**South Carolina General Assembly**

119th Session, 2011-2012

**H. 4063**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Murphy and McCoy

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Introduced in the House on April 12, 2011

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

Summary: Forfeiture procedures for property seized

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/12/2011 House Introduced and read first time ([House Journal‑page 11](file:///h:\hj%20archive\2011\04-12-11.docx))

4/12/2011 House Referred to Committee on **Judiciary** ([House Journal‑page 11](file:///h:\hj%20archive\2011\04-12-11.docx))

**VERSIONS OF THIS BILL**

[4/12/2011](file:///p:\pprever\2011-12\4063_20110412.docx)

**A** **BILL**

TO AMEND SECTION 44‑53‑530, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CONTROLLED SUBSTANCES AND FORFEITURE PROCEDURES FOR PROPERTY SEIZED ACCORDINGLY, SO AS TO ALLOW PETITION TO THE MAGISTRATES COURT IF THE VALUE OF THE PROPERTY SEIZED IS LESS THAN SEVEN THOUSAND FIVE HUNDRED DOLLARS, TO REQUIRE NOTICE TO OWNERS OF RECORD, LIENHOLDERS OF RECORD, AND OTHER INTERESTED PARTIES BY CERTIFIED MAIL, AND TO PROVIDE THAT A PETITION FOR FORFEITURE IS NOT SUBJECT TO A FILING FEE.

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

SECTION 1. Section 44‑53‑530(a), as last amended by Act 345 of 2006, and (k) of the 1976 Code is further amended to read:

“(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, or the magistrates court if the value of the property seized is less than seven thousand five hundred dollars, for the jurisdiction where the items were seized. The petition is not subject to the filing fee established pursuant to Section 8‑21‑310(11)(a). 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, and other persons with interests in the property as provided in this subsection, 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 and service may not be made by publication.

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) 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 and if service cannot be made through the appropriate institution, service must be made to the person’s last known address. ~~The seizing agency shall check the appropriate institutions after receiving an affidavit of nonservice before attempting service by publication.~~

(k) 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, or the magistrates court if the value of the property seized is less than seven thousand five hundred dollars, for the jurisdiction where the items were seized.”

SECTION 2. 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 3. This act takes effect upon approval by the Governor.

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