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HOUSE BILL NO. 617

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact §§ 19.2-368.5, 19.2-368.20, and 19.2-368.21 of the Code of Virginia, relating to profits from crime; special order of escrow.

Patrons—O'Bannon, Athey, Cosgrove, Gear, Gilbert, Iaquinto, Jones, S.C., Landes, Nixon, Oder, Rust, Sherwood and Wright

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-368.5, 19.2-368.20, and 19.2-368.21 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-368.5. Filing of claims; deferral of proceedings; restitution.

A. A claim may be filed by a person eligible to receive an award, as provided in § 19.2-368.4, or if such person is a minor, by his parent or guardian. In any case in which the person entitled to make a claim is incapacitated, the claim may be filed on his behalf by his guardian, conservator or such other individual authorized to administer his estate.

B. A claim shall be filed by the claimant not later than one year after the occurrence of the crime upon which such claim is based, or not later than one year after the death of the victim. However, (i) in cases involving claims made on behalf of a minor or a person who is incapacitated, the provisions of subsection A of § 8.01-229 shall apply to toll the one-year period; (ii) in cases involving claims made by a victim against profits of crime ~~forfeited and~~ held in escrow pursuant to Chapter 21.2 (§ 19.2-368.19 et seq.) of this title, the claim shall be filed within five years of the date of the ~~order of forfeiture~~ *special order of escrow*; and (iii) in cases involving claims of sexual abuse of a minor, the claim shall be filed within 10 years after the minor's eighteenth birthday. For good cause shown, the Commission may extend the time for filing.

C. Claims shall be filed in the office of the Commission in person or by mail. The Commission shall accept for filing all claims submitted by persons eligible under subsection A of this section and alleging the jurisdictional requirements set forth in this chapter and meeting the requirements as to form in the rules and regulations of the Commission.

D. Upon filing of a claim pursuant to this chapter, the Commission shall promptly notify the attorney for the Commonwealth of the jurisdiction wherein the crime is alleged to have occurred. If, within 10 days after such notification, the attorney for the Commonwealth so notified advises the Commission that a criminal prosecution is pending upon the same alleged crime, the Commission shall defer all proceedings under this chapter until such time as such criminal prosecution has been concluded in the circuit court unless notification is received from the attorney for the Commonwealth that no objection is made to a continuation of the investigation and determination of the claim. When such criminal prosecution has been concluded in the circuit court the attorney for the Commonwealth shall promptly so notify the Commission. Nothing in this section shall be construed to mean that the Commission is to defer proceedings upon the filing of an appeal, nor shall this section be construed to limit the authority of the Commission to grant emergency awards as hereinafter provided. Upon awarding a claim pursuant to this chapter, the Commission shall promptly notify the attorney for the Commonwealth of the jurisdiction wherein the crime is alleged to have occurred. If a criminal prosecution occurs regarding the same alleged crime, the attorney for the Commonwealth shall request the court to order restitution. However, neither the lack of a restitution order, nor the failure of the attorney for the Commonwealth to request such an order, shall preclude the Fund from exercising its subrogation rights pursuant to § 19.2-368.15. Any such restitution shall be paid over to the Comptroller for deposit into the Criminal Injuries Compensation Fund to the extent of the amount of the award paid from the Fund.

§ 19.2-368.20. Special order of escrow.

Any proceeds or profits received or to be received directly or indirectly by a defendant or a transferee of that defendant from any source, as a direct or indirect result of his crime or sentence, or the notoriety which such crime or sentence has conferred upon him, shall be subject to ~~forfeiture~~ *pursuant to a special order of escrow, which trial shall be in the manner set forth in Chapter 22* (§ 19.2-369 et seq.) of this title.

Income from the defendant's employment in a position unrelated to his crime or the notoriety which such crime has conferred upon him but obtained through the assistance of or rehabilitative training by correctional or mental health programs or personnel shall not be subject to ~~forfeiture~~ *a special order of*

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escrow under this section, and nothing in this section shall be construed to prohibit or hinder the return of property belonging to victims of crime to its rightful owners. Any proceeds from a contract relating to a depiction or discussion of the defendant's crime in a movie, book, newspaper, magazine, radio or television production, or live entertainment or publication of any kind shall not be subject to forfeiture a special order of escrow unless an integral part of the work is a depiction or discussion of the defendant's crime or an impression of the defendant's thoughts, opinions, or emotions regarding such crime.

Upon petition of the attorney for the Commonwealth filed at any time after conviction of such defendant or his acquittal by reason of insanity and after notice to the interested parties, a hearing upon the motion and a finding for the Commonwealth, for good cause shown, any circuit court in which the petition is filed shall order that such proceeds be ~~forfeited~~ subject to a special order of escrow.

An order issued under this section shall require that the defendant and the person with whom the defendant contracts pay to the Division any proceeds due the defendant under the contract and the proceeds shall be placed in a special escrow account for the victims of the defendant's crime.

§ 19.2-368.21. Distribution.

A. Proceeds paid to the Division under § 19.2-368.20 shall be retained in escrow in the Criminal Injuries Compensation Fund for five years after the date of the order, but during that five-year period may be levied upon to satisfy:

1. A money judgment rendered by a court or award of the Workers' Compensation Commission in favor of a victim of an offense for which the defendant has been convicted or acquitted by reason of insanity, or a legal representative of the victim; and

2. Any fines or costs assessed against the defendant by a court of this Commonwealth.

B. If ordered by a circuit court in the interest of justice, after motion, notice to all interested parties, and opportunity for hearing, such escrow fund shall be used to:

1. Satisfy First, satisfy a money judgment rendered in the court hearing the matter, in favor of a victim of any offense for which the defendant has been convicted; and

2. Pay Second, pay for legal representation of the defendant in criminal proceedings, including the appeals process, to the extent the defendant's representation was paid for by the Commonwealth or an agency thereof. No more than ~~twenty-five percent~~ 25% of the total proceeds in escrow may be used for legal representation; and

3. Third, pay any fines or costs assessed against the defendant by a court of the Commonwealth.

C. At the end of the five-year period, the remaining proceeds shall be paid into the ~~Criminal Injuries Compensation~~ Literary Fund. However, (i) if a civil action under this section is pending against the defendant, the proceeds shall be held in escrow until completion of the action or (ii) if the defendant has appealed his conviction and the appeals process is not final, the proceeds shall be held in escrow until the appeals process is final, and upon disposition of the charges favorable to the defendant, the Division shall immediately pay any money in the escrow account to the defendant.