

SECOND REGULAR SESSION

SENATE BILL NO. 1024

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOSTER.

Read 1st time February 7, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

5011S.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 reform, 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513.623, 513.625, 513.630, 513.635, 513.637, 513.640, 513.645, 513.647, 513.649, 513.651, and 513.653, RSMo, are repealed and twenty-five new sections enacted in lieu thereof, to be known as sections 546.2000, 546.2003, 546.2006, 546.2009, 546.2012, 546.2015, 546.2018, 546.2021,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 interest in

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

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

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

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

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

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

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

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

41 (10) **"Seizure for forfeiture", seizure of property by a law**
42 **enforcement officer, including a constructive seizure, accompanied by**
43 **an assertion by the seizing agency or by an attorney for the state that**
44 **the property is seized for forfeiture, in accordance with section 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 interest**
14 **holder for the conduct alleged to give rise to the forfeiture. A claimant**
15 **or defendant may obtain a change of venue if there exists so great a**
16 **prejudice against the party that they cannot obtain a fair and impartial**
17 **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 of**
7 **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 rise
28 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 (2)
32 of this section; or

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

36 Property described in this subdivision may be seized for forfeiture under
37 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 the
40 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 action
46 under this section, the remaining balance shall be ordered forfeited as
47 a personal judgment against the defendant.

48 (7) Any abandoned or unclaimed property that a law enforcement

49 **officer comes into contact with during the performance of his official**
50 **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 the**
11 **conduct giving rise to its forfeiture, including acquisition of proceeds of**
12 **conduct giving rise to forfeiture, and acquired the property in good**
13 **faith, for value and did not knowingly take part in an illegal transaction.**

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

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

21 **(2) The owner or interest holder is criminally responsible for the**
22 **conduct giving rise to its forfeiture, whether or not there is a**
23 **prosecution or conviction; or**

24 **(3) The owner or interest holder acquired the property with**
25 **notice of its actual or constructive seizure for forfeiture under section**
26 **546.2015, or with reason to believe that it was subject to forfeiture under**
27 **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 or circuit**
3 **judge. The court may issue a seizure warrant on an affidavit under oath**
4 **demonstrating that probable cause exists for its forfeiture or that the**
5 **property has been the subject of a previous final judgment of forfeiture**
6 **in the courts of any state or of the United States. The court may order**
7 **that the property be seized on such terms and conditions as are**
8 **reasonable in the discretion of the court. The order may be made on or**

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

18 4. Property may be seized constructively by:

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

21 (2) Giving notice under section 546.2021;

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

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

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

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

546.2018. 1. Property seized for forfeiture under sections 546.2000
2 to 546.2072 is not subject to alienation, conveyance, sequestration,

3 attachment, or a motion or order under chapter 542, RSMo, relating to
4 the return of property seized as evidence with or without a search
5 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 546.2072
10 may obtain release of the property by posting with the attorney for the
11 state a surety bond or cash in an amount equal to the full fair market
12 value of the property as determined by the attorney for the state. The
13 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 giving
17 rise to forfeiture.

18 If a surety bond or cash is posted and the property is forfeited, the court
19 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 maintain
35 its value, in any appropriate location within the jurisdiction of the
36 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 stipulated**
52 **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 priority:**

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

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

63 **(3) Any balance of the proceeds shall be preserved in the actual**
64 **or constructive custody of the court, in an interest bearing account,**
65 **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 the**
5 **court, pending further proceedings under sections 546.2000 to 546.2072**
6 **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 claim**
11 **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 546.2030,**
17 **except that no petition may be filed after the state commences a court**
18 **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 procedures**
23 **shall apply:**

24 **(a) The attorney for the state shall provide the seizing agency and**
25 **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 and**
38 **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 the**
42 **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 sections
51 546.2036, 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 offers
55 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 provided
58 in sections 546.2045 and 546.2048.

59 2. (1) Notice of pending forfeiture, service of an in rem complaint
60 or notice of a recognition of exemption and statement of nonexempt
61 interests required under sections 546.2000 to 546.2072, shall be given in
62 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 is
75 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 is
77 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 the
83 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 relating
4 to conduct giving rise to forfeiture under sections 546.2000 to 546.2072;

5 (2) Upon seizure for forfeiture; or

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

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

15 3. The lien notice shall set forth:

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

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

23 (3) The amount claimed by the lienor;

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

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

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

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

38 **named person. A separate forfeiture lien shall be filed for each named**
39 **person.**

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

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

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

546.2027. 1. Except as provided in subsection 2 of this section, a
2 **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 or**
5 **entity for whom the person holds title or appears as record owner, shall**
6 **furnish within fifteen days, to the seizing agency or the attorney for the**
7 **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 and**
22 **may, upon conviction, be sentenced to imprisonment for not less than**
23 **two nor more than five years, and shall be fined not less than ten**
24 **thousand dollars per day for each day compliance was not made.**

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

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

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

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

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

46 9. A judgment or an order of payment entered under this section
47 becomes a judgment lien against the property alleged to be subject to
48 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 agency
4 and to the attorney for the state by certified mail, return receipt
5 requested, within thirty days after the effective date of notice of pending
6 forfeiture. No extension of time for the filing of a claim shall be granted.

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

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

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

18 **(2) The address where the claimant will accept mail;**

19 **(3) The nature and extent of the claimant's interest in the**
20 **property;**

21 **(4) The date, the identity of the transferor, and the circumstances**
22 **of the claimant's acquisition of the interest in the property;**

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

25 **(6) All essential facts supporting each assertion; and**

26 **(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 on**
16 **the sole issue of whether probable cause for forfeiture of the property**
17 **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 with**

25 the requirements for claims in section 546.2030. The hearing shall be
26 held within thirty days of the order to show cause unless continued for
27 good cause on motion of either party.

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

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

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

45 (1) He has not had an opportunity to participate in a previous
46 adversarial judicial determination of probable cause;

47 (2) He has no access to other monies adequate for the payment of
48 criminal defense counsel; and

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

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

59 8. A defendant convicted in any criminal proceeding is precluded
60 from later denying the essential allegations of the criminal offense of
61 which the defendant was convicted in any proceeding under this

62 section. For the purposes of this section, a conviction results from a
63 verdict or plea of guilty, including a plea of no contest, nolo contendere
64 or an Alford plea.

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

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

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

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

- 84 (1) The person has engaged in conduct giving rise to forfeiture;
85 (2) The property was acquired by the person during that period
86 of the conduct giving rise to forfeiture or within a reasonable time after
87 that period; and
88 (3) There was no likely source for the property other than the
89 conduct giving rise to forfeiture.

90 13. A finding that property is the proceeds of conduct giving rise
91 to forfeiture does not require proof that the property is the proceeds of
92 any particular exchange or transaction.

93 14. A person who acquires any property subject to forfeiture is a
94 constructive trustee of the property, and its fruits, for the benefit of the
95 state, to the extent that their interest is not exempt from forfeiture. If
96 property subject to forfeiture has been commingled with other property,
97 the court shall order the forfeiture of the mingled property and of any
98 fruits of the mingled property, to the extent of the property subject to

99 forfeiture, unless an owner or interest holder proves that specified
100 property does not contain property subject to forfeiture, or that their
101 interest in specified property is exempt from forfeiture.

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

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

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

118 18. Except as otherwise provided by sections 546.2000 to 546.2072,
119 all proceedings hereunder shall be governed by the Missouri rules of
120 civil procedure.

121 19. An action under sections 546.2000 to 546.2072 shall be
122 consolidated with any other action or proceeding under sections
123 546.2000 to 546.2072 or to foreclosure or trustee sale proceedings relating
124 to the same property on motion of the attorney for the state, and may be
125 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 in
3 personam forfeiture procedures and is also subject to the provisions of
4 this section. If a forfeiture is authorized by sections 546.2000 to 546.2072,
5 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 has**
12 **timely filed a proper claim may file an answer in an action in rem. For**
13 **the purposes of this section, an owner of or interest holder in property**
14 **who has filed a claim and answer shall be referred to as a claimant.**

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

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

22 **(2) The address where the claimant will accept mail;**

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

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

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

29 **(6) All essential facts supporting each assertion; and**

30 **(7) The specific relief sought.**

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

42 **6. The state and any claimant who has timely answered the**
43 **complaint may serve discovery requests on any other party at the time**
44 **of filing its pleadings or at any other time not less than thirty days prior**
45 **to the hearing. Answers or responses to the requests are due within**
46 **twenty days of service. Depositions may be taken after the expiration**
47 **of fifteen days after the filing and service of the complaint. Any party**

48 may move for a summary judgment after service of an answer or
49 responsive pleading but not less than thirty days prior to the hearing.

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

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

546.2039. 1. A judicial in personam forfeiture proceeding brought
2 by the attorney for the state under an in personam civil action alleging
3 conduct giving rise to forfeiture is also subject to the provisions of this
4 section. If a forfeiture is authorized by sections 546.2000 to 546.2072, it
5 shall be ordered by the court in the in personam action. This action
6 shall be in addition to or in lieu of in rem forfeiture procedures.

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

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

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

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

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

22 be limited to the issues of whether:

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

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

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

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

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

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

38 6. Except as provided in section 546.2033, no person claiming an
39 interest in property subject to forfeiture under sections 546.2000 to
40 546.2072 may intervene in a trial or appeal of a criminal action or in an
41 in personam civil action involving the forfeiture of the property.

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

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

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

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

57 (4) In accordance with findings made at the hearing, the court
58 may amend the order of forfeiture if it determines that any claimant has

59 established by a preponderance of the evidence that the claimant has an
60 interest in the property which is exempt under the provision of section
61 546.2012.

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 with
7 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 for
11 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 court,
19 conceals, or otherwise renders unavailable property alleged to be subject
20 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 been
24 filed and notice given under such section 546.2021 or the Missouri rules
25 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 property,
28 or if there is no lien, in an amount equal to the fair market value of the
29 property, together with reasonable investigative expenses and attorney
30 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 of
4 such notice, the attorney for the state shall prepare a written
5 declaration of forfeiture of the subject property to the state and allocate
6 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 1
12 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 giving
23 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 in
27 an action in personam, the court shall enter an order that the state has
28 clear title to the forfeited property interest. Title to the forfeited
29 property interest and its proceeds shall be deemed to have vested in the
30 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 entry**
60 **of judgment in favor of a person claiming an interest in the property**
61 **that is subject to forfeiture proceedings under sections 546.2000 to**
62 **546.2072, the court shall enter an order that the property or interest in**
63 **property shall be released or delivered promptly to that person free of**
64 **liens and encumbrances under sections 546.2000 to 546.2072, and that the**
65 **person's cost bond shall be discharged.**

66 **8. Upon motion by the attorney for the state, if it appears after a**
67 **hearing that there was reasonable cause for the seizure for forfeiture or**
68 **for the filing of the notice of pending forfeiture or complaint, the court**
69 **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 to
2 546.2072 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 the
6 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 forfeited
11 or obtained by judgment or settlement under this section shall be
12 distributed as provided in subsection 2 of this section.

13 2. The office of the prosecuting or circuit attorney shall distribute
14 monies 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 the
4 commencement of any proceeding or action under sections 546.2000 to

5 546.2072, to subpoena witnesses; compel their attendance; examine them
6 under oath; and require the production of documentary evidence for
7 inspection, reproducing, or copying. Except as otherwise provided by
8 this section, the attorney for the state shall proceed under this
9 subsection with the same powers and limitations, and judicial oversight
10 and enforcement, and in the manner provided by sections 546.2000 to
11 546.2072 and by the Missouri rules of civil procedure. Any person
12 compelled to appear under a demand for oral testimony under this
13 section may be accompanied, represented, and advised by counsel.

14 2. The examination of all witnesses under this section shall be
15 conducted by the attorney for the state before an officer authorized to
16 administer oaths. The testimony shall be taken stenographically or by
17 a sound recording device and shall be transcribed or otherwise
18 preserved. The attorney for the state may exclude from the examination
19 all persons except the witness, his counsel, the officer before whom the
20 testimony is to be taken, law enforcement officials, and a
21 stenographer. Prior to oral examination, the person shall be advised of
22 his right to refuse to answer any questions on the basis of the privilege
23 against self-incrimination. The examination shall be conducted in a
24 manner consistent with the rules of civil procedure dealing with the
25 taking of depositions.

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

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

41 5. Acts or omissions by the attorneys for the state in the course

42 of their duties in the enforcement of any of the provisions of sections
43 546.2000 to 546.2072, including provision of any legal services prior to
44 charging, complaint or seizure, are prosecutorial and shall not subject
45 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 at
3 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 prosecuting or circuit
7 attorney for that judicial circuit, issue an order, ex parte or after a
8 hearing, requiring the person to produce evidence, notwithstanding that
9 person's refusal to do so on the basis of the privilege against self-
10 incrimination.

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

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

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

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

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

6 proceedings relating to the same conduct are pending.

546.2060. Controlled substances included in section 195.017, RSMo,
2 which are contraband and any controlled substance whose owners are
3 unknown are summarily forfeited to the state. The court may include in
4 any judgment under sections 546.2000 to 546.2072 an order forfeiting any
5 controlled substance involved in the offense to the extent of the
6 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 in
4 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 remedies
3 under sections 546.2000 to 546.2072 shall be supplemental and not
4 mutually exclusive. They do not preclude and are not precluded by any
5 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.

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 sections
6 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
60 of seizure. The burden of proof will be on the investigative agency
61 to 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.]

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

12 2. The court may, upon such terms and conditions as
13 prescribed by it, order that the property be sold by an innocent
14 party who holds a lien on or security interest in the property at any
15 time during the proceedings. Any proceeds from such sale over and
16 above the amount necessary to satisfy the lien or security interest

17 shall be paid into court pending final judgment in the forfeiture
18 proceeding. No such sale shall be ordered, however, unless the
19 obligation upon which the lien or security interest is based is in
20 default.

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

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

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

2 [513.617. 1. In the event criminal charges arising from the
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 to

8 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 such
40 a finding. No state or local government agency, nor any person,
41 may accept any monetary payment or other thing of value in
42 exchange for the release of property seized for forfeiture or for the
43 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.]

[513.620. Subject to the requirement of protecting the
2 interest of all innocent parties, the court may after judgment of
3 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.]

1 [513.637. 1. Notwithstanding any other provision of law, a
2 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 fictitious
18 names under which the person may be known. The investigative
19 agency may also name in the CAFA lien notice any corporation,
20 partnership, or other entity that is either controlled by or entirely
21 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 investigative
48 agency to so furnish a copy of the notice under this subsection shall
49 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 shall
118 also be entitled to recover investigative costs and attorney's fees
119 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 be
140 made with due provision for the rights of innocent persons.]

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

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

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

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

29 (1) The court shall, upon the motion of such person,
30 immediately enter an order setting a date for hearing, which shall
31 be not less than five nor more than ten days after the suit has been
32 filed. The order, along with a copy of the complaint, shall be
33 served on the investigative agency within three days after the
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
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
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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