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HOUSE BILL NO. 48**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee for Courts of Justice
on February 12, 2016)

(Patron Prior to Substitute—Delegate Cole)

A *BILL to amend and reenact §§ 19.2-386.1, 19.2-386.10, 19.2-386.31, 19.2-386.32, 19.2-386.34, and 19.2-386.35 of the Code of Virginia, relating to forfeiture of property used in connection with the commission of crimes; finding of guilt required.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-386.1, 19.2-386.10, 19.2-386.31, 19.2-386.32, 19.2-386.34, and 19.2-386.35 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-386.1. Commencing an action of forfeiture.

Except as otherwise specifically provided by law, whenever any property is forfeited to the Commonwealth by reason of the violation of any law, or if any statute provides for the forfeiture of any property or money, or if any property or money be seized as forfeited for a violation of any of the provisions of this Code, the Commonwealth shall follow the procedures set forth in this chapter.

An action against any property subject to seizure under the provisions of Chapter 22.2 (§ 19.2-386.15 et seq.) shall be commenced by the filing of an information in the clerk's office of the circuit court. Any information shall be filed in the name of the Commonwealth by the attorney for the Commonwealth or may be filed by the Attorney General if so requested by the attorney for the Commonwealth. Venue for an action of forfeiture shall lie in the county or city where (i) the property is located, (ii) the property is seized, or (iii) an owner of the property could be prosecuted for the illegal conduct alleged to give rise to the forfeiture. Such information shall (a) name as parties defendant all owners and lienholders then known or of record and the trustees named in any deed of trust securing such lienholder, (b) specifically describe the property, (c) set forth in general terms the grounds for forfeiture of the named property, (d) pray that the same be condemned and sold or otherwise be disposed of according to law, and (e) ask that all persons concerned or interested be notified to appear and show cause why such property should not be forfeited. In all cases, an information shall be filed within three years of the date of actual discovery by the Commonwealth of the last act giving rise to the forfeiture or the action for forfeiture will be barred. *Any action of forfeiture commenced under this section shall be stayed until the court in which the owner of the property is being prosecuted for an offense authorizing the forfeiture finds the owner guilty of any offense that authorizes forfeiture of such property, and any property eligible for forfeiture under the provisions of any statute shall be forfeited only upon such finding of the owner's guilt, regardless of whether the owner has been sentenced. If no such finding is made by the court, all property seized shall be released from seizure. However, property that has been seized may be forfeited pursuant to the procedures set forth in this chapter even though no finding of guilt is made if (1) the owner of the property is a fugitive from justice, (2) there is no identifiable owner of the property, (3) the property has been abandoned, (4) the owner denied ownership of the property during the prosecution for the offense, (5) the owner of the property agrees to the forfeiture, (6) such forfeiture is ordered by a court pursuant to a lawful plea agreement, or (7) the owner of the property has not submitted a written demand for the return of the property with the law-enforcement agency that seized the property within 21 days from when the stay terminates.*

§ 19.2-386.10. Trial.

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. 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

60 shall be by a preponderance of the evidence.

61 B. The information and trial thereon shall be independent of any criminal proceeding against any
62 party or other person for violation of law. ~~However, upon motion and for good cause shown, the court~~
63 ~~may stay a forfeiture proceeding that is related to any indictment or information.~~

64 **§ 19.2-386.31. Seizure and forfeiture of property used in connection with the exploitation and**
65 **solicitation of children.**

66 All audio and visual equipment, electronic equipment, devices and other personal property used in
67 connection with the possession, production, distribution, publication, sale, possession with intent to
68 distribute or making of child pornography that constitutes a violation of § 18.2-374.1 or 18.2-374.1:1, or
69 in connection with the solicitation of a person less than 18 years of age that constitutes a violation of
70 § 18.2-374.3 shall be subject to lawful seizure by a law-enforcement officer and shall be subject to
71 forfeiture to the Commonwealth pursuant to Chapter 22.1 (§ 19.2-386.1 et seq.). The Commonwealth
72 shall file an information and notice of seizure in accordance with the procedures in Chapter 22.1
73 (§ 19.2-386.1 et seq.); ~~however, any forfeiture action shall be stayed until conviction of the person~~
74 ~~whose property is subject to forfeiture. Upon his conviction, the court may dispose of the issue of~~
75 ~~forfeiture or may continue the civil case allowing the defendant time to answer, at the court's discretion.~~

76 **§ 19.2-386.32. Seizure and forfeiture of property used in connection with the abduction of**
77 **children.**

78 All moneys and other property, real and personal, owned by a person and used to further the
79 abduction of a child in violation of § 18.2-47, 18.2-48, or 18.2-48.1 are subject to lawful seizure by a
80 law-enforcement officer and are subject to forfeiture to the Commonwealth pursuant to Chapter 22.1
81 (§ 19.2-386.1 et seq.) by order of the court in which a conviction under ~~§ 18.2-47, 18.2-48, or 18.2-48.1~~
82 ~~is obtained.~~

83 **§ 19.2-386.34. Forfeiture of vehicle used in a felony violation of § 18.2-266.**

84 The vehicle solely owned and operated by the accused during the commission of a felony violation
85 of § 18.2-266 shall be subject to seizure and forfeiture. After an arrest upon a felony violation of
86 § 18.2-266, the vehicle may be forfeited to the Commonwealth pursuant to the procedures set forth in
87 Chapter 22.1 (§ 19.2-386.1 et seq.). ~~Any seizure shall be stayed until conviction and the exhaustion of~~
88 ~~all appeals at which time, if the information has been filed, the Commonwealth shall give notice of~~
89 ~~seizure to all appropriate parties pursuant to § 19.2-386.3.~~

90 An immediate family member of the owner of any motor vehicle for which an information has been
91 filed under this section who was not the driver at the time of the violation may petition the court in
92 which such information was filed for the release of the motor vehicle. If the immediate family member
93 proves by a preponderance of the evidence that his immediate family has only one motor vehicle and
94 will suffer a substantial hardship if that motor vehicle is seized and forfeited, the court, in its discretion,
95 may release the vehicle.

96 In the event the vehicle was sold to a bona fide purchaser subsequent to the arrest but prior to
97 seizure in order to avoid seizure and forfeiture, the Commonwealth shall have a right of action against
98 the seller for the proceeds of the sale.

99 **§ 19.2-386.35. Seizure of property used in connection with certain offenses.**

100 All money, equipment, motor vehicles, and other personal and real property of any kind or character
101 together with any interest or profits derived from the investment of such proceeds or other property that
102 (i) was used in connection with the commission of, or in an attempt to commit, a violation of subsection
103 B of § 18.2-47, § 18.2-48 or 18.2-59, subsection B of § 18.2-346, or § 18.2-347, 18.2-348, 18.2-349,
104 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, 40.1-29, 40.1-100.2, or 40.1-103; (ii) is traceable to the
105 proceeds of some form of activity that violates subsection B of § 18.2-47, § 18.2-48 or 18.2-59,
106 subsection B of § 18.2-346, or § 18.2-347, 18.2-348, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 40.1-29,
107 40.1-100.2, or 40.1-103; or (iii) was used to or intended to be used to promote some form of activity
108 that violates subsection B of § 18.2-47, § 18.2-48 or 18.2-59, subsection B of § 18.2-346, or § 18.2-347,
109 18.2-348, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 40.1-29, 40.1-100.2, or 40.1-103 is subject to lawful
110 seizure by a law-enforcement officer and subject to forfeiture to the Commonwealth pursuant to Chapter
111 22.1 (§ 19.2-386.1 et seq.). ~~Any forfeiture action under this section shall be stayed until conviction, and~~
112 ~~property eligible for forfeiture pursuant to this section shall be forfeited only upon the entry of a final~~
113 ~~judgment of conviction for an offense listed in this section; if no such judgment is entered, all property~~
114 ~~seized pursuant to this section shall be released from seizure.~~

115 Real property shall not be subject to seizure unless the minimum prescribed punishment for the
116 violation is a term of imprisonment of not less than five years.

117 All seizures and forfeitures under this section shall be governed by Chapter 22.1 (§ 19.2-386.1 et
118 seq.), and the procedures specified therein shall apply, mutatis mutandis, to all forfeitures under this
119 section.