

COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2324
(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 13-4301, Arizona Revised Statutes, is amended to
3 read:

4 13-4301. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Abandoned ~~THE~~ property":

7 (a) Means ~~personal property~~ that the owner ~~OF PERSONAL PROPERTY~~ has
8 intentionally relinquished the right to and control over ~~THE PERSONAL~~
9 ~~PROPERTY~~.

10 (b) Does not ~~include~~ ~~APPLY TO~~ property that is obtained as a result
11 of a peace officer requesting, requiring or inducing a person to execute a
12 document that purports to disclaim an interest in or right to the property
13 or that relinquished interest in or rights to the property.

14 2. "Attorney for the state" means an attorney designated by the
15 attorney general, by a county attorney or by a city attorney to
16 investigate, commence and prosecute an action under this chapter.

17 3. "Commercially reasonable" means a sale or disposal that would be
18 commercially reasonable under title 47, chapter 9, article 6.

19 4. "DIGITAL ASSET":

20 (a) MEANS A DIGITAL REPRESENTATION OF VALUE, RIGHTS OR OWNERSHIP
21 THAT IS RECORDED AND TRANSFERRED ELECTRONICALLY USING BLOCKCHAIN TECHNOLOGY
22 OR OTHER DISTRIBUTED SYSTEMS.

23 (b) INCLUDES ANY OF THE FOLLOWING:

24 (i) CRYPTOCURRENCY.

25 (ii) A NONFUNGIBLE TOKEN.

26 (iii) TOKENIZED REAL-WORLD ASSETS.

(iv) AN AIRDROP.

(v) A FORKED TOKEN.

(vi) DECENTRALIZED FINANCE REWARDS OR TOKENS.

(vii) VIRTUAL CURRENCY. FOR THE PURPOSES OF THIS ITEM, "VIRTUAL CURRENCY" HAS THE SAME MEANING PRESCRIBED IN SECTION 43-1028.

(viii) OTHER DIGITAL REPRESENTATIONS THAT MAY HOLD ECONOMIC, UTILITY OR OWNERSHIP VALUE.

~~4.~~ 5. "Injured person" means a person who has sustained economic loss, including medical loss, as a result of injury to his person, business or property by the conduct giving rise to the forfeiture of property, and who is not an owner of or an interest holder in the property. Injured person does not include a person who is responsible for the conduct giving rise to forfeiture or a person whose interest would not be exempt from forfeiture if the person were an owner of or interest holder in the property.

~~5.~~ 6. "Interest holder" means a person in whose favor there is a security interest or who is the beneficiary of a perfected encumbrance pertaining to an interest in property.

~~6.~~ 7. "Owner" means a person who is not a secured party as defined in section 47-9102 and who has an interest in property, whether legal or equitable. A person who holds property for the benefit of or as agent or nominee for another is not an owner. A purported interest that is not in compliance with any statute requiring its recordation or reflection in public records in order to perfect the interest against a bona fide purchaser for value shall not be recognized as an interest against this state in an action pursuant to this chapter. An owner with power to convey property binds other owners, and a spouse binds his spouse, by his act or omission.

~~7.~~ 8. "Person known to have an interest" means a person whose interest in property is reflected in the public records in which his interest is required by law to be recorded or reflected in order to perfect his interest. If a person's interest in property is not required by law to be reflected in public records in order to perfect his interest in the

1 property, a person shall be known to have an interest only if his interest
2 can be readily ascertained at the time the forfeiture action commences
3 pursuant to this chapter.

4 ~~8-~~ 9. "Personal property" includes all interests in property, as
5 defined in section 13-105, in whatever form, except real property and
6 fixtures as defined in section 47-9102.

7 ~~9-~~ 10. "Seizing agency" means any department or agency of this
8 state or its political subdivisions that regularly employs peace officers
9 and that employs the peace officer who seizes property for forfeiture, or
10 such other agency as the seizing agency may designate in a particular case
11 by its chief executive officer or the chief executive officer's designee.

12 ~~10-~~ 11. "Seizure for forfeiture" means seizure of property by a
13 peace officer and either:

14 (a) There is an assertion by the seizing agency or by an attorney
15 for the state that the property is subject to forfeiture.

16 (b) The property has no evidentiary value.

17 Sec. 2. Section 13-4304, Arizona Revised Statutes, is amended to
18 read:

19 13-4304. Property subject to forfeiture; exemptions; innocent
20 owner

21 A. Except as provided in subsections B, C and D of this section, all
22 property, including all interests in such property, described in a statute
23 providing for its forfeiture is subject to forfeiture if both of the
24 following apply:

25 1. The owner is convicted of an offense to which forfeiture applies.

26 2. The state establishes by clear and convincing evidence that the
27 property is subject to forfeiture as provided in subsection E of this
28 section.

29 B. A vehicle used by any person as a common carrier in the
30 transaction of business as a common carrier may not be forfeited under this
31 chapter unless the state proves by clear and convincing evidence that the
32 owner or other person in charge of the vehicle was a consenting party or
33 privy to the act or omission giving rise to forfeiture or knew of it.

1 C. A vehicle may not be forfeited under this chapter following a
2 conviction for any act or for an omission committed or omitted by a person
3 other than the owner while the vehicle was unlawfully in the possession of
4 a person other than the owner in violation of the criminal laws of this
5 state or of the United States.

6 D. Property may not be forfeited pursuant to section 13-3413,
7 subsection A, paragraph 1 or 3 if the conduct giving rise to the seizure
8 both:

9 1. Did not involve an amount of unlawful substance greater than the
10 statutory threshold amount as defined in section 13-3401.

11 2. Was not committed for financial gain.

12 E. After a person is convicted of an offense for which forfeiture
13 applies, a court may order the person to forfeit any of the following:

14 1. Property THAT the person acquired through the commission of the
15 offense.

16 2. Property that is directly traceable to property acquired through
17 the commission of the offense.

18 3. Any property or instrumentality that the person used in the
19 commission of the offense or to facilitate the offense.

20 4. Substitute assets as prescribed in section 13-2314, subsection D,
21 paragraph 6, subdivision (d) and in accordance with section 13-4305,
22 subsection C.

23 5. ANY DIGITAL ASSET USED IN, ACQUIRED THROUGH OR TRACEABLE TO THE
24 COMMISSION OF AN OFFENSE.

25 F. The court may waive the conviction requirement if the prosecuting
26 authority shows by clear and convincing evidence that there is no known
27 owner of the seized property, diligent efforts have been made to identify
28 the owner of the seized property and no person has asserted an ownership
29 interest in the seized property or that, before conviction, the defendant
30 or alleged criminal:

31 1. Died.

32 2. No longer resides in the United States or was deported.

1 3. Was granted immunity or reduced punishment in exchange for
2 testifying or assisting a law enforcement investigation or prosecution.

3 4. Fled the jurisdiction of this state.

4 5. Abandoned the property.

5 G. This section does not prevent property from being forfeited by
6 the terms of a plea agreement that is approved by a court or by other
7 agreement of the parties in a criminal proceeding.

8 H. A person who claims to be an innocent owner has the burden of
9 production to show that the person either:

10 1. Held a legal right, title or interest in the property seized at
11 the time the illegal conduct that gave rise to the seizure of the property
12 occurred.

13 2. Acquired as a bona fide purchaser for value a legal right, title
14 or interest in the property subject to forfeiture after the commission of
15 the crime that gave rise to the seizure of the property.

16 I. If a person establishes that the person is an innocent owner
17 pursuant to subsection H of this section and the state pursues a forfeiture
18 proceeding with respect to that person's property, other than property
19 described in section 13-3413 to successfully forfeit the property, the
20 state shall prove by clear and convincing evidence that the innocent owner
21 had actual knowledge of the underlying crime that gave rise to the
22 forfeiture.

23 J. If the state is unable to prove the person is not an innocent
24 owner as provided in subsections H and I of this section, the court shall
25 find that the person is an innocent owner and order the state to relinquish
26 all claims of title to the property and return the property to the innocent
27 owner.

28 Sec. 3. Section 13-4305, Arizona Revised Statutes, is amended to
29 read:

30 13-4305. Seizure of property

31 A. Property subject to forfeiture under this chapter may be seized
32 for forfeiture by a peace officer:

1 1. On process issued pursuant to the Arizona rules of civil
2 procedure or this title, including a seizure warrant.

3 2. By making a seizure for forfeiture on property seized on process
4 issued pursuant to law, including sections 13-3911, 13-3912, 13-3913,
5 13-3914 and 13-3915.

6 3. By making a seizure for forfeiture without court process if the
7 officer has probable cause to believe that the property is subject to
8 forfeiture and any of the following is true:

9 (a) The seizure for forfeiture is of property seized incident to a
10 lawful arrest for a crime or a lawful search.

11 (b) The property subject to seizure for forfeiture has been the
12 subject of a prior judgment in favor of this state or any other state or
13 the federal government in a forfeiture proceeding.

14 (c) The peace officer has probable cause to believe that the
15 property is subject to forfeiture and that the delay occasioned by the need
16 to obtain a court order would result in the removal or destruction of the
17 property or otherwise frustrate the seizure.

18 4. BY MAKING A SEIZURE OF A DIGITAL ASSET BY:

19 (a) GAINING ACCESS TO A PRIVATE KEY, PASSPHRASE OR OTHER ACCESS
20 MECHANISM.

21 (b) SECURING A DIGITAL WALLET THROUGH BLOCKCHAIN TECHNOLOGY.

22 (c) TRANSFERRING THE DIGITAL ASSET TO A STATE-APPROVED, SECURE
23 DIGITAL WALLET OR PLATFORM.

24 B. The court shall determine probable cause for seizure before real
25 property may be seized for forfeiture. The court may make its
26 determination ex parte if the state demonstrates that notice and an
27 opportunity to appear would create a risk of harm to the public safety or
28 welfare, including the risk of physical injury or the likelihood of
29 property damage or financial loss.

30 C. The court shall determine probable cause for seizure before
31 property may be seized for forfeiture as a substitute asset pursuant to
32 section 13-2314, subsection D or ~~E~~, or pursuant to section 13-4313,
33 subsection A. The court may issue a seizure warrant for such property if

1 it determines that there is probable cause to believe that the property is
2 subject to forfeiture and is not available for seizure for forfeiture for
3 any reason described in section 13-4313, subsection A. The determinations
4 shall be made ex parte unless real property is to be seized and subsection
5 B of this section requires notice and an opportunity to appear.

6 D. In establishing probable cause for seizure, a rebuttable
7 presumption exists that the property of any person is subject to forfeiture
8 if the state establishes all of the following by clear and convincing
9 evidence:

10 1. Conduct giving rise to forfeiture occurred.

11 2. The person acquired the property during the period of the conduct
12 giving rise to forfeiture or within a reasonable time after that period.

13 3. There is no likely source for the property other than the conduct
14 giving rise to forfeiture.

15 E. The presence or possession of United States currency, debit cards
16 or credit cards, without other indicia of a crime that subjects property to
17 forfeiture, is insufficient probable cause for seizure of United States
18 currency, debit cards or credit cards.

19 F. A DIGITAL ASSET THAT IS SEIZED PURSUANT TO THIS CHAPTER MUST BE
20 STORED IN A STATE-APPROVED, SECURE DIGITAL WALLET SYSTEM THAT IS MANAGED BY
21 AUTHORIZED PERSONNEL TO PREVENT LOSS, THEFT OR UNAUTHORIZED ACCESS.

22 Sec. 4. Section 13-4315, Arizona Revised Statutes, is amended to
23 read:

24 13-4315. Allocation of forfeited property

25 A. Any property, including all interests in property, forfeited to
26 the state under this title shall be transferred as requested by the
27 attorney for the state to the seizing agency or to the agency or political
28 subdivision employing the attorney for the state, which may do any of the
29 following:

30 1. Sell, lease, lend or transfer the property to any local or state
31 government entity or agency or political subdivision, any law enforcement
32 agency or prosecutorial agency or any federal law enforcement agency that
33 operates within this state for official federal, state or political

1 subdivision use within this state, with expenses for keeping and
2 transferring such property to be paid by the recipient. Property may not
3 be allocated for official use if the fair market value of the property
4 substantially exceeds the agency's probable cost of purchasing other
5 property equally suited for the intended official use. Property that is
6 allocated for official use may not be assigned for use by any person who
7 supervised or exercised discretion in its forfeiture unless the use is
8 approved in writing by the head of the agency.

9 2. Sell forfeited property by public or otherwise commercially
10 reasonable sale with expenses of keeping and selling the property and the
11 amount of all valid interests established by claimants paid out of the
12 proceeds of the sale with the balance paid into the anti-racketeering
13 revolving fund of the state or of the county in which the political
14 subdivision seizing the property or prosecuting the action is located. A
15 sale of forfeited property may not be made to any employee of the seizing
16 agency, any person who participated in the forfeiture, any employee of a
17 contractor selling the property on behalf of the seizing agency or any
18 member of the immediate family of any of these employees or persons.

19 3. SELL A FORFEITED DIGITAL ASSET BY PUBLIC OR OTHERWISE
20 COMMERCIALY REASONABLE SALE WITH EXPENSES OF KEEPING AND SELLING THE
21 DIGITAL ASSET AND THE AMOUNT OF ALL VALID INTERESTS ESTABLISHED BY
22 CLAIMANTS PAID OUT OF THE PROCEEDS OF THE SALE. FIFTY PERCENT OF THE
23 REMAINING BALANCE SHALL BE DEPOSITED IN THE STATE GENERAL FUND AND THE
24 REMAINING FIFTY PERCENT SHALL BE DEPOSITED IN THE BITCOIN AND DIGITAL
25 ASSETS RESERVE FUND ESTABLISHED BY SECTION 41-180. DIGITAL ASSETS MUST BE
26 SOLD THROUGH STATE-APPROVED CRYPTOCURRENCY EXCHANGES OR OTHER SECURE
27 PLATFORMS TO ENSURE ACCURATE VALUATION AND TRANSPARENCY. A DIGITAL ASSET
28 MAY REMAIN IN ITS NATIVE FORM.

29 ~~3.~~ 4. Destroy or use for investigative purposes any illegal or
30 controlled substances or other contraband at any time more than twenty days
31 after seizure, on written approval of the attorney for the state,
32 preserving only such material as may be necessary for evidence.

1 ~~4.~~ 5. Sell, use or destroy all raw materials, products and
2 equipment of any kind used or intended for use in manufacturing,
3 compounding or processing a controlled substance.

4 ~~5.~~ 6. Compromise and pay claims against property forfeited pursuant
5 to any provision of this section.

6 ~~6.~~ 7. Make any other disposition of forfeited property authorized
7 by law for the disposition of property of the state, government entity,
8 agency or political subdivision.

9 B. Notwithstanding subsection A of this section or any other law to
10 the contrary:

11 1. If the property forfeited is money, and a law enforcement agency
12 can specifically identify monies as being from its investigative funds or
13 as being exchanged for property from its investigative property, the monies
14 shall be remitted to the investigative fund. If there are additional
15 forfeited monies or monies tendered on satisfaction by an interest holder
16 that cannot be specifically identified, the court shall order the monies
17 returned to each law enforcement agency that makes a showing of costs or
18 expenses that it incurred in connection with the investigation and
19 prosecution of the matter and shall order all excess monies remaining after
20 such returns deposited in the anti-racketeering revolving fund of this
21 state or of the county in which the political subdivision seizing the
22 monies or prosecuting the action is located, established pursuant to
23 section 13-2314.01 or 13-2314.03.

24 2. If the property declared forfeited is an interest in a vehicle,
25 the court shall order it forfeited to the local, state or other law
26 enforcement agency seizing the vehicle for forfeiture or to the seizing
27 agency.

28 C. Monies in any anti-racketeering revolving fund established
29 pursuant to this title may be used, in addition to any other lawful use,
30 for:

31 1. The payment of any expenses necessary to seize, detain, appraise,
32 inventory, protect, maintain, preserve the availability of, advertise or
33 sell property that is subject to forfeiture and that is seized, detained or

1 forfeited pursuant to this title or of any other necessary expenses
2 incident to the seizure, detention, preservation or forfeiture of the
3 property. The payments may include payments for contract services and
4 payments to reimburse any federal, state or local agency for any
5 expenditures made to perform the investigative, storage and maintenance
6 functions associated with the property held by the seizing agency.

7 2. The payment of awards for information or assistance leading to a
8 civil or criminal proceeding under this title.

9 3. The payment of compensation from forfeited property to injured
10 persons as provided in section 13-4310, subsection P, paragraph 3.

11 D. Each attorney for the state shall submit a copy of each
12 forfeiture judgment, including each order of forfeiture, to the Arizona
13 criminal justice commission within sixty days after the forfeiture judgment
14 becomes final or after the conclusion of appellate review, if any.

15 Sec. 5. Title 41, chapter 1, article 4, Arizona Revised Statutes, is
16 amended by adding section 41-180, to read:

17 41-180. Bitcoin and digital assets reserve fund; definitions

18 A. THE BITCOIN AND DIGITAL ASSETS RESERVE FUND IS ESTABLISHED TO
19 STORE, MANAGE AND ALLOCATE DIGITAL ASSETS SECURELY. THE FUND CONSISTS OF
20 FORFEITED DIGITAL ASSETS SEIZED OR DEPOSITED PURSUANT TO SECTIONS 13-4305
21 AND 13-4315. THE STATE TREASURER SHALL ADMINISTER THE FUND. MONIES IN THE
22 FUND ARE SUBJECT TO LEGISLATIVE APPROPRIATION. THE FORFEITED DIGITAL ASSET
23 MAY BE IN THE FORMS OF A DIGITAL ASSET AND BITCOIN.

24 B. ON APPROVAL OF THE LEGISLATURE, TEN PERCENT OF THE DIGITAL ASSETS
25 HELD IN THE FUND SHALL BE DEPOSITED IN THE STATE GENERAL FUND. THE
26 LEGISLATURE MAY NOT DEPOSIT BITCOIN INTO THE STATE GENERAL FUND.

27 C. FOR THE PURPOSES OF THIS SECTION:

28 1. "AIRDROP" MEANS THE RECEIPT OF VIRTUAL CURRENCY THROUGH A MEANS
29 OF DISTRIBUTION OF VIRTUAL CURRENCY TO THE DISTRIBUTED LEDGER ADDRESSES OF
30 MULTIPLE TAXPAYERS.

31 2. "DIGITAL ASSET":

1 (a) MEANS A DIGITAL REPRESENTATION OF VALUE, RIGHTS OR OWNERSHIP
2 THAT IS RECORDED AND TRANSFERRED ELECTRONICALLY USING BLOCKCHAIN TECHNOLOGY
3 OR OTHER DISTRIBUTED SYSTEMS.

4 (b) INCLUDES ANY OF THE FOLLOWING:

5 (i) CRYPTOCURRENCY.

6 (ii) A NONFUNGIBLE TOKEN.

7 (iii) TOKENIZED REAL-WORLD ASSETS.

8 (iv) AN AIRDROP.

9 (v) A FORKED TOKEN.

10 (vi) DECENTRALIZED FINANCE REWARDS OR TOKENS.

11 (vii) VIRTUAL CURRENCY. FOR THE PURPOSES OF THIS ITEM, "VIRTUAL
12 CURRENCY" HAS THE SAME MEANING PRESCRIBED IN SECTION 43-1028.

13 (viii) OTHER DIGITAL REPRESENTATIONS THAT MAY HOLD ECONOMIC, UTILITY
14 OR OWNERSHIP VALUE.

15 3. "NON-FUNGIBLE TOKEN" HAS THE SAME MEANING PRESCRIBED IN SECTION
16 43-1028."

17 Amend title to conform

And, as so amended, it do pass

JEFF WENINGER
CHAIRMAN

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