VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 19.2-386.14 of the Code of Virginia, relating to sharing of forfeited assets; promoting law enforcement.

[H 1282]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-386.14 of the Code of Virginia is amended and reenacted as follows:

§ 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 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 into a special fund of the Department of Criminal Justice Services for distribution in accordance with this section. The forfeited property and proceeds, less 10 percent, shall be made available to federal, state, and local agencies to promote law enforcement in accordance with this section, *which may include expenditures to strengthen relationships between the community and law enforcement, encourage goodwill between the community and law enforcement, or promote cooperation with law enforcement,* and regulations adopted by the Criminal Justice Services Board to implement the asset-sharing program.

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

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

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

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

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

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

D. All forfeited property, including its proceeds or cash equivalent, received by a participating state or local agency pursuant to this section shall be used to promote law enforcement, *which may include expenditures to strengthen relationships between the community and law enforcement, encourage goodwill between the community and law enforcement, or promote cooperation with law enforcement,* but shall not be used to supplant existing programs or funds. The Board shall promulgate regulations establishing an audit procedure to ensure compliance with this section.

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

F. The Department shall report annually on or before December 31 to the Governor and the General Assembly the amount of all cash, negotiable instruments, and proceeds from sales conducted pursuant to § 19.2-386.7 or 19.2-386.12 that were forfeited to the Commonwealth, including the amount of all forfeitures distributed to the Literary Fund. Such report shall also detail the amount distributed by the Department to each federal, state, or local agency or office pursuant to this section, and the amount each state or local agency or office received from federal asset forfeiture proceedings. Any state or local agency that receives a forfeited asset or an equitable share of the net proceeds of a forfeited asset from the Department or from a federal asset forfeiture proceeding shall inform the Department, in a manner prescribed by the Department, of (i) the offense on which the forfeiture is based listed in the information filed pursuant to § 19.2-386.1, (ii) any criminal charge brought against the owner of the forfeited asset, and (iii) if a criminal charge was brought against the owner of the forfeited asset, the status of the charge, including whether the charge is pending or resulted in a conviction. The Department shall include such information in the annual report. The Department shall ensure that such report is available to the public.