
By: Senator Dorman

Introduced and read first time: January 15, 1996

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Firearms - Unlawful Possession or Use - Forfeiture of Vehicle**

3 FOR the purpose of establishing that a motor vehicle that is used or intended for use in
4 connection with the unlawful wearing, carrying, transporting, possessing, or using of
5 a firearm subject to seizure and forfeiture under certain circumstances; requiring
6 certain notices, hearings, and other procedures for the seizure and forfeiture of
7 vehicles; defining certain terms; and generally relating to the seizure and forfeiture
8 of motor vehicles related to firearm offenses.

9 BY repealing and reenacting, with amendments,
10 Article 27 - Crimes and Punishments
11 Section 297
12 Annotated Code of Maryland
13 (1992 Replacement Volume and 1995 Supplement)

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

16 **Article 27 - Crimes and Punishments**

17 297.

18 (a) (1) In this section the following words have the meanings indicated.

19 (2) "Chief executive officer" means:

20 (i) For Baltimore City, the Mayor;

21 (ii) For charter counties, the county executive or, if there is no county
22 executive, the county council;

23 (iii) For code counties, the county commissioners or county council;

24 (iv) For county commissioner counties, the county commissioners; and

25 (v) For municipal corporations, the legislative body established by
26 municipal charter.

27 (3) "Convicted" means a finding of guilt by a criminal court of competent
28 jurisdiction.

2

1 (4) "Final disposition" means the date on which any criminal charge giving
2 rise to a forfeiture under this section is terminated by dismissal, the entry of a nolle
3 prosequi or stet, the entry of a not guilty verdict, the pronouncement of sentence, or the
4 imposition of probation under § 641 of this article.

5 (5) (I) "FIREARM" MEANS A:

6 1. HANDGUN, ANTIQUE FIREARM, RIFLE, SHOTGUN,
7 SHORT-BARRELED RIFLE, OR SHORT-BARRELED SHOTGUN, AS DEFINED IN § 36F OF
8 THIS ARTICLE;

9 2. PISTOL, REVOLVER, OR ANTIQUE PISTOL OR REVOLVER,
10 AS DEFINED IN § 441 OF THIS ARTICLE;

11 3. MACHINE GUN, AS DEFINED IN § 372 OF THIS ARTICLE;

12 4. ASSAULT WEAPON, AS DEFINED IN § 481E OF THIS
13 ARTICLE; OR

14 5. ASSAULT PISTOL, AS DEFINED IN § 36H-1 OF THIS
15 ARTICLE.

16 (II) "FIREARM" DOES NOT INCLUDE A WEAPON THAT HAS BEEN
17 MODIFIED TO RENDER IT PERMANENTLY INOPERATIVE.

18 [(5)] (6) (i) "Forfeiting authority" means the office or person designated,
19 from time to time, by agreement between the State's Attorney for a county and the chief
20 executive officer of the governing body having jurisdiction over the assets subject to
21 forfeiture.

22 (ii) The Attorney General or the Attorney General's designee when
23 the seizing agency is an instrumentality of the State, may, by agreement with any State's
24 Attorney, or county or municipal attorney, designate an office or person as forfeiting
25 authority to act on behalf of the State regarding any assets subject to forfeiture by the
26 State.

27 [(6)] (7) "Governing body" includes:

28 (i) The State, if the seizing agency is an instrumentality of the State;

29 (ii) A county, if the seizing agency is an instrumentality of a county;

30 (iii) A municipality, if the seizing agency is an instrumentality of a
31 municipality; and

32 (iv) Baltimore City, if the seizing agency is the Baltimore City Police
33 Department.

34 [(7)] (8) "Lien" includes a mortgage, deed of trust, pledge, security interest,
35 encumbrance, or right of setoff.

36 [(8)] (9) "Lienholder" means a person who has a lien or a secured interest
37 on property created before the seizure.

3

1 [(9)] (10) (i) "Owner" means a person having a legitimate legal, equitable,
2 or possessory interest in property.

3 (ii) "Owner" includes:

- 4 1. A coowner;
- 5 2. A life tenant;
- 6 3. A remainderman to a life tenancy in real property;
- 7 4. A holder of an inchoate interest in real property;and
- 8 5. A bona fide purchaser for value.

9 [(10)] (11) "Proceeds" includes property derived directly or indirectly in
10 connection with or as a result of an offense or offenses under this subheading.

11 [(11)] (12) (i) "Property" includes:

- 12 1. Real property and anything growing on or attached to real
13 property;
- 14 2. Tangible and intangible personal property including
15 securities, negotiable and nonnegotiable instruments, vehicles and conveyances of any
16 type, privileges, interest, claims and rights;
- 17 3. Any item, object, tool, substance, device, or weapon used in
18 connection with an enumerated offense; and
- 19 4. Money.

20 (ii) "Property" does not include:

- 21 1. Any item unlawfully in the possession of a person other than
22 the owner when used in connection with an offense under this subheading; and
- 23 2. A lessor's interest in property subject to a bona fide lease,
24 unless the forfeiting authority can show that the lessor participated in an offense under
25 this subheading OR PARTICIPATED IN THE UNLAWFUL POSSESSION OF A FIREARMor
26 that the property was the proceeds of [an] A CONTROLLED DANGEROUS SUBSTANCE
27 offense under this subheading.

28 [(12)] (13) (i) "Real property" means any land or improvements to land.

29 (ii) "Real property" includes:

- 30 1. A leasehold or other limited interest in real property;
- 31 2. An easement; and
- 32 3. A reversionary interest in a 99-year ground lease renewable
33 forever.

4

1 [(13)] (14) "Seizing agency" means any law enforcement authority within
2 the State authorized to investigate violations of this subheading OR THE UNLAWFUL
3 POSSESSION OF A FIREARM which has seized property under this section.

4 (15) "UNLAWFUL FIREARM" MEANS A FIREARM THAT IS WORN,
5 CARRIED, TRANSPORTED, POSSESSED, OR USED IN VIOLATION OF THIS ARTICLE.

6 (16) "UNLAWFUL POSSESSION OF A FIREARM" MEANS TO WEAR, CARRY,
7 TRANSPORT, POSSESS, OR USE A FIREARM IN VIOLATION OF THIS ARTICLE.

8 (b) The following shall be subject to forfeiture and no property right shall exist in
9 them:

10 (1) All controlled dangerous substances which have been manufactured,
11 distributed, dispensed, acquired, or possessed in violation of the provisions of this
12 subheading;

13 (2) All raw materials, products and equipment of any kind which are used,
14 or intended for use, in manufacturing, compounding, processing, delivering, importing, or
15 exporting any controlled dangerous substance in violation of the provisions of this
16 subheading;

17 (3) All property which is used, or intended for use, as a container for
18 property described in paragraph (1) or (2) of this subsection;

19 (4) All conveyances including aircraft, vehicles or vessels, which are used, or
20 intended for use, to transport, or in any manner to facilitate the transportation, sale,
21 receipt, possession, or concealment of property described in paragraph (1) or (2) of this
22 subsection[,] OR ANY MOTOR VEHICLE THAT IS USED OR IS INTENDED FOR USE IN
23 CONNECTION WITH THE UNLAWFUL POSSESSION OF A FIREARM except that:

24 (i) No conveyance used by any person as a common carrier or vehicle
25 for hire in the transaction of business as a common carrier or vehicle for hire shall be
26 seized or forfeited under this [subheading] SECTION unless it appears that the owner or
27 other person in charge of the conveyance was a consenting party or privy to a violation of
28 this subheading OR THE UNLAWFUL POSSESSION OF A FIREARM; and

29 (ii) No conveyance shall be forfeited under the provisions of this
30 section by reason of any act or omission established by the owner thereof to have been
31 committed or omitted by any person other than such owner while such conveyance was
32 unlawfully in the possession of a person other than the owner in violation of the criminal
33 laws of the United States, or of any state;

34 (5) All books, records, and research, including formulas, microfilm, tapes,
35 and data which are used, or intended for use, in violation of this subheading;

36 (6) All money, coin, currency, or weapons which have been used or intended
37 for use in connection with the illegal manufacture, distribution, dispensing or possession
38 of controlled dangerous substances or controlled paraphernalia. All money, coin,
39 currency, or weapons which are found in close proximity to contraband controlled
40 dangerous substances, controlled paraphernalia, or forfeitable records of the importation,
41 manufacture, or distribution of controlled dangerous substances are presumed to be

5

1 forfeitable under this paragraph. The burden of proof is upon a claimant of the property
2 to rebut this presumption.

3 This money, currency, or weapons shall be deemed to be contraband of law and all
4 rights, title and interest in and to the money, currency, or weapons shall immediately vest
5 in and to Baltimore City or the county in which it was seized if it was seized by a county
6 or Baltimore City law enforcement agency, including a local sheriff's department which is
7 the law enforcement agency, the municipal corporation, if seized by municipal authorities,
8 or, if it was seized by State law enforcement authorities, the State; and no such money,
9 currency, or weapons shall be returned to any person claiming it, or to any other person,
10 except in the manner hereinafter provided;

11 (7) All drug paraphernalia as prohibited by § 287A of this article, and
12 controlled paraphernalia as prohibited by § 287 of this article;

13 (8) The remaining balance of the proceeds of a sale by a holder of an
14 installment sale agreement under § 12-626 of the Commercial Law Article of goods
15 seized by a police department, bureau, or force, under this subtitle;

16 (9) In the manner provided under subsections (l) and (m) of this section, all
17 real property; and

18 (10) Everything of value furnished, or intended to be furnished, in exchange
19 for a controlled dangerous substance in violation of this subheading, all proceeds
20 traceable to such an exchange, and all negotiable instruments and securities used, or
21 intended to be used, to facilitate any violation of this subheading.

22 (c) Property or an interest in property described under subsection (b)(4), (9), and
23 (10) of this section may not be forfeited if the owner establishes by a preponderance of
24 the evidence that the violation of this subheading OR THE UNLAWFUL POSSESSION OF A
25 FIREARM was done without the owner's actual knowledge.

26 (d) (1) Any property subject to forfeiture [under this subheading] UNDER
27 THIS SECTION may be seized upon process issued by any court having jurisdiction over
28 the property except that seizure without such process may be made when:

29 (i) The seizure is incident to an arrest or a search under a search
30 warrant or an inspection under an administrative inspection warrant;

31 (ii) The property subject to seizure has been the subject of a prior
32 judgment in favor of the State in a criminal injunction or forfeiture proceeding under this
33 [subheading] SECTION;

34 (iii) There is probable cause to believe that the property is directly or
35 indirectly dangerous to health or safety; or

36 (iv) There is probable cause to believe that the property has been used
37 or intended to be used in violation of this subheading OR IN CONNECTION WITH THE
38 UNLAWFUL POSSESSION OF A FIREARM.

39 (2) In the event of seizure pursuant to paragraph (1)(iii) and (iv) of this
40 subsection, proceedings under subsection (f) of this section shall be instituted promptly,
41 except all proceedings relating to money or currency, that shall be instituted within 90

6

1 days from the date of final disposition of criminal proceedings that arise out of §§ 276
2 through 302 of this article.

3 (i) All applications for the forfeiture of money or currency contraband
4 shall be made by the director of finance of Baltimore City, the county treasurer or
5 appropriate county finance officer, municipal treasurer, or the Attorney General. The
6 applications shall be by complaint, affidavit and show cause order and shall be filed in the
7 District Court or circuit court of the county.

8 (ii) The complaint, affidavit and show cause order shall be served in
9 the first instance pursuant to Maryland Rule 2-121 or Maryland Rule 3-121(a), and
10 thereafter, the summons having been returned non est, the director of finance of
11 Baltimore City, county treasurer or appropriate county finance officer, municipal
12 treasurer, or Attorney General may proceed pursuant to Maryland Rule 2-122 or
13 Maryland Rule 3-121(b) or (c).

14 (3) (i) If proceedings relating to money or currency are not instituted by
15 the State or a political subdivision within the 90-day period, the money or currency seized
16 under this section, upon petition by the defendant, shall be returned to the defendant.

17 (ii) If the defendant fails to petition for return of the money or
18 currency within 1 year from the date of final disposition of criminal proceedings, the
19 money or currency shall revert to the treasury as provided by subsection (f) of this section.

20 (e) Property taken or detained under this section shall not be repleviable, but
21 shall be deemed to be in the custody of the seizing agency subject only to the orders,
22 judgments, and decrees of the court or the official having jurisdiction thereof. Whenever
23 property is seized under the provisions of this [subheading] SECTION, the seizing agency
24 may:

25 (1) Place the property under seal; and

26 (2) Remove the property to a place designated by the court.

27 (f) Except as provided under subsection (k) of this section, whenever property is
28 forfeited under this [subheading] SECTION, the political subdivision in which such
29 property was seized, or, if the property was seized by State authorities, the State may:

30 (1) Retain the property for official use (except, whenever coin, currency, or
31 property is seized by the Baltimore City police, and forfeited under this [subheading]
32 SECTION, it shall be surrendered to the City of Baltimore for disposition according to this
33 section);

34 (2) Sell any forfeited property which is not required to be destroyed by law
35 and which is not harmful to the public, provided that the proceeds be disposed of for
36 payment of all proper expenses of the proceedings for forfeiture and sale including
37 expenses of seizure, maintenance of custody, advertising and court costs; or

38 (3) Require an appropriate agency to take custody of the property and
39 remove it for disposition in accordance with law, or destruction.

40 (g) All substances listed in Schedule I that are possessed, transferred, sold or
41 offered for sale in violation of the provisions of this subheading shall be deemed

7

1 contraband and seized and summarily forfeited to the State. Similarly, all substances
2 listed in Schedule I, which are seized or come into the possession of the State, the owners
3 of which are unknown, shall be deemed contraband and summarily forfeited to the State.

4 (1) All species of plants from which controlled substances in Schedules I
5 and II may be derived which have been planted or cultivated in violation of this
6 subheading, or of which the owners or cultivators are unknown, or which are wild
7 growths, may be seized and summarily forfeited to the State.

8 (2) The failure, upon demand by the Department, or its duly authorized
9 agent, of the person in occupancy or in control of land or premises upon which such
10 species of plants are growing or being stored, to produce an appropriate registration, or
11 proof that he is the holder thereof, shall constitute authority for the seizure and
12 forfeiture.

13 (h) (1) Except as provided in § 4-401(8) of the Courts and Judicial Proceedings
14 Article, all proceedings under this section shall be instituted in the circuit court by the
15 appropriate forfeiting authority.

16 (2) (i) Except as provided under subsection (d)(2) of this section and
17 subparagraph (ii) of this paragraph, a complaint seeking forfeiture shall be filed within
18 the earlier of:

19 1. 90 days following the seizure; or

20 2. One year following the final disposition of a criminal charge
21 for a violation under this subheading giving rise to the forfeiture.

22 (ii) A complaint for the forfeiture of a motor vehicle shall be filed
23 within 45 days after the seizure of the motor vehicle.

24 (3) A complaint shall contain the following:

25 (i) A description of the property seized;

26 (ii) A statement of the time and place where seized;

27 (iii) The owner, if known;

28 (iv) The person in possession, if known;

29 (v) The name of any lienholder, if any, if known or reasonably subject
30 to discovery;

31 (vi) An allegation that the property is subject to forfeiture;

32 (vii) If the forfeiting authority is seeking to forfeit a lienholder's
33 interest in property, an allegation that the lien was created with actual knowledge that the
34 property was being, or was to be, used in violation of this subheading OR IN
35 CONNECTION WITH THE UNLAWFUL POSSESSION OF A FIREARM;

36 (viii) A statement of the facts and circumstances surrounding the
37 seizure;

8

1 (ix) A statement setting forth the specific causes or grounds for
2 forfeiture or both; and

3 (x) An oath or affirmation by the forfeiting authority that the contents
4 of the complaint are true to the best of the forfeiting authority's knowledge, information,
5 and belief.

6 (4) Within 10 days after the filing of the complaint:

7 (i) Copies of the summons and complaint shall be sent by certified
8 mail requesting "restricted delivery - show to whom, date, address of delivery" and first
9 class mail on all known owners and lienholders whose identities are reasonably subject to
10 discovery, including for real property all owners and lienholders shown in the records
11 prescribed by law for notice or perfection of the lien.

12 (ii) A notice which includes a description of the property, the date and
13 place of seizure, the known owners and lienholders of the property, the violation or
14 violations of law alleged to be the basis for forfeiture, a statement that a complaint has
15 been filed and that the property shall be forfeited if no answer is timely filed, and
16 instructions on where to file an answer and whom to contact for additional information
17 concerning the forfeiture shall be:

18 1. Posted by the sheriff on the door of the courthouse in which
19 the action is pending or on a bulletin board within its immediate vicinity;

20 2. With respect to real property, posted by the sheriff in a
21 conspicuous place on the land; and

22 3. Except if the property is a boat or motor vehicle, published at
23 least once a week in each of 3 successive weeks in 1 or more newspapers of general
24 circulation published in the county in which the action is pending.

25 (5) The answer shall comply with the Maryland Rules and:

26 (i) Set forth the nature and extent of the person's right, title, or
27 interest in the property;

28 (ii) Set forth the date and circumstances of the creation of the person's
29 right, title, or interest in the property; and

30 (iii) Contain a request for relief.

31 (6) (i) The court shall set a hearing on the forfeiture claim within 60 days
32 after the later of the posting or final publication of the notice under paragraph (4) of this
33 subsection if an answer has been timely filed.

34 (ii) The court may order forfeiture without a hearing of the property
35 interest of any person who fails to timely file an answer.

36 (i) In exercising the authority to seize motor vehicles pursuant to this section the
37 following standards shall be utilized:

38 (1) A motor vehicle used in violation of this section shall be seized and
39 forfeiture recommended to the forfeiting authority when:

9

1 (i) Controlled dangerous substances in any quantity are sold or
2 attempted to be sold in violation of this subtitle;

3 (ii) Although the violator has not sold or attempted to sell controlled
4 dangerous substances in violation of this subtitle, an amount of such substances or
5 paraphernalia is located which would reasonably indicate that sale is contemplated by the
6 violator; or

7 (iii) The total circumstances of the case dictate that seizure and
8 forfeiture is justified; these circumstances would include such factors as the following:

- 9 1. The possession of controlled dangerous substances;
- 10 2. An extensive criminal record of the violator;
- 11 3. A previous conviction of the violator for a controlled
12 dangerous substances violation;
- 13 4. Corroborated information is developed indicating that the
14 violator is or was recently a seller, or frequently associates with individuals known to be
15 distributors of illegal controlled dangerous substances or paraphernalia;
- 16 5. THE UNLAWFUL POSSESSION OF A FIREARM;
- 17 6. A PREVIOUS CONVICTION OF THE VIOLATOR FOR
18 UNLAWFUL POSSESSION OF A FIREARM;
- 19 [5] 7. Circumstances of the arrest; or
- 20 [6] 8. The manner in which the vehicle was being used.

21 (2) A motor vehicle used in violation of this subtitle shall not be seized and
22 forfeiture shall not be recommended to the forfeiting authority when:

23 (i) The motor vehicle is being used by a member of the family other
24 than the registered owner and controlled dangerous substances or paraphernalia are
25 located therein in a quantity insufficient to suggest a sale is contemplated, and where no
26 sale was made or attempted, and the registered owner did not know that such material
27 was in the motor vehicle;

28 (II) THE MOTOR VEHICLE IS BEING USED BY A MEMBER OF THE
29 FAMILY OTHER THAN THE REGISTERED OWNER IN CONNECTION WITH THE
30 UNLAWFUL POSSESSION OF A FIREARM AND THE REGISTERED OWNER DID NOT
31 KNOW THAT THE MOTOR VEHICLE WAS BEING USED FOR THAT PURPOSE;

32 [(ii)] (III) An innocent registered owner lends his motor vehicle to
33 another and the latter or someone invited into the motor vehicle by such person:

- 34 1. [causes] CAUSES controlled dangerous substances or
35 paraphernalia to be brought into the vehicle without the knowledge of the owner; or
- 36 2. USES THE MOTOR VEHICLE IN CONNECTION WITH THE
37 UNLAWFUL POSSESSION OF A FIREARM; OR
37 seizure;

10

1 [(iii)] (IV) The motor vehicle falls within the provisions of subsection
2 (b)(4)(i) or (ii) of this section.

3 (3) (i) Forfeiture of the motor vehicle used in violation of this [subtitle]
4 SUBHEADING OR IN CONNECTION WITH THE UNLAWFUL POSSESSION OF A FIREARM
5 shall be recommended to the forfeiting authority only after the chief law enforcement
6 officer of the police department, bureau, or force that seized the motor vehicle has
7 determined from the records of the Motor Vehicle Administration the names and
8 addresses of all registered owners and secured parties as defined in the Code, has
9 personally reviewed the facts and circumstances of the seizure and has personally
10 determined, according to the above guidelines, that forfeiture is warranted and so
11 represents in writing to the appropriate forfeiting authority.

12 (ii) In a proceeding under this section for forfeiture of a motor vehicle:

13 1. A sworn affidavit by the chief law enforcement officer that
14 the chief followed the requirements of this paragraph is admissible in evidence; and

15 2. The chief law enforcement officer may not be subpoenaed or
16 compelled to appear and testify if another law enforcement officer with personal
17 knowledge of the facts and circumstances surrounding the seizure and the
18 recommendation of forfeiture appears and testifies at the proceeding.

19 (j) If the forfeiting authority determines independent of the decision of the police
20 department, bureau, or force that seized the motor vehicle that the motor vehicle falls
21 within the purview of subsection (i)(2) of this section or that the standards to be utilized
22 pursuant to subsection (i)(1) of this section were not met, the forfeiting authority shall
23 surrender the vehicle upon request to the owner.

24 (k) (1) In any proceeding under this section, the court may determine if, based
25 on the factors provided in subsection (i)(1) of this section, the seizing agency or forfeiting
26 authority abused its discretion or was clearly erroneous in making a recommendation of
27 forfeiture of a motor vehicle or not surrendering on request a motor vehicle to an owner.

28 (2) If, after a full hearing, the court determines that the property should not
29 be forfeited, the court shall order that the property be released.

30 (3) (i) Except as provided in subparagraph (v) of this paragraph, if the
31 court determines that the property should be forfeited, the court shall order that the
32 property be forfeited to the appropriate governing body.

33 (ii) If, however, the court determines that the forfeited property is
34 subject to a valid lien created without actual knowledge that the property was being, or
35 was to be, used in violation of this subheading OR IN CONNECTION WITH THE
36 UNLAWFUL POSSESSION OF A FIREARM, the court shall order that the property be
37 released within 5 days to the first priority lienholder.

38 (iii) The lienholder shall sell the property in a commercially reasonable
39 manner.

40 (iv) The proceeds of the sale shall be applied as follows:

41 1. To the court costs of the forfeiture proceeding;

12

1 (i) The property was acquired by such person during the period in
2 which such person had committed violations of § 286, § 286A, § 286B, § 286C, or § 290 of
3 this article in relation to these offenses, or within a reasonable time after such period; and

4 (ii) There was no likely source for such property other than the
5 violation of § 286, § 286A, § 286B, § 286C, or § 290 of this article in relation to these
6 offenses.

7 (2) Except as provided in subsection (n)(2) of this section, real property
8 used as the principal family residence may not be forfeited under this subsection unless it
9 is shown that one of the owners of the real property was convicted of one or more of the
10 offenses described under paragraph (1) of this subsection.

11 (3) The burden of proof is on a claimant of the property to rebut the
12 presumption in paragraph (1) of this subsection.

13 (m) (1) (i) Except as provided in subsection (l) of this section and paragraph
14 (2) of this subsection, an owner's interest in real property may be forfeited if the real
15 property was used in connection with a violation of § 286, § 286A, § 286B, § 286C, or §
16 290 of this article in relation to these offenses.

17 (ii) An owner's interest in real property may not be forfeited for a
18 violation of § 287 or § 287A of this article.

19 (2) Except as provided in subsections (l)(2) and (n)(2) of this section, real
20 property used as the principal family residence by a husband and wife and held by the
21 husband and wife as tenants by the entirety, and which was used in connection with a
22 violation of § 286, § 286A, § 286B, § 286C, or § 290 of this article in relation to these
23 offenses, may not be forfeited unless both the husband and wife are convicted of one or
24 more of these offenses.

25 (3) (i) Forfeiture proceedings for real property may be brought in the
26 jurisdiction where:

27 1. The criminal charges are pending;

28 2. The owner resides; or

29 3. The real property is located.

30 (ii) 1. If forfeiture proceedings for real property are brought in a
31 jurisdiction other than where the real property is located, lis pendens shall be filed in the
32 jurisdiction where the property is located.

33 2. A lis pendens required under this subparagraph shall include
34 at a minimum:

35 A. The name and address of the owner of the property;

36 B. A description of the property; and

37 C. A description of the reasons for the filing of the forfeiture
38 proceedings and the lis pendens.

13

1 (4) Seizure of real property occurs when a complaint for forfeiture under
2 this [subtitle] SECTION is filed or lis pendens is filed in the circuitcourt of the
3 jurisdiction where the property is located, whichever occurs first.

4 (5) Unless agreed to by the forfeiting authority or ordered by the court, or
5 unless the owner posts a bond under subsection (o) of this section, an owner may not
6 attempt to convey or encumber an interest in seized real property, or remove a building or
7 fixture on seized property until the court enters judgment in favor of the owner.

8 (n) (1) If an owner of real property used as the principal family residence is
9 convicted of a violation under § 286, § 286A, § 286B, § 286C, or § 290 of this article in
10 relation to these offenses, and the owner files an appeal of the conviction, the court shall
11 stay, during the pendency of the appeal, any forfeiture proceedings under subsection
12 (1)(2) or subsection (m)(2) of this section against real property used as the principal
13 family residence.

14 (2) A court may order a forfeiture of real property used as the principal
15 family residence under subsection (1)(2) or subsection (m)(2) of this section without a
16 conviction if the owner:

17 (i) Fails to appear for a required court appearance; and

18 (ii) Does not surrender to the jurisdiction of the court within 180 days
19 of the date of the required court appearance.

20 (o) (1) Except as provided in subsection (m)(4) and (p) of this section, if an
21 owner of seized property wants to obtain possession of the property, regardless of
22 whether forfeiture proceedings have been commenced, or to convey an interest in real
23 property, or remove a building or fixture on real property, where forfeiture proceedings
24 have been commenced against the real property, the owner shall notify:

25 (i) If forfeiture proceedings have been commenced, the clerk of the
26 court where the proceedings have been commenced;

27 (ii) If criminal proceedings have been commenced but forfeiture
28 proceedings have not, the clerk of the court where the criminal proceedings have been
29 commenced; or

30 (iii) If neither forfeiture nor criminal proceedings have been
31 commenced, the clerk of the circuit court of the jurisdiction where the property was
32 seized.

33 (2) If the property is not needed for evidentiary purposes in a judicial
34 proceeding:

35 (i) For property other than motor vehicles, the clerk shall obtain an
36 independent appraisal of the value of the property.

37 (ii) For motor vehicles, the clerk shall have an appraisal made by the
38 sheriff of the jurisdiction in which the court is located.

39 (3) The sheriff or other person responsible for an appraisal under paragraph
40 (2) of this subsection shall promptly:

14

1 (i) Inspect and render an appraisal of the value of the property; and

2 (ii) Return the appraisal, in writing, under oath, to the clerk of the
3 court.

4 (4) Notice of the appraisal shall be sent to all lienholders shown in the
5 records prescribed by law for notice or the perfection of the lien.

6 (5) (i) Upon the filing of the appraisal, the owner may give bond payable
7 to the clerk of the court in an amount equal to the greater of the appraised value of the
8 property plus costs which may accrue, or the aggregate amount of the liens on the
9 property as shown in the records prescribed by law for the notice or perfection of liens,
10 with security to be approved by the clerk of the court, and conditioned for performance
11 on final judgment by the court.

12 (ii) The bond authorized in this subsection shall be filed in the District
13 Court or circuit court where the criminal action that gave rise to the seizure is pending
14 and shall be part of that same criminal proceeding, unless a complaint for forfeiture has
15 been filed. However, if no criminal action is pending or if no forfeiture complaint has
16 been filed, the bond shall be filed in the circuit court or District Court where the property
17 was seized.

18 (6) (i) If forfeiture of the property or of an interest or equity in the
19 property or proceeds is directed under this section, judgment shall be entered against the
20 obligors on the bond without further proceedings, to be discharged by payment of the
21 amount of the bond, on which judgment may issue.

22 (ii) Payment of the amount of the bond shall be applied as provided
23 under subsection (k)(2)(iv) of this section.

24 (p) (1) Subject to the rights of a lienholder to sell the real property, an owner or
25 the owner's tenants may remain in possession of seized real property until forfeiture is
26 ordered.

27 (2) The forfeiting authority may apply to the court for the appointment of a
28 receiver to apply income from income-producing property.

29 (3) If an owner or the owner's tenants remain in possession of the real
30 property and that owner's or tenant's interest in the real property is forfeited, that owner
31 or tenant shall immediately surrender the property to the seizing agency in substantially
32 the same condition as when seized.

33 (q) Any sale ordered pursuant to this section shall be made for cash and vest in
34 the purchaser a clear and absolute title to the property that is sold.

35 (r) (1) This section may not be construed to prohibit a lienholder from
36 exercising its rights under applicable law, including the right to sell property that has been
37 seized under this section, in the event of a default in the obligation giving rise to the lien.

38 (2) (i) A lienholder exercising the right to sell property that has been
39 seized under this section shall notify the forfeiting authority in writing of the lienholder's
40 intention to sell the property.

15

1 (ii) The notice shall be accompanied by copies of documents giving
2 rise to the lien and shall include an affidavit under oath by the lienholder that the
3 underlying obligation is in default and the reasons for the default.

4 (iii) Upon request of the lienholder, the property shall be released to
5 the lienholder.

6 (3) Except as provided in paragraph (4) of this subsection, the rights and
7 duties provided by law to the lienholder for the sale of collateral securing an obligation in
8 default shall govern the repossession and sale of the property.

9 (4) (i) The lienholder may not be required to take possession of the
10 property prior to the sale of the property.

11 (ii) The proceeds of the sale shall be applied first to the costs of the
12 forfeiture proceeding, then as provided by law for distribution of proceeds of a sale by the
13 lienholder.

14 (iii) Any portion of the proceeds that would be paid to an owner of the
15 property under the applicable law relating to distribution of proceeds shall be paid to the
16 seizing agency and shall be property subject to forfeiture. If no order of forfeiture is
17 entered, the State shall remit to the owner that portion of the proceeds and any costs of
18 the forfeiture proceedings paid from the proceeds of the sale.

19 (5) (i) If the interest of the owner in the property is redeemed, the
20 lienholder shall mail a notice of the redemption to the forfeiting authority within 10 days
21 after the redemption.

22 (ii) If the property has been repossessed or otherwise lawfully taken by
23 the lienholder, the lienholder shall return the property to the seizing agency within 21
24 days after the redemption.

25 (iii) The seizing agency and the forfeiting authority may then proceed
26 with the forfeiture of the property or proceeds, and all time limitations required under
27 this section for notice and filing of the complaint for forfeiture shall run from the date of
28 the redemption or purchase of the property.

29 (s) In a proceeding under this section, a court may:

30 (1) Grant requests for mitigation or remission of forfeiture, or take any
31 other action to protect the rights of innocent persons which is in the interest of justice and
32 which is not inconsistent with the provisions of this section;

33 (2) Resolve claims arising under this section; or

34 (3) Take appropriate measures necessary to safeguard and maintain
35 property ordered forfeited under this section pending its disposition.

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
37 October 1, 1996.