

SECOND REGULAR SESSION

# SENATE BILL NO. 611

90TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS GOODE AND SCHNEIDER.

Pre-filed December 1, 1999, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3024S.011

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## AN ACT

To repeal sections 513.605 and 513.647, RSMo 1994, relating to forfeitures, and to enact in lieu thereof two new sections relating to the same subject.

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

Section A. Sections 513.605 and 513.647, RSMo 1994, are repealed and two new sections enacted in lieu thereof, to be known as sections 513.605 and 513.647, to read as follows:

513.605. As used in sections 513.600 to 513.645, unless the context clearly indicates otherwise, the following terms mean:

(1) (a) "Beneficial interest":

a. The interest of a person as a beneficiary under any other trust arrangement pursuant to which a trustee holds legal or record title to real property for the benefit of such person; or

b. The interest of a person under any other form of express fiduciary arrangement pursuant to which any other person holds legal or record title to real property for the benefit of such person;

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in either a general partnership or limited partnership. A beneficial interest shall be deemed to be located where the real property owned by the trustee is located;

(2) "Civil proceeding", any civil suit commenced by an investigative agency under any provision of sections 513.600 to 513.645;

(3) "Criminal activity" is the commission, attempted commission, conspiracy to commit, or the solicitation, coercion or intimidation of another person to commit any crime which is chargeable by indictment or information under the following Missouri laws:

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

- (a) Chapter 195, RSMo, relating to drug regulations;
- (b) Chapter 565, RSMo, relating to offenses against the person;
- (c) Chapter 566, RSMo, relating to sexual offenses;
- (d) Chapter 568, RSMo, relating to offenses against the family;
- (e) Chapter 569, RSMo, relating to robbery, arson, burglary and related offenses;
- (f) Chapter 570, RSMo, relating to stealing and related offenses;
- (g) Chapter 567, RSMo, relating to prostitution;
- (h) Chapter 573, RSMo, relating to pornography and related offenses;
- (i) Chapter 574, RSMo, relating to offenses against public order;
- (j) Chapter 575, RSMo, relating to offenses against the administration of justice;
- (k) Chapter 491, RSMo, relating to witnesses;
- (l) Chapter 572, RSMo, relating to gambling;
- (m) Chapter 311, RSMo, but relating only to felony violations of this chapter committed

by persons not duly licensed by the supervisor of liquor control;

- (n) Chapter 571, RSMo, relating to weapons offenses;
- (o) Chapter 409, RSMo, relating to regulation of securities;
- (p) Chapter 301, RSMo, relating to registration and licensing of motor vehicles;

(4) "Criminal proceeding", any criminal prosecution commenced by an investigative agency under any criminal law of this state;

(5) "Investigative agency", the attorney general's office, or the office of any prosecuting attorney or circuit attorney;

(6) "Pecuniary value":

(a) Anything of value in the form of money, a negotiable instrument, a commercial interest, or anything else the primary significance of which is economic advantage; or

(b) Any other property or service that has a value in excess of one hundred dollars;

(7) "Real property", any estate or legal or equitable interest in land situated in this state or any interest in such real property, including, but not limited to, any lease or deed of trust upon such real property;

**(8) "Seizure", the point at which a law enforcement officer or agent discovers and exercises any type of control over property which the officer or agent has reason to believe was used or intended for use in the course of, derived from, or realized through criminal activity;**

**[(8)] (9)** (a) "Trustee":

a. Any person who holds legal or record title to real property for which any other person has a beneficial interest; or

b. Any successor trustee or trustees to any of the foregoing persons;

(b) "Trustee" does not include the following:

a. Any person appointed or acting as a personal representative under chapter 475, RSMo, or under chapter 473, RSMo;

b. Any person appointed or acting as a trustee of any testamentary trust or as trustee of any indenture of trust under which any bonds are or are to be issued.

513.647. 1. **A state or local law enforcement agency may transfer property seized by the state or local agency to any federal agency for the limited purpose of completing a criminal investigation, upon approval of the prosecuting attorney of the county in which the property was seized. The state shall retain jurisdiction over the property for any forfeiture proceeding, unless transfer for forfeiture under federal law is conducted pursuant to subsection 2 of this section.**

2. No state or local law enforcement agency may transfer any property seized by the state or local agency to any federal agency for forfeiture under federal law until the prosecuting attorney and the circuit judge of the county in which the property was seized first review the seizure and approve the transfer to a federal agency. The prosecuting attorney and the circuit judge shall not approve any transfer unless it reasonably appears the activity giving rise to the investigation or seizure involves more than one state or [the nature of the investigation or seizure would be better pursued under federal forfeiture statutes] **will result in a federal criminal prosecution**. No transfer shall be made to a federal agency unless the violation would be a felony under Missouri law or federal law.

[2.] 3. Prior to transfer, in an ex parte proceeding, the prosecuting attorney shall file with the court a statement setting forth the facts and circumstances of the event or occurrence which led to the seizure of the property and the parties involved, if known. The court shall certify the filing, and notify by mailing to the last known address of the property owner that his property is subject to being transferred to the federal government and further notify the property owner of his right to file a petition stating legitimate grounds for challenging the transfer. If within ninety-six hours after the filing of the statement by the prosecuting attorney, the property owner by petition shows by a preponderance of the evidence that the property should not be transferred to the federal government for forfeiture, the court shall delay such transfer until a hearing may be held. If the court orders a delay in transfer, no later than ten days after the filing of a petition under this section and sections 513.649 and 513.651, a hearing shall be held unless the court deems, for good cause shown, that a continuance should be granted. At the hearing, if the prosecutor has proved by a preponderance of the evidence that the investigation or seizure involved more than one state or that the nature of the investigation or seizure would be better pursued under the federal forfeiture statutes, the court shall order that the transfer shall be made.