**South Carolina General Assembly**

121st Session, 2015-2016

**S. 380**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Davis

Document Path: l:\s-jud\bills\davis\jud0039.jjg.docx

Introduced in the Senate on January 28, 2015

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

Summary: Civil Asset Forfeiture Reform

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/28/2015 Senate Introduced and read first time ([Senate Journal‑page 22](file:///h:\SJ%20Archive\2015\01-28-15.docx))

1/28/2015 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 22](file:///h:\SJ%20Archive\2015\01-28-15.docx))

3/29/2016 Senate Referred to Subcommittee: Hutto (ch), Corbin, Young

View the latest [legislative information](http://www.scstatehouse.gov/billsearch.php?billnumbers=380&session=121&summary=B) at the website

**VERSIONS OF THIS BILL**

[1/28/2015](file:///p:\pprever\2015-16\380_20150128.docx)

**A** **BILL**

TO AMEND SECTION 16‑3‑2090, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TRAFFICKING IN PERSONS, SECTION 16‑8‑260, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CRIMINAL GANG PREVENTION ACT, SECTION 16‑13‑175, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO LARCENY, SECTION 16‑13‑177, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TIMBER THEFT, SECTION 16‑27‑55, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ANIMAL FIGHTING, SECTION 39‑15‑1195, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO COUNTERFEITING, SECTION 44‑53‑520, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CONTROLLED SUBSTANCES, SECTION 44‑53‑530, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CONTROLLED SUBSTANCES, AND SECTIONS 56‑29‑40 AND 56‑29‑50, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CHOP SHOPS, SO AS TO PROVIDE THAT PROPERTY SUBJECT TO FORFEITURE MAY BE SEIZED UPON CRIMINAL CONVICTION AND THAT PROCEEDS FROM DISPOSITION OF THE PROPERTY MUST BE DEPOSITED IN THE STATE’S GENERAL FUND.

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

SECTION 1. Section 16‑3‑2090 of the 1976 Code is amended to read:

“Section 16‑3‑2090. (A)(1) The following are subject to forfeiture:

(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~~ conviction for a violation of Section 16‑3‑2020. ~~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 State Budget and Control Board.

(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:~~ by remitting proceeds to the State Treasurer and depositing to the credit of the State’s general fund ~~(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 Victims’ 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 Victims’ 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.”

SECTION 2. 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~~ upon conviction of the criminal gang member, if 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~~ upon conviction of the criminal gang member, if 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~~ upon conviction of the criminal gang member, if 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.

(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.

(I) Disposition of forfeited property under this section must be accomplished by remitting proceeds to the State Treasurer and depositing to the credit of the State’s general fund.”

SECTION 3. 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 conviction of the person owning and using the motor vehicle in the larceny of property. 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.

(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~~ The proceeds of the sale of the motor vehicle must be remitted to the State Treasurer and deposited to the credit of the State’s general fund.”

SECTION 4. 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)~~ upon conviction for a violation of Section 16‑11‑580, 16‑13‑30, 16‑13‑230, or 16‑13‑240 involving timber theft valued in excess of five thousand dollars. 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.

(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~~ remitted 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~~ State Treasurer and deposited in the general fund of the State.”

SECTION 6. 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~~ upon conviction for a violation of this chapter. ~~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.~~

(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.

(J) Disposition of forfeited property under this section must be accomplished by remitting proceeds to the State Treasurer and deposited to the credit of the State’s general fund.”

SECTION 7. 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 conviction for a 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~~ conviction for a violation of Section 39‑15‑1190. ~~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.~~

(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.

(J) Disposition of forfeited property under this section must be accomplished by remitting proceeds to the State Treasurer and depositing to the credit of the State’s general fund.”

SECTION 8. Section 44‑53‑520 of the 1976 Code is amended to read:

“Section 44‑53‑520. ~~(a)~~(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~~ upon conviction for a 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)~~(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~~ conviction for a violation of this article. ~~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)~~(C) In the event of seizure pursuant to subsection ~~(b)~~(B), proceedings under Section 44‑53‑530 regarding forfeiture and disposition must be instituted within a reasonable time.

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

SECTION 9. Section 44‑53‑530 of the 1976 Code is amended to read:

“Section 44‑53‑530. ~~(a)~~(A) 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 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 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.

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.

~~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 subsection ~~(e)~~(E) of this section.

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 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 Budget and Control Board.

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)~~(B) If the property is seized by a state law enforcement agency and is not transferred by the court to the seizing agency, the judge shall order it transferred to the Division of General Services 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)~~(E) of this section. ~~The Division of General Services may authorize payment of like expenses in cases where monies, negotiable instruments, or securities are seized and forfeited.~~

~~(c)~~(C) If the property is seized by a local law enforcement agency and is not transferred by the court to the 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)~~(D) 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.

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

~~(e)~~(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:~~

~~(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 State’s 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) 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.~~

~~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.~~

~~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.~~

~~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)~~(F) 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) 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.~~

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

~~(k)~~(G) In all cases where 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 for the jurisdiction where the items were seized.”

SECTION 10. 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~~ conviction for a violation of Section 56‑29‑30.

~~(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.~~

~~(C)~~(B) 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.”

SECTION 11. Section 56‑29‑50 of the 1976 Code is amended to read:

“Section 56‑29‑50. (A) The following are subject to forfeiture upon conviction for a violation of Section 56‑29‑30 unless obtained by theft, fraud, or conspiracy to defraud and the rightful owner is known or can be identified and located:

(1) any tool;

(2) any instrumentality, including but not limited to any motor vehicle or motor vehicle part, whether owned or unowned by the person from whose possession or control it was seized, which is used or possessed either in violation of Section 56‑29‑30 or to promote or facilitate a violation of Section 56‑29‑30.

(B) Any motor vehicle, other conveyance, or motor vehicle part used by any person as a common carrier is subject to forfeiture under this section where the owner or other person in charge of the motor vehicle, other conveyance, or motor vehicle part is a consenting party to a violation of Section 56‑29‑30.

(C) Any motor vehicle, motor vehicle part, other conveyance, tool, implement, or instrumentality is not subject to forfeiture under this section by reason of any act or omission which the owner proves to have been committed or omitted without the owner’s knowledge or consent.

(D) A forfeiture of a motor vehicle, motor vehicle part, or other conveyance encumbered by a bona fide security interest is subject to the interest of the secured party where the secured party neither had knowledge of nor consented to the act or omission forming the ground for the forfeiture.

(E)(1) The circuit solicitor shall give notice of the forfeiture proceeding by mailing a copy of the complaint in the forfeiture proceeding to each person whose right, title, or interest is of record at the Department of Motor Vehicles or any other department of the State, or any other state or territory of the United States, or of the federal government if the property is required to be registered in the Department of Motor Vehicles.

(2) Notice of the proceeding must be given to any other person as may appear, from the facts and circumstances, to have any right, title, or interest in or to the property.

(3) The owner of the property, or any person having, or claiming right, title, or interest in the property, may within thirty days after the mailing of the notice file a verified answer to the complaint and may appear at the hearing on the action for forfeiture.

(4) The circuit solicitor shall show at a forfeiture hearing, by a preponderance of the evidence, that the property was used in the commission of a violation of Section 56‑29‑30, or was used or possessed to facilitate the violation.

(5) Unless the circuit solicitor makes the showing required, the court shall order the property released to the owner. Where the prosecutor has made a showing, the court shall order:

(a) the property be destroyed by the agency which seized it or some other agency designated by the court;

(b) the property be delivered and retained for use by the agency which seized it or some other agency designated by the court; or

(c) any other disposition which the court considers appropriate under the circumstances.

(F) A copy of a forfeiture order must be filed with the clerk of court of the county in which the forfeiture occurs and with each federal or state department with which the property is required to be registered. The order, when filed, constitutes authority for the issuance to the agency to whom the property is delivered and retained for use or to any purchaser of the property of a title certificate, registration certificate, or other special certificate as may be required by law considering the condition of the property.

(G) Proceeds from sale at public auction~~, after payment of all reasonable charges and expenses incurred by the agency designated by the court to conduct the sale in storing and selling the property,~~ must be paid to the State’s general fund ~~of the county in which the seizure occurred~~.

(H) No motor vehicle, either seized under Section 56‑29‑40 or forfeited under this section, may be released by the seizing agency or used or sold by an agency designated by the court unless any altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed vehicle identification number is corrected by the issuance and affixing of either an assigned or replacement vehicle identification number plate as may be appropriate under laws or regulations of this State.

(I) No motor vehicle or motor vehicle part may be forfeited under this section solely on the basis that it is unidentifiable. Instead of forfeiture, any seized motor vehicle or motor vehicle part which is unidentifiable must be the subject of a written report sent by the seizing agency to the Department of Motor Vehicles which report must include a description of the motor vehicle or motor vehicle part, its color, if any, the date, time, and place of its seizure, the name of the person from whose possession or control it was seized, the grounds for its seizure, and the location where it is held or stored.

(J) The proceeds of the public sale of an unidentifiable motor vehicle or motor vehicle part must be deposited in the State’s general fund ~~of the governmental unit employing the seizing agency after deduction of any reasonable and necessary towing and storage charges~~.

(K) A seized motor vehicle or motor vehicle part that is neither forfeited nor unidentifiable must be held subject to the order of the court in which the criminal action is pending or, if a request for its release from custody is made, until the prosecutor has notified the defendant or the defendant’s attorney of the request and both the prosecution and defense have been afforded a reasonable opportunity for an examination of the property to determine its true value and to produce or reproduce, by photographs or other identifying techniques, legally sufficient evidence for introduction at trial or other criminal proceedings. Upon expiration of a reasonable time for the completion of the examination which in no event shall exceed fourteen days from the date of service upon the defense of the notice of request for return of property as provided herein, the property must be released to the person making the request after satisfactory proof of such person’s entitlement to the possession thereof. Notwithstanding the foregoing, upon application by either party with notice to the other, the court may order retention of the property if it determines that retention is necessary in the furtherance of justice.

(L) When a seized vehicle is forfeited, restored to its owner, or disposed of as unidentifiable, the seizing agency shall retain a report of the transaction for a period of at least seven years from the date of the transaction.

(M) When an applicant for a certificate of title or salvage certificate presents to the Department of Motor Vehicles proof that the applicant purchased or acquired a motor vehicle at the public sale conducted pursuant to this section and that fact is attested to by the seizing agency, the department shall issue a certificate of title, or salvage certificate for the motor vehicle upon receipt of the statutory fee, properly executed application for a certificate of title, or other certificate of ownership, and the certification of the seizing agency that a state‑assigned number was applied for and affixed to the motor vehicle prior to the time that the motor vehicle was released by the seizing agency to the purchaser.”

SECTION 12. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑