

HB 1345-FN – AS INTRODUCED

2014 SESSION

14-2573
04/01

HOUSE BILL

1345-FN

AN ACT

relative to forfeiture of items used in connection with a drug offense.

SPONSORS:

Rep. O’Flaherty, Hills 12; Rep. Michael Garcia, Hills 34

COMMITTEE:

Judiciary

ANALYSIS

This bill provides that the state may only initiate forfeiture proceedings for property used in connection with a drug offense after the defendant is convicted of a drug offense. The bill also changes the distribution of proceeds from the sale of such forfeited property.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT relative to forfeiture of items used in connection with a drug offense.

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

1 1 Application of Receipts; Drug Forfeiture Funds. Amend RSA 6:12, I(b)(19) to read as follows:

2 (19) Money received under RSA 318-B:17-b, V, which shall be credited as specified in
3 RSA 318-B:17-b, V[~~to:~~

4 (A) ~~The drug forfeiture fund;~~

5 (B) ~~The state law enforcement agency account; or~~

6 (C) ~~The department of health and human services office of alcohol and drug
7 abuse prevention account].~~

8 2 Controlled Drug Act; Forfeiture of Items Used in Connection With Drug Offense. Amend the
9 introductory paragraph of RSA 318-B:17-b, I to read as follows:

10 I. Interests in the following property, ***after conviction of the defendant for a violation***
11 ***of this chapter, and*** upon petition of the attorney general, shall be subject to forfeiture to the state
12 and said property interest shall be vested in the state:

13 3 Controlled Drug Act; Forfeiture of Items Used in Connection With Drug Offense. Amend
14 RSA 318-B:17-b, V to read as follows:

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

25 (a) ~~Of the first \$500,000:~~

26 (1) ~~Forty five percent shall be returned to the fiscal officer or officers of the~~
27 ~~municipal, county, state, or federal government which provided the law enforcement agency or~~
28 ~~agencies responsible for the seizure. Moneys returned to each fiscal officer shall be deposited in a~~
29 ~~special account and shall be used primarily for meeting expenses incurred by law enforcement~~
30 ~~agencies in connection with drug related investigations. Except as provided in RSA 31:95 b, such~~
31 ~~funds shall be available for expenditure without further appropriation by the legislative body of the~~

1 municipal, county, state or federal government, and shall not be transferred or expended for any
2 other purpose. Moneys returned to a state law enforcement agency shall be deposited in a special
3 nonlapsing account established within the office of the state treasurer and shall be in addition to all
4 other state appropriations to such agency;

5 ~~(2) Ten percent shall be deposited into a special nonlapsing account established~~
6 ~~within the office of the state treasurer for the department of health and human services; and~~

7 ~~(3) Forty five percent shall be deposited in a revolving drug forfeiture fund,~~
8 ~~administered by the department of justice pursuant to RSA 318-B:17 e; and~~

9 ~~(b) Of any balance remaining:~~

10 ~~(1) Ten percent shall be deposited in the manner prescribed in subparagraph V(a)(2)~~
11 ~~of this section; and~~

12 ~~(2) Ninety percent shall be deposited in the manner prescribed in subparagraph~~
13 ~~V(a)(3) of this section.] **Ninety percent of the remaining balance shall be deposited into the**~~
14 ~~**general fund and 10 percent shall be deposited into the department of health and human**~~
15 ~~**services, office of alcohol and drug abuse prevention account.**~~

16 The total amount of payments made to the ~~[special]~~ **office of alcohol and drug abuse**
17 **prevention** account for the department of health and human services pursuant to ~~[subparagraphs~~
18 ~~V(a)(2) and V(b)(1) of]~~ this section shall not exceed \$400,000 in any fiscal year and any excess over
19 \$400,000 which would otherwise be paid to such ~~[special]~~ account under this section shall be
20 deposited in the general fund. ~~[The revolving drug forfeiture fund shall at no time exceed~~
21 ~~\$1,000,000. All sums in the revolving drug forfeiture fund in excess of \$1,000,000 shall be credited to~~
22 ~~the general fund.]~~

23 4 Controlled Drug Act; Administrative Forfeiture of Items Used in Connection With Drug
24 Offenses. Amend RSA 318-B:17-d, I to read as follows:

25 I. Interests in property subject to forfeiture under the provisions of RSA 318-B:17-b,
26 subparagraphs I(a), I(b), I(c) excepting proceeds and I(d), but not real property, shall be subject to
27 administrative forfeiture by the department of justice **after conviction of the defendant for a**
28 **violation of this chapter**, provided that the total amount or value of such property does not exceed
29 \$75,000. The provisions of RSA 318-B:17-b shall apply in any case of administrative forfeiture
30 except as otherwise provided in this section.

31 5 Effective Date. This act shall take effect 60 days after its passage.

LBAO
14-2573
11/01/13

HB 1345-FN - FISCAL NOTE

AN ACT relative to forfeiture of items used in connection with a drug offense.

FISCAL IMPACT:

The Department of Justice and Department of Health and Human Services state this bill, as introduced, will increase state general fund revenue, decrease state restricted revenue, decrease county revenue, and decrease local revenue by an indeterminable amount in FY 2015 and each year thereafter. There is no fiscal impact on state, county or local expenditures.

METHODOLOGY:

The Department of Justice states this bill provides that the state may only initiate forfeiture proceedings under RSA 318-B:17-b when a person owning the property or proceeds, or holding an interest in the property or proceeds, has been convicted of an offense under the controlled drug act. Additionally, the bill changes the distribution of funds to require 90 percent be deposited to general fund instead of splitting the amount to have 45 percent go to law enforcement agencies involved in the drug forfeiture and 45 percent go to the revolving drug forfeiture fund. The remaining 10 percent will continue to go to the Department of Health and Human Services and be deposited into the office of alcohol and drug abuse prevention account. The Department states over the past four fiscal years an average of \$62,000 has been distributed as a result of forfeiture under RSA 318-B. The changes proposed by this bill would result in the general fund increasing by \$55,800 each year and a decrease in the revolving drug fund of \$27,900 each year and a decrease to law enforcement of \$27,900 each year. The Department of Health and Human Services would continue to receive approximately \$6,200 each year. Due to the proposed change to not distribute funds until a person is convicted, the Department is not able to predict the exact amount of forfeiture revenue that will be collected each year or how much of that revenue would have gone to local or county law enforcement to determine an exact fiscal impact.

The Department of Health and Human Services states the fiscal impact resulting from the changes proposed in this bill cannot be determined. For the period of FY 2008 through FY 2013, the Department has received on average \$5,164 each year from drug forfeiture proceedings under RSA 318-B:17-b.