

SECOND REGULAR SESSION

SENATE BILL NO. 1047

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WRIGHT-JONES.

Read 1st time March 1, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

5165S.011

AN ACT

To repeal section 542.301, RSMo, and to enact in lieu thereof one new section relating to the disposition of unclaimed seized property.

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

Section A. Section 542.301, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 542.301, to read as follows:

542.301. 1. Property which comes into the custody of an officer or of a
2 court as the result of any seizure and which has not been forfeited pursuant to
3 any other provisions of law or returned to the claimant shall be disposed of as
4 follows:

5 (1) Stolen property, or property acquired in any other manner declared an
6 offense by chapters 569 and 570, RSMo, but not including any of the property
7 referred to in subdivision (2) of this subsection, shall be delivered by order of
8 court upon claim having been made and established, to the person who is entitled
9 to possession:

10 (a) The claim shall be made by written motion filed with the court with
11 which a motion to suppress has been, or may be, filed. The claim shall be barred
12 if not made within one year from the date of the seizure;

13 (b) Upon the filing of such motion, the judge shall order notice to be given
14 to all persons interested in the property, including other claimants and the
15 person from whose possession the property was seized, of the time, place and
16 nature of the hearing to be held on the motion. The notice shall be given in a
17 manner reasonably calculated to reach the attention of all interested
18 persons. Notice may be given to unknown persons and to persons whose address
19 is unknown by publication in a newspaper of general circulation in the county. No

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

20 property shall be delivered to any claimant unless all interested persons have
21 been given a reasonable opportunity to appear and to be heard;

22 (c) After a hearing, the judge shall order the property delivered to the
23 person or persons entitled to possession, if any. The judge may direct that
24 delivery of property required as evidence in a criminal proceeding shall be
25 postponed until the need no longer exists;

26 (d) A law enforcement officer having custody of seized property may, at
27 any time that seized property has ceased to be useful as evidence, request that
28 the prosecuting attorney of the county in which property was seized file a motion
29 with the court of such county for the disposition of the seized property. [If] The
30 prosecuting attorney [does not file such motion] **shall**, within sixty days of the
31 request by the law enforcement officer having custody of the seized property, **file**
32 **such motion or notify in writing the law enforcement officer making**
33 **the request of the reasons for which the seized property cannot be**
34 **disposed. If the prosecuting attorney does not file such motion**, then
35 such officer may request that the attorney general file **such** a [written] motion
36 with the circuit court of the county or judicial district in which the seizure
37 occurred. **The attorney general shall, within sixty days of the request by**
38 **the law enforcement officer having custody of the seized property, file**
39 **such motion or notify in writing the law enforcement officer making**
40 **the request of the reasons for which the seized property cannot be**
41 **disposed. If the attorney general does not file such motion, then the**
42 **law enforcement officer, or the officer's employer, may on his or her**
43 **own behalf file such a motion with the circuit court of the county in**
44 **which the seizure occurred. In the event of such filing, the movant**
45 **shall provide written notice of the filing to the prosecuting attorney of**
46 **the county where the seizure occurred.** Upon filing of the motion, **if the**
47 **court finds that such disposition is appropriate**, the court shall issue an
48 order directing the disposition of the property. Such disposition may, if the
49 property is not claimed within one year from the date of the seizure or if no one
50 establishes a right to it, and the seized property has ceased to be useful as
51 evidence, include a public sale of the property. Pursuant to a motion properly
52 filed and granted under this section, the proceeds of any sale, less necessary
53 expenses of preservation and sale, shall be paid into the county treasury for the
54 use of the county. If the property is not salable, the judge may order its
55 destruction. Notwithstanding any other provision of law, if no claim is filed

56 within one year of the seizure and no motion pursuant to this section is filed
57 within six months thereafter, and the seized property has ceased to be useful as
58 evidence, the property shall be deemed abandoned, converted to cash and shall
59 be turned over immediately to the treasurer pursuant to section 447.543, RSMo;

60 (e) If the property is a living animal or is perishable, the judge may, at
61 any time, order it sold at public sale. The proceeds shall be held in lieu of the
62 property. A written description of the property sold shall be filed with the judge
63 making the order of sale so that the claimant may identify the property. If the
64 proceeds are not claimed within the time limited for the claim of the property, the
65 proceeds shall be paid into the county treasury. If the property is not salable, the
66 judge may order its destruction.

67 (2) Weapons, tools, devices, and substances other than motor vehicles,
68 aircraft or watercraft, used by the owner or with the owner's consent as a means
69 for committing felonies other than the offense of possessing burglary tools in
70 violation of section 569.180, RSMo, and property, the possession of which is an
71 offense under the laws of this state or which has been used by the owner, or used
72 with the owner's acquiescence or consent, as a raw material or as an instrument
73 to manufacture or produce anything the possession of which is an offense under
74 the laws of this state, or which any statute authorizes or directs to be seized,
75 other than lawfully possessed weapons seized by an officer incident to an arrest,
76 shall be forfeited to the state of Missouri.

77 2. The officer who has custody of the property shall inform the prosecuting
78 attorney of the fact of seizure and of the nature of the property. The prosecuting
79 attorney shall thereupon file a written motion with the court with which the
80 motion to suppress has been, or may be, filed praying for an order directing the
81 forfeiture of the property. If the prosecuting attorney of a county in which
82 property is seized fails to file a motion with the court for the disposition of the
83 seized property within sixty days of the request by a law enforcement officer, the
84 officer having custody of the seized property may request the attorney general to
85 file a written motion with the circuit court of the county or judicial district in
86 which the seizure occurred. Upon filing of the motion, the court shall issue an
87 order directing the disposition of the property. The signed motion shall be
88 returned to the requesting agency. A motion may also be filed by any person
89 claiming the right to possession of the property praying that the court declare the
90 property not subject to forfeiture and order it delivered to the moving party.

91 3. Upon the filing of a motion either by the prosecuting attorney or by a

92 claimant, the judge shall order notice to be given to all persons interested in the
93 property, including the person out of whose possession the property was seized
94 and any lienors, of the time, place and nature of the hearing to be held on the
95 motion. The notice shall be given in a manner reasonably calculated to reach the
96 attention of all interested persons. Notice may be given to unknown persons and
97 to persons of unknown address by publication in a newspaper of general
98 circulation in the county. Every interested person shall be given a reasonable
99 opportunity to appear and to be heard as to the nature of the person's claim to
100 the property and upon the issue of whether or not it is subject to forfeiture.

101 4. If the evidence is clear and convincing that the property in issue is in
102 fact of a kind subject to forfeiture under this subsection, the judge shall declare
103 it forfeited and order its destruction or sale. The judge shall direct that the
104 destruction or sale of property needed as evidence in a criminal proceeding shall
105 be postponed until this need no longer exists.

106 5. If the forfeited property can be put to a lawful use, it may be ordered
107 sold after any alterations which are necessary to adapt it to a lawful use have
108 been made. If there is a holder of a bona fide lien against property which has
109 been used as a means for committing an offense or which has been used as a raw
110 material or as an instrument to manufacture or produce anything which is an
111 offense to possess, who establishes that the use was without the lienholder's
112 acquiescence or consent, the proceeds, less necessary expenses of preservation and
113 sale, shall be paid to the lienholder to the amount of the lienholder's lien. The
114 remaining amount shall be paid into the county treasury.

115 6. If the property is perishable the judge may order it sold at a public sale
116 or destroyed, as may be appropriate, prior to a hearing. The proceeds of a sale,
117 less necessary expenses of preservation and sale, shall be held in lieu of the
118 property.

119 7. When a warrant has been issued to search for and seize allegedly
120 obscene matter for forfeiture to the state, after an adversary hearing, the judge,
121 upon return of the warrant with the matter seized, shall give notice of the fact to
122 the prosecuting attorney of the county in which the matter was seized and the
123 dealer, exhibitor or displayer and shall conduct further adversary proceedings to
124 determine whether the matter is subject to forfeiture. If the evidence is clear and
125 convincing that the matter is obscene as defined by law and it was being held or
126 displayed for sale, exhibition, distribution or circulation to the public, the judge
127 shall declare it to be obscene and forfeited to the state and order its destruction

128 or other disposition; except that, no forfeiture shall be declared without the
129 dealer, distributor or displayer being given a reasonable opportunity to appear
130 in opposition and without the judge having thoroughly examined each item. If
131 the material to be seized is the same as or another copy of matter that has
132 already been determined to be obscene in a criminal proceeding against the
133 dealer, exhibitor, displayer or such person's agent, the determination of obscenity
134 in the criminal proceeding shall constitute clear and convincing evidence that the
135 matter to be forfeited pursuant to this subsection is obscene. Except when the
136 dealer, exhibitor or displayer consents to a longer period, or by such person's
137 actions or pleadings willfully prevents the prompt resolution of the hearing,
138 judgment shall be rendered within ten days of the return of the warrant. If the
139 matter is not found to be obscene or is not found to have been held or displayed
140 for sale, exhibition or distribution to the public, or a judgment is not entered
141 within the time provided for, the matter shall be restored forthwith to the dealer,
142 exhibitor or displayer.

143 8. If an appeal is taken by the dealer, exhibitor or displayer from an
144 adverse judgment, the case should be assigned for hearing at the earliest
145 practicable date and expedited in every way. Destruction or disposition of a
146 matter declared forfeited shall be postponed until the judgment has become final
147 by exhaustion of appeal, or by expiration of the time for appeal, and until the
148 matter is no longer needed as evidence in a criminal proceeding.

149 9. A determination of obscenity, pursuant to this subsection, shall not be
150 admissible in any criminal proceeding against any person or corporation for sale
151 or possession of obscene matter; except that dealer, distributor or displayer from
152 which the obscene matter was seized for forfeiture to the state.

153 10. When allegedly obscene matter or pornographic material for minors
154 has been seized under a search warrant issued pursuant to subsection 2 of section
155 542.281 and the matter is no longer needed as evidence in a criminal proceeding
156 the prosecuting attorney of the county in which the matter was seized may file
157 a written motion with the circuit court of the county or judicial district in which
158 the seizure occurred praying for an order directing the forfeiture of the
159 matter. Upon filing of the motion, the court shall set a date for a
160 hearing. Written notice of date, time, place and nature of the hearing shall be
161 personally served upon the owner, dealer, exhibitor, displayer or such person's
162 agent. Such notice shall be served no less than five days before the hearing.

163 11. If the evidence is clear and convincing that the matter is obscene as

164 defined by law, and that the obscene material was being held or displayed for
165 sale, exhibition, distribution or circulation to the public or that the matter is
166 pornographic for minors and that the pornographic material was being held or
167 displayed for sale, exhibition, distribution or circulation to minors, the judge shall
168 declare it to be obscene or pornographic for minors and forfeited to the state and
169 order its destruction or other disposition. A determination that the matter is
170 obscene in a criminal proceeding as well as a determination that such obscene
171 material was held or displayed for sale, exhibition, distribution or circulation to
172 the public or a determination that the matter is pornographic for minors in a
173 criminal proceeding as well as a determination that such pornographic material
174 was held or displayed for sale, exhibition, distribution or circulation to minors
175 shall be clear and convincing evidence that such material should be forfeited to
176 the state; except that, no forfeiture shall be declared without the dealer,
177 distributor or displayer being given a reasonable opportunity to appear in
178 opposition and without a judge having thoroughly examined each item. A dealer,
179 distributor or displayer shall have had reasonable opportunity to appear in
180 opposition if the matter the prosecutor seeks to destroy is the same matter that
181 formed the basis of a criminal proceeding against the dealer, distributor or
182 displayer where the dealer, distributor or displayer has been charged and found
183 guilty of holding or displaying for sale, exhibiting, distributing or circulating
184 obscene material to the public or pornographic material for minors to minors. If
185 the matter is not found to be obscene, or if obscene material is not found to have
186 been held or displayed for sale, exhibition, distribution or circulation to the
187 public, or if the matter is not found to be pornographic for minors or if
188 pornographic material is not found to have been held or displayed for sale,
189 exhibition, distribution or circulation to minors, the matter shall be restored
190 forthwith to the dealer, exhibitor or displayer.

191 12. If an appeal is taken by the dealer, exhibitor or displayer from an
192 adverse judgment, the case shall be assigned for hearing at the earliest
193 practicable date and expedited in every way. Destruction or disposition of matter
194 declared forfeited shall be postponed until the judgment has become final by
195 exhaustion of appeal, or by expiration of the time for appeal, and until the matter
196 is no longer needed as evidence in a criminal proceeding.

197 13. A determination of obscenity shall not be admissible in any criminal
198 proceeding against any person or corporation for sale or possession of obscene
199 matter.

200 14. An appeal by any party shall be allowed from the judgment of the
201 court as in other civil actions.

202 15. All other property still in the custody of an officer or of a court as the
203 result of any seizure and which has not been forfeited pursuant to this section or
204 any other provision of law after three years following the seizure and which has
205 ceased to be useful as evidence shall be deemed abandoned, converted to cash and
206 shall be turned over immediately to the treasurer pursuant to section 447.543,
207 RSMo.

208 16. In fiscal year 2003, the commissioner of administration shall estimate
209 the amount of any additional state revenue received pursuant to this section and
210 section 447.532, RSMo, shall transfer an equivalent amount of general revenue
211 to the schools of the future fund created in section 163.005, RSMo.

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Bill

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