

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 19.2-386.10 of the Code of Virginia, relating to asset forfeiture; burden*
3 *of proof.*

4
5 Approved

[S 457]

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That § 19.2-386.10 of the Code of Virginia is amended and reenacted as follows:**

8 **§ 19.2-386.10. Forfeiture; default judgment; remission; trial.**

9 A. A party defendant who fails to appear as provided in § 19.2-386.9 shall be in default. The
10 forfeiture shall be deemed established as to the interest of any party in default upon entry of judgment
11 as provided in § 19.2-386.11. Within ~~twenty-one~~ 21 days after entry of judgment, any party defendant
12 against whom judgment has been so entered may petition the Department of Criminal Justice Services
13 for remission of his interest in the forfeited property. For good cause shown and upon proof *by a*
14 *preponderance of the evidence* that the party defendant's interest in the property is exempt under
15 subdivision 2, 3, or 4 of § 19.2-386.8, the Department of Criminal Justice Services shall grant the
16 petition and direct the state treasury to either (i) remit to the party defendant an amount not exceeding
17 the party defendant's interest in the proceeds of sale of the forfeited property after deducting expenses
18 incurred and payable pursuant to subsection B of § 19.2-386.12 or (ii) convey clear and absolute title to
19 the forfeited property in extinguishment of such interest.

20 If any party defendant appears in accordance with § 19.2-386.9, the court shall proceed to trial of the
21 case, unless trial by jury is demanded by the Commonwealth or any party defendant. At trial, the
22 Commonwealth has the burden of proving *by clear and convincing evidence* that the property is subject
23 to forfeiture under this chapter. Upon such a showing by the Commonwealth, the claimant has the
24 burden of proving *by a preponderance of the evidence* that the claimant's interest in the property is
25 exempt under subdivision 2, 3, or 4 of § 19.2-386.8. ~~The proof of all issues shall be by a preponderance~~
26 ~~of the evidence.~~

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

ENROLLED

SB457ER