

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 between lines 248 and 249 the following:*

3 10-1-357.2.

4 (a) When property is seized under Code Section 10-1-357.1, the sheriff or law enforcement
 5 officer seizing the same shall report the seizure, within 20 days thereof, to the district
 6 attorney of the judicial circuit having jurisdiction in the county where the seizure was
 7 made. Within 60 days from the date he or she receives notice of the seizure, the district
 8 attorney of the judicial circuit shall cause to be filed in the superior court of the county in
 9 which the property was seized or detained an in rem complaint for forfeiture of such
 10 property as provided for in this Code section. The proceedings shall be brought in the
 11 name of the state by the district attorney of the circuit in which the property was seized,
 12 and the complaint shall be verified by a duly authorized agent of this state in a manner
 13 required by the law of this state. The complaint shall describe the property; state its
 14 location; state its present custodian; state the name of the owner, if known to the duly
 15 authorized agent of this state; allege the essential elements of the violation upon which the
 16 forfeiture is based; and conclude with a prayer of due process to enforce the forfeiture.
 17 Upon the filing of such a complaint, the court shall promptly cause process to issue to the
 18 present custodian in possession of the property described in the complaint, commanding
 19 him or her to seize the property described in the complaint and to hold that property for
 20 further order of the court. A copy of the complaint shall be served upon the owner or
 21 lessee, if known, and upon any person having a duly recorded security interest in or lien
 22 upon that property. If the owner or lessee is unknown, resides outside this state, departs
 23 this state, cannot after due diligence be found within this state, or conceals himself or
 24 herself so as to avoid service, notice of the proceedings shall be published once a week for
 25 two weeks in the newspaper in which the sheriff's advertisements are published. Such
 26 publication shall be deemed notice to any and all persons having an interest in or right
 27 affected by such proceeding and from any sale of the property resulting therefrom but shall
 28 not constitute notice to any person having a duly recorded security interest in or lien upon
 29 such property and required to be served under this Code section unless that person is
 30 unknown, resides outside this state, departs this state, cannot after due diligence be found
 31 within this state, or conceals himself or herself to avoid service. An owner of or interest
 32 holder in the property may file an answer asserting a claim against the property in the
 33 action in rem. Any such answer shall be filed within 30 days after the service of the

34 summons and complaint. Where service is made by publication and personal service has
 35 not been made, an owner or interest holder shall file an answer within 30 days of the date
 36 of final publication. An answer shall be verified by the owner or interest holder under
 37 penalty of perjury. In addition to complying with the general rules applicable to an answer
 38 in civil actions, the answer shall set forth:

39 (1) The caption of the proceedings as set forth in the complaint and the name of the
 40 claimant;

41 (2) The address at which the claimant will accept mail;

42 (3) The nature and extent of the claimant's interest in the property;

43 (4) The date, identity of transferor, and circumstances of the claimant's acquisition of the
 44 interest in the property;

45 (5) The specific provision of this Code section relied on in asserting that the property is
 46 not subject to forfeiture;

47 (6) All essential facts supporting each assertion; and

48 (7) The precise relief sought.

49 If at the expiration of the period set forth in this subsection no answer has been filed, the
 50 court shall order the disposition of the seized property as provided for in this Code section.

51 If an answer is filed, a hearing shall be held within 60 days after service of the complaint
 52 unless continued for good cause and shall be held by the court without a jury. If the court
 53 determines that a claimant defending the complaint knew or by the exercise of ordinary
 54 care should have known that the property was to be used for an unlawful purpose
 55 subjecting it to forfeiture under this Code section, the court shall order the disposition of
 56 the seized property as provided in this Code section and that claimant shall have no claim
 57 upon the property or proceeds from the sale thereof.

58 (b)(1) When property is forfeited under Code Section 10-1-357.1, the judge of the
 59 superior court of the county where the seizure was made or of the county in which it can
 60 be proven that the crime was committed may dispose of the property by issuing an order
 61 to:

62 (A) Retain it for official use by any agency of this state or any political subdivision
 63 thereof;

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

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

70 (2)(A) Money, currency, or proceeds which are realized from the sale or disposition
71 of forfeited property shall after satisfaction of the interest of secured parties and after
72 payment of all costs vest in the local political subdivision whose law enforcement
73 officers seized it. If the property was seized by a municipal law enforcement agency,
74 then the money, currency, or proceeds realized from the sale or disposition of the
75 property shall vest in that municipality. If the property was seized by a county law
76 enforcement agency, then the money, currency, or proceeds realized from the sale or
77 disposition of the property shall vest in that county. If the property was seized by joint
78 action of a county law enforcement agency and a municipal law enforcement agency,
79 then the money, currency, or proceeds realized from the sale or disposition of the
80 property shall vest in that county and that municipality and shall be divided equally
81 between the county and municipality. If the property was seized by a state law
82 enforcement agency, then the money, currency, or proceeds realized from the sale or
83 disposition of the property shall vest in the county where the condemnation proceedings
84 are filed. Except as otherwise provided in subparagraph (B) of paragraph (1) of this
85 subsection for payment of all costs, the local government in which the money, currency,
86 or proceeds realized from the forfeited property vests shall expend or use such funds
87 or proceeds received for any official law enforcement purpose except for the payment
88 of salaries or rewards to law enforcement personnel, at the discretion of the chief officer
89 of the local law enforcement agency, or to fund victim-witness assistance programs.
90 Such property shall not be used to supplant any other local, state, or federal funds
91 appropriated for staff or operations.

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