

10/2/86

2C:64-5

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2C:64-5 (Forfeiture of certain property--used in commission of a crime)

LAWS OF: 1986

CHAPTER 79

BILL NO: A324

Sponsor(s): Kern

Date Introduced: Pre-filed

Committee: Assembly: Judiciary

Senate: Judiciary

Amended during passage: Yes Amendments during passage denoted by asterisks.-

Date of Passage: Assembly: February 3, 1986

Senate: June 2, 1986

Date of Approval: August 6, 1986

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

# ASSEMBLY, No. 324

Introduced Pending Technical Review by Legislative Counsel  
PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Assemblyman KERN

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# ASSEMBLY, No. 933

## STATE OF NEW JERSEY

INTRODUCED FEBRUARY 6, 1984

By Assemblymen KERN, FELICE, SCHUBER, KOSCO and  
SCHWARTZ

AN ACT concerning the forfeiture of property used in commission  
of crimes and amending N. J. S. 2C:64-5.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. N. J. S. 2C:64-5 is amended to read as follows:

2 2C:64-5. Seized Property; Rights of Owners and Others Holding  
3 Interests.

4 *a.* No forfeiture under this chapter shall affect the rights of any  
5 lessor *in the ordinary course of business* or any person holding a  
6 perfected security interest in property subject to seizure unless it  
7 shall appear that such person had knowledge of or consented to  
8 any act or omission upon which the right of forfeiture is based.  
9 Such rights are only to the extent of interest in the seized property  
10 and at the option of the entity funding the prosecuting agency  
11 involved may be extinguished by appropriate payment.

12 *b.* **\*[Property]\*** *\*Property\* seized under this chapter shall not*  
13 *be subject to forfeiture if the owner* **\*[can demonstrate that he and**  
14 *his agent had no knowledge of any act or omission upon which the*  
15 *right of forfeiture is based] *\*of the property establishes by a*  
16 *preponderance of the evidence that the owner was not involved in*  
17 *or aware of the unlawful activity and that the owner had done all*  
18 *that could reasonably be expected to prevent the proscribed use*  
19 *of the property by an agent\*. A person who uses or possesses prop-*  
20 *erty with the consent or knowledge of the owner is deemed to be*  
21 *the agent of the owner for purposes of this chapter.**

**EXPLANATION—**Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.  
Matter printed in italics thus is new matter.

22 c. **"[A vehicle]"** **"Property"** seized under this chapter shall not  
 23 be subject to forfeiture if the **"[vehicle]"** **"property"** is seized while  
 24 entrusted to **"[an agent of]"** **"a person by"** the owner **"[such as"**  
 25 **repairmen, parking attendants and other service personnel whose"**  
 26 **employment normally includes the need to move vehicles and this"**  
 27 **agent]"** **"or the agent of the owner when the property"** has been  
 28 entrusted to the person for repairs, restoration or other services  
 29 to be performed on the property, and that person<sup>\*</sup>, without the  
 30 owner's knowledge or consent, uses the vehicle for unlawful pur-  
 31 poses.

1 2. This act shall take effect immediately.

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#### STATEMENT

The forfeiture chapter of New Jersey's penal code allows the State to confiscate private property such as automobiles, trucks and boats used in the commission of a crime. As presently drafted, the provisions of this chapter, at least theoretically, would allow for the forfeiture of a car stolen from its owner and then used in the commission of a crime. In order to provide some statutory protection to innocent owners of property, this bill would provide that property would not be subject to forfeiture if the owner establishes by a preponderance of the evidence that the owner was not involved in or aware of the unlawful activity and that the owner had done all that could be expected to prevent the proscribed use of the property by an agent. As used in this bill, any person whom the owner permits to use the property would be deemed the owner's agent.

The bill also provides an exemption from the forfeiture provisions for property that is used for unlawful purposes by persons who normally require a vehicle to be entrusted to them by the owner or the agent of the owner for repairs, restoration or other services to be performed on the property when that person, without the owner's knowledge, uses the property for unlawful purposes.

This bill also adds language clarifying that the protection afforded to those who lease motor vehicles is intended to protect those who can lease cars in the ordinary course of business. It is not intended to protect those who enter into sham lease arrangements for the purpose of avoiding the forfeiture of motor vehicles used in criminal activities.

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## ASSEMBLY, No. 324

## STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Assemblyman KERN

AN ACT concerning the forfeiture of property used in commission  
of crimes and amending N. J. S. 2C:54-5.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. N. J. S. 2C:64-5 is amended to read as follows:

2 2C:64-5. Seized Property: Rights of Owners and Others Holding  
3 Interests.

4 *a. No forfeiture under this chapter shall affect the rights of any*  
5 *lessor in the ordinary course of business or any person holding a*  
6 *perfected security interest in property subject to seizure unless it*  
7 *shall appear that such person had knowledge of or consented to*  
8 *any act or omission upon which the right of forfeiture is based.*  
9 *Such rights are only to the extent of interest in the seized property*  
10 *and at the option of the entity funding the prosecuting agency*  
11 *involved may be extinguished by appropriate payment.*

12 *b. Property seized under this chapter shall not be subject to*  
13 *forfeiture if the owner of the property establishes by a prepon-*  
14 *derance of the evidence that the owner was not involved in or*  
15 *aware of the unlawful activity and that the owner had done all*  
16 *that could reasonably be expected to prevent the proscribed use*  
17 *of the property by an agent. A person who uses or possesses prop-*  
18 *erty with the consent or knowledge of the owner is deemed to be*  
19 *the agent of the owner for purposes of this chapter.*

20 *c. Property seized under this chapter shall not be subject to*  
21 *forfeiture if the property is seized while entrusted to a person by*  
22 *the owner or the agent of the owner when the property has been*

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:  
\*—Senate committee amendment adopted May 12, 1986.

23 *entrusted to the person for repairs, restoration or other services*  
24 *to be performed on the property, and that person, without the*  
25 *owner's knowledge or consent, uses the "[vehicle]" "property" for*  
26 *unlawful purposes.*

1 2. This act shall take effect immediately.

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PROPERTY

Prohibits forfeiture of certain property used in the commission  
of a crime.

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SENATE JUDICIARY COMMITTEE  
STATEMENT TO  
ASSEMBLY, No. 324  

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STATE OF NEW JERSEY

DATED: MAY 12, 1986

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 324.

This bill would amend the forfeiture chapter of the penal code to provide that property would not be subject to forfeiture if the owner establishes by a preponderance of the evidence that the owner was not involved in or aware of the unlawful activity and that the owner had done all that could be expected to prevent the prescribed use of the property by an agent. Under this bill, any person whom the owner permits to use the property would be deemed the owner's agent.

The bill also provides an exemption from the forfeiture provisions for property that is used for unlawful purposes by persons who normally require a vehicle to be entrusted to them by the owner or the agent of the owner for repairs, restoration or other services to be performed on the property when that person, without the owner's knowledge, uses the property for unlawful purposes.

Additionally, the bill clarifies that the protection afforded to those who lease motor vehicles is intended to protect those who lease cars in the ordinary course of business. It is not intended to protect those who enter into sham lease agreements for the purpose of avoiding the forfeiture of motor vehicles used in criminal activities.

The amendment adopted by the committee was of a technical nature and clarified the language of the bill.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 324

STATE OF NEW JERSEY

DATED: JANUARY 24, 1986

The Assembly Judiciary Committee reports favorably Assembly Bill No. 324.

The forfeiture chapter of New Jersey's penal code allows the State to confiscate private property such as automobiles, trucks and boats used in the commission of a crime. As presently drafted, the provisions of this chapter, at least theoretically, would allow for the forfeiture of a car stolen from its owner and then used in the commission of a crime. In order to provide some statutory protection to innocent owners of property, this bill provides that property would not be subject to forfeiture if the owner establishes by a preponderance of the evidence that the owner was not involved in or aware of the unlawful activity and that the owner had done all that could be expected to prevent the prescribed use of the property by an agent. Under this bill, any person whom the owner permits to use the property would be deemed the owner's agent.

The bill also provides an exemption from the forfeiture provisions for property that is used for unlawful purposes by persons who normally require a vehicle to be entrusted to them by the owner or the agent of the owner for repairs, restoration or other services to be performed on the property when that person, without the owner's knowledge, uses the property for unlawful purposes.

This bill also clarifies that the protection afforded to those who lease motor vehicles is intended to protect those who lease cars in the ordinary course of business. It is not intended to protect those who enter into sham lease arrangements for the purpose of avoiding the forfeiture of motor vehicles used in criminal activities.