

HOUSE BILL NO. 2072

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Glass)

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.

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

27 and show cause why such property should not be forfeited. In all cases, an information shall be filed within
28 three years of the date of actual discovery by the Commonwealth of the last act giving rise to the forfeiture
29 or the action for forfeiture will be barred.

30 C. Any action of forfeiture commenced under this section shall be stayed until the court in which
31 the owner of the property or the person in whose custody the property is found is being prosecuted for an
32 offense authorizing the forfeiture finds the owner or the person in whose custody the property is found
33 guilty of any offense that authorizes forfeiture of such property, and any property eligible for forfeiture
34 under the provisions of any statute shall be forfeited only upon such finding of guilt of the owner or the
35 person in whose custody the property is found, regardless of whether the owner or the person in whose
36 custody the property is found has been sentenced. If no such finding is made by the court, all property
37 seized shall be released from seizure no later than 21 days from the date the stay terminates and a notice
38 shall be sent to the owner of the property or the person in whose custody the property is found informing
39 such person of the process to have such property returned. However, property that has been seized may
40 be forfeited pursuant to the procedures set forth in this chapter even though no finding of guilt is made if
41 (i) such forfeiture is ordered by a court pursuant to a lawful plea agreement or (ii) ~~the owner of the property~~
42 ~~or the person in whose custody the property was found has not submitted a written demand for the return~~
43 ~~of the property with the law enforcement agency that seized the property within 21 days from the date the~~
44 ~~stay terminates~~ made any claim of ownership in any legal filing or proceeding.

45 **§ 19.2-386.8. Exemptions; prohibitions.**

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

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

51 2. No conveyance may be forfeited under the provisions of this section for any conduct committed
52 by a person other than the owner while the conveyance was unlawfully in the possession of a person other

53 than the owner in violation of the criminal laws of this Commonwealth, or any other state, the District of
54 Columbia, the United States or any territory thereof.

- 55 3. No owner's interest may be forfeited under this chapter if the court finds that:
- 56 a. He did not know and had no reason to know of the conduct giving rise to forfeiture;
 - 57 b. He was a bona fide purchaser for value without notice;
 - 58 c. The conduct giving rise to forfeiture occurred without his connivance or consent, express or
59 implied; or
 - 60 d. The conduct giving rise to forfeiture was committed by a tenant of a residential or commercial
61 property owned by a landlord, and the landlord did not know or have reason to know of the tenant's
62 conduct.

- 63 4. No lien holder's interest may be forfeited under this chapter if the court finds that:
- 64 a. The lien holder did not know of the conduct giving rise to forfeiture at the time the lien was
65 granted;
 - 66 b. The lien holder held a bona fide lien on the property subject to forfeiture and had perfected the
67 same in the manner prescribed by law prior to seizure of the property; and
 - 68 c. The conduct giving rise to forfeiture occurred without his connivance or consent, express or
69 implied.

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

73 B. No moneys or motor vehicle subject to seizure under the provisions of Chapter 22.2 (§ 19.2-
74 386.15 et seq.) or any other provision of law may be forfeited under the provisions of this chapter if (i)
75 the total value of moneys does not exceed \$200 or (ii) the fair market value of such motor vehicle does
76 not exceed \$2,000.

77 **§ 19.2-386.10. Forfeiture; default judgment; remission; trial.**

78 A. A party defendant who fails to appear as provided in § 19.2-386.9 shall be in default. The
79 forfeiture shall be deemed established as to the interest of any party in default upon entry of judgment as

80 provided in § 19.2-386.11. Within 21 days after entry of judgment, any party defendant against whom
81 judgment has been so entered may petition the Department of Criminal Justice Services for remission of
82 his interest in the forfeited property. For good cause shown and upon proof by a preponderance of the
83 evidence that the party defendant's interest in the property is exempt under subdivision A 2, 3, or 4 or
84 subsection B of § 19.2-386.8, the Department of Criminal Justice Services shall grant the petition and
85 direct the state treasury to either (i) remit to the party defendant an amount not exceeding the party
86 defendant's interest in the proceeds of sale of the forfeited property after deducting expenses incurred and
87 payable pursuant to subsection B of § 19.2-386.12 or (ii) convey clear and absolute title to the forfeited
88 property in extinguishment of such interest.

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

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

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