

SECOND REGULAR SESSION

SENATE BILL NO. 761

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CHAPPELLE-NADAL.

Pre-filed December 1, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4987S.011

AN ACT

To repeal section 513.605, RSMo, section 195.140 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session, and section 195.140 as enacted by house bill no. 1427, ninety-second general assembly, second regular session, and to enact in lieu thereof two new sections relating to forfeitures for violations of the controlled substance laws.

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

Section A. Sections 195.140 as enacted by senate bill no. 491, ninety-
2 seventh general assembly, second regular session, 195.140 as enacted by house
3 bill no. 1427, ninety-second general assembly, second regular session, and
4 513.605, RSMo, are repealed and two new sections enacted in lieu thereof, to be
5 known as sections 195.140 and 513.605, to read as follows:

195.140. 1. **Except when the controlled substance is marijuana,**
2 all controlled substances, imitation controlled substances or drug paraphernalia
3 for the administration, use or manufacture of controlled substances or imitation
4 controlled substances and which have come into the custody of a peace officer or
5 officer or agent of the department of health and senior services as provided by
6 this chapter or chapter 579, the lawful possession of which is not established or
7 the title to which cannot be ascertained after a hearing as prescribed in Rule 34
8 of Rules of Criminal Procedure for the courts of Missouri or some other
9 appropriate hearing, shall be forfeited, and disposed of as follows:

10 (1) Except as in this section otherwise provided, the court or associate
11 circuit judge having jurisdiction shall order such controlled substances, imitation
12 controlled substances, or drug paraphernalia forfeited and destroyed. A record
13 of the place where said controlled substances, imitation controlled substances, or
14 drug paraphernalia were seized, of the kinds and quantities of controlled

15 substances, imitation controlled substances, or drug paraphernalia so destroyed,
16 and of the time, place and manner of destructions, shall be kept, and a return
17 under oath, reporting the destruction of the controlled substances, imitation
18 controlled substances, or drug paraphernalia shall be made to the court or
19 associate circuit judge;

20 (2) The department of health and senior services shall keep a complete
21 record of all controlled substances, imitation controlled substances, or drug
22 paraphernalia received and disposed of, together with the dates of such receipt
23 and disposal, showing the exact kinds, quantities, and forms of such controlled
24 substances, imitation controlled substances, or drug paraphernalia; the persons
25 from whom received and to whom delivered; and by whose authority they were
26 received, delivered or destroyed; which record shall be open to inspection by all
27 federal or state officers charged with the enforcement of federal and state narcotic
28 or controlled substances laws.

29 2. (1) Everything of value furnished, or intended to be furnished, in
30 exchange for a controlled substance, imitation controlled substance or drug
31 paraphernalia in violation of this chapter or chapter 579, all proceeds traceable
32 to such an exchange, and all moneys, negotiable instruments, or securities used,
33 or intended to be used, to facilitate any violation of this chapter or chapter 579,
34 shall be forfeited, except that no property shall be forfeited under this subsection
35 to the extent of the interest of an owner by reason of any act or omission
36 established by him to have been committed without his or her knowledge or
37 consent **and no property shall be forfeited under this subsection if the**
38 **violation is for any amount of marijuana.**

39 (2) Any moneys, coin, or currency found in close proximity to forfeitable
40 controlled substances, imitation controlled substances, or drug paraphernalia,
41 **except marijuana**, or forfeitable records of the importation, manufacture, or
42 distribution of controlled substances, imitation controlled substances or drug
43 paraphernalia, **except marijuana**, are presumed to be forfeitable under this
44 subsection. The burden of proof shall be upon claimants of the property to rebut
45 this presumption.

46 (3) All forfeiture proceedings shall be conducted pursuant to the
47 provisions of sections 513.600 to 513.653.

195.140. 1. **Except when the controlled substance is marijuana,**
2 all controlled substances, imitation controlled substances or drug paraphernalia
3 for the administration, use or manufacture of controlled substances or imitation

4 controlled substances and which have come into the custody of a peace officer or
5 officer or agent of the department of health and senior services as provided by
6 sections 195.010 to 195.320, the lawful possession of which is not established or
7 the title to which cannot be ascertained after a hearing as prescribed in Rule 34
8 of Rules of Criminal Procedure for the courts of Missouri or some other
9 appropriate hearing, shall be forfeited, and disposed of as follows:

10 (1) Except as in this section otherwise provided, the court or associate
11 circuit judge having jurisdiction shall order such controlled substances, imitation
12 controlled substances, or drug paraphernalia forfeited and destroyed. A record
13 of the place where said controlled substances, imitation controlled substances, or
14 drug paraphernalia were seized, of the kinds and quantities of controlled
15 substances, imitation controlled substances, or drug paraphernalia so destroyed,
16 and of the time, place and manner of destructions, shall be kept, and a return
17 under oath, reporting the destruction of the controlled substances, imitation
18 controlled substances, or drug paraphernalia shall be made to the court or
19 associate circuit judge;

20 (2) The department of health and senior services shall keep a complete
21 record of all controlled substances, imitation controlled substances, or drug
22 paraphernalia received and disposed of, together with the dates of such receipt
23 and disposal, showing the exact kinds, quantities, and forms of such controlled
24 substances, imitation controlled substances, or drug paraphernalia; the persons
25 from whom received and to whom delivered; and by whose authority they were
26 received, delivered or destroyed; which record shall be open to inspection by all
27 federal or state officers charged with the enforcement of federal and state narcotic
28 or controlled substances laws.

29 2. (1) Everything of value furnished, or intended to be furnished, in
30 exchange for a controlled substance, imitation controlled substance or drug
31 paraphernalia in violation of sections 195.010 to 195.320, all proceeds traceable
32 to such an exchange, and all moneys, negotiable instruments, or securities used,
33 or intended to be used, to facilitate any violation of sections 195.010 to 195.320
34 shall be forfeited, except that no property shall be forfeited under this subsection
35 to the extent of the interest of an owner by reason of any act or omission
36 established by him to have been committed without his knowledge or consent **and**
37 **no property shall be forfeited under this subsection if the violation is**
38 **for any amount of marijuana.**

39 (2) Any moneys, coin, or currency found in close proximity to forfeitable

40 controlled substances, imitation controlled substances, or drug paraphernalia,
41 **except marijuana**, or forfeitable records of the importation, manufacture, or
42 distribution of controlled substances, imitation controlled substances or drug
43 paraphernalia, **except marijuana**, are presumed to be forfeitable under this
44 subsection. The burden of proof shall be upon claimants of the property to rebut
45 this presumption.

46 (3) All forfeiture proceedings shall be conducted pursuant to the
47 provisions of sections 513.600 to 513.660.

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

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

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

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

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

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

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

20 (a) Chapter 195, relating to drug regulations **unless the crime is based**
21 **on any amount of marijuana as defined in section 195.010, in which**
22 **case, the crime shall not be considered criminal activity for purposes**
23 **of sections 513.600 to 513.660;**

24 (b) Chapter 565, relating to offenses against the person;

25 (c) Chapter 566, relating to sexual offenses;

26 (d) Chapter 568, relating to offenses against the family;

27 (e) Chapter 569, relating to robbery, arson, burglary and related offenses;

28 (f) Chapter 570, relating to stealing and related offenses;

- 29 (g) Chapter 567, relating to prostitution;
- 30 (h) Chapter 573, relating to pornography and related offenses;
- 31 (i) Chapter 574, relating to offenses against public order;
- 32 (j) Chapter 575, relating to offenses against the administration of justice;
- 33 (k) Chapter 491, relating to witnesses;
- 34 (l) Chapter 572, relating to gambling;
- 35 (m) Chapter 311, but relating only to felony violations of this chapter
- 36 committed by persons not duly licensed by the supervisor of liquor control;
- 37 (n) Chapter 571, relating to weapons offenses;
- 38 (o) Chapter 409, relating to regulation of securities;
- 39 (p) Chapter 301, relating to registration and licensing of motor vehicles;
- 40 (4) "Criminal proceeding", any criminal prosecution commenced by an
- 41 investigative agency under any criminal law of this state;
- 42 (5) "Investigative agency", the attorney general's office, or the office of any
- 43 prosecuting attorney or circuit attorney;
- 44 (6) "Pecuniary value":
- 45 (a) Anything of value in the form of money, a negotiable instrument, a
- 46 commercial interest, or anything else the primary significance of which is
- 47 economic advantage; or
- 48 (b) Any other property or service that has a value in excess of one
- 49 hundred dollars;
- 50 (7) "Real property", any estate or legal or equitable interest in land
- 51 situated in this state or any interest in such real property, including, but not
- 52 limited to, any lease or deed of trust upon such real property;
- 53 (8) "Seizing agency", the agency which is the primary employer of the
- 54 officer or agent seizing the property, including any agency in which one or more
- 55 of the employees acting on behalf of the seizing agency is employed by the state
- 56 of Missouri or any political subdivision of this state;
- 57 (9) "Seizure", the point at which any law enforcement officer or agent
- 58 discovers and exercises any control over property that an officer or agent has
- 59 reason to believe was used or intended for use in the course of, derived from, or
- 60 realized through criminal activity. Seizure includes but is not limited to
- 61 preventing anyone found in possession of the property from leaving the scene of
- 62 the investigation while in possession of the property;
- 63 (10) (a) "Trustee":
- 64 a. Any person who holds legal or record title to real property for which

65 any other person has a beneficial interest; or

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

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

68 a. Any person appointed or acting as a personal representative under
69 chapter 475 or under chapter 473;

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

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