



# ARIZONA HOUSE OF REPRESENTATIVES

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## **HB 2810: civil asset forfeiture; conviction; procedures**

**Sponsor: Representative Grantham, LD 12**

**House Engrossed**

### **Overview**

Modifies civil asset forfeiture to require the property owner to have been convicted of an offense and for the state to establish the property is subject to forfeiture by clear and convincing evidence.

### **History**

A *search warrant* is a court order issued by a magistrate that directs a peace officer to search for property or persons ([A.R.S. § 13-3911](#)). A magistrate may issue a search warrant under certain conditions established in law, authorizing property to be seized when the property:

- 1) Was stolen;
- 2) Was used as a means of committing a crime;
- 3) Is possessed by a person who intends to use them to commit a crime; or
- 4) Consists of evidence that shows a crime was committed ([A.R.S. § 13-3912](#)).

A forfeiture proceeding may occur after the property is seized; all property which is outlined in statute as eligible for forfeiture is subject to that proceeding unless it meets certain specified exemptions ([A.R.S. § 13-4304](#)). There are requirements for notice to be given to the owner of the seized property that forfeiture proceedings are pending ([A.R.S. § 13-4307](#)). Judicial forfeiture can take the form of general, *in rem* or *in personam* proceedings. In this context, *in rem* is contrasted with *in personam* as meaning “against the thing” or “against the person,” respectively (A.R.S. §§ [13-4310](#), [13-4311](#), [13-4312](#)). If the seized property is deemed forfeited, the court orders the title to the forfeited property to the state ([A.R.S. § 13-4314](#)).

### **Provisions**

#### ***Anti-Racketeering***

1. Removes the ability of the Attorney General or a county attorney to pursue *in rem* forfeiture in support of racketeering charges. (Sec. 1)
2. Prohibits the Attorney General from using money in the Anti-Racketeering Revolving Fund to pay salaries for full-time equivalent positions beginning August 28, 2024. (Sec. 2)
3. Modifies reporting requirements for the state Anti-Racketeering Revolving Fund and county anti-racketeering revolving funds. (Sec. 2, 3)
4. Requires a criminal conviction for seizure and forfeiture related to drug offenses. (Sec. 4)

#### ***Warrants for Seizure***

5. States that an applicant for a search warrant and the judicial officer issuing the warrant must have probable cause to believe grounds for issuance exist. (Sec. 5)
6. Directs the officer who takes property under a warrant to provide an itemized receipt of seized property. (Sec. 6)

7. Provides for the return of all seized property to the known owner within 10 business days unless:
  - a) The owner has been charged with a criminal offense subject to forfeiture;
  - b) The property is to be used for evidence;
  - c) It is illegal for the owner to possess the property; or
  - d) The property was seized for forfeiture, in which case it may be returned by forfeiture proceedings. (Sec. 7)
8. Instructs the magistrate to provide a written copy of the inventory of property taken to both the person whose property was taken and the applicant of the warrant. (Sec. 8)

#### ***Forfeiture Proceedings***

9. States *seizure for forfeiture* may include property that has no evidentiary value. (Sec. 10)
10. Requires a criminal conviction of the offense that led to the seizure of property in order to pursue a civil forfeiture action. (Sec. 11, 12, 16)
11. Permits a court to order forfeiture of any of the following:
  - a) Property acquired by committing an offense;
  - b) Property traced to property acquired by committing an offense; and
  - c) Any property used to commit an offense or facilitate the offense. (Sec. 12)
12. Allows the court to waive conviction requirement for seizure if the prosecutor demonstrates, by clear and convincing evidence, that there is no known owner of the property or the defendant:
  - a) Died;
  - b) No longer lives in the United States or fled the jurisdiction of the state;
  - c) Was granted a reduced punishment for testifying in support of an investigation or prosecution; or
  - d) Abandoned the property. (Sec. 13)
13. Permits a peace officer to seize property for forfeiture without a court process if the officer has probable cause and that the delay to seek a court order would frustrate the seizure. (Sec. 13)
14. Eliminates *constructive seizure*. (Sec. 13)
15. Prevents a peace officer from inducing a person to relinquish a right to property. (Sec. 14)
16. Restricts the ability of the court to charge fees for forfeiture filing. (Sec. 15, 19)
17. Alters pending forfeiture notice requirements to be provided within 60 days, to be served to the owner's attorney and to allow for an interest holder to file a claim against the property. (Sec. 15)
18. Repeals *uncontested forfeiture*. (Sec. 17)
19. Establishes *postdeprivation hearings* for the property owner to seek the property's release prior to judgment. (Sec. 18)
20. Sets the maximum value of the forfeited property to not reasonably exceed:
  - a) The pecuniary gain sought or actually derived from the crime;
  - b) The pecuniary loss caused by the crime; or
  - c) The value of the convicted owner's interest in the property. (Sec. 19)
21. Allows a person injured by the offense to petition the court for compensation through the forfeited property following a hearing using the standard of a preponderance of evidence. (Sec. 19)
22. Subjects *in rem* and *in personam* forfeiture proceedings to new procedures aligned with other forfeiture hearings. (Sec. 20, 21)

23. Extends, from 30 to 60 days, the period in which an owner of seized property may file a claim during an *in rem* forfeiture proceeding. (Sec. 20)

**Miscellaneous**

24. Prohibits the transfer of forfeited property to either an officer or employee of the agency that seized the property, the attorney for the state or any individual working in the same office or any individual related to them. (Sec. 22)

25. Enables the Anti-Racketeering Revolving Fund to be used for investigative purposes and storage costs associated with seized property. (Sec. 23)

26. Defines *abandoned property*. (Sec. 10)

27. Makes technical and conforming changes. (Sec. 1, 3, 4, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24)

<input type="checkbox"/> Prop 105 (45 votes)	<input type="checkbox"/> Prop 108 (40 votes)	<input type="checkbox"/> Emergency (40 votes)	<input type="checkbox"/> Fiscal Note
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