

HOUSE BILL 1078

By Rich

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 6 and Title 40, Chapter 33, Part 2, relative to asset forfeitures.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 6, is amended by adding the following as a new part:

40-6-401. It is the intent of the general assembly that the following rights of any owner or owners of property shall supersede and override all Tennessee procedures, statutes and regulations governing forfeiture of property to the state of Tennessee or any county or municipality, whether the property is real, personal, or in other form, including, the procedure found in chapter 33, part 2 of this title and title 39, chapter 11, part 7. To the extent any statute, regulation or procedure is in conflict with this part, it shall be null and void.

40-6-402.

(a) No seizure of any property shall be executed without first obtaining a seizure warrant issued by a magistrate who is popularly elected within the county where the seizure is to be executed. If the seizure warrant identifies locations in more than one county, then the magistrate issuing the warrant shall preside in a court in one of those counties.

(b) Any officer with the statutory authority to arrest an offender shall have the authority to request the issuance of a seizure warrant. Upon issuance of a seizure warrant, only the sheriff of the county in which the seizure is to be executed shall have the power to seize any property, real or personal.

40-6-403.

(a) If a forfeiture warrant is issued, upon execution of the forfeiture warrant, all real property seized shall be either sequestered and guarded against damage from third parties, or released to the owner or occupant for use and caretaking until the disposal of the property is resolved by the court. Any person entrusted to such use pending the hearing shall be responsible for any loss due to damage caused by neglect or intentionally, or removal of contents subject to the seizure.

(b) All personal property seized shall either remain upon the real property where it was located according to the warrant. If the real property is also being seized, the personal property shall be removed to a secure location under the supervision of the jurisdiction wherein the magistrate presides.

40-6-404.

(a) The owner or persons in possession of the property at the time of the seizure shall receive full documentation of the warrant and a receipt particularly describing the property seized, and its condition. The seizing officer shall bear custodial liability for the safekeeping of the property throughout its possession until disposition by the court.

(b) The owner of the property, lessor thereof, or agents of either shall have access to the property sufficient to assure the safety and security of the property at all stages of the holding of that property prior to the disposition ordered by the court.

(c) The person or entity claiming ownership of the property that has been seized shall have the right to an expedited recovery hearing upon a showing of potential loss of value if such expedited resolution is not accomplished.

40-6-405. No forfeiture shall be final nor shall title or other indicia of ownership pass to the state or jurisdiction seeking forfeiture until:

(1) The owner of the property in question is prosecuted and convicted of the criminal acts which render the property subject contraband; or

(2) The property is deemed contraband on account of its nature by a court of jurisdiction, the magistrate of which is an elected office, after a hearing wherein any persons opposing any finding of contraband shall have due process to present a case why it is not.

40-6-404. Any property damage, spoilage, or loss of any criterion of value during the pre-hearing possession of the jurisdiction shall be grounds for recovery of that damage by the owner or user, from the jurisdiction making the seizure, if the hearing finds in favor of the opponent of the seizure. Such recovery may be ordered by the court wherein the seizure hearing is held, or in a separate suit by the owner or other interested party after return of the property.

SECTION 2. This act shall take effect upon becoming law, the public welfare requiring it.