

Amendment No. 1 to SB0316

Kelsey
Signature of Sponsor

AMEND Senate Bill No. 316*

House Bill No. 421

by deleting all the language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 40-33-203, is amended by adding the following language as a new subsection (e):

(1) After the seizure of any personal property subject to forfeiture pursuant to § 40-33-201, where the owner of the property is not present at the time of the seizure, regardless of whether an arrest has been made, the seizing officer shall, within five (5) business days of the date of seizure, mail to the owner by return receipt requested mail, at the owner's last known address as determined from public records of titles, registrations, or other recorded documents or information provided by the person in possession, a notice entitled "Notice of Forfeiture Warrant Hearing". The notice shall contain the following:

(A) The date, time, and court in which the seizing officer will be seeking a forfeiture warrant against the property pursuant to § 40-33-204;

(B) A statement that the owner is entitled to appear in court at the stated date and time to contest the issuance of a forfeiture warrant against the seized property and that this hearing shall be civil in nature pursuant to § 40-33-204(b);

(C) A statement that if the owner does not appear in court, a forfeiture warrant may be issued and the property subject to the forfeiture process set forth in title 40, chapter 33, part 2, and as stated in the Notice of Seizure; and

(D) A copy of the Notice of Seizure.

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(2) If an owner cannot be determined from public records of titles, registrations, or other recorded documents or information provided by the person in possession, the officer shall document the attempts made to determine the owner and include the documentation with any application for forfeiture warrant for the judge to review.

SECTION 2. Tennessee Code Annotated, Section 40-33-204(b), is amended by deleting the last sentence of subdivision (b)(2) and substituting instead the following:

Except as provided in subdivision (b)(4), the hearing on the application for a forfeiture warrant shall be ex parte and based upon the application, the affidavit, and any testimony as may be required in this section.

SECTION 3. Tennessee Code Annotated, Section 40-33-204(b), is further amended by redesignating the current subdivision (b)(3) as subdivision (b)(3)(A) and adding the following subdivisions:

(B) The time period for seeking an ex parte forfeiture warrant under subdivision (b)(2) shall not apply to forfeiture warrant hearings under this subdivision (b)(3).

(C) Except as provided in subdivision (b)(4), if the person in possession at the time of the seizure does not appear at the hearing and has received notice of the hearing, then the court shall review the application for a forfeiture warrant ex parte as provided in subdivision (b)(2).

SECTION 4. Tennessee Code Annotated, Section 40-33-204(b)(4), is amended by deleting the subdivision and substituting instead the following language:

(4)

(A) If the owner of the property is not present at the time of the seizure, regardless of whether an arrest is made, the officer making the seizure shall present to the court, at the date and time specified on the notice of forfeiture warrant hearing, the application for a forfeiture warrant, the affidavit in support, the notice of seizure, and the notice of forfeiture warrant hearing for both the person in possession, if no arrest was made, and the owner of the property.

(B) The time period for seeking an ex parte forfeiture warrant under subdivision (b)(2) shall not apply to forfeiture warrant hearings under this subdivision (b)(4).

(C) The owner of the property must be given reasonable notice of the forfeiture warrant hearing; however, a forfeiture warrant hearing under this subdivision (b)(4) shall be held within forty-five (45) days after the date of seizure.

(D) At the hearing on the forfeiture warrant application, the court shall:

(i) Review the application for a forfeiture warrant and the affidavit in support and take testimony from the seizing officer regarding the probable cause to issue a forfeiture warrant, including any testimony as may be required in this section;

(ii) Review any evidence presented by and take testimony from the person in possession at the time of the seizure, if present, regarding why no probable cause exists to issue a forfeiture warrant; and

(iii) Review any evidence presented by and take testimony from the owner of the property, if present, regarding why no probable cause exists to issue a forfeiture warrant.

(E) If neither the person in possession at the time of the seizure, if no arrest was made, nor the owner of the property appear at the hearing and the

person in possession and the owner have received notice of the hearing, the court shall review the application for a forfeiture warrant ex parte as provided in subdivision (b)(2).

SECTION 5. Tennessee Code Annotated, Section 40-33-204(b)(5), is amended by deleting the language "the seizing officer and person in possession" and substituting instead the language "the seizing officer, owner of the property, and person in possession".

SECTION 6. Tennessee Code Annotated, Section 40-33-204, is amended by adding the following as a new subsection (j):

(1) The seizing agency shall, within five (5) business days of receipt of any forensic chemistry report regarding any alleged controlled substances or controlled substance analogues that are the basis of the seizure, send a copy of the forensic chemistry report to the applicable agency.

(2) If the forensic chemistry report shows that the alleged controlled substances that are the basis of the seizure are not controlled substances or controlled substance analogues, and those substances were the sole basis for the seizure, the applicable agency, within five (5) business days of receipt, shall submit an order dismissing the case, or the portion of the case based on the alleged controlled substances or controlled substance analogues, to the administrative law judge or the administrative head of the applicable agency.

(3) If the property is not needed for evidence in a criminal proceeding, or is not subject to other forfeiture proceedings, the seizing agency shall make the property available to the owner, as determined from public records of titles, registrations, or other recorded documents, or if the owner cannot be determined, to the person in possession of the property at the time of seizure, within five (5) business days of receipt from the applicable agency of the signed order of dismissal under subdivision (j)(2). A seizing

agency that fails to make the property available as required by this subdivision (j)(3) may be considered to be acting in bad faith under § 40-33-215.

SECTION 7. Tennessee Code Annotated, Section 40-33-204, is further amended by adding the following as a new subsection (k):

(k) In any forfeiture warrant hearing, there shall be a rebuttable presumption that currency seized, for which a person has claimed ownership, is not subject to forfeiture absent evidence to the contrary. The burden to rebut the presumption is on the seizing officer.

SECTION 8. Tennessee Code Annotated, Section 40-33-213, is amended by adding the following new subsection (d):

(d) If the reviewing court reverses the final order of the applicable agency and orders the return of seized property, the court shall also order the payment of attorney's fees incurred during the administrative proceeding, in the same manner provided and subject to the limits found in § 40-33-217, and any reasonable attorney's fees incurred during the appeal.

SECTION 9. Tennessee Code Annotated, Title 40, Chapter 33, Part 2, is amended by adding the following language as a new section:

40-33-217.

(a) Upon entering an initial order which includes a return of property, in whole or in part, the administrative law judge shall also include an award of attorney's fees against the seizing agency subject to the limits in subsection (c).

(b) No award of attorney's fees against a seizing agency shall be entered when the initial order is the result of a settlement between the parties.

(c) No award of attorney's fees under this section shall exceed the lesser of the following, as may be applicable to the case:

(1) Twenty-five percent (25%) of the National Automobile Dealers Association rough trade-in value of any motor vehicle seized and returned;

(2) Twenty-five percent (25%) of the value of any currency seized and returned;

(3) Twenty-five percent (25%) of the reasonable replacement value of any miscellaneous personal property seized and returned;

(4) Three thousand dollars (\$3,000); or

(5) If multiple types of property are returned, a combination of the amounts in subdivisions (c)(1)-(3), provided that the total amount of attorney's fees awarded shall not exceed three thousand dollars (\$3,000).

(d) The award of attorney's fees shall be appealable in the same manner as an initial order under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(e) Compensation shall not be awarded to an attorney whose fees are paid under any federally funded legal services program, or any such program funded by the state. However, compensation shall be determined and allowed in accordance with subsection (f) to an attorney employed in a privately or publicly funded nonprofit public interest law firm or corporation if neither the attorney, the law firm, nor the corporation received, or is entitled to receive, compensation for filing the claim on behalf of the claimant under any federal or state statute or rule other than this section.

(f) Notwithstanding § 4-5-325 or any other law to the contrary, this section shall be the exclusive means for seeking attorney's fees from the seizing agency for proceedings conducted under this part. This section does not prohibit a person who files an action pursuant to § 40-33-215 from seeking attorney's fees for that specific action.

(g) For the purposes of this section, "seizing agency" means the agency that issued the Notice of Seizure pursuant to § 40-33-203.

(h) Notwithstanding § 40-33-211, § 53-11-201, or any other law, funds forfeited to a seizing agency under this part may be used to pay attorney's fees ordered under this section.

SECTION 10. Tennessee Code Annotated, Section 40-33-204, is further amended by deleting subdivision (c)(3) and adding the following language to the end of subsection (a):

Magistrates and judicial commissioners shall not issue forfeiture warrants.

SECTION 11. This act shall be known and may be cited as the "Asset Forfeiture and Disposition of Seized Property Act."

SECTION 12. This act shall take effect July 1, 2017, the public welfare requiring it.