**South Carolina General Assembly**

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**S. 209**

**STATUS INFORMATION**

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Sponsors: Senator Hembree

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

Summary: Forfeitures

**HISTORY OF LEGISLATIVE ACTIONS**

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12/9/2020 Senate Referred to Committee on **Judiciary**

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1/12/2021 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 217](file:///h:\sj\20210112.docx))

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**VERSIONS OF THIS BILL**

[12/9/2020](file:///p:\pprever\2021-22\209_20201209.docx)

**A** **BILL**

TO AMEND SECTION 44-53-520(a) OF THE 1976 CODE, RELATING TO FORFEITURES, TO DELETE PROVISIONS SUBJECT TO FORFEITURE, TO PROVIDE THE TERMS FOR MOTOR VEHICLE FORFEITURE, TO DELETE SPECIFIC REFERENCES TO ILLEGAL SUBSTANCES AND ADD REFERENCES TO ILLEGAL SUBSTANCES GENERALLY, AND TO PROVIDE FOR PROBABLE CAUSE FOR MONIES SEIZED; AND TO AMEND SECTION 44-53-530 OF THE 1976 CODE, RELATING TO FORFEITURE PROCEDURES, THE DISPOSITION OF FORFEITED ITEMS, AND THE DISPOSITION OF THE PROCEEDS OF SALES, TO PROVIDE FOR COURT HEARINGS AND PROCEDURES FOR FORFEITED ITEMS, AND TO MAKE CONFORMING CHANGES.

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

SECTION 1. Section 44-53-520(a) of the 1976 Code is amended to read:

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

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

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

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

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

~~(5)~~(3) all books, records, and research products and materials, including formulas, microfilm, tapes, and data ~~which~~ that are used~~, or which have been positioned for use,~~ in violation of this article;

~~(6)~~(4) 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 the distribution, manufacturing, or trafficking of an unlawful substance ~~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)~~(5) all property including, but not limited to, monies, negotiable instruments, securities, or other things of value furnished, received, or intended to be furnished or received 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)~~(6) all monies seized in close proximity to forfeitable controlled substances, drug manufacturing, or distributing paraphernalia, provided that there is probable cause that such monies were obtained or used to facilitate unlawful activity involving the forfeitable controlled substances and provided that mere presence is insufficient ~~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.”

SECTION 2. Section 44-53-530 of the 1976 Code is amended to read:

“Section 44-53-530. (a)(1) 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 non-jury 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~~ fifteen days of 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 and any criminal charges associated with the seized property.

(2) Any forfeiture may be effected by a 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, that are entitled to notice under this section, except lienholders and agencies, consent to the forfeiture. The consent order must set forth the facts upon which the seizure was made. The consent order must describe the property and include the names of all owners of record and lienholders of record. Consent orders 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 and any criminal charges associated with the seized property. Disposition of the property may be accomplished by the 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 of the proceeds of property and cash forfeited by a consent order must be disposed of as provided in subsection (d) of this section.

(3) 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. An initial hearing must be scheduled within sixty days of the filing of a petition. At the initial hearing, the judge shall review the petition and any affidavits presented and determine if the seizure is appropriate pursuant to this article. The judge may dismiss the petition, enter a default judgment confirming forfeiture, or continue the matter for a non-jury trial proceeding. 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.

(4)(a) ~~The judge shall determine whether the property is subject to forfeiture and order the forfeiture confirmed.~~ If the judge finds or confirms 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.

(b) If there is a dispute as to the allocation 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)~~(d) of this section.

(5) All property, conveyances, and equipment not 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 Department of Administration.

(6) 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) 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 of the Department of Administration 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) of this section. The Division of General Services of the Department of Administration may authorize payment of like expenses in cases where monies, negotiable instruments, or securities are seized and forfeited.

(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) ~~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) of this section.~~

~~(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 monies, 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 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)~~(e)(1) 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.

(2) 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.

(3) 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.

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

~~(j)~~(h)(1) 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.

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

~~(k)~~(i) 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 3. This act takes effect upon approval by the Governor.

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