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SENATE BILL NO. 384

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact §§ 19.2-265.4 and 19.2-386.10 of the Code of Virginia, relating to procedures applicable in certain forfeiture cases.

Patron—McDougle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-265.4 and 19.2-386.10 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-265.4. Providing discovery in criminal and forfeiture cases.

A. In any criminal prosecution for a felony in a circuit court, or for a misdemeanor brought on direct indictment, *and in any forfeiture proceeding brought pursuant to Chapter 22.1 of Title 19.2*, the attorney for the Commonwealth shall have a duty to adequately and fully provide discovery as provided under Rule 3A:11 of the Rules of the Supreme Court. Rule 3A:11 shall be construed to apply to such felony and misdemeanor prosecutions *and to such forfeitures*. This duty to disclose shall be continuing and shall apply to any additional evidence or material discovered by the Commonwealth prior to or during trial which is subject to discovery or inspection and has been previously requested by the accused. In any criminal prosecution for a misdemeanor by trial de novo in circuit court, the attorney for the Commonwealth shall have a duty to adequately and fully provide discovery as provided under Rule 7C:5 of the Rules of the Supreme Court.

B. If at any time during the course of the proceedings it is brought to the attention of the court that the attorney for the Commonwealth has failed to comply with this section, the court may order the Commonwealth to permit the discovery or inspection, grant a continuance, or prohibit the Commonwealth from introducing evidence not disclosed, or the court may enter such other order as it deems just under the circumstances.

§ 19.2-386.10. Trial and procedure.

A. A party defendant who fails to appear as provided in § 19.2-386.9 shall be in default. The forfeiture shall be deemed established as to the interest of any party in default upon entry of judgment as provided in § 19.2-386.11. Within twenty-one days after entry of judgment, any party defendant against whom judgment has been so entered may petition the Department of Criminal Justice Services for remission of his interest in the forfeited property. For good cause shown and upon proof that the party defendant's interest in the property is exempt under subdivision 2, 3 or 4 of § 19.2-386.8, the Department of Criminal Justice Services shall grant the petition and direct the state treasury to either (i) remit to the party defendant an amount not exceeding the party defendant's interest in the proceeds of sale of the forfeited property after deducting expenses incurred and payable pursuant to subsection B of § 19.2-386.12 or (ii) convey clear and absolute title to the forfeited property in extinguishment of such interest.

If any party defendant appears in accordance with § 19.2-386.9, the court shall proceed to trial of the case, unless trial by jury is demanded by the Commonwealth or any party defendant, *or the Commonwealth takes a nonsuit in accordance with the provisions of § 8.01-380. In the event of trial by jury, five persons from a panel of not less than 11 shall constitute a jury.* At trial, the Commonwealth has the burden of proving that the property is subject to forfeiture under this chapter. Upon such a showing by the Commonwealth, the claimant has the burden of proving that the claimant's interest in the property is exempt under subdivision 2, 3 or 4 of § 19.2-386.8. The proof of all issues shall be by a preponderance of the evidence. *Discovery shall be had in accordance with § 19.2-265.4.*

B. The information and trial thereon shall be independent of any criminal proceeding against any party or other person for violation of law. However, upon motion and for good cause shown, the court may stay a forfeiture proceeding that is related to any indictment or information. *When no indictment or information is pending, the Commonwealth shall have the right to a nonsuit in accordance with the provisions of § 8.01-380.*

INTRODUCED

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