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## DIGEST

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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)