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HOUSE BILL NO. 771

Offered January 13, 2016

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A BILL to amend and reenact §§ 19.2-386.2, 19.2-386.2:1, 19.2-386.10, and 19.2-386.14 of the Code of Virginia, relating to asset forfeiture.

Patrons—Gilbert and McClellan

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-386.2, 19.2-386.2:1, 19.2-386.10, and 19.2-386.14 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 Chapter 22.2 (§ 19.2-386.15 et seq.) or other provision under the Code 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.

C. When any property is seized for the purposes of forfeiture under Chapter 22.2 (§ 19.2-386.15 et seq.) or other forfeiture provision under the Code, the agency seizing the property shall, as soon as practicable after the seizure, conduct an inventory of the seized property and shall, as soon as practicable, provide a copy of the inventory to the owner. An agency's failure to provide a copy of an inventory pursuant to this subsection shall not invalidate any forfeiture.

D. When any property is seized for the purposes of forfeiture under Chapter 22.2 (§ 19.2-386.15 et seq.) or other forfeiture provision under the Code, and an information naming that property has not been filed, neither the agency seizing the property nor any other law-enforcement agency may request, require, or in any manner induce any person who asserts ownership, lawful possession, or any lawful right to the property to waive his interest in or rights to the property until an information has been filed.

§ 19.2-386.2:1. Notice to Commissioner of Department of Motor Vehicles; duties of Commissioner.

If the property seized is a motor vehicle required by the motor vehicle laws of Virginia to be registered, the attorney for the Commonwealth shall forthwith notify the Commissioner of the Department of Motor Vehicles, by certified mail, *or electronically in a format prescribed by the Commissioner*, of such seizure and the motor number of the vehicle so seized, and the Commissioner shall promptly certify to such attorney for the Commonwealth the name and address of the person in whose name such vehicle is registered, together with the name and address of any person holding a lien thereon, ~~and the amount thereof~~. The Commissioner shall also forthwith notify such registered owner and lienor, in writing, of the reported seizure and the county or city wherein such seizure was made.

The certificate of the Commissioner, concerning such registration and lien, shall be received in evidence in any proceeding, either civil or criminal, under any provision of this chapter, in which such facts may be material to the issue involved.

§ 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~~ 21 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.

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59 If any party defendant appears in accordance with § 19.2-386.9, the court shall proceed to trial of
60 the case, unless trial by jury is demanded by the Commonwealth or any party defendant. At trial, the
61 Commonwealth has the burden of proving that the property is subject to forfeiture under this chapter.
62 Upon such a showing by the Commonwealth, the claimant has the burden of proving that the claimant's
63 interest in the property is exempt under subdivision 2, 3 or 4 of § 19.2-386.8. The proof of all issues
64 shall be by a preponderance of the evidence.

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

68 **§ 19.2-386.14. Sharing of forfeited assets.**

69 A. All cash, negotiable instruments, and proceeds from a sale conducted pursuant to § 19.2-386.7 or
70 19.2-386.12, after deduction of expenses, fees, and costs as provided in § 19.2-386.12, shall, as soon
71 after entry of the forfeiture as is practicable, be distributed in a manner consistent with this chapter and
72 Article VIII, Section 8 of the Constitution of Virginia.

73 A1. All cash, negotiable instruments and proceeds from a sale conducted pursuant to § 19.2-386.7 or
74 19.2-386.12, after deduction of expenses, fees and costs as provided in § 19.2-386.12, shall, as soon
75 after entry of the forfeiture as is practicable, be paid over to the state treasury into a special fund of the
76 Department of Criminal Justice Services for distribution in accordance with this section. The forfeited
77 property and proceeds, less 10 percent, shall be made available to federal, state and local agencies to
78 promote law enforcement in accordance with this section and regulations adopted by the Criminal
79 Justice Services Board to implement the asset-sharing program.

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

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

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

98 C. After the order of forfeiture is entered concerning any motor vehicle, boat, aircraft, or other
99 tangible personal property, any seizing agency may (i) petition the Department for return of the property
100 that is not subject to a grant or pending petition for remission or (ii) request the circuit court to order
101 the property destroyed. Where all the participating agencies agree upon the equitable distribution of the
102 tangible personal property, the Department shall return the property to those agencies upon finding that
103 (a) the agency meets the criteria for distribution as set forth in subsection B and (b) the agency has a
104 clear and reasonable law-enforcement need for the forfeited property.

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

112 If a seizing agency has received property for its use pursuant to this section, when the agency
113 disposes of the property (1) by sale, the proceeds shall be distributed as set forth in this section; or (2)
114 by destruction pursuant to a court order, the agency shall do so in a manner consistent with this section.

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

119 E. On or after July 1, 2012, but before July 1, 2014, local seizing agencies may contribute cash
120 funds and proceeds from forfeited property to the Virginia Public Safety Foundation to support the

121 construction of the Commonwealth Public Safety Memorial. Any funds contributed by seizing agencies
122 shall be contributed only after an internal analysis to determine that such contributions will not
123 negatively impact law-enforcement training or operations.

124 *F. The Department shall report annually on or before December 31 to the Governor and the General*
125 *Assembly the amount of all cash, negotiable instruments, and proceeds from sales conducted pursuant to*
126 *§ 19.2-386.7 or 19.2-386.12 that were forfeited to the Commonwealth, including the amount of all*
127 *forfeitures distributed to the Literary Fund. Such report shall also detail the amount distributed by the*
128 *Department to each federal, state, or local agency or office pursuant to this section, and the amount*
129 *each state or local agency or office received from federal asset forfeiture proceedings. The Department*
130 *shall ensure that such report is available to the public.*