

§54.4. Forfeitures

A. The following contraband shall be subject to seizure and forfeiture and no property right shall exist therein:

(1) Any instrument, device, chemical or explosive substance which is arranged, manufactured, mixed or so made up as to be a device or substance which, when exposed to heat, humidity, air or foreign elements will after prolongation of time burst into flame, ignite, cause to be ignited or explode, or raw materials used or intended to be used in the manufacture of such instrument, device, chemical or explosive substance;

(2) Any bomb as proscribed and defined in R.S. 14:54.3;

(3) All property which is used, or intended for use as a container for property described in Paragraphs (1) and (2) of this Subsection;

(4) All conveyances including aircraft, vehicles, or vessels, which are used or intended for use, to transport, or in any manner to facilitate the transportation, possession, production, manufacture, dispensation or concealment of property described in Paragraphs (1) and (2) of this Subsection, except that:

(a) No conveyance used by any person as a common carrier in transaction of business as a common carrier shall be seized or forfeited under the provisions of this Section unless it shall appear that the owner or other person in charge of such conveyance was knowingly and intentionally a consenting party or privy to a violation of R.S. 14:54.2 and 54.3; and

(b) No vessel, vehicle or aircraft shall be seized or forfeited under the provisions of this Section by reason of any act or omission established by the owner thereof to have been committed or omitted, without the owner's knowledge, consent, or permission by any person other than such owner while such vessel, vehicle or aircraft was in the possession of such person.

B. Any property subject to forfeiture under this Section may be seized under process issued by any court of record having jurisdiction over the property except that seizure without such process may be made when:

(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 property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this Section.

C. After seizure, all conveyances taken or detained under this Section shall be immediately returned to the owner when the charges of violating R.S. 14:54.2 and 54.3 in which the conveyance was 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 in which the violation is alleged to have occurred. Vehicles seized under this Section shall be forfeited upon:

- (1) A showing by the district attorney of a conviction for a violation under which seizure is authorized by this Section; and
- (2) A showing by the district attorney that the seizure was made incident to an arrest with probable cause or a search under a valid search warrant or with probable cause or an inspection under a valid administrative inspection warrant; and
- (3) A showing by the district attorney that the owner of the conveyance was knowingly and intentionally a consent party or privy to a violation of R.S. 14:54.2 or R.S. 14:54.3.

D. Property taken or detained under this Section 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 of record having jurisdiction thereof. Whenever property is seized under the provisions of this Section, the law enforcement officer or employee making the seizure shall:

- (1) Place the property under seal;
- (2) Remove the property to a place designated by the valid warrant under which such property was seized; or
- (3) Request that the Department of Public Safety take custody of the property and remove it to an appropriate location for disposition in accordance with law.

E. Whenever property is forfeited under this Section, the law enforcement agency making the seizure may:

- (1) Retain the property for official use except the conveyances described in R.S. 14:54.4(A)(4); or
- (2) Sell any forfeited 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; or
- (3) Request that the Department of Public Safety take custody of the property and remove it for disposition in accordance with law.

F. Any law enforcement agency is empowered to authorize, or designate officers, agents, or other persons to carry out the seizure provisions of this Section.

G. The district attorney within whose jurisdiction the vessel, vehicle, or aircraft or other property has been seized because of its use, attempted use in violation of R.S. 14:54.2 or R.S. 14:54.3, shall proceed against the vessel, vehicle, or aircraft or other property as provided in

Subsection C in the district court having jurisdiction over the offense and have it forfeited to the use of or the sale by the law enforcement agency making the seizure.

H. Where it appears by affidavit that the residence of the owner of the vessel, vehicle, aircraft or other property is out of state or is unknown to the district attorney, the court shall appoint an attorney at law to represent the absent owner, against whom the rule shall be tried contradictorily within ten days after its filing. This affidavit may be made by the district attorney or one of his assistants. The attorney so appointed may waive service and citation of the petition or rule but shall not waive time nor any legal defenses.

I. Whenever the head of the law enforcement agency effecting the forfeiture deems it necessary or expedient to sell the property forfeited, rather than retain it for the use of the law enforcement agency, he shall cause an advertisement to be inserted in the official journal of the parish where the seizure was made, and after ten days, shall dispose of said property at public auction to the highest bidder, for cash and without appraisal.

J. The proceeds of all funds collected from any such sale, except as provided in R.S. 14:54.4(E)(2), shall be paid into the state treasury.

K. The rights of any mortgage or lien holder or holder of a vendor's privilege on the property seized shall not be affected by the seizure.

Added by Acts 1979, No. 494, §1.