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By: Delegate Mones (Chairwennen, Special Committee on Drug and Alcahel

By: Delegate Menes (Chairwoman, Special Committee on Drug and Alcohol Abuse) and Delegates R. Baker, Boston, E. Burns, Eckardt, Hutchins, Montague, Pitkin, and Stup

Introduced and read first time: February 9, 1998

Assigned to: Judiciary

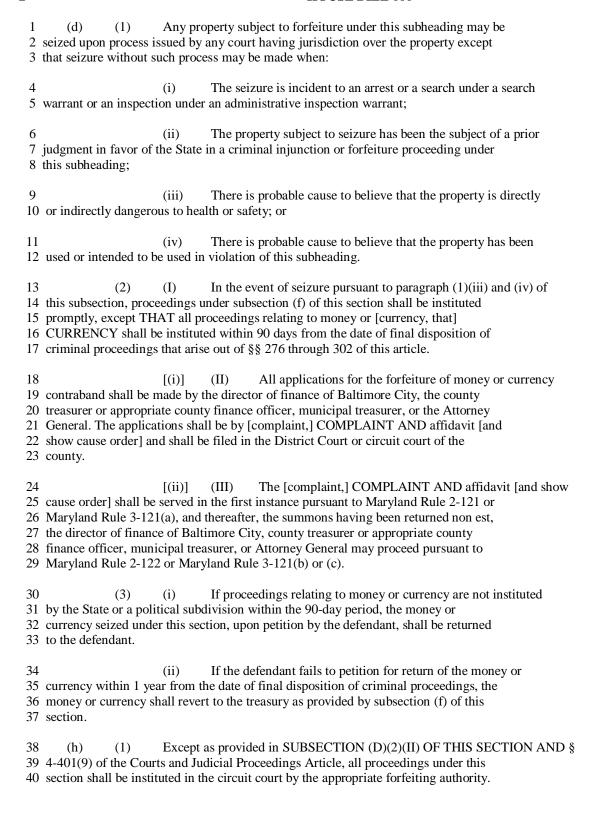
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A BILL ENTITLED

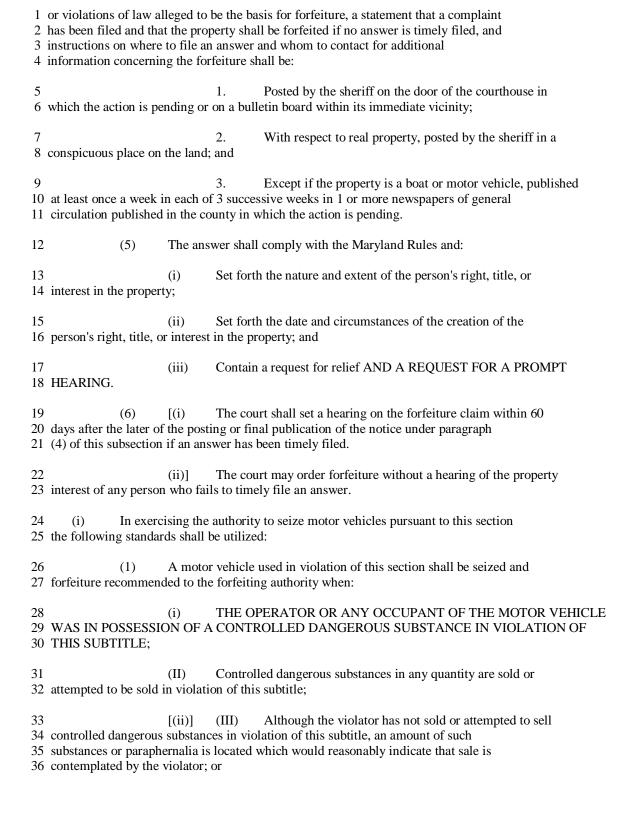
1	AN ACT	concerning
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2 Crimes - Controlled Dangerous Substances - Forfeiture

- 3 FOR the purpose of clarifying that certain types of property may not be forfeited in
- 4 connection with a controlled dangerous substance offense if the owner
- 5 establishes by a preponderance of the evidence that the offense was committed
- 6 without the owner's actual knowledge; requiring that an application for
- forfeiture of money or currency be made by complaint and affidavit; making
- 8 certain clarifying changes regarding the parties who are authorized to institute
- 9 a forfeiture proceeding and the deadlines for filing a complaint seeking
- 10 forfeiture; changing the deadline for certain action relating to a forfeiture
- 11 complaint; requiring that an answer to a forfeiture complaint contain a request
- for a prompt hearing; requiring that a motor vehicle be seized and forfeiture
- 13 recommended under certain circumstances; and generally relating to crimes,
- 14 controlled dangerous substances, and forfeiture.
- 15 BY repealing and reenacting, with amendments,
- 16 Article 27 Crimes and Punishments
- 17 Section 297 (c), (d), (h), and (i)
- 18 Annotated Code of Maryland
- 19 (1996 Replacement Volume and 1997 Supplement)
- 20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
- 21 MARYLAND, That the Laws of Maryland read as follows:
- 22 Article 27 Crimes and Punishments
- 23 297.
- 24 (c) Property or an interest in property described under subsection (b)(4), (9),
- 25 and (10) of this section may not be forfeited if the owner establishes by a
- 26 preponderance of the evidence that the violation of this subheading was [done]
- 27 COMMITTED without the owner's actual knowledge.



	(2) (D)(2)(I) of this section forfeiture shall be file		Except as provided under [subsection (d)(2)] SUBSECTION bparagraph (ii) of this paragraph, a complaint seeking the earlier of:		
4			1. 90 days following the seizure; or		
5 6	charge for a violation	under thi	2. One year following the final disposition of a criminal s subheading giving rise to the forfeiture.		
7 8	within 45 days after the	(ii) ne seizure	A complaint for the forfeiture of a motor vehicle shall be filed to f the motor vehicle.		
9	(3)	A compl	laint shall contain the following:		
10		(i)	A description of the property seized;		
11		(ii)	A statement of the time and place where seized;		
12		(iii)	The owner, if known;		
13		(iv)	The person in possession, if known;		
14 15	subject to discovery;	(v)	The name of any lienholder, if any, if known or reasonably		
16		(vi)	An allegation that the property is subject to forfeiture;		
			If the forfeiting authority is seeking to forfeit a lienholder's ion that the lien was created with actual knowledge was to be, used in violation of this subheading;		
20 21	seizure;	(viii)	A statement of the facts and circumstances surrounding the		
22 23	forfeiture or both; and	(ix) d	A statement setting forth the specific causes or grounds for		
	4 (x) An oath or affirmation by the forfeiting authority that the 5 contents of the complaint are true to the best of the forfeiting authority's knowledge, 6 information, and belief.				
27	(4)	Within [10] 30 days after the filing of the complaint:		
30 31	first class mail on all subject to discovery,	known o	Copies of the summons and complaint shall be sent by certified ivery - show to whom, date, address of delivery" and wners and lienholders whose identities are reasonably g for real property all owners and lienholders shown in for notice or perfection of the lien.		
33 34	and place of seizure,	(ii) the know	A notice which includes a description of the property, the date n owners and lienholders of the property, the violation		



	[(iii)] (IV) The total circumstances of the case dictate that seizure and forfeiture is justified; these circumstances [would] MAY include BUT ARE NOT LIMITED TO such factors as the following:							
4		1.	[The pos	ssession of controlled dangerous substances;				
5		2.]	An exter	nsive criminal record of the violator;				
6 7	dangerous substances violation	[3.] ;	2.	A previous conviction of the violator for a controlled				
	violator is or was recently a sel be distributors of illegal contro		equently a	rated information is developed indicating that the associates with individuals known to abstances or paraphernalia;]				
	3. EVIDENCE THAT THE MOTOR VEHICLE WAS ACQUIRED BY USE OF PROCEEDS FROM A TRANSACTION INVOLVING A CONTROLLED DANGEROUS SUBSTANCE;							
14		[5.]	4.	Circumstances of the arrest; [or]				
15		[6.]	5.	The manner in which the vehicle was being used; OR				
18	6. THERE IS OTHER PROBABLE CAUSE TO BELIEVE THAT 7 THE MOTOR VEHICLE WAS USED OR INTENDED FOR USE IN COMMITTING OR 8 FACILITATING THE COMMISSION OF A VIOLATION OF ANY OF THE PROVISIONS OF 9 THIS SUBHEADING.							
20 21	(2) A motor and forfeiture shall not be reco			iolation of this subtitle shall not be seized orfeiting authority when:				
24 25	2 (i) The motor vehicle is being used by a member of the family other 3 than the registered owner and controlled dangerous substances or paraphernalia are 4 located therein in a quantity insufficient to suggest a sale is contemplated, and where 5 no sale was made or attempted, and the registered owner did not know that such 6 material was in the motor vehicle;							
29	(ii) An innocent registered owner lends his motor vehicle to another and the latter or someone invited into the motor vehicle by such person causes controlled dangerous substances or paraphernalia to be brought into the vehicle without the knowledge of the owner; or							
31 32	(iii) (b)(4)(i) or (ii) of this section.	The mot	or vehicl	e falls within the provisions of subsection				
35 36	(3) (i) Forfeiture of the motor vehicle used in violation of this subtitle shall be recommended to the forfeiting authority only after the chief law enforcement officer of the police department, bureau, or force that seized the motor vehicle has determined from the records of the Motor Vehicle Administration the names and addresses of all registered owners and secured parties as defined in the Code, has							

- 1 personally reviewed the facts and circumstances of the seizure and has personally 2 determined, according to the above guidelines, that forfeiture is warranted and so 3 represents in writing to the appropriate forfeiting authority. (ii) In a proceeding under this section for forfeiture of a motor 5 vehicle: A sworn affidavit by the chief law enforcement officer that 6 1. 7 the chief followed the requirements of this paragraph is admissible in evidence; and 8 The chief law enforcement officer may not be subpoenaed 2. 9 or compelled to appear and testify if another law enforcement officer with personal 10 knowledge of the facts and circumstances surrounding the seizure and the 11 recommendation of forfeiture appears and testifies at the proceeding.
- SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect 13 October 1, 1998.