

No. 2006-71

## AN ACT

HB 456

Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for the offense of terrorism; further providing in controlled substances forfeitures for loss of property rights to Commonwealth; providing for terrorism forfeiture; further providing for procedure with respect to seized property subject to liens and rights of lienholders; and providing for penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

**§ 2717. Terrorism.**

*(a) General rule.—A person is guilty of terrorism if he commits a violent offense intending to do any of the following:*

*(1) Intimidate or coerce a civilian population.*

*(2) Influence the policy of a government by intimidation or coercion.*

*(3) Affect the conduct of a government.*

*(b) Grading and penalty.—*

*(1) If the violent offense is a misdemeanor or a felony of the third or second degree, an offense under this section shall be classified one degree higher than the classification of the violent offense specified in section 106 (relating to classes of offenses).*

*(2) If the violent offense is a felony of the first degree, a person convicted of an offense under this section shall be sentenced to a term of imprisonment fixed by the court at not more than 40 years and may be sentenced to pay a fine of not more than \$100,000.*

*(c) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:*

*“Dangerous to human life or property.” A violent act or an act which is intended to or likely to cause death, serious bodily injury or mass destruction.*

*“Mass destruction.” An act which is intended to or likely to destroy or cause serious damage to transportation-related infrastructure or facilities, energy-related infrastructure or facilities, public or private buildings, places of public accommodation or public works under circumstances evincing depraved indifference to human life or property.*

*“Violent offense.” An offense under this part, including an attempt, conspiracy or solicitation to commit any such offense, which is punishable by imprisonment of more than one year and involves an act dangerous to human life or property.*

Section 2. The heading of Chapter 68 of Title 42 is amended to read:

CHAPTER 68  
[CONTROLLED SUBSTANCES] FORFEITURES

Section 3. The heading of section 6801 of Title 42 is amended to read:  
§ 6801. [Loss of property rights to Commonwealth] *Controlled substances forfeiture.*

Section 4. Title 42 is amended by adding a section to read:  
§ 6801.1. *Terrorism forfeiture.*

(a) *Forfeitures generally.—The following shall be subject to forfeitures to the Commonwealth, and no property right shall exist in them:*

(1) *All assets, foreign or domestic:*

(i) *Of an individual, entity or organization engaged in planning or perpetrating an act in this Commonwealth which violates 18 Pa.C.S. § 2717 (relating to terrorism) and all assets, foreign or domestic, affording a person a source of influence over such an entity or organization.*

(ii) *Acquired or maintained by a person with the intent and for the purpose of supporting, planning, conducting or concealing an act in this Commonwealth which violates 18 Pa.C.S. § 2717.*

(iii) *Derived from, involved in or used or intended to be used to commit an act in this Commonwealth which violates 18 Pa.C.S. § 2717.*

(2) *All assets within this Commonwealth:*

(i) *Of an individual, entity or organization engaged in planning or perpetrating an act which violates 18 Pa.C.S. § 2717.*

(ii) *Acquired or maintained with the intent and for the purpose of supporting, planning, conducting or concealing an act which violates 18 Pa.C.S. § 2717.*

(iii) *Derived from, involved in or used or intended to be used to commit an act which violates 18 Pa.C.S. § 2717.*

(b) *Process and seizures.—Property subject to forfeiture under this section may be seized by the law enforcement authority upon process issued by a court of common pleas having jurisdiction over the property. Seizure without process may be made if any of the following apply:*

(1) *The seizure is incident to an arrest, a search under a search warrant or an inspection under an administrative inspection warrant.*

(2) *The property subject to seizure has been the subject of a prior judgment in favor of the Commonwealth in a criminal injunction or forfeiture proceeding under this chapter.*

(3) *There is probable cause to believe that the property is dangerous to health or safety.*

(4) *There is probable cause to believe that the property has been or is intended to be used in the commission of an act which violates 18 Pa.C.S. § 2717.*

(c) *Seizure without process.*—*In the event seizure is made without process, proceedings for the issuance of process shall be instituted forthwith.*

(d) *Custody of property.*—*Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the law enforcement authority, subject only to the orders and decrees of the court of common pleas having jurisdiction over the forfeiture proceedings and of the district attorney or the Attorney General. When property is seized under this section, the law enforcement authority shall place the property under seal and either:*

(1) *remove the property to a place determined by the law enforcement authority; or*

(2) *request that the district attorney or Attorney General take custody of the property and remove it to an appropriate location for disposition in accordance with law.*

(e) *Use of property held in custody.*—*Whenever property is forfeited under this section, it shall be transferred to the custody of the district attorney if the law enforcement authority seizing the property has local or county jurisdiction or of the Attorney General if the law enforcement authority seizing the property has Statewide jurisdiction. The district attorney or the Attorney General, where appropriate, may:*

(1) *Retain the property for official use.*

(2) *Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, the proceeds from any such sale to be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs. The balance of the proceeds shall be dealt with under subsections (f) and (g).*

(f) *Use of cash or proceeds of property.*—*Cash or proceeds of forfeited property transferred to the custody of the district attorney under subsection (e) shall be placed in the operating fund of the county in which the district attorney is elected. The appropriate county authority shall immediately release from the operating fund, without restriction, a like amount for the use of the district attorney in enforcing the criminal laws of the Commonwealth of Pennsylvania. The entity having budgetary control shall not anticipate future forfeitures or proceeds therefrom in adoption and approval of the budget for the district attorney.*

(g) *Distribution of property among law enforcement authorities.*—*If both municipal and State law enforcement authorities were substantially involved in effecting the seizure, the court having jurisdiction over the forfeiture proceedings shall equitably distribute the property between the district attorney and the Attorney General.*

(h) *Authorization to utilize property.*—*The district attorney and the Attorney General shall utilize forfeited property or proceeds thereof for the purpose of enforcing the provisions of 18 Pa.C.S. § 2717, section 6802*

*(relating to procedure with respect to seized property subject to liens and rights of lienholders) and this section.<sup>1</sup> In appropriate cases, the district attorney and the Attorney General may designate proceeds from forfeited property to be utilized for antiterrorism public safety programs and for relocation and protection of witnesses in criminal cases.*

*(i) Annual audit of forfeited property.—It shall be the responsibility of every county in this Commonwealth to provide, through the controller, board of auditors or other appropriate auditor and the district attorney, an annual audit of all forfeited property and proceeds obtained under this section. The audit shall not be made public but shall be submitted to the Office of Attorney General. The county shall report all forfeited property and proceeds obtained under this section and the disposition thereof to the Attorney General by September 30 of each year.*

*(j) Annual report; confidential information regarding property.—The Attorney General shall annually submit a report to the Appropriations Committee and Judiciary Committee of the Senate and the Appropriations Committee and Judiciary Committee of the House of Representatives specifying the forfeited property or proceeds thereof obtained under this section. The report shall give an accounting of all proceeds derived from the sale of forfeited property and the use made of unsold forfeited property. The Attorney General shall adopt procedures and guidelines governing the release of information by the district attorney to protect the confidentiality of forfeited property or proceeds used in ongoing antiterrorist activities.*

*(k) Proceeds and appropriations.—The proceeds or future proceeds from property forfeited under this section shall be in addition to any appropriation made to the Office of Attorney General.*

Section 5. Section 6802(a)(5), (f), (j) and (k) of Title 42 are amended to read:

§ 6802. Procedure with respect to seized property subject to liens and rights of lienholders.

(a) General procedure.—The proceedings for the forfeiture or condemnation of property, the sale of which is provided for in this chapter, shall be in rem, in which the Commonwealth shall be the plaintiff and the property the defendant. A petition shall be filed in the court of common pleas of the judicial district where the property is located, verified by oath or affirmation of an officer or citizen, containing the following:

\* \* \*

(5) An allegation that the property is subject to forfeiture pursuant to [section 6801(a) (relating to loss of property rights to Commonwealth)] section 6801(a) (relating to controlled substances forfeiture) or 6801.1(a) (relating to terrorism forfeiture) and an averment of material facts upon which the forfeiture action is based.

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<sup>1</sup>“provisions of this act.” in enrolled bill.

(f) Preservation of the property subject for forfeiture.—Upon application of the Commonwealth, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond or take any other action to preserve the availability of property described in section 6801(a) *or 6801.1(a)* for forfeiture under this section either:

(1) upon the filing of an information or an indictment charging [a violation of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act,] *an offense in this Commonwealth* for which criminal forfeiture may be ordered under this chapter and alleging that the property with respect to which the order is sought would be subject to forfeiture; or

(2) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and an opportunity for a hearing, the court determines that:

(i) there is a substantial probability that the Commonwealth will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

However, an order entered pursuant to this paragraph shall be effective for not more than 90 days unless extended by the court for good cause shown or unless an indictment or information described in paragraph (1) has been filed.

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(j) Owner's burden of proof.—At the time of the hearing, if the Commonwealth produces evidence that the property in question was unlawfully used, possessed or otherwise subject to forfeiture under section 6801(a) *or 6801.1(a)*, the burden shall be upon the claimant to show:

(1) That the claimant is the owner of the property or the holder of a chattel mortgage or contract of conditional sale thereon.

(2) That the claimant lawfully acquired the property.

(3) That it was not unlawfully used or possessed by him. In the event that it shall appear that the property was unlawfully used or possessed by a person other than the claimant, then the claimant shall show that the unlawful use or possession was without his knowledge or consent. Such absence of knowledge or consent must be reasonable under the circumstances presented.

(k) Court-ordered release of property.—If a person claiming the ownership of or right of possession to or claiming to be the holder of a chattel mortgage or contract of conditional sale upon the property, the disposition of which is provided for in this section, prior to the sale presents a petition to the court alleging over the property lawful ownership, right of possession, a lien or reservation of title and if, upon public hearing, due

notice of which having been given to the Attorney General or the district attorney, the claimant shall prove by competent evidence to the satisfaction of the court that the property was lawfully acquired, possessed and used by him or, it appearing that the property was unlawfully used by a person other than the claimant, that the unlawful use was without the claimant's knowledge or consent, then the court may order the property returned or delivered to the claimant. Such absence of knowledge or consent must be reasonable under the circumstances presented. Otherwise, it shall be retained for official use or sold in accordance with section 6801(e) *or* 6801.1(f).

Section 6. This act shall take effect in 60 days.

APPROVED—The 7th day of July, A.D. 2006.

EDWARD G. RENDELL