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SENATE BILL NO. 1146

Offered January 9, 2013

Prefiled January 9, 2013

A *BILL to amend and reenact § 19.2-386.23 of the Code of Virginia, relating to disposal of seized controlled substances, other drugs, and paraphernalia; duties of Department of State Police.*

Patron—McEachin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-386.23 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-386.23. Disposal of seized controlled substances, marijuana, synthetic cannabinoids, and paraphernalia.

A. All controlled substances, imitation controlled substances, marijuana, synthetic cannabinoids as defined in § 18.2-248.1:1, or paraphernalia, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer or have been seized in connection with violations of Chapter 7 (§ 18.2-247 et seq.) of Title 18.2, shall be forfeited and disposed of as follows:

1. Upon written application by the Department of Forensic Science the court may order the forfeiture of any such substance or paraphernalia to the Department for research and training purposes and for destruction pursuant to regulations of the United States Department of Justice Drug Enforcement Administration and of the Board of Pharmacy once these purposes have been fulfilled.

2. In the event no application is made under subdivision 1 of this subsection, the court shall order the destruction of all such substances or paraphernalia, which order shall state the existence and nature of the substance or paraphernalia, the quantity thereof, the location where seized, the person or persons from whom the substance or paraphernalia was seized, if known, and the manner whereby such item shall be destroyed. However, the court may order that paraphernalia identified in subdivision 5 of § 18.2-265.1 not be destroyed and that it be given to a person or entity that makes a showing to the court of sufficient need for the property and an ability to put the property to a lawful and publicly beneficial use. A return under oath, reporting the time, place and manner of destruction shall be made to the court and to the ~~Board of Pharmacy~~ *Department of State Police* by the officer to whom the order is directed. A copy of the order and affidavit shall be made a part of the record of any criminal prosecution in which the substance or paraphernalia was used as evidence and shall, thereafter, be prima facie evidence of its contents. In the event a law-enforcement agency recovers, seizes, finds, is given or otherwise comes into possession of any such substances or paraphernalia that are not evidence in a trial in the Commonwealth, the chief law-enforcement officer of the agency or his designee may, with the written consent of the appropriate attorney for the Commonwealth, order destruction of same; provided that, a statement under oath, reporting a description of the substances and paraphernalia destroyed, and the time, place and manner of destruction is made to the chief law-enforcement officer and to the ~~Board of Pharmacy~~ *Department of State Police* by the officer to whom the order is directed.

B. No such substance or paraphernalia used or to be used in a criminal prosecution under Chapter 7 (§ 18.2-247 et seq.) of Title 18.2 shall be disposed of as provided by this section until all rights of appeal have been exhausted, except as provided in § 19.2-386.24.

C. *The Department of State Police shall maintain a listing of those law-enforcement agencies that have submitted to the Department returns under oath reporting the time, place, and manner of destruction of such substances and paraphernalia and which law-enforcement agencies have submitted to the Department statements under oath reporting a description of the substances or paraphernalia destroyed that were not evidence in a trial. This listing shall be publicly available on the Department's website, and the Department shall submit an annual report to the General Assembly containing a listing of all such returns and reports submitted by law-enforcement agencies for the previous year.*

INTRODUCED

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