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Summary: Controlled substances and forfeiture of property

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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1/30/2019 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 4](file:///h:\sj\20190130.docx))

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**VERSIONS OF THIS BILL**

[1/30/2019](file:///p:\pprever\2019-20\462_20190130.docx)

**A** **BILL**

TO AMEND SECTION 44‑53‑520 OF THE 1976 CODE, RELATING TO CONTROLLED SUBSTANCES AND FORFEITURE PROCEDURES FOR PROPERTY SEIZED ACCORDINGLY, TO PROVIDE FOR THE EXPEDITED RETURN OF CERTAIN PROPERTY AND MONIES SEIZED WHEN FORFEITURE PROCEEDINGS HAVE NOT BEEN INSTITUTED AND CHARGES HAVE NOT BEEN FILED WITHIN THIRTY DAYS OF SEIZURE, TO PROVIDE THAT A LAWFUL OWNER MAY NOT BE REQUIRED TO PROVE THAT PROPERTY OR MONIES SEIZED WERE LEGALLY ACQUIRED, TO PROHIBIT A SEIZING AUTHORITY FROM REQUIRING A LAWFUL OWNER OF PROPERTY OR MONIES TO SIGN A RELEASE ABSOLVING THE SEIZING AUTHORITY FROM CIVIL LIABILITY RELATING TO AN UNLAWFUL SEIZURE BEFORE PROPERTY OR MONIES ARE RETURNED, AND TO PROVIDE THAT CRIMINAL CHARGES MAY BE BROUGHT AT A LATER DATE IF EVIDENCE WARRANTS; TO AMEND SECTION 44‑53‑530 OF THE 1976 CODE, RELATING TO CONTROLLED SUBSTANCES AND FORFEITURE PROCEDURES FOR PROPERTY SEIZED ACCORDINGLY, TO ALLOW FORFEITURE PROCEEDINGS TO BE HELD IN THE MAGISTRATES COURT IF THE VALUE OF THE PROPERTY SEIZED DOES NOT EXCEED SEVEN THOUSAND FIVE HUNDRED DOLLARS, TO CHANGE THE METHOD OF ALLOCATING VARIOUS ASSETS OBTAINED THROUGH DRUG FORFEITURES SO THAT, AFTER THE FIRST ONE THOUSAND DOLLARS RETAINED BY THE APPROPRIATE LAW ENFORCEMENT AGENCY, THE REMAINING ASSETS MUST BE FORWARDED TO THE PROSECUTING AGENCY, AND TO MAKE TECHNICAL CHANGES REFLECTING THE NEW DISTRIBUTION OF THESE ASSETS; AND TO AMEND SECTION 44‑53‑586 OF THE 1976 CODE, RELATING TO THE RETURN OF SEIZED ITEMS UNDER DRUG FORFEITURE LAWS TO INNOCENT OWNERS, TO ALLOW PROCEEDINGS TO BE HELD IN THE MAGISTRATES COURT IF THE VALUE OF THE PROPERTY SEIZED DOES NOT EXCEED SEVEN THOUSAND FIVE HUNDRED DOLLARS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 44‑53‑520 of the 1976 Code is amended to read:

“Section 44‑53‑520. (a) The following are subject to forfeiture:

(1) all controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this article;

(2) all raw materials, products, and equipment of any kind which are used, or which have been positioned for use, in manufacturing, producing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this article;

(3) all property which is used, or which has been positioned for use, as a container for property described in items (1) or (2);

(4) all property, both real and personal, which in any manner is knowingly used to facilitate production, manufacturing, distribution, sale, importation, exportation, or trafficking in various controlled substances as defined in this article;

(5) all books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or which have been positioned for use, in violation of this article;

(6) all conveyances including, but not limited to, trailers, aircraft, motor vehicles, and watergoing vessels which are used or intended for use unlawfully to conceal, contain, or transport or facilitate the unlawful concealment, possession, containment, manufacture, or transportation of controlled substances and their compounds, except as otherwise provided, must be forfeited to the State. No motor vehicle may be forfeited to the State under this item unless it is used, intended for use, or in any manner facilitates a violation of Section 44‑53‑370(a), involving at least one pound or more of marijuana, one pound or more of hashish, more than four grains of opium, more than two grains of heroin, more than four grains of morphine, more than ten grains of cocaine, more than fifty micrograms of lysergic acid diethylamide (LSD) or its compounds, more than ten grains of crack, or more than one gram of ice or crank, as defined in Section 44‑53‑110, or unless it is used, intended for use, or in any manner facilitates a violation of Section 44‑53‑370(e) or fifteen tablets, capsules, dosage units, or the equivalent quantity of 3, 4‑methylenedioxymethamphetamine (MDMA);

(7) all property including, but not limited to, monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, and all proceeds including, but not limited to, monies, and real and personal property traceable to any exchange;

(8) all monies seized in close proximity to forfeitable controlled substances, drug manufacturing, or distributing paraphernalia, or in close proximity to forfeitable records of the importation, manufacturing, or distribution of controlled substances and all monies seized at the time of arrest or search involving violation of this article. If the person from whom the monies were taken can establish to the satisfaction of a court of competent jurisdiction that the monies seized are not products of illegal acts, the monies must be returned pursuant to court order and as provided in subsection (c).

(b) Any property subject to forfeiture under this article may be seized by the department having authority upon warrant issued by any court having jurisdiction over the property. Seizure without process may be made if:

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an 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 based upon this article;

(3) the department has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the department has probable cause to believe that the property was used or is intended to be used in violation of this article.

(c) In the event of seizure pursuant to subsection (b), proceedings under Section 44‑53‑530 regarding forfeiture and disposition must be instituted within a reasonable time. If, after thirty days, no proceedings under Section 44‑53‑530 have been instituted and the person whose property or monies as described in subsection (a)(7) or (8) were seized pursuant to subsection (b) has not been charged with a crime, then the property or monies must be immediately returned to their lawful owner. If no criminal charges are filed within the thirty‑day time period, then the lawful owner may not be required to prove that the property or monies seized were legally acquired before they are returned. Additionally, the lawful owner may not be required to sign a release of any kind absolving the seizing authority of civil liability relating to an unlawful seizure before his property or monies are returned. However, return of the property or monies seized pursuant to the requirements of this subsection does not prejudice law enforcement from later bringing charges related to the seizure if evidence warrants a related criminal charge.

(d) Any property taken or detained under this section is not subject to replevin but is considered to be in the custody of the department making the seizure subject only to the orders of the court having jurisdiction over the forfeiture proceedings. Property described in Section 44‑53‑520(a) is forfeited and transferred to the government at the moment of illegal use. Seizure and forfeiture proceedings confirm the transfer.

(e) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this article are contraband and must be seized and summarily forfeited to the State. Controlled substances listed in Schedule I, which are seized or come into the possession of the State, the owners of which are unknown, are contraband and must be summarily forfeited to the State.

(f) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this article, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the State.

(g) The failure, upon demand by the department having authority to make the demand, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(h) For the purposes of this section, whenever the seizure of any property subject to seizure is accomplished as a result of a joint effort by more than one law enforcement agency, the law enforcement agency initiating the investigation is considered to be the agency making the seizure.

(i) Law enforcement agencies seizing property under this section shall take reasonable steps to maintain the property. Equipment and conveyances seized must be removed to an appropriate place for storage. Any monies seized must be deposited in an interest bearing account pending final disposition by the court unless the seizing agency determines the monies to be of an evidential nature and provides for security in another manner.

(j) When property and monies of any value as defined in this section or anything else of any value is seized, the law enforcement agency making the seizure, within ten days or a reasonable period of time after the seizure, shall submit a report to the appropriate prosecution agency.

(1) The report shall provide the following information with respect to the property seized:

(a) description;

(b) circumstances of seizure;

(c) present custodian and where the property is being stored or its location;

(d) name of owner;

(e) name of lienholder, if any;

(f) seizing agency; and

(g) the type and quantity of the controlled substance involved.

(2) If the property is a conveyance, the report shall include the:

(a) make, model, serial number, and year of the conveyance;

(b) person in whose name the conveyance is registered; and

(c) name of any lienholders.

(3) In addition to the report provided for in items (1) and (2), the law enforcement agency shall prepare for dissemination to the public upon request a report providing the following information:

(a) a description of the quantity and nature of the property and money seized;

(b) the seizing agency;

(c) the type and quantity of the controlled substance involved;

(d) the make, model, and year of a conveyance; and

(e) the law enforcement agency responsible for the property or conveyance seized.

(k) Property or conveyances seized by a law enforcement agency or department must not be used by officers for personal purposes.”

SECTION 2. Section 44‑53‑530 of the 1976 Code is amended to read:

“Section 44‑53‑530. (a)(1) Forfeiture of property defined in Section 44‑53‑520 must be accomplished by petition of the Attorney General or his designee or the circuit solicitor or his designee to the court of common pleas, or the magistrates court if the value of the property or monies seized does not exceed seven thousand five hundred dollars, for the jurisdiction where the items were seized. The petition must be submitted to the court within a reasonable time period, or as otherwise provided in Section 44‑53‑520(c), following seizure and shall set forth the facts upon which the seizure was made. The petition shall describe the property and include the names of all owners of record and lienholders of record. The petition shall identify any other persons known to the petitioner to have interests in the property. Petitions for the forfeiture of conveyances shall also include: the make, model, and year of the conveyance, the person in whose name the conveyance is registered, and the person who holds the title to the conveyance. The petition shall set forth the type and quantity of the controlled substance involved. A copy of the petition must be sent to each law enforcement agency which has notified the petitioner of its involvement in effecting the seizure. Notice of hearing or rule to show cause must be directed to all persons with interests in the property listed in the petition, including law enforcement agencies which have notified the petitioner of their involvement in effecting the seizure. Owners of record and lienholders of record may be served by certified mail, to the last known address as appears in the records of the governmental agency which records the title or lien.

(2) The judge shall determine whether the property is subject to forfeiture and order the forfeiture confirmed. If the judge finds a forfeiture, he shall then determine the lienholder’s interest as provided in this article. The judge shall determine whether any property must be returned to a law enforcement agency pursuant to Section 44‑53‑582.

(3) ~~If there is a dispute as to the allocation of the proceeds of forfeited property among participating law enforcement agencies, this issue must be determined by the judge.~~ The proceeds from a sale of property, conveyances, and equipment must be disposed of pursuant to subsection (e) of this section.

(4) All property, conveyances, and equipment not reduced to proceeds may be transferred ~~to the law enforcement agency or agencies or~~ to the prosecution agency. Upon agreement of ~~the law enforcement agency or agencies and~~ the ~~prosecution~~ prosecuting agency, conveyances and equipment may be transferred to any other appropriate agency. Property transferred must not be used to supplant operating funds within the current or future budgets. If the property seized and forfeited is an aircraft or watercraft and is transferred to a state law enforcement agency or other state agency pursuant to the provisions of this subsection, its use and retainage by that agency shall be at the discretion and approval of the Department of Administration.

(5) If a defendant or his attorney sends written notice to the petitioner or the seizing agency of his interest in the subject property, service may be made by mailing a copy of the petition to the address provided and service may not be made by publication. In addition, service by publication may not be used for a person incarcerated in a South Carolina Department of Corrections facility, a county detention facility, or other facility where inmates are housed for the county where the seizing agency is located. The seizing agency shall check the appropriate institutions after receiving an affidavit of nonservice before attempting service by publication.

(b) If the property is seized by a state law enforcement agency and is not transferred by the court to the ~~seizing~~ prosecuting agency, the judge shall order it transferred to the Division of General Services of the Department of Administration for sale. Proceeds may be used by the division for payment of all proper expenses of the proceedings for the forfeiture and sale of the property, including the expenses of seizure, maintenance, and custody, and other costs incurred by the implementation of this section. The net proceeds from any sale must be remitted to the State Treasurer as provided in subsection (g) of this section. The Division of General Services of the Department of Administration may authorize payment of like expenses in cases where monies, negotiable instruments, or securities are seized and forfeited.

(c) If the property is seized by a local law enforcement agency and is not transferred by the court to the prosecuting agency, the judge shall order it sold at public auction by the seizing agency as provided by law. Notwithstanding any other provision of the law, proceeds from the sale may be used by the agency for payment of all proper expenses of the proceeding for the forfeiture and sale of the property, including the expenses of the seizure, maintenance, and custody and other costs incurred by the implementation of this section. The net proceeds from the sale must be disposed of as provided by this section.

(d)(1) Any forfeiture may be effected by consent order approved by the court without filing or serving pleadings or notices provided that all owners and other persons with interests in the property, including participating law enforcement agencies, entitled to notice under this section, except lienholders and agencies, consent to the forfeiture. Disposition of the property may be accomplished by consent of the petitioner and those agencies involved. Persons entitled to notice under this section may consent to some issues and have the judge determine the remaining issues.

(2) All proceeds of property and cash forfeited by consent order must be disposed of as provided in subsection (e) of this section.

(e) All real or personal property, conveyances, and equipment of any value defined in Section 44‑53‑520, when reduced to proceeds, any cash more than one thousand dollars, any negotiable instruments, and any securities which are seized and forfeited must be ~~disposed of as follows:~~ forwarded

~~(1)~~ ~~seventy‑five percent to the law enforcement agency or agencies;~~

~~(2)~~ ~~twenty percent~~ to the prosecuting agency~~; and~~

~~(3)~~ ~~five percent must be remitted to the State Treasurer and deposited to the credit of the general fund of the State~~.

(f) The first one thousand dollars of any cash seized and forfeited pursuant to this article remains with and is the property of the law enforcement agency which effected the seizure unless otherwise agreed to by the law enforcement agency and prosecuting agency.

(g)(1) All forfeited monies and proceeds from the sale of forfeited property as defined in Section 44‑53‑520 must be retained by the governing body of the local law enforcement agency or prosecution agency and deposited in a separate, special account in the name of each appropriate agency. These accounts may be drawn on and used only by the law enforcement agency or prosecution agency for which the account was established. For law enforcement agencies, the accounts must be used for drug enforcement activities, or for drug or other law enforcement training or education. For prosecution agencies, the accounts must be used in matters relating to the prosecution of drug offenses and litigation of drug‑related matters.

(2) These accounts must not be used to supplant operating funds in the current or future budgets. Expenditures from these accounts for an item that would be a recurring expense must be approved by the governing body before purchase or, in the case of a state law enforcement agency or prosecution agency, approved as provided by law.

(3) In the case of a state law enforcement agency or state prosecution agency, monies and proceeds must be remitted to the State Treasurer who shall establish separate, special accounts as provided in this section for local agencies.

(4) All expenditures from these accounts must be documented, and the documentation made available for audit purposes and upon request by a person under the provisions of Chapter 4, Title 30, the Freedom of Information Act.

(h) The use of all property forfeited pursuant to Section 44‑53‑520 and retained by the law enforcement agency must be documented and the documentation available upon request by a person subject to the provisions of Chapter 4 ~~of~~, Title 30.

(i) An expenditure from these accounts must be made in accordance with the established procurement procedures of the jurisdiction where the account is established.

(j) (1) A law enforcement agency may draw from the account an amount necessary to maintain a confidential financial account to be used in the purchase of information or evidence relating to an investigation, to purchase services, or to provide compensation in matters which are confidential and in support of law enforcement activity. The disbursement of funds from the confidential financial account must be made in accordance with procedures approved by the South Carolina Law Enforcement Division (division). All records of disbursement must be maintained and made available for audit purposes as provided in this section.

(2) All expenditures from these accounts must be fully documented and audited annually with the general fund of the appropriate jurisdiction.

(k) In all cases ~~where~~ in which the criminal offense giving rise to the forfeiture of property described in Section 44‑53‑520 is prosecuted in a state court, the forfeiture proceeding must be accomplished in the court of common pleas, or the magistrates court if the value of the property or monies seized does not exceed seven thousand five hundred dollars, for the jurisdiction where the items were seized.”

SECTION 3. Section 44‑53‑586(a) of the 1976 Code is amended to read:

“Section 44‑53‑586. (a) Any innocent owner ~~or any~~, manager or owner of a licensed rental agency, or ~~any~~ common carrier or carrier of goods for hire may apply to the court of common pleas, or to the magistrates court if the value of the property or monies seized does not exceed seven thousand five hundred dollars, for the return of any item seized under the provisions of Section 44‑53‑520. Notice of hearing or rule to show cause accompanied by copy of the application must be directed to all persons and agencies entitled to notice under Section 44‑53‑530. If the judge denies the application, the hearing may proceed as a forfeiture hearing held pursuant to Section 44‑53‑530.

(b)(1) The court may return any seized item to the owner if the owner demonstrates to the court by a preponderance of the evidence:

~~(1)~~(A) in the case of an innocent owner, that the person or entity was not a consenting party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture~~.~~;

~~(2)~~(B) in the case of a manager or an owner of a licensed rental agency, a common carrier, or a carrier of goods for hire, that any agent, servant, or employee of the rental agency or of the common carrier or carrier of goods for hire was not a party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

(2) If the licensed rental agency demonstrates to the court that it has rented the seized property in the ordinary course of its business and that the tenant or tenants were not related within the third degree of kinship to the manager or owner, or any agents, servants, or employees of the rental agency, then it is presumed that the licensed rental agency was not a party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

(c) The lien of any innocent person or other legal entity, recorded in public records, shall continue in force upon transfer of title of any forfeited item, and any transfer of title is subject to the lien, if the lienholder demonstrates to the court by a preponderance of the evidence that he was not a consenting party to, or privy to, or did not have knowledge of, the involvement of the property which made it subject to seizure and forfeiture.”

SECTION 4. This act takes effect upon approval by the Governor.

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