

SENATE BILL 1494

By Green

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 11, Part 7; Title 40, Chapter 33 and Title 53, Chapter 11, relative to asset forfeiture.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-33-201, is amended by designating the existing language as subsection (a) and by adding the following new language:

(b) Except for seized controlled substances, forfeiture of real or personal property pursuant to this part shall not be ordered unless:

(1) The owner of the property has been convicted of a criminal offense related to the seized property; and

(2) The property, in turn, has been found by clear and convincing evidence, in a hearing conducted pursuant to § 40-33-210, to have been used or possessed illegally.

(c) This section does not prohibit property from being forfeited pursuant to a plea agreement between the state and the defendant, subject to approval by the court, or pursuant to a settlement agreement made in accordance with § 40-33-212; provided, that the owner has given written, informed consent acknowledging that a conviction is required for a hearing officer to order forfeiture and that the owner waives the right to a hearing.

(d) Subdivision (b)(1) shall not apply if the owner of the property:

(1) Is deported;

(2) Is unknown, after the seizing agency has exercised due diligence and good faith in attempting to determine the owner; or

(3) Flees after prosecution is commenced.

SECTION 2. Tennessee Code Annotated, Section 40-33-204(c)(1)(A), is amended by deleting the subdivision and substituting instead the following:

(A) The property is subject to forfeiture; provided, that a conviction is not required prior to the issuance of a forfeiture warrant; and

SECTION 3. Tennessee Code Annotated, Section 40-33-206(c), is amended by deleting the language "If a claim or proof of a security interest is not filed" and substituting instead the language "If proof of a security interest is not filed".

SECTION 4. Tennessee Code Annotated, Section 40-33-207(a), is amended by deleting the subsection and substituting instead the following:

(a)

(1) If a claim is filed, then the applicable agency shall establish a hearing date and set the case on the docket within thirty (30) days from the day the claim is filed.

(2) If a claim is not filed and the owner of the property is known, then the applicable agency shall establish a hearing date and set the case on the docket within thirty (30) days from the day that the agency becomes aware the owner has:

(A) Been convicted of an offense related to the seizure;

(B) Been deported; or

(C) Fleed after the commencement of prosecution.

(3) If a claim is not filed and the owner of the property remains unknown after the agency has exercised due diligence and good faith in attempting to determine the owner, then the seized property shall be forfeited and disposed of as provided by law.

SECTION 5. Tennessee Code Annotated, Section 40-33-210(a), is amended by deleting the language "the state shall have the burden to prove by a preponderance of

evidence" and substituting instead the language "the state shall have the burden to prove by clear and convincing evidence".

SECTION 6. Tennessee Code Annotated, Section 40-33-210(b), is amended by adding the following new subdivision:

(3) Notwithstanding that the hearing officer found that the state carried its burden of proof and recommended forfeiture of the property, forfeiture of the property shall not be authorized until the state proves by clear and convincing evidence that the owner of the property has been convicted of a criminal offense or that the owner has:

(A) Been deported; or

(B) Fled after the commencement of prosecution.

SECTION 7. Tennessee Code Annotated, Section 40-33-213(a), is amended by deleting the language "shall use the preponderance of the evidence standard" and substituting instead the language "shall use the clear and convincing evidence standard".

SECTION 8. Tennessee Code Annotated, Section 40-33-107(4), is amended by deleting the language "the state shall have the burden of proving by a preponderance of the evidence" and substituting instead the language "the state shall have the burden of proving by clear and convincing evidence".

SECTION 9. Tennessee Code Annotated, Section 40-33-108(a), is amended by deleting the subsection and substituting instead the following:

(a) Whenever in any proceeding under this part, a claim is filed for any conveyance, the court shall allow the claim if:

(1) The claimant proves by a preponderance of the evidence that the claimant has an interest in the conveyance, as owner or otherwise, which the claimant acquired in good faith; and

(2) The state fails to prove by clear and convincing evidence that the claimant had knowledge or reason to believe the conveyance was used in the commission of an offense identified in § 40-33-101(a).

SECTION 10. This act shall take effect July 1, 2016, the public welfare requiring it.