

Amendment No. 788

Assembly Amendment to Senate Bill No. 138 First Reprint (BDR 14-222)

Proposed by: Assembly Committee on Judiciary

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

MKM/BAW



Date: 5/16/2015

S.B. No. 138—Revises provisions governing the forfeiture of property.
(BDR 14-222)



SENATE BILL NO. 138—SENATORS GUSTAVSON;
AND SETTELMAYER

FEBRUARY 12, 2015

JOINT SPONSORS: ASSEMBLYMEN FIORE, ELLISON;
DICKMAN, JONES AND WHEELER

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the forfeiture of property.
(BDR 14-222)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal procedure; requiring the reporting of certain information relating to the forfeiture of property; revising provisions relating to the forfeiture of property; 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 any technological crime which is punishable as a felony. (NRS 179.1211-179.1235) Finally, existing law provides for the seizure, forfeiture and disposition of property and proceeds attributable to racketeering crimes. (NRS 207.350-207.520) This bill requires each law enforcement agency to submit an annual report containing certain information relating to the seizure, forfeiture and disposition of property to the Office of the Attorney General.

Section 34.3 of this bill requires a plaintiff to file a complaint for forfeiture within 120 days after property has been seized if the property was seized without process. Section 34.3 also prohibits the forfeiture of property seized by a law enforcement agency unless: (1) the agency files a complaint for forfeiture in the district court for the county in which such property is located; or (2) a stipulated agreement between the parties is reached.

Section 34.6 of this bill requires that, if a criminal trial is pending, an order staying a proceeding for forfeiture remains in effect until the completion of the criminal trial. Section 34.6 also requires seized property to be returned to a claimant if the criminal charges against the claimant have been denied or dismissed. Lastly, section 34.6 provides for the forfeiture of property through a claimant's plea or a stipulated agreement reached between the claimant and the plaintiff.

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

Sec. 8. (Deleted by amendment.)

Sec. 9. (Deleted by amendment.)

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. (Deleted by amendment.)

Sec. 13. (Deleted by amendment.)

Sec. 14. (Deleted by amendment.)

Sec. 15. (Deleted by amendment.)

Sec. 16. (Deleted by amendment.)

Sec. 17. (Deleted by amendment.)

Sec. 18. (Deleted by amendment.)

Sec. 19. (Deleted by amendment.)

Sec. 20. (Deleted by amendment.)

Sec. 21. (Deleted by amendment.)

Sec. 22. (Deleted by amendment.)

Sec. 23. (Deleted by amendment.)

Sec. 24. (Deleted by amendment.)

Sec. 25. (Deleted by amendment.)

Sec. 26. (Deleted by amendment.)

Sec. 27. (Deleted by amendment.)

Sec. 28. (Deleted by amendment.)

Sec. 29. (Deleted by amendment.)

Sec. 30. Chapter 179 of NRS is hereby amended by adding thereto a new section to read as follows:

1. On an annual basis, each law enforcement agency shall report the following information about each individual seizure and forfeiture completed by the law enforcement agency under state forfeiture law:

(a) Data on seizures and forfeitures, including, without limitation, the:

(1) Date that currency, vehicles, houses or other types of property were seized;

(2) Type of property seized, including, the year, make and model, as applicable;

(3) Type of crime associated with the seizure of the property;

(4) Market value of the property seized;

(5) Disposition of the property following the seizure; and

(6) Date of the disposition of the property.

(b) Data on the use of proceeds, including, without limitation, the:

(1) Payment of all outstanding liens on the forfeited property;

(2) Payment of reasonable expenses, except personnel costs, of the seizure, storage and maintenance of custody of any forfeited property; and

(3) Distribution of proceeds pursuant to NRS 179.118, 179.1187, 179.1233 and 207.500.

(c) Any other information required by the Office of the Attorney General.
2. The Office of the Attorney General shall develop standard forms, processes and deadlines for the entry of electronic data for the annual submission of the report required by subsection 1.

3. Each law enforcement agency shall file with the Office of the Attorney General the report required by subsection 1. A null report must be filed by a law enforcement agency that did not engage in a seizure or forfeiture during the reporting period. The Office of the Attorney General shall compile the submissions and issue an aggregate report of all forfeitures in this State.

4. On or before April 1 of each year, the Office of the Attorney General shall make available:

(a) On its Internet website, the reports submitted by law enforcement agencies and the aggregate report.

(b) Upon request, printed copies of the reports submitted by law enforcement agencies and the aggregate report.

5. The Office of the Attorney General shall include in the aggregate report information on any law enforcement agencies not in compliance with this section.

Sec. 30.3. NRS 179.1156 is hereby amended to read as follows:

179.1156 Except as otherwise provided in NRS 179.1211 to 179.1235, inclusive, and 207.350 to 207.520, inclusive, the provisions of NRS 179.1156 to 179.121, inclusive, and section 30 of this act govern the seizure, forfeiture and disposition of all property and proceeds subject to forfeiture.

Sec. 30.7. NRS 179.1157 is hereby amended to read as follows:

179.1157 As used in NRS 179.1156 to 179.119, inclusive, and section 30 of this act, unless the context otherwise requires, the words and terms defined in NRS 179.1158 to 179.11635, inclusive, have the meanings ascribed to them in those sections.

Sec. 31. (Deleted by amendment.)

Sec. 32. (Deleted by amendment.)

Sec. 33. (Deleted by amendment.)

Sec. 34. (Deleted by amendment.)

Sec. 34.3. NRS 179.1171 is hereby amended to read as follows:

179.1171 1. Except as otherwise provided in NRS 179.1156 to 179.119, inclusive, and section 30 of this act, the Nevada Rules of Civil Procedure are applicable to and constitute the rules of practice in a proceeding for forfeiture pursuant to those sections.

2. A proceeding for forfeiture is commenced by filing a complaint for forfeiture. If the property has been seized without process, the plaintiff shall ~~promptly~~ file the complaint for forfeiture. within 120 days after the property is seized. The property is subject to an action to claim its delivery only if the plaintiff does not file the complaint for forfeiture within 60 days after the property is seized. If the complaint for forfeiture is filed following the commencement of an action claiming delivery, the complaint must be treated as a counterclaim.

3. If a law enforcement agency seizes property, the property must not be forfeited unless:

(a) The agency files a complaint for forfeiture in the district court for the county in which the property is located; or

(b) A stipulated agreement between the parties regarding the property is reached.

4. A proceeding for forfeiture is in rem. The complaint for forfeiture must be filed in the district court for the county in which the property which is the subject of the proceeding is located.

~~44~~ 5. The plaintiff shall cause service of the summons and complaint to be made upon each claimant whose identity is known to the plaintiff or who can be identified through the exercise of reasonable diligence. If real property or any interest in real property is affected by the proceeding, the plaintiff shall file notice of the proceeding in the manner provided in NRS 14.010.

~~45~~ 6. Each claimant served with the summons and complaint who desires to contest the forfeiture shall, within 20 days after the service, serve and file a verified answer to the complaint. The claimant shall admit or deny the averments of the complaint and shall, in short and plain terms, describe the interest which the claimant asserts in the property. Concurrently with the answer, the claimant shall serve answers or objections to any written interrogatories served with the summons and complaint.

~~46~~ 7. No person, other than the plaintiff and any claimant, is a proper party in the proceeding.

Sec. 34.6. NRS 179.1173 is hereby amended to read as follows:

179.1173 1. ~~The~~ Except as otherwise provided in subsection 2, the district court shall proceed as soon as practicable to a trial and determination of the matter. A proceeding for forfeiture is entitled to priority over other civil actions which are not otherwise entitled to priority.

2. At a proceeding for forfeiture, the ~~plaintiff or claimant may file a motion for~~ court shall issue an order staying the proceeding ~~and the court shall grant that motion if a~~ that remains in effect while the criminal action which is the basis of the proceeding is pending trial. The court shall ~~upon a motion made by the plaintiff~~ lift the stay ~~upon a satisfactory showing that the claimant is a fugitive.~~ after the trial is completed. If the claimant is acquitted during the trial, the property of the claimant must be returned to the claimant within 7 business days after the acquittal.

3. If property has been seized and the criminal charges against the owner of such property are denied or dismissed, all such property must be returned to the owner within 7 business days after the property is seized.

4. The plaintiff in a proceeding for forfeiture must establish proof by clear and convincing evidence that the property is subject to forfeiture.

~~44~~ 5. In a proceeding for forfeiture, the rule of law that forfeitures are not favored does not apply.

~~45~~ 6. The plaintiff is not required to plead or prove that a claimant has been charged with or convicted of any criminal offense. If proof of such a conviction is made, and it is shown that the judgment of conviction has become final, the proof is, as against any claimant, conclusive evidence of all facts necessary to sustain the conviction.

~~46~~ 7. The plaintiff has an absolute privilege to refuse to disclose the identity of any person, other than a witness, who has furnished to a law enforcement officer information purporting to reveal the commission of a crime. The privilege may be claimed by an appropriate representative of the plaintiff.

~~47~~ 8. If the court determines that the property is not subject to forfeiture, the court shall order the property and any interest accrued pursuant to subsection 2 of NRS 179.1175 returned to the claimant found to be entitled to the property ~~within 7 business days after the order is issued.~~ If the court determines that the property is subject to forfeiture, the court shall so decree. The property, including any interest accrued pursuant to subsection 2 of NRS 179.1175, must be forfeited to the plaintiff, subject to the right of any claimant who establishes a protected interest. Any such claimant must, upon the sale or retention of the property, be compensated for the claimant's interest in the manner provided in NRS 179.118.

1 9. A claimant who agrees to enter a plea of guilty, guilty but mentally ill or
2 nolo contendere to criminal charges relating to the seized property or reaches a
3 stipulated agreement with the plaintiff may agree to the forfeiture of any property
4 as part of the plea or agreement.

5 10. If the court accepts a plea or stipulated agreement pursuant to
6 subsection 9, the court shall order forfeiture of the property that the claimant
7 agreed to forfeit pursuant to the plea or agreement.

8 Sec. 35. (Deleted by amendment.)

9 Sec. 36. (Deleted by amendment.)

10 Sec. 37. (Deleted by amendment.)

11 Sec. 38. (Deleted by amendment.)

12 Sec. 39. (Deleted by amendment.)

13 Sec. 40. (Deleted by amendment.)

14 Sec. 41. (Deleted by amendment.)

15 Sec. 42. (Deleted by amendment.)

16 Sec. 43. (Deleted by amendment.)

17 Sec. 44. (Deleted by amendment.)

18 Sec. 45. (Deleted by amendment.)

19 Sec. 46. (Deleted by amendment.)

20 Sec. 47. (Deleted by amendment.)

21 Sec. 48. (Deleted by amendment.)

22 Sec. 49. (Deleted by amendment.)

23 Sec. 50. (Deleted by amendment.)

24 Sec. 51. (Deleted by amendment.)

25 Sec. 52. (Deleted by amendment.)