**South Carolina General Assembly**

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**H. 3619**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Pope, McKnight, G.R. Smith, Wheeler, Simrill, Rutherford, Lucas, Dillard, Erickson, Hart, Hyde, Kimmons, Murphy, W. Newton, Stavrinakis, Thigpen, Bryant, Taylor, Bamberg, Willis and Jones

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Introduced in the House on January 12, 2021

Currently residing in the House Committee on **Judiciary**

Summary: Criminal asset fortieture

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/12/2021 House Introduced and read first time ([House Journal‑page 261](file:///h:\hj\20210112.docx))

1/12/2021 House Referred to Committee on **Judiciary** ([House Journal‑page 261](file:///h:\hj\20210112.docx))

2/2/2021 House Member(s) request name added as sponsor: Willis, Jones

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**VERSIONS OF THIS BILL**

[1/12/2021](file:///p:\pprever\2021-22\3619_20210112.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 32 TO TITLE 17 SO AS TO ENTITLE THE CHAPTER “CRIMINAL ASSET FORFEITURE”, AND TO PROVIDE PROCEDURES FOR THE FORFEITURE OF MONIES, PROPERTY, AND OTHER ASSETS; TO AMEND SECTIONS 16‑3‑2090, RELATING TO TRAFFICKING IN PERSONS, 16‑8‑260, RELATING TO CRIMINAL GANGS, 16‑13‑175, RELATING TO LARCENY OF PROPERTY AND MOTOR VEHICLES USED, 16‑13‑177, RELATING TO TIMBER THEFT, 16‑27‑55, RELATING TO ANIMAL FIGHTING AND BAITING, 39‑15‑1195, RELATING TO COUNTERFEIT MARKS, 44‑53‑520, RELATING TO CONTROLLED SUBSTANCES, AND 56‑29‑40, RELATING TO CHOP SHOPS, ALL SO AS TO MAKE CONFORMING CHANGES; TO REPEAL SECTION 44‑53‑530 RELATING TO DRUG FORFEITURE PROCEDURES, SECTION 44‑53‑586 RELATING TO RETURN OF SEIZED PROPERTY TO INNOCENT OWNERS, SECTION 44‑53‑590 RELATING TO THE OFFENSE OF USING PROPERTY IN A MANNER THAT MAKES IT SUBJECT TO FORFEITURE, AND SECTION 56‑29‑50 RELATING TO FORFEITURE OF MOTOR VEHICLES AND SUCH; AND BY ADDING ARTICLE 17 TO CHAPTER 3, TITLE 23 SO AS TO PROVIDE THAT THE COMMISSION ON PROSECUTION COORDINATION SHALL ESTABLISH AND MAINTAIN AN ASSET SEIZURE AND FORFEITURE TRACKING DATABASE AND SEARCHABLE WEBSITE THAT INCLUDES CERTAIN INFORMATION ABOUT PROPERTY SEIZED BY LAW ENFORCEMENT AGENCIES AND FORFEITED UNDER STATE LAW OR UNDER ANY AGREEMENT WITH THE FEDERAL GOVERNMENT.

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

PART I

Criminal Asset Forfeiture

SECTION 1. A. Title 17 of the 1976 Code is amended by adding:

“CHAPTER 32

Criminal Asset Forfeiture Act

Section 17‑32‑10. This chapter may be cited as the ‘Criminal Asset Forfeiture Act’.

Section 17‑32‑20. As used in this chapter, the term:

(1) ‘Contraband’ means goods that are unlawful to import, export, or possess.

(2) ‘Conveyance’ means a device used for transportation and includes, but is not limited to, a motor vehicle, trailer, snowmobile, airplane, vessel, or any equipment attached to it. This term does not include property that is stolen or taken in violation of the law.

(3) ‘Law enforcement agency’ means any police force, multijurisdictional task force, or other local, county, or state agency that has the authority under state law or operates in cooperation with a federal agency under federal law to engage in the seizure and forfeiture of property.

(4) ‘Other assets’ includes a conveyance or any other property which is forfeitable pursuant to another statute or federal law that specifically delineates property or assets that are forfeitable.

(5) ‘Prosecuting agency’ means any solicitor’s office or the Office of the Attorney General.

Section 17‑32‑30. A person who uses monies, property, or other assets in a manner which would make the monies, property, or other assets subject to forfeiture pursuant to the provisions of this chapter, except for innocent owners, rental agencies, lienholders, and the like as provided for in this chapter, is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than one year or fined not more than five thousand dollars, or both, in the discretion of the court. For a lawful seizure and forfeiture pursuant to the provisions of this chapter, the person must be charged with both a violation of this section and any underlying offenses for which the seizure and forfeiture is connected and the penalty provided in this section shall run concurrent to those underlying offenses.

Section 17‑32‑40. (A) Notwithstanding any other provision of law, all monies, property, or other assets subject to forfeiture pursuant to the following statutes and established by proof of a criminal conviction are governed by the provisions of this chapter:

(1) Section 16‑3‑2090, trafficking in persons;

(2) Section 16‑8‑260, criminal gangs;

(3) Section 16‑13‑175, larceny of property and motor vehicles used;

(4) Section 16‑13‑177, timber theft;

(5) Section 16‑27‑55, animal fighting and baiting;

(6) Section 39‑15‑1195, counterfeit marks

(7) Section 44‑53‑520, controlled substances;

(8) Section 56‑29‑40, chop shops;

(9) any other provision of law which provides for the forfeiture of monies, property, or other assets not specifically delineated in this subsection, except property or assets considered contraband.

(B)(1) Any property subject to forfeiture pursuant to this chapter may be seized by the law enforcement agency having authority upon warrant issued by any court having jurisdiction over the property. Seizure without process may be made if the:

(a) seizure is incident to an arrest for a charge subject to forfeiture or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) property subject to seizure has been the subject of a prior judgment in favor of the State;

(c) law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of a statute subject to forfeiture.

(2)(a) A law enforcement agency may not seize cash of five hundred dollars or less or property or other asset of a value less than two thousand five hundred dollars. In addition, cash in any amount may not be seized solely incident to an arrest for possession of twenty-eight grams or one ounce or less of marijuana (simple possession of marijuana pursuant to Section 44-53-370(d)(4)). For purposes of determining the value of property or other assets, the law enforcement agency shall make a reasonable determination at the time of seizure based on fair market value, if possible. If a determination cannot be made of fair market value of the property or asset within five days of the seizure, the property or asset must be returned to the lawful owner on day five following the seizure.

(b) Upon seizure, the law enforcement agency making the seizure shall provide to the person in possession of the property seized an itemized receipt. If such person is not physically present, a receipt must be left in the place of seizure, if possible.

(c) The presence or possession of cash in any amount, without other evidence of a criminal offense subject to forfeiture, is insufficient probable cause for seizure of cash.

(C) A law enforcement agency seizing property with or without a court order may not request, require, or in any manner induce a person to waive his interest or rights to property seized for the purposes of forfeiture pursuant this chapter. However, this subsection may not be construed to prohibit such a waiver of a person’s interest or rights in property seized after a hearing and finding of probable cause pursuant to the provisions of this chapter.

(D)(1) Within thirty days of a seizure pursuant to this chapter, a preliminary hearing must be scheduled, unless waived as provided in this section, in a court with jurisdiction over the violation of Section 17‑32‑30 and any underlying criminal offenses to determine whether probable cause existed to seize the monies, property, or other asset. One or more of the law enforcement officers who made the seizure shall testify under oath regarding the facts and circumstances which established probable cause for the seizure. The State has the burden of proof that probable cause existed for a violation of Section 17‑32‑30. If the court determines that probable cause did not exist for the seizure, the monies, property, or other asset seized must be returned to the lawful owner within thirty days of a final probable cause determination. If the court determines there was probable cause for the seizure, the property is subject to the forfeiture proceeding pursuant to the provisions of this chapter.

(2) Notice must be provided by the appropriate solicitor’s office or law enforcement agency prosecuting the underlying criminal offense, as appropriate, to all parties known to the prosecutor to have an interest in the property and anyone that the defendant may provide. These parties have a right to be heard and provide proof of innocent ownership in the seized property for the court to determine, in writing, the protection or return of the monies, property, or other asset. Any interested party may waive their right to this preliminary hearing. Failure to appear at the preliminary hearing by an innocent owner in no way precludes an innocent owner from seeking relief pursuant to Section 17-32-60.

(3) A defendant has the right to waive his portion of the preliminary hearing pursuant to this subsection.

(4) The provisions of this subsection do not apply to the seizure of contraband.

(E) For notice and storage purposes, when 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.

(F) Law enforcement agencies seizing property pursuant to this section shall take reasonable steps to maintain the property in the condition in which was received. 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. An innocent owner may petition the court for restitution for failure of a seizing agency to maintain in good faith the seized property.

(G) When monies, property, or other assets are 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 and the Commission on Prosecution Coordination in accordance with the requirements of Article 17, Chapter 3, Title 23.

(1) The report must 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 law enforcement agency;

(g) the type and quantity of the controlled substance involved, if applicable;

(h) name and contact information of any interested party.

(2) If the property is a conveyance, the report must 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 law enforcement agency;

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

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

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

(H) Monies, property, or other assets seized by a law enforcement agency must not be used by officers for personal purposes.

Section 17‑32‑50. (A)(1) Forfeiture of monies, property, or other assets seized pursuant to this chapter is accomplished upon conviction of the defendant for the charges pursuant to Section 17‑32‑30 or consent agreement pursuant to subsection (B).

(2) If the court determines a law enforcement agency or a prosecuting agency did not comply in good faith with the provisions in the chapter regarding the item in question, then that item is not subject to forfeiture.

(3) At any time when contraband is no longer needed as evidence, the court may order it to be destroyed pursuant to state law.

(4) At any time when abandoned property is no longer needed as evidence, the court may order it be sold under subsection (C).

(B) Any forfeiture may be effected by consent order approved by the court provided that all owners and other persons known to have an interest in the property entitled to notice under this section, except lienholders and agencies, consent to the forfeiture. Disposition of the property must be accomplished pursuant to the provisions of subsection (D). Persons entitled to notice under this chapter may consent to some issues and have the court determine remaining issues.

(C) If property is seized by a state law enforcement agency and forfeiture is accomplished under this section, the court shall order the property transferred to the Division of General Services of the Department of Administration for sale. If property is seized by a local law enforcement agency and forfeiture is accomplished under this section, the court shall order the property transferred to the local governing body for sale pursuant to the established procedures of that jurisdiction. Proceeds are to be distributed as provided in subsection (D).

(D) When all seized and forfeited monies, property, or other assets are reduced to proceeds, the court must allocate as follows:

(1) determine any lienholder’s interest as provided in this chapter and satisfy any recorded liens, mortgages, or filed security interests in the forfeited property;

(2) determine and pay any restitution to the victim of the underlying criminal offense;

(3) pay reasonable costs for the towing, storage, maintenance, repairs, and other operating costs related to the property used in the underlying criminal offense;

(4) return to a law enforcement agency any monies used by law enforcement officers or agents, in the line of duty, to purchase controlled substances during a criminal investigation pursuant to Section 44‑53‑582, if applicable; and

(5) Of the remainder, if any, after the allocations pursuant to items (1) through (4):

(a) fifty percent to the seizing law enforcement agency or multijurisdictional task force for reimbursement for salaries, benefits, and overtime pay of personnel and other costs associated with the criminal investigation;

(b) twenty-five percent to the South Carolina Public Safety Coordinating Council to be dispersed through grants to law enforcement agencies to fund the following services:

(1) body cameras;

(2) training of law enforcement officers;

(3) community policing and outreach efforts;

(4) victim services; and

(5) other law enforcement purposes as determined by the South Carolina Public Safety Coordinating Council;

(c) twenty percent to the prosecuting agency for reimbursement for salaries, benefits, and overtime pay of personnel and other costs associated with criminal prosecution; and

(d) five percent to the Commission on Prosecution Coordination for reimbursement for the housing, maintenance, and auditing of, and other costs associated with, an Asset Seizure and Forfeiture Tracking Database pursuant to the provisions of Article 17, Chapter 3, Title 23. This five percent must be remitted to the State Treasurer and deposited to the credit of the Commission on Prosecution Coordination.

(E) 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 agencies, as appropriate.

(F) All expenditures from these accounts must be documented, and the documentation made available for audit purposes as required by the provisions of Article 17, Chapter 3, Title 23, and upon request by a person under the provisions of Chapter 4, Title 30, the Freedom of Information Act.

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

(H) 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. All records of disbursement must be maintained and made available for audit purposes as provided in this section. All expenditures from these accounts must be fully documented and audited annually with the general fund of the appropriate jurisdiction.

(I) A law enforcement agency may not transfer a criminal investigation or forfeiture proceedings to the federal government for the predominate intention to circumvent the forfeiture provisions of this chapter nor may the agency refer, transfer, or otherwise relinquish possession of property seized under state law to a federal agency not involved in the initial investigation of a criminal offense for purposes of forfeiture.

Section 17‑32‑60. (A) Property of an innocent owner shall not be forfeited.

(B) The law enforcement or prosecuting agency shall return property to an innocent owner. Contraband shall not be returned.

(C) Notice of hearing and the right to contest the forfeiture prior to final disposition must be directed to all persons and agencies entitled to notice under Section 17‑32‑50.

(D) Any innocent owner, any manager or owner of a licensed rental agency or any common carrier or carrier of goods for hire, or any person known to have an interest may apply to the court with jurisdiction over the violation of Section 17-32-30 and any underlying criminal offenses for the return of any item seized under the provisions of this chapter. Application may be made at any time before the forfeiture is accomplished pursuant to Section 17-32-50 by filing a statement with the court that sets forth:

(1) the claimant’s right, title, or interest in the property;

(2) the time and circumstances of the claimant’s acquisition of the interest in the property;

(3) additional facts supporting the claimant’s claim; and

(4) the relief sought by the claimant.

This filing is not subject to a filing fee. The court shall schedule the petition within thirty days after its filing or at the court’s discretion.

(E) The court may order return of any seized item to the owner if the court finds by clear and convincing evidence:

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

(2) 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 or derivation of the property which made it subject to seizure and forfeiture. 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; or

(3) in the case of a bona fide purchaser, that the person or entity was without notice of any defect in title, did not have knowledge of the use or derivation of the property which made it subject to seizure and forfeiture, and paid valuable consideration.

(F) 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.”

B. Section 16‑3‑2090 of the 1976 Code is amended to read:

“Section 16‑3‑2090. ~~(A)~~(1) The following are subject to forfeiture and are governed by the provisions of Chapter 32, Title 17:

(a) all monies used, or intended for use, in violation of Section 16‑3‑2020;

(b) all property constituting the proceeds obtained directly or indirectly, for a violation of Section 16‑3‑2020;

(c) all property derived from the proceeds obtained, directly or indirectly, from any sale or exchange for pecuniary gain from a violation of Section 16‑3‑2020;

(d) all property used or intended for use, in any manner or part, to commit or facilitate the commission of a violation for pecuniary gain of Section 16‑3‑2020;

(e) 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 Section 16‑3‑2020;

(f) all conveyances including, but not limited to, trailers, aircraft, motor vehicles, and watergoing vessels, which are used or intended for use unlawfully to conceal or transport or facilitate a violation of Section 16‑3‑2020. 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 16‑3‑2020;

(g) 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 any kind of services under Section 16‑3‑2020, and all proceeds including, but not limited to, monies, and real and personal property traceable to any exchange under Section 16‑3‑2020; and

(h) overseas assets of persons convicted of trafficking in persons also are subject to forfeiture to the extent they can be retrieved by the government.

~~(2)~~ ~~Any property subject to forfeiture may be seized by the investigating agency having authority upon warrant issued by any court having jurisdiction over the property. Seizure without process may be made if the:~~

~~(a)~~ ~~seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;~~

~~(b)~~ ~~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 Section 16‑3‑2020;~~

~~(c)~~ ~~the investigating agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or~~

~~(d)~~ ~~the investigating agency has probable cause to believe that the property was used or is intended to be used in violation of Section 16‑3‑2020.~~

~~(3)~~ ~~In the event of seizure, proceedings under this section regarding forfeiture and disposition must be instituted within a reasonable time.~~

~~(4)~~ ~~Any property taken or detained under this section is not subject to replevin but is considered to be in the custody of the investigating agency making the seizure subject only to the orders of the court having jurisdiction over the forfeiture proceedings. Property is forfeited and transferred to the government at the moment of illegal use. Seizure and forfeiture proceedings confirm the transfer.~~

~~(5)~~ ~~For the purposes of this section, whenever the seizure of 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.~~

~~(6)~~ ~~Law enforcement agencies seizing property pursuant to this section shall take reasonable steps to maintain the property. Equipment and conveyances seized must be removed to an appropriate place for storage. 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.~~

~~(7)~~ ~~When property and monies of any value as defined in this article 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.~~

~~(a)~~ ~~The report must provide the following information with respect to the property seized:~~

~~(i)~~  ~~description;~~

~~(ii)~~ ~~circumstances of seizure;~~

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

~~(iv)~~ ~~name of owner;~~

~~(v)~~ ~~name of lienholder; and~~

~~(vi)~~ ~~seizing agency.~~

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

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

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

~~(iii)~~ ~~name of any lienholders.~~

~~(c)~~ ~~In addition to the report, the law enforcement agency shall prepare for dissemination to the public upon request a report providing the following information:~~

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

~~(ii)~~ ~~the seizing agency;~~

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

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

~~(d)~~ ~~Property or conveyances seized by a law enforcement agency or department may not be used by officers for personal purposes.~~

~~(B)(1)~~ ~~Forfeiture of property 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 for the jurisdiction where the items were seized. The petition must be submitted to the court within a reasonable time period following seizure and shall provide 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 also shall 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. 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. The Attorney General or his designee or the circuit solicitor or his designee has the burden of proof to establish by a preponderance of the evidence that the property is subject to forfeiture. 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 this section.~~

~~(3)~~ ~~If there is a dispute as to the division 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 this section.~~

~~(4)~~ ~~All property, conveyances, and equipment which will not be 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 agency, conveyances and equipment may be transferred to any other appropriate agency. Property transferred may 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 is 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 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.~~

~~(6)~~ ~~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.~~

~~(7)~~ ~~Disposition of forfeited property under this section must be accomplished as follows:~~

~~(a)~~ ~~Property forfeited under this subsection shall first be applied to payment to the victim. The return of the victim to his home country or other absence of the victim from the jurisdiction shall not prevent the victim from receiving compensation.~~

~~(b)~~ ~~The victim and the South Carolina Victim Compensation Fund shall each receive one‑fourth, and law enforcement shall receive one‑half of the value of the forfeited property.~~

~~(c)~~ ~~If no victim is named, or reasonable attempts to locate a named victim for forfeiture and forfeiture fails, then all funds shall revert to the South Carolina Victim Compensation Fund and law enforcement to be divided equally.~~

~~(d)~~ ~~If federal law enforcement becomes involved in the investigation, they shall equitably split the share local law enforcement receives under this section, if they request or pursue any of the forfeiture. The equitable split must be pursuant to 21 U.S.C. Section 881(e)(1)(A) and (e)(3), 18 U.S.C. Section 981(e)(2), and 19 U.S.C. Section 1616a.~~

~~(C)(1)~~ ~~An innocent owner, 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 for the return of any item seized. 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. If the judge denies the application, the hearing may proceed as a forfeiture hearing.~~

~~(2)~~ ~~The court may return any seized item to the owner if the owner demonstrates to the court by a preponderance of the evidence:~~

~~(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; or~~

~~(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.~~

~~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.~~

~~(3)~~ ~~The lien of an 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.~~

~~(D)~~ ~~A person who uses property or a conveyance in a manner which would make the property or conveyance subject to forfeiture except for innocent owners, rental agencies, lienholders, and the like as provided for in this section, is guilty of a misdemeanor and, upon conviction, must be imprisoned for not less than thirty days nor more than one year, fined not more than five thousand dollars, or both. The penalties prescribed in this section are cumulative and must be construed to be in addition to any other penalty prescribed by another provision of this article.~~”

C. Section 16‑8‑260 of the 1976 Code is amended to read:

“Section 16‑8‑260. (A)(1) Any firearm, ammunition to be used in a firearm, or dangerous weapon in the possession of a member of a criminal gang may be seized by a law enforcement officer or agency when the law enforcement officer or agency reasonably believes that the firearm, ammunition to be used in a firearm, or dangerous weapon is or has been used in a pattern of criminal gang activity or in the commission of a criminal act for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

(2) Any written or electronic communications, records, money, negotiable instruments, or valuables may be seized by a law enforcement officer or agency when the law enforcement officer or agency reasonably believes that the written or electronic communications, records, money, negotiable instruments, or valuables have been used in a pattern of criminal gang activity or have been used for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

(3) Any contraband, as defined in Section 16‑8‑230, or other asset owned or titled in the name of the gang or an individual gang member may be seized by a law enforcement officer or agency when the law enforcement officer or agency reasonably believes that the contraband or asset has been used in a pattern of criminal gang activity or has been used for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

(B) ~~The solicitor or another prosecuting attorney shall initiate, in a civil action, forfeiture proceedings by petition in a court of competent jurisdiction regarding any property seized pursuant to the provisions of this section within ninety days of seizure. The solicitor or another prosecuting attorney must provide notice of the filing of the petition to those criminal gang members who become known to law enforcement officials as a result of the seizure and any related arrests, and to any person learned by law enforcement officials to be the owner of any of the property involved. After initial notice of the filing of the petition, the court must ensure that all persons so notified continue to receive notice of all subsequent proceedings related to the property~~ Forfeiture procedures and proceedings are governed by the provisions of Chapter 32, Title 17.

~~(C)~~ ~~A person who claims an interest in any seized property, in order to assert a claim that the property should not be forfeited, must file a notice with the court, without the necessity of paying costs, of the intent to establish either of the following:~~

~~(1)~~ ~~that the person asserting the claim did not know and could not have known of the property’s use in the commission of a pattern of criminal gang activity or in furthering the interests of the criminal gang; or~~

~~(2)~~ ~~that the law enforcement officer lacked the requisite reasonable belief that the property was or would be used in the commission of a pattern of criminal gang activity or in furtherance of the interests of the criminal gang.~~

~~(D)~~ ~~In any hearings held and determinations made, pursuant to this section, the court may receive and consider, in making a determination of reasonable cause, all evidence admissible in determining reasonable or probable cause at a preliminary hearing together with inferences arising from the evidence presented.~~

~~(E)~~ ~~An acquittal or dismissal in a criminal proceeding must not preclude civil proceedings under this section. However, for good cause shown, on motion by the solicitor or another prosecuting attorney, the court may stay civil forfeiture proceedings during the criminal trial for a related criminal indictment or information alleging a violation of this section. A stay is not available pending an appeal.~~

~~(F)~~ ~~Except as otherwise provided by this section, all proceedings under this section are governed according to the common law, by statutory provisions relating to civil remedies and procedures, and the rules of civil procedure established for the circuit court. Additionally, any action under the provisions of this section may be consolidated with any other action or proceeding pursuant to this section relating to the same property on motion of the solicitor or prosecuting attorney.~~

~~(G)~~ ~~The forfeiture provided for in this section must be decided by the court. The hearing on the claim must be held within sixty days after service of the petition, unless continued for good cause. The solicitor or prosecuting attorney has the burden of proof to establish by a preponderance of the evidence that the property is subject to forfeiture.~~

~~(H)~~ ~~A person who asserts a successful claim in accordance with subsection (C) must be awarded the seized property by the court. All property to which no claim is filed, or to which no successful claim is made may be destroyed, sold at a public or private sale, retained for use by the seizing agency, or transferred without charge to any law enforcement agency of the State for use by the agency.~~”

D. Section 16‑13‑175 of the 1976 Code is amended to read:

“Section 16‑13‑175. (A) In addition to the penalties for larceny of property, the motor vehicle used in the commission of the larceny may be confiscated and forfeited to the jurisdiction where the larceny occurred if the offender is the registered owner of the motor vehicle and the offender used the motor vehicle during the commission of the offense.

(B) ~~A motor vehicle subject to confiscation and forfeiture under this section may be confiscated by any law enforcement officer upon a warrant issued by any court having jurisdiction or upon probable cause to believe that the motor vehicle was used pursuant to subsection (A). The confiscating officer shall deliver the motor vehicle immediately to the county or municipality where the larceny occurred. The county or municipality shall notify the registered owner of the motor vehicle by certified mail within seventy‑two hours of the confiscation. Upon notice, the registered owner has ten days to request a hearing before the presiding judge of the judicial circuit or his designated hearing officer. The confiscation hearing must be held within ten days from the date of receipt of the request. The motor vehicle must remain confiscated unless the registered owner can show by a preponderance of the evidence that the confiscation and forfeiture would cause an undue hardship on his family. The county or municipality in possession of the motor vehicle shall provide notice by certified mail of the confiscation to all lienholders of record within ten days of the confiscation~~ Forfeiture procedures and proceedings are governed by the provisions of Chapter 32, Title 17.

~~(C)~~ ~~Upon the conviction of the person owning and using the motor vehicle in the larceny of property, or upon his plea of guilty or nolo contendere to this offense, the county or municipality where the larceny occurred may initiate an action in the circuit court of the county in which the motor vehicle was seized to accomplish forfeiture by giving notice to registered owners of record, lienholders of record, and other persons claiming an interest in the motor vehicle subject to forfeiture and by giving these persons an opportunity to appear and show why the motor vehicle should not be forfeited and disposed of as provided for by this section. Failure of a person claiming an interest in the motor vehicle to appear at this proceeding after having been given notice constitutes a waiver of the claim. However, the failure to appear does not alter or affect the claim of a lienholder of record. The court, after hearing, may order that the motor vehicle be forfeited to the county or municipality and sold as provided in this section or returned to the registered owner. The court may order a motor vehicle returned to the registered owner if it is shown by a preponderance of the evidence that forfeiture of the motor vehicle would cause an undue hardship on the registered owner’s family. Forfeiture of a motor vehicle is subordinate in priority to all valid liens and encumbrances. Under this subsection, a person is entitled to a jury trial if requested.~~

~~(D)~~ ~~If the person fails to file an appeal within ten days after the conviction, the forfeited motor vehicle is considered abandoned and must be disposed of as provided by Section 56‑5‑5640. However, if the fair market value of the motor vehicle is less than five hundred dollars, it must be sold as scrap to the highest bidder after first receiving at least two bids.~~

~~(E)~~ ~~All costs relating to the confiscation and forfeiture of a motor vehicle under this section, including expenses for court costs and storage of the motor vehicle, must be paid from the proceeds of the sale of the motor vehicle.~~”

E. Section 16‑13‑177 of the 1976 Code is amended to read:

“Section 16‑13‑177. (A) In addition to the penalties provided by law, when an offense in violation of Section 16‑11‑580, 16‑13‑30, 16‑13‑230, or 16‑13‑240 involves timber theft valued in excess of five thousand dollars, all motor vehicles, conveyances, tractors, trailers, watercraft, vessels, tools, and equipment of any kind, used or positioned for use, in acquiring, cutting, harvesting, manufacturing, producing, processing, delivering, importing, or exporting timber or timber products that are known by the owner to be used in the commission of the offense may be confiscated and forfeited to the jurisdiction where the offense occurred if the offender is the owner or registered owner of the property and the offender or someone under his direction or control knowingly used the property during the commission of the offense.

(B) ~~Property subject to forfeiture under this section may be seized or confiscated by any law enforcement officer incident to a lawful arrest or a warrant issued for the purpose by a court of competent jurisdiction pursuant to subsection (A). The confiscating officer must deliver the property immediately to the county or municipality where the offense occurred. The county or municipality must notify the registered owner of the property by certified mail within seventy‑two hours of the confiscation. Upon notice, the registered owner has ten days to request a hearing before the presiding judge of the judicial circuit or his designated hearing officer. The forfeiture hearing must be held within ten days from the date of receipt of the request. The property confiscated must be returned to the registered owner unless the Forestry Commission, a county, or a municipality can show by a preponderance of the evidence that the property seized was knowingly used in the commission of the crime. In the event the commission, a county, or municipality is unable to make such a showing, all property seized under this section must be returned to the owner upon proof of ownership and the posting of a bond in a sufficient amount not to exceed ten thousand dollars. The county or municipality in possession of the property must provide notice by certified mail of the confiscation to all lienholders of record within ten days of the confiscation~~ Forfeiture procedures and proceedings are governed by the provisions of Chapter 32, Title 17.

~~(C)~~ ~~Upon conviction of a person owning and using the seized property or upon his plea of nolo contendre to an offense subjecting the property to forfeiture, the county or municipality where the offense occurred or the Forestry Commission may initiate an action in the circuit court of the county in which the property was seized to accomplish forfeiture by giving notice to registered owners of record, lienholders of record, and other persons claiming an interest in the property subject to forfeiture and by giving these persons notice and an opportunity to appear and show cause why the property should not be forfeited and disposed of as provided in this section. Failure of a person claiming an interest in the property to appear at this proceeding after having been given notice constitutes a waiver of the claim. However, the failure to appear does not affect the claim of a lienholder of record. The court, after hearing, may order the property forfeited to the county or municipality and sold as provided in this section or returned to the owner or registered owner. Forfeiture of property is subordinate in priority to all valid liens and encumbrances. A person whose property is subject to forfeiture under this section is entitled to a jury trial if requested.~~

~~(D)~~ ~~When property is forfeited under this section, the judge must order the property sold at public auction by the seizing agency as provided by law. Notwithstanding any other provision of 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 of any sale pursuant to this section shall be distributed to the victim of the offense in an amount to be determined by the presiding judge and any remaining proceeds shall be disbursed to the South Carolina Commission on Forestry to be used exclusively for timber theft enforcement, prevention, and awareness.~~”

F. Section 16‑27‑55 of the 1976 Code is amended to read:

“Section 16‑27‑55. (A) A person who violates a provision of this chapter is subject to forfeiture of:

(1) property, both real and personal, which is knowingly used to engage in a violation or to further a violation of this chapter; and

(2) monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by a person to engage in or further a violation of this chapter.

(B) ~~Property subject to forfeiture pursuant to the provisions of this chapter may be seized by the appropriate law enforcement agency with a warrant properly issued by a court with jurisdiction over the property. Property may be seized without a warrant if the:~~

~~(1)~~ ~~seizure is incident to an arrest or a search with a search warrant or an inspection under an administrative inspection warrant;~~

~~(2)~~ ~~property subject to seizure was the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding pursuant to the provisions of this chapter;~~

~~(3)~~ ~~law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or~~

~~(4)~~ ~~law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of the provisions of this chapter~~ Forfeiture procedures and proceedings are governed by the provisions of Chapter 32, Title 17.

~~(C)~~ ~~Forfeiture proceedings instituted pursuant to the provisions of this section are subject to the procedures and requirements for forfeiture as set out in Section 44‑53‑530.~~

~~(D)~~ ~~Property taken or detained pursuant to the provisions of this section is not subject to replevin but is considered to be in the custody of the law enforcement agency making the seizure subject only to an order of the court having jurisdiction over the forfeiture proceedings.~~

~~(E)~~ ~~For purposes of this section, when the seizure of property subject to forfeiture 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.~~

~~(F)~~ ~~A law enforcement agency seizing property pursuant to the provisions of this section shall take reasonable steps to maintain the property. Equipment and conveyances seized must be removed to an appropriate place for storage. 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 appropriate security in another manner.~~

~~(G)~~ ~~When property, monies, negotiable instruments, securities, or other things of value are seized pursuant to the provisions of subsection (A), 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 prosecuting agency.~~

~~(1)~~ ~~The report must include the following information:~~

~~(a)~~ ~~a description of the property seized;~~

~~(b)~~ ~~the circumstances of the seizure;~~

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

~~(d)~~ ~~the name of the owner of the property;~~

~~(e)~~ ~~the name of any lienholders of the property; and~~

~~(f)~~ ~~the seizing agency.~~

~~(2)~~ ~~If the property is a conveyance, the report must 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) of this subsection, the appropriate 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 make, model, and year of a conveyance; and~~

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

~~(H)~~ ~~Property or conveyances seized by a law enforcement agency may not be used by officers or employees of the agency for personal purposes.~~

~~(I)(1)~~ ~~An innocent owner or a manager or owner of a licensed rental agency or a common carrier or carrier of goods for hire may apply to the court of common pleas for the return of an item seized pursuant to the provisions of this chapter. 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 as provided in Section 44‑53‑530. If the court denies the application, the hearing may proceed as a forfeiture hearing held pursuant to the provisions of Section 44‑53‑530.~~

~~(2)~~ ~~The court may return a seized item to the owner if the owner demonstrates to the court by a preponderance of the evidence:~~

~~(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; or~~

~~(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 an 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.~~

~~(3)~~ ~~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.~~

~~(4)~~ ~~The lien of an innocent person or other legal entity, recorded in public records, continues in force upon transfer of title of a forfeited item, and a 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.~~”

G. Section 39‑15‑1195 of the 1976 Code is amended to read:

“Section 39‑15‑1195. (A) The following property is subject to seizure by and forfeiture to any law enforcement agency upon violation of Section 39‑15‑1190:

(1) all items bearing the counterfeit mark;

(2) all personal property that is employed or used in connection with a violation of Section 39‑15‑1190 including, but not limited to, any items, objects, tools, machines, equipment, or instrumentalities of any kind;

(3) all conveyances including, but not limited to, trailers, aircraft, motor vehicles, and watergoing vessels which are used unlawfully to conceal, contain, or transport or facilitate the unlawful concealment, possession, containment, manufacture, or transportation of counterfeit marks;

(4) all books, records, computers, and data that are used or intended for use in the production, manufacture, sale, or delivery of items bearing a counterfeit mark or services identified by a counterfeit mark; and

(5) all monies, negotiable instruments, balances in deposit or other accounts, securities, or other things of value furnished or intended to be furnished by any person used to engage in a violation or to further a violation of Section 39‑15‑1190.

(B) ~~Property subject to forfeiture pursuant to this section may be seized by the department having authority upon a warrant issued by a court having jurisdiction over the property. Seizure without process may be made if:~~

~~(1)~~ ~~the seizure is incident to an arrest or a search pursuant to a search warrant or an inspection pursuant to 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 section;~~

~~(3)~~ ~~the department has probable cause to believe that the property is directly or indirectly dangerous to an individual’s 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 Section 39‑15‑1190~~ Forfeiture procedures and proceedings are governed by the provisions of Chapter 32, Title 17.

~~(C)~~ ~~If a seizure is made pursuant to subsection (B), proceedings pursuant to Section 44‑53‑530 regarding forfeiture and disposition must be instituted within a reasonable time.~~

~~(D)~~ ~~Property taken or detained pursuant to 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.~~

~~(E)~~ ~~For the purposes of this section, when the seizure of 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.~~

~~(F)~~ ~~Law enforcement agencies seizing property pursuant to this section shall take reasonable steps to maintain the property. Equipment and conveyances seized must be removed to an appropriate place for storage. 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 evidentiary nature and provides for security in another manner.~~

~~(G)~~ ~~When property, conveyances, monies, negotiable instruments, securities, or anything else of value is seized pursuant to the provisions of subsection (A), 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 must 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; and~~

~~(f)~~ ~~seizing agency.~~

~~(2)~~ ~~If the property is a conveyance, the report must 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 make, model, and year of a conveyance; and~~

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

~~(H)(1)~~ ~~An owner may apply to the court of common pleas for the return of an item seized pursuant to the provisions of this chapter. Notice of hearing or rule to show cause accompanied by a copy of the application must be directed to all persons and agencies entitled to notice as provided in Section 44‑53‑530. If the court denies the application, the hearing may proceed as a forfeiture hearing held pursuant to the provisions of Section 44‑53‑530.~~

~~(2)~~ ~~The court may return a seized item to the owner if the owner demonstrates to the court by a preponderance of the evidence that the owner was not a consenting party to, or privy to, or did not have knowledge of, the use of the property that made it subject to seizure and forfeiture.~~

~~(3)~~ ~~The lien of an innocent person or other legal entity, recorded in public records, continues in force upon transfer of title of a forfeited item, and a transfer of title is subject to the lien, if the lienholder demonstrates to the court by a preponderance of the evidence that the lienholder 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.~~

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

H. 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~~ 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)~~ one pound or more of marijuana, substances containing tetrahydrocannabinaol (THC) and marketed as food products, and any controlled substance analogue as classified by the United States Drug Enforcement Administration; Section 44‑53‑370(e), including trafficking in illegal drugs containing four grams or more of any morphine, opium, salt, isomer, salt of an isomer thereof, or any mixture of any of these substances including, but not limited to, heroin and fentanyl as described in Section 44‑53‑190 or 44‑53‑210; Section 44‑53‑375(B); or Section 44‑53‑375(C);

(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.

(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~~ Forfeiture procedures and proceedings are governed by the provisions of Chapter 32, Title 17.

(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.~~

~~(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)~~(d) 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)~~(e) 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.~~”

I. Section 56‑29‑40 of the 1976 Code is amended to read:

“Section 56‑29‑40. (A) Any tool, implement, or instrumentality~~,~~ including, but not limited to, a motor vehicle or motor vehicle part, used or possessed in connection with any violation of Section 56‑29‑30 may be seized by a member of a state or local law enforcement agency upon process issued by any court of competent jurisdiction.

(B) ~~Seizure of property described in subsection (A) of this section may be made by a member of a state or local law enforcement agency without process if:~~

~~(1)~~ ~~it is in accordance with any applicable law or regulation;~~

~~(2)~~ ~~the seizure is incident to inspection under an administrative inspection warrant;~~

~~(3)~~ ~~the seizure is incident to search made under a search warrant;~~

~~(4)~~ ~~the seizure is incident to a lawful arrest;~~

~~(5)~~ ~~the seizure is made pursuant to a valid consent to search;~~

~~(6)~~ ~~the property seized has been the subject of a prior judgment in favor of the State in a criminal proceeding, or in an injunction or forfeiture proceeding under Section 56‑29‑60; or~~

~~(7)~~ ~~there are reasonable grounds to believe that the property is directly or indirectly dangerous to health or safety~~ Forfeiture procedures and proceedings are governed by the provisions of Chapter 32, Title 17.

~~(C)~~ ~~When property is seized under this section, the seizing agency may:~~

~~(1)~~ ~~place the property under seal; or~~

~~(2)~~ ~~remove the property to a place selected and designated by the seizing agency.~~”

J. The provisions of this SECTION:

(1) apply to seizures, forfeitures, and dispositions of monies, property, and other assets subject to forfeiture pursuant to laws that specifically apply to this act;

(2) do not apply to goods that are unlawful to import, export, or possess, which must be considered contraband including, but not limited to, certain controlled substances deemed contraband or certain species of plants, as provided in Section 44‑53‑520(c), (d), and (e), which are subject to seizure and must be summarily forfeited as otherwise provided by law; and

(3) provide the exclusive process governing forfeiture of monies, property, and other assets in this State, and if there is a conflict between the provisions of this act and another provision of law, the provisions of this act control.

K. Sections 44‑53‑530, 44‑53‑586, 44‑53‑590, and 56‑29‑50 are repealed.

Part II

Asset Seizure and Forfeiture Tracking Database

SECTION 2. A. Chapter 3, Title 23 of the 1976 Code is amended by adding:

“Article 17

Asset Seizure and Forfeiture Tracking Database

Reporting of Property Seized and Forfeited

Section 23‑3‑1500. For purposes of this article, ‘law enforcement agency’ means any police force, multijurisdictional task force, or other local, county, or state agency that has the authority under state law or operates in cooperation with a federal agency under federal law to engage in the seizure and forfeiture of property.

Section 23‑3‑1510. This article is applicable to any provision that authorizes a law enforcement agency to seize property that is used in the commission of a criminal offense.

Section 23‑3‑1520. (A) The Commission on Prosecution Coordination shall establish and maintain a Seizure and Forfeiture Tracking Database and searchable public website that includes the following information about property seized by a law enforcement agency and forfeited under state law or under any agreement with the federal government:

(1) name of the law enforcement agency that seized the property;

(2) date the property was seized;

(3) type of property seized, including year, make, model, and serial number, as applicable;

(4) location of the seizure: home; business; traffic stop including street name and traffic direction where the seizure occurred;

(5) estimated value of the seized property;

(6) criminal offense that led to the seizure;

(7) crime for which the suspect was charged;

(8) criminal case number;

(9) outcome of any related criminal action, to include whether any charges were brought or dropped, a plea bargain was reached, a conviction was obtained, or an acquittal was issued;

(10) if the forfeiture was not processed under state law, the reason for the federal transfer: adoption or joint task force;

(11) forfeiture case number;

(12) whether a claim or counterclaim was filed by a suspect, innocent property owner, or a joint or third‑party owner;

(13) type of forfeiture procedure: criminal forfeiture, civil‑administrative forfeiture, or civil‑judicial forfeiture;

(14) whether the property owner was represented by an attorney in the forfeiture case;

(15) date of forfeiture decision;

(16) total administrative and other expenses deducted as part of the forfeiture process;

(17) net amount received from the forfeiture;

(18) disposition of property following its seizure, to include whether the property was:

(a) fully returned to the owner;

(b) partially returned to owner;

(c) destroyed;

(d) sold after forfeiture; or

(e) retained after forfeiture by law enforcement; and

(19) date of forfeiture decision.

Section 23‑3‑1530. (A) The Commission on Prosecution Coordination shall establish and maintain a searchable public website that includes:

(1) the total value of seized and forfeited property held by the agency at the end of the reporting period; and

(2) the total amount of funds expended, in each of the following nine categories, which resulted from property seized, forfeited, and reported in Section 23‑3‑1520:

(a) drug abuse, crime, and gang prevention programs;

(b) victim reparations;

(c) investigation costs, including witness protection, informant fees, and controlled buys;

(d) salaries, overtime, and benefits, as permitted by law;

(e) professional outside services, including auditing, court reporting, expert witness fees, outside attorney fees and membership fees paid to trade associations;

(f) travel, meals, entertainment, conferences, training, and continuing education;

(g) other operating expenses including office supplies, postage, and printing;

(h) capital expenditures including vehicles, firearms, equipment, computers, and furniture; and

(i) other expenditures of forfeiture proceeds.

(B) The Commission on Prosecution Coordination may require that information not specified in this section also be reported.

Section 23‑3‑1540. The law enforcement agency that seizes property and prosecutors that litigate related criminal cases and forfeiture proceedings shall update the Commission on Prosecution Coordination’s website with the information required under Section 23‑3‑1520 at the end of the month following each seizure of property. The commander of a multijurisdictional task force may appoint one agency to report its seizures. If an agency has made no seizures during the previous year, a null report must be filed by the agency specifying that it did not engage in seizures or forfeitures during the reporting period.

Section 23‑3‑1550. The law enforcement agency that expends forfeiture‑related proceeds shall update the Commission on Prosecution Coordination’s website with the information required under Section 23‑3‑1530 within thirty days after the end of the fiscal year. The commander of a multijurisdictional task force may appoint one agency to report its expenditures.

Section 23‑3‑1560. (A) The Commission on Prosecution Coordination shall develop a standard form, webpage, process and deadlines for electronic data entry for submission of seizure data, forfeiture data, and expenditures of proceeds by law enforcement agencies.

(B) The State Auditor shall perform annually a financial audit under the generally accepted auditing standards of records related to inventory of seized property and expenditures of forfeiture proceeds. A copy of the final audit report must be submitted to the Commission on Prosecution Coordination no later than ninety days after the end of the fiscal year and must be made public.

(C) One hundred twenty days after the close of the fiscal year, the Commission on Prosecution Coordination shall submit to the Speaker of the House of Representatives, President of the Senate, Attorney General, and Governor a written report summarizing activity in the State, for the preceding fiscal year, that includes the type, approximate value, and disposition of property seized and forfeited and the amount of any proceeds received or expended at the state and local levels. The report shall provide a categorized accounting of all proceeds expended. The aggregate report also must be made available on the Commission on Prosecution Coordination’s website and must be assessable to the public.

(D) The Commission on Prosecution Coordination shall include in its aggregate report recommendations to the General Assembly to improve forfeiture laws to better ensure that forfeiture proceedings are reported and handled in a manner that is fair to crime victims, innocent property owners, secured interest holders, citizens, and taxpayers.

(E) The Commission on Prosecution Coordination shall include in its aggregate report information on law enforcement agencies that are not in compliance with this article.

(F) The data and reports compiled and prepared under this article regarding completed forfeitures are public information pursuant to Chapter 4, Title 30.

(G) The Commission on Prosecution Coordination may adopt rules and promulgate regulations that are necessary to implement the requirements of this article.”

B. This SECTION takes effect upon approval by the Governor and is subject to funding by the General Assembly in the General Appropriations Act.

Part III

Savings and Severability Clauses

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Part IV

Time effective

SECTION 5. This act takes effect upon approval by the Governor.

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