

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

Re-referred to: Judicial Proceedings, February 25, 1999

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 24, 1999

CHAPTER _____

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

23 BY repealing and reenacting, without amendments,
24 Article 27 - Crimes and Punishments
25 Section 15
26 Annotated Code of Maryland

1 (1996 Replacement Volume and 1998 Supplement)

2 BY repealing and reenacting, with amendments,

3 Article 27 - Crimes and Punishments

4 Section 17

5 Annotated Code of Maryland

6 (1996 Replacement Volume and 1998 Supplement)

7 BY adding to

8 Article 27 - Crimes and Punishments

9 Section 17A

10 Annotated Code of Maryland

11 (1996 Replacement Volume and 1998 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article 27 - Crimes and Punishments**

15 15.

16 It shall be unlawful:

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

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

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

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

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

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

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

3 17.

4 Any person convicted of violating any of the provisions of § 15 of this article shall
5 be subject to a [fine of not more than \$500.00] MINIMUM MANDATORY FINE OF \$500
6 or to confinement in or commitment to any penal or reformatory institution in this
7 State for not more than one year, or to both such fine and imprisonment in the
8 discretion of the court; provided, that the CONFINEMENT OR COMMITMENT PART OF
9 THE sentence [or any part thereof] may be suspended and provided that the
10 defendant may be placed on parole or probation.

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

13 **Article 27 - Crimes and Punishments**

14 17A.

15 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
16 INDICATED.

17 (2) "CHIEF LAW ENFORCEMENT OFFICER" MEANS THE CHIEF LAW
18 ENFORCEMENT OFFICER OF THE SEIZING UNIT.

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

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

25 (B) THIS SECTION APPLIES ONLY TO MOTOR VEHICLES THAT ARE USED IN ~~OR~~
26 ~~IN CONNECTION WITH~~ THE COMMISSION OF A SECOND OR SUBSEQUENT VIOLATION
27 OF § 15(E) OF THIS ARTICLE THAT OCCURS WITHIN 5 YEARS OF AN INITIAL
28 VIOLATION.

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

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

32 (1) THE MOTOR VEHICLE IS USED BY A MEMBER OF THE FAMILY OTHER
33 THAN THE REGISTERED OWNER AND THE REGISTERED OWNER DID NOT KNOW THAT
34 THE MOTOR VEHICLE WAS USED IN THE ~~COURSE~~ COMMISSION OF A VIOLATION OF §
35 15(E) OF THIS ARTICLE; OR

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

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

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

6 (E) (1) THE CHIEF LAW ENFORCEMENT OFFICER MAY RECOMMEND
7 FORFEITURE OF A MOTOR VEHICLE TO THE FORFEITING AUTHORITY ONLY AFTER
8 THE CHIEF LAW ENFORCEMENT OFFICER:

9 (I) DETERMINES FROM THE RECORDS OF THE MOTOR VEHICLE
10 ADMINISTRATION THE NAMES AND ADDRESSES OF ALL REGISTERED OWNERS AND
11 SECURED PARTIES;

12 (II) PERSONALLY REVIEWS THE FACTS AND CIRCUMSTANCES OF
13 THE SEIZURE; AND

14 (III) WRITES TO THE FORFEITING AUTHORITY THAT FORFEITURE IS
15 WARRANTED.

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

19 (3) THE CHIEF LAW ENFORCEMENT OFFICER MAY NOT BE SUBPOENAED
20 OR COMPELLED TO TESTIFY IF ANOTHER LAW ENFORCEMENT OFFICER WITH
21 PERSONAL KNOWLEDGE OF THE FACTS AND CIRCUMSTANCES SURROUNDING THE
22 SEIZURE AND THE RECOMMENDATION OF FORFEITURE TESTIFIES AT THE
23 PROCEEDING.

24 (4) IF THE FORFEITING AUTHORITY DETERMINES INDEPENDENTLY OF
25 THE DECISION OF THE SEIZING UNIT THAT THE MOTOR VEHICLE FALLS WITHIN THE
26 SCOPE OF SUBSECTION (D) OF THIS SECTION, THE FORFEITING AUTHORITY SHALL
27 SURRENDER THE MOTOR VEHICLE ON REQUEST TO THE OWNER.

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

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

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

35 (2) THAT THE MOTOR VEHICLE SHOULD BE FORFEITED, THE COURT
36 SHALL ORDER THAT THE PROPERTY BE FORFEITED TO THE APPROPRIATE
37 GOVERNING BODY; OR

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

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

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

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

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

13 (III) TO PAYMENT OF ALL OTHER EXPENSES OF THE PROCEEDINGS
14 FOR FORFEITURE, INCLUDING EXPENSES OF SEIZURE OR MAINTENANCE OF
15 CUSTODY; AND

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

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

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

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

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

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