

24:21-35

LEGISLATIVE FACT SHEET

ON "Cont. of Dangerous Substances
for Carriage of Conveyances"

N.J.R.S. 24:21-35

(1975 Amendment)

LAWS OF 1975

CHAPTER #2 April 2, 1975

SENATE 731 (S 2343-1975)

ASSEMBLY

INTRODUCED Feb. 4, 1974

BY Beckman, McLean

STATEMENT

YES

NO

AMENDED DURING PASSAGE

YES

NO

HEARING None discovered

VETO

There was no hearing (see statute)
in 1960. C160

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SENATE, No. 731

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 4, 1974

By Senator BATEMAN

Referred to Committee on Law, Public Safety and Defense

AN ACT to amend the "New Jersey Controlled Dangerous Substances Act," approved October 19, 1970 (P. L. 1970, c. 226).

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

1 1. Section 35 of P. L. 1970, c. 226 (C. 24:21-35) is amended to
2 read as follows:

3 35. Nuisances and forfeitures. a. The maintenance of any build-
4 ing, conveyance or premises whatever which is resorted to by
5 persons for the unlawful manufacture, distribution, dispensing,
6 administration or use of controlled dangerous substances shall con-
7 stitute the keeping of a common nuisance.

8 b. The following shall be subject to forfeiture and no property
9 right shall exist in them:

10 (1) All controlled dangerous substances which have been manu-
11 factured, distributed, dispensed or acquired in violation of the
12 provisions of this act;

13 (2) All raw materials, products and equipment of any kind which
14 are used, or intended for use, in manufacturing, compounding,
15 processing, delivering, importing, or exporting any controlled
16 dangerous substance in violation of the provisions of this act;

17 (3) All property which is used or intended for use, as a container
18 for property described in subsections b. (1) and (2) above;

19 (4) All conveyances including aircraft, vehicles, or vessels, which
20 are used or intended for use, to transport, or in any manner to
21 facilitate the transportation, for the purpose of sale or receipt of
22 property described in b. (1) or (2) above, except that:

23 (a) No conveyance used by any person as a common carrier
24 in the transaction of business as a common carrier shall be
25 forfeited under the provisions of this chapter unless it shall
26 appear that the owner or other person in charge of such con-

27 conveyance was a consenting party or privy to a violation of this
28 act; and

29 (b) No conveyance shall be forfeited under the provisions
30 of this section by reason of any act or omission, established by
31 the owner thereof to have been committed or omitted without
32 the knowledge or consent of such owner, and by any person
33 other than such owner while such conveyance was unlawfully
34 in the possession of a person other than the owner in violation
35 of the criminal laws of the United States, or of any state; and

36 (c) *The forfeiture of any conveyance encumbered by a bona*
37 *fide security interest shall remain subject to the interest of*
38 *the secured party if he neither had knowledge of nor consented*
39 *to the act or omission; and*

40 (5) All books, records, and research, including formulas, micro-
41 film, tapes, and data which are used, or intended for use, in viola-
42 tion of this act.

43 c. Any property subject to forfeiture under this act may be
44 seized by the State or any person charged with enforcement of this
45 act, upon process issued by any court of competent jurisdiction
46 over the property, except that seizure without such process may be
47 made when:

48 (1) It is not inconsistent with the Constitution of this State and
49 the United States;

50 (2) The property subject to seizure has been the subject of a
51 prior judgment in favor of the State in a criminal injunction or
52 forfeiture proceeding under this act;

53 (3) The commissioner or any other person charged with enforce-
54 ment of this act has probable cause to believe that the property is
55 directly or indirectly dangerous to health or safety; or

56 (4) The commissioner or any other person charged with enforce-
57 ment of this act has probable cause to believe that the property has
58 been used or intended to be used in violation of this act.

59 In the event of seizure pursuant to paragraphs (3) and (4) of
60 this subsection, proceedings under subsection d. of this section shall
61 be instituted promptly.

62 d. Property taken or detained under this section shall not be
63 repleviable, but shall be deemed to be in the custody of the State
64 or political subdivision, acting as agent for the State, whichever
65 may have seized said property, and subject only to the orders and
66 decrees of the court or the official having jurisdiction thereof.
67 Whenever property is seized under the provisions of this act, the
68 State may:

- 69 (1) Place the property under seal;
70 (2) Remove the property to a place designated by it; or
71 (3) Require that the political subdivision or State take custody
72 of the property and remove it to an appropriate location for dis-
73 position in accordance with law.

74 e. Whenever any property, including motor vehicles and other
75 conveyances, is forfeited under this act, it shall be forthwith de-
76 posited in the custody of the Director of the Division of Purchase
77 and Property, State Department of the Treasury, whereupon dis-
78 position of such property shall be carried out in the following
79 manner:

80 (1) Any State agency or bureau, or any county or municipality,
81 having a demonstrated need for specific property or classes of prop-
82 erty, subject to forfeiture under this act, shall make application for
83 such property to the Director of the Division of Budget and Ac-
84 counting, State Department of the Treasury, and shall clearly set
85 forth in the application his or its need for the property and the
86 use to which such property will be put; and

87 (2) The Director of the Division of Budget and Accounting shall
88 review all applications for such property submitted pursuant to
89 subsection e. (1) of this section, and shall make a determination
90 based on necessity and advisability, as to final disposition, and shall
91 so notify the applicant and the Director of Purchase and Property,
92 subject to such rules and regulations as may be required.

93 (3) In the event no application or disposition is made under (1)
94 or (2) above the Director of Purchase and Property shall dispose
95 of such property in the manner authorized by law for disposal of
96 surplus property.

97 f. All substances listed in Schedule I that are possessed, trans-
98 ferred, sold, or offered for sale in violation of the provisions of this
99 act shall be deemed contraband and seized and summarily forfeited
100 to the State of New Jersey. Similarly, all substances listed in
101 Schedule I, the owners of which are unknown, shall be deemed
102 contraband and summarily forfeited to the State of New Jersey.

103 (1) All species of plants from which controlled substances in
104 Schedules I and II may be derived which have been planted or
105 cultivated in violation of this act, or of which the owners or culti-
106 vators are unknown, or which are wild growths, may be seized and
107 summarily forfeited to the State of New Jersey.

108 (2) The failure upon demand by the commissioner, or his duly
109 authorized agent, of the person in occupancy or in control of land
110 or premises upon which such species of plants are growing or being

111 stored, to produce an appropriate registration, or proof that he is
112 the holder thereof, shall constitute authority for the seizure and
113 forfeiture.

114 g. Whenever any property is subject to forfeiture under this act,
115 such forfeiture may be enforced by a civil action, commenced by
116 the seizing authority in the name of the State of New Jersey and
117 against the property sought to be forfeited.

118 (1) Complaint. The complaint shall be verified on oath or affirma-
119 tion. It shall describe with reasonable particularity the property
120 that is the subject matter of the action and the place of seizure and
121 shall contain such allegations as may be required by this act.

122 (2) Process. Upon the filing of the complaint, the clerk shall
123 forthwith issue a warrant for the seizure of the property that is the
124 subject matter of the action and deliver it to the sheriff for service.

125 (3) Notice. The notice requirements of the Rules of Court for
126 an in rem action shall be followed.

127 (4) Claim and answer. The claimant of property that is the sub-
128 ject of an action under this section shall file his claim within 10 days
129 after the execution of process, or within such additional time as
130 may be allowed by the court, and shall serve his answer within 20
131 days after the filing of the claim. The claim shall be verified on
132 oath or affirmation, and shall state the interest in the property by
133 virtue of which the claimant demands its restitution and the right
134 to defend the action. If the claim is made on behalf of the person
135 entitled to possession by an agent, bailee or attorney, it shall state
136 that he is duly authorized to make the claim. At the time of answer-
137 ing the claimant shall also serve answers to any interrogatories
138 served with the complaint.

1 2. This act shall take effect immediately.