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SENATE BILL NO. 463

Offered January 10, 2018

Prefiled January 9, 2018

A *BILL to amend and reenact §§ 18.2-251.02, 19.2-386.12, and 19.2-386.14 of the Code of Virginia, relating to disposition of forfeited property used in connection with the commission of drug crimes; Drug Offender Assessment and Treatment Fund.*

Patron—Reeves

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-251.02, 19.2-386.12, and 19.2-386.14 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-251.02. Drug Offender Assessment and Treatment Fund.

There is hereby established in the state treasury the Drug Offender Assessment and Treatment Fund, which shall consist of moneys received from (i) fees imposed on certain drug offense convictions pursuant to § 16.1-69.48:3 and subdivisions A 10 and A 11 of § 17.1-275 and ~~§ 16.1-69.48:3~~ and (ii) ~~property subject to forfeiture pursuant to § 19.2-386.22 that has been forfeited in accordance with the procedures of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2.~~ All interest derived from the deposit and investment of moneys in the Fund shall be credited to the Fund. Any moneys not appropriated by the General Assembly shall remain in the Drug Offender Assessment and Treatment Fund and shall not be transferred or revert to the general fund at the end of any fiscal year. All moneys in the Fund shall be subject to annual appropriation by the General Assembly to the Department of Corrections, the Department of Juvenile Justice, and the Commission on VASAP to implement and operate the offender substance abuse screening and assessment program; the Department of Criminal Justice Services for the support of community-based probation and local pretrial services agencies; and the Office of the Executive Secretary of the Supreme Court of Virginia for the support of drug treatment court programs.

§ 19.2-386.12. Sale of forfeited property.

A. Any sale of forfeited property shall be made for cash, after due advertisement. The sale shall be by public sale or other commercially feasible means authorized by the court in the order of forfeiture and shall vest in the purchaser a clear and absolute title to the property sold subject to the rights of any lien holder whose interest is not forfeited. The proceeds of sale, and whatever may be realized on any bond given under § 19.2-386.6, and any money forfeited shall be paid over to the state treasury into (i) a special fund of the Department of Criminal Justice Services or (ii) *the Drug Offender Assessment and Treatment Fund* in accordance with § 19.2-386.14.

B. In all cases of forfeiture under this section, the actual expenses incident to the custody, preservation, and management of the seized property prior to forfeiture, the actual expenses incident to normal legal proceedings to perfect the Commonwealth's interest in the seized property through forfeiture, and the actual expenses incident to the sale thereof, including commissions, shall be taxed as costs and shall be paid to the person or persons who incurred these costs out of the net proceeds from the sale of such property. If there are no proceeds, the actual expenses shall be paid by the Commonwealth from the Criminal Fund. Actual expenses in excess of the available net proceeds shall be paid by the Commonwealth from the Criminal Fund. The party or parties in interest to any forfeiture proceeding commenced under this section shall be entitled to reasonable ~~attorney's~~ attorney fees and costs if the forfeiture proceeding is terminated in favor of such party or parties. Such fees and costs shall be paid by the Commonwealth from the Criminal Fund.

The residue, if any, shall be paid and disbursed as provided in subsection A of § 19.2-386.10 and § 19.2-386.14 and regulations promulgated by the Criminal Justice Services Board.

§ 19.2-386.14. Sharing of forfeited assets.

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

A1. ~~All~~ For property used in connection with the manufacture, sale, or distribution of controlled substances or marijuana that is subject to forfeiture pursuant to § 19.2-386.22, all cash, negotiable instruments, and proceeds from a sale conducted pursuant to § 19.2-386.7 or 19.2-386.12, after deduction of expenses, fees and costs as provided in § 19.2-386.12, shall, as soon after entry of the forfeiture as is practicable, be paid over to the state treasury. *The state treasury shall transfer 80 percent*

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59 *of the forfeited property and proceeds* into a special fund of the Department of Criminal Justice Services
60 for distribution in accordance with this section. The forfeited property and proceeds *in the special fund*
61 *of the Department of Criminal Justice Services*, less 10 percent, shall be made available to federal, state,
62 and local agencies to promote law enforcement in accordance with this section and regulations adopted
63 by the Criminal Justice Services Board to implement the asset-sharing program. *The state treasury shall*
64 *transfer the remaining 20 percent of the forfeited property and proceeds into the Drug Offender*
65 *Assessment and Treatment Fund for distribution in accordance with the provisions of § 18.2-251.02.*

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

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

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

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

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

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

101 D. All forfeited property, including its proceeds or cash equivalent, received by a participating state
102 or local agency pursuant to this section shall be used to promote law enforcement but shall not be used
103 to supplant existing programs or funds. The Board shall promulgate regulations establishing an audit
104 procedure to ensure compliance with this section. *For the purposes of this section, "promote law*
105 *enforcement" includes activities calculated to enhance future investigations, law-enforcement training,*
106 *law-enforcement equipment and operations, detention facilities, law-enforcement facilities and equipment,*
107 *drug education, awareness, addiction programs, and rehabilitation programs, pro rata funding, and*
108 *asset accounting and tracking and other expenses specifically approved by the Department of Criminal*
109 *Justice Services that promote law enforcement in accordance with this section and regulations adopted*
110 *by the Criminal Justice Services Board.*

111 E. On or after July 1, 2012, but before July 1, 2014, local seizing agencies may contribute cash
112 funds and proceeds from forfeited property to the Virginia Public Safety Foundation to support the
113 construction of the Commonwealth Public Safety Memorial. Any funds contributed by seizing agencies
114 shall be contributed only after an internal analysis to determine that such contributions will not
115 negatively impact law-enforcement training or operations.

116 F. The Department shall report annually on or before December 31 to the Governor and the General
117 Assembly the amount of all cash, negotiable instruments, and proceeds from sales conducted pursuant to
118 § 19.2-386.7 or 19.2-386.12 that were forfeited to the Commonwealth, including the amount of all
119 forfeitures distributed to the Literary Fund. Such report shall also detail the amount distributed by the
120 Department to each federal, state, or local agency or office pursuant to this section, and the amount each

121 state or local agency or office received from federal asset forfeiture proceedings. The Department shall
122 ensure that such report is available to the public.

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