

HOUSE BILL 1306

R3

6lr1140

By: **Delegates Ciliberti, Afzali, McConkey, McKay, Vogt, and Wivell**

Introduced and read first time: February 12, 2016

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Habitual Drunk Driver – Mandatory Minimum Penalty and Vehicle Forfeiture**

3 FOR the purpose of altering a certain mandatory minimum penalty for a third or
4 subsequent offense of driving under the influence of alcohol or under the influence of
5 alcohol per se; authorizing, with a certain exception, the seizure and forfeiture of a
6 motor vehicle that a person drives or attempts to drive under the influence of alcohol
7 or under the influence of alcohol per se when the person has a certain number of
8 prior convictions for a certain drunk driving offense within a certain period of time;
9 providing certain procedures and establishing certain requirements for seizure and
10 forfeiture of a motor vehicle under this Act; and generally relating to a certain
11 penalty and forfeiture of a motor vehicle for a habitual drunk driver.

12 BY repealing and reenacting, without amendments,
13 Article – Transportation
14 Section 21–902(a) and 27–101(j)(6) and (k)(1)(iii)
15 Annotated Code of Maryland
16 (2012 Replacement Volume and 2015 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Transportation
19 Section 27–101(j)(2)(ii)
20 Annotated Code of Maryland
21 (2012 Replacement Volume and 2015 Supplement)

22 BY adding to
23 Article – Transportation
24 Section 28–101 through 28–123 to be under the new title “Title 28. Habitual Drunk
25 Driver — Forfeiture”
26 Annotated Code of Maryland
27 (2012 Replacement Volume and 2015 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
2 That the Laws of Maryland read as follows:

3 **Article – Transportation**

4 21–902.

5 (a) (1) A person may not drive or attempt to drive any vehicle while under the
6 influence of alcohol.

7 (2) A person may not drive or attempt to drive any vehicle while the person
8 is under the influence of alcohol per se.

9 (3) A person may not violate paragraph (1) or (2) of this subsection while
10 transporting a minor.

11 27–101.

12 (j) (2) (ii) A person who is convicted of a third or subsequent offense under
13 § 21–902(a) of this article within [5]10 years is subject to a mandatory minimum penalty
14 of imprisonment for not less than [10 days] 1 YEAR.

15 (6) The penalties provided by this subsection are mandatory and are not
16 subject to suspension or probation.

17 (k) (1) Except as provided in subsection (q) of this section, any person who is
18 convicted of a violation of any of the provisions of § 21–902(a) of this article (“Driving while
19 under the influence of alcohol or under the influence of alcohol per se”) or § 21–902(d) of
20 this article (“Driving while impaired by controlled dangerous substance”):

21 (iii) For a third or subsequent offense, shall be subject to a fine of not
22 more than \$3,000, or imprisonment for not more than 3 years, or both.

23 **TITLE 28. HABITUAL DRUNK DRIVER — FORFEITURE.**

24 **28–101.**

25 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
26 INDICATED.

27 (B) “CHIEF EXECUTIVE OFFICER” MEANS:

28 (1) FOR BALTIMORE CITY, THE MAYOR;

29 (2) FOR A CHARTER COUNTY, THE COUNTY EXECUTIVE OR, IF THERE
30 IS NO COUNTY EXECUTIVE, THE COUNTY COUNCIL;

1 **(3) FOR A CODE COUNTY, THE COUNTY COMMISSIONERS OR COUNTY**
2 **COUNCIL;**

3 **(4) FOR A COUNTY COMMISSIONER COUNTY, THE COUNTY**
4 **COMMISSIONERS; OR**

5 **(5) FOR A MUNICIPAL CORPORATION, THE LEGISLATIVE BODY**
6 **ESTABLISHED BY MUNICIPAL CHARTER.**

7 **(C) “FORFEITING AUTHORITY” MEANS:**

8 **(1) THE UNIT OR PERSON DESIGNATED BY AGREEMENT BETWEEN**
9 **THE STATE’S ATTORNEY FOR A COUNTY AND THE CHIEF EXECUTIVE OFFICER OF**
10 **THE GOVERNING BODY HAVING JURISDICTION OVER ASSETS SUBJECT TO**
11 **FORFEITURE TO ACT ON BEHALF OF THE GOVERNING BODY REGARDING THOSE**
12 **ASSETS; OR**

13 **(2) IF THE SEIZING AUTHORITY IS A UNIT OF THE STATE, A UNIT OR**
14 **PERSON THAT THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL’S DESIGNEE**
15 **DESIGNATES BY AGREEMENT WITH A STATE’S ATTORNEY, COUNTY ATTORNEY, OR**
16 **MUNICIPAL ATTORNEY TO ACT ON BEHALF OF THE STATE REGARDING ASSETS**
17 **SUBJECT TO FORFEITURE BY THE STATE.**

18 **(D) “GOVERNING BODY” INCLUDES:**

19 **(1) THE STATE IF THE SEIZING AUTHORITY IS A UNIT OF THE STATE;**

20 **(2) A COUNTY IF THE SEIZING AUTHORITY IS A UNIT OF A COUNTY;**

21 **(3) A MUNICIPAL CORPORATION IF THE SEIZING AUTHORITY IS A**
22 **UNIT OF A MUNICIPALITY; AND**

23 **(4) BALTIMORE CITY IF THE SEIZING AUTHORITY IS THE BALTIMORE**
24 **CITY POLICE DEPARTMENT.**

25 **(E) “LIEN” INCLUDES A PLEDGE, A SECURITY INTEREST, AN**
26 **ENCUMBRANCE, OR A RIGHT OF SETOFF.**

27 **(F) “LIENHOLDER” MEANS A PERSON THAT HAS A LIEN ON OR A SECURED**
28 **INTEREST IN A MOTOR VEHICLE CREATED BEFORE THE SEIZURE.**

1 **(G) (1) "OWNER" MEANS A PERSON THAT HAS A LEGAL, AN EQUITABLE,**
2 **OR A POSSESSORY INTEREST IN A MOTOR VEHICLE.**

3 **(2) "OWNER" INCLUDES:**

4 **(I) A CO-OWNER; AND**

5 **(II) A BONA FIDE PURCHASER FOR VALUE.**

6 **(H) "SEIZING AUTHORITY" MEANS A LAW ENFORCEMENT UNIT IN THE**
7 **STATE THAT IS AUTHORIZED TO INVESTIGATE VIOLATIONS OF THE MARYLAND**
8 **VEHICLE LAW AND HAS SEIZED A MOTOR VEHICLE UNDER THIS TITLE.**

9 **28-102.**

10 **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A MOTOR**
11 **VEHICLE IS SUBJECT TO FORFEITURE IN ACCORDANCE WITH THIS TITLE IF A**
12 **PERSON DRIVES OR ATTEMPTS TO DRIVE THE MOTOR VEHICLE IN VIOLATION OF §**
13 **21-902(A) OF THIS ARTICLE, AND THE PERSON IS CONVICTED OF A THIRD OR**
14 **SUBSEQUENT VIOLATION OF § 21-902(A) OF THIS ARTICLE WITHIN 10 YEARS.**

15 **(B) A MOTOR VEHICLE MAY NOT BE SEIZED AND FORFEITED UNDER THIS**
16 **TITLE IF A REGISTERED OWNER LENDS THE MOTOR VEHICLE TO ANOTHER PERSON**
17 **WHO IS IN POSSESSION OF THE MOTOR VEHICLE AT THE TIME OF A VIOLATION**
18 **UNDER THIS TITLE.**

19 **28-103.**

20 **A MOTOR VEHICLE SUBJECT TO FORFEITURE UNDER THIS TITLE MAY BE**
21 **SEIZED:**

22 **(1) ON A WARRANT ISSUED BY A COURT THAT HAS JURISDICTION**
23 **OVER THE MOTOR VEHICLE; AND**

24 **(2) WITHOUT A WARRANT WHEN:**

25 **(I) THE SEIZURE IS INCIDENT TO AN ARREST OR A SEARCH**
26 **UNDER A SEARCH WARRANT; OR**

27 **(II) THE MOTOR VEHICLE SUBJECT TO SEIZURE HAS BEEN THE**
28 **SUBJECT OF A PRIOR JUDGMENT IN FAVOR OF THE STATE IN A FORFEITURE**
29 **PROCEEDING UNDER THIS TITLE.**

1 28-104.

2 (A) A MOTOR VEHICLE SEIZED UNDER THIS TITLE:

3 (1) IS NOT REPLEVIABLE; BUT

4 (2) IS IN THE CUSTODY OF THE SEIZING AUTHORITY, SUBJECT ONLY
5 TO THE ORDERS, JUDGMENTS, AND DECREES OF THE COURT OR THE OFFICIAL
6 HAVING JURISDICTION OVER THE MOTOR VEHICLE.

7 (B) A SEIZING AUTHORITY MAY REMOVE THE MOTOR VEHICLE TO A PLACE
8 DESIGNATED BY THE COURT.

9 28-105.

10 (A) THE CHIEF LAW ENFORCEMENT OFFICER OF THE SEIZING AUTHORITY
11 THAT SEIZES A MOTOR VEHICLE IN ACCORDANCE WITH THIS TITLE SHALL
12 RECOMMEND TO THE APPROPRIATE FORFEITING AUTHORITY IN WRITING THAT THE
13 MOTOR VEHICLE BE FORFEITED ONLY IF THE OFFICER:

14 (1) DETERMINES FROM THE RECORDS OF THE MOTOR VEHICLE
15 ADMINISTRATION THE NAMES AND ADDRESSES OF ALL REGISTERED OWNERS AND
16 SECURED PARTIES AS DEFINED IN THE CODE;

17 (2) PERSONALLY REVIEWS THE FACTS AND CIRCUMSTANCES OF THE
18 SEIZURE; AND

19 (3) PERSONALLY DETERMINES AND REPRESENTS IN WRITING THAT
20 FORFEITURE IS WARRANTED.

21 (B) (1) A SWORN AFFIDAVIT BY THE CHIEF LAW ENFORCEMENT OFFICER
22 THAT THE OFFICER FOLLOWED THE REQUIREMENTS OF SUBSECTION (A) OF THIS
23 SECTION IS ADMISSIBLE IN EVIDENCE IN A PROCEEDING UNDER THIS TITLE.

24 (2) THE CHIEF LAW ENFORCEMENT OFFICER MAY NOT BE
25 SUBPOENAED OR COMPELLED TO APPEAR AND TESTIFY IF ANOTHER LAW
26 ENFORCEMENT OFFICER WITH PERSONAL KNOWLEDGE OF THE FACTS AND
27 CIRCUMSTANCES SURROUNDING THE SEIZURE AND THE RECOMMENDATION OF
28 FORFEITURE APPEARS AND TESTIFIES AT THE PROCEEDING.

29 28-106.

1 **(A) THE FORFEITING AUTHORITY SHALL SURRENDER THE MOTOR VEHICLE**
2 **ON REQUEST TO THE OWNER IF THE FORFEITING AUTHORITY DETERMINES,**
3 **INDEPENDENT OF THE DECISION OF THE SEIZING AUTHORITY, THAT THE MOTOR**
4 **VEHICLE FALLS WITHIN THE PURVIEW OF § 28-102(B) OF THIS TITLE.**

5 **(B) IN A PROCEEDING UNDER THIS TITLE, THE COURT MAY DETERMINE**
6 **WHETHER THE SEIZING AUTHORITY OR FORFEITING AUTHORITY ABUSED ITS**
7 **DISCRETION OR WAS CLEARLY ERRONEOUS IN:**

8 **(1) RECOMMENDING THE FORFEITURE OF A MOTOR VEHICLE; OR**

9 **(2) NOT SURRENDERING ON REQUEST A MOTOR VEHICLE TO AN**
10 **OWNER OF A SEIZED MOTOR VEHICLE.**

11 **28-107.**

12 **(A) (1) AN OWNER OF A SEIZED MOTOR VEHICLE WHO WISHES TO OBTAIN**
13 **POSSESSION OF THE PROPERTY SHALL NOTIFY THE CLERK OF THE PROPER COURT.**

14 **(2) IF FORFEITURE PROCEEDINGS HAVE BEGUN, THE PROPER COURT**
15 **IS THE COURT IN WHICH THE PROCEEDINGS HAVE BEGUN.**

16 **(3) IF CRIMINAL PROCEEDINGS HAVE BEGUN BUT FORFEITURE**
17 **PROCEEDINGS HAVE NOT BEGUN, THE PROPER COURT IS THE COURT IN WHICH THE**
18 **CRIMINAL PROCEEDINGS HAVE BEGUN.**

19 **(4) IF NEITHER FORFEITURE NOR CRIMINAL PROCEEDINGS HAVE**
20 **BEGUN, THE PROPER COURT IS THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE**
21 **PROPERTY WAS SEIZED.**

22 **(B) (1) UNLESS THE FORFEITING AUTHORITY AND THE OWNER OF THE**
23 **MOTOR VEHICLE AGREE TO A BOND IN ANOTHER AMOUNT, IF A MOTOR VEHICLE IS**
24 **NOT NEEDED FOR EVIDENTIARY PURPOSES IN A JUDICIAL PROCEEDING:**

25 **(I) THE COURT SHALL APPRAISE THE VALUE OF THE MOTOR**
26 **VEHICLE ON THE BASIS OF THE AVERAGE VALUE OF THE MOTOR VEHICLE SET**
27 **FORTH IN THE NATIONAL AUTOMOBILE DEALER'S ASSOCIATION OFFICIAL USED**
28 **CAR GUIDE; OR**

29 **(II) IF THE OWNER OF THE MOTOR VEHICLE SHOWS THAT A LIEN**
30 **IS ON THE MOTOR VEHICLE AND THE OWNER AGREES TO MAKE THE REQUIRED**
31 **PAYMENTS TO THE LIENHOLDER, THE COURT SHALL REQUIRE A BOND IN AN**
32 **AMOUNT OF THE AVERAGE VALUE OF THE MOTOR VEHICLE SET FORTH IN THE**

1 NATIONAL AUTOMOBILE DEALER'S ASSOCIATION OFFICIAL USED CAR GUIDE LESS
2 THE AMOUNT OWED ON THE LIEN.

3 (2) FOR A MOTOR VEHICLE, THE COURT SHALL APPRAISE THE VALUE
4 IN THE MANNER PROVIDED IN THIS SUBSECTION AND PROVIDE THE APPRAISAL IN
5 WRITING TO THE CLERK OF THE COURT.

6 (C) NOTICE OF THE APPRAISAL SHALL BE SENT TO ALL LIENHOLDERS
7 SHOWN IN THE RECORDS REQUIRED BY LAW FOR THE NOTICE OR PERFECTION OF
8 LIENS.

9 (D) (1) ON THE FILING OF AN APPRAISAL, THE OWNER OF THE MOTOR
10 VEHICLE MAY GIVE BOND PAYABLE TO THE CLERK OF THE COURT IN AN AMOUNT
11 EQUAL TO THE GREATER OF:

12 (I) THE APPRAISED VALUE OF THE MOTOR VEHICLE PLUS ANY
13 ACCRUED COSTS; OR

14 (II) THE AGGREGATE AMOUNT OF THE LIENS ON THE MOTOR
15 VEHICLE THAT ARE SHOWN IN THE RECORDS REQUIRED BY LAW FOR THE NOTICE OR
16 PERFECTION OF LIENS.

17 (2) A PERSON MAY GIVE A BOND UNDER THIS SECTION BY CASH,
18 THROUGH A SURETY, THROUGH A LIEN ON REAL PROPERTY, OR BY ANY OTHER
19 MEANS THAT THE CLERK APPROVES.

20 (3) A BOND AUTHORIZED UNDER THIS SECTION:

21 (I) SHALL BE CONDITIONED FOR PERFORMANCE ON FINAL
22 JUDGMENT BY THE COURT;

23 (II) SHALL BE FILED IN THE DISTRICT COURT OR CIRCUIT
24 COURT WHERE THE CRIMINAL ACTION THAT GAVE RISE TO THE SEIZURE IS
25 PENDING; AND

26 (III) UNLESS A COMPLAINT FOR FORFEITURE HAS BEEN FILED,
27 SHALL BE PART OF THE SAME CRIMINAL PROCEEDING.

28 (4) IF A CRIMINAL ACTION IS NOT PENDING OR A FORFEITURE
29 COMPLAINT HAS NOT BEEN FILED, THE BOND SHALL BE FILED IN THE CIRCUIT
30 COURT OR DISTRICT COURT IN THE COUNTY IN WHICH THE MOTOR VEHICLE WAS
31 SEIZED.

1 **(E) (1) IF THE COURT ORDERS THAT A MOTOR VEHICLE BE FORFEITED**
2 **UNDER THIS TITLE, THE COURT SHALL ENTER JUDGMENT IN THE AMOUNT OF THE**
3 **BOND AGAINST THE OBLIGORS ON THE BOND WITHOUT FURTHER PROCEEDINGS.**

4 **(2) PAYMENT OF THE AMOUNT OF THE BOND SHALL BE APPLIED AS**
5 **PROVIDED UNDER § 28-116(C)(2) OF THIS TITLE.**

6 **28-108.**

7 **SEIZURE OF A MOTOR VEHICLE OCCURS ON THE EARLIER OF THE FILING OF:**

8 **(1) A COMPLAINT FOR FORFEITURE UNDER THIS TITLE; OR**

9 **(2) A NOTICE OF PENDING LITIGATION IN THE CIRCUIT COURT OF**
10 **THE COUNTY IN WHICH THE MOTOR VEHICLE IS LOCATED.**

11 **28-109.**

12 **THE APPROPRIATE FORFEITING AUTHORITY SHALL FILE PROCEEDINGS**
13 **UNDER THIS TITLE IN THE CIRCUIT COURT.**

14 **28-110.**

15 **A COMPLAINT FOR THE FORFEITURE OF A MOTOR VEHICLE SHALL BE FILED**
16 **WITHIN 45 DAYS AFTER THE MOTOR VEHICLE IS SEIZED.**

17 **28-111.**

18 **(A) A COMPLAINT SEEKING FORFEITURE SHALL CONTAIN:**

19 **(1) A DESCRIPTION OF THE MOTOR VEHICLE SEIZED;**

20 **(2) THE DATE AND PLACE OF THE SEIZURE;**

21 **(3) THE NAME OF THE OWNER OF THE MOTOR VEHICLE, IF KNOWN;**

22 **(4) THE NAME OF THE PERSON IN POSSESSION OF THE MOTOR**
23 **VEHICLE, IF KNOWN;**

24 **(5) THE NAME OF EACH LIENHOLDER, IF KNOWN OR REASONABLY**
25 **SUBJECT TO DISCOVERY;**

1 **(6) AN ALLEGATION THAT THE PROPERTY IS SUBJECT TO**
2 **FORFEITURE;**

3 **(7) A STATEMENT OF THE FACTS AND CIRCUMSTANCES**
4 **SURROUNDING THE SEIZURE;**

5 **(8) A STATEMENT SETTING FORTH THE SPECIFIC GROUNDS FOR**
6 **FORFEITURE; AND**

7 **(9) AN OATH OR AFFIRMATION BY THE FORFEITING AUTHORITY THAT**
8 **THE CONTENTS OF THE COMPLAINT ARE TRUE TO THE BEST OF THE FORFEITING**
9 **AUTHORITY'S KNOWLEDGE, INFORMATION, AND BELIEF.**

10 **(B) WITHIN 20 DAYS AFTER THE FILING OF THE COMPLAINT, COPIES OF THE**
11 **SUMMONS AND COMPLAINT SHALL BE SENT BY CERTIFIED MAIL REQUESTING**
12 **"RESTRICTED DELIVERY – SHOW TO WHOM, DATE, ADDRESS OF DELIVERY" AND**
13 **FIRST-CLASS MAIL TO ALL KNOWN OWNERS AND LIENHOLDERS WHOSE IDENTITIES**
14 **ARE REASONABLY SUBJECT TO DISCOVERY.**

15 **28-112.**

16 **(A) A NOTICE SHALL BE SIGNED BY THE CLERK AND SHALL:**

17 **(1) INCLUDE THE CAPTION OF THE CASE;**

18 **(2) DESCRIBE THE SUBSTANCE OF THE COMPLAINT AND THE RELIEF**
19 **SOUGHT;**

20 **(3) STATE THE LATEST DATE ON WHICH A RESPONSE MAY BE FILED;**

21 **(4) STATE THAT THE MOTOR VEHICLE SHALL BE FORFEITED IF A**
22 **RESPONSE IS NOT FILED ON TIME;**

23 **(5) STATE THAT THE OWNER OF THE MOTOR VEHICLE MAY HAVE**
24 **POSSESSION OF THE MOTOR VEHICLE PENDING FORFEITURE BY POSTING A BOND AS**
25 **PROVIDED IN § 28-107 OF THIS TITLE; AND**

26 **(6) TELL WHERE TO FILE A RESPONSE AND WHOM TO CONTACT FOR**
27 **MORE INFORMATION CONCERNING THE FORFEITURE.**

28 **(B) WITHIN 20 DAYS AFTER THE FILING OF THE COMPLAINT, THE NOTICE**
29 **SHALL BE POSTED BY THE SHERIFF ON THE DOOR OF THE COURTHOUSE WHERE THE**

1 ACTION IS PENDING OR ON A BULLETIN BOARD WITHIN THE IMMEDIATE VICINITY OF
2 THE DOOR.

3 28-113.

4 THE ANSWER TO A COMPLAINT SHALL:

5 (1) COMPLY WITH THE MARYLAND RULES;

6 (2) STATE THE NATURE AND EXTENT OF THE PERSON'S RIGHT IN,
7 TITLE TO, OR INTEREST IN THE MOTOR VEHICLE;

8 (3) STATE HOW AND WHEN THE PERSON ACQUIRED A RIGHT IN, TITLE
9 TO, OR INTEREST IN THE MOTOR VEHICLE; AND

10 (4) CONTAIN A REQUEST FOR RELIEF AND A REQUEST FOR A PROMPT
11 HEARING.

12 28-114.

13 (A) IF AN ANSWER HAS BEEN FILED ON TIME, THE COURT SHALL SET A
14 HEARING ON THE FORFEITURE CLAIM WITHIN 60 DAYS AFTER THE POSTING OF
15 NOTICE UNDER § 28-112 OF THIS TITLE.

16 (B) WITHOUT A HEARING, THE COURT MAY ORDER FORFEITURE OF THE
17 PROPERTY INTEREST OF A PERSON WHO FAILS TO TIMELY FILE AN ANSWER.

18 28-115.

19 IN A PROCEEDING UNDER THIS TITLE, A COURT MAY:

20 (1) GRANT REQUESTS FOR MITIGATION OR REMISSION OF
21 FORFEITURE OR TAKE OTHER ACTION, CONSISTENT WITH THIS TITLE, THAT
22 PROTECTS THE RIGHTS OF INNOCENT PERSONS AND IS IN THE INTEREST OF
23 JUSTICE;

24 (2) RESOLVE CLAIMS ARISING UNDER THIS TITLE; AND

25 (3) TAKE APPROPRIATE MEASURES TO SAFEGUARD AND MAINTAIN
26 PROPERTY FORFEITED UNDER THIS TITLE PENDING THE DISPOSITION OF THE
27 PROPERTY.

28 28-116.

1 (A) AFTER A FULL HEARING, IF THE COURT DETERMINES THAT THE MOTOR
2 VEHICLE SHOULD NOT BE FORFEITED, THE COURT SHALL ORDER THAT THE MOTOR
3 VEHICLE BE RELEASED.

4 (B) SUBJECT TO § 28-117 OF THIS TITLE, IF THE COURT DETERMINES THAT
5 THE MOTOR VEHICLE SHOULD BE FORFEITED, THE COURT SHALL ORDER THAT THE
6 MOTOR VEHICLE BE FORFEITED TO THE APPROPRIATE GOVERNING BODY.

7 (C) (1) THE LIENHOLDER SHALL SELL THE PROPERTY IN A
8 COMMERCIALY REASONABLE MANNER.

9 (2) THE PROCEEDS OF THE SALE SHALL BE APPLIED IN THE
10 FOLLOWING ORDER:

11 (I) TO THE COURT COSTS OF THE FORFEITURE PROCEEDING;

12 (II) TO THE BALANCE DUE THE LIENHOLDER, INCLUDING ALL
13 REASONABLE COSTS INCIDENT TO THE SALE;

14 (III) TO PAYMENT OF ALL OTHER EXPENSES OF THE
15 PROCEEDINGS FOR FORFEITURE, INCLUDING EXPENSES OF SEIZURE OR
16 MAINTENANCE OF CUSTODY; AND

17 (IV) EXCEPT AS PROVIDED IN § 28-117 OF THIS TITLE, TO THE
18 GENERAL FUND OF THE STATE OR OF THE POLITICAL SUBDIVISION THAT SEIZED
19 THE PROPERTY.

20 28-117.

21 (A) (1) IF A MOTOR VEHICLE IS FORFEITED UNDER THIS TITLE, THE
22 GOVERNING BODY WHERE THE MOTOR VEHICLE WAS SEIZED MAY:

23 (I) KEEP THE MOTOR VEHICLE FOR OFFICIAL USE;

24 (II) REQUIRE AN APPROPRIATE UNIT TO TAKE CUSTODY OF THE
25 MOTOR VEHICLE AND DESTROY OR OTHERWISE DISPOSE OF IT; OR

26 (III) SELL THE MOTOR VEHICLE.

27 (2) THE PROCEEDS OF A SALE UNDER THIS SUBSECTION SHALL FIRST
28 BE USED TO PAY ALL PROPER EXPENSES OF THE PROCEEDINGS FOR FORFEITURE

1 AND SALE, INCLUDING EXPENSES OF SEIZURE, MAINTENANCE OF CUSTODY,
2 ADVERTISING, AND COURT COSTS.

3 (B) IF THE SEIZING AUTHORITY WAS A STATE LAW ENFORCEMENT UNIT
4 UNDER § 28-116 OF THIS TITLE, THE COURT SHALL ORDER THE PROPERTY TO BE
5 FORFEITED TO THE STATE LAW ENFORCEMENT UNIT.

6 (C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE STATE
7 LAW ENFORCEMENT UNIT THAT RECEIVES A FORFEITED MOTOR VEHICLE OR
8 PROCEEDS FROM A SALE OF A FORFEITED MOTOR VEHICLE UNDER THIS SECTION
9 SHALL:

10 (1) DISPOSE OF THE FORFEITED MOTOR VEHICLE AS PROVIDED IN
11 SUBSECTION (A) OF THIS SECTION; AND

12 (2) PAY TO THE GENERAL FUND OF THE STATE ANY PROCEEDS OF
13 THE SALE OF THE FORFEITED MOTOR VEHICLE.

14 (D) EXCEPT AS OTHERWISE PROVIDED UNDER FEDERAL LAW, A LAW
15 ENFORCEMENT UNIT OTHER THAN A STATE LAW ENFORCEMENT UNIT THAT
16 PARTICIPATED WITH A STATE LAW ENFORCEMENT UNIT IN SEIZING A MOTOR
17 VEHICLE FORFEITED UNDER THIS SECTION:

18 (1) SHALL BE PAID BY THE STATE LAW ENFORCEMENT UNIT THE
19 SHARE OF THE PROCEEDS FROM THE SALE OF THE FORFEITED MOTOR VEHICLE AS
20 AGREED BY THE LAW ENFORCEMENT UNITS; OR

21 (2) MAY ASK THE GOVERNOR'S OFFICE OF CRIME CONTROL AND
22 PREVENTION TO DETERMINE ITS SHARE.

23 (E) PROCEEDS THAT A LAW ENFORCEMENT UNIT OTHER THAN A STATE LAW
24 ENFORCEMENT UNIT RECEIVES UNDER SUBSECTION (D) OF THIS SECTION SHALL BE
25 DEPOSITED IN THE GENERAL FUND OF THE POLITICAL SUBDIVISION OF THAT LAW
26 ENFORCEMENT UNIT.

27 28-118.

28 A SALE OF A MOTOR VEHICLE ORDERED UNDER THIS TITLE SHALL BE MADE
29 FOR CASH AND GIVES THE PURCHASER CLEAR AND ABSOLUTE TITLE.

30 28-119.

1 **(A) BEFORE EXERCISING THE RIGHT TO SELL A MOTOR VEHICLE THAT HAS**
2 **BEEN SEIZED UNDER THIS TITLE, A LIENHOLDER SHALL GIVE TO THE FORFEITING**
3 **AUTHORITY:**

4 **(1) WRITTEN NOTICE OF THE INTENTION TO SELL;**

5 **(2) COPIES OF DOCUMENTS GIVING RISE TO THE LIEN; AND**

6 **(3) AN AFFIDAVIT UNDER OATH BY THE LIENHOLDER STATING:**

7 **(I) THAT THE UNDERLYING OBLIGATION IS IN DEFAULT; AND**

8 **(II) THE REASONS FOR THE DEFAULT.**

9 **(B) ON REQUEST OF THE LIENHOLDER, THE FORFEITING AUTHORITY SHALL**
10 **RELEASE THE MOTOR VEHICLE TO THE LIENHOLDER.**

11 **28-120.**

12 **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE LAW**
13 **GOVERNING THE SALE OF COLLATERAL SECURING AN OBLIGATION IN DEFAULT**
14 **GOVERNS A LIENHOLDER'S REPOSSESSION AND SALE OF A MOTOR VEHICLE THAT**
15 **HAS BEEN SEIZED UNDER THIS TITLE.**

16 **(B) A LIENHOLDER MAY NOT BE REQUIRED TO TAKE POSSESSION OF THE**
17 **MOTOR VEHICLE BEFORE THE SALE OF THE MOTOR VEHICLE.**

18 **28-121.**

19 **(A) ANY PART OF THE PROCEEDS FROM A SALE OF A MOTOR VEHICLE THAT**
20 **HAS BEEN SEIZED UNDER THIS TITLE THAT WOULD BE PAID TO AN OWNER OF THE**
21 **MOTOR VEHICLE UNDER THE APPLICABLE LAW RELATING TO DISTRIBUTION OF**
22 **PROCEEDS SHALL BE:**

23 **(1) PAID TO THE SEIZING AUTHORITY; AND**

24 **(2) PROPERTY SUBJECT TO FORFEITURE.**

25 **(B) IF AN ORDER OF FORFEITURE IS NOT ENTERED, THE STATE SHALL**
26 **RETURN TO THE OWNER THAT PART OF THE PROCEEDS AND ANY COSTS OF THE**
27 **FORFEITURE PROCEEDINGS PAID FROM THE PROCEEDS OF THE SALE.**

28 **28-122.**

1 **(A) IF THE INTEREST OF THE OWNER IN A MOTOR VEHICLE THAT HAS BEEN**
2 **SEIZED UNDER THIS TITLE IS REDEEMED, THE LIENHOLDER SHALL MAIL A NOTICE**
3 **OF THE REDEMPTION TO THE FORFEITING AUTHORITY WITHIN 10 DAYS AFTER THE**
4 **REDEMPTION.**

5 **(B) (1) IF A MOTOR VEHICLE THAT HAS BEEN SEIZED UNDER THIS TITLE**
6 **HAS BEEN REPOSSESSED OR OTHERWISE LAWFULLY TAKEN BY THE LIENHOLDER,**
7 **THE LIENHOLDER SHALL RETURN THE MOTOR VEHICLE TO THE SEIZING AUTHORITY**
8 **WITHIN 21 DAYS AFTER THE REDEMPTION.**

9 **(2) THE SEIZING AUTHORITY AND THE FORFEITING AUTHORITY MAY**
10 **THEN PROCEED WITH THE FORFEITURE OF THE MOTOR VEHICLE OR THE PROCEEDS**
11 **FROM THE SALE OF THE MOTOR VEHICLE.**

12 **(C) TIME LIMITATIONS REQUIRED UNDER THIS TITLE FOR NOTICE AND**
13 **FILING OF THE COMPLAINT FOR FORFEITURE RUN FROM THE DATE OF REDEMPTION**
14 **OR PURCHASE OF THE MOTOR VEHICLE THAT HAS BEEN SEIZED UNDER THIS TITLE.**

15 **28-123.**

16 **THIS TITLE DOES NOT PROHIBIT A LIENHOLDER FROM EXERCISING RIGHTS**
17 **UNDER APPLICABLE LAW, INCLUDING THE RIGHT TO SELL A MOTOR VEHICLE THAT**
18 **HAS BEEN SEIZED UNDER THIS TITLE, IF A DEFAULT OCCURS IN THE OBLIGATION**
19 **GIVING RISE TO THE LIEN.**

20 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
21 **October 1, 2016.**