**A** **BILL**

TO AMEND SECTION 44‑53‑520, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE FORFEITURE OF CERTAIN PROPERTY, SO AS TO PROHIBIT THE TRANSFER OF SEIZED ASSETS FROM STATE LAW ENFORCEMENT AGENCIES TO FEDERAL AGENCIES WITHOUT A COURT ORDER AND TO PROVIDE THAT ALL PROCEEDS FROM DRUG SEIZURES TO BE TRANSFERRED TO THE GENERAL FUND TO BE DISPERSED TO CERTAIN SCHOOL DISTRICTS.

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

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

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

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

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

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

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

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

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

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

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

~~(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. 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)~~(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.

(L) No property seized by a law enforcement agency or department may be transferred to a federal law enforcement agency or department without an order authorizing the transfer by a court with jurisdiction over the property.

(M) After a proceeding confirming the forfeiture of property, the money seized or proceeds from the sale of forfeited property must be transferred to the General Fund to be dispersed equally to the following school districts:

(1) Allendale County School District;

(2) Dillon County School District 2;

(3) Florence County School District 4;

(4) Hampton County School District 2;

(5) Jasper County School District;

(6) Lee County School District;

(7) Marion County School District 7; and

(8) Orangeburg County School District 3.”

SECTION 2. This act takes effect upon approval by the Governor.

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