

CHAPTER.....

AN ACT relating to crimes; providing for the criminal and civil forfeiture of property and proceeds attributable to technological crimes; making certain changes to the membership and duties of the Advisory Board for the Nevada Task Force for Technological Crime; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the seizure, forfeiture and disposition of certain property and proceeds attributable to the commission of certain crimes. (NRS 179.1156-179.121) Existing law separately provides for the seizure, forfeiture and disposition of property and proceeds attributable to racketeering crimes. (NRS 207.350-207.520) **Sections 2-14** of this bill provide for the seizure, forfeiture and disposition of property and proceeds attributable to any technological crime which is punishable as a felony. **Section 18** of this bill revises the definition of a technological crime to include an attempt to commit or conspiracy to commit a technological crime. (NRS 205A.030)

Section 6 of this bill provides for the criminal forfeiture of property attributable to any technological crime in certain circumstances and designates the procedures by which a court or jury may determine the extent to which certain property is subject to such criminal forfeiture. **Section 7** of this bill provides that a criminal defendant who enters a plea of guilty to a technological crime may agree to the forfeiture of any property in the plea agreement. **Sections 8 and 9** of this bill provide that a prosecutor may apply for an order to preserve property which may be subject to criminal forfeiture in certain circumstances. **Section 10** of this bill gives the court the authority to order the forfeiture of certain property upon a verdict or plea of guilty to a technological crime.

Section 11 of this bill provides for the forfeiture of property attributable to any technological crime in a civil action or proceeding brought by the Attorney General or a district attorney. In such a proceeding, the State is not required to plead or prove that a person has been charged with or convicted of any technological crime.

Section 12 of this bill provides for the seizure of property subject to a criminal or civil forfeiture. **Section 13** of this bill requires the appropriate city or county or the State to sell any forfeited property and provides for the distribution of the proceeds of such sales. **Section 14** of this bill provides, with exceptions, for a 5-year statute of limitations on any action brought under the provisions of this bill.

Section 16 of this bill provides that establishing allodial title in a homestead does not exempt the property from forfeiture pursuant to the new provisions of this bill. (NRS 115.010)

Section 17 of this bill changes the name of the Advisory Board for the Nevada Task Force for Technological Crime to the Technological Crime Advisory Board. (NRS 205A.020) **Sections 19-25** of this bill make certain changes concerning the membership and duties of the Board. (NRS 205A.040-205A.100) **Sections 22 and 23** amend existing law to provide for the approval of certain actions of the Board by a two-thirds vote rather than by unanimous approval of the members of the Board. (NRS 205A.070, 205A.080) **Section 24** amends existing law to provide for the distribution of money which is deposited into the Account for the Technological Crime Advisory Board as a result of the sale of forfeited property. (NRS 205A.090)



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 179 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this act.

Sec. 2. *As used in sections 2 to 14, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Proceeds” means any property, or that part of an item of property, derived directly or indirectly from a technological crime.*

Sec. 4. *“Property” includes, without limitation, any:*

- 1. Real property or interest in real property.*
- 2. Fixture or improvement to real property.*
- 3. Personal property, whether tangible or intangible, or interest in personal property.*
- 4. Conveyance, including, without limitation, any aircraft, vehicle or vessel.*
- 5. Money, security or negotiable instrument.*
- 6. Proceeds.*

Sec. 5. *“Technological crime” has the meaning ascribed to it in NRS 205A.030.*

Sec. 6. 1. *Except as otherwise provided in section 7 of this act, if an indictment or information filed in a criminal proceeding alleges that property was derived from, realized through, or used or intended for use in the course of a technological crime which is punishable as a felony and the extent of that property:*

(a) The jury; or

(b) If the trial is without a jury, the court,

↪ shall, upon a conviction, determine at a separate hearing the extent of the property to be forfeited. If the indictment or information does not include such an allegation, the property is not subject to criminal forfeiture pursuant to this section.

2. *If, at a hearing to determine the extent of the property to be forfeited pursuant to subsection 1, the jury or, if the hearing is without a jury, the court determines by a preponderance of the evidence that the property:*

(a) Was used or intended to be used in, or was used or intended to be used to facilitate, a technological crime; or



*(b) Was acquired during a technological crime or within a reasonable time after the technological crime and there was no likely source of such property other than the technological crime,
↳ the court shall order the forfeiture of the property.*

3. The following property is subject to criminal forfeiture pursuant to subsection 1:

(a) Any proceeds attributable to a technological crime;

(b) Any property acquired directly or indirectly from a technological crime; and

(c) Any property used or intended to be used in, or used or intended to be used to facilitate, a technological crime.

4. If property which is ordered to be criminally forfeited pursuant to subsection 1:

(a) Cannot be located;

(b) Has been sold to a purchaser in good faith for value;

(c) Has been placed beyond the jurisdiction of the court;

(d) Has been substantially diminished in value by the conduct of the defendant;

(e) Has been commingled with other property which cannot be divided without difficulty or undue injury to innocent persons; or

(f) Is otherwise unreachable without undue injury to innocent persons,

↳ the court shall order the forfeiture of other property of the defendant up to the value of the property that is unreachable.

Sec. 7. *1. A defendant who agrees to enter a plea of guilty to a technological crime may agree to the forfeiture of any property as part of the agreement.*

2. If the court accepts the plea of guilty, the court shall order the forfeiture of the property that the defendant agreed to forfeit pursuant to subsection 1.

Sec. 8. *1. The prosecuting attorney may apply for, and a court may issue without notice or hearing, a temporary restraining order to preserve property which would be subject to criminal forfeiture pursuant to section 6 of this act if:*

(a) An indictment or information alleging a technological crime has been filed in a criminal proceeding and the extent of criminally forfeitable property is included therein or the court believes there is probable cause for such an inclusion;

(b) The property is in the possession or control of the party against whom the order will be entered; and

(c) The court determines that the nature of the property is such that it can be concealed, disposed of or placed beyond the jurisdiction of the court before a hearing on the matter.



2. A temporary restraining order which is issued without notice may be issued for not more than 10 days and may be extended only for good cause or by consent. The court shall provide notice and hold a hearing on the matter before the order expires.

Sec. 9. 1. After an information or indictment alleging a technological crime is filed in a criminal proceeding, the prosecuting attorney may request the court to:

- (a) Enter a restraining order or injunction;
- (b) Require the execution of a satisfactory bond;
- (c) Appoint a receiver; or
- (d) Take any other necessary action,

↳ to secure property which is subject to criminal forfeiture.

2. The court shall, after a hearing for which notice was given to any person whose rights in the property proposed for forfeiture would be affected, order such an action if the prosecuting attorney shows by a preponderance of the evidence that the action is necessary to preserve the defendant's property which is subject to criminal forfeiture.

3. If no indictment or information alleging a technological crime has been filed, the court may, after such a hearing and upon a showing of the prosecuting attorney that:

(a) There is probable cause to believe that the property for which the order is sought would be subject to criminal forfeiture; and

(b) The requested order would not result in substantial and irreparable harm or injury to the party against whom the order is to be entered that outweighs the need to secure the property for the potential criminal forfeiture,

↳ order an action to secure the property. Such an order may not be effective for more than 90 days unless it is extended for good cause or an indictment or information alleging a technological crime is filed and the extent of the criminally forfeitable property is listed therein.

Sec. 10. 1. Upon a verdict of guilty or a plea of guilty to a technological crime, the court may order the forfeiture of the appropriate property.

2. Upon entry of such an order, the court may:

- (a) Enter a restraining order or injunction;
- (b) Require the execution of a satisfactory bond;
- (c) Appoint a receiver; or
- (d) Take any other necessary action,

↳ to protect the interests of the State.



Sec. 11. *1. Except as otherwise provided in subsection 2, all property used in the course of, intended for use in the course of, derived from or gained through a technological crime is subject to civil forfeiture to the State.*

2. Upon a showing by the owner of the property of the requisite facts, the following is not subject to forfeiture under this section:

(a) Except as otherwise provided in paragraph (b), property used without the knowledge or consent of its owner; and

(b) A means of transportation used by a person in the transaction of his business as a common carrier unless it appears the owner or person in charge of the common carrier consented to or had knowledge of the technological crime.

3. The State is not required to plead or prove that a person has been charged with or convicted of any technological crime. If proof of such conviction is made, and it is shown that the judgment of conviction has become final, the proof against any person is conclusive evidence of all facts necessary to sustain the conviction.

4. Any civil action or proceeding under this section must be instituted in the district court of the State in the county in which the prospective defendant resides or has committed any act which subjects him to criminal or civil liability pursuant to the provisions of sections 2 to 14, inclusive, of this act.

Sec. 12. *1. Property subject to forfeiture under section 6 or 11 of this act may be seized by a law enforcement agency upon process issued by a court. Before an order of civil forfeiture is issued without legal process, notice of the claim for forfeiture of real property may be given in the manner provided in NRS 14.010 and 14.015. A seizure of personal property may be made without legal process if the seizure is incident to:*

(a) A lawful arrest or search; or

(b) An inspection under an administrative warrant.

2. Property seized or made the subject of notice under this section is deemed to be in the custody of the agency, subject only to orders of the court which has jurisdiction over the proceedings for forfeiture. An agency which has seized such property without process shall begin proceedings for forfeiture promptly. Such an action takes precedence over other civil proceedings. The seized property is subject to an action to claim the delivery of the property if the agency does not file the complaint for forfeiture within 60 days after the property is seized. If a complaint for forfeiture is



filed after an affidavit claiming delivery, the complaint must be treated as a counterclaim.

3. When property is seized pursuant to this section, pending forfeiture and final disposition, the law enforcement agency may:

(a) Place the property under seal.

(b) Remove the property to a place designated by the court.

(c) Require another agency authorized by law to take custody of the property and remove it to an appropriate location.

4. The district attorney may institute civil proceedings under this section for the forfeiture of property subject to forfeiture pursuant to section 11 of this act. The Attorney General may institute such proceedings when the property is seized by a state agency. If a district attorney has not instituted such a proceeding or has not pursued one which was instituted, the Attorney General may intercede after giving 30 days' written notice of his intention to do so to the district attorney. In any action so brought, the district court shall proceed as soon as practicable to the hearing and determination. Pending final determination in an action brought pursuant to this section, the district court may at any time enter such injunctions, prohibitions or restraining orders, or take such actions, including, without limitation, the acceptance of satisfactory performance bonds, as the court deems proper in connection with any property or interest subject to forfeiture.

5. Upon a finding of civil liability under this section, the court may order the forfeiture of the appropriate property.

Sec. 13. *1. The State, county or city shall sell any property forfeited pursuant to section 6 or 11 of this act as soon as commercially feasible. Except as otherwise provided in subsection 2, the proceeds from such a sale must be used first for payment of all proper expenses of any proceedings for the forfeiture and sale, including, without limitation, any expenses for the seizure and maintenance of the property, advertising and court costs. The balance of the proceeds, if any, must be deposited in the Account for the Technological Crime Advisory Board created pursuant to NRS 205A.090.*

2. If the property forfeited is encumbered by a bona fide security interest and the secured party shows that he did not consent or have knowledge of the violation causing the forfeiture, the State, county or city shall pay the existing balance or return the property to the secured party.

Sec. 14. *A criminal action or proceeding pursuant to section 6 of this act may be commenced at any time within 5 years after the technological crime occurs. Except as otherwise provided in*



NRS 217.007, a civil action or proceeding pursuant to section 11 of this act may be commenced at any time within 5 years after the technological crime occurs. If a criminal prosecution, civil action or other proceeding is brought to punish, prevent or restrain a technological crime, the running of the period of limitations prescribed by this section with respect to any cause of action arising under section 11 of this act, which is based in whole or in part upon any matter complained of in the prosecution or proceeding, is suspended during the pendency of the prosecution or proceeding and for 2 years following termination of the prosecution or proceeding.

Sec. 15. NRS 179.1156 is hereby amended to read as follows:

179.1156 Except as otherwise provided in NRS 207.350 to 207.520, inclusive, *and sections 2 to 14, inclusive, of this act*, the provisions of NRS 179.1156 to ~~179.119,~~ *179.121*, inclusive, govern the seizure, forfeiture and disposition of all property and proceeds subject to forfeiture.

Sec. 16. NRS 115.010 is hereby amended to read as follows:

115.010 1. The homestead is not subject to forced sale on execution or any final process from any court, except as otherwise provided by subsections 2, 3 and 5, and NRS 115.090 and except as otherwise required by federal law.

2. The exemption provided in subsection 1 extends only to that amount of equity in the property held by the claimant which does not exceed \$350,000 in value, unless allodial title has been established and not relinquished, in which case the exemption provided in subsection 1 extends to all equity in the dwelling, its appurtenances and the land on which it is located.

3. Except as otherwise provided in subsection 4, the exemption provided in subsection 1 does not extend to process to enforce the payment of obligations contracted for the purchase of the property, or for improvements made thereon, including any mechanic's lien lawfully obtained, or for legal taxes, or for:

(a) Any mortgage or deed of trust thereon executed and given, including, without limitation, any second or subsequent mortgage, mortgage obtained through refinancing, line of credit taken against the property and a home equity loan; or

(b) Any lien to which prior consent has been given through the acceptance of property subject to any recorded declaration of restrictions, deed restriction, restrictive covenant or equitable servitude, specifically including any lien in favor of an association pursuant to NRS 116.3116 or 117.070,

↳ by both husband and wife, when that relation exists.



4. If allodial title has been established and not relinquished, the exemption provided in subsection 1 extends to process to enforce the payment of obligations contracted for the purchase of the property, and for improvements made thereon, including any mechanic's lien lawfully obtained, and for legal taxes levied by a state or local government, and for:

(a) Any mortgage or deed of trust thereon; and

(b) Any lien even if prior consent has been given through the acceptance of property subject to any recorded declaration of restrictions, deed restriction, restrictive covenant or equitable servitude, specifically including any lien in favor of an association pursuant to NRS 116.3116 or 117.070,

↳ unless a waiver for the specific obligation to which the judgment relates has been executed by all allodial titleholders of the property.

5. Establishment of allodial title does not exempt the property from forfeiture pursuant to NRS 179.1156 to ~~179.119,~~ 179.121, inclusive, or 207.350 to 207.520, inclusive ~~179.121,~~ *or sections 2 to 14, inclusive, of this act.*

6. Any declaration of homestead which has been filed before July 1, 2005, shall be deemed to have been amended on that date by extending the homestead exemption commensurate with any increase in the amount of equity held by the claimant in the property selected and claimed for the exemption up to the amount permitted by law on that date, but the increase does not impair the right of any creditor to execute upon the property when that right existed before July 1, 2005.

Sec. 17. NRS 205A.020 is hereby amended to read as follows:

205A.020 “Board” means the *Technological Crime* Advisory Board ~~[for the Nevada Task Force for Technological Crime]~~ created pursuant to NRS 205A.040.

Sec. 18. NRS 205A.030 is hereby amended to read as follows:

205A.030 “Technological crime” means *the commission of, attempt to commit or conspiracy to commit* any crime that involves, directly or indirectly, any component, device, equipment, system or network that, alone or in conjunction with any other component, device, equipment, system or network, is designed or has the capability to:

1. Be programmed; or
2. Generate, process, store, retrieve, convey, emit, transmit, receive, relay, record or reproduce any data, information, image, program, signal or sound in a technological format, including, without limitation, a format that involves analog, digital, electronic, electromagnetic, magnetic or optical technology.



- Sec. 19.** NRS 205A.040 is hereby amended to read as follows:
- 205A.040 1. The *Technological Crime* Advisory Board ~~for the Nevada Task Force for Technological Crime~~ is hereby created.
2. The Board consists of ~~[nine]~~ *13* members as follows:
- (a) The Attorney General.
 - (b) The Director of the Department of Information Technology.
 - (c) One member of the Senate appointed by the Majority Leader of the Senate.
 - (d) One member of the Assembly appointed by the Speaker of the Assembly.
 - (e) ~~[Five]~~ *Nine* other persons appointed by the Governor as follows:
 - (1) Two *or more* persons who represent major sectors of the economy of this State that are impacted significantly by technological crimes.
 - (2) One ~~[person who is an employee]~~ *or more persons who are employees* of a law enforcement agency of this State.
 - (3) One ~~[person who is an employee]~~ *or more persons who are employees* of a public educational institution within this State.
 - (4) One ~~[person who is a resident]~~ *or more persons who are residents* of this State and who ~~[is]~~ *are* employed by the Federal Government.
3. Each member of the Board who is appointed to the Board serves for a term of 4 years. A vacancy on the Board in an appointed position must be filled in the same manner as the original appointment. A member may be reappointed to the Board.
4. The members of the Board shall elect a Chairman and Vice Chairman by majority vote. After the initial election, the Chairman and Vice Chairman shall hold office for a term of 1 year beginning on July 1 of each year. If a vacancy occurs in the chairmanship or vice chairmanship, the members of the Board shall elect a Chairman or Vice Chairman, as appropriate, from among its members for the remainder of the unexpired term.
5. The members of the Board:
- (a) Serve without compensation; and
 - (b) May, upon written request, receive the per diem allowance and travel expenses provided for state officers and employees generally while engaged in the business of the Board.
6. A member of the Board who is an officer or employee of this State or a political subdivision of this State must be relieved from his duties without loss of his regular compensation so that he may prepare for and attend meetings of the Board and perform any work necessary to carry out the duties of the Board in the most



timely manner practicable. A state agency or political subdivision of this State shall not require an officer or employee who is a member of the Board to make up the time he is absent from work to carry out his duties as a member of the Board or use annual vacation or compensatory time for the absence.

Sec. 20. NRS 205A.050 is hereby amended to read as follows:

205A.050 1. The Board shall meet at least once every quarter and at the times and places specified by a call of the Chairman or a majority of the members of the Board.

2. Except as otherwise provided in subsection 3, a member of the Board may designate in writing a person to represent him at a meeting of the Board ~~if it is impractical for the member of the Board to attend the meeting.~~ A representative who has been so designated:

(a) Shall be deemed to be a member of the Board for the purpose of determining a quorum at the meeting; and

(b) May vote on any matter that is voted on by the regular members of the Board at the meeting.

3. The Attorney General may designate a representative to serve in his place on the Board or attend a meeting of the Board in his place. The Director of the Department of Information Technology may designate a representative to serve in his place on the Board or attend a meeting of the Board in his place.

4. ~~Five~~ *Seven* members of the Board constitute a quorum. ~~A~~ *Except as otherwise provided in NRS 205A.070 and 205A.080, a* quorum may exercise all the power and authority conferred on the Board.

5. Notwithstanding any other provision of law, a member of the Board:

(a) Is not disqualified from public employment or holding a public office because of his membership on the Board; and

(b) Does not forfeit his public office or public employment because of his membership on the Board.

Sec. 21. NRS 205A.060 is hereby amended to read as follows:

205A.060 The Board shall:

1. Facilitate cooperation between state, local and federal officers in detecting, investigating and prosecuting technological crimes.

2. Establish , *support and assist in the coordination of activities between* two multiagency task forces on technological crime, one based in Reno ~~for northern Nevada~~ and one based in Las Vegas , ~~for southern Nevada,~~ consisting of [-



~~—(a) Investigators and prosecutors]~~ *investigators and forensic examiners* who are specifically trained to investigate ~~[and prosecute]~~ technological crimes. ~~[- and~~

~~—(b) Persons from the private sector who are knowledgeable in the area of information technology or the prevention or detection of technological crimes.]~~

3. Coordinate and provide training and education for members of the general public, private industry and governmental agencies, including, without limitation, law enforcement agencies, concerning the statistics and methods of technological crimes and how to prevent, ~~[and]~~ *detect and investigate* technological crimes.

4. ~~[Administer, with the assistance of members of private industry, a program to secure]~~ *Assist the Department of Information Technology in securing* governmental information systems against illegal intrusions and other criminal activities.

5. Evaluate and recommend changes to the existing civil and criminal laws relating to technological crimes in response to current and projected changes in technology and law enforcement techniques.

6. *Distribute money deposited pursuant to section 13 of this act into the Account for the Technological Crime Advisory Board in accordance with the provisions of NRS 205A.090.*

7. Authorize the payment of expenses incurred by the Board in carrying out its duties pursuant to this chapter.

Sec. 22. NRS 205A.070 is hereby amended to read as follows:

205A.070 1. Upon ~~[unanimous]~~ approval *by two-thirds* of the members of the Board, the Board shall appoint an Executive Director of Technological Crime within the Office of the Attorney General.

2. The Executive Director is in the unclassified service of the State and serves at the pleasure of the Board.

3. The Board shall establish the qualifications, powers and duties of the Executive Director.

Sec. 23. NRS 205A.080 is hereby amended to read as follows:

205A.080 Upon ~~[unanimous]~~ approval *by two-thirds* of the members of the Board, the Board shall appoint a full-time ~~[secretary]~~ *administrative assistant* who is in the unclassified service of the State, ~~[and]~~ serves at the pleasure of the Board ~~[- and reports to the Executive Director.~~

Sec. 24. NRS 205A.090 is hereby amended to read as follows:

205A.090 1. The Account for the *Technological Crime* Advisory Board ~~[for the Nevada Task Force for Technological~~



~~Crime~~ is hereby created in the State General Fund. The Board shall administer the Account.

2. The money in the Account must only be used to carry out the provisions of this chapter and pay the expenses incurred by the Board in the discharge of its duties, including, without limitation, the payment of any expenses related to the creation and subsequent activities of the task forces on technological crime.

3. *For each criminal or civil forfeiture carried out pursuant to sections 2 to 14, inclusive, of this act, the Board shall distribute the money deposited into the Account pursuant to section 13 of this act in the following manner:*

(a) Not less than 25 percent to be retained in the Account for use by the Board to carry out the provisions of this chapter and to pay the expenses incurred by the Board in the discharge of its duties.

(b) Not more than 75 percent to be distributed to the federal, state and local law enforcement agencies that participated in the investigation of the unlawful act giving rise to the criminal or civil forfeiture in accordance with the level of participation of each law enforcement agency as determined by the Board. If the participating law enforcement agencies have entered into an agreement to share any such money, the Board shall distribute the money to the law enforcement agencies in accordance with the provisions of the agreement.

4. Claims against the Account must be paid as other claims against the State are paid.

~~[4.]~~ 5. The money in the Account must remain in the Account and must not revert to the State General Fund at the end of any fiscal year.

Sec. 25. NRS 205A.100 is hereby amended to read as follows:

205A.100 1. The Board may apply for any available grants and accept gifts, grants, appropriations or donations *from any public or private source* to assist the Board in carrying out its duties pursuant to the provisions of this chapter.

2. Any money received by the Board must be deposited in the Account for the *Technological Crime* Advisory Board ~~[for the Nevada Task Force for Technological Crime]~~ created pursuant to NRS 205A.090.

