

**WITHDRAWN**

Senators Hill of the 32nd, Unterman of the 45th and Loudermilk of the 52nd offered the following amendment:

1 *Amend the Senate Regulated Industries and Utilities Committee substitute to SB 321 by*  
 2 *inserting after "property;" on line 4 the following:*

3 to provide for forfeiture of certain property and procedure therefor;

4 *By inserting between lines 248 and 249 the following:*

5 10-1-357.1.

6 (a) As used in this Code section, the term 'crime' means:

7 (1) Theft by taking in violation of Code Section 16-8-2, theft by conversion in violation  
 8 of Code Section 16-8-4, or theft by receiving stolen property in violation of Code Section  
 9 16-8-7 if the subject of the theft was regulated metal property;

10 (2) Criminal damage to property in the first degree in violation of paragraph (2) of  
 11 subsection (a) of Code Section 16-7-22; or

12 (3) A criminal violation of this article.

13 (b) All motor vehicles, tools, and weapons which are used or intended for use in any  
 14 manner in the commission of or to facilitate the commission of a crime are subject to  
 15 forfeiture under this Code section, but:

16 (1) No motor vehicle used by any person as a common carrier in the transaction of  
 17 business as a common carrier shall be subject to forfeiture under this Code section unless  
 18 it appears that the owner or other person in charge of the motor vehicle is a consenting  
 19 party or privy to the commission of a crime;

20 (2) No motor vehicle shall be subject to forfeiture under this Code section by reason of  
 21 any act or omission established by the owner thereof to have been committed or omitted  
 22 without his or her knowledge or consent, and any co-owner of a motor vehicle without  
 23 knowledge of or consent to the act or omission shall be protected to the extent of the  
 24 interest of such co-owner; and

25 (3) A forfeiture of a motor vehicle encumbered by a bona fide security interest shall be  
 26 subject to the interest of the secured party if he or she neither had knowledge of nor  
 27 consented to the act or omission.

28 (c) Property subject to forfeiture under this Code section may be seized by any law  
 29 enforcement officer of this state or any political subdivision thereof who has the power to  
 30 make arrests upon process issued by any court having jurisdiction over the property.  
 31 Seizure without process or warrant may be made if:

32 (1) The seizure is incident to an arrest or a search under a search warrant;

33 (2) The property subject to seizure has been the subject of a prior judgment in favor of  
34 this state in a criminal injunction or forfeiture proceeding based upon this Code section;  
35 or

36 (3) Probable cause exists that the vehicle, tool, or weapon is subject to seizure.

37 (d) Property taken or detained under this Code section shall not be subject to replevin but  
38 shall be deemed to be in the custody of the superior court of the county wherein the seizure  
39 was made or in the custody of the superior court of the county where it can be proven that  
40 the crime was committed, subject only to the orders and decrees of the court having  
41 jurisdiction over the forfeiture proceedings. When property is seized under this Code  
42 section, law enforcement officers seizing such property shall:

43 (1) Place the property under seal;

44 (2) Remove the property to a place designated by the judge of the superior court having  
45 jurisdiction over the forfeiture as set out in this subsection; or

46 (3) Deliver such property to the sheriff or police chief of the county in which the seizure  
47 occurred, and the sheriff or police chief shall take custody of the property and remove it  
48 to an appropriate location for disposition in accordance with law.

49 (e) When property is seized under this Code section, the sheriff or law enforcement officer  
50 seizing the same shall report the seizure, within 20 days thereof, to the district attorney of  
51 the judicial circuit having jurisdiction in the county where the seizure was made. Within  
52 60 days from the date he or she receives notice of the seizure, the district attorney of the  
53 judicial circuit shall cause to be filed in the superior court of the county in which the  
54 property was seized or detained an in rem complaint for forfeiture of such property as  
55 provided for in this Code section. The proceedings shall be brought in the name of the  
56 state by the district attorney of the circuit in which the property was seized, and the  
57 complaint shall be verified by a duly authorized agent of this state in a manner required by  
58 the law of this state. The complaint shall describe the property; state its location; state its  
59 present custodian; state the name of the owner, if known to the duly authorized agent of  
60 this state; allege the essential elements of the violation upon which the forfeiture is based;  
61 and conclude with a prayer of due process to enforce the forfeiture. Upon the filing of such  
62 a complaint, the court shall promptly cause process to issue to the present custodian in  
63 possession of the property described in the complaint, commanding him or her to seize the  
64 property described in the complaint and to hold that property for further order of the court.  
65 A copy of the complaint shall be served upon the owner or lessee, if known, and upon any  
66 person having a duly recorded security interest in or lien upon that property. If the owner  
67 or lessee is unknown, resides outside this state, departs this state, cannot after due diligence  
68 be found within this state, or conceals himself or herself so as to avoid service, notice of  
69 the proceedings shall be published once a week for two weeks in the newspaper in which

70 the sheriff's advertisements are published. Such publication shall be deemed notice to any  
 71 and all persons having an interest in or right affected by such proceeding and from any sale  
 72 of the property resulting therefrom but shall not constitute notice to any person having a  
 73 duly recorded security interest in or lien upon such property and required to be served  
 74 under this Code section unless that person is unknown, resides outside this state, departs  
 75 this state, cannot after due diligence be found within this state, or conceals himself or  
 76 herself to avoid service. An owner of or interest holder in the property may file an answer  
 77 asserting a claim against the property in the action in rem. Any such answer shall be filed  
 78 within 30 days after the service of the summons and complaint. Where service is made by  
 79 publication and personal service has not been made, an owner or interest holder shall file  
 80 an answer within 30 days of the date of final publication. An answer shall be verified by  
 81 the owner or interest holder under penalty of perjury. In addition to complying with the  
 82 general rules applicable to an answer in civil actions, the answer shall set forth:

- 83 (1) The caption of the proceedings as set forth in the complaint and the name of the  
 84 claimant;
- 85 (2) The address at which the claimant will accept mail;
- 86 (3) The nature and extent of the claimant's interest in the property;
- 87 (4) The date, identity of transferor, and circumstances of the claimant's acquisition of the  
 88 interest in the property;
- 89 (5) The specific provision of this Code section relied on in asserting that the property is  
 90 not subject to forfeiture;
- 91 (6) All essential facts supporting each assertion; and
- 92 (7) The precise relief sought.

93 If at the expiration of the period set forth in this subsection no answer has been filed, the  
 94 court shall order the disposition of the seized property as provided for in this Code section.  
 95 If an answer is filed, a hearing shall be held within 60 days after service of the complaint  
 96 unless continued for good cause and shall be held by the court without a jury. If the court  
 97 determines that a claimant defending the complaint knew or by the exercise of ordinary  
 98 care should have known that the property was to be used for an unlawful purpose  
 99 subjecting it to forfeiture under this Code section, the court shall order the disposition of  
 100 the seized property as provided in this Code section and that claimant shall have no claim  
 101 upon the property or proceeds from the sale thereof.

102 (f)(1) When property is forfeited under this Code section, the judge of the superior court  
 103 of the county where the seizure was made or of the county in which it can be proven that  
 104 the crime was committed may dispose of the property by issuing an order to:

- 105 (A) Retain it for official use by any agency of this state or any political subdivision  
 106 thereof;

107 (B) Sell that which is not required to be destroyed by law and which is not harmful to  
108 the public. The proceeds shall be used for payment of all proper expenses of the  
109 proceedings for forfeiture and sale, including but not limited to the expenses of seizure,  
110 maintenance of custody, advertising, and court costs; or

111 (C) Require the sheriff or police chief of the county in which the seizure occurred to  
112 take custody of the property and remove it for disposition in accordance with law.

113 (2)(A) Money, currency, or proceeds which are realized from the sale or disposition  
114 of forfeited property shall after satisfaction of the interest of secured parties and after  
115 payment of all costs vest in the local political subdivision whose law enforcement  
116 officers seized it. If the property was seized by a municipal law enforcement agency,  
117 then the money, currency, or proceeds realized from the sale or disposition of the  
118 property shall vest in that municipality. If the property was seized by a county law  
119 enforcement agency, then the money, currency, or proceeds realized from the sale or  
120 disposition of the property shall vest in that county. If the property was seized by joint  
121 action of a county law enforcement agency and a municipal law enforcement agency,  
122 then the money, currency, or proceeds realized from the sale or disposition of the  
123 property shall vest in that county and that municipality and shall be divided equally  
124 between the county and municipality. If the property was seized by a state law  
125 enforcement agency, then the money, currency, or proceeds realized from the sale or  
126 disposition of the property shall vest in the county where the condemnation proceedings  
127 are filed. Except as otherwise provided in subparagraph (B) of paragraph (1) of this  
128 subsection for payment of all costs, the local government in which the money, currency,  
129 or proceeds realized from the forfeited property vests shall expend or use such funds  
130 or proceeds received for any official law enforcement purpose except for the payment  
131 of salaries or rewards to law enforcement personnel, at the discretion of the chief officer  
132 of the local law enforcement agency, or to fund victim-witness assistance programs.  
133 Such property shall not be used to supplant any other local, state, or federal funds  
134 appropriated for staff or operations.

135 (B) Any local law enforcement agency receiving property under this subsection shall  
136 submit an annual report to the local governing authority. The report shall be submitted  
137 with the agency's budget request and shall itemize the property received during the  
138 fiscal year and the utilization made thereof.