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HOUSE BILL NO. 2072

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact §§ 19.2-386.1, 19.2-386.8, and 19.2-386.10 of the Code of Virginia, relating to action of forfeiture; disposal of property; exemptions.

Patrons—Glass and Subramanyam

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-386.1, 19.2-386.8, and 19.2-386.10 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. A lawful plea agreement shall dispose of all property that was seized in relation to the offense in question, regardless of whether a civil case has been initiated, provided that an innocent owner claimant or any lien holder consents to the forfeiture. If the criminal case is dismissed, all property shall be returned to the defendant, all civil cases shall be dismissed, and the dismissal shall mark an end to all claims on the property seized. As used in this section, "innocent owner claimant" means a person who (i) holds a legal interest, right, or title in the property seized subject to forfeiture and held such interest, right, or title in such property at the time of seizure and (ii) did not have any involvement in the illegal criminal activity causing such property to be seized.

D. Any person who has been acquitted or who is an innocent owner claimant shall have all court fees waived.

E. An innocent owner claimant or lien holder may petition the court for a hearing at any time prior to the commencement of the criminal trial. The court shall hear the motion within 30 days of the filing of such petition or at the court's discretion. The hearing shall be held before the court alone without a jury. The court may consolidate the hearing on the petition with any other hearing before the court

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59 *related to the referenced case.*

60 **§ 19.2-386.8. Exemptions; prohibitions.**

61 A. The following exemptions shall apply to property otherwise subject to forfeiture:

62 1. No conveyance used by any person as a lawfully certified common carrier in the transaction of
63 business as a common carrier may be forfeited under the provisions of this section unless the owner of
64 the conveyance was a consenting party or privy to the conduct giving rise to forfeiture or knew or had
65 reason to know of it.

66 2. No conveyance may be forfeited under the provisions of this section for any conduct committed
67 by a person other than the owner while the conveyance was unlawfully in the possession of a person
68 other than the owner in violation of the criminal laws of this Commonwealth, or any other state, the
69 District of Columbia, the United States or any territory thereof.

70 3. No owner's interest may be forfeited under this chapter if the court finds that:

71 a. He did not know and had no reason to know of the conduct giving rise to forfeiture;

72 b. He was a bona fide purchaser for value without notice;

73 c. The conduct giving rise to forfeiture occurred without his connivance or consent, express or
74 implied; or

75 d. The conduct giving rise to forfeiture was committed by a tenant of a residential or commercial
76 property owned by a landlord, and the landlord did not know or have reason to know of the tenant's
77 conduct.

78 4. No lien holder's interest may be forfeited under this chapter if the court finds that:

79 a. The lien holder did not know of the conduct giving rise to forfeiture at the time the lien was
80 granted;

81 b. The lien holder held a bona fide lien on the property subject to forfeiture and had perfected the
82 same in the manner prescribed by law prior to seizure of the property; and

83 c. The conduct giving rise to forfeiture occurred without his connivance or consent, express or
84 implied.

85 In the event *that* the interest has been sold to a bona fide purchaser for value in order to avoid the
86 provisions of this chapter, the Commonwealth shall have a right of action against the seller of the
87 property for the proceeds of the sale.

88 B. *No moneys or motor vehicle subject to seizure under the provisions of Chapter 22.2 (§*
89 *19.2-386.15 et seq.) or any other provision of law may be forfeited under the provisions of this chapter*
90 *if (i) the total value of moneys does not exceed \$200 or (ii) the fair market value of such motor vehicle*
91 *does not exceed \$2,000.*

92 **§ 19.2-386.10. Forfeiture; default judgment; remission; trial.**

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

104 If any party defendant appears in accordance with § 19.2-386.9, the court shall proceed to trial of
105 the case, unless trial by jury is demanded by the Commonwealth or any party defendant. At trial, the
106 Commonwealth has the burden of proving by clear and convincing evidence that the property is subject
107 to forfeiture under this chapter. Upon such a showing by the Commonwealth, the claimant has the
108 burden of proving by a preponderance of the evidence that the claimant's interest in the property is
109 exempt under subdivision A 2, 3, or 4 *or subsection B* of § 19.2-386.8.

110 B. The information and trial thereon shall be independent of any criminal proceeding against any
111 party or other person for violation of law.