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HOUSE BILL NO. 225

Offered January 8, 2020

Prefiled December 28, 2019

A BILL to amend and reenact §§ 19.2-386.1, 19.2-386.10, 19.2-386.29, 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; reporting requirements.

Patrons—Freitas and Cole, M.L.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-386.1, 19.2-386.10, 19.2-386.29, 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.

A. 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.

B. 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 *or the person in whose custody the property is found* 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.

C. Any action of forfeiture commenced under this section shall be stayed until the court in which the owner of the property or the person in whose custody the property is found is being prosecuted for an offense authorizing the forfeiture finds the owner or the person in whose custody the property is found 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 guilt of the owner or the person in whose custody the property is found, regardless of whether the owner or the person in whose custody the property is found has been sentenced. If no such finding is made by the court, all property seized shall be released from seizure no later than 21 days from the date the stay terminates. 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 (i) such forfeiture is ordered by a court pursuant to a lawful plea agreement or (ii) the owner of the property or the person in whose custody the property was found 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 the date the stay terminates.

§ 19.2-386.10. Forfeiture; default judgment; remission; 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 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 by a preponderance of the evidence 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

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the case, unless trial by jury is demanded by the Commonwealth or any party defendant. At trial, the Commonwealth has the burden of proving by clear and convincing evidence that the property is subject to forfeiture under this chapter. Upon such a showing by the Commonwealth, the claimant has the burden of proving by a preponderance of the evidence that the claimant's interest in the property is exempt under subdivision 2, 3, or 4 of § 19.2-386.8.

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

§ 19.2-386.29. Forfeiture of certain weapons used in commission of criminal offense.

All pistols, shotguns, rifles, dirks, bowie knives, switchblade knives, ballistic knives, razors, slingshots, brass or metal knucks, blackjacks, stun weapons, and other weapons used by any person in the commission of a criminal offense, shall~~, upon conviction of such person,~~ be forfeited to the Commonwealth by order of the court trying the case. The court shall dispose of such weapons as it deems proper by entry of an order of record. Such disposition may include the destruction of the weapons or, subject to any registration requirements of federal law, sale of the firearms to a licensed dealer in such firearms in accordance with the provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) regarding sale of property forfeited to the Commonwealth.

The court may authorize the seizing law-enforcement agency to use the weapon for a period of time as specified in the order. When the seizing agency ceases to so use the weapon, it shall be disposed of as otherwise provided in this section.

However, upon petition to the court and notice to the attorney for the Commonwealth, the court, upon good cause shown, shall return any such weapon to its lawful owner after conclusion of all relevant proceedings if such owner (i) did not know and had no reason to know of the conduct giving rise to the forfeiture and (ii) is not otherwise prohibited by law from possessing the weapon. The owner shall acknowledge in a sworn affidavit to be filed with the record in the case or cases that he has retaken possession of the weapon involved.

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

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

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

All moneys and other property, real and personal, owned by a person and used to further the 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 law-enforcement officer and are subject to forfeiture to the Commonwealth pursuant to Chapter 22.1 (§ 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 is obtained~~.

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

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

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

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

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

All money, equipment, motor vehicles, and other personal and real property of any kind or character together with any interest or profits derived from the investment of such proceeds or other property that (i) was used in connection with the commission of, or in an attempt to commit, a violation of subsection 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, 18.2-348.1, 18.2-349, 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 proceeds of some form of activity 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, 18.2-348, 18.2-348.1, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 40.1-29, 40.1-100.2, or 40.1-103; or (iii) was used to or intended to be used to promote some form of activity 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, 18.2-348, 18.2-348.1, 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 seizure by a law-enforcement officer and subject to forfeiture to the Commonwealth pursuant to Chapter 22.1 (§ 19.2-386.1 et seq.). ~~Any forfeiture action under this section shall be stayed until conviction, and property eligible for forfeiture pursuant to this section shall be forfeited only upon the entry of a final judgment of conviction for an offense listed in this section; if no such judgment is entered, all property seized pursuant to this section shall be released from seizure.~~

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

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

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