

SECOND REGULAR SESSION

SENATE BILL NO. 1208

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODMAN.

Read 1st time February 27, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

5282S.011

AN ACT

To repeal sections 513.600, 513.605, 513.607, 513.610, 513.612, 513.615, 513.617, 513.620, 513.623, 513.625, 513.630, 513.635, 513.637, 513.640, 513.645, 513.647, 513.649, 513.651, and 513.653, RSMo, and to enact in lieu thereof twenty-five new sections relating to criminal forfeiture, with penalty provisions.

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

Section A. Sections 513.600, 513.605, 513.607, 513.610, 513.612, 513.615, 513.617, 513.620, 513.623, 513.625, 513.630, 513.635, 513.637, 513.640, 513.645, 513.647, 513.649, 513.651, and 513.653, RSMo, are repealed and twenty-five new sections enacted in lieu thereof, to be known as sections 546.2000, 546.2003, 546.2006, 546.2009, 546.2012, 546.2015, 546.2018, 546.2021, 546.2024, 546.2027, 546.2030, 546.2033, 546.2036, 546.2039, 546.2042, 546.2045, 546.2048, 546.2051, 546.2054, 546.2057, 546.2060, 546.2063, 546.2066, 546.2069, and 546.2072, to read as follows:

546.2000. As used in sections 546.2000 to 546.2072, the following terms shall mean:

(1) "Attorney for the state", any prosecuting or circuit attorney authorized to investigate, commence, and prosecute an action under sections 546.2000 to 546.2072;

(2) "Conveyance", includes any vehicle, trailer, vessel, aircraft, or other means of transportation;

(3) "Interest holder", a secured party within the meaning of the Uniform Commercial Code, a mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to an

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

11 **interest in property, whose interest would be perfected against a good**
12 **faith purchaser for value. A person who holds property for the benefit**
13 **of or as an agent or nominee for another person, or who is not in**
14 **substantial compliance with any statute requiring an interest in**
15 **property to be recorded or reflected in public records in order to**
16 **perfect the interest against a good faith purchaser for value, is not an**
17 **interest holder;**

18 **(4) "Omission", the failure to perform an act that is required by**
19 **law;**

20 **(5) "Owner", a person, other than an interest holder, who has an**
21 **interest in property. A person who holds property for the benefit of or**
22 **as an agent or nominee for another person, or who is not in substantial**
23 **compliance with any statute requiring an interest in property to be**
24 **recorded or reflected in public records in order to perfect the interest**
25 **against a good faith purchaser for value, is not an owner;**

26 **(6) "Proceeds", property acquired directly or indirectly from,**
27 **produced through, realized through, or caused by an act or omission**
28 **and includes any property of any kind without reduction for expenses**
29 **incurred for acquisition, maintenance, production, or any other**
30 **purpose;**

31 **(7) "Property", anything of value, which includes any interest in**
32 **property, including any benefit, privilege, claim, or right with respect**
33 **to anything of value, whether real or personal, tangible or intangible;**

34 **(8) "Regulated interest holder", an interest holder that is a**
35 **business authorized to do business in this state and is under the**
36 **jurisdiction of an appropriate state or federal regulatory agency or**
37 **agencies relating to banking, securities, insurance, and real estate;**

38 **(9) "Seizing agency", any department or agency of this state or its**
39 **political subdivisions that regularly employs law enforcement officers,**
40 **and that employs the law enforcement officer who seizes property for**
41 **forfeiture, or such other agency as the agency or department may**
42 **designate by its chief executive officer or their designee;**

43 **(10) "Seizure for forfeiture", seizure of property by a law**
44 **enforcement officer, including a constructive seizure, accompanied by**
45 **an assertion by the seizing agency or by an attorney for the state that**
46 **the property is seized for forfeiture, in accordance with section**
47 **546.2015.**

546.2003. 1. The judicial circuit court where actual or
2 constructive seizure of the property occurs has jurisdiction under
3 sections 546.2000 to 546.2072 over:

4 (1) All interests in property if the property for which forfeiture
5 is sought is within this state at the time the action is filed; and

6 (2) The interest of an owner or interest holder in the property if
7 the owner or interest holder is subject to personal jurisdiction in this
8 state.

9 2. In addition to the venue provided for under state law or any
10 other provision of law, a proceeding for forfeiture under sections
11 546.2000 to 546.2072 may be maintained in the judicial circuit in which
12 any part of the property is found or in the judicial circuit in which a
13 civil or criminal action could be maintained against an owner or
14 interest holder for the conduct alleged to give rise to the forfeiture. A
15 claimant or defendant may obtain a change of venue if there exists so
16 great a prejudice against the party that such party cannot obtain a fair
17 and impartial trial.

546.2006. The following conduct gives rise to forfeiture whether
2 or not there is a prosecution or conviction related to the conduct:

3 (1) An act or omission occurring in this state punishable as a
4 felony or misdemeanor;

5 (2) An act or omission occurring outside this state, that would be
6 punishable as a felony or misdemeanor in the place of occurrence and
7 would be described in subdivision (1) of this section if the act or
8 omission occurred in this state; or

9 (3) An act or omission committed in furtherance of any act or
10 omission described in subdivision (1) of this section and is punishable
11 as a felony or misdemeanor including any inchoate or preparatory
12 offense.

546.2009. The following property is subject to seizure and
2 forfeiture:

3 (1) All controlled substances in section 195.017, RSMo, raw
4 materials, controlled substance analogs, counterfeit substances,
5 imitation controlled substances, that have been manufactured,
6 distributed, dispensed, possessed, or acquired in violation of the laws
7 of this state;

8 (2) (a) All property, except as provided in paragraph (b) of this

9 subdivision, including the whole of any lot or tract of land and any
10 appurtenances or improvements to real property that is either:

11 a. Furnished or intended to be furnished by any person in an
12 exchange that constitutes conduct giving rise to forfeiture; or

13 b. Used or intended to be used in any manner or part to facilitate
14 conduct giving rise to forfeiture;

15 (b) If the only conduct giving rise to forfeiture is possession of
16 controlled substances solely for personal consumption:

17 a. Real property is not subject to forfeiture; and

18 b. Other property subject to forfeiture under subparagraph b. of
19 paragraph (a) of subdivision (2) of this section may be forfeited only
20 under section 546.2039;

21 (3) All proceeds of any conduct giving rise to forfeiture;

22 (4) All weapons possessed, used, or available for use in any
23 manner to facilitate conduct giving rise to forfeiture;

24 (5) Any interest or security in, claim against, or property or
25 contractual right of any kind affording a source of control over any
26 enterprise that a person has established, operated, controlled,
27 conducted, or participated in the conduct of, through conduct giving
28 rise to forfeiture; and

29 (6) Any property of a person up to the value of property either:

30 (a) Described in subdivision (2) of this section that the person
31 owned or possessed for the purpose of a use described in subdivision
32 (2) of this section; or

33 (b) Described in subdivision (3) of this section and is proceeds
34 of conduct engaged in by the person or for which the person is
35 criminally responsible;

36 Property described in this subdivision may be seized for forfeiture
37 under a constructive seizure or an actual seizure under section
38 546.2015. Actual seizure may only be done under a seizure warrant
39 issued on showings, in addition to the showing of probable cause for
40 the forfeiture of the subject property, that the subject property is not
41 available for seizure for reasons described in subsection 1 of section
42 546.2042, and that the value of the property to be seized is not greater
43 than the total value of the subject property, or under a constructive
44 seizure. If property of a defendant up to the total value of all interests
45 in the subject property is not seized prior to final judgment in an

46 action under this section, the remaining balance shall be ordered
47 forfeited as a personal judgment against the defendant;

48 (7) Any abandoned or unclaimed property that a law
49 enforcement officer comes into contact with during the performance of
50 his or her official duties.

546.2012. 1. All property, including all interests in property,
2 described in section 546.2009 is subject to forfeiture, except that
3 property is exempt from forfeiture:

4 (1) If the owner or interest holder acquired the property before
5 or during the conduct giving rise to its forfeiture, and:

6 (a) Did not know and could not reasonably have known of the act
7 or omission or that it was likely to occur; or

8 (b) Acted reasonably to prevent the conduct giving rise to
9 forfeiture; or

10 (2) If the owner or interest holder acquired the property after
11 the conduct giving rise to its forfeiture, including acquisition of
12 proceeds of conduct giving rise to forfeiture, and acquired the property
13 in good faith, for value and did not knowingly take part in an illegal
14 transaction.

15 2. Notwithstanding subsection 1 of this section, property is not
16 exempt from forfeiture, even though the owner or interest holder
17 lacked knowledge or reason to know that the conduct giving rise to its
18 forfeiture had occurred or was likely to occur, if:

19 (1) The person whose conduct gave rise to its forfeiture had the
20 authority to convey the property of the person claiming the exemption
21 to a good faith purchaser for value at the time of the conduct;

22 (2) The owner or interest holder is criminally responsible for the
23 conduct giving rise to its forfeiture, whether or not there is a
24 prosecution or plea or finding of guilt; or

25 (3) The owner or interest holder acquired the property with
26 notice of its actual or constructive seizure for forfeiture under section
27 546.2015, or with reason to believe that it was subject to forfeiture
28 under sections 546.2000 to 546.2072.

546.2015. 1. Property may be seized for forfeiture by law
2 enforcement officers upon process issued by any associate circuit judge
3 or circuit judge. The court may issue a seizure warrant on an affidavit
4 under oath demonstrating that probable cause exists for its forfeiture

5 or that the property has been the subject of a previous final judgment
6 of forfeiture in the courts of any state or of the United States. The
7 court may order that the property be seized on such terms and
8 conditions as are reasonable in the discretion of the court. The order
9 may be made on or in connection with a search warrant.

10 2. Property may be seized for forfeiture by law enforcement
11 officers without process on probable cause to believe that the property
12 is subject to forfeiture under sections 546.2000 to 546.2072.

13 3. The seizure of inhabited residential real property for
14 forfeiture which is accompanied by removing or excluding its residents
15 shall be done under a pre-seizure adversarial judicial determination of
16 probable cause, except that this determination may be done ex parte
17 when the attorney for the state has demonstrated exigent
18 circumstances.

19 4. Property may be seized constructively by:

20 (1) Posting notice of seizure for forfeiture or notice of pending
21 forfeiture on the property;

22 (2) Giving notice under section 546.2021; and

23 (3) Filing or recording in the public records relating to that type
24 of property notice of seizure for forfeiture, notice of pending forfeiture,
25 a forfeiture lien or a lis pendens. Filings or recordings made under
26 this subsection are not subject to a filing fee or other charge.

27 5. The seizing agency, or the attorney for the state, shall make
28 a reasonable effort to provide notice of the seizure to the person from
29 whose possession or control the property was seized. If no person is in
30 possession or control, the seizing agency may attach the notice to the
31 property or to the place of its seizure or may make a reasonable effort
32 to deliver it to the owner of the property. The notice shall contain a
33 general description of the property seized, the date and place of
34 seizure, the name of the seizing agency and the address and telephone
35 number of the seizing officer or other person or agency from whom
36 information about the seizure may be obtained.

37 6. A person who acts in good faith and in a reasonable manner
38 to comply with an order of the court or a request of a law enforcement
39 officer is not liable to any person for acts done in reasonable
40 compliance with the order or request. In addition, no inference of guilt
41 may be drawn from the fact that a person refuses a law enforcement

42 officer's request to deliver the property.

43 7. A possessory lien of a person from whose possession property
44 is seized is not affected by the seizure.

546.2018. 1. Property seized for forfeiture under sections
2 546.2000 to 546.2072 is not subject to alienation, conveyance,
3 sequestration, attachment, or a motion or order under chapter 542,
4 RSMo, relating to the return of property seized as evidence with or
5 without a search warrant.

6 2. The seizing agency or the attorney for the state may authorize
7 the release of the seizure for forfeiture on the property if forfeiture or
8 retention of actual custody is unnecessary.

9 3. An owner of property seized under sections 546.2000 to
10 546.2072 may obtain release of the property by posting with the
11 attorney for the state a surety bond or cash in an amount equal to the
12 full fair market value of the property as determined by the attorney for
13 the state. The state may refuse to release the property if:

14 (1) The bond tendered is inadequate; or

15 (2) The property is retained as contraband or as evidence; or

16 (3) It is particularly altered or designed for use in conduct
17 giving rise to forfeiture.

18 If a surety bond or cash is posted and the property is forfeited, the
19 court shall forfeit the surety bond or cash in lieu of the property.

20 4. The seizing agency, at its discretion, may release property
21 seized for forfeiture to any federal agency for use in a federal criminal
22 prosecution or forfeiture under federal law.

23 5. If property is seized under sections 546.2000 to 546.2072, the
24 attorney for the state or his designee, subject to any need to retain the
25 property as evidence, may:

26 (1) Remove the property to an appropriate place designated by
27 the seizing agency head or his designee;

28 (2) Place the property under constructive seizure;

29 (3) Remove the property to a storage area for safekeeping or, if
30 the property is a negotiable instrument or money, deposit it in an
31 interest bearing account;

32 (4) Provide for another agency or custodian, including an owner,
33 secured party, mortgagee, or lienholder, to take custody of the property
34 and service, maintain and operate it as reasonably necessary to

35 maintain its value, in any appropriate location within the jurisdiction
36 of the court; or

37 (5) Require the seizing law enforcement agency to take custody
38 of the property and remove it to an appropriate location for disposition
39 in accordance with law.

40 6. As soon as practicable after seizure for forfeiture, the seizing
41 agency shall conduct a written inventory and estimate the value of the
42 property seized.

43 7. The court may order property which has been seized for
44 forfeiture sold, leased, rented, or operated to satisfy a specified interest
45 of any interest holder, or to preserve the interests of any party, on
46 motion of such party. The court may enter orders under this subsection
47 after notice to persons known to have an interest in the property, and
48 an opportunity for a hearing, if the interest holder:

49 (1) Has timely filed a proper claim and is a regulated interest
50 holder; or

51 (2) Has an interest which the attorney for the state has
52 stipulated is exempt from forfeiture.

53 8. A sale may be ordered under subsection 7 of this section when
54 the property is liable to perish, to waste, or to be foreclosed or
55 significantly reduced in value, or when the expenses of maintaining the
56 property are disproportionate to its value. A third party designated by
57 the court shall dispose of the property by commercially reasonable
58 public sale and distribute the proceeds in the following order of
59 priority:

60 (1) For the payment of reasonable expenses incurred in
61 connection with the sale or disposal;

62 (2) For the satisfaction of exempt interests in the order of their
63 priority; and

64 (3) Any balance of the proceeds shall be preserved in the actual
65 or constructive custody of the court, in an interest bearing account,
66 subject to further proceedings under sections 546.2000 to 546.2072.

546.2021. 1. Forfeiture proceedings shall be commenced as
2 follows:

3 (1) Property seized for forfeiture shall be released on the request
4 of an owner or interest holder to his or her custody, as custodian for
5 the court, pending further proceedings under sections 546.2000 to

6 546.2072, if the attorney for the state fails:

7 (a) To file a notice of pending forfeiture against the property
8 within ninety days after seizure; or

9 (b) To file a judicial forfeiture proceeding within ninety days
10 after notice of pending forfeiture of property upon which a proper
11 claim has been timely filed.

12 (2) Within thirty days after the effective date of the notice of
13 pending forfeiture, an owner of or interest holder in the property may
14 elect to file with the attorney for the state:

15 (a) A claim under section 546.2030; or

16 (b) A petition for recognition of exemption under section
17 546.2030, except that no petition may be filed after the state commences
18 a court action.

19 (3) No extension of time for the filing of a claim shall be granted.

20 (4) If a petition is timely filed, the attorney for the state may
21 delay filing a judicial forfeiture proceeding for one hundred and eighty
22 days after the notice of pending forfeiture, and the following
23 procedures shall apply:

24 (a) The attorney for the state shall provide the seizing agency
25 and the petitioning party with a written recognition of exemption and
26 statement of nonexempt interests relating to any or all interests in the
27 property in response to each petitioning party:

28 a. Within sixty days after the effective date of the notice of
29 pending forfeiture if the petitioner is a regulated interest holder. The
30 recognition of exemption shall recognize the interest of the petitioner
31 to the extent of documented outstanding principal plus interest at the
32 contract rate until paid; or

33 b. Within one hundred twenty days after the effective date of the
34 notice of pending forfeiture for all other petitioners;

35 (b) An owner or interest holder in any property declared
36 nonexempt may file a claim under section 546.2030 within thirty days
37 after the effective date of the notice of the recognition of exemption
38 and statement of nonexempt interest;

39 (c) If no petitioning party timely files a proper claim under
40 subdivision (4) of this subsection, the recognition of exemption and
41 statement of nonexempt interests becomes final, and the attorney for
42 the state shall proceed as provided in sections 546.2045 and 546.2048;

43 (d) The attorney for the state may elect to proceed herein for
44 judicial forfeiture at any time;

45 (e) If a judicial forfeiture proceeding follows the application of
46 procedures in this paragraph:

47 a. No duplicate or repetitive notice is required. If a proper claim
48 has been timely filed under paragraph (b) of subdivision (4) of this
49 subsection, the claim shall be determined in a judicial forfeiture
50 proceeding after the commencement of such a proceeding under
51 sections 546.2036, 546.2039, and 546.2042;

52 b. The proposed recognition of exemption and statement of
53 nonexempt interests responsive to all petitioning parties who
54 subsequently filed claims are void and will be regarded as rejected
55 offers to compromise.

56 (5) If no proper petition for recognition of exemption or proper
57 claim is timely filed, the attorney for the state shall proceed as
58 provided in sections 546.2045 and 546.2048.

59 2. (1) Notice of pending forfeiture, service of an in rem
60 complaint or notice of a recognition of exemption and statement of
61 nonexempt interests required under sections 546.2000 to 546.2072, shall
62 be given in accordance with one of the following:

63 (a) If the owner's or interest holder's name and current address
64 are known, by either personal service by any person qualified to serve
65 process or by any law enforcement officer or by mailing a copy of the
66 notice by certified mail, return receipt requested, to that address.

67 (b) If the owner's or interest holder's name and address are
68 required by law to be on record with the county recorder, secretary of
69 state, department of revenue or another state or federal agency to
70 perfect an interest in the property, and the owner's or interest holder's
71 current address is not known, by mailing a copy of the notice by
72 certified mail, return receipt requested, to any address of record with
73 any of the described agencies.

74 (c) If the owner's or interest holder's address is not known and
75 is not on record as provided in paragraph (d) of subdivision (4) of
76 subsection 1 of this section, or the owner or interest holder's interest
77 is not known, by publication in one issue of a newspaper of general
78 circulation in the county in which the seizure occurred;

79 (2) Notice is effective upon the earlier of personal service,

80 publication, or the mailing of a written notice, except that notice of
81 pending forfeiture of real property is not effective until it is
82 recorded. Notice of pending forfeiture shall include a description of
83 the property, the date and place of seizure, the conduct giving rise to
84 forfeiture or the violation of law alleged, and a summary of procedures
85 and procedural rights applicable to the forfeiture action.

546.2024. 1. The attorney for the state may file, without a filing
2 fee, a lien for the forfeiture of property:

3 (1) Upon the initiation of any civil or criminal proceeding
4 relating to conduct giving rise to forfeiture under sections 546.2000 to
5 546.2072;

6 (2) Upon seizure for forfeiture; or

7 (3) In connection with a proceeding or seizure for forfeiture in
8 any other state under a state or federal statute substantially similar to
9 the relevant provisions of sections 546.2000 to 546.2072. The filing
10 constitutes notice to any person claiming an interest in the seized
11 property or in property owned by the named person.

12 2. The lienor, as soon as practical after filing a lien, shall furnish
13 to any person named in the lien a notice of the filing of the
14 lien. Failure to furnish notice under this subsection shall not
15 invalidate or otherwise affect the lien.

16 3. The lien notice shall set forth:

17 (1) The name of the person and, in the discretion of the lienor,
18 any alias, or the name of any corporation, partnership, trust, or other
19 entity, including nominees, that are owned entirely or in part, or
20 controlled by the person;

21 (2) The description of the seized property or the criminal or civil
22 proceeding that has been brought relating to conduct giving rise to
23 forfeiture under sections 546.2000 to 546.2072;

24 (3) The amount claimed by the lienor;

25 (4) The name of the court where the proceeding or action has
26 been brought; and

27 (5) The case number of the proceeding or action if known at the
28 time of filing.

29 4. The notice of forfeiture lien shall be filed in accordance with
30 the provisions of the laws of this state relating to the type of property
31 that is subject to the lien. The validity and priority of the forfeiture

32 lien shall be determined in accordance with applicable law pertaining
33 to liens.

34 5. A lien filed under this section applies to the described seized
35 property or to one named person, any aliases, fictitious names, or other
36 names, including the names of any corporation, partnership, trust, or
37 other entity, owned entirely or in part, or controlled by the named
38 person, and any interest in real property owned or controlled by the
39 named person. A separate forfeiture lien shall be filed for each named
40 person.

41 6. The notice of lien creates, upon filing, a lien in favor of the
42 lienor as it relates to the seized property or the named person or
43 related entities. The lien secures the amount of potential liability for
44 civil judgment, and, if applicable, the fair market value of seized
45 property relating to all proceedings under sections 546.2000 to 546.2072
46 enforcing the lien.

47 7. The lienor may amend or release, in whole or in part, a lien
48 filed under this section at any time by filing, without a filing fee, an
49 amended lien.

50 8. Upon entry of judgment in its favor, the state may proceed to
51 execute on the lien as provided by law.

546.2027. 1. Except as provided in subsection 2 of this section,
2 a trustee, constructive or otherwise, who has notice that a notice of
3 forfeiture lien, or a notice of pending forfeiture, or a civil forfeiture
4 proceeding has been filed against the property or against any person
5 or entity for whom the person holds title or appears as record owner,
6 shall furnish within fifteen days, to the seizing agency or the attorney
7 for the state:

8 (1) The name and address of each person or entity for whom the
9 property is held;

10 (2) The description of all other property whose legal title is held
11 for the benefit of the named person; and

12 (3) A copy of the applicable trust agreement or other instrument,
13 if any, under which the trustee or other person holds legal title or
14 appears as record owner of the property.

15 2. Subsection 1 of this section is inapplicable if:

16 (1) A trustee is acting under a recorded subdivision trust
17 agreement or a recorded deed of trust; or

18 **(2) All of the information is of record in the public records giving**
19 **notice of liens on that type of property.**

20 **3. A trustee with notice, who knowingly fails to comply with the**
21 **provisions of this section, shall be guilty of violating such provision**
22 **and may, upon a finding or plea of guilt, be sentenced to imprisonment**
23 **for not less than two but not more than five years, and shall be fined**
24 **not less than ten thousand dollars per day for each day compliance was**
25 **not made.**

26 **4. A trustee with notice, who fails to comply with subsection 1 of**
27 **this section, is subject to a civil penalty of three hundred dollars for**
28 **each day of noncompliance. The court shall enter judgment ordering**
29 **payment of three hundred dollars for each day of noncompliance from**
30 **the effective date of the notice until the required information is**
31 **furnished or the state executes its judgment lien under this section.**

32 **5. To the extent permitted by the Constitution of the United**
33 **States, the duty to comply with subsection 1 of this section shall not be**
34 **excused by any privilege or provision of law of this state or any other**
35 **state or country which authorizes or directs that testimony or records**
36 **required to be furnished under subsection 1 of this section are**
37 **privileged or confidential or otherwise may not be disclosed.**

38 **6. A trustee who furnishes information under subsection 1 of this**
39 **section is immune from civil liability for the release of the information.**

40 **7. Any employee of the seizing agency or the attorney for the**
41 **state who releases the information obtained under subsection 1 of this**
42 **section, except in the proper discharge of official duties, is guilty of a**
43 **class A misdemeanor.**

44 **8. If any information furnished under subsection 1 of this section**
45 **is offered in evidence, the court may seal that portion of the record or**
46 **may order that the information be disclosed in a designated way.**

47 **9. A judgment or an order of payment entered under this section**
48 **becomes a judgment lien against the property alleged to be subject to**
49 **forfeiture.**

546.2030. 1. Only an owner of, or interest holder in, property
2 **seized for forfeiture may file a claim, and shall do so in the manner**
3 **provided in this section. The claim shall be mailed to the seizing**
4 **agency and to the attorney for the state by certified mail, return**
5 **receipt requested, within thirty days after the effective date of notice**

6 of pending forfeiture. No extension of time for the filing of a claim
7 shall be granted.

8 2. The attorney for the state may make an opportunity to file a
9 petition for recognition of exemption available by so indicating in the
10 notice of pending forfeiture described in subsection 1 of section
11 546.2021.

12 3. The claim or petition and all supporting documents shall be
13 in affidavit form, signed by the claimant under oath, sworn to by the
14 affiant before one who has authority to administer the oath, under
15 penalty of perjury, and shall set forth:

16 (1) The caption of the proceedings and identifying number, if
17 any, as set forth on the notice of pending forfeiture or complaint, the
18 name of the claimant, and the name of the attorney for the state who
19 authorized the notice of pending forfeiture or complaint;

20 (2) The address where the claimant shall accept mail;

21 (3) The nature and extent of the claimant's interest in the
22 property;

23 (4) The date, the identity of the transferor, and the
24 circumstances of the claimant's acquisition of the interest in the
25 property;

26 (5) The specific provision of sections 546.2000 to 546.2072 relied
27 on in asserting that the property is not subject to forfeiture;

28 (6) All essential facts supporting each assertion; and

29 (7) The specific relief sought.

546.2033. 1. A judicial forfeiture proceeding under sections
2 546.2000 to 546.2072 is subject to the provisions of this section.

3 2. The court, before or after the filing of a notice of pending
4 forfeiture or complaint, and on application of the attorney for the state,
5 may:

6 (1) Enter any restraining order or injunction;

7 (2) Require the execution of satisfactory performance bonds;

8 (3) Create receiverships;

9 (4) Appoint conservators, custodians, appraisers, accountants, or
10 trustees; or

11 (5) Take any other action to seize, secure, maintain, or preserve
12 the availability of property subject to forfeiture under sections 546.2000
13 to 546.2072, including a writ of attachment or a warrant for its seizure.

14 **3. The court, after five days notice to the attorney for the state,**
15 **may issue an order to show cause to the seizing agency, for a hearing**
16 **on the sole issue of whether probable cause for forfeiture of the**
17 **property then exists if:**

18 **(1) Property is seized for forfeiture or a forfeiture lien is filed**
19 **without a previous judicial determination of probable cause, order of**
20 **forfeiture, or a hearing under subsection 4 of section 546.2039;**

21 **(2) An owner of or interest holder in the property files an**
22 **application within ten days after notice of its seizure for forfeiture or**
23 **lien, or actual knowledge of it, whichever is earlier; and**

24 **(3) The owner of, or interest holder in, the property complies**
25 **with the requirements for claims in section 546.2030. The hearing shall**
26 **be held within thirty days of the order to show cause unless continued**
27 **for good cause on motion of either party.**

28 **4. If the court finds in a hearing under subsection 3 of this**
29 **section that there is no probable cause for forfeiture of the property,**
30 **or if the state elects not to contest the issue, the property shall be**
31 **released to the custody of the applicant, as custodian for the court, or**
32 **from the lien pending the outcome of a judicial proceeding under**
33 **sections 546.2000 to 546.2072. If the court finds that probable cause for**
34 **the forfeiture of the property exists, the court shall not order the**
35 **property released.**

36 **5. All applications filed within the ten-day period prescribed by**
37 **subsection 3 of this section shall be consolidated for a single hearing**
38 **relating to each applicant's interest in the property seized for**
39 **forfeiture.**

40 **6. A person charged with a criminal offense may apply to the**
41 **court where the forfeiture proceeding is pending for the release of**
42 **property seized for forfeiture, to pay necessary expenses of the person's**
43 **criminal defense. The application may be filed at any time before final**
44 **judgment and shall satisfy the requirements under subsection 3 of**
45 **section 546.2030. The court shall hold a probable cause hearing if the**
46 **applicant establishes that:**

47 **(1) He or she has not had an opportunity to participate in a**
48 **previous adversarial judicial determination of probable cause;**

49 **(2) He or she has no access to other monies adequate for the**
50 **payment of criminal defense counsel; and**

51 **(3) The interest in property to be released is not subject to any**
52 **claim other than the forfeiture.**

53 **7. If the court finds in a hearing under subsection 6 of this**
54 **section that there is no probable cause for forfeiture of the property,**
55 **the court shall order the property released under subsection 4 of this**
56 **section. If the state does not contest the hearing, the court may release**
57 **a reasonable amount of property for the payment of the applicant's**
58 **criminal defense costs. Property that has been released by the court**
59 **and that has been paid for criminal defense services actually rendered**
60 **is exempt under sections 546.2000 to 546.2072.**

61 **8. A defendant convicted in any criminal proceeding is precluded**
62 **from later denying the essential allegations of the criminal offense of**
63 **which the defendant was convicted in any proceeding under this**
64 **section. For the purposes of this section, a conviction results from a**
65 **verdict or plea of guilty, including a plea of no contest, nolo contendere**
66 **or an Alford plea.**

67 **9. In any proceeding under sections 546.2000 to 546.2072, if a**
68 **claim is based on an exemption provided for in sections 546.2000 to**
69 **546.2072, the burden of proving the existence of the exemption is on the**
70 **claimant, and it is not necessary for the state to negate the exemption**
71 **in any application or complaint.**

72 **10. In hearings and determinations under this section, the court**
73 **may receive and consider, in making any determination of probable**
74 **cause or reasonable cause, all evidence admissible in determining**
75 **probable cause at a preliminary hearing or by a judge under section**
76 **542.276, RSMo, together with inferences therefrom.**

77 **11. The fact that money or a negotiable instrument was found in**
78 **close proximity to contraband or an instrumentality of conduct giving**
79 **rise to forfeiture shall give rise to the rebuttable presumption that the**
80 **money or negotiable instrument was the proceeds of conduct giving**
81 **rise to forfeiture or was used or intended to be used to facilitate the**
82 **conduct.**

83 **12. There shall be a rebuttable presumption that any property of**
84 **a person is subject to forfeiture under sections 546.2000 to 546.2072 if**
85 **the state establishes, by the standard of proof applicable to that**
86 **proceeding, that:**

87 **(1) The person has engaged in conduct giving rise to forfeiture;**

88 **(2) The property was acquired by the person during that period**
89 **of the conduct giving rise to forfeiture or within a reasonable time**
90 **after that period; and**

91 **(3) There was no likely source for the property other than the**
92 **conduct giving rise to forfeiture.**

93 **13. A finding that property is the proceeds of conduct giving rise**
94 **to forfeiture does not require proof that the property is the proceeds**
95 **of any particular exchange or transaction.**

96 **14. A person who acquires any property subject to forfeiture is**
97 **a constructive trustee of the property, and its fruits, for the benefit of**
98 **the state, to the extent that their interest is not exempt from forfeiture.**
99 **If property subject to forfeiture has been commingled with other**
100 **property, the court shall order the forfeiture of the mingled property**
101 **and of any fruits of the mingled property, to the extent of the property**
102 **subject to forfeiture, unless an owner or interest holder proves that**
103 **specified property does not contain property subject to forfeiture, or**
104 **that their interest in specified property is exempt from forfeiture.**

105 **15. Title to all property declared forfeited under sections**
106 **546.2000 to 546.2072 vests in this state on the commission of the conduct**
107 **giving rise to forfeiture together with the proceeds of the property**
108 **after that time. Any such property or proceeds subsequently**
109 **transferred to any person remain subject to forfeiture and thereafter**
110 **shall be ordered forfeited unless the transferee claims and establishes**
111 **in a hearing under the provisions of sections 546.2000 to 546.2072 that**
112 **the transferee's interest is exempt under section 546.2012.**

113 **16. An acquittal or dismissal in a criminal proceeding shall not**
114 **preclude civil proceedings under sections 546.2000 to 546.2072.**

115 **17. For good cause shown, on motion by the attorney for the**
116 **state, the court may stay discovery against the criminal defendant and**
117 **against the state in civil forfeiture proceedings during a criminal trial**
118 **for a related criminal indictment or information alleging the same**
119 **conduct, after making provision to prevent loss to any party resulting**
120 **from the delay. Such a stay shall not be available pending an appeal.**

121 **18. Except as otherwise provided by sections 546.2000 to**
122 **546.2072, all proceedings hereunder shall be governed by the Missouri**
123 **rules of civil procedure.**

124 **19. An action under sections 546.2000 to 546.2072 shall be**

125 consolidated with any other action or proceeding under sections
126 546.2000 to 546.2072, foreclosure, or trustee sale proceedings, relating
127 to the same property on motion of the attorney for the state, and may
128 be consolidated on motion of an owner or interest holder.

546.2036. 1. A judicial in rem forfeiture proceeding may be
2 brought by the attorney for the state in addition to, or in lieu of, civil
3 in personam forfeiture procedures and is also subject to the provisions
4 of this section. If a forfeiture is authorized by sections 546.2000 to
5 546.2072, it shall be ordered by the court in the in rem action.

6 2. An action in rem may be brought by the attorney for the state
7 under a notice of pending forfeiture or verified complaint for
8 forfeiture. The state may serve the complaint in the manner provided
9 by subsection 3 of section 546.2021, or as provided by the Missouri rules
10 of civil procedure.

11 3. Only an owner of, or an interest holder in, the property who
12 has timely filed a proper claim may file an answer in an action in
13 rem. For the purposes of this section, an owner of, or interest holder
14 in, property who has filed a claim and answer shall be referred to as a
15 claimant.

16 4. The answer shall be signed by the owner or interest holder
17 under penalty of perjury and shall be in accordance with the Missouri
18 rules of civil procedure on answers and shall also set forth all of the
19 following:

20 (1) The caption of the proceedings and identifying number, if
21 any, as set forth on the notice of pending forfeiture or complaint and
22 the name of the claimant;

23 (2) The address where the claimant shall accept mail;

24 (3) The nature and extent of the claimant's interest in the
25 property;

26 (4) The date, the identity of the transferor, and the
27 circumstances of the claimant's acquisition of the interest in the
28 property;

29 (5) The specific provision of sections 546.2000 to 546.2072 relied
30 on in asserting that it is not subject to forfeiture;

31 (6) All essential facts supporting each assertion; and

32 (7) The specific relief sought.

33 5. The answer, accompanied by a bond to the court, shall be filed

34 within twenty days after service of the civil in rem complaint. The
35 bond amount shall be the greater of two thousand five hundred dollars
36 or ten percent of the estimated value of the property as alleged in the
37 complaint, or up to a maximum of two hundred fifty thousand dollars.
38 In lieu of a cost bond, a claimant may, under penalty of perjury, move
39 the court to proceed in forma pauperis. Any funds received by the
40 court as cost bonds shall be placed in an interest-bearing account
41 pending final disposition of the case. The court shall approve sureties
42 upon condition that the claimant shall pay all costs and expenses of the
43 forfeiture proceedings as provided in section 546.2045.

44 6. The state and any claimant who has timely answered the
45 complaint may serve discovery requests on any other party at the time
46 of filing its pleadings or at any other time not less than thirty days
47 prior to the hearing. Answers or responses to the requests are due
48 within twenty days of service. Depositions may be taken after the
49 expiration of fifteen days after the filing and service of the
50 complaint. Any party may move for a summary judgment after service
51 of an answer or responsive pleading but not less than thirty days prior
52 to the hearing.

53 7. The forfeiture hearing shall be held without a jury and within
54 sixty days after service of the complaint unless continued for good
55 cause. The attorney for the state shall have the initial burden of
56 proving the property is subject to forfeiture by a preponderance of the
57 evidence. If the state proves the property is subject to forfeiture, the
58 claimant has the burden of proving that the claimant has an interest in
59 the property which is exempt from forfeiture under sections 546.2000
60 to 546.2072 by a preponderance of the evidence.

61 8. The court shall order the interest in the property returned or
62 conveyed to the claimant if the attorney for the state fails to meet the
63 state's burden or the claimant establishes by a preponderance of the
64 evidence that the claimant has an interest that is exempt from
65 forfeiture. The court shall order all other property forfeited to this
66 state and conduct further proceedings under sections 546.2045 and
67 546.2048.

546.2039. 1. A judicial in personam forfeiture proceeding
2 brought by the attorney for the state under an in personam civil action
3 alleging conduct giving rise to forfeiture is also subject to the

4 provisions of this section. If a forfeiture is authorized by sections
5 546.2000 to 546.2072, it shall be ordered by the court in the in personam
6 action. This action shall be in addition to or in lieu of in rem forfeiture
7 procedures.

8 2. The court, on application of the attorney for the state, may
9 enter any order authorized by section 546.2033, or any other
10 appropriate order to protect the state's interest in property forfeited
11 or subject to forfeiture.

12 3. The court may issue a temporary restraining order on
13 application of the attorney for the state, if the state demonstrates that:

14 (1) There is probable cause to believe that in the event of a final
15 judgment, the property involved would be subject to forfeiture under
16 the provisions of sections 546.2000 to 546.2072; and

17 (2) Provision of notice would jeopardize the availability of the
18 property for forfeiture.

19 4. Notice of the issuance of a temporary restraining order and an
20 opportunity for a hearing shall be given to persons known to have an
21 interest in the property. A hearing shall be held at the earliest possible
22 date in accordance with the Missouri rules of civil procedure and shall
23 be limited to the issues of whether:

24 (1) There is a probability that the state will prevail on the issue
25 of forfeiture;

26 (2) The failure to enter the order will result in the property
27 being destroyed, conveyed, encumbered, removed from the jurisdiction
28 of the court, concealed, or otherwise made unavailable for forfeiture;
29 and

30 (3) The need to preserve the availability of property outweighs
31 the hardship on any owner or interest holder against whom the order
32 is to be entered.

33 5. On a determination of liability of a person for conduct giving
34 rise to forfeiture under sections 546.2000 to 546.2072, the court shall:

35 (1) Enter a judgment of forfeiture of the property found to be
36 subject to forfeiture described in the complaint; and

37 (2) Authorize the attorney for the state or his or her designee or
38 any law enforcement officer to seize all property ordered forfeited
39 which was not previously seized or is not then under seizure.

40 6. Except as provided in section 546.2033, no person claiming an

41 interest in property subject to forfeiture under sections 546.2000 to
42 546.2072 may intervene in a trial or appeal of a criminal action or in an
43 in personam civil action involving the forfeiture of the property.

44 7. Following the entry of an in personam forfeiture order, the
45 attorney for the state may proceed with an in rem action to resolve the
46 remaining interests in the property. The following procedures shall
47 apply:

48 (1) The attorney for the state may give notice of pending
49 forfeiture, in the manner provided in section 546.2021, to all owners
50 and interest holders who have not previously been given notice;

51 (2) An owner of, or interest holder in, property that has been
52 ordered forfeited and whose claim is not precluded may file a claim as
53 described in section 546.2030 within thirty days after initial notice of
54 pending forfeiture or after notice under subdivision (1) of this
55 subsection, whichever is earlier;

56 (3) If the state does not recognize the claimed exemption, the
57 attorney for the state shall file a complaint and the court shall hold an
58 in rem forfeiture hearing as provided for in section 546.2036; and

59 (4) In accordance with findings made at the hearing, the court
60 may amend the order of forfeiture if it determines that any claimant
61 has established by a preponderance of the evidence that the claimant
62 has an interest in the property which is exempt under the provision of
63 section 546.2012.

546.2042. 1. The court shall order the forfeiture of any other
2 property of a person, including a claimant, up to the value of that
3 person's property found by the court to be subject to forfeiture under
4 sections 546.2000 to 546.2072, if any of the person's forfeitable property:

5 (1) Cannot be located;

6 (2) Has been transferred or conveyed to, sold to, or deposited
7 with a third party;

8 (3) Is beyond the jurisdiction of the court;

9 (4) Has been substantially diminished in value while not in the
10 actual physical custody of the court, the seizing agency, the attorney
11 for the state, or their designee;

12 (5) Has been commingled with other property that cannot be
13 divided without difficulty; or

14 (6) Is subject to any interest of another person which is exempt

15 from forfeiture under sections 546.2000 to 546.2072.

16 2. (1) The attorney for the state may institute a civil action in
17 circuit court against any person with notice or actual knowledge who
18 destroys, conveys, encumbers, removes from the jurisdiction of the
19 court, conceals, or otherwise renders unavailable property alleged to
20 be subject to forfeiture if:

21 (a) A forfeiture lien or notice of pending forfeiture has been filed
22 and notice given under section 546.2021; or

23 (b) A complaint alleging conduct giving rise to forfeiture has
24 been filed and notice given under such section 546.2021 or the Missouri
25 rules of civil procedure;

26 (2) The court shall enter a final judgment in an amount equal to
27 the value of the lien not to exceed the fair market value of the
28 property, or if there is no lien, in an amount equal to the fair market
29 value of the property, together with reasonable investigative expenses
30 and attorney fees;

31 (3) If a civil proceeding under sections 546.2000 to 546.2072 is
32 pending in court, the action shall be heard by that court.

 546.2045. 1. If notice of pending forfeiture is properly served in
2 an action in rem or in personam in which personal property is seized,
3 and no claim opposing forfeiture is filed within thirty days of service
4 of such notice, the attorney for the state shall prepare a written
5 declaration of forfeiture of the subject property to the state and
6 allocate the property according to the provisions of section 546.2048.

7 2. Within one hundred eighty days of the date of a declaration of
8 forfeiture, an owner or interest holder in property declared forfeited
9 under subsection 1 of this section may petition the court to have the
10 declaration of forfeiture set aside, after making a prima facie showing
11 that the state failed to serve proper notice as provided by subsection
12 1 of this section. Upon said showing the court shall allow the state to
13 demonstrate by a preponderance of the evidence that notice was
14 properly served. If the state fails to meet its burden of proof, the court
15 may order the declaration of forfeiture set aside. The state may then
16 proceed with judicial proceedings under sections 546.2000 to 546.2072.

17 3. Except as provided in subsection 1 of this section, if no proper
18 claims are timely filed in an action in rem, or if no proper answer is
19 timely filed in response to a complaint, the attorney for the state may

20 apply for an order of forfeiture and allocation of forfeited property
21 under section 546.2048. Upon a determination by the court that the
22 state's written application established the court's jurisdiction, the
23 giving of proper notice, and facts sufficient to show probable cause for
24 forfeiture, the court shall order the property forfeited to the state.

25 4. After final disposition of all claims timely filed in an action in
26 rem, or after final judgment and disposition of all claims timely filed
27 in an action in personam, the court shall enter an order that the state
28 has clear title to the forfeited property interest. Title to the forfeited
29 property interest and its proceeds shall be deemed to have vested in
30 the state on the commission of the conduct giving rise to the forfeiture
31 under sections 546.2000 to 546.2072.

32 5. The court, on application of the attorney for the state, may
33 release or convey forfeited personal property to a regulated interest
34 holder if:

35 (1) The attorney for the state, in his or her discretion, has
36 recognized in writing that the interest holder has an interest that is
37 exempt from forfeiture;

38 (2) The interest holder's interest was acquired in the regular
39 course of business as a regulated interest holder;

40 (3) The amount of the interest holder's encumbrance is readily
41 determinable and it has been reasonably established by proof made
42 available by the attorney for the state to the court; and

43 (4) The encumbrance held by the interest holder seeking
44 possession is the only interest exempted from forfeiture and the order
45 forfeiting the property to the state transferred all of the rights of the
46 owner prior to forfeiture, including rights to redemption, to the state.

47 6. After the court's release or conveyance under subsection 3 of
48 this section, the interest holder shall dispose of the property by a
49 commercially reasonable public sale. Within ten days of disposition the
50 interest holder shall tender to the state the amount received at
51 disposition less the amount of the interest holder's encumbrance and
52 reasonable expenses incurred by the interest holder in connection with
53 the sale or disposal. For the purposes of this section, "commercially
54 reasonable" shall be a sale or disposal that would be commercially
55 reasonable as defined under the Uniform Commercial Code.

56 7. On order of the court or declaration of forfeiture forfeiting the

57 subject property, the state may transfer good and sufficient title to any
58 subsequent purchaser or transferee. The title shall be recognized by all
59 courts and agencies of this state, and any political subdivision. On
60 entry of judgment in favor of a person claiming an interest in the
61 property that is subject to forfeiture proceedings under sections
62 546.2000 to 546.2072, the court shall enter an order that the property or
63 interest in property shall be released or delivered promptly to that
64 person free of liens and encumbrances under sections 546.2000 to
65 546.2072, and that the person's cost bond shall be discharged.

66 8. Upon motion by the attorney for the state, if it appears after
67 a hearing that there was reasonable cause for the seizure for forfeiture
68 or for the filing of the notice of pending forfeiture or complaint, the
69 court shall find that:

70 (1) Reasonable cause existed, or that any such action was taken
71 under a reasonable good faith belief that it was proper;

72 (2) The claimant is not entitled to costs or damages; and

73 (3) The person or seizing agency who made the seizure and the
74 attorney for the state are not liable to suit or judgment for the seizure,
75 suit or prosecution.

76 9. The court shall order a claimant who fails to establish that a
77 substantial portion of the claimant's interest is exempt from forfeiture
78 under section 546.2012 to pay the reasonable costs and expenses:

79 (1) Of any claimant who established that his entire interest is
80 exempt from forfeiture under section 546.2012; and

81 (2) Of the state for the investigation and prosecution of the
82 matter, including reasonable attorney fees, in connection with that
83 claimant.

546.2048. 1. When property is forfeited under sections 546.2000
2 to 546.2072 the attorney for the state may:

3 (1) Upon the written approval of the attorney for the state,
4 destroy or use for investigative purposes, any illegal or controlled
5 substances or other contraband, after not less than twenty days after
6 the seizure, provided that materials necessary as evidence shall be
7 preserved; or

8 (2) Authorize a public or otherwise commercially reasonable sale
9 of that which is not required by law to be destroyed and which is not
10 harmful to the public. The proceeds of any sale and any monies

11 forfeited or obtained by judgment or settlement under this section shall
12 be distributed as provided in subsection 2 of this section.

13 2. The office of the attorney for the state shall distribute monies
14 in the following order of priority:

15 (1) The satisfaction of any exempt security interest or lien;

16 (2) The payment of all proper expenses of the proceedings for
17 forfeiture and disposition, including expenses of seizure, inventory,
18 appraisal, maintenance of custody, preservation of availability,
19 advertising, sale and court costs; and

20 (3) The remaining proceeds shall be distributed under section 7
21 of article 9 of the constitution of the state of Missouri.

22 3. The attorney for the state may require the appropriate
23 administrative agency to take custody of the property and remove it for
24 disposition in accordance with law, and to forward controlled
25 substances to the United States Drug Enforcement Administration for
26 disposition.

546.2051. 1. An attorney for the state may conduct an
2 investigation of any conduct that gives rise to forfeiture under sections
3 546.2000 to 546.2072. The attorney for the state is authorized, before
4 the commencement of any proceeding or action under sections 546.2000
5 to 546.2072, to subpoena witnesses, compel such witnesses' attendance,
6 and examine the witnesses under oath, and require the production of
7 documentary evidence for inspection, reproducing, or copying. Except
8 as otherwise provided by this section, the attorney for the state shall
9 proceed under this subsection with the same powers and limitations,
10 and judicial oversight and enforcement, and in the manner provided by
11 sections 546.2000 to 546.2072 and by the Missouri rules of civil
12 procedure. Any person compelled to appear under a demand for oral
13 testimony under this section may be accompanied, represented, and
14 advised by counsel.

15 2. The examination of all witnesses under this section shall be
16 conducted by the attorney for the state before an officer authorized to
17 administer oaths. The testimony shall be taken stenographically or by
18 a sound recording device and shall be transcribed or otherwise
19 preserved. The attorney for the state may exclude from the
20 examination all persons except the witness, his counsel, the officer
21 before whom the testimony is to be taken, law enforcement officials,

22 and a stenographer. Prior to oral examination, the person shall be
23 advised of his right to refuse to answer any questions on the basis of
24 the privilege against self-incrimination. The examination shall be
25 conducted in a manner consistent with the rules of civil procedure
26 dealing with the taking of depositions.

27 3. Except as otherwise provided in this section, prior to the filing
28 of a civil or criminal proceeding or action relating to it, no
29 documentary material, or transcripts, or oral testimony, in the
30 possession of the attorney for the state shall be available for
31 examination by any individual other than a law enforcement official or
32 agent of such official without the consent of the person who produced
33 the material or transcripts.

34 4. No person shall knowingly remove from any place, conceal,
35 withhold, destroy, mutilate, alter, or by any other means falsify any
36 documentary material that is the subject of a subpoena, with intent to
37 avoid, evade, prevent, or obstruct compliance, in whole or in part, by
38 any person with any duly served subpoena of the attorney for the state
39 under this section. A violation of this subsection is a class C
40 felony. The attorney for the state shall investigate and prosecute
41 suspected violations of this subsection.

42 5. Acts or omissions by the attorneys for the state in the course
43 of their duties in the enforcement of any of the provisions of sections
44 546.2000 to 546.2072, including provision of any legal services prior to
45 charging, complaint, or seizure, are prosecutorial and shall not subject
46 the attorneys or their principals to civil liability.

546.2054. 1. If a person is or may be called to produce evidence
2 at a deposition, hearing, or trial under sections 546.2000 to 546.2072 or
3 at an investigation brought by the attorney for the state under section
4 546.2051, the circuit court for the judicial circuit in which the
5 deposition, hearing, trial, or investigation is or may be held shall, upon
6 certification in writing of a request of the state's attorney for that
7 judicial circuit, issue an order, ex parte or after a hearing, requiring
8 the person to produce evidence, notwithstanding that person's refusal
9 to do so on the basis of the privilege against self-incrimination.

10 2. The attorney for the state may certify in writing a request for
11 an ex parte order under subsection 1 of this section if in his or her
12 judgment:

13 (1) The production of the evidence may be necessary to the
14 public interest; and

15 (2) The person has refused or is likely to refuse to produce
16 evidence on the basis of his or her privilege against self-incrimination.

17 3. A person may not refuse to comply with an order issued under
18 subsection 1 of this section on the basis of a self-incrimination
19 privilege. If the person refuses to comply with the order after being
20 informed of its existence by the presiding officer, the person may be
21 compelled or punished by the circuit court issuing an order for civil or
22 criminal contempt.

23 4. The production of evidence compelled by order issued under
24 subsection 1 of this section, and any information directly or indirectly
25 derived from it, may not be used against the person in a subsequent
26 criminal case, except in a prosecution for perjury, false swearing, or an
27 offense otherwise involving a failure to comply with the order.

 546.2057. A civil action under sections 546.2000 to 546.2072 shall
2 be commenced within seven years after the last conduct giving rise to
3 forfeiture or the cause of action becomes known or should have become
4 known, excluding any time during which either the property or
5 defendant is out of the state or in confinement, or during which
6 criminal proceedings relating to the same conduct are pending.

 546.2060. Controlled substances included in section 195.017,
2 RSMo, which are contraband and any controlled substance whose
3 owners are unknown are summarily forfeited to the state. The court
4 may include in any judgment under sections 546.2000 to 546.2072 an
5 order forfeiting any controlled substance involved in the offense to the
6 extent of the defendant's interest.

 546.2063. No person claiming an interest in property subject to
2 forfeiture may commence or maintain any action against the state
3 concerning the validity of the alleged interest other than as provided
4 in sections 546.2000 to 546.2072.

 546.2066. The provisions of sections 546.2000 to 546.2072 shall be
2 liberally construed to effectuate their remedial purposes. Civil
3 remedies under sections 546.2000 to 546.2072 shall be supplemental and
4 not mutually exclusive. They do not preclude and are not precluded by
5 any other provision of law.

 546.2069. 1. The provisions of sections 546.2000 to 546.2072 shall

2 **be applied and construed to effectuate their general purpose to make**
3 **uniform the law with respect to the subject of sections 546.2000 to**
4 **546.2072 among states enacting similar provisions.**

5 **2. The attorney general is authorized to enter into reciprocal**
6 **agreements with the attorney general or chief prosecuting attorney of**
7 **any state to effectuate the purposes of sections 546.2000 to 546.2072.**

546.2072. If any provision of sections 546.2000 to 546.2072 or the
2 **application thereof to any person or circumstance are held invalid, the**
3 **invalidity does not affect other provisions or applications of sections**
4 **546.2000 to 546.2072 which can be given effect without the invalid**
5 **provision or application, and to this end the provisions of these**
6 **sections are severable.**

[513.600. Sections 513.600 to 513.645 shall be known and
2 may be cited as the "Criminal Activity Forfeiture Act".]

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

3 (1) (a) "Beneficial interest":

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

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

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

15 (2) "Civil proceeding", any civil suit commenced by an
16 investigative agency under any provision of sections 513.600 to
17 513.645;

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

- 23 (a) Chapter 195, RSMo, relating to drug regulations;
- 24 (b) Chapter 565, RSMo, relating to offenses against the
25 person;
- 26 (c) Chapter 566, RSMo, relating to sexual offenses;
- 27 (d) Chapter 568, RSMo, relating to offenses against the
28 family;
- 29 (e) Chapter 569, RSMo, relating to robbery, arson, burglary
30 and related offenses;
- 31 (f) Chapter 570, RSMo, relating to stealing and related
32 offenses;
- 33 (g) Chapter 567, RSMo, relating to prostitution;
- 34 (h) Chapter 573, RSMo, relating to pornography and related
35 offenses;
- 36 (i) Chapter 574, RSMo, relating to offenses against public
37 order;
- 38 (j) Chapter 575, RSMo, relating to offenses against the
39 administration of justice;
- 40 (k) Chapter 491, RSMo, relating to witnesses;
- 41 (l) Chapter 572, RSMo, relating to gambling;
- 42 (m) Chapter 311, RSMo, but relating only to felony
43 violations of this chapter committed by persons not duly licensed
44 by the supervisor of liquor control;
- 45 (n) Chapter 571, RSMo, relating to weapons offenses;
- 46 (o) Chapter 409, RSMo, relating to regulation of securities;
- 47 (p) Chapter 301, RSMo, relating to registration and
48 licensing of motor vehicles;
- 49 (4) "Criminal proceeding", any criminal prosecution
50 commenced by an investigative agency under any criminal law of
51 this state;
- 52 (5) "Investigative agency", the attorney general's office, or
53 the office of any prosecuting attorney or circuit attorney;
- 54 (6) "Pecuniary value":
- 55 (a) Anything of value in the form of money, a negotiable
56 instrument, a commercial interest, or anything else the primary
57 significance of which is economic advantage; or
- 58 (b) Any other property or service that has a value in excess

59 of one hundred dollars;

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

64 (8) "Seizing agency", the agency which is the primary
65 employer of the officer or agent seizing the property, including any
66 agency in which one or more of the employees acting on behalf of
67 the seizing agency is employed by the state of Missouri or any
68 political subdivision of this state;

69 (9) "Seizure", the point at which any law enforcement officer
70 or agent discovers and exercises any control over property that an
71 officer or agent has reason to believe was used or intended for use
72 in the course of, derived from, or realized through criminal
73 activity. Seizure includes but is not limited to preventing anyone
74 found in possession of the property from leaving the scene of the
75 investigation while in possession of the property;

76 (10) (a) "Trustee":

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

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

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

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

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

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

6 2. A CAFA forfeiture proceeding shall be governed by the
7 Missouri rules of court, rules of civil procedure, except to the extent

8 that special rules of procedure are stated herein.

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

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

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

24 6. (1) If the petition is filed before seizure, it shall state
25 what property is sought to be forfeited, that the property is within
26 the jurisdiction of the court, the grounds for forfeiture, and the
27 names of all persons known to have or claim an interest in the
28 property. The court shall determine ex parte whether there is
29 reasonable cause to believe that the property is subject to forfeiture
30 and that notice to those persons having or claiming an interest in
31 the property prior to seizure would cause the loss or destruction of
32 the property. If the court finds that reasonable cause does not
33 exist to believe the property is subject to forfeiture, it shall dismiss
34 the proceeding. If the court finds that reasonable cause does exist
35 to believe the property is subject to forfeiture but there is not
36 reasonable cause to believe that prior notice would result in loss or
37 destruction, it shall order service on all persons known to have or
38 claim an interest in the property prior to a further hearing on
39 whether a writ of seizure should issue.

40 If the court finds that there is reasonable cause to believe that the
41 property is subject to forfeiture and to believe that prior notice
42 would cause loss or destruction, it shall without any further
43 hearing or notice issue a writ of seizure directing the sheriff of the

44 county or other authorized law enforcement agency where the
45 property is found to seize it.

46 (2) Seizure may be effected by a law enforcement officer
47 authorized to enforce the criminal laws of this state prior to the
48 filing of the petition and without a writ of seizure if the seizure is
49 incident to a lawful arrest, search, or inspection and the officer has
50 probable cause to believe the property is subject to forfeiture and
51 will be lost or destroyed if not seized.

52 Within four days of the date of seizure, such seizure shall be
53 reported by said officer to the prosecuting attorney of the county in
54 which the seizure is effected or the attorney general; and if in the
55 opinion of the prosecuting attorney or attorney general forfeiture
56 is warranted, the prosecuting attorney or attorney general shall,
57 within ten days after receiving notice of seizure, file a petition for
58 forfeiture. The petition shall state, in addition to the information
59 required in subdivision (1) of this subsection, the date and place of
60 seizure. The burden of proof will be on the investigative agency to
61 prove all allegations contained in the petition.

62 7. After the petition is filed or the seizure effected,
63 whichever is later, every person known to have or claim an interest
64 in the property shall be served, if not previously served, with a
65 copy of the petition and a notice of seizure in the manner provided
66 by the Missouri rules of court and rules of civil procedure. Service
67 by publication may be ordered upon any party whose whereabouts
68 cannot be determined or if there be unknown parties.

69 8. The prosecuting attorney or attorney general to whom
70 the seizure is reported shall report annually by January thirty-first
71 for the previous calendar year all seizures. Such report shall
72 include the date, time, and place of seizure, the property seized, the
73 estimated value of the property seized, the person or persons from
74 whom the property was seized, the criminal charges filed, and the
75 disposition of the seizure, forfeiture and criminal actions. The
76 report shall be made to the director of the Missouri department of
77 public safety and shall be considered an open record. The
78 prosecuting attorney or attorney general shall submit a copy of the
79 report to the state auditor at the time the report is made to the

80 director of the department of public safety.

81 9. The state auditor shall make an annual report compiling
82 the data received from law enforcement, prosecuting attorneys and
83 the attorney general, and shall submit the report regarding
84 seizures for the previous calendar year to the general assembly
85 annually by February twenty-eighth.

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

2 [513.610. 1. Any person claiming an interest in the
3 property may become a party to the action at any time prior to
4 judgment, whether named in the petition or not. Any party
5 claiming a valid interest in the property shall upon motion be
6 allowed by the court to take possession of the property upon
7 posting bond with good and sufficient security in the amount of the
8 property's value conditioned to pay the value of any interest in the
9 property found to be subject to forfeiture or the value of any
10 interest of another not subject to forfeiture. Such a party taking
11 possession shall not remove the property from the jurisdiction of
12 the court except pursuant to court order.

13 2. The court may, upon such terms and conditions as
14 prescribed by it, order that the property be sold by an innocent
15 party who holds a lien on or security interest in the property at any
16 time during the proceedings. Any proceeds from such sale over and
17 above the amount necessary to satisfy the lien or security interest
18 shall be paid into court pending final judgment in the forfeiture
19 proceeding. No such sale shall be ordered, however, unless the
20 obligation upon which the lien or security interest is based is in
21 default.

22 3. Pending final judgment in the forfeiture proceeding, the
23 court may make any other disposition of the property as may be
24 provided by the laws of this state which is in the interest of
justice.]

2 [513.612. Any party may bring one motion to dismiss at any
3 time and such motion shall be heard and ruled on within ten
days. Any party may demand a jury trial.]

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

[513.617. 1. In the event criminal charges arising from the
2 same activity giving rise to the CAFA proceeding are filed against
3 any individual claiming an interest in the property subject to the
4 CAFA proceeding, such CAFA proceeding shall be stayed by the
5 court until the disposition of the criminal charges. In such cases,
6 no property shall be forfeited unless the person charged is found
7 guilty of or pleads guilty to a felony offense substantially related
8 to the forfeiture. The property of persons arrested, detained or
9 apprehended and not subsequently charged is not subject to
10 forfeiture for that arrest, detention or apprehension. The rights of
11 an innocent owner of property are superior to any right or claim of
12 the state or county, and such rights shall be enforced pursuant to
13 the provisions of sections 513.610 to 513.620.

14 2. In any case where the court determines that seized
15 property is subject to forfeiture pursuant to the provisions of
16 section 513.607 but there has not been a felony conviction, finding
17 of guilt or plea of guilt to support such forfeiture, the court shall

18 stay the civil forfeiture proceedings and order the release of the
19 property subject to the following requirements:

20 (1) The person to whom the property is released shall file
21 a bond in an amount which the court determines to be adequate to
22 secure the property and which does not exceed the value of the
23 property;

24 (2) The court may impose other conditions that it deems
25 reasonable and necessary to prevent the property from being made
26 unavailable for disposition by the court;

27 (3) The bond and other conditions shall terminate at such
28 time as the released property is no longer subject to forfeiture or
29 upon return of the property to the confiscating authority.

30 3. No action filed pursuant to sections 513.600 to 513.660
31 shall be compromised or otherwise settled without the express
32 approval of the terms of the settlement by the court in which such
33 action is pending. Nothing in this section shall prohibit or prevent
34 the parties from contemporaneously resolving criminal charges and
35 a CAFA proceeding arising from the same activity. However,
36 seized property shall not be used in bargaining to defer prosecution
37 of criminal charges, obtain a guilty plea or affect sentencing
38 recommendations, and the court in which the CAFA proceeding is
39 pending shall not approve any settlement without first making
40 such a finding. No state or local government agency, nor any
41 person, may accept any monetary payment or other thing of value
42 in exchange for the release of property seized for forfeiture or for
43 the settlement of any criminal charges.

44 4. No state or local government agency may hold property
45 seized for forfeiture unless a petition for forfeiture has been filed
46 within the time limit provided by section 513.607, unless a time
47 extension is granted by order of the circuit court. The court may
48 extend the time for filing a petition for up to ten days for each
49 order, but may not extend the time for filing for more than thirty
50 days.]

2 [513.620. Subject to the requirement of protecting the
3 interest of all innocent parties, the court may after judgment of
forfeiture make any of the following orders for disposition of the

4 property:

5 (1) Destruction of contraband, the possession of which is
6 illegal;

7 (2) Retention of the property by any innocent party having
8 an interest therein, upon payment or approval of a plan for
9 payment into court of the value of any forfeited interest in the
10 property; such a plan may include, in the case of an innocent party
11 who holds a lien on or security interest in the property, the sale of
12 the property by said innocent party under such terms and
13 conditions as may be prescribed by the court and the payment into
14 court of any proceeds from such sale over and above the amount
15 necessary to satisfy the lien or security interest;

16 (3) Judicial sale of the property;

17 (4) Transfer of the property to any innocent party having an
18 interest therein equal to or greater than the value of the property;
19 or

20 (5) Any other disposition of the property as may be provided
21 by the laws of this state which is in the interest of justice and
22 adequately protects innocent parties.]

[513.623. The clear proceeds of any sale or disposition after
2 satisfaction of the interest of any innocent party and after payment
3 of the reasonable costs of the CAFA proceeding, including
4 reasonable storage costs as assessed by the court, if any, shall be
5 distributed pursuant to section 7 of article IX of the Constitution
6 of the state of Missouri.]

[513.625. 1. Upon the entry of a final judgment of
2 forfeiture in favor of the state, the title of the state to the forfeited
3 property shall:

4 (1) In the case of real property or beneficial interest, relate
5 back to the date of filing of the CAFA lien notice in the official
6 records of the county where the real property or beneficial trust is
7 located and, if no CAFA lien notice is filed, then to the date of the
8 filing of any notice of lis pendens under section 527.260, RSMo, in
9 the official records of the county where the real property or
10 beneficial interest is located and, if no CAFA lien notice or notice
11 of lis pendens is so filed, then to the date of recording of the final

12 judgment of forfeiture in the official records of the county where
13 the real property or beneficial interest is located; and

14 (2) In the case of personal property, relate back to the date
15 the personal property was seized by the investigating agency.

16 2. If property subject to forfeiture is conveyed, alienated,
17 disposed of, or otherwise rendered unavailable for forfeiture after
18 the filing of a CAFA lien notice or after the filing of a forfeiture
19 petition, whichever is earlier, the investigative agency may, on
20 behalf of the state, institute an action in the appropriate circuit
21 court against the person named in the CAFA lien notice or the
22 defendant in the civil proceeding and the court shall enter final
23 judgment against the person named in the CAFA lien notice or the
24 defendant in the civil proceeding in an amount equal to the fair
25 market value of the property, together with investigative costs and
26 attorney's fees incurred by the investigative agency in the action.
27 If a civil proceeding is pending, such action shall be filed only in
28 the court where such civil proceeding is pending.]

[513.630. Notwithstanding any other provision of law, a
2 proceeding under this act may be commenced up until five years
3 after the conduct terminates or the cause of action accrues. If a
4 criminal prosecution or civil action is brought by the state relating
5 to conduct which would constitute criminal activity as defined in
6 section 513.605, then the running of the period of limitations shall
7 be suspended during the pendency of such prosecution or action by
8 the state and for five years thereafter.]

[513.635. The application of one civil remedy under any
2 provision of this act shall not preclude the application of any other
3 remedy. Remedies under this act are supplemental and not
4 mutually exclusive.]

[513.637. 1. Notwithstanding any other provision of law,
2 a valid judgment rendered by a court of a jurisdiction having a law
3 substantially similar to sections 513.600 to 513.645 will be
4 recognized and enforced by the courts of this state to the extent
5 that a judgment rendered by a court of this state pursuant to
6 sections 513.600 to 513.645 would be enforced in such other
7 jurisdiction.]

8 2. The attorney general is hereby authorized to enter into
9 reciprocal agreements with the attorney general or chief
10 prosecuting attorney of any jurisdiction having a law substantially
11 similar to sections 513.600 to 513.645 so as to further the purposes
12 of sections 513.600 to 513.645.]

 [513.640. 1. Upon the institution of a civil forfeiture
2 proceeding or, if no civil suit has been instituted, upon the return
3 of an indictment or filing of an information of a crime which may
4 constitute criminal activity as defined in section 513.605, the
5 investigative agency then or at any time during the pendency of the
6 proceeding may file in the official records of any one or more
7 counties a CAFA lien notice. No filing fee or other charge shall be
8 required as a condition for filing the CAFA lien notice. The
9 recorder of deeds shall, upon the presentation of a CAFA lien
10 notice, immediately record it in the official records.

11 2. The CAFA lien notice shall be signed by the attorney
12 general or his designee or by a prosecuting or circuit attorney or
13 his designee. The notice shall be in such form as the attorney
14 general prescribes and shall set forth the following information:

15 (1) The name of the person against whom the civil
16 proceeding has been brought. The investigative agency may also
17 name in the CAFA lien notice any other aliases, names, or
18 fictitious names under which the person may be known. The
19 investigative agency may also name in the CAFA lien notice any
20 corporation, partnership, or other entity that is either controlled by
21 or entirely owned by the person;

22 (2) If known to the investigative agency, the present
23 residence and business addresses of the person named in the CAFA
24 lien notice and of the other names set forth in the CAFA lien
25 notice;

26 (3) A reference to the civil proceeding stating that a
27 proceeding under this act has been brought against the person
28 named in the CAFA lien notice, the name of the county or counties
29 where the proceeding has been brought, and, if known to the
30 investigative agency at the time of filing the CAFA lien notice, the
31 case number of the proceeding;

32 (4) A statement that the notice is being filed pursuant to
33 this act; and

34 (5) The name and address of the investigative agency filing
35 the CAFA lien notice and the name of the individual signing the
36 CAFA lien notice.

37 3. A CAFA lien notice shall apply only to one person and,
38 to the extent applicable, any aliases, fictitious names, or other
39 names, including names of corporations, partnerships, or other
40 entities. A separate CAFA lien notice shall be filed for any other
41 person against whom the investigative agency desires to file a
42 CAFA lien notice under this section.

43 4. The investigative agency shall, as soon as practicable
44 after the filing of each CAFA lien notice, furnish to the person
45 named in the notice either a copy of the recorded notice or a copy
46 of the notice with a notation thereon of the county or counties in
47 which the notice has been recorded. The failure of the
48 investigative agency to so furnish a copy of the notice under this
49 subsection shall not invalidate or otherwise affect the notice.

50 5. The filing of a CAFA lien notice creates, from the time of
51 its filing, a lien in favor of the state on the following property of
52 the person named in the notice and against any other names set
53 forth in the notice:

54 (1) Any real property situated in the county where the
55 notice is filed then or thereafter owned by the person; and

56 (2) Any beneficial interest situated in the county where the
57 notice is filed then or thereafter owned by the person.

58 6. The lien shall commence and attach as of the time of
59 filing of the CAFA lien notice and shall continue thereafter until
60 expiration, termination, or release. The lien created in favor of the
61 state shall be superior and prior to the interest of any other person
62 in the real property or beneficial interest if the interest is acquired
63 subsequent to the filing of the notice.

64 7. In conjunction with any civil proceeding:

65 (1) The investigative agency may file without prior court
66 order in any county a lis pendens and, in such case, any person
67 acquiring an interest in the subject real property or beneficial

68 interest subsequent to the filing of lis pendens shall take the
69 interest subject to the civil proceeding and any subsequent
70 judgment of forfeiture; and

71 (2) If a CAFA lien notice has been filed, the investigative
72 agency may name as defendants, in addition to the person named
73 in the notice, any persons acquiring an interest in the real property
74 or beneficial interest subsequent to the filing of the notice. If a
75 judgment of forfeiture is entered in the proceeding in favor of the
76 state, the interest of any person in the property that was acquired
77 subsequent to the filing of the notice shall be subject to the notice
78 and judgment of forfeiture.

79 8. (1) A trustee who acquires actual knowledge that a
80 CAFA lien notice or a civil proceeding under sections 513.600 to
81 513.645 has been filed against any person for whom he holds legal
82 or record title to real property shall immediately furnish to the
83 investigative agency the following:

84 (a) The name and address of the beneficiary against whose
85 interest the CAFA lien notice or the CAFA proceeding has been
86 filed, as known to the trustee;

87 (b) The name and address, as known to the trustee, of all
88 other persons for whose benefit the trustee holds title to the real
89 property; and

90 (c) A copy of the trust agreement or other instrument
91 pursuant to which the trustee holds legal or record title to the real
92 property;

93 (2) Any trustee who fails to comply with the provisions of
94 this subsection is guilty of a class C misdemeanor.

95 9. Any trustee who conveys title to real property for which
96 a CAFA lien notice has been filed at the time of the conveyance in
97 the county where the real property is situated naming a person
98 who, to the actual knowledge of the trustee, holds a beneficial
99 interest in the trust shall be liable to the state for the greater of:

100 (1) The amount of proceeds received directly by the person
101 named in the CAFA lien notice as a result of the conveyance;

102 (2) The amount of proceeds received by the trustee as a
103 result of the conveyance and distributed to the person named in the

104 CAFA lien notice; or

105 (3) The fair market value of the interest of the person
106 named in the CAFA lien notice in the real property so conveyed;
107 however, if the trustee conveys the real property and holds the
108 proceeds that would otherwise be paid or distributed to the
109 beneficiary or at the direction of the beneficiary or his designee, the
110 trustee's liability shall not exceed the amount of the proceeds so
111 held for so long as the proceeds are held by the trustee.

112 10. The filing of a CAFA lien notice shall not constitute a
113 lien on the record title to real property as owned by the trustee
114 except to the extent the trustee is named in the CAFA lien
115 notice. The investigative agency may bring a civil proceeding in
116 any circuit court against the trustee to recover from the trustee the
117 amounts set forth in subsection 9 of this section, and the state
118 shall also be entitled to recover investigative costs and attorney's
119 fees incurred by the investigative agency.

120 11. The filing of a CAFA lien notice shall not affect the use
121 to which real property or a beneficial interest owned by the person
122 named in the CAFA lien notice may be put or the right of the
123 person to receive any avails, rents, or other proceeds resulting from
124 the use and ownership, but not the sale, of the property until a
125 judgment of forfeiture is entered.

126 12. (1) The provisions of this section shall not apply to any
127 conveyance by a trustee pursuant to a court order unless such court
128 order is entered in an action between the trustee and the
129 beneficiary;

130 (2) Unless the trustee has actual knowledge that a person
131 owning a beneficial interest in the trust is named in a CAFA lien
132 notice or is otherwise a defendant in a civil proceeding, the
133 provisions of this section shall not apply to:

134 (a) Any conveyance by a trustee required under the terms
135 of any trust agreement, which trust agreement is a matter of public
136 record prior to the filing of any CAFA lien notice; or

137 (b) Any conveyance by a trustee to all of the persons who
138 own a beneficial interest in the trust.

139 13. All forfeitures or dispositions under this section shall

140 be made with due provision for the rights of innocent persons.]

1 [513.645. 1. The term of a CAFA lien notice shall be for a
2 period of six months from the date of filing of the petition. Said
3 lien notice may be renewed by the investigative agency one time
4 prior to judgment. After judgment in favor of the investigative
5 agency the CAFA lien notice shall be for a period of six years. The
6 investigative agency shall be entitled to only one renewal of the
7 CAFA lien notice after judgment.

8 2. The investigative agency filing the CAFA lien notice may
9 release in whole or in part any CAFA lien notice or may release
10 any specific real property or beneficial interest from the CAFA lien
11 notice upon such terms and conditions as it may determine. Any
12 release of a CAFA lien notice executed by the investigative agency
13 may be filed in the official records of any county. No charge or fee
14 shall be imposed for the filing of any release of a CAFA lien notice.

15 3. If no civil proceeding has been instituted by the
16 investigative agency seeking a forfeiture of any property owned by
17 the person named in the CAFA lien notice, the acquittal in the
18 criminal proceeding of the person named in the CAFA lien notice
19 or the dismissal of the criminal proceeding shall terminate the
20 CAFA lien notice; and, in such case, the filing of the CAFA lien
21 notice shall have no effect.

22 4. If no civil proceeding is then pending against the person
23 named in a CAFA lien notice, any person named in a CAFA lien
24 notice may institute an action against the investigative agency
25 filing the notice in the county where the notice has been filed
26 seeking a release or extinguishment of the notice; and, in such
27 case:

28 (1) The court shall, upon the motion of such person,
29 immediately enter an order setting a date for hearing, which shall
30 be not less than five nor more than ten days after the suit has been
31 filed. The order, along with a copy of the complaint, shall be
32 served on the investigative agency within three days after the
33 institution of the suit. At the hearing, the court shall take
34 evidence on the issue of whether any real property or beneficial
35 interest owned by such person is covered by the CAFA lien notice

36 or otherwise subject to forfeiture under the Missouri CAFA act. If
37 such person shows by the preponderance of the evidence that the
38 CAFA lien notice is not applicable to him or that any real property
39 or beneficial interest owned by him is not subject to forfeiture
40 under this act, the court shall enter a judgment extinguishing the
41 CAFA lien notice or releasing the real property or beneficial
42 interest from the CAFA lien notice;

43 (2) The court shall immediately enter its order releasing
44 from the CAFA lien notice any specific real property or beneficial
45 interest if a sale of the real property or beneficial interest is
46 pending and the filing of the notice prevents the sale of the
47 property or interest; provided, however, that the proceeds resulting
48 from the sale of the real property or beneficial interest shall be
49 deposited into the registry of the court, subject to the further order
50 of the court; and

51 (3) At the hearing set forth in subdivision (1) of this
52 subsection, the court may release from the CAFA lien notice any
53 real property or beneficial interest upon the posting by such person
54 of such security as is equal to the value of the real property or
55 beneficial interest owned by such person.

56 5. In the event a civil proceeding is pending against a
57 person named in a CAFA lien notice, the court, upon motion by
58 said person, may grant the relief set forth herein.

59 6. Upon acquittal or dismissal of a criminal action against
60 a person also named in a CAFA action, the civil action shall be
61 dismissed.]

[513.647. 1. No state or local law enforcement agency may
2 transfer any property seized by the state or local agency to any
3 federal agency for forfeiture under federal law until the prosecuting
4 attorney and the circuit judge of the county in which the property
5 was seized first review the seizure and approve the transfer to a
6 federal agency, regardless of the identity of the seizing
7 agency. The prosecuting attorney and the circuit judge shall not
8 approve any transfer unless it reasonably appears the activity
9 giving rise to the investigation or seizure involves more than one
10 state or unless it is reasonably likely to result in federal criminal

11 charges being filed, based upon a written statement of intent to
12 prosecute from the United States attorney with jurisdiction. No
13 transfer shall be made to a federal agency unless the violation
14 would be a felony under Missouri law or federal law.

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

2 [513.649. Any property seized by state or local peace or
3 reserve officers who are detached to, deputized or commissioned by
4 or working in conjunction with the federal agency shall remain
5 subject to the provisions of this section and sections 513.647 and
6 513.651.]

2 [513.651. The moneys acquired by law enforcement agencies
3 pursuant to this section and sections 513.647 and 513.649 shall be
4 used only by the law enforcement agency for the investigation or
5 prosecution of criminal activity, the execution of court orders

5 arising from such activity, the enforcement of drug-related crimes,
6 training, drug education, and the safety of both the citizens and
7 law enforcement officers.]

[513.653. 1. Law enforcement agencies involved in using
2 the federal forfeiture system under federal law shall be required at
3 the end of their respective fiscal year to acquire an independent
4 audit of the federal seizures and the proceeds received therefrom
5 and provide this audit to their respective governing body and to the
6 department of public safety. A copy of such audit shall be provided
7 to the state auditor's office. This audit shall be paid for out of the
8 proceeds of such federal forfeitures. The department of public
9 safety shall not issue funds to any law enforcement agency that
10 fails to comply with the provisions of this section.

11 2. Intentional or knowing failure to comply with the audit
12 requirement contained in this section shall be a class A
13 misdemeanor, punishable by a fine of up to one thousand dollars.]

Bill ✓

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