

CHAPTER 329
SB 522-FN-A - FINAL VERSION

02/04/2016 0368s
06/01/2016 2040CofC
06/01/2016 2149EBA

2016 SESSION

16-2964
10/09

SENATE BILL ***522-FN-A***

AN ACT making an appropriation to the office of professional licensure and certification for technology upgrades for the controlled drug prescription health and safety program and relative to the forfeiture of property.

SPONSORS: Sen. Bradley, Dist 3; Sen. Birdsell, Dist 19; Sen. Boutin, Dist 16; Sen. Carson, Dist 14; Sen. Cataldo, Dist 6; Sen. D'Allesandro, Dist 20; Sen. Forrester, Dist 2; Sen. Fuller Clark, Dist 21; Sen. Kelly, Dist 10; Sen. Lasky, Dist 13; Sen. Little, Dist 8; Sen. Morse, Dist 22; Sen. Prescott, Dist 23; Sen. Reagan, Dist 17; Sen. Soucy, Dist 18; Sen. Stiles, Dist 24; Sen. Watters, Dist 4; Sen. Woodburn, Dist 1; Rep. Hinch, Hills. 21; Rep. Shurtleff, Merr. 11; Rep. Rosenwald, Hills. 30; Rep. L. Ober, Hills. 37

COMMITTEE: Finance

AMENDED ANALYSIS

This bill:

I. Makes an appropriation to the office of professional licensure and certification for technology upgrades for the controlled drug prescription health and safety program.

II. Limits forfeiture to cases in which, after a criminal conviction, the state has found by clear and convincing evidence that the property was derived from, or used in, the commission of a crime. The proceeds from forfeiture cases would continue to be deposited in the drug forfeiture fund.

III. Requires the attorney general to provide an annual, detailed accounting of grants and expenditures from the drug forfeiture fund.

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Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Sixteen

AN ACT making an appropriation to the office of professional licensure and certification for technology upgrades for the controlled drug prescription health and safety program and relative to the forfeiture of property.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 329:1 Appropriation; Office of Professional Licensure and Certification; Controlled Drug
2 Prescription Health and Safety Program. The sum of \$130,000 is hereby appropriated to the office
3 of professional licensure and certification for the biennium ending June 30, 2017 for the purposes of
4 technology upgrades for the controlled drug prescription health and safety program, established in
5 RSA 318-B:32. The governor is authorized to draw a warrant for said sum out of any money in the
6 treasury not otherwise appropriated.

7 329:2 New Section; Property Subject to Forfeiture. Amend RSA 617 by inserting after section 1
8 the following new section:

9 617:1-a Criminal Forfeiture; Property Subject to Forfeiture.

10 I. Subsequent to a criminal conviction pursuant to a statute that authorizes forfeiture,
11 including but not limited to RSA 318-B:17-b, the court may order the person convicted to forfeit:

12 (a) Property the person derived from the commission of the crime;

13 (b) Property directly traceable to property derived from the commission of the crime;

14 and

15 (c) Instrumentalities the person used in the commission of the crime.

16 II. When a conviction or agreement of the parties is not possible due to the person's death,
17 incompetence, unavailability, or not being within the jurisdiction of the court, or the person to be
18 charged cannot be identified, forfeiture proceedings may be commenced.

19 III. Property may be forfeited if the state establishes that the property is forfeitable by clear
20 and convincing evidence.

21 IV. Nothing in this section shall prevent property from being forfeited by plea agreement
22 approved by the presiding criminal court or other agreement of the parties.

23 V. At the request of any party, the civil portion of the forfeiture proceeding may be stayed
24 by the court.

25 329:3 New Section; Forfeiture; Innocent Owner. Amend RSA 617 by inserting after section 4
26 the following new section:

27 617:4-a Innocent Owner. In addition to any other remedy provided by law, any person claiming
28 to be an innocent owner of property seized for purposes of forfeiture may petition the court, after 10

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1 days from the date of seizure, for return of the property. No item or property interest shall be
2 subject to forfeiture unless the alleged innocent owner thereof was a consenting party to the crime.
3 This section shall not apply to property seized as evidence in a pending criminal investigation or
4 prosecution.

5 329:4 New Section; Disposition of Unclaimed Property and Proceeds. Amend RSA 617 by
6 inserting after section 10 the following new section:

7 617:11 Disposition of Property and Proceeds.

8 I. Notwithstanding any other provision of law, at any time when unclaimed property or
9 contraband held for evidentiary purposes is no longer needed for that purpose, the court may order
10 the state to deliver any unclaimed property, other than currency, to the commissioner of the
11 department of administrative services, to deliver any currency to the state treasurer, and to destroy
12 any contraband within 30 days.

13 II. If the forfeiture is granted, the court may order the state to deliver any currency to the
14 state treasurer and any other property to the commissioner of the department of administrative
15 services within 30 days. The commissioner of the department of administrative services shall
16 dispose of the forfeited property at public auction.

17 III. Upon motion, the court may order that a portion of the currency seized or proceeds from
18 public auction be used to pay reasonable nonpersonnel expenses of the seizure, storage, and
19 maintenance of custody of any forfeited items.

20 IV. The auction proceeds and forfeited currency shall be forwarded to the state treasurer
21 and shall be used first to pay all outstanding recorded liens on the forfeited property, then to comply
22 with an order of the court to pay reasonable nonpersonnel expenses, with all remaining funds to be
23 deposited into the drug forfeiture fund.

24 329:5 Forfeiture of Items Used in Connection with Drug Offense. Amend RSA 318-B:17-b, II(e)
25 to read as follows:

26 (e) The department of justice shall, within 60 days of the seizure, ~~either~~ file a petition
27 in the superior court having jurisdiction under this section ~~[or seek administrative forfeiture~~
28 ~~pursuant to RSA 318-B:17-d]~~. If no such petition is filed ~~[or administrative procedure initiated]~~
29 within 60 days, the items or property interest seized shall be released or returned to the owners.

30 329:6 Disposition of Funds Obtained by the Attorney General; Reference to Administrative
31 Forfeiture Removed. Amend RSA 7:6-e, III to read as follows:

32 III. This section shall not apply to fines received by the attorney general in criminal cases,
33 penalty assessment funds, drug forfeiture funds as provided in RSA 318-B:17-b ~~[through RSA 318-~~
34 ~~B:17-d]~~ **and RSA 318-B:17-c**, fines or civil penalties authorized by state law as a result of
35 enforcement actions taken by state agencies or the attorney general, and money received on behalf
36 of a victim or the state as restitution.

37 329:7 Forfeiture of Items Used in Connection with Drug Offense; Reference Change. Amend

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1 the introductory paragraph of RSA 318-B:17-b, V to read as follows:

2 V. Final orders for forfeiture of property under this section [~~or under RSA 318-B:17-d~~] shall
3 be implemented by the department of justice and shall provide for disposition of the items or
4 property interests by the state in any manner not prohibited by law, including retention for official
5 use by law enforcement or other public agencies or sale at public auction. The department of justice
6 shall pay the reasonable expenses of the forfeiture proceeding, seizure, storage, maintenance of
7 custody, advertising, court costs, and notice of sale from any money forfeited and from the proceeds
8 of any sale or public auction of forfeited items. All outstanding recorded liens on said items or
9 property interests seized shall be paid in full upon conclusion of the court proceedings from the
10 proceeds of any sale or public auction of forfeited items. The balance remaining shall be distributed
11 by the department of justice as follows:

12 329:8 Drug Forfeiture Fund; Reporting Requirement. Amend RSA 318-B:17-c, II to read as
13 follows:

14 II. Law enforcement agencies may apply to the department of justice for grants from the
15 forfeiture fund. Such grants shall be utilized exclusively for meeting expenses associated with drug
16 related investigations. The attorney general shall report 60 days after the close of each fiscal year
17 to the governor and council and to the fiscal committee of the general court a [~~summary~~] **detailed**
18 **accounting** of the grants provided to law enforcement agencies under this paragraph **by agency,**
19 **including the department of safety, and the amount forwarded to the department of**
20 **health and human services, bureau of drug and alcohol services,** for the preceding fiscal
21 year. **The attorney general's report shall also include a detailed accounting of the costs of**
22 **investigations, enforcement programs, and prosecutions paid under paragraph I.**

23 329:9 Repeal. RSA 318-B:17-d, relative to administrative forfeiture of items used in connection
24 with drug offenses, is repealed.

25 329:10 Effective Date.

26 I. Sections 2-7 and 9 of this act shall take effect January 1, 2017.

27 II. The remainder of this act shall take effect upon its passage.

28 Approved: June 24, 2016

29 Effective Date: I. Sections 2-7 and 9 shall take effect January 1, 2017

30 II. Remainder shall take effect June 24, 2016

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