 previously established by a preponderance of the evidence that the
44 claimant is an owner of or interest holder in the property has the burden

1 of establishing by a preponderance of the evidence that the claimant's
2 interest in the property is exempt from forfeiture under section 13-4304.

3 N. In accordance with its findings at the hearing:

4 1. The court shall order an interest in property returned or
5 conveyed to a claimant, if any, who has established by a preponderance of
6 the evidence that the claimant is an owner of or interest holder in the
7 property if either of the following applies:

8 (a) The state has failed to establish by ~~a preponderance of the~~
9 CLEAR AND CONVINCING evidence that the interest is subject to forfeiture
10 under section 13-4304.

11 (b) The claimant has established by a preponderance of the evidence
12 that the interest is exempt from forfeiture under section 13-4304.

13 2. The court shall order all other property, including all
14 interests in the property, forfeited to this state and proceed pursuant to
15 sections 13-4314 and 13-4315.

16 3. If the court finds that a requestor is an injured person the
17 court shall determine the amount of the injured person's economic loss
18 caused by the conduct giving rise to the forfeiture of the designated
19 property and shall require the following:

20 (a) If the designated property is not contraband and is not altered
21 or designed for use in conduct giving rise to forfeiture, the attorney for
22 the state shall sell the property as provided in section 13-4315,
23 subsection A, paragraph 2, and shall apply the resulting balance to
24 compensate the injured person's economic loss in the amount found by the
25 court.

26 (b) If the balance is insufficient to compensate the economic loss
27 of all injured persons the attorney for the state shall distribute the
28 balance among the injured persons according to a method determined by the
29 court.

30 (c) After compensation of all injured persons, the attorney for the
31 state shall transmit ten ~~per cent~~ PERCENT of the remaining balance, if
32 any, to the Arizona criminal justice commission for deposit in the victim
33 compensation and assistance fund established by section 41-2407.

34 (d) The attorney for the state shall deposit the remainder of the
35 balance, if any, in an appropriate anti-racketeering revolving fund
36 established by section 13-2314.01 or 13-2314.03.

37 Sec. 8. Section 13-4312, Arizona Revised Statutes, is amended to
38 read:

39 13-4312. Judicial in personam forfeiture proceedings

40 A. If a forfeiture is authorized by law, it shall be ordered by a
41 court on proceedings by the state in an in personam civil or criminal
42 action pursuant to section 13-2313 or 13-2314 or any other law providing
43 for a forfeiture.

44 B. Any complaint, information or indictment alleging or charging
45 one or more offenses included in section 13-2301, subsection D, paragraph

1 4 or a violation of section 13-2312, or any other offense giving rise to
2 forfeiture under this title, shall set forth with reasonable particularity
3 property that the state seeks to forfeit pursuant to this section in that
4 action, if any. The court shall allow the allegation that particular new
5 or different or differently described property is subject to forfeiture in
6 an in personam criminal or civil case to be made at any time prior to the
7 date the case is actually tried unless the allegation is filed fewer than
8 twenty days before the case is actually tried, and the court finds on the
9 record that the defendant was in fact prejudiced by the untimely filing
10 and states reasons for these findings, provided that when the allegation
11 is filed, the state must make available to the defendant a copy of any
12 material information concerning the allegation.

13 C. In any proceeding pursuant to this section, the court, on
14 application of the state, may enter any order authorized by section
15 13-4310, subsection A or take any other action to seize, secure, maintain
16 or preserve the availability of property subject to forfeiture under this
17 title, including a warrant for its seizure, whether before or after the
18 filing of a complaint, indictment or information.

19 D. Notwithstanding subsection E of this section, a temporary
20 restraining order under this section may be entered on application of the
21 state without notice or an opportunity for a hearing if the state
22 demonstrates both that:

23 1. There is probable cause to believe that the property with
24 respect to which the order is sought would, in the event of final judgment
25 or conviction, be subject to forfeiture under this title.

26 2. Provision of notice will jeopardize the availability of the
27 property for forfeiture. A temporary restraining order expires within ten
28 days after the date on which it is entered unless the party against whom
29 it is entered consents to an extension for a longer period or unless after
30 commencing a hearing the court enters or is considering a preliminary
31 injunction.

32 E. Notice of the entry of the restraining order and an opportunity
33 for a hearing shall be afforded to persons known to have an interest in
34 the property, whether or not a temporary restraining order is entered
35 without notice. The hearing, however, is limited to the issues of whether
36 both:

37 1. There is a probability that the state will prevail on the issue
38 of forfeiture and that failure to enter the order will result in the
39 property being destroyed, conveyed, encumbered or further encumbered,
40 removed from the jurisdiction of the court, concealed or otherwise made
41 unavailable for forfeiture.

42 2. The need to preserve the availability of property through the
43 entry of the requested order outweighs the hardship on any owner, interest
44 holder or defendant against whom the order is to be entered.

1 F. A hearing requested by any owner or interest holder concerning
2 an order entered under this section shall be held at the earliest possible
3 time and before the expiration of a temporary order.

4 G. On a determination of liability or the conviction of a person
5 for conduct giving rise to forfeiture under this title, the court shall
6 enter a judgment of forfeiture of the property described in the forfeiture
7 statute alleged and set out in the complaint, information or indictment,
8 as amended, and shall also authorize the county attorney or attorney
9 general, their agents or any peace officer to seize all property ordered
10 forfeited that was not previously seized or is not then under seizure.
11 Following the entry of an order declaring the property forfeited, the
12 court, on application of the state, may enter any order authorized by
13 section 13-4310, subsection A or take any other action to protect the
14 interest of this state or a political subdivision in the property ordered
15 forfeited. The filing of the order of forfeiture in the appropriate
16 public records perfects the interest of the state in the property
17 described in the order as of the earlier of the date of the act or
18 omission giving rise to forfeiture or the date that a notice of seizure
19 for forfeiture or notice of pending forfeiture or racketeering lien was
20 first filed in the records, which entitles the state to all rights of a
21 secured party as to that property in addition to any other rights or
22 remedies of the state in relation to the property. Any income accruing
23 to, or derived from, an enterprise or any interest in an enterprise or
24 other property interest that is forfeited under this chapter is also
25 forfeited from the time of the conduct giving rise to forfeiture. It may
26 be used pending procedures subsequent to a verdict or finding of liability
27 to offset ordinary and necessary expenses of the enterprise or property as
28 required by law or that are necessary to protect the interests of this
29 state or a political subdivision.

30 H. Procedures subsequent to the verdict or finding of liability and
31 order of forfeiture shall be as follows:

32 1. Following the entry of an order of forfeiture under this
33 subsection the clerk of the court shall, and the attorney for the state
34 may, give notice of pending forfeiture to all owners and interest holders
35 who have not previously been given notice, if any, in the manner provided
36 in section 13-4307.

37 2. An owner of or interest holder in property that has been ordered
38 forfeited pursuant to such action whose claim is not precluded may file a
39 claim as described in section 13-4311, subsections E and F in the court
40 for a hearing to adjudicate the validity of his claimed interest in the
41 property within thirty days after initial notice of pending forfeiture or
42 after notice under paragraph 1 of this subsection, whichever is earlier.

43 3. The hearing on the claim, to the extent practicable and
44 consistent with the interest of justice, shall be held within sixty days
45 after the order of forfeiture. The court may consolidate the hearing on

1 the claim with a hearing on any other claim filed by a person other than a
2 party or defendant in the underlying action and concerning the same
3 property.

4 4. The hearing shall be held by the court without a jury and
5 conducted in the manner provided for in rem judicial forfeiture actions
6 including the provisions of section 13-4311, subsections ~~J~~ L and ~~K~~ M.
7 In addition to testimony and evidence presented at the hearing, the court
8 shall consider the relevant portions of the record of the underlying civil
9 or criminal action that resulted in the order of forfeiture.

10 5. In accordance with its findings at the hearing, the court may
11 amend the order of forfeiture if it determines that any claimant has
12 established by a preponderance of the evidence that the claimant is an
13 owner of or interest holder in the property if either of the following
14 applies:

15 (a) The state has failed to establish by ~~a preponderance of the~~
16 CLEAR AND CONVINCING evidence that the interest is subject to forfeiture
17 under section 13-4304.

18 (b) The claimant has established by a preponderance of the evidence
19 that the interest is exempt from forfeiture under section 13-4304.

20 I. In order to facilitate the identification or location of
21 property declared forfeited and to facilitate the disposition of filed or
22 subsequent claims pursuant to subsection H, paragraph 2 of this section,
23 the court, on application of the state, may order that the testimony of
24 any witness relating to the property forfeited or alleged to be subject to
25 forfeiture be taken by deposition and that any designated book, paper,
26 document, record, recording, electronic or otherwise, or other material
27 which is not privileged be produced at the same time and place and in the
28 same manner as that provided for the taking of depositions under the rules
29 of civil procedure.

30 Sec. 9. Section 13-4314, Arizona Revised Statutes, is amended to
31 read:

32 13-4314. Disposition by court

33 A. If no petitions for remission or mitigation or claims are timely
34 filed or if no petitioner files a claim in the court within thirty days
35 after the mailing of a declaration of forfeiture, the attorney for the
36 state shall apply to the court for an order of forfeiture and allocation
37 of forfeited property pursuant to section 13-4315. On the state's written
38 application showing jurisdiction, notice and facts sufficient to
39 demonstrate probable cause for forfeiture, and in cases brought pursuant
40 to section 13-3413, subsection A, paragraph 1 or 3, probable cause to
41 believe that the conduct giving rise to forfeiture involved an amount of
42 unlawful substance greater than the statutory threshold amount as defined
43 in section 13-3401 or was committed for financial gain, the court shall
44 order the property forfeited to the state.

1 B. After the court's disposition of all claims timely filed under
2 this chapter, the state has clear title to the forfeited property and the
3 court shall so order. Title to the forfeited property and its proceeds is
4 deemed to have vested in the state on the commission of the act or
5 omission giving rise to the forfeiture under this title.

6 C. If, in his discretion, the attorney for the state has entered
7 into a stipulation with an interest holder that the interest holder has an
8 interest that is exempted from forfeiture, the court, on application of
9 the attorney for the state, may release or convey forfeited personal
10 property to the interest holder if all of the following are true:

11 1. The interest holder has an interest ~~which~~ THAT was acquired in
12 the regular course of business as a financial institution within section
13 13-2301, subsection D, paragraph 3.

14 2. The amount of the interest holder's encumbrance is readily
15 determinable and it has been reasonably established by proof made
16 available by the attorney for the state to the court.

17 3. The encumbrance held by the interest holder seeking possession
18 is the only interest exempted from forfeiture and the order forfeiting the
19 property to the state transferred all of the rights of the owner ~~prior to~~
20 BEFORE forfeiture, including rights to redemption, to the state.

21 4. After the court's release or conveyance, the interest holder
22 shall dispose of the property by a commercially reasonable public sale,
23 and within ten days of disposition shall tender to the state the amount
24 received at disposition less the amount of the interest holder's
25 encumbrance and reasonable expense incurred by the interest holder in
26 connection with the sale or disposal.

27 D. On order of the court forfeiting the subject property, the
28 attorney for the state may transfer good and sufficient title to any
29 subsequent purchaser or transferee, and the title shall be recognized by
30 all courts, by this state and by all departments and agencies of this
31 state and any political subdivision.

32 E. On entry of judgment for a claimant or claimants in any
33 proceeding to forfeit property under this chapter such property or
34 interest in property shall be returned or conveyed immediately to the
35 claimant or claimants designated by the court. ~~if it appears that there~~
36 ~~was reasonable cause for the seizure for forfeiture or for the filing of~~
37 ~~the notice of pending forfeiture, complaint, information or indictment,~~
38 ~~the court shall cause a finding to be entered, and the claimant is not, in~~
39 ~~such case, entitled to costs or damages, nor is the person or seizing~~
40 ~~agency that made the seizure, nor is the attorney for the state liable to~~
41 ~~suit or judgment on account of such seizure, suit or prosecution. THE~~
42 ~~PERSON OR SEIZING AGENCY THAT MADE THE SEIZURE AND THE ATTORNEY FOR THE~~
43 ~~STATE ARE NOT PERSONALLY LIABLE TO SUIT OR JUDGMENT ON ACCOUNT OF SUCH~~
44 ~~SEIZURE, SUIT OR PROSECUTION UNLESS THE PERSON, SEIZING AGENCY OR ATTORNEY~~
45 ~~FOR THE STATE INTENDED TO CAUSE INJURY OR WAS GROSSLY NEGLIGENT.~~

1 F. The court shall order any claimant who fails to establish that
2 his entire interest is exempt from forfeiture under section 13-4304 to pay
3 the costs of any claimant who establishes that his entire interest is
4 exempt from forfeiture under section 13-4304 and the state's costs and
5 expenses of the investigation and prosecution of the matter, including
6 reasonable attorney fees MAY AWARD REASONABLE ATTORNEY FEES, EXPENSES AND
7 DAMAGES FOR LOSS OF THE USE OF THE PROPERTY TO ANY CLAIMANT WHO
8 SUBSTANTIALLY PREVAILS BY AN ADJUDICATION ON THE MERITS OF A CLAIM. IF
9 THE COURT FINDS THAT REASONABLE CAUSE DID NOT EXIST FOR THE SEIZURE FOR
10 FORFEITURE OR THE FILING OF THE NOTICE OF PENDING FORFEITURE, COMPLAINT,
11 INFORMATION OR INDICTMENT AND THAT THE SEIZING AGENCY OR ATTORNEY FOR THE
12 STATE INTENDED TO CAUSE INJURY OR WAS GROSSLY NEGLIGENT, THE COURT SHALL
13 AWARD THE CLAIMANT TREBLE COSTS OR DAMAGES. THE COURT MUST APPORTION THE
14 AWARD FOR TREBLE COSTS OR DAMAGES BETWEEN THE AGENCY THAT MADE THE SEIZURE
15 AND THE OFFICE OF THE ATTORNEY FOR THE STATE.

APPROVED BY THE GOVERNOR APRIL 12, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 12, 2017.

Passed the House February 23, 2017

Passed the Senate April 3, 2017

by the following vote: 60 Ayes,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

0 Nays, 0 Not Voting

[Signature]
Speaker of the House
 Pro Tempore

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20____

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20____

at _____ o'clock _____ M.

Secretary of State

H.B. 2477

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

_____ April 20, 20 17,

by the following vote: 55 Ayes,

1 Nays, 4 Not Voting

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

10th day of April, 20 17,

at 2:47 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 12th day of

April, 20 17,

at 2:55 o'clock P. M.

[Signature]
Governor of Arizona

H.B. 2477

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 12 day of April, 20 17,

at 4:03 o'clock P. M.

[Signature]
Secretary of State