

12101832D

HOUSE BILL NO. 212

Offered January 11, 2012

Prefiled January 9, 2012

A BILL to amend and reenact §§ 19.2-386.2, 19.2-386.14, 19.2-386.19, and 19.2-386.30 of the Code of Virginia, relating to asset forfeiture procedures.

Patron—Miller

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-386.2, 19.2-386.14, 19.2-386.19, and 19.2-386.30 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-386.2. Seizure of named property.

A. When any property subject to seizure ~~under § 19.2-386.15 or § 19.2-386.22~~ utilizing the provisions of Chapter 22.2 (§ 19.2-386.15 et seq.) has not been seized at the time an information naming that property is filed, the clerk of the circuit court or a judge of the circuit court, upon motion of the attorney for the Commonwealth wherein the information is filed, shall issue a warrant to the sheriff or other state or local law-enforcement officer authorized to serve criminal process in the jurisdiction where the property is located, describing the property named in the complaint and authorizing its immediate seizure.

B. In all cases of seizure of real property, a notice of lis pendens shall be filed with the clerk of the circuit court of the county or city wherein the property is located and shall be indexed in the land records in the name or names of those persons whose interests appear to be affected thereby.

§ 19.2-386.14. Sharing of forfeited drug assets.

A. All cash, negotiable instruments and proceeds from a sale conducted pursuant to § 19.2-386.7 or § 19.2-386.12, after deduction of expenses, fees and costs as provided in § 19.2-386.12, shall, as soon after entry of the forfeiture as is practicable, be paid over to the state treasury into a special fund of the Department of Criminal Justice Services for distribution in accordance with this section. The forfeited property and proceeds, less ~~ten~~ 10 percent, shall be made available to federal, state and local agencies to promote law enforcement in accordance with this section and regulations adopted by the Criminal Justice Services Board to implement the asset-sharing program.

The ~~ten~~ 10 percent retained by the Department shall be held in a nonreverting fund, known as the Asset Sharing Administrative Fund. Administrative costs incurred by the Department to manage and operate the asset-sharing program shall be paid from the Fund. Any amounts remaining in the Fund after payment of these costs shall be used to promote state or local law-enforcement activities. Distributions from the Fund for these activities shall be based upon need and shall be made from time to time in accordance with regulations promulgated by the Board.

All cash, negotiable instruments, and proceeds from a sale conducted pursuant to § 19.2-386.7 or 19.2-386.12, after deduction of expenses, fees, and costs as provided in § 19.2-386.12, shall, as soon after entry of the forfeiture as is practicable, be distributed in a manner consistent with this section and Article VIII, Section 8 of the Constitution of Virginia.

B. Any federal, state or local agency or office that directly participated in the investigation or other law-enforcement activity which led, directly or indirectly, to the seizure and forfeiture shall be eligible for, and may petition the Department for, return of the forfeited asset or an equitable share of the net proceeds, based upon the degree of participation in the law-enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law-enforcement effort with respect to the violation of law on which the forfeiture is based. Upon finding that the petitioning agency is eligible for distribution and that all participating agencies agree on the equitable share of each, the Department shall distribute each share directly to the appropriate treasury of the participating agency.

If all eligible participating agencies cannot agree on the equitable shares of the net proceeds, the shares shall be determined by the Criminal Justice Services Board in accordance with regulations which shall specify the criteria to be used by the Board in assessing the degree of participation in the law-enforcement effort resulting in the forfeiture.

C. After the order of forfeiture is entered *concerning any motor vehicle, boat, aircraft, or other tangible personal property*, any seizing agency may (i) petition the Department for return of ~~any forfeited motor vehicle, boat or aircraft or other tangible personal~~ the property which that is not subject to a grant or pending petition for remission or (ii) *request the circuit court to order the property destroyed*. Where all the participating agencies agree upon the equitable distribution of the tangible

INTRODUCED

HB212

59 personal property, the Department shall return the property to those agencies upon finding that (i) the
60 agency meets the criteria for distribution as set forth in subsection B and (ii) the agency has a clear and
61 reasonable law-enforcement need for the forfeited property.

62 If all eligible participating agencies cannot agree on the distribution of the property, distribution shall
63 be determined by the Criminal Justice Services Board as in subsection B, taking into consideration the
64 clear and reasonable law-enforcement needs for the property which the agencies may have. In order to
65 equitably distribute tangible personal property, the Criminal Justice Services Board may require the
66 agency receiving the property to reimburse the Department in cash for the difference between the fair
67 market value of the forfeited property and the agency's equitable share as determined by the Criminal
68 Justice Services Board.

69 *If a seizing agency has received property for its use, pursuant to this subsection, when said agency is*
70 *disposing of said property (i) if sold, the proceeds shall be distributed as outlined in this section or (ii)*
71 *if the seizing agency decides that the property should be destroyed, then the agency shall do so in a*
72 *manner consistent with this section.*

73 D. All forfeited property, including its proceeds or cash equivalent, received by a participating state
74 or local agency pursuant to this section shall be used to promote law enforcement but shall not be used
75 to supplant existing programs or funds. The Board shall promulgate regulations establishing an audit
76 procedure to ensure compliance with this section.

77 § 19.2-386.19. Seizure of property used in connection with money laundering.

78 The following property shall be subject to lawful seizure by any officer charged with enforcing the
79 provisions of Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2: (i) all money, equipment, motor
80 vehicles, and all other personal and real property of any kind or character used in substantial connection
81 with the laundering of proceeds of some form of activity punishable as a felony under the laws of the
82 Commonwealth, another state or territory of the United States, the District of Columbia, or the United
83 States; ~~and~~; (ii) all money or other property, real or personal, traceable to the proceeds of some form of
84 activity punishable as a felony under the laws of the Commonwealth, another state or territory of the
85 United States, the District of Columbia, or the United States, together with any interest or profits derived
86 from the investment of such proceeds or other property; *and (iii) all money, equipment, motor vehicles,*
87 *and all other personal and real property of any kind or character used to or intended to be used to*
88 *promote money laundering.* Real property shall not be subject to seizure unless the minimum prescribed
89 punishment for the violation is a term of imprisonment of not less than five years. All seizures and
90 forfeitures under this section shall be governed by Chapter 22.1 (§ 19.2-386.1 et seq.) ~~of this title~~, and
91 the procedures specified therein shall apply, mutatis mutandis, to all forfeitures under Article 9
92 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2.

93 § 19.2-386.30. Forfeiture of money, gambling devices, etc., seized from illegal gambling enterprise;
94 innocent owners or lienors.

95 ~~All~~ *The following property shall be subject to lawful seizure by any officer charged with enforcing*
96 *the provisions of Article 1 (§ 18.2-325 et seq.) of Chapter 8 of Title 18.2 and forfeited to the*
97 *Commonwealth: all money, gambling devices, office equipment and other personal property used in*
98 *connection with an illegal gambling enterprise or activity, and all money, stakes and things of value*
99 *received or proposed to be received by a winner in any illegal gambling transaction; which are lawfully*
100 *seized by any law-enforcement officer or which shall lawfully come into his custody, shall be forfeited*
101 *to the Commonwealth by order of the court in which a conviction under Article 1 (§ 18.2-325 et seq.)*
102 *of Chapter 8 of Title 18.2 is obtained. Such court shall order all money so forfeited to be paid over to*
103 *the Commonwealth, and by order shall make such disposition of other property so forfeited as the court*
104 *deems proper, including award of such property to any state agency or charitable organization for lawful*
105 *purposes, or in case of the sale thereof, the proceeds therefrom to be paid over to the Commonwealth.*
106 *Provided, however, that such forfeiture shall not extinguish the rights of any person without knowledge*
107 *of the illegal use of such property who is the lawful owner or who has a lien on the same, which has*
108 *been perfected in the manner provided by law. All forfeitures under this section shall be governed by*
109 *the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.).*