

2022 Regular Session

HOUSE BILL NO. 328

BY REPRESENTATIVE VILLIO

CRIMINAL/FORFEITURE: Provides relative to civil forfeiture

1 AN ACT

2 To enact R.S. 14:230.1, relative to forfeiture; to provide for definitions; to provide for  
3 offenses; to provide relative to seizure with process issued by a court; to provide for  
4 seizure without process issued by a court; to provide for return after seizure  
5 following a dismissal in a preliminary hearing or an acquittal at trial; to provide for  
6 mandatory and permissive duties of law enforcement officers; to provide relative to  
7 designation by law enforcement; to provide relative to public auction after seizure;  
8 to provide for payment into the state treasury; to provide relative to rights of  
9 mortgage holders, lien holders, and holders of a vendor's privilege; to provide for  
10 restitution; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S.14:230.1 is hereby enacted to read as follows:

13 §230.1. Civil forfeiture

14 A. As used in this Section:

15 (1) "Comingled funds" means the combination of legitimate funds and  
16 proceeds derived from criminal activity.

17 (2) "Criminal activity" means any of the offenses listed in Subsection B of  
18 this Section, including conspiracy, principals, and attempts to commit any of the  
19 listed offenses that are classified as a felony under the laws of this state or of the  
20 United States.

1           (3) "Facilitating property" means any property used to commit the offense.

2           (4) "Proceeds" means funds acquired or derived directly or indirectly from  
3           or produced or realized through an act.

4           B. All facilitating property, proceeds, and comingled funds, without  
5           limitation to comingled funds of persons who knowingly or should have reasonably  
6           known of the foregoing criminal activity, shall be subject to seizure and forfeiture  
7           if involved in or derived from any of the following offenses:

8           (1) Theft (R.S. 14:67).

9           (2) Identity theft (R.S. 14:67.16).

10          (3) Access device fraud (R.S. 14:70.4).

11          (4) Illegal transmission of monetary funds (R.S. 14:70.8).

12          (5) Bank fraud (R.S. 14:71.1).

13          (6) Monetary instrument abuse (R.S. 14:72.2).

14          (7) Computer fraud (R.S. 14:73.5).

15          (8) Money laundering; transactions involving proceeds derived from  
16          criminal activity (R.S. 14:230).

17          C. Any facilitating property, proceeds, and comingled funds subject to  
18          forfeiture under this Section may be seized under process issued by any court of  
19          record having jurisdiction over the facilitating property, proceeds, and comingled  
20          funds except that seizure without such process may be made when either of the  
21          following exists:

22          (1) The seizure is incident to an arrest with probable cause or a search under  
23          a valid search warrant or with probable cause or an inspection under valid  
24          administrative inspection warrant.

25          (2) The facilitating property, proceeds, and comingled funds subject to  
26          seizure have been the subject of a prior judgment in favor of the state in a criminal  
27          injunction or forfeiture proceeding under this Section.

28          D. After seizure, any facilitating property, proceeds, and comingled funds  
29          taken or detained under this Section shall be immediately returned to the owner when

1        the charges of violating R.S. 14:67, 67.16, 70.4, 70.8, 71.1, 72.2, 73.5, or 230 in  
2        which the facilitating property, proceeds, and comingled funds were involved are  
3        dismissed by the district attorney or dismissed by the district court, on the basis of  
4        a preliminary hearing or other preliminary proceedings, or when the accused is  
5        acquitted following a trial in the district court of the parish in which the violation is  
6        alleged to have occurred.

7                E. Facilitating property, proceeds, and comingled funds taken or detained  
8        under this Section shall not be repleviable, but shall be deemed to be in the custody  
9        of the law enforcement agency making the seizure subject only to the orders and  
10       decrees of the court of record having jurisdiction. Whenever facilitating property,  
11       proceeds, or comingled funds are seized under the provisions of this Section, the law  
12       enforcement officer or employee making the seizure shall perform all of the  
13       following:

14                (1) Place facilitating property, proceeds, and comingled funds under seal.

15                (2) Remove the facilitating property, proceeds, and comingled funds to a  
16       place designated by the valid warrant under which such property was seized.

17                (3) Request that the Department of Public Safety take custody of the  
18       facilitating property, proceeds, and comingled funds and remove them to an  
19       appropriate location for disposition in accordance with law.

20                F. Whenever facilitating property, proceeds, and comingled funds are  
21       forfeited under this Section, the law enforcement agency making the seizure may  
22       perform any of the following functions:

23                (1) Retain the facilitating property, proceeds, and comingled funds for  
24       official use.

25                (2) Sell any facilitating property, which is not required to be destroyed by  
26       law and which is not harmful to the public, provided that the proceeds be used for  
27       payment of all costs of the proceedings for forfeiture and sale including expenses of  
28       seizure, maintenance of custody, advertising, and court costs.

1           (3) Request that the Department of Public Safety take custody of the  
2           facilitating property, proceeds, and comingled funds and remove them for disposition  
3           in accordance with law.

4           G. Any law enforcement agency is empowered to authorize, or designate  
5           officers, agents, or other persons to carry out the seizure provisions of this Section.

6           H. Whenever the head of the law enforcement agency effecting the forfeiture  
7           deems it necessary or expedient to sell the facilitating property that has been  
8           forfeited, rather than retain it for the use of the law enforcement agency, he shall  
9           cause an advertisement to be inserted in the official journal of the parish where the  
10           seizure was made, and after ten days, shall dispose of the property at public auction  
11           to the highest bidder, for cash and without appraisal.

12           I. The proceeds of all funds collected from any such sale, except as provided  
13           in R.S. 14:230.1(E)(2), shall be paid into the state treasury.

14           J. The rights of any mortgage or lien holder or holder of a vendor's privilege  
15           on the facilitating property seized shall not be affected by the seizure.

16           K. Comingled funds or proceeds that are traceable to a victim shall be  
17           returned to the victim as restitution and shall not be subject to the provisions of this  
18           Section.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 328 Original

2022 Regular Session

Villio

**Abstract:** Provides for the seizure and forfeiture of proceeds and property obtained from criminal activity.

Proposed law defines "comingled funds", "criminal activity", "facilitating property", and "proceeds".

Proposed law provides that all facilitating property, proceeds, and comingled funds, without limitation to comingled funds of persons who knowingly or should have reasonably known of the foregoing criminal activity, shall be subject to seizure and forfeiture if involved in or derived from any of the following offenses:

- (1) Theft (R.S. 14:67).

- (2) Identity theft (R.S. 14:67.16).
- (3) Access device fraud (R.S. 14:70.4).
- (4) Illegal transmission of monetary funds (R.S. 14:70.8).
- (5) Bank fraud (R.S. 14:71.1).
- (6) Monetary instrument abuse (R.S. 14:72.2).
- (7) Computer fraud (R.S. 14:73.5).
- (8) Money laundering; transactions involving proceeds derived from criminal activity (R.S. 14:230).

Proposed law provides that any facilitating property, proceeds, and comingled funds subject to forfeiture under proposed law may be seized under process issued by any court with jurisdiction over the facilitating property, proceeds, and comingled funds.

Proposed law provides that seizure without such process may be made when either of the following exists:

- (1) The seizure is incident to an arrest with probable cause or a search under a valid search warrant or with probable cause or an inspection under valid administrative inspection warrant.
- (2) The facilitating property, proceeds, and comingled funds subject to seizure have been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under proposed law.

Proposed law provides that after seizure, any facilitating property, proceeds, and comingled funds taken or detained shall be immediately returned to the owner when the charges of violating present law (R.S. 14:67, 67.16, 70.4, 70.8, 71.1, 72.2, 73.5, or 230) in which the facilitating property, proceeds, and comingled funds were involved are dismissed by the district attorney or dismissed by the district court, on the basis of a preliminary hearing or other preliminary proceedings, or when the accused is acquitted following a trial in the district court of the parish where the violation is alleged to have occurred.

Proposed law provides that facilitating property, proceeds, and comingled funds taken or detained under proposed law shall not be repleviable, but shall be deemed to be in the custody of the law enforcement agency making the seizure subject only to the orders and decrees of the court with jurisdiction over the matter.

Proposed law provides that whenever facilitating property, proceeds, or comingled funds are seized under the provisions of proposed law, the law enforcement officer or employee making the seizure shall perform all of the following:

- (1) Place facilitating property, proceeds, and comingled funds under seal.
- (2) Remove the facilitating property, proceeds, and comingled funds to a place designated by the valid warrant under which such property was seized.
- (3) Request that the Dept. of Public Safety take custody of the facilitating property, proceeds, and comingled funds and remove them to an appropriate location for disposition in accordance with law.

Proposed law provides that whenever facilitating property, proceeds, and comingled funds are forfeited under proposed law, the law enforcement agency making the seizure may perform any of the following functions:

- (1) Retain the facilitating property, proceeds, and comingled funds for official use.
- (2) Sell any facilitating property, which is not required to be destroyed by law and which is not harmful to the public, provided that the proceeds be used for payment of all costs of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs.
- (3) Request that the Dept. of Public Safety take custody of the facilitating property, proceeds, and comingled funds and remove them for disposition in accordance with law.

Proposed law provides that any law enforcement agency is empowered to authorize, or designate officers, agents, or other persons to carry out the seizure provisions of proposed law.

Proposed law provides that whenever the head of the law enforcement agency effecting the forfeiture deems it necessary or expedient to sell the facilitating property that has been forfeited, rather than retain it for the use of the law enforcement agency, he shall advertise the facilitating property in the official journal of the parish where the seizure was made, and after 10 days, shall dispose of the property at public auction to the highest bidder, for cash and without appraisal.

Proposed law provides that the proceeds of all funds collected from any such sale, except as provided in proposed law (R.S. 14:230.1(E)(2)), shall be paid into the state treasury.

Proposed law provides that the rights of any mortgage or lien holder or holder of a vendor's privilege on the facilitating property seized shall not be affected by the seizure.

Proposed law provides that comingled funds or proceeds that are traceable to a victim shall be returned to the victim as restitution and shall not be subject to the provisions of proposed law.

(Adds R.S. 14:230.1)