
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

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 23, 1998

CHAPTER _____

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~~ eliminating
8 the requirement that there be a show cause order for forfeiture of money and
9 currency; requiring a certain notice to the owner of seized property regarding
10 posting a bond under certain circumstances; making certain clarifying changes
11 regarding the parties who are authorized to institute a forfeiture proceeding and
12 the deadlines for filing a complaint seeking forfeiture; changing the deadline for
13 certain action relating to a forfeiture complaint; requiring that an answer to a
14 forfeiture complaint contain a request for a prompt hearing; ~~requiring that a~~
15 ~~motor vehicle be seized and forfeiture recommended under certain~~
16 ~~circumstances~~ altering certain factors that may be considered and altering
17 procedures relating to seizure and forfeiture of motor vehicles; requiring a court
18 to appraise a motor vehicle under certain circumstances; altering the method of
19 appraising the value of a seized motor vehicle for certain purposes; allowing a
20 bond to be given by certain means; and generally relating to crimes, controlled
21 dangerous substances, and forfeiture.

22 BY repealing and reenacting, with amendments,
23 Article 27 - Crimes and Punishments
24 Section 297(c), (d), (h), ~~and (i)~~ (i), and (o)
25 Annotated Code of Maryland

1 (1996 Replacement Volume and 1997 Supplement)

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

4 **Article 27 - Crimes and Punishments**

5 297.

6 (c) Property or an interest in property described under subsection (b)(4), (9),
7 and (10) of this section may not be forfeited if the owner establishes by a
8 preponderance of the evidence that the violation of this subheading was [done]
9 COMMITTED without the owner's actual knowledge.

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

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

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

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

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

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

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

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

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

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

9 (h) (1) Except as provided in SUBSECTION (D)(2)(II) OF THIS SECTION AND §
10 4-401(9) of the Courts and Judicial Proceedings Article, all proceedings under this
11 section shall be instituted in the circuit court by the appropriate forfeiting authority.

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

15 1. 90 days following the seizure; or

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

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

20 (3) A complaint shall contain the following:

21 (i) A description of the property seized;

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

23 (iii) The owner, if known;

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

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

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

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

31 (viii) A statement of the facts and circumstances surrounding the
32 seizure;

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

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

4 (4) Within [10] ~~30~~ 20 days after the filing of the complaint:

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

10 (ii) A notice which includes a description of the property, the date
11 and place of seizure, the known owners and lienholders of the property, the violation
12 or violations of law alleged to be the basis for forfeiture, a statement that a complaint
13 has been filed and that the property shall be forfeited if no answer is timely filed, A
14 STATEMENT THAT THE OWNER OF SEIZED PROPERTY MAY OBTAIN POSSESSION OF
15 THE PROPERTY PENDING FORFEITURE BY POSTING A BOND IN THE MANNER
16 PROVIDED IN SUBSECTION (O) OF THIS SECTION, and instructions on where to file an
17 answer and whom to contact for additional information concerning the forfeiture shall
18 be:

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

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

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

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

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

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

31 (iii) Contain a request for relief AND A REQUEST FOR A PROMPT
32 HEARING.

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

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

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

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

5 (i) ~~THE OPERATOR OR ANY OCCUPANT OF THE MOTOR VEHICLE~~
6 ~~WAS IN POSSESSION OF A CONTROLLED DANGEROUS SUBSTANCE IN VIOLATION OF~~
7 ~~THIS SUBTITLE;~~

8 ~~(H)~~ Controlled dangerous substances in any quantity are sold or
9 attempted to be sold in violation of this subtitle;

10 ~~(ii)~~ ~~(H)~~ Although the violator has not sold or attempted to sell
11 controlled dangerous substances in violation of this subtitle, an amount of such
12 substances or paraphernalia is located which would reasonably indicate that sale is
13 contemplated by the violator; or

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

17 1. ~~{~~The possession of controlled dangerous substances;

18 2.} An extensive criminal record of the violator;

19 ~~{3.}~~ 2. A previous conviction of the violator for a controlled
20 dangerous substances violation;

21 [4. Corroborated information is developed indicating that the
22 violator is or was recently a seller, or frequently associates with individuals known to
23 be distributors of illegal controlled dangerous substances or paraphernalia;]

24 ~~3.~~ 4. EVIDENCE THAT THE MOTOR VEHICLE WAS
25 ACQUIRED BY USE OF PROCEEDS FROM A TRANSACTION INVOLVING A CONTROLLED
26 DANGEROUS SUBSTANCE;

27 ~~{5.}~~ 4. Circumstances of the arrest; ~~{or}~~

28 ~~{6.}~~ 5. The manner in which the vehicle was being used; ~~OR~~

29 ~~6. THERE IS OTHER PROBABLE CAUSE TO BELIEVE THAT~~
30 ~~THE MOTOR VEHICLE WAS USED OR INTENDED FOR USE IN COMMITTING OR~~
31 ~~FACILITATING THE COMMISSION OF A VIOLATION OF ANY OF THE PROVISIONS OF~~
32 ~~THIS SUBHEADING.~~

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

35 (i) The motor vehicle is being used by a member of the family other
36 than the registered owner and controlled dangerous substances or paraphernalia are

1 located therein in a quantity insufficient to suggest a sale is contemplated, and where
2 no sale was made or attempted, and the registered owner did not know that such
3 material was in the motor vehicle;

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

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

10 (3) (i) Forfeiture of the motor vehicle used in violation of this subtitle
11 shall be recommended to the forfeiting authority only after the chief law enforcement
12 officer of the police department, bureau, or force that seized the motor vehicle has
13 determined from the records of the Motor Vehicle Administration the names and
14 addresses of all registered owners and secured parties as defined in the Code, has
15 personally reviewed the facts and circumstances of the seizure and has personally
16 determined, according to the above guidelines, that forfeiture is warranted and so
17 represents in writing to the appropriate forfeiting authority.

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

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

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

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

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

33 (ii) If criminal proceedings have been commenced but forfeiture
34 proceedings have not, the clerk of the court where the criminal proceedings have been
35 commenced; or

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

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

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

5 (ii) For motor vehicles, [the clerk shall have an appraisal made by
6 the sheriff of the jurisdiction in which the court is located] UNLESS THE FORFEITING
7 AUTHORITY AND THE OWNER AGREE TO A BOND IN ANOTHER AMOUNT:

8 1. EXCEPT AS PROVIDED IN ITEM 2 OF THIS ITEM, THE
9 COURT SHALL APPRAISE THE VALUE OF THE MOTOR VEHICLE ON THE BASIS OF THE
10 AVERAGE VALUE OF THE MOTOR VEHICLE SET FORTH IN THE NATIONAL
11 AUTOMOBILE DEALER'S ASSOCIATION OFFICIAL USED CAR GUIDE; OR

12 2. IF THE OWNER SHOWS THAT THERE IS A LIEN ON THE
13 MOTOR VEHICLE AND THE OWNER AGREES TO MAKE THE REQUIRED PAYMENTS TO
14 THE LIENHOLDER, THE COURT SHALL REQUIRE A BOND IN AN AMOUNT OF THE
15 AVERAGE VALUE OF THE MOTOR VEHICLE SET FORTH IN THE NATIONAL
16 AUTOMOBILE DEALER'S ASSOCIATION OFFICIAL USED CAR GUIDE, LESS THE
17 AMOUNT OWED ON THE LIEN.

18 (3) (I) [The] FOR PROPERTY OTHER THAN A MOTOR VEHICLE, THE
19 sheriff or other person responsible for an appraisal under paragraph (2) of this
20 subsection shall promptly:

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

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

25 (II) FOR A MOTOR VEHICLE, THE COURT SHALL APPRAISE THE
26 VALUE IN THE MANNER PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION AND
27 PROVIDE THE APPRAISAL IN WRITING TO THE CLERK OF THE COURT.

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

30 (5) (i) Upon the filing of the appraisal, the owner may give bond
31 payable to the clerk of the court in an amount equal to the greater of the appraised
32 value of the property plus costs which may accrue, or the aggregate amount of the
33 liens on the property as shown in the records prescribed by law for the notice or
34 perfection of liens, [with security to be approved by the clerk of the court,] and
35 conditioned for performance on final judgment by the court.

36 (II) A PERSON MAY GIVE A BOND UNDER THIS SUBSECTION BY
37 MEANS OF CASH, THROUGH A SURETY, THROUGH A LIEN ON REAL PROPERTY, OR BY
38 MEANS OF OTHER SECURITY APPROVED BY THE CLERK.

1 [(ii)] (III) The bond authorized in this subsection shall be filed in the
2 District Court or circuit court where the criminal action that gave rise to the seizure
3 is pending and shall be part of that same criminal proceeding, unless a complaint for
4 forfeiture has been filed. However, if no criminal action is pending or if no forfeiture
5 complaint has been filed, the bond shall be filed in the circuit court or District Court
6 where the property was seized.

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

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

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