

SECOND REGULAR SESSION

SENATE BILL NO. 853

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS KEAVENY AND WRIGHT-JONES.

Read 1st time January 28, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

4580S.02I

AN ACT

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

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Section A. Section 542.301, RSMo, is repealed and one new section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.

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

20 No 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 within sixty days of the request by
31 the law enforcement officer having custody of the seized property, then such
32 officer may request that the attorney general file a written motion with the
33 circuit court of the county or judicial district in which the seizure occurred. **If**
34 **the attorney general does not file such motion within sixty days of the**
35 **request of such law enforcement officer, the law enforcement agency**
36 **having custody of the seized property may, on its own behalf, file a**
37 **written motion with the circuit court of the county in which the**
38 **property was seized for the proper disposition of such property.** Upon
39 filing of the motion, the court shall issue an order directing the disposition of the
40 property. Such disposition may, if the property is not claimed within one year
41 from the date of the seizure or if no one establishes a right to it, and the seized
42 property has ceased to be useful as evidence, include a public sale of the
43 property. Pursuant to a motion properly filed and granted under this section, the
44 proceeds of any sale, less necessary expenses of preservation and sale, shall be
45 paid into the county treasury for the use of the county. If the property is not
46 salable, the judge may order its destruction. Notwithstanding any other provision
47 of law, if no claim is filed within one year of the seizure and no motion pursuant
48 to this section is filed within six months thereafter, and the seized property has
49 ceased to be useful as evidence, the property shall be deemed abandoned,
50 converted to cash and shall be turned over immediately to the treasurer pursuant
51 to section 447.543, RSMo;

52 (e) If the property is a living animal or is perishable, the judge may, at
53 any time, order it sold at public sale. The proceeds shall be held in lieu of the
54 property. A written description of the property sold shall be filed with the judge
55 making the order of sale so that the claimant may identify the property. If the

56 proceeds are not claimed within the time limited for the claim of the property, the
57 proceeds shall be paid into the county treasury. If the property is not salable, the
58 judge may order its destruction.

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

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

88 3. Upon the filing of a motion [either] by the prosecuting attorney,
89 **attorney general, law enforcement agency having custody of the seized**
90 **property,** or [by] a claimant, the judge shall order notice to be given to all
91 persons interested in the property, including the person out of whose possession

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

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

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

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

118 7. When a warrant has been issued to search for and seize allegedly
119 obscene matter for forfeiture to the state, after an adversary hearing, the judge,
120 upon return of the warrant with the matter seized, shall give notice of the fact to
121 the prosecuting attorney of the county in which the matter was seized and the
122 dealer, exhibitor or displayer and shall conduct further adversary proceedings to
123 determine whether the matter is subject to forfeiture. If the evidence is clear and
124 convincing that the matter is obscene as defined by law and it was being held or
125 displayed for sale, exhibition, distribution or circulation to the public, the judge
126 shall declare it to be obscene and forfeited to the state and order its destruction
127 or other disposition; except that, no forfeiture shall be declared without the

128 dealer, distributor or displayer being given a reasonable opportunity to appear
129 in opposition and without the judge having thoroughly examined each item. If
130 the material to be seized is the same as or another copy of matter that has
131 already been determined to be obscene in a criminal proceeding against the
132 dealer, exhibitor, displayer or such person's agent, the determination of obscenity
133 in the criminal proceeding shall constitute clear and convincing evidence that the
134 matter to be forfeited pursuant to this subsection is obscene. Except when the
135 dealer, exhibitor or displayer consents to a longer period, or by such person's
136 actions or pleadings willfully prevents the prompt resolution of the hearing,
137 judgment shall be rendered within ten days of the return of the warrant. If the
138 matter is not found to be obscene or is not found to have been held or displayed
139 for sale, exhibition or distribution to the public, or a judgment is not entered
140 within the time provided for, the matter shall be restored forthwith to the dealer,
141 exhibitor or displayer.

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

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

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

162 11. If the evidence is clear and convincing that the matter is obscene as
163 defined by law, and that the obscene material was being held or displayed for

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

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

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

199 14. An appeal by any party shall be allowed from the judgment of the

200 court as in other civil actions.

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

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

211 **17. For the purposes of this section, "seized property that has**
212 **ceased to be useful as evidence" shall include but not be limited to**
213 **property that is evidence in a case where the prosecuting or circuit**
214 **attorney has refused to make a motion to the court for an arrest**
215 **warrant and the statute of limitations for such case has run.**

Section B. Because of the need to promote the efficient provision of
2 services by law enforcement agencies, section A of this act is deemed necessary
3 for the immediate preservation of the public health, welfare, peace and safety,
4 and is hereby declared to be an emergency act within the meaning of the
5 constitution, and section A of this act shall be in full force and effect upon its
6 passage and approval.

✓

Copy