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**S. 70**

**STATUS INFORMATION**

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Sponsors: Senator Malloy

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Summary: Asset Forfeiture and Private Property Protection Act

**HISTORY OF LEGISLATIVE ACTIONS**

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12/9/2020 Senate Referred to Committee on **Judiciary**

1/12/2021 Senate Introduced and read first time ([Senate Journal‑page 157](file:///h:\sj\20210112.docx))

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**VERSIONS OF THIS BILL**

[12/9/2020](file:///p:\pprever\2021-22\70_20201209.docx)

**A** **BILL**

TO ENACT THE “ASSET FORFEITURE AND PRIVATE PROPERTY PROTECTION ACT”; TO AMEND TITLE 17 OF THE 1976 CODE, RELATING TO CRIMINAL PROCEDURES, BY ADDING CHAPTER 32, TO PROVIDE FOR ASSET FORFEITURE AND PRIVATE PROPERTY PROTECTION PROCESSES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act must be known and may be cited as the “Asset Forfeiture and Private Property Protection Act”.

SECTION 2. Title 17 of the 1976 Code is amended by adding:

“CHAPTER 32

Asset Forfeiture and Private Property Protection

Section 17‑32‑10. As used in this chapter:

(1) ‘Actual knowledge’ means direct and clear awareness of information, a fact, or a condition.

(2) ‘Contraband’ means goods that are unlawful to import, export, or possess.

(3) ‘Conveyance’ means a device used for transportation, including a motor vehicle, trailer, snowmobile, airplane, vessel, and any equipment attached to it. This term does not include property that is stolen or taken in violation of the law.

(4) ‘Instrumentality’ means property otherwise lawful to possess that is used in a criminal offense, including a tool, firearm, container, conveyance, computer or telecommunications device, ammunition, equipment, or computer software.

(5) ‘Law enforcement agency’ has the same meaning as in Section 17‑28‑20(8).

(6) ‘Law subject to forfeiture’ means a state criminal law that is a felony and explicitly includes forfeiture as punishment or sanction for the offense.

(7) ‘Proceeds’ means money, securities, negotiable instruments, or other means of exchange obtained by the sale of property.

Section 17‑32‑20. (A) Property used in or derived from the violation of a law is subject to forfeiture only if the violation is:

(1) of a law subject to forfeiture; and

(2) established by proof of a criminal conviction.

(B) The State shall establish that seized property is forfeitable pursuant to the provisions of Section 17‑32‑30(A).

(C) Nothing in this section prevents property from being forfeited by plea agreement approved by the presiding criminal court, except a court shall not accept a plea agreement or other arrangement that prevents the claim of any person other than a defendant who claims ownership.

(D) A court may waive the conviction requirement if a prosecuting agency shows by clear and convincing evidence that, before conviction, a defendant:

(1) died;

(2) was deported by the United States government;

(3) was granted immunity or a reduced punishment in exchange for testifying or assisting a law enforcement investigation or prosecution;

(4) fled the jurisdiction; or

(5) abandoned the property.

(E) There is no civil asset forfeiture.

Section 17‑32‑30. (A) If a person is convicted of violating a law subject to forfeiture, then a court shall order the person to forfeit:

(1) proceeds and property derived directly from the commission of the crime;

(2) proceeds and property directly traceable to proceeds and property derived directly from the commission of the crime; and

(3) instrumentalities used in the commission of the crime.

(B) The only property subject to forfeiture is:

(1) land, buildings, containers, conveyances, equipment, materials, products, money, securities, and negotiable instruments the court finds to meet the requirements of subsection (A); and

(2) ammunition, firearms, and ammunition‑and‑firearm accessories used in the furtherance of, used in the commission of, or obtained from the proceeds of a violation of a law subject to forfeiture.

(C) The State may petition a court to order a defendant to submit substitute property owned fully by the defendant up to the value of unreachable property if the State proves, by a preponderance of evidence, that the defendant intentionally dissipated, transferred, sold, commingled property with other property that cannot be divided without difficulty, or deposited property with a third party to avoid the court’s jurisdiction. The State may not seek additional remedies, including, but not limited to, a personal money judgment.

(D) A defendant is not jointly and severally liable for forfeiture awards owed by other defendants. If ownership is unclear, then a court may order each defendant to forfeit property on a pro rata basis proportional to the proceeds that each defendant personally received.

Section 17‑32‑40. (A) A law enforcement agency shall not refer, transfer, or otherwise relinquish possession of property seized under state law to a federal agency by way of adoption or other means for the purpose of the property’s forfeiture under the federal Controlled Substances Act.

(B) A law enforcement agency may not transfer a criminal investigation or proceeding to the federal government with the sole intention of circumventing state forfeiture law.

(C) In a case in which the aggregate net equity value of the property and currency seized is fifty thousand dollars or less, excluding the value of contraband, a law enforcement agency participating in a joint task force or other multi-jurisdictional collaboration with the federal government shall transfer responsibility for the seized property to the prosecuting agency for forfeiture under state law.

(D) If the federal government prohibits the transfer of seized property and currency to a prosecuting agency as required by subsection (C) and instead requires the property be transferred to the federal government for forfeiture under federal law, then the law enforcement agency is prohibited from accepting payment of any kind or distribution of forfeiture proceeds from the federal government.

(E) Nothing in subsections (C) or (D) must be construed to restrict a law enforcement agency participating in a joint task force or other multi-jurisdictional collaboration from transferring responsibility to the federal government for the forfeiture of seized property and currency that has an aggregate net equity value of greater than fifty thousand dollars, excluding the value of contraband.

(F) A law enforcement agency shall report all transfers to the federal government of an investigation or criminal proceeding that involves forfeiture per the reporting requirements in Sections 17‑32‑85 and 17‑32‑200.

Section 17‑32‑50. (A) Before a defendant’s first appearance in court, a prosecuting agency shall file a criminal complaint that includes:

(1) criminal charges; and

(2) in any case in which the State seeks forfeiture of property, the following information:

(a) a description of the property seized;

(b) the date and place of the seizure;

(c) the name and address of the appropriate agency responsible for the seizure;

(d) a statement of facts establishing probable cause to believe that the charged offense was committed, that the defendant committed it, and that the seized property is an instrument or represents the proceeds of the underlying offense;

(e) the name of any person known to the prosecuting agency to have an interest in the property, and the nature of that interest; and

(f) references to the relevant statutory provisions required to show that the property is the type of property that may be forfeited.

(B) Upon motion by the prosecuting agency, a court may permit the filing of an amended criminal complaint within seven days of the first appearance for good cause shown. Service of an amended criminal complaint on a represented party must be made upon the attorney. Service on the attorney or party must be made in the manner provided by law and the rules of practice of the court, including by electronic means as authorized by law or court rule. The court shall verify service at the defendant’s next appearance.

(C) The prosecuting agency shall provide notice of the forfeiture proceeding to the registered owner of any vehicle and any other individual known to have an interest in any property subject to forfeiture under this section who is not charged with a crime in the complaint. Notice must be given within seven days of the filing of the complaint, pursuant to subsection (A) or, if an interest was not known at the time of the filing, within seven days of the discovery of an individual with an interest in the property and may be made by personal service if the owner is a resident of this State, or by certified mail if the person is a resident of another state.

(D) The notice must be in writing and must contain:

(1) a description of the property seized;

(2) the date of seizure; and

(3) a copy of the complaint

(E) Substantially, the following language must appear conspicuously in the notice:

‘WARNING: You may lose the right to be heard in court if you do not file a statement of interest or ownership before the conclusion of the criminal prosecution of the defendant. You must file in district court. You do not have to pay a filing fee to file your notice.’

(F) If notice is not served in accordance with this section to all persons appearing to have an interest in the property and no time extension is granted or the extension period has expired, then the appropriate agency shall, upon the owner’s request, return the property to the person from whom the property was seized or another owner if another owner made the request.

(G) The law enforcement agency shall not be required to return contraband.

Section 17-32-60. (A) In any case in which the State seeks the forfeiture of property, except through a complaint as provided in Section 17-32-50, the prosecuting agency shall file an indictment or information that includes:

(1) a criminal charge; and

(2) a charge for which the forfeiture of property under this chapter may be ordered.

(B) The property-related charge shall identify the specific assets to be forfeited, if known, listed in Section 17-32-50(A)(2).

(C) Upon the application of the prosecuting agency, the court may enter a restraining order or injunction, or take other action to preserve the availability of property only:

(1) upon the issuance of an indictment or information according to subsection (A); or

(2) prior to the issuance of an indictment or information according to subsection (A), if the court determines there is a substantial probability the State will prevail on the issue of criminal forfeiture and that failure to enter the order will result in property being destroyed, removed from the jurisdiction, or otherwise made unavailable for forfeiture.

(D) Any order entered pursuant to subsection (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subsection (A) has been issued subsequently.

(E) Notice must be provided as set forth in Section 17‑32‑50(D),(E), and (F) to all persons known to have an interest in the property who are not named in the indictment or information.

Section 17-32-70. (A) The prosecuting agency may petition the court to issue an ex parte preliminary order to seize or secure the personal property for which forfeiture is sought and to provide for its custody.

(B) Personal property subject to forfeiture may be seized without a court order if the:

(1) seizure is incident to a lawful arrest or a lawful search;

(2) the State has probable cause to believe the person committed an offense that authorizes the forfeiture of property and the search was lawfully conducted;

(3) property subject to seizure is the subject of a prior judgment in favor of the State; or

(4) the State has probable cause to believe that delay occasioned by the necessity to obtain process would result in the removal or destruction of property and the property is forfeitable pursuant to Section 17‑32‑30.

(C) If personal property is seized, then the law enforcement officer who seizes the property shall give an itemized receipt to the person in possession of the property. If the property is not with a person or the person is absent from the premises, then the law enforcement officer may leave a receipt in the place where the property was found.

(D) The mere presence or possession of United States currency, without other indicia of an offense that authorizes the forfeiture of property, is insufficient probable cause for the seizure of United States currency.

Section 17-32-75 (A) Seizure or restraint of real property requires a court order. A court may issue an order to seize or secure real property for which forfeiture is sought only after proper notice to property owners and an opportunity for a contested hearing to determine the sufficiency of probable cause for seizure.

(B) Nothing in this section prohibits a prosecuting agency from seeking a lis pendens or restraining order to hinder the sale or destruction of real property. However, if the prosecuting attorney obtains a lis pendens or restraining order, then the prosecuting agency shall notify any party with an interest in any real property within thirty days.

Section 17‑32‑80. (A) A police officer, sheriff, or other member of law enforcement, other than the prosecuting agency responsible for the litigation of the forfeiture case, may not request, require, or in any manner induce any person to execute a document purporting to waive, for the purpose of forfeiture under this chapter, the person’s interest in or rights to property seized.

(B) Any such document purporting to waive a person’s interest in or right to property seized under this chapter is null, void, and inadmissible in court.

Section 17-32-85. (A) The State acquires a provisional title at the time of seizure, which authorizes the State to hold and protect property. The title to property vests with the State if a final forfeiture verdict is returned in favor of the State and relates the verdict back to the time when the State acquired a provisional title. A title to substitute assets vests if the court issues an order forfeiting substitute assets. Title to an asset is still subject to third-party claims pursuant to the provisions of this chapter.

(B) The State shall use reasonable diligence to secure seized property and prevent waste.

(C)(1) The state entity in custody of seized property that is subject to forfeiture shall maintain a record of:

(a) the exact kind, quantity, and form of the property;

(b) the date and from whom it received the property;

(c) the violation of law that subjected the property to seizure;

(d) the liens against the seized property;

(e) the make, model, and serial number of each seized firearm;

(f) to whom and when the notice of forfeiture was given;

(g) to whom the property was delivered; and

(h) the date and manner of destruction or disposition of the property.

(2) The records required pursuant to this subsection are subject to the provisions of Chapter 4, Title 30, the Freedom of Information Act.

Section 17‑32‑90. (A) If an owner of seized property seeks its possession before trial, then the owner may post bond or give substitute property in an amount equal to the fair market value of the seized property at the time that bond is determined. This does not apply to property reasonably held for investigatory purposes.

(B) After the owner has posted bond or given substitute property, the State shall return the seized property within three business days. The forfeiture action may proceed against the bond or substitute property as if it were the seized property.

Section 17‑32‑100. A person who has an interest in seized property may file a petition for remission or mitigation for the forfeiture action with the Attorney General of South Carolina before the entry of a court order disposing of the forfeiture action. The Attorney General shall remit or mitigate the forfeiture on terms and conditions the Attorney General deems reasonable if he finds that:

(1) the petitioner did not intend to violate the law; or

(2) extenuating circumstances justify the remission or mitigation of the forfeiture.

Section 17-32-105. The following property is exempt from seizure and forfeiture:

(1) homesteaded real property;

(2) United States currency totaling five hundred dollars or less; and

(3) a conveyance of less than two thousand five hundred dollars in market value.

Section 17‑32‑110. (A) Following the seizure of property pursuant to the provisions of this chapter, a defendant or third party has the right to a pretrial hearing to determine the validity of the seizure.

(B) The claimant, at any time prior to sixty days before a trial of the related criminal violation, may claim the right to possession of the property by motion to the court to issue a writ of replevin.

(C) The claimant shall file a motion establishing the validity of the alleged right, title, or interest in the property. The court shall hear the motion no more than thirty days after the motion is filed. The State shall file an answer showing probable cause for the seizure or cross‑motions at least ten days before the hearing.

(D) The court shall grant the motion if it finds that:

(1) it is likely the final judgment will be that the State must return the property to the claimant;

(2) the property is not reasonably required to be held for evidentiary reasons; or

(3) the property is the only reasonable means for the defendant to pay for legal representation and minimum living expenses in the forfeiture or criminal proceeding unless the prosecuting agency shows by clear and convincing evidence that the property is the instrument or proceeds of an offense for which the defendant is charged. At the court’s discretion, it may order the return of funds and property not needed for evidentiary reasons that are sufficient to obtain counsel of choice but less than the total amount seized.

(E) The court may order the State to give security for satisfaction of any judgment, including damages, that may be rendered in the action or may order other relief as may be just in lieu of ordering the issuance of the writ.

Section 17‑32‑120. (A) The trial court with jurisdiction over the related criminal matter has jurisdiction over the forfeiture proceeding.

(B) Litigation related to the forfeiture of property shall be held in a single proceeding following the trial of the related alleged offense. The litigation associated with the forfeiture of property of less than ten thousand dollars in value shall be held before only a judge.

(C) The court is not bound by the common law, court rules of evidence, statutory rules of evidence, or technical or formal rules of pleading or procedure in the litigation related to the forfeiture of property if the property owner engages in pro se representation in a case before a judge.

(D) If a defendant in the related criminal matter was represented by a public defender, then the state public defender or chief public defender of the judicial district may authorize representation of the defendant in the forfeiture proceeding.

Section 17‑32‑130. (A) At any time during a hearing pursuant to Section 17-32-110 or Section 17-32-120, the owner of the property may petition the court to determine whether the forfeiture is unconstitutionally excessive under the South Carolina Constitution or the United States Constitution. The owner of the property has the burden of establishing that the forfeiture is grossly disproportional to the seriousness of the offense by a preponderance of the evidence at a hearing conducted by the court without a jury.

(B) The court shall consider all relevant factors in determining the constitutionality of a forfeiture, including, but not limited to:

(1) the seriousness of the offense and its impact on the community, including the duration of the activity and the harm caused by the person whose property is subject to forfeiture;

(2) the extent to which the person whose property is subject to forfeiture participated in the offense;

(3) the extent to which the property was used in the commission of the offense;

(4) the sentence imposed for committing the crime subject to forfeiture; and

(5) whether the offense was attempted or completed.

(C) The court shall consider all relevant factors, except the value of the property to the State, in determining the value of the property subject to forfeiture, including, but not limited to, the:

(1) fair market value of the property;

(2) value of the property to the person, including hardship to the owner if the property is forfeited; and

(3) hardship from the loss of the property to family members or others if the property is forfeited.

Section 17‑32‑140. (A) A bona fide security interest in property is not subject to forfeiture unless the person claiming the security interest had actual knowledge that the property was subject to forfeiture at the time the property was seized or restrained. The party claiming the security interest bears the burden of establishing the validity of the interest by a preponderance of evidence.

(B) The prosecuting agency shall summarily return seized property to the person with a bona fide security interest, up to the value of the secured interest.

Section 17‑32‑150. (A) A person who has not been charged in an indictment but has an interest in property subject to forfeiture may not intervene after a criminal trial has begun. Following the entry of a guilty plea in court or a verdict of forfeiture of property, the State shall exercise reasonable diligence to identify a person with a potential interest in the property and make reasonable efforts to give notice to potential claimants. The State shall provide notice by publication in a newspaper most likely to give notice to potential claimants and provide written notice of its intent to dispose of property to a person known or alleged to have an interest in the property exempted from forfeiture under this chapter, including a person making claims for:

(1) court‑ordered child support;

(2) employment‑related compensation; or

(3) payment of unsecured debts.

(B) A third party asserting a legal interest in the property may petition the court for a hearing to adjudicate the validity of the interest in the property within sixty days of the date of the notice. The request for hearing shall:

(1) be signed by the petitioner under penalty of perjury;

(2) state the nature and extent of the petitioner’s right, title, or interest in the property;

(3) state the time and circumstances of the petitioner’s acquisition of the right, title, or interest; and

(4) state any additional facts supporting the petitioner’s claim and the relief sought.

(C) Upon the filing of a petition, the court must schedule a hearing no later than six months after the sentencing of any defendant convicted upon the same indictment. The court must issue or amend a final order of forfeiture after a hearing if the court determines that the petitioner:

(1) has a legal right, title, or interest in the property that renders the order of forfeiture invalid in whole or in part because it was vested in the petitioner rather than the defendant or was superior to the defendant’s right, title, or interest at the time the property was seized or restrained; or

(2) is a bona fide purchaser for the value of the right, title, or interest in the property and did not have cause to believe that the property was subject to forfeiture at the time of purchase. The State has the burden of proof with respect to the issue of whether the petitioner was without cause to believe the property was subject to forfeiture at the time of purchase.

Section 17‑32‑160. (A) The property of an innocent owner may not be forfeited under any forfeiture statute.

(B) Any person, including an heir but excluding a defendant or a secured-interest holder, asserting a legal interest in property that has been seized or restrained may, at any time up until a court’s entering judgment in criminal prosecution, petition the court for a hearing to adjudicate the validity of the person’s alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(C) The person shall file a simple statement of interest or ownership. The person shall sign the petition under penalty of perjury and shall set forth the nature and extent of the petitioner’s right, title, or interest in the property; the time and circumstances of the petitioner’s acquisition of the right, title, or interest in the property; any additional facts supporting the person’s claim; and the relief sought. Any filing fee for a statement under this section is waived.

(D) The person who has an ownership interest in the property subject to forfeiture at the time the commission of the crime giving rise to forfeiture occurred and who claims to be an innocent owner bears the burden of proving by clear and convincing evidence that he has a legal right, title, or interest in the property seized under this chapter.

(E)(1) If subsection (D) is satisfied and the State seeks to proceed with the forfeiture of the property, then the State must prove by a preponderance of evidence that the person had actual knowledge of the underlying crime giving rise to the forfeiture or was willfully blind to its commission. If the State fails to meet its burden, then the court shall find that the person was not a party to the crime and is an innocent partial or joint owner. If the State meets its burden, then the person may reestablish innocent owner status by showing that he took reasonable steps to prohibit, abate, or terminate the illegal use of the property by a preponderance of the evidence. The person may show that he did all that could reasonably be expected by demonstrating that he:

(a) gave timely notice to an appropriate law enforcement agency of information that led the person to know that conduct giving rise to forfeiture would occur or had occurred; or

(b) revoked or made a good faith attempt to revoke permission for those engaging in illegal conduct to use the property or took other reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

(2) The person is not required to take steps that he reasonably believes would subject him to physical danger.

(F) A person who acquired an ownership interest in property after the commission of a crime giving rise to forfeiture occurred and claiming to be an innocent owner must establish by clear and convincing evidence that the person has a legal right, title, or interest in the property seized.

(G) If subsection (F) is satisfied and the State seeks to proceed with the forfeiture of the property, then the State must prove by a preponderance of the evidence that the person:

(1) had actual knowledge that the property was subject to forfeiture; or

(2) was not a bona fide purchaser without notice of any defect in the title and for valuable consideration in order to proceed with the forfeiture.

(H) If the court determines that the person is an innocent owner who has an interest in the seized property, then the court shall enter an appropriate order for the State to relinquish all claims of title to the property.

(I) No information in the statement of interest or ownership the person filed pursuant to this section shall be used as evidence in the criminal matter. Nothing in this section prohibits the person who has filed a statement of interest or ownership under this section from providing information to any prosecuting agency or defendant involved in the related criminal matter or the prosecuting agency or defendant’s representatives, or from testifying in any criminal trial as to facts within the person’s knowledge.

(J) The defendant or convicted offender may invoke the right against self-incrimination or the marital privilege during any forfeiture-related hearing. The trier of fact at a hearing may draw an adverse inference from the invocation of the right or privilege.

Section 17‑32‑170. (A) The State shall return property to the owner within a reasonable period of time, not to exceed three business days, after a court finds that:

(1) the owner had a bona fide security interest;

(2) the owner was an innocent owner;

(3) charges against the owner were dismissed; or

(4) the owner was found not guilty of the criminal charge that is the basis for the forfeiture action.

(B) If property returned pursuant to subsection (A) has been damaged, then the owner may make a claim in small claims court for the damages to the seized property against the agency that seized the property.

(C) The State is responsible for any storage fees and related costs applicable to property returned under subsection (A).

Section 17‑32‑180. (A) If a trier of fact finds that property is to be forfeited, then the court shall order the State to:

(1) return stolen property to its owner;

(2) sell firearms, ammunition, and firearm accessories to licensed firearm dealers in a commercially reasonable manner; and

(3) sell other property in a commercially reasonable manner.

(B) The law enforcement agency that seized the property may not retain it for its own use or sell it directly to any employee of the agency, family member of an employee, or another law enforcement agency.

Section 17‑32‑190. (A) Proceeds seized and proceeds from the sale of forfeited assets may only be distributed pursuant to a court order. The court shall order the funds be used to pay, in order of priority, for the following purposes:

(1) storage and sale expenses;

(2) the satisfaction of valid liens against the property;

(3) restitution ordered to the victim of the criminal offense;

(4) the reimbursement of investigation costs, excluding salaries, that the law enforcement agency incurred in the seizure of the assets subject to the forfeiture action;

(5) court‑ordered child support obligations;

(6) claims for compensation by the defendant’s employees; and

(7) claims for compensation by the defendant’s unsecured creditors.

(B) All remaining funds must be forwarded to the Office of the State Treasurer for deposit into the general fund.

(C) A law enforcement agency may not directly or indirectly transfer seized or forfeited property to a federal law enforcement authority or other federal agency unless:

(1)(a) the value of the seized or forfeited property exceeds fifty thousand dollars, excluding the potential value of controlled substances; and

(b) the law enforcement agency determines that the criminal conduct that gave rise to the seizure is interstate in nature and sufficiently complex to justify the transfer of the property; or

(2) the seized or forfeited property is forfeited under federal law.

Section 17‑32‑200. (A) Every law enforcement agency in this State shall compile and file a report with the Office of the Attorney General on no less than an annual basis, listing the following information on each individual seizure and forfeiture completed under state and federal forfeiture law, including, but not limited to, the:

(1) date the property was seized;

(2) type of property seized, including details such as the year, make, and model of a conveyance;

(3) alleged crime associated with the seizure of the property and outcome of the related criminal action;

(4) venue of the forfeiture case and whether the property owner was represented by counsel;

(5) market value of the property seized;

(6) net amount received from the forfeiture, the gross amount received from the forfeiture, and the total administrative and other expenses deducted;

(7) date and manner of the disposition of the property; and

(8) data on how the funds were spent.

(B) The Office of the Attorney General shall develop a standard form and filing process, shall establish deadlines for the submission of forfeiture data, and shall publish the reports when it publishes agency accountability reports.

(C) A law enforcement agency that fails to submit a report is in violation of this chapter and may have funds withheld until the agency is found in compliance with the provisions of this section.

Section 17‑32‑210. (A) A party to forfeiture litigation, other than a defendant, may appeal a district court’s decision regarding the seizure, on an interlocutory basis, or forfeiture of property under this chapter.

(B) The defendant may appeal the district court’s decision regarding the seizure or forfeiture of property following judgment in the forfeiture litigation.

Section 17-32-220 In any proceeding in which a property owner’s claims prevail by recovering at least half, by value, of the property or currency claimed, the seizing law enforcement agency shall be liable for:

(1) reasonable attorney fees and other litigation costs reasonably incurred by the claimant;

(2) post-judgment interest; and

(3) in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale, any interest actually paid from the date of seizure.

Section 17-32-230. This chapter preempts laws by municipality, county, or other political subdivision in the State that regulate civil or criminal forfeiture.”

SECTION 3. The provisions of this act provide the exclusive process governing the forfeiture of property in this State, and if there is a conflict between the provisions of this act and another provision of law, then the provisions of this act control. However, the provisions of this act do not apply to property considered “contraband” as defined in this act.

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent, or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 5. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, then such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 6. This act takes effect upon approval by the Governor.

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