

## RÉSUMÉ DIGEST

ACT 747 (HB 820)

2022 Regular Session

Villio

New law provides definitions for "commingled funds", "criminal activity", "facilitating property", and "proceeds".

New law provides that all facilitating property, proceeds, and commingled funds, without limitation to commingled 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) Identity theft (R.S. 14:67.16).
- (2) Access device fraud (R.S. 14:70.4).
- (3) Illegal transmission of monetary funds (R.S. 14:70.8).
- (4) Bank fraud (R.S. 14:71.1).
- (5) Monetary instrument abuse (R.S. 14:72.2).
- (6) Computer fraud (R.S. 14:73.5).
- (7) Money laundering; transactions involving proceeds derived from criminal activity (R.S. 14:230).

New law provides that any facilitating property, proceeds, and commingled funds subject to forfeiture under new law may be seized under process issued by any court of record having jurisdiction over the facilitating property, proceeds, and commingled funds.

New 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 commingled 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 new law.

New law provides that all forfeitures or dispositions under new law shall be made with due provisions for the rights of factually innocent persons and that no forfeiture or disposition shall affect the rights of factually innocent persons.

New law provides that no mortgage, lien, privilege, or other security interest recognized under the laws of La. and no ownership interest in indivision shall be affected by a forfeiture if the owner of such mortgage, lien, privilege, or other security interest, or owner in indivision establishes that he is a factually innocent person.

New law provides that a mortgage, lien, or security interest held by a federally-insured financial institution shall not be affected by the seizure and forfeiture provisions of new law.

New law provides that notice of pending forfeiture or disposition shall be provided by the district attorney in accordance with the requirements of existing law (R.S. 40:2608(3) or R.S. 14:90.1(B)(3)).

New law provides that in an event of a seizure under new law, a forfeiture proceeding shall be instituted promptly. Provides that any facilitating property, proceeds, and commingled funds taken or detained under new law shall not be subject to sequestration or attachment but is deemed to be in the custody of the law enforcement officer making the seizure, subject only to a court order.

New law provides that when property is seized under new law, pending forfeiture and final disposition, the law enforcement officer making the seizure may do any of the following:

- (1) Place the property under seal.
- (2) Remove the property to a place designated by the court.
- (3) Request another agency authorized by law to take custody of the property and remove it to an appropriate location.

New law provides that the district attorney may institute civil proceedings under new law. Provides that in any action brought under new law, the district court shall proceed as soon as practicable to the hearing and determination following conviction or agreement between the parties. Provides that pending final determination, the court may at any time enter such injunctions or restraining orders or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper.

New law provides that a final judgment or decree rendered in favor of the state in any criminal proceeding shall preclude the defendant from denying the essential facts established in that proceeding in any subsequent civil action.

New law provides that a criminal or civil action or proceeding under new law may be commenced at any time within five years after the conduct in violation of new law terminates or the cause of action accrues.

New law provides that if a criminal prosecution or civil action is brought under new law, the running of the period prescribed by new law with respect to any cause of action arising under new law which is based in whole or in part upon any matter complained of in any such prosecution or action shall be suspended during the pendency of such prosecution or action and for two years following its termination.

New law provides that the application of one civil remedy under new law shall not preclude the application of any other remedy, civil or criminal, under any other provision of law. Provides that civil remedies under new law are supplemental and not mutually exclusive.

New law provides that the allocation of proceeds from forfeitures or dispositions under new law shall be determined by the court in accordance with each law enforcement entity's participation in the investigation, seizure, and forfeiture process. Provides that proceeds shall be distributed in the following order of priority:

- (1) Satisfaction of any bona fide security interest or lien.
- (2) Payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs.
- (3) The remaining funds shall be allocated as follows:
  - (a) 60% to the law enforcement agency or agencies making the seizure.
  - (b) 20% to the criminal court fund.
  - (c) 20% to the district attorney's office pursuing the forfeiture.

Effective August 1, 2022.

(Adds R.S. 14:230.1)