

SENATE BILL 712

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1999 Regular Session
9lr2361
CF 9lr2362

By: **Senator McFadden (Baltimore City Administration)**

Introduced and read first time: February 22, 1999

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Prostitution or Lewdness - Seizure and Forfeiture of Motor Vehicles**

3 FOR the purpose of allowing the seizure and forfeiture of a motor vehicle used in or in
4 connection with an act of prostitution or lewdness under certain circumstances;
5 establishing certain conditions under which a motor vehicle may not be
6 forfeited; requiring a chief law enforcement officer to take certain actions before
7 recommending forfeiture of a motor vehicle to a forfeiting authority; establishing
8 that a certain sworn affidavit may be admissible into evidence in a forfeiture
9 proceeding; requiring that a forfeiting authority surrender a motor vehicle to its
10 owner under certain conditions; allowing a court to determine if a seizing unit or
11 forfeiting authority abused its discretion or was clearly erroneous under certain
12 conditions; requiring a court to take a certain action after a forfeiture hearing;
13 requiring a lienholder to sell a motor vehicle under certain conditions; requiring
14 that the proceeds of a certain sale be applied in a certain order; allowing a
15 political subdivision to sell a forfeited motor vehicle under certain conditions;
16 defining certain terms; providing a certain minimum mandatory fine for an act
17 of prostitution or lewdness; clarifying that a specific part of a sentence for a
18 certain violation may be suspended; providing for the application of a section of
19 this Act; and generally relating to the seizure and forfeiture of motor vehicles
20 used in connection with an act of prostitution or lewdness and to penalties for an
21 act of prostitution or lewdness.

22 BY repealing and reenacting, without amendments,
23 Article 27 - Crimes and Punishments
24 Section 15
25 Annotated Code of Maryland
26 (1996 Replacement Volume and 1998 Supplement)

27 BY repealing and reenacting, with amendments,
28 Article 27 - Crimes and Punishments
29 Section 17
30 Annotated Code of Maryland
31 (1996 Replacement Volume and 1998 Supplement)

1 BY adding to
2 Article 27 - Crimes and Punishments
3 Section 17A
4 Annotated Code of Maryland
5 (1996 Replacement Volume and 1998 Supplement)

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

8 **Article 27 - Crimes and Punishments**

9 15.

10 It shall be unlawful:

11 (a) To keep, set up, maintain or operate any place, structure, building or
12 conveyance for the purpose of prostitution, lewdness or assignation;

13 (b) To occupy any place, structure, building or conveyance for the purpose of
14 prostitution, lewdness or assignation, or for any person to permit any place, structure,
15 building or conveyance owned by him or under his control to be used for the purpose
16 of prostitution, lewdness or assignation with knowledge or reasonable cause to know
17 that the same is, or is to be, used for such purpose;

18 (c) To receive, or to offer or agree to receive any person into any place,
19 structure, building or conveyance for the purpose of prostitution, lewdness or
20 assignation, or to knowingly permit any person to remain there for such purpose;

21 (d) To direct, take or transport, or to offer or agree to take or transport, any
22 person to any place, structure or building or to any other person with knowledge or
23 reasonable cause to know that the purpose of such directing, taking or transporting is
24 prostitution, lewdness or assignation;

25 (e) To procure or to solicit or to offer to procure or solicit for the purpose of
26 prostitution, lewdness or assignation;

27 (f) To reside in, enter in any place, structure, building, or to remain in any
28 conveyance, for the purpose of prostitution, lewdness or assignation; or

29 (g) To engage in prostitution, lewdness or assignation by any means
30 whatsoever.

31 17.

32 Any person convicted of violating any of the provisions of § 15 of this article shall
33 be subject to a [fine of not more than \$500.00] MINIMUM MANDATORY FINE OF \$500
34 or to confinement in or commitment to any penal or reformatory institution in this
35 State for not more than one year, or to both such fine and imprisonment in the
36 discretion of the court; provided, that the CONFINEMENT OR COMMITMENT PART OF

1 THE sentence [or any part thereof] may be suspended and provided that the
2 defendant may be placed on parole or probation.

3 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
4 read as follows:

5 **Article 27 - Crimes and Punishments**

6 17A.

7 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
8 INDICATED.

9 (2) "CHIEF LAW ENFORCEMENT OFFICER" MEANS THE CHIEF LAW
10 ENFORCEMENT OFFICER OF THE SEIZING UNIT.

11 (3) "FORFEITING AUTHORITY" MEANS THE OFFICE OR PERSON
12 DESIGNATED BY AGREEMENT BETWEEN THE STATE'S ATTORNEY FOR A COUNTY AND
13 THE CHIEF EXECUTIVE OFFICER OF THE POLITICAL SUBDIVISION THAT SEIZES A
14 MOTOR VEHICLE.

15 (4) "SEIZING UNIT" MEANS THE POLICE DEPARTMENT, BUREAU, OR
16 FORCE OR OTHER LAW ENFORCEMENT UNIT THAT SEIZES A MOTOR VEHICLE.

17 (B) THIS SECTION APPLIES ONLY TO MOTOR VEHICLES THAT ARE USED IN OR
18 IN CONNECTION WITH A SECOND OR SUBSEQUENT VIOLATION OF § 15(E) OF THIS
19 ARTICLE THAT OCCURS WITHIN 5 YEARS OF AN INITIAL VIOLATION.

20 (C) AN AUTHORIZED LAW ENFORCEMENT OFFICER MAY SEIZE AND
21 RECOMMEND FORFEITURE OF A MOTOR VEHICLE.

22 (D) A MOTOR VEHICLE MAY NOT BE FORFEITED IF:

23 (1) THE MOTOR VEHICLE IS USED BY A MEMBER OF THE FAMILY OTHER
24 THAN THE REGISTERED OWNER AND THE REGISTERED OWNER DID NOT KNOW THAT
25 THE MOTOR VEHICLE WAS USED IN THE COURSE OF A VIOLATION OF § 15(E) OF THIS
26 ARTICLE; OR

27 (2) WITHOUT THE KNOWLEDGE OF THE REGISTERED OWNER OF THE
28 MOTOR VEHICLE, § 15(E) OF THIS ARTICLE IS VIOLATED BY:

29 (I) AN INDIVIDUAL WHO IS NOT THE REGISTERED OWNER; OR

30 (II) SOMEONE INVITED INTO THE MOTOR VEHICLE BY AN
31 INDIVIDUAL WHO IS NOT THE REGISTERED OWNER.

32 (E) (1) THE CHIEF LAW ENFORCEMENT OFFICER MAY RECOMMEND
33 FORFEITURE OF A MOTOR VEHICLE TO THE FORFEITING AUTHORITY ONLY AFTER
34 THE CHIEF LAW ENFORCEMENT OFFICER:

1 (I) DETERMINES FROM THE RECORDS OF THE MOTOR VEHICLE
2 ADMINISTRATION THE NAMES AND ADDRESSES OF ALL REGISTERED OWNERS AND
3 SECURED PARTIES;

4 (II) PERSONALLY REVIEWS THE FACTS AND CIRCUMSTANCES OF
5 THE SEIZURE; AND

6 (III) WRITES TO THE FORFEITING AUTHORITY THAT FORFEITURE IS
7 WARRANTED.

8 (2) IN A PROCEEDING FOR FORFEITURE OF A MOTOR VEHICLE, A SWORN
9 AFFIDAVIT BY THE CHIEF LAW ENFORCEMENT OFFICER THAT THE REQUIREMENTS
10 OF THIS SUBSECTION HAVE BEEN FOLLOWED IS ADMISSIBLE INTO EVIDENCE.

11 (3) THE CHIEF LAW ENFORCEMENT OFFICER MAY NOT BE SUBPOENAED
12 OR COMPELLED TO TESTIFY IF ANOTHER LAW ENFORCEMENT OFFICER WITH
13 PERSONAL KNOWLEDGE OF THE FACTS AND CIRCUMSTANCES SURROUNDING THE
14 SEIZURE AND THE RECOMMENDATION OF FORFEITURE TESTIFIES AT THE
15 PROCEEDING.

16 (4) IF THE FORFEITING AUTHORITY DETERMINES INDEPENDENTLY OF
17 THE DECISION OF THE SEIZING UNIT THAT THE MOTOR VEHICLE FALLS WITHIN THE
18 SCOPE OF SUBSECTION (D) OF THIS SECTION, THE FORFEITING AUTHORITY SHALL
19 SURRENDER THE MOTOR VEHICLE ON REQUEST TO THE OWNER.

20 (F) IN A PROCEEDING UNDER THIS SECTION, THE COURT MAY DETERMINE IF
21 THE SEIZING UNIT OR FORFEITING AUTHORITY ABUSED ITS DISCRETION OR WAS
22 CLEARLY ERRONEOUS IN RECOMMENDING FORFEITURE OR IN NOT SURRENDERING
23 ON REQUEST A MOTOR VEHICLE TO AN OWNER.

24 (G) IF AFTER A FULL HEARING, THE COURT DETERMINES:

25 (1) THAT THE MOTOR VEHICLE SHOULD NOT BE FORFEITED, THE
26 COURT SHALL ORDER THAT THE MOTOR VEHICLE BE RELEASED;

27 (2) THAT THE MOTOR VEHICLE SHOULD BE FORFEITED, THE COURT
28 SHALL ORDER THAT THE PROPERTY BE FORFEITED TO THE APPROPRIATE
29 GOVERNING BODY; OR

30 (3) THAT THE MOTOR VEHICLE IS SUBJECT TO A LIEN CREATED
31 WITHOUT ACTUAL KNOWLEDGE THAT THE MOTOR VEHICLE WAS BEING OR WAS TO
32 BE USED IN VIOLATION OF § 15(E) OF THIS ARTICLE, THE COURT SHALL ORDER THAT
33 THE MOTOR VEHICLE BE RELEASED WITHIN 5 DAYS TO THE FIRST PRIORITY
34 LIENHOLDER.

35 (H) (1) THE LIENHOLDER SHALL SELL THE MOTOR VEHICLE IN A
36 COMMERCIALY REASONABLE MATTER.

37 (2) THE PROCEEDS OF THE SALE OF THE MOTOR VEHICLE SHALL BE
38 APPLIED IN THE FOLLOWING ORDER:

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

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

4 (III) TO PAYMENT OF ALL OTHER EXPENSES OF THE PROCEEDINGS
5 FOR FORFEITURE, INCLUDING EXPENSES OF SEIZURE OR MAINTENANCE OF
6 CUSTODY; AND

7 (IV) TO THE GENERAL FUND OF THE STATE OR THE POLITICAL
8 SUBDIVISION THAT SEIZED THE MOTOR VEHICLE.

9 (I) IF A CLAIM IS NOT LODGED BY A LIENHOLDER:

10 (1) THE POLITICAL SUBDIVISION IN WHICH THE VEHICLE WAS SEIZED
11 MAY SELL THE FORFEITED VEHICLE; AND

12 (2) THE PROCEEDS OF SALE SHALL BE APPLIED TO THE GENERAL FUND
13 OF THE POLITICAL SUBDIVISION.

14 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
15 be construed only prospectively and may not be applied or interpreted to have any
16 effect on or application to any offense committed before the effective date of this Act.

17 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 1999.