
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

A BILL ENTITLED

1 AN ACT concerning

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
7 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
12 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.

1 (d) (1) Any property subject to forfeiture under this subheading may be
2 seized upon process issued by any court having jurisdiction over the property except
3 that seizure without such process may be made when:

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

6 (ii) The property subject to seizure has been the subject of a prior
7 judgment in favor of the State in a criminal injunction or forfeiture proceeding under
8 this subheading;

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

11 (iv) There is probable cause to believe that the property has been
12 used or intended to be used in violation of this subheading.

13 (2) (I) In the event of seizure pursuant to paragraph (1)(iii) and (iv) of
14 this subsection, proceedings under subsection (f) of this section shall be instituted
15 promptly, except THAT all proceedings relating to money or [currency, that]
16 CURRENCY shall be instituted within 90 days from the date of final disposition of
17 criminal proceedings that arise out of §§ 276 through 302 of this article.

18 [(i)] (II) All applications for the forfeiture of money or currency
19 contraband shall be made by the director of finance of Baltimore City, the county
20 treasurer or appropriate county finance officer, municipal treasurer, or the Attorney
21 General. The applications shall be by [complaint,] COMPLAINT AND affidavit [and
22 show cause order] and shall be filed in the District Court or circuit court of the
23 county.

24 [(ii)] (III) The [complaint,] COMPLAINT AND affidavit [and show
25 cause order] shall be served in the first instance pursuant to Maryland Rule 2-121 or
26 Maryland Rule 3-121(a), and thereafter, the summons having been returned non est,
27 the director of finance of Baltimore City, county treasurer or appropriate county
28 finance officer, municipal treasurer, or Attorney General may proceed pursuant to
29 Maryland Rule 2-122 or Maryland Rule 3-121(b) or (c).

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

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

38 (h) (1) Except as provided in SUBSECTION (D)(2)(II) OF THIS SECTION AND §
39 4-401(9) of the Courts and Judicial Proceedings Article, all proceedings under this
40 section shall be instituted in the circuit court by the appropriate forfeiting authority.

1 (2) (i) Except as provided under [subsection (d)(2)] SUBSECTION
2 (D)(2)(I) of this section and subparagraph (ii) of this paragraph, a complaint seeking
3 forfeiture shall be filed within the earlier of:

4 1. 90 days following the seizure; or

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

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

9 (3) A complaint 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 (v) The name of any lienholder, if any, if known or reasonably
15 subject to discovery;

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

17 (vii) If the forfeiting authority is seeking to forfeit a lienholder's
18 interest in property, an allegation that the lien was created with actual knowledge
19 that the property was being, or was to be, used in violation of this subheading;

20 (viii) A statement of the facts and circumstances surrounding the
21 seizure;

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

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

27 (4) Within [10] 30 days after the filing of the complaint:

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

33 (ii) A notice which includes a description of the property, the date
34 and place of seizure, the known owners and lienholders of the property, the violation

1 or violations of law alleged to be the basis for forfeiture, a statement that a complaint
2 has been filed and that the property shall be forfeited if no answer is timely filed, and
3 instructions on where to file an answer and whom to contact for additional
4 information concerning the forfeiture shall be:

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

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

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

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

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

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

17 (iii) Contain a request for relief AND A REQUEST FOR A PROMPT
18 HEARING.

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

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

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

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

28 (i) **THE OPERATOR OR ANY OCCUPANT OF THE MOTOR VEHICLE**
29 **WAS IN POSSESSION OF A CONTROLLED DANGEROUS SUBSTANCE IN VIOLATION OF**
30 **THIS SUBTITLE;**

31 (II) Controlled dangerous substances in any quantity are sold or
32 attempted to be sold in violation of this subtitle;

33 [(ii)] (III) Although the violator has not sold or attempted to sell
34 controlled dangerous substances in violation of this subtitle, an amount of such
35 substances or paraphernalia is located which would reasonably indicate that sale is
36 contemplated by the violator; or

1 [(iii)] (IV) The total circumstances of the case dictate that seizure
2 and forfeiture is justified; these circumstances [would] MAY include BUT ARE NOT
3 LIMITED TO such factors as the following:

- 4 1. [The possession of controlled dangerous substances;
5 2.] An extensive criminal record of the violator;
6 [3.] 2. A previous conviction of the violator for a controlled
7 dangerous substances violation;
8 [4. Corroborated information is developed indicating that the
9 violator is or was recently a seller, or frequently associates with individuals known to
10 be distributors of illegal controlled dangerous substances or paraphernalia;]

11 3. EVIDENCE THAT THE MOTOR VEHICLE WAS ACQUIRED BY
12 USE OF PROCEEDS FROM A TRANSACTION INVOLVING A CONTROLLED DANGEROUS
13 SUBSTANCE;

- 14 [5.] 4. Circumstances of the arrest; [or]
15 [6.] 5. The manner in which the vehicle was being used; OR

16 6. THERE IS OTHER PROBABLE CAUSE TO BELIEVE THAT
17 THE MOTOR VEHICLE WAS USED OR INTENDED FOR USE IN COMMITTING OR
18 FACILITATING THE COMMISSION OF A VIOLATION OF ANY OF THE PROVISIONS OF
19 THIS SUBHEADING.

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

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

27 (ii) An innocent registered owner lends his motor vehicle to another
28 and the latter or someone invited into the motor vehicle by such person causes
29 controlled dangerous substances or paraphernalia to be brought into the vehicle
30 without the knowledge of the owner; or

31 (iii) The motor vehicle falls within the provisions of subsection
32 (b)(4)(i) or (ii) of this section.

33 (3) (i) Forfeiture of the motor vehicle used in violation of this subtitle
34 shall be recommended to the forfeiting authority only after the chief law enforcement
35 officer of the police department, bureau, or force that seized the motor vehicle has
36 determined from the records of the Motor Vehicle Administration the names and
37 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.

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

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

8 2. The chief law enforcement officer may not be subpoenaed
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.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 1998.