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HOUSE BILL NO. 1403

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice on January 31, 2011)

(Patrons Prior to Substitute—Delegates Loupassi and McQuinn [HB 2211])

A BILL to amend and reenact §§ 4.1-340 and 19.2-386.16 of the Code of Virginia, relating to forfeiture of vehicle for felony offense of eluding police.

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-340 and 19.2-386.16 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-340. Notice to Commissioner of Department of Motor Vehicles; proceedings by attorney for the Commonwealth; filing of information; procedures in lieu of filing information.

A. The procedure for notification of the Commissioner of the Department of Motor Vehicles of the seizure of a vehicle pursuant to § 4.1-339 shall be in accordance with § 19.2-375.

B. Within sixty days after receiving notice of the seizure of a motor vehicle pursuant to § 4.1-339, the attorney for the Commonwealth shall file, in the name of the Commonwealth, an information against the seized property in the clerk's office of the circuit court of the county or city wherein the seizure was made.

Such information shall be in the form and contain those provisions required by §§ 19.2-370 and 19.2-371.

The attorney for the Commonwealth shall notify, in accordance with § 19.2-376, the owner, purchaser, lienor, and all other persons who are in any manner then indebted or liable for the purchase price of the property.

C. In lieu of filing an information, the attorney for the Commonwealth may, and shall for any seizure of a vehicle pursuant to § 19.2-386.16 for a felony violation of § 46.2-817, upon payment of costs incident to the custody of the seized property, return the seized property to the owner or lienor, without requiring that such owner or lienor file bond as provided in § 4.1-341, if he believes that (i) such owner was the actual bona fide owner of the conveyance or vehicle at the time of the seizure, that he was ignorant of such illegal use thereof, and that such illegal use was without his connivance or consent or (ii) such lienor was ignorant of the fact that the conveyance or vehicle was being used for illegal purposes when it was seized, that such illegal use was without such lienor's connivance or consent, that he held a bona fide lien on such property and had perfected the lien in the manner prescribed by law prior to seizure, and that the lien is equal to or more than the value of the conveyance or vehicle.

In the event the conveyance or vehicle was sold to a bona fide purchaser subsequent to the arrest but prior to seizure in order to avoid the provisions of § 4.1-339, the Commonwealth shall have a right of action against the seller for the proceeds of the sale.

§ 19.2-386.16. Forfeiture of motor vehicles used in commission of certain crimes.

A. Any vehicle (i) knowingly used by the owner thereof or used by another with his knowledge of and during the commission of, or in an attempt to commit, a second or subsequent offense of §§ 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-355, 18.2-356 or § 18.2-357 or of a similar ordinance of any county, city or town or; (ii) knowingly used for the transportation of any stolen goods, chattels or other property, when the value of such stolen goods, chattels or other property is \$200 or more, or any stolen property obtained as a result of a robbery, without regard to the value of the property; or (iii) driven in the commission of a felony violation of § 46.2-817 shall be forfeited to the Commonwealth. The vehicle shall be seized by any law-enforcement officer arresting the operator of such vehicle for the criminal offense, and delivered to the sheriff of the county or city in which the offense occurred. The officer shall take a receipt therefor.

B. Any vehicle knowingly used by the owner thereof or used by another with his knowledge of and during the commission of, or in an attempt to commit, a felony violation of (i) Article 3, (§ 18.2-47 et seq.) of Chapter 4 of Title 18.2 (§§ 18.2-47 et seq.), or (ii) § 18.2-357 where the prostitute is a minor, shall be forfeited to the Commonwealth. The vehicle shall be seized by any law-enforcement officer arresting the operator of such vehicle for the criminal offense, and delivered to the sheriff of the county or city in which the offense occurred. The officer shall take a receipt therefor.

C. Forfeiture of such vehicle shall be enforced as is provided in §§ 4.1-339 through 4.1-348 as to vehicles used for the transportation of illegally acquired alcoholic beverages, and the provisions of §§ 4.1-339 through 4.1-348 shall apply, mutatis mutandis, to proceedings for the enforcement of such forfeiture except that venue for the forfeiture proceeding shall be in the county or city in which the offense occurred.

D. The agency seizing the motor vehicle or other conveyance shall, for such period of time as the

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60 court prescribes, be permitted the use and operation of the motor vehicle or other conveyance, after
61 court forfeiture, for the investigation of crimes against the Commonwealth by the agency seizing the
62 motor vehicle or other conveyance. The agency using or operating each motor vehicle shall have
63 insurance on each vehicle used or operated for liability and property damage.