

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0256.01 Jerry Barry x4341

SENATE BILL 15-006

SENATE SPONSORSHIP

Woods,

HOUSE SPONSORSHIP

Saine,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING LIMITATIONS ON FORFEITURE ACTIONS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Under certain circumstances, a forfeiture action may proceed without a criminal conviction of the person named in the forfeiture action. The bill repeals the provisions authorizing a forfeiture action to proceed without a conviction unless it is part of a settlement agreed upon by all parties.

The bill gives the party who had items seized the right to a preliminary hearing or writ of replevin to determine the validity of the seizure or to require the return of the property. The court shall grant the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

motion if:

- ! It is likely that the final judgement will be that the seizing agency must return the property to the claimant;
- ! The property is not reasonably required to be held for investigatory reasons; or
- ! The property is the only reasonable means for a defendant to pay for legal representation in the forfeiture or criminal proceeding; at the court's discretion, it may order the return of funds or property sufficient to obtain legal counsel, but less than the total amount seized, and require an accounting.

Current law authorizes law enforcement agencies in Colorado to accept and expend the proceeds of property forfeited to the federal government when the agency participated in the investigation. The bill prohibits law enforcement agencies in Colorado from participating or assisting in a federal forfeiture action unless the property subject to forfeiture has a value of greater than \$50,000, excluding the value of any controlled substance. The bill also requires that any proceeds of a federal forfeiture action received by a law enforcement agency must be credited to the state general fund.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 16-13-307, **amend**
3 (1.5) and (1.6); **repeal** (1.7); and **add** (5.5) as follows:

4 **16-13-307. Jurisdiction - venue - parties - process.** (1.5) ~~No A~~
5 COURT SHALL NOT ENTER A judgment of forfeiture of property in any
6 forfeiture proceeding ~~shall be entered~~ unless and until an owner of the
7 property is convicted of an offense listed in section 16-13-301 or
8 16-13-303. ~~or a lesser included offense of an eligible offense if the~~
9 ~~conviction is the result of a negotiated guilty plea.~~ Nothing in this section
10 ~~shall be construed to require~~ **REQUIRES** the conviction to be obtained in
11 the same jurisdiction as the jurisdiction in which the forfeiture action is
12 brought. In the event criminal charges arising from the same activity
13 giving rise to the forfeiture proceedings are filed against any individual
14 claiming an interest in the property subject to the forfeiture proceeding,

1 THE COURT SHALL STAY the trial and discovery phases of the forfeiture
2 proceeding ~~shall be stayed by the court~~ until the disposition of the
3 criminal charges. A COURT SHALL NOT MAINTAIN A stay ~~shall not be~~
4 ~~maintained~~ during an appeal or post-conviction proceeding challenging
5 a criminal conviction. Nothing in this section ~~shall be construed to~~
6 ~~prohibit or prevent~~ PROHIBITS OR PREVENTS the parties from
7 contemporaneously resolving criminal charges and a forfeiture
8 proceeding arising from the same activity. NOTHING IN THIS SECTION
9 PREVENTS PROPERTY FROM BEING FORFEITED BY PLEA AGREEMENT
10 APPROVED BY THE PRESIDING CRIMINAL COURT OR OTHER AGREEMENT OF
11 THE PARTIES.

12 (1.6) Upon acquittal or dismissal of a criminal action against a
13 person named in a forfeiture action related to the criminal action, ~~unless~~
14 ~~the forfeiture action was brought pursuant to one or more of paragraphs~~
15 ~~(a) to (f) of subsection (1.7) of this section,~~ THE COURT SHALL DISMISS the
16 forfeiture claim, ~~shall be dismissed~~ and the SEIZING AUTHORITY SHALL
17 RETURN THE seized property ~~shall be returned~~ as respects the subject
18 matter property or interest therein of that person, if the case has been
19 adjudicated as to all other claims, interests, and owners, unless possession
20 of the property is illegal. If the forfeiture action is dismissed or judgment
21 is entered in favor of the claimant, the claimant ~~shall not be~~ IS NOT subject
22 to any monetary charges by the state for storage of the property or
23 expenses incurred in the preservation of the property, unless at the time
24 of dismissal the plaintiff shows that those expenses would have been
25 incurred to prevent waste of the property even if it had not been seized.

26 (1.7) ~~Notwithstanding the provisions of subsection (1.5) of this~~
27 ~~section:~~

1 ~~(a) (I) A person shall lack standing for and shall be disallowed~~
2 ~~from pursuit of a claim or defense in a civil forfeiture action upon a~~
3 ~~finding that a warrant or other process has been issued for the~~
4 ~~apprehension of the person, and, in order to avoid criminal prosecution,~~
5 ~~the person:~~

6 ~~(A) Purposely leaves the state; or~~

7 ~~(B) Declines to enter or reenter the state to submit to its~~
8 ~~jurisdiction; or~~

9 ~~(C) Otherwise evades the jurisdiction of the court in which a~~
10 ~~criminal case is pending against the person or from which a warrant has~~
11 ~~been issued, by failing to appear in court or surrender on a warrant; and~~

12 ~~(D) Is not known to be confined or held in custody in any other~~
13 ~~jurisdiction within the United States for commission of criminal conduct~~
14 ~~in that jurisdiction.~~

15 ~~(H) If a person lacks standing pursuant to this paragraph (a), the~~
16 ~~forfeiture action may proceed and a judgment of forfeiture may be entered~~
17 ~~without a criminal conviction of an owner, upon motion and notice as~~
18 ~~provided in the rules of civil procedure.~~

19 ~~(b) If, following notice to all persons known to have an interest,~~
20 ~~or who have asserted an interest in the property subject to forfeiture, an~~
21 ~~owner fails to file an answer or other appropriate pleading with the court~~
22 ~~claiming an interest in the subject matter property, or no person~~
23 ~~establishes standing to contest the forfeiture action pursuant to section~~
24 ~~16-13-303 (5), a forfeiture action may proceed and a judgment of~~
25 ~~forfeiture may be entered without a criminal conviction of an owner.~~

26 ~~(c) If the plaintiff proves by clear and convincing evidence that~~
27 ~~the property was instrumental in the commission of an offense listed in~~

1 ~~section 16-13-303 (1) or that the property is traceable proceeds of the~~
2 ~~offense or related criminal activity by a nonowner and the plaintiff proves~~
3 ~~by clear and convincing evidence that an owner is not an innocent owner~~
4 ~~pursuant to section 16-13-303 (5.2) (a), a judgment of forfeiture may be~~
5 ~~entered without a criminal conviction of an owner.~~

6 ~~(d) If an owner of the property who was involved in the public~~
7 ~~nuisance act or conduct giving rise to the claim of forfeiture subsequently~~
8 ~~dies, and was not an innocent owner pursuant to section 16-13-303 (5.2)~~
9 ~~(a), a judgment of forfeiture may be entered without a criminal conviction~~
10 ~~of an owner.~~

11 ~~(e) If an owner received a deferred judgment, deferred sentence,~~
12 ~~or participated in a diversion program, or in the case of a juvenile a~~
13 ~~deferred adjudication or deferred sentence or participated in a diversion~~
14 ~~program for the offense, a judgment of forfeiture may be entered without~~
15 ~~a criminal conviction.~~

16 ~~(f) A defendant or claimant shall be permitted to waive the~~
17 ~~requirement of a criminal conviction in order to settle a forfeiture action.~~

18 (5.5) (a) FOLLOWING THE SEIZURE OF PROPERTY, A DEFENDANT OR
19 THIRD PARTY HAS A RIGHT TO A PRETRIAL HEARING TO DETERMINE THE
20 VALIDITY OF THE SEIZURE.

21 (b) AT ANY TIME SIXTY DAYS BEFORE THE TRIAL OF THE RELATED
22 CRIMINAL OFFENSE, A CLAIMANT MAY ASSERT THE RIGHT TO POSSESSION
23 OF PROPERTY BY FILING A MOTION FOR A WRIT OF REPLEVIN.

24 (c) THE MOTION FOR PRETRIAL HEARING OR MOTION FOR WRIT OF
25 REPLEVIN MUST ESTABLISH THE VALIDITY OF THE ALLEGED INTEREST IN
26 THE PROPERTY. THE COURT SHALL HEAR THE PRETRIAL HEARING OR
27 MOTION FOR A WRIT OF REPLEVIN NO MORE THAN THIRTY DAYS AFTER THE

1 MOTION IS FILED.

2 (d) THE DISTRICT ATTORNEY OR ATTORNEY GENERAL SHALL FILE
3 AN ANSWER SHOWING PROBABLE CAUSE FOR THE SEIZURE OR CROSS
4 MOTIONS AT LEAST TEN DAYS BEFORE THE HEARING.

5 (e) EXCEPT AS PROVIDED IN PARAGRAPH (f) OF THIS SUBSECTION
6 (5.5), THE COURT SHALL GRANT THE MOTION IF IT FINDS THAT:

7 (I) IT IS LIKELY THAT THE FINAL JUDGMENT WILL BE THAT THE
8 SEIZING AGENCY MUST RETURN THE PROPERTY TO THE CLAIMANT;

9 (II) THE PROPERTY IS NOT REASONABLY REQUIRED TO BE HELD FOR
10 INVESTIGATORY REASONS; OR

11 (III) (A) THE PROPERTY IS THE ONLY REASONABLE MEANS FOR A
12 DEFENDANT TO PAY FOR LEGAL REPRESENTATION IN THE FORFEITURE OR
13 CRIMINAL PROCEEDING.

14 (B) AT THE COURT'S DISCRETION UNDER SUB-SUBPARAGRAPH (A)
15 OF THIS SUBPARAGRAPH (III), IT MAY ORDER THE RETURN OF FUNDS OR
16 PROPERTY SUFFICIENT TO OBTAIN LEGAL COUNSEL, BUT LESS THAN THE
17 TOTAL AMOUNT SEIZED, AND REQUIRE AN ACCOUNTING.

18 (f) IN LIEU OF ORDERING THE ISSUANCE OF THE WRIT, THE COURT
19 MAY ORDER THE SEIZING ENTITY TO GIVE SECURITY OR WRITTEN
20 ASSURANCE FOR SATISFACTION OF ANY JUDGMENT, INCLUDING DAMAGES,
21 THAT MAY BE RENDERED IN THE ACTION OR ORDER OTHER RELIEF AS MAY
22 BE JUST.

23 **SECTION 2.** In Colorado Revised Statutes, 16-13-505, **amend**
24 (1.5) and (1.6); **repeal** (1.7); and **add** (4.5) as follows:

25 **16-13-505. Forfeiture proceedings.** (1.5) ~~No~~ A COURT SHALL
26 NOT ENTER A judgment of forfeiture of property in any forfeiture
27 proceeding ~~shall be entered~~ unless and until an owner of the property is

1 convicted of an offense involving the conduct listed in section 16-13-503.
2 ~~or a lesser included offense of an eligible offense if the conviction is the~~
3 ~~result of a negotiated guilty plea.~~ Nothing in this section ~~shall be~~
4 ~~construed to require~~ REQUIRES the conviction to be obtained in the same
5 jurisdiction as the jurisdiction in which the forfeiture action is brought.
6 In the event criminal charges arising from the same activity giving rise to
7 the forfeiture proceedings are filed against any individual claiming an
8 interest in the property subject to the forfeiture proceeding, THE COURT
9 SHALL STAY the trial and discovery phases of the forfeiture proceeding
10 ~~shall be stayed by the court~~ until the disposition of the criminal charges.
11 THE COURT SHALL NOT MAINTAIN a stay ~~shall not be maintained~~ during an
12 appeal or post-conviction proceeding challenging a criminal conviction.
13 Nothing in this section ~~shall be construed to prohibit or prevent~~ PROHIBITS
14 OR PREVENTS the parties from contemporaneously resolving criminal
15 charges and a forfeiture proceeding arising from the same activity.
16 NOTHING IN THIS SECTION PREVENTS PROPERTY FROM BEING FORFEITED
17 BY PLEA AGREEMENT APPROVED BY THE PRESIDING CRIMINAL COURT OR
18 OTHER AGREEMENT OF THE PARTIES.

19 (1.6) Upon acquittal or dismissal of a criminal action against a
20 person named in a forfeiture action related to the criminal action, ~~unless~~
21 ~~the forfeiture action was brought pursuant to one or more of paragraphs~~
22 ~~(a) to (f) of subsection (1.7) of this section,~~ the forfeiture claim ~~shall~~
23 MUST be dismissed, and the seized property ~~shall~~ MUST be returned as
24 respects the subject matter property or interest therein of that person, if
25 the case has been adjudicated as to all other claims, interests, and owners,
26 unless possession of the property is illegal. If the forfeiture action is
27 dismissed or judgment is entered in favor of the claimant, the claimant

1 ~~shall not be~~ IS NOT subject to any monetary charges by the state for
2 storage of the property or expenses incurred in the preservation of the
3 property, unless at the time of dismissal the plaintiff shows that those
4 expenses would have been incurred to prevent waste of the property even
5 if it had not been seized.

6 (1.7) ~~Notwithstanding the provisions of subsection (1.5) of this~~
7 ~~section:~~

8 (a) ~~(I) A person shall lack standing for and shall be disallowed~~
9 ~~from pursuit of a claim or defense in a civil forfeiture action upon a~~
10 ~~finding that a warrant or other process has been issued for the~~
11 ~~apprehension of the person, and, in order to avoid criminal prosecution,~~
12 ~~the person:~~

13 ~~(A) Purposely leaves the state; or~~

14 ~~(B) Declines to enter or reenter the state to submit to its~~
15 ~~jurisdiction; or~~

16 ~~(C) Otherwise evades the jurisdiction of the court in which a~~
17 ~~criminal case is pending against the person or from which a warrant has~~
18 ~~been issued, by failing to appear in court or surrender on the warrant; and~~

19 ~~(D) Is not known to be confined or held in custody in any other~~
20 ~~jurisdiction within the United States for commission of criminal conduct~~
21 ~~in that jurisdiction.~~

22 ~~(H) If a person lacks standing pursuant to this paragraph (a), the~~
23 ~~forfeiture action may proceed and a judgment of forfeiture may be entered~~
24 ~~without a criminal conviction of an owner, upon motion and notice as~~
25 ~~provided in the rules of civil procedure.~~

26 (b) ~~If, following notice to all persons known to have an interest or~~
27 ~~who have asserted an interest in the property subject to forfeiture, an~~

1 owner fails to file an answer or other appropriate response with the court
2 claiming an interest in the subject matter property, or no person
3 establishes standing to contest the forfeiture action pursuant to section
4 16-13-504 (2), a forfeiture action may proceed and a judgment of
5 forfeiture may be entered without a criminal conviction of an owner.

6 (c) If the plaintiff proves by clear and convincing evidence that
7 the property was instrumental in the commission of an offense listed in
8 section 16-13-503 (1) or that the property is traceable proceeds of the
9 offense or related criminal activity by a nonowner and the plaintiff proves
10 by clear and convincing evidence that an owner is not an innocent owner
11 pursuant to section 16-13-504 (2.2), a judgment of forfeiture may be
12 entered without a criminal conviction of an owner.

13 (d) If an owner of the property who was involved in the public
14 nuisance act or conduct giving rise to the claim of forfeiture subsequently
15 dies, and was not an innocent owner pursuant to section 16-13-504 (2.2),
16 a judgment of forfeiture may be entered without a criminal conviction of
17 an owner.

18 (e) If an owner received a deferred judgment, deferred sentence,
19 or participated in a diversion program, or in the case of a juvenile a
20 deferred adjudication or deferred sentence or participated in a diversion
21 program for the offense, a judgment of forfeiture may be entered without
22 a criminal conviction.

23 (f) A defendant or claimant shall be permitted to waive the
24 requirement of a criminal conviction in order to settle a forfeiture action.

25 (4.5) (a) FOLLOWING THE SEIZURE OF PROPERTY, A DEFENDANT OR
26 THIRD PARTY HAS A RIGHT TO A PRETRIAL HEARING TO DETERMINE THE
27 VALIDITY OF THE SEIZURE.

1 (b) AT ANY TIME SIXTY DAYS BEFORE THE TRIAL OF THE RELATED
2 CRIMINAL OFFENSE, A CLAIMANT MAY ASSERT THE RIGHT TO POSSESSION
3 OF PROPERTY BY FILING A MOTION FOR A WRIT OF REPLEVIN.

4 (c) THE MOTION FOR PRETRIAL HEARING OR MOTION FOR WRIT OF
5 REPLEVIN MUST ESTABLISH THE VALIDITY OF THE ALLEGED INTEREST IN
6 THE PROPERTY. THE COURT SHALL HEAR THE PRETRIAL HEARING OR
7 MOTION FOR A WRIT OF REPLEVIN NO MORE THAN THIRTY DAYS AFTER THE
8 MOTION IS FILED.

9 (d) THE DISTRICT ATTORNEY OR ATTORNEY GENERAL SHALL FILE
10 AN ANSWER SHOWING PROBABLE CAUSE FOR THE SEIZURE OR CROSS
11 MOTIONS AT LEAST TEN DAYS BEFORE THE HEARING.

12 (e) EXCEPT AS PROVIDED IN PARAGRAPH (f) OF THIS SUBSECTION
13 (4.5), THE COURT SHALL GRANT THE MOTION IF IT FINDS THAT:

14 (I) IT IS LIKELY THAT THE FINAL JUDGMENT WILL BE THAT THE
15 SEIZING AGENCY MUST RETURN THE PROPERTY TO THE CLAIMANT;

16 (II) THE PROPERTY IS NOT REASONABLY REQUIRED TO BE HELD FOR
17 INVESTIGATORY REASONS; OR

18 (III) (A) THE PROPERTY IS THE ONLY REASONABLE MEANS FOR A
19 DEFENDANT TO PAY FOR LEGAL REPRESENTATION IN THE FORFEITURE OR
20 CRIMINAL PROCEEDING.

21 (B) AT THE COURT'S DISCRETION UNDER SUB-SUBPARAGRAPH (A)
22 OF THIS SUBPARAGRAPH (III), IT MAY ORDER THE RETURN OF FUNDS OR
23 PROPERTY SUFFICIENT TO OBTAIN LEGAL COUNSEL, BUT LESS THAN THE
24 TOTAL AMOUNT SEIZED, AND REQUIRE AN ACCOUNTING.

25 (f) IN LIEU OF ORDERING THE ISSUANCE OF THE WRIT, THE COURT
26 MAY ORDER THE SEIZING ENTITY TO GIVE SECURITY OR WRITTEN
27 ASSURANCE FOR SATISFACTION OF ANY JUDGMENT, INCLUDING DAMAGES,

1 THAT MAY BE RENDERED IN THE ACTION OR ORDER OTHER RELIEF AS MAY
2 BE JUST.

3 **SECTION 3.** In Colorado Revised Statutes, **amend** 16-13-601 as
4 follows:

5 **16-13-601. Receipt of federally forfeited property.** (1) AN
6 AGENCY CHARGED WITH THE ENFORCEMENT OF THE LAWS OF THIS STATE,
7 INCLUDING THE COLORADO NATIONAL GUARD WHEN PARTICIPATING IN
8 OPERATIONS PURSUANT TO THE DRUG INTERDICTION AND ENFORCEMENT
9 PLAN REQUIRED BY PART 13 OF ARTICLE 3 OF TITLE 28, C.R.S., SHALL NOT
10 PARTICIPATE OR ASSIST IN ANY FORFEITURE ACTION BROUGHT BY THE
11 FEDERAL GOVERNMENT UNLESS THE VALUE OF THE PROPERTY SUBJECT TO
12 FORFEITURE EXCEEDS FIFTY THOUSAND DOLLARS, EXCLUDING THE VALUE
13 OF ANY CONTROLLED SUBSTANCE.

14 (2) Any agency ~~charged with the enforcement of the laws of this~~
15 ~~state, including the Colorado National Guard when participating in~~
16 ~~operations pursuant to the drug interdiction and enforcement plan~~
17 ~~required by part 13 of article 3 of title 28, C.R.S., is authorized to~~
18 AUTHORIZED PURSUANT TO SUBSECTION (1) OF THIS SECTION TO
19 PARTICIPATE OR ASSIST IN A FORFEITURE ACTION BROUGHT BY THE
20 FEDERAL GOVERNMENT MAY accept AND receive ~~dispose of, and expend~~
21 the property or proceeds from any property forfeited to the federal
22 government and allocated to such agency by the United States attorney
23 general pursuant to 21 U.S.C. sec. 881 (e). ~~Such revenues shall be in~~
24 ~~addition to the moneys appropriated to such law enforcement agency by~~
25 ~~the general assembly or any unit of local government.~~ Said property or
26 proceeds ~~may~~ MUST be credited to ~~any lawfully created~~ THE STATE
27 GENERAL fund. ~~designated to receive proceeds of forfeitures.~~ Any

1 ~~proceeds received pursuant to this section are exempt from the~~
2 ~~distribution requirements of section 16-13-311 (3) (a).~~

3 **SECTION 4. Safety clause.** The general assembly hereby finds,
4 determines, and declares that this act is necessary for the immediate
5 preservation of the public peace, health, and safety.