

ADOPTED

Senators Hill of the 32nd 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.