

SECOND REGULAR SESSION

# HOUSE BILL NO. 2295

98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE PARKINSON.

5195H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 513.607, 513.615, and 513.623, RSMo, and to enact in lieu thereof three new sections relating to the criminal activity forfeiture act, with a penalty provision.

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

Section A. Sections 513.607, 513.615, and 513.623, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 513.607, 513.615, and 513.623, to read as follows:

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

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

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

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

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

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

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

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

47           7. After the petition is filed or the seizure effected, whichever is later, every person  
48 known to have or claim an interest in the property shall be served, if not previously served, with  
49 a copy of the petition and a notice of seizure in the manner provided by the Missouri rules of

50 court and rules of civil procedure. Service by publication may be ordered upon any party whose  
51 whereabouts cannot be determined or if there be unknown parties.

52 8. The prosecuting attorney or attorney general to whom the seizure is reported shall  
53 report annually by January thirty-first for the **five** previous calendar [year] **years** all seizures.  
54 Such report shall include the date, time, and place of seizure, the property seized, the estimated  
55 value of the property seized, the person or persons from whom the property was seized, the  
56 criminal charges filed, [and] the **initial** disposition of the seizure, [forfeiture] **any changes in**  
57 **disposition for previously reported seizures, a full accounting of all completed forfeitures,**  
58 **and a final accounting of all connected** criminal actions. The report shall be made to the  
59 director of the Missouri department of public safety and shall be considered an open record. The  
60 prosecuting attorney or attorney general shall submit a copy of the report to the state auditor at  
61 the time the report is made to the director of the department of public safety.

62 9. The state auditor shall make an annual report compiling the data received from law  
63 enforcement, prosecuting attorneys and the attorney general, and shall submit the report  
64 regarding seizures for the **five** previous calendar [year] **years** to the general assembly annually  
65 by February twenty-eighth.

66 10. Intentional or knowing failure to comply with any reporting requirement contained  
67 in this section shall be a class A misdemeanor, punishable by a fine of up to one thousand  
68 dollars.

513.615. **1.** The interest of an innocent party in the property shall not be subject to  
2 forfeiture. An "innocent party" is one who did not have actual knowledge that the property was  
3 used or intended for use in the course of, derived from or realized through a criminal activity.  
4 Any innocent party shall have a right or claim to forfeited property or to the proceeds derived  
5 therefrom superior to any right or claim the state or the county has in the same property or  
6 proceeds. To enforce such a claim, the innocent party must intervene in the forfeiture proceeding  
7 prior to its final disposition; except that, with respect to any property for which the state  
8 maintains records of ownership, if the certificate of title, the official records or other evidence  
9 of ownership indicates the existence of a lien on the seized property or the ownership of the  
10 property by someone other than the defendant, the named lienholder or owner shall be a  
11 necessary party to the action commenced under this section unless the party has by affidavit  
12 released the lien. The lienholder or owner shall have no obligation to intervene to protect his  
13 rights, but the court shall determine the validity of the lien.

14 **2. In all cases where an intervening party invokes a claim of innocence on his or her**  
15 **interest in the property, the burden of proof shall be on the state to prove by a**  
16 **preponderance of the evidence that the intervening party does not meet the definition of**  
17 **an innocent party under this section.**

513.623. The clear proceeds of any sale, **including the sale of any forfeited property**  
2 **received by a state or local agency from another jurisdiction**, or disposition after satisfaction  
3 of the interest of any innocent party and after payment of the reasonable costs of the CAFA  
4 proceeding, including reasonable storage costs as assessed by the court, if any, shall be  
5 distributed pursuant to Section 7 of Article IX of the Constitution of the State of Missouri.

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