

FIRST REGULAR SESSION

HOUSE BILL NO. 776

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ROBERTS.

1646H.011

D. ADAM CRUMBLISS, Chief Clerk

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Section A. Section 542.301, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 542.301, to read as follows: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 court as the result of any seizure and which has not been forfeited pursuant to any other provisions of law or returned to the claimant shall be disposed of as follows:

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

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 delivered to any claimant unless all interested persons have been given a reasonable opportunity
18 to appear and to be heard;

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

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

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

50 (2) Weapons, tools, devices, computers, computer equipment, computer software,
51 computer hardware, cellular telephones, or other devices capable of accessing the internet, and
52 substances other than motor vehicles, aircraft or watercraft, used by the owner or with the

53 owner's consent as a means for committing felonies other than the offense of possessing burglary
54 tools in violation of section 569.180, and property, the possession of which is an offense under
55 the laws of this state or which has been used by the owner, or used with the owner's acquiescence
56 or consent, as a raw material or as an instrument to manufacture, produce, or distribute, or be
57 used as a means of storage of anything the possession of which is an offense under the laws of
58 this state, or which any statute authorizes or directs to be seized, other than lawfully possessed
59 weapons seized by an officer incident to an arrest, shall be forfeited to the state of Missouri.

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

76 3. Upon the filing of a motion [~~either~~] by the prosecuting attorney, **attorney general,**
77 **law enforcement agency having custody of the seized property,** or [~~by~~] a claimant, the judge
78 shall order notice to be given to all persons interested in the property, including the person out
79 of whose possession the property was seized and any lienors, of the time, place and nature of the
80 hearing to be held on the motion. The notice shall be given in a manner reasonably calculated
81 to reach the attention of all interested persons. Notice may be given to unknown persons and to
82 persons of unknown address by publication in a newspaper of general circulation in the county.
83 Every interested person shall be given a reasonable opportunity to appear and to be heard as to
84 the nature of the person's claim to the property and upon the issue of whether or not it is subject
85 to forfeiture.

86 4. If the evidence is clear and convincing that the property in issue is in fact of a kind
87 subject to forfeiture under this subsection, the judge shall declare it forfeited and order its

88 destruction or sale. The judge shall direct that the destruction or sale of property needed as
89 evidence in a criminal proceeding shall be postponed until this need no longer exists.

90 5. If the forfeited property can be put to a lawful use, it may be ordered sold after any
91 alterations which are necessary to adapt it to a lawful use have been made. In the case of
92 computers, computer equipment, computer software, computer hardware, cellular telephones,
93 or other devices capable of accessing the internet, or other devices used in the acquisition,
94 possession, or distribution of child pornography or obscene material, the law enforcement agency
95 in possession of such items may, upon court order, retain possession of such property and
96 convert such property to the use of the law enforcement agency for use in criminal investigations.
97 If there is a holder of a bona fide lien against property which has been used as a means for
98 committing an offense or which has been used as a raw material or as an instrument to
99 manufacture or produce anything which is an offense to possess, who establishes that the use was
100 without the lienholder's acquiescence or consent, the proceeds, less necessary expenses of
101 preservation and sale, shall be paid to the lienholder to the amount of the lienholder's lien. The
102 remaining amount shall be paid into the county treasury.

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

106 7. When a warrant has been issued to search for and seize allegedly obscene matter for
107 forfeiture to the state, after an adversary hearing, the judge, upon return of the warrant with the
108 matter seized, shall give notice of the fact to the prosecuting attorney of the county in which the
109 matter was seized and the dealer, exhibitor or displayer and shall conduct further adversary
110 proceedings to determine whether the matter is subject to forfeiture. If the evidence is clear and
111 convincing that the matter is obscene as defined by law and it was being held or displayed for
112 sale, exhibition, distribution or circulation to the public, the judge shall declare it to be obscene
113 and forfeited to the state and order its destruction or other disposition; except that, no forfeiture
114 shall be declared without the dealer, distributor or displayer being given a reasonable opportunity
115 to appear in opposition and without the judge having thoroughly examined each item. If the
116 material to be seized is the same as or another copy of matter that has already been determined
117 to be obscene in a criminal proceeding against the dealer, exhibitor, displayer or such person's
118 agent, the determination of obscenity in the criminal proceeding shall constitute clear and
119 convincing evidence that the matter to be forfeited pursuant to this subsection is obscene. Except
120 when the dealer, exhibitor or displayer consents to a longer period, or by such person's actions
121 or pleadings willfully prevents the prompt resolution of the hearing, judgment shall be rendered
122 within ten days of the return of the warrant. If the matter is not found to be obscene or is not
123 found to have been held or displayed for sale, exhibition or distribution to the public, or a

124 judgment is not entered within the time provided for, the matter shall be restored forthwith to the
125 dealer, exhibitor or displayer.

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

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

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

144 11. If the evidence is clear and convincing that the matter is obscene as defined by law,
145 and that the obscene material was being held or displayed for sale, exhibition, distribution or
146 circulation to the public or that the matter is pornographic for minors and that the pornographic
147 material was being held or displayed for sale, exhibition, distribution or circulation to minors,
148 the judge shall declare it to be obscene or pornographic for minors and forfeited to the state and
149 order its destruction or other disposition. A determination that the matter is obscene in a
150 criminal proceeding as well as a determination that such obscene material was held or displayed
151 for sale, exhibition, distribution or circulation to the public or a determination that the matter is
152 pornographic for minors in a criminal proceeding as well as a determination that such
153 pornographic material was held or displayed for sale, exhibition, distribution or circulation to
154 minors shall be clear and convincing evidence that such material should be forfeited to the state;
155 except that, no forfeiture shall be declared without the dealer, distributor or displayer being given
156 a reasonable opportunity to appear in opposition and without a judge having thoroughly
157 examined each item. A dealer, distributor or displayer shall have had reasonable opportunity to
158 appear in opposition if the matter the prosecutor seeks to destroy is the same matter that formed
159 the basis of a criminal proceeding against the dealer, distributor or displayer where the dealer,

160 distributor or displayer has been charged and found guilty of holding or displaying for sale,
161 exhibiting, distributing or circulating obscene material to the public or pornographic material for
162 minors to minors. If the matter is not found to be obscene, or if obscene material is not found
163 to have been held or displayed for sale, exhibition, distribution or circulation to the public, or if
164 the matter is not found to be pornographic for minors or if pornographic material is not found
165 to have been held or displayed for sale, exhibition, distribution or circulation to minors, the
166 matter shall be restored forthwith to the dealer, exhibitor or displayer.

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

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

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

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

181 **16. For the purposes of this section, "seized property that has ceased to be useful**
182 **as evidence" shall include, but not be limited to, property that is evidence in a case if the**
183 **prosecuting or circuit attorney has refused to make a motion to the court for an arrest**
184 **warrant and the statute of limitations for such case has run.**

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

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