~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 18, 2013

**H. 3762**

Introduced by Reps. Ott, Skelton, Hardwick, Hodges, Knight, Bales, Jefferson, Parks, Sellers, Finlay, Funderburk, Gagnon, Gambrell, George, Hayes, Hiott, Hixon, Horne, Lowe, D.C. Moss, Norman, Pitts, Putnam, Riley, White and Williams

S. Printed 4/18/13--H.

Read the first time March 6, 2013.

**THE COMMITTEE ON AGRICULTURE, NATURAL**

**RESOURCES AND ENVIRONMENTAL AFFAIRS**

To whom was referred a Bill (H. 3762) to amend Sections 50‑11‑740, as amended, and 50‑11‑745, relating to the confiscation, forfeiture, sale, and release of property used, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, Section 50-11-740, as contained in SECTION 1, by inserting / or subsequent / after / third / on line 1, page 3.

When amended, Section 50-11-740 shall read:

/“Section 50‑11‑740. Every vehicle, boat, trailer, other means of conveyance, animal, ~~and~~ firearm, or device used in the hunting of deer or bear at night, or used in connection with a violation of Section 50‑11‑710, is forfeited to the State and must be ~~confiscated~~ seized by any peace officer who shall forthwith deliver it to the department.

‘Hunting’ as used in this section in reference to a vehicle, boat, or other means of conveyance includes the transportation of a hunter to or from the place of hunting or the transportation of the carcass, or any part of the carcass, of a deer, bear, coyote, armadillo, or feral hog which has been unlawfully killed at night.

For purposes of this section, a conviction for unlawfully hunting deer, bear, coyote, armadillo, or feral hog at night is conclusive as against any ~~convicted~~ owner of the above‑mentioned property.

In all other instances, forfeiture must be accomplished by the initiation by the State of an action in the circuit court in the county in which the property was seized giving notice to owners of record and lienholders of record or other persons having claimed an interest in the property subject to forfeiture and an opportunity to appear and show, if they can, why the property should not be forfeited and disposed of as provided for by this section. Failure of any person claiming an interest in the property to appear at the above proceeding after having been given notice of the proceeding constitutes a waiver of his claim and the property must be immediately forfeited to the State.

Notice of the above proceedings must be accomplished by:

(a) personal service of the owner of record or lienholder of record by certified copy of the petition or notice of hearing or;

(b) in the case of property for which there is no owner or lienholder of record, publication of notice in a newspaper of local circulation in the county where the property was seized for at least two successive weeks before the hearing.

The department shall sell any confiscated device at public auction for cash to the highest bidder in front of the county courthouse in the county where it is confiscated, after having given ten days’ public notice of the sale by posting advertisement thereof on the door or bulletin board of the county courthouse or by publishing the advertisement at least once in a newspaper of general circulation in the county. Upon sale, the department shall pay over the net proceeds, after payment of the proper costs and expenses, if any, of the seizure, advertisement, and sale, including any proper expense incurred for the storage of the confiscated device, to the State Treasurer for deposit in the Fish and Wildlife Protection Fund. ~~When~~ If an individual is apprehended for a first offense and the device is of greater value than ~~one~~ two thousand five hundred dollars, the owner may at any time before sale redeem it by paying to the department the sum of ~~one~~ two thousand five hundred dollars. When the device is of lesser value than ~~one~~ two thousand five hundred dollars, the owner may at any time before sale redeem it by paying to the department the retail market value. ~~The sums received by the department must be deposited in the game protection fund pursuant to the provisions of this section.~~

If an individual is apprehended for a second offense and the device is of greater value than five thousand dollars, the owner may at any time before sale redeem it by paying to the department the sum of five thousand dollars. When the device is of lesser value than five thousand dollars, the owner may at any time before sale redeem it by paying to the department the retail market value.

If an individual is apprehended for a third or subsequent offense, the device must be forfeited to the State.” /

Renumber sections to conform.

Amend title to conform.

NELSON L. HARDWICK for Committee.

**A** **BILL**

TO AMEND SECTIONS 50‑11‑740, AS AMENDED, AND 50‑11‑745, RELATING TO THE CONFISCATION, FORFEITURE, SALE, AND RELEASE OF PROPERTY USED FOR THE UNLAWFUL HUNTING OF WILDLIFE, SO AS TO PROVIDE ADDITIONAL TYPES OF PROPERTY THAT ARE COVERED BY BOTH PROVISIONS, AND TO REVISE THE PENALTIES THAT MAY BE IMPOSED FOR THE UNLAWFUL HUNTING OF WILDLIFE.

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

SECTION 1. Section 50‑11‑740 of the 1976 Code, as last amended by Act 228 of 2012, is further amended to read:

“Section 50‑11‑740. Every vehicle, boat, trailer, other means of conveyance, animal, ~~and~~ firearm, or device used in the hunting of deer or bear at night, or used in connection with a violation of Section 50‑11‑710, is forfeited to the State and must be ~~confiscated~~ seized by any peace officer who shall forthwith deliver it to the department.

‘Hunting’ as used in this section in reference to a vehicle, boat, or other means of conveyance includes the transportation of a hunter to or from the place of hunting or the transportation of the carcass, or any part of the carcass, of a deer, bear, coyote, armadillo, or feral hog which has been unlawfully killed at night.

For purposes of this section, a conviction for unlawfully hunting deer, bear, coyote, armadillo, or feral hog at night is conclusive as against any ~~convicted~~ owner of the above‑mentioned property.

In all other instances, forfeiture must be accomplished by the initiation by the State of an action in the circuit court in the county in which the property was seized giving notice to owners of record and lienholders of record or other persons having claimed an interest in the property subject to forfeiture and an opportunity to appear and show, if they can, why the property should not be forfeited and disposed of as provided for by this section. Failure of any person claiming an interest in the property to appear at the above proceeding after having been given notice of the proceeding constitutes a waiver of his claim and the property must be immediately forfeited to the State.

Notice of the above proceedings must be accomplished by:

(a) personal service of the owner of record or lienholder of record by certified copy of the petition or notice of hearing or;

(b) in the case of property for which there is no owner or lienholder of record, publication of notice in a newspaper of local circulation in the county where the property was seized for at least two successive weeks before the hearing.

The department shall sell any confiscated device at public auction for cash to the highest bidder in front of the county courthouse in the county where it is confiscated, after having given ten days’ public notice of the sale by posting advertisement thereof on the door or bulletin board of the county courthouse or by publishing the advertisement at least once in a newspaper of general circulation in the county. Upon sale, the department shall pay over the net proceeds, after payment of the proper costs and expenses, if any, of the seizure, advertisement, and sale, including any proper expense incurred for the storage of the confiscated device, to the State Treasurer for deposit in the Fish and Wildlife Protection Fund. ~~When~~ If an individual is apprehended for a first offense and the device is of greater value than ~~one~~ two thousand five hundred dollars, the owner may at any time before sale redeem it by paying to the department the sum of ~~one~~ two thousand five hundred dollars. When the device is of lesser value than ~~one~~ two thousand five hundred dollars, the owner may at any time before sale redeem it by paying to the department the retail market value. ~~The sums received by the department must be deposited in the game protection fund pursuant to the provisions of this section.~~

If an individual is apprehended for a second offense and the device is of greater value than five thousand dollars, the owner may at any time before sale redeem it by paying to the department the sum of five thousand dollars. When the device is of lesser value than five thousand dollars, the owner may at any time before sale redeem it by paying to the department the retail market value.

If an individual is apprehended for a third offense, the device must be forfeited to the State.”

SECTION 2. Section 50‑11‑745(A) of the 1976 Code is amended to read:

“(A) Notwithstanding another provision of law, the Department of Natural Resources may administratively release any vehicle, boat, trailer, other means of conveyance, firearm, or hunting device confiscated from a person charged with a violation of this chapter to an innocent owner or lienholder of the property.”

SECTION 3. 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 4. This act takes effect upon approval by the Governor.

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