

FIRST REGULAR SESSION

HOUSE BILL NO. 311

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WALKER.

0805H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 513.607, RSMo, and to enact in lieu thereof one new section relating to civil forfeitures.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 513.607, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 513.607, to read as follows:

513.607. 1. All property of every kind, including cash or other negotiable instruments, used or intended for use in the course of, derived from, or realized through criminal activity is subject to civil forfeiture. Civil forfeiture shall be had by a civil procedure known as a CAFA forfeiture proceeding.

2. A CAFA forfeiture proceeding shall be governed by the Missouri rules of court, rules of civil procedure, except to the extent that special rules of procedure are stated herein.

3. Any property seized by a law enforcement officer or agent shall not be disposed of pursuant to section 542.301 or by the uniform disposition of unclaimed property act, sections 447.500 through 447.595, unless the CAFA proceeding involving the seized property does not result in a judgment of forfeiture.

4. In cases where the property is abandoned or unclaimed, an in rem CAFA forfeiture proceeding may be instituted by petition by the prosecuting attorney of the county in which the property is located or seized by the attorney general's office. The proceeding may be commenced before or after seizure of the property.

5. In lieu of, or in addition to, an in rem proceeding under subsection 4 of this section, the prosecuting attorney or attorney general may bring an in personam action for the forfeiture of property, which may be commenced by petition before or after the seizure of property.

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

18 6. (1) If the petition is filed before seizure, it shall state what property is sought to be
19 forfeited, that the property is within the jurisdiction of the court, the grounds for forfeiture, and
20 the names of all persons known to have or claim an interest in the property. The court shall
21 determine ex parte whether there is reasonable cause to believe that the property is subject to
22 forfeiture and that notice to those persons having or claiming an interest in the property prior to
23 seizure would cause the loss or destruction of the property. If the court finds that reasonable
24 cause does not exist to believe the property is subject to forfeiture, it shall dismiss the
25 proceeding. If the court finds that reasonable cause does exist to believe the property is subject
26 to forfeiture but there is not reasonable cause to believe that prior notice would result in loss or
27 destruction, it shall order service on all persons known to have or claim an interest in the
28 property prior to a further hearing on whether a writ of seizure should issue. If the court finds
29 that there is reasonable cause to believe that the property is subject to forfeiture and to believe
30 that prior notice would cause loss or destruction, it shall without any further hearing or notice
31 issue a writ of seizure directing the sheriff of the county or other authorized law enforcement
32 agency where the property is found to seize it.

33 (2) Seizure may be effected by a law enforcement officer authorized to enforce the
34 criminal laws of this state prior to the filing of the petition and without a writ of seizure if the
35 seizure is incident to a lawful arrest, search, or inspection and the officer has probable cause to
36 believe the property is subject to forfeiture and will be lost or destroyed if not seized. Within
37 four days of the date of seizure, such seizure shall be reported by said officer to the prosecuting
38 attorney of the county in which the seizure is effected or the attorney general; and if in the
39 opinion of the prosecuting attorney or attorney general forfeiture is warranted, the prosecuting
40 attorney or attorney general shall, within ten days after receiving notice of seizure, file a petition
41 for forfeiture. The petition shall state, in addition to the information required in subdivision (1)
42 of this subsection, the date and place of seizure. The burden of proof will be on the investigative
43 agency to prove all allegations contained in the petition.

44 7. After the petition is filed or the seizure effected, whichever is later, every person
45 known to have or claim an interest in the property shall be served, if not previously served, with
46 a copy of the petition and a notice of seizure in the manner provided by the Missouri rules of
47 court and rules of civil procedure. Service by publication may be ordered upon any party whose
48 whereabouts cannot be determined or if there be unknown parties.

49 8. The prosecuting attorney or attorney general to whom the seizure is reported shall
50 report annually by January thirty-first for the previous calendar year all seizures. Such report
51 shall include:

52 (1) The date, time, and place of seizure[.];

- 53 (2) The property seized[₅] . **If the property seized is something other than currency,**
54 **any make, model, or serial number related to the property, if applicable;**
- 55 (3) The estimated value of the property seized[₅] ;
- 56 (4) The person or persons from whom the property was seized[₅] ;
- 57 (5) **The seizing agency;**
- 58 (6) The criminal charges filed[₅and] ;
- 59 (7) The disposition of the seizure, forfeiture, and criminal actions; **and**
- 60 (8) **Any other information related to any forfeiture proceeding, including:**
- 61 (a) **The court in which the forfeiture case was filed;**
- 62 (b) **The forfeiture case number;**
- 63 (c) **If any owner or interest holder filed a counterclaim;**
- 64 (d) **If any owner was determined by the court to be an innocent owner;**
- 65 (e) **The date of the forfeiture order;**
- 66 (f) **If any asset was returned in whole to an owner or interest holder, a description**
67 **of the asset and the date of the return;**
- 68 (g) **If any property was sold, including the proceeds received from the sale;**
- 69 (h) **If any property was retained by a state or local agency and the purpose for**
70 **which it was used;**
- 71 (i) **The date of any disposition of the property;**
- 72 (j) **If the property was destroyed by a state or local agency, the date of the**
73 **destruction; and**
- 74 (k) **If an order for destruction was issued by the federal government.**
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76 The report shall be made to the director of the Missouri department of public safety and shall be
77 considered an open record. The prosecuting attorney or attorney general shall submit a copy of
78 the report to the state auditor at the time the report is made to the director of the department of
79 public safety.

80 9. The state auditor shall make an annual report compiling the data received from law
81 enforcement, prosecuting attorneys, and the attorney general, and shall submit the report
82 regarding seizures for the previous calendar year to the general assembly annually by February
83 twenty-eighth.

84 **10. Notwithstanding any provision of this section, if the reporting of information**
85 **required under subsection 8 of this section is likely to disclose the identity of a confidential**
86 **source, disclose confidential investigative or prosecution material that could endanger the**
87 **life or physical safety of a person, disclose the existence of a confidential surveillance or**
88 **investigation, or disclose techniques or procedures for law enforcement procedures,**

89 **investigation, or prosecutions, the seizing agency is not required to include such**
90 **information.**

91 ~~[10.]~~ **11.** Intentional or knowing failure to comply with any reporting requirement
92 contained in this section shall be a class A misdemeanor, punishable by a fine of up to one
93 thousand dollars.

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