

No. 2017-13

AN ACT

SB 8

Amending Titles 4 (Amusements), 18 (Crimes and Offenses), 30 (Fish), 42 (Judiciary and Judicial Procedure) and 75 (Vehicles) of the Pennsylvania Consolidated Statutes, extensively revising forfeiture provisions as follows: in administration and enforcement relating to gaming, further providing for prohibited acts and penalties; in inchoate crimes, further providing for the offense of manufacture, distribution, use or possession of devices for theft of telecommunications services; in assault, further providing for the offense of terrorism; in loss of property rights relating to sexual offenses, further providing for general rule and repealing provisions relating to process and seizure, to custody of property and to disposal of property; in forgery and fraudulent practices, further providing for the offenses of copying and recording devices and for trademark counterfeiting; in riot, disorderly conduct and related offenses, further providing for the offense of gambling devices, gambling, etc.; in wiretapping and electronic surveillance, further providing for seizure and forfeiture of electronic, mechanical or other devices; in minors, further providing for sentencing and penalties for trafficking drugs to minors; in nuisances, further providing for the offense of scattering rubbish; in other offenses, further providing for drug trafficking sentencing and penalties; in vehicle chop shop and illegally obtained and altered property, further providing for loss of property rights to Commonwealth and repealing provisions relating to procedure with respect to seized property subject to liens and rights of lienholders; in enforcement relating to Fish and Boat Code, further providing for forfeiture of fish and devices; in actions, proceedings and other matters generally relating to Judicial Code, providing for forfeiture of assets; in forfeitures, repealing provisions relating to controlled substances forfeiture, to terrorism forfeiture and to procedure with respect to seized property subject to liens and rights of lienholders; in size, weight and load relating to Vehicle Code, further providing for transporting foodstuffs in vehicles used to transport waste; in liquid fuels and fuel use tax enforcement, further providing for forfeitures and process and procedures and for disposition of fines and forfeitures; providing for conduct of forfeiture; and making repeals of provisions of the Liquor Code and another act relating to certain forfeiture of property.

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

Section 1. Section 1518(f) of Title 4 of the Pennsylvania Consolidated Statutes is amended to read:

§ 1518. Prohibited acts; penalties.

* * *

(f) Property subject to seizure, confiscation, destruction or forfeiture.— Any equipment, device or apparatus, money, material, gaming proceeds or substituted proceeds or real or personal property used, obtained or received or any attempt to use, obtain or receive the device, apparatus, money, material, proceeds or real or personal property in violation of this part shall be subject to ~~[seizure, confiscation, destruction or forfeiture.]~~ *the provisions of 42 Pa.C.S. §§ 5803 (relating to asset forfeiture), 5805 (relating to forfeiture procedure), 5806 (relating to motion for return of*

property), 5807 (relating to restrictions on use), 5807.1 (relating to prohibition on adoptive seizures) and 5808 (relating to exceptions).

Section 2. Section 910(c.1) of Title 18 is amended to read:

§ 910. Manufacture, distribution, use or possession of devices for theft of telecommunications services.

* * *

(c.1) Forfeiture of unlawful telecommunication devices.—Upon conviction of a defendant under this section, the court may, in addition to any other sentence authorized by law, direct that the defendant forfeit any unlawful telecommunication devices in the defendant's possession or control which were involved in the violation for which the defendant was convicted. *The forfeiture shall be conducted in accordance with 42 Pa.C.S. §§ 5803 (relating to asset forfeiture), 5805 (relating to forfeiture procedure), 5806 (relating to motion for return of property), 5807 (relating to restrictions on use), 5807.1 (relating to prohibition on adoptive seizures) and 5808 (relating to exceptions).*

* * *

Section 3. Section 2717 of Title 18 is amended by adding a subsection to read:

§ 2717. Terrorism.

* * *

(b.1) *Forfeiture.—Each foreign or domestic asset related to terrorism, including the following, shall be subject to forfeiture under 42 Pa.C.S. §§ 5803 (relating to asset forfeiture), 5805 (relating to forfeiture procedure), 5806 (relating to motion for return of property), 5807 (relating to restrictions on use), 5807.1 (relating to prohibition on adoptive seizures) and 5808 (relating to exceptions) and no property right shall exist in the asset:*

(1) *Each foreign or domestic asset:*

(i) *Of an individual, entity or organization engaged in planning or perpetrating an act in this Commonwealth which violates this section and each foreign or domestic asset affording a person a source of influence over the 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 this section.*

(iii) *Derived from, involved in or used or intended to be used to commit an act in this Commonwealth which violates this section.*

(2) *Each asset within this Commonwealth:*

(i) *Of an individual, entity or organization engaged in planning or perpetrating an act which violates this section.*

(ii) *Acquired or maintained with the intent and for the purpose of supporting, planning, conducting or concealing an act which violates this section.*

(iii) *Derived from, involved in or used or intended to be used to commit an act which violates this section.*

* * *

Section 4. Section 3141 of Title 18 is amended to read:

§ 3141. General rule.

A person:

(1) convicted under section 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault), 3125 (relating to aggravated indecent assault) or 3126 (relating to indecent assault); or

(2) required to register with the Pennsylvania State Police under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders); may be required to forfeit property rights in any property or assets used to implement or facilitate commission of the crime or crimes of which the person has been convicted. **[Such property may include, but is not limited to, a computer or computers, telephone equipment, firearms, licit or illicit prescription drugs or controlled substances, a motor vehicle or such other property or assets as determined by the court of common pleas to have facilitated the person's criminal misconduct.]** *The forfeiture shall be conducted in accordance with 42 Pa.C.S. §§ 5803 (relating to asset forfeiture), 5805 (relating to forfeiture procedure), 5806 (relating to motion for return of property), 5807 (relating to restrictions on use), 5807.1 (relating to prohibition on adoptive seizures) and 5808 (relating to exceptions).*

Section 5. Sections 3142, 3143 and 3144 of Title 18 are repealed:

[§ 3142. Process and seizure.

(a) **Seizure.**—Property subject to forfeiture under this section may be seized by law enforcement authority upon process issued by the court of common pleas having jurisdiction over the person or property.

(b) **Seizure without process.**—Seizure without process may be made if the seizure is incident to an arrest or a search under a search warrant and there is probable cause to believe that the property was or is material to the charges for which the arrest or search warrant was issued. In seizures without process, proceedings for the issuance thereof shall be instituted immediately.

(c) **Return of property.**—Property belonging to someone other than the convicted sex offender or registrant shall be returned if the offense was committed without the knowledge or consent of the owner.

§ 3143. Custody of property.

Property taken or detained under this subchapter is deemed to be the property of the law enforcement authority having custody thereof and is subject only to the court of common pleas having jurisdiction over the criminal or forfeiture proceedings, the district attorney in the matter or the Attorney General.

§ 3144. Disposal of property.

Property taken or detained pursuant to the provisions of this subchapter shall be sold in the manner of property forfeited under 42 Pa.C.S. Ch. 68 (relating to forfeitures). The net proceeds, as determined by the law enforcement authority having custody thereof, shall be utilized for investigation or prosecution of sexual offenses or donated to nonprofit charitable institutions which provide counseling and other assistance to victims of sexual offenses.]

Section 6. Sections 4116(i), 4119(f)(2)(i), 5513(b), 5707, 6314(f), 6501(b)(5) and (d), 7508(e) and 7707 of Title 18 are amended to read:

§ 4116. Copying; recording devices.

(i) Forfeiture.—

(1) No property right shall exist in any property used or intended for use in the commission of a violation of this section or in any proceeds traceable to a violation of this section, and the same shall be deemed contraband and forfeited in accordance with the provisions **[set forth in section 6501(d) (relating to scattering rubbish).]** of 42 Pa.C.S. §§ 5803 (relating to asset forfeiture), 5805 (relating to forfeiture procedure), 5806 (relating to motion for return of property), 5807 (relating to restrictions on use), 5807.1 (relating to prohibition on adoptive seizures) and 5808 (relating to exceptions).

[(2) Property and proceeds found in close proximity to illegally recorded devices shall be rebuttably presumed to be used or intended for use to facilitate a violation of this section.]

(3) The provisions of this subsection shall not, in any way, limit the right of the Commonwealth to exercise any rights or remedies otherwise provided by law.

§ 4119. Trademark counterfeiting.

(f) Seizure, forfeiture and disposition.—

(2) (i) All seized personal property **and property constituting or derived from any proceeds** referenced in paragraph (1) shall be forfeited in accordance with **[the procedures set forth in section 6501(d) (relating to scattering rubbish).]** 42 Pa.C.S. §§ 5803 (relating to asset forfeiture), 5805 (relating to forfeiture procedure), 5806 (relating to motion for return of property), 5807 (relating to restrictions on use), 5807.1 (relating to prohibition on adoptive seizures) and 5808 (relating to exceptions).

§ 5513. Gambling devices, gambling, etc.

(b) Confiscation of gambling devices.—Any gambling device possessed or used in violation of the provisions of subsection (a) **[of this section]** shall be seized and forfeited to the Commonwealth. **[All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of intoxicating liquor shall apply to seizures and forfeitures under the provisions of this section.]** *The forfeiture shall be conducted in accordance with 42 Pa.C.S. §§ 5803 (relating to asset forfeiture), 5805 (relating to forfeiture procedure), 5806 (relating to motion for return of property), 5807 (relating to restrictions on use), 5807.1 (relating to prohibition on adoptive seizures) and 5808 (relating to exceptions).*

§ 5707. Seizure and forfeiture of electronic, mechanical or other devices.

Any electronic, mechanical or other device possessed, used, sent, distributed, manufactured, or assembled in violation of this chapter is hereby declared to be contraband and may be seized and forfeited to the Commonwealth[.] *in accordance with 42 Pa.C.S. §§ 5803 (relating to asset forfeiture), 5805 (relating to forfeiture procedure), 5806 (relating to motion for return of property), 5807 (relating to restrictions on use), 5807.1 (relating to prohibition on adoptive seizures) and 5808 (relating to exceptions).*

§ 6314. Sentencing and penalties for trafficking drugs to minors.

* * *

(f) Forfeiture.—Assets against which a *petition seeking forfeiture* [petition] has been filed and is pending or against which the Commonwealth has indicated an intention to file a [forfeiture] *petition seeking forfeiture* shall not be subject to a fine under this section.

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§ 6501. Scattering rubbish.

* * *

(b) Penalty.—

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(5) Any vehicle, equipment or conveyance, including any private automobile and small truck, used for the transportation or disposal of trash, garbage or debris in the commission of a second or subsequent offense under subsection (a)(3) may be deemed contraband and forfeited in accordance with [the provisions set forth in this section.] *42 Pa.C.S. §§ 5803 (relating to asset forfeiture), 5805 (relating to forfeiture procedure), 5806 (relating to motion for return of property), 5807 (relating to restrictions on use), 5807.1 (relating to prohibition on adoptive seizures) and 5808 (relating to exceptions).*

* * *

[(d) Forfeiture.—

(1) Property subject to forfeiture under this section may be seized by the law enforcement authority upon process issued by any court of common pleas having jurisdiction over the property.

(2) 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. When property is seized under this section, the law enforcement authority shall place the property under seal and either:

(i) remove the property to a place designated by it; or

(ii) require that the district attorney take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(3) Whenever property is forfeited under this section, the property shall be transferred to the custody of the municipal corporation. The municipal corporation shall sell any forfeited property, but the proceeds from any such sale shall 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 used for the enforcement of this act.

(4) The proceedings for the forfeiture or condemnation of property, the sale of which is provided for in this section, 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:

- (i) A description of the property seized.
- (ii) A statement of the time and place where seized.
- (iii) The owner, if known.
- (iv) The person or persons in possession, if known.
- (v) An allegation that the property is subject to forfeiture pursuant to this subsection and an averment of material facts upon which the forfeiture action is based.
- (vi) A prayer for an order of forfeiture that the property be adjudged forfeited to the Commonwealth and condemned and be ordered sold according to law, unless cause be shown to the contrary.

(5) A copy of the petition required under paragraph (4) shall be served personally or by certified mail on the owner or upon the person or persons in possession at the time of the seizure. The copy shall have endorsed a notice, as follows:

To the Claimant of within Described Property:

You are required to file an answer to this petition, setting forth your title in, and right to possession of, the property within 30 days from the service hereof, and you are also notified that, if you fail to file the answer, a decree of forfeiture and condemnation will be entered against the property.

The notice shall be signed by the district attorney, deputy district attorney or assistant district attorney.

(6) If the owner of the property is unknown or there was no person in possession of the property when seized or if the owner or such person or persons in possession at the time of the seizure cannot be personally served or located within the jurisdiction of the court, notice of the petition shall be given by the Commonwealth through an advertisement in only one newspaper of general circulation published in the county where the property shall have been seized, once a week for two successive weeks. No other advertisement of any sort shall be necessary, any other law to the contrary notwithstanding. The notice shall contain a statement of the seizure of the property with a description of the property and the place and date of seizure and shall direct any claimants to the property to file a claim on or before a date given in the notice, which date shall not be less than 30 days from the date of the first publication. If no claims are filed within 30

days of publication, the property shall summarily forfeit to the Commonwealth.

(7) For purposes of this section, the owner or other such person cannot be found in the jurisdiction of the court if:

(i) a copy of the petition is mailed to the last known address by certified mail and is returned without delivery;

(ii) personal service is attempted once but cannot be made at the last known address; and

(iii) a copy of the petition is left at the last known address.

(8) The notice provisions of this section are automatically waived when the owner, without good cause, fails to appear in court in response to a subpoena on the underlying criminal charges. Forty-five days after such a failure to appear, if good cause has not been demonstrated, the property shall summarily forfeit to the Commonwealth.

(9) Upon the filing of a claim for the property setting forth a right of possession, the case shall be deemed at issue and a time shall be fixed for the hearing.

(10) 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 this section, the burden shall be upon the claimant to show:

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

(ii) That the claimant lawfully acquired the property.

(iii) 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.

(11) 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 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 paragraph (4).]

* * *

§ 7508. Drug trafficking sentencing and penalties.

* * *

(e) Forfeiture.—Assets against which a *petition seeking* forfeiture [petition] has been filed and is pending or against which the Commonwealth has indicated an intention to file a [forfeiture] *petition seeking forfeiture* shall not be subject to a fine. Nothing in this section shall prevent a fine from being imposed on assets which have been subject to an unsuccessful forfeiture petition.

* * *

§ 7707. Loss of property rights to Commonwealth.

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

(1) Any tool, implement or instrumentality, including, but not limited to, a vehicle or vehicle part used or possessed in connection with any violation of this chapter.

(2) All materials, products and equipment of any kind which are used or intended for use in violation of this chapter.

(3) All books, records, microfilm, tapes and data which are used or intended for use in violation of this chapter.

(4) All money, negotiable instruments, securities or other things of value used or intended to be used to facilitate any violation of this chapter and all proceeds traceable to any transactions in violation of this chapter.

(5) All real property used or intended to be used to facilitate any violation of this chapter, including structures or other improvements thereon and including any right, title and interest in the whole or any lot or tract of land and any appurtenances or improvements which are used or intended to be used in any manner or part to commit or to facilitate the commission of a violation of this chapter.

[(b) Exceptions.—

(1) No property shall be forfeited under this section, to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without the knowledge or consent of that owner.

(2) No valid lien or encumbrance on real property shall be subject to forfeiture or impairment under this paragraph. A lien which is fraudulent or intended to avoid forfeiture under this section shall be invalid.

(c) Process and seizure.—Property subject to forfeiture under this chapter 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:

(1) the seizure is incident to an arrest or a search warrant or inspection under 75 Pa.C.S. § 6308 (relating to investigation by police officers) or any other administrative inspection;

(2) the property subject to seizure has been the subject of a proper 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; or

(4) there is probable cause to believe that the property has been used or is intended to be used in violation of this chapter.

(d) Seizure without process.—In the event seizure without process occurs as provided in this chapter, proceeding for the issuance thereof shall be instituted forthwith.

(e) 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 Office of Attorney General. When property is seized under this chapter, the law enforcement authority shall place the property under seal and either:

(1) remove the property to a place designated by it; or

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

(f) Use of property held in custody.—

(1) Whenever property is forfeited under this chapter, the property shall be transferred to:

(i) the custody of the district attorney, if the law enforcement authority seizing the property has local or county jurisdiction; or

(ii) the Office of Attorney General, if the law enforcement authority seizing the property has Statewide jurisdiction.

(2) The district attorney or the Office of Attorney General, where appropriate, may:

(i) Retain the property for official use.

(ii) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, but the proceeds from any such sale must be used to pay all proper expenses of the proceeding for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs. The balance of the proceeds shall be dealt with in accordance with subsections (g) and (h).

(g) Use of cash, property or proceeds of property.—Cash or proceeds of forfeited property transferred to the custody of the district attorney under subsection (f) 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 this Commonwealth. The entity having budgetary control shall not anticipate future forfeitures or proceeds from such forfeitures in adoption and approval of the budget for the district attorney.

(h) Distribution of property among law enforcement authorities.—If both State and municipal 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 Office of Attorney General.

(i) **Annual audit of forfeited property.**—A county shall 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 Office of Attorney General by September 30 of each year.

(j) **Annual report; confidential information regarding property.**—The Office of Attorney General shall annually submit a report to the Appropriations Committee of the Senate, the Appropriations Committee of the House of Representatives, the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives specifying the forfeited property or proceeds thereof obtained under this section. The report shall give an account of all proceeds derived from the sale of forfeited property and the use made of unsold forfeited property. The Office of 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 enforcement activities.

(k) **Proceeds and appropriations.**—The proceeds or future proceeds from forfeited property under this chapter shall be in addition to any appropriation made to the Office of Attorney General.] *(a.1) Conduct of forfeiture.*—*Forfeiture of property shall be authorized for a violation of this chapter and conducted in accordance with 42 Pa.C.S. §§ 5803 (relating to asset forfeiture), 5805 (relating to forfeiture procedure), 5806 (relating to motion for return of property), 5807 (relating to restrictions on use), 5807.1 (relating to prohibition on adoptive seizures) and 5808 (relating to exceptions).*

Section 7. Section 7708 of Title 18 is repealed:

[§ 7708. 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 under this chapter, shall be in rem in which the Commonwealth shall be the plaintiff and the property the defendant. The Pennsylvania Rules of Civil Procedure shall apply to all forfeiture proceedings brought under this chapter. 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:

- (1) A description of the property seized.
- (2) A statement of the time and place where seized.
- (3) The owner, if known.
- (4) The person or persons in possession, if known.
- (5) An allegation that the property is subject to forfeiture under section 7707 (relating to loss of property rights to Commonwealth) and an averment of material facts upon which the forfeiture action is based.

(6) A prayer for an order of forfeiture that the property be adjudged forfeited to the Commonwealth and condemned and be ordered sold according to law unless cause be shown to the contrary.

(b) Notice to property owners.—A copy of the petition required under subsection (a) shall be served personally or by certified mail on the owner or upon the person or persons in possession at the time of the seizure. The copy shall have endorsed a notice as follows:

To the claimant of within described property: You are required to file an answer to this petition, stating your title in and right to possession of the property within 30 days from the service of this petition, and you are also notified that, if you fail to file an answer, a decree of forfeiture and condemnation will be entered against the property.

The notice shall be signed by the Attorney General, Deputy Attorney General, district attorney, deputy district attorney or assistant district attorney.

(c) Substitute notice.—

(1) If the owner of the property is unknown or there was no person in possession of the property when seized or if the owner or such person or persons in possession at the time of the seizure cannot be personally served or located within the jurisdiction of the court, notice of the petition shall be given by the Commonwealth through an advertisement in only one newspaper of general circulation published in the county where the property was seized once a week for two successive weeks. No other advertisement of any sort shall be necessary, any other law to the contrary notwithstanding.

(2) The notice shall:

(i) contain a statement of the seizure of the property with a description of the property and the place and date of seizure; and

(ii) direct any claimants to the property to file a claim on or before a date given in the notice, which date shall not be less than 30 days from the date of the first publication.

(3) If no claims are filed within 30 days of publication, the property shall summarily forfeit to the Commonwealth.

(d) Property owners not in jurisdiction.—For purposes of this section, the owner or other such person cannot be found in the jurisdiction of the court if:

(1) A copy of the petition is mailed to the last known address by certified mail and is returned without a delivery.

(2) A personal service is attempted once but cannot be made at the last known address.

(3) A copy of the petition is left at the last known address.

(e) Notice automatically waived.—

(1) The notice provisions of this section are automatically waived when the owner, without good cause, fails to appear in court in response to a subpoena on the underlying criminal charges.

(2) Forty-five days after such a failure to appear, if good cause has not been demonstrated, the property shall summarily forfeit to the Commonwealth.

(f) Preservation of the property subject for forfeiture.—

(1) 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 7707 for forfeiture under this section either:

(i) upon the filing of an information or an indictment charging a violation of this chapter 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

(ii) 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:

(A) 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.

(B) 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.

(2) An order entered under this subsection 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)(i) has been filed.

(g) Temporary restraining order.—

(1) A temporary restraining order under subsection (f) may be entered upon application of the Commonwealth without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property if the Commonwealth demonstrates that:

(i) there is probable cause to believe that the property with respect to which the order is sought would be subject to forfeiture under this chapter; and

(ii) the provision of notice will jeopardize the availability of the property for forfeiture.

(2) Such temporary order shall expire not more than ten days after the date on which it is entered, unless:

(i) extended for good cause shown; or

(ii) the party against whom it is entered consents to an extension for a longer period.

(3) A hearing requested concerning an order entered under this subsection shall be held at the earliest possible time and prior to the expiration of the temporary order.

(h) Hearing regarding property; rules of evidence.—The court may receive and consider at a hearing held under subsection (f) or (g)

evidence and information that would be inadmissible under the rules of evidence.

(i) **Hearing time set.**—Upon the filing of a claim for the property setting forth a right of possession, the case shall be deemed at issue, and a time shall be fixed for the hearing.

(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 7706 (relating to presumptions), the burden shall be upon the claimant to show that:

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

(2) The claimant lawfully acquired the property.

(3) It was not unlawfully used or possessed by the claimant. 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 must show that the unlawful use or possession was without the claimant's knowledge or consent. Such absence of knowledge or consent must be reasonable under the circumstances presented.

(k) **Court-ordered release of property.**—

(1) 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 Office of Attorney General or the district attorney, the claimant proves by competent evidence to the satisfaction of the court:

(i) that the property was lawfully acquired, possessed and used by him; or

(ii) if it appears 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.

(2) Such absence of knowledge or consent must be reasonable under the circumstances presented. Otherwise, the property shall be retained for official use or sold in accordance with section 7707(f).]

Section 8. Section 927 of Title 30 is amended to read:

§ 927. Forfeiture of fish and devices.

(a) **General rule.**—A person convicted of an offense under this title shall forfeit any fish seized under section [901(6)] *901(a)(6)* (relating to powers and duties of waterways [patrolmen] *conservation officers* and deputies) and any device confiscated under this title. *Forfeitures shall be conducted in accordance with 42 Pa.C.S. §§ 5803 (relating to asset forfeiture), 5805 (relating to forfeiture procedure), 5806 (relating to motion for return of property), 5807 (relating to restrictions on use), 5807.1 (relating to prohibition on adoptive seizures) and 5808 (relating to exceptions).*

[(b) Disposition of confiscated property.—Any property confiscated by the commission under this title shall be sold or otherwise disposed of by the executive director. These dispositions shall be recorded on the books of the commission.]

Section 9. Title 42 is amended by adding a chapter to read:

**CHAPTER 58
FORFEITURE OF ASSETS**

Sec.

5801. Scope of chapter.

5802. Controlled substances forfeiture.

5803. Asset forfeiture.

5804. (Reserved).

5805. Forfeiture procedure.

5806. Motion for return of property.

5806.1. (Reserved).

5806.2. (Reserved).

5807. Restrictions on use.

5807.1. Prohibition on adoptive seizures.

5807.2. Federal reporting requirements.

5808. Exceptions.

§ 5801. Scope of chapter.

This chapter relates to asset forfeiture.

§ 5802. Controlled substances forfeiture.

The following shall be subject to forfeiture to the Commonwealth and no property right shall exist in them:

(1) All drug paraphernalia, controlled substances or other drugs which have been manufactured, distributed, dispensed or acquired in violation of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(2) All raw materials, products and equipment of any kind which are used or intended for use in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance or other drug in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(3) All property which is used or intended for use as a container for property described in paragraph (1) or (2).

(4) All conveyances, including aircraft, vehicles or vessels, which are used or are intended for use to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of property described in paragraph (1) or (2), except that:

(i) no bona fide security interest retained or acquired under 13 Pa.C.S. (relating to commercial code) by any merchant dealing in new or used aircraft, vehicles or vessels, or retained or acquired by any licensed or regulated finance company, bank or lending institution, or by any other business regularly engaged in the financing or lending on the security of such aircraft, vehicles or vessels, shall be subject to forfeiture or impairment; and

(ii) no conveyance shall be forfeited under this chapter for a violation of section 13(a)(31) of The Controlled Substance, Drug, Device and Cosmetic Act.

(5) All books, records and research, including formulas, microfilm, tapes and data, which are used or intended for use in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(6) (i) All of the following:

(A) Money, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act, and all proceeds traceable to such an exchange.

(B) Money, negotiable instruments, securities or other things of value used or intended to be used to facilitate any violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(C) Real property used or intended to be used to facilitate any violation of The Controlled Substance, Drug, Device and Cosmetic Act other than a violation of section 13(a)(16) or (31) of The Controlled Substance, Drug, Device and Cosmetic Act, including structures or other improvements thereon, and including any right, title and interest in the whole or any lot or tract of land and any appurtenances or improvements, which is used or intended to be used in any manner or part to commit or to facilitate the commission of a violation of The Controlled Substance, Drug, Device and Cosmetic Act, and things growing on, affixed to and found in the land.

(ii) The money and negotiable instruments found in close proximity to controlled substances possessed in violation of The Controlled Substance, Drug, Device and Cosmetic Act shall be rebuttably presumed to be proceeds derived from the selling of a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(iii) No valid lien or encumbrance on real property shall be subject to forfeiture or impairment under this paragraph. A lien which is fraudulent or intended to avoid forfeiture under this chapter shall be invalid.

(7) Any firearms, including, but not limited to, rifles, shotguns, pistols, revolvers, machine guns, zip guns or any type of prohibited offensive weapon, as that term is defined in 18 Pa.C.S. § 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms), which are used or intended for use to facilitate a violation of The Controlled Substance, Drug, Device and Cosmetic Act. Firearms as are found in close proximity to illegally possessed controlled substances shall be rebuttably presumed to be used or intended for use to facilitate a violation of The Controlled Substance, Drug, Device and Cosmetic Act. All weapons forfeited under this chapter shall be immediately destroyed by the receiving law enforcement agency.

§ 5803. Asset forfeiture.

(a) Applicability.—Notwithstanding any law to the contrary, this section shall apply to forfeitures conducted under the following:

- (1) 4 Pa.C.S. § 1518 (relating to prohibited acts; penalties).*
- (2) 18 Pa.C.S. § 910 (relating to manufacture, distribution, use or possession of devices for theft of telecommunications services).*
- (3) 18 Pa.C.S. § 2717 (relating to terrorism).*
- (4) 18 Pa.C.S. § 3141 (relating to general rule).*
- (5) 18 Pa.C.S. § 4116 (relating to copying; recording devices).*
- (6) 18 Pa.C.S. § 4119 (relating to trademark counterfeiting).*
- (7) 18 Pa.C.S. § 5513 (relating to gambling devices, gambling, etc.).*
- (8) 18 Pa.C.S. § 5707 (relating to seizure and forfeiture of electronic, mechanical or other devices).*
- (9) 18 Pa.C.S. § 6501 (relating to scattering rubbish).*
- (10) 18 Pa.C.S. § 7707 (relating to loss of property rights to Commonwealth).*
- (11) 30 Pa.C.S. § 927 (relating to forfeiture of fish and devices).*
- (12) Section 5802 (relating to controlled substances forfeiture).*
- (13) 75 Pa.C.S. § 4909 (relating to transporting foodstuffs in vehicles used to transport waste).*
- (14) 75 Pa.C.S. § 9405 (relating to forfeitures; process and procedures).*

(b) Process and seizure of money and personal property.—Property subject to forfeiture may be seized by a law enforcement authority if any of the following apply:

- (1) The seizure is incident to an arrest or a search under a search warrant or inspection under an administrative inspection warrant and there is reason to believe the property is subject to forfeiture.*
- (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 and safety and exigencies are likely to result in the destruction or removal of the property or in the property otherwise being made unavailable for forfeiture.*
- (4) There is probable cause to believe that the property has been used or is intended to be used in violation of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or another offense for which forfeiture is expressly authorized as a sanction.*
- (5) There is a warrant issued by a court of common pleas with appropriate jurisdiction.*
- (6) There is probable cause to believe that the property is subject to forfeiture and exigencies are likely to result in the destruction or removal of the property.*

(b.1) Process and seizure of real property.—Real property subject to forfeiture under this chapter may be seized by the law enforcement authority upon process issued by a court of common pleas having jurisdiction over the property. Except as provided under this section, real property subject to forfeiture shall not be seized before the entry of an

order of forfeiture and the owners or occupants of the real property shall not be evicted from or otherwise deprived of the use and enjoyment of real property that is the subject of a pending forfeiture action. The following shall apply:

(1) The filing of a lis pendens or the issuance of a temporary restraining order shall not constitute a seizure under this subsection.

(2) Real property may be seized prior to the entry of an order of forfeiture if:

(i) the district attorney or the Attorney General notifies the court that it intends to seize the property before a trial; and

(ii) the court:

(A) after causing notice to be served on the property owner and posted on the property and conducting a hearing in which the property owner has a meaningful opportunity to be heard, authorizes such seizure; or

(B) makes an ex parte determination that there is probable cause to believe that a nexus exists between the property and the criminal activity for which forfeiture is authorized and that exigent circumstances are presented that permit the district attorney or the Attorney General to seize the property without prior notice and an opportunity for the property owner to be heard.

(3) For purposes of paragraph (2)(ii)(B), exigent circumstances are presented where the district attorney or the Attorney General demonstrates that less restrictive measures, such as a lis pendens, temporary restraining order or security bond, would not suffice to protect the Commonwealth's interest in preventing the sale, destruction or continued unlawful use of the real property.

(4) If the court authorizes a seizure of real property under paragraph (2)(ii)(B), it shall conduct a prompt postseizure hearing at which the claimant shall have an opportunity to contest the Commonwealth's continuing custody of the property.

(c) Issuance of process.—If seizure without process occurs under subsection (b) or (b.1), proceedings for the issuance of process shall be instituted as soon as feasible.

(d) Custody of property.—Property taken or detained under this section shall not be subject to replevin and 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 of the district attorney or the Attorney General. When property is seized under this chapter, the law enforcement authority shall place the property in a secure area or facility and either:

(1) remove the property to a secure area or facility designated by the law enforcement authority; or

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

(e) Receipt.—When property is seized, the law enforcement authority shall provide a receipt to the person in possession of the property or, in the

absence of a person, leave a receipt in the place where the property was found, if reasonably possible. The receipt shall provide notice of the right of interest holders to seek the return of the seized property under this chapter. This section shall not apply if law enforcement is otherwise required to provide a receipt for the property.

(f) Use of property held in custody.—When property is forfeited under this chapter, the property shall be transferred to the custody of the district attorney, if the law enforcement authority seizing the property has local or county jurisdiction, or 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; or

(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, except that the proceeds from the sale shall 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 used and distributed in accordance with this chapter.

(f.1) Prohibited sales.—Sale of forfeited property to an employee of the district attorney or Attorney General, an individual related to an employee by blood or marriage or an employee of another law enforcement authority is prohibited.

(g) Use of cash or proceeds of property.—Cash or proceeds of property, subject to forfeiture under section 5802 and transferred to the custody of the district attorney under subsection (f) 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 for the enforcement of or prevention of a violation of the provisions of The Controlled Substance, Drug, Device and Cosmetic Act. The funds shall be maintained in an account or accounts separate from other revenues of the office. The entity having budgetary control shall not anticipate future forfeitures or proceeds from future forfeitures in adoption and approval of the budget for the district attorney.

(h) Distribution of property among law enforcement authorities.—If both State and municipal 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.

(i) Authorization to utilize property.—Cash or proceeds of property subject to forfeiture under section 5802 and transferred to the custody of the district attorney or Attorney General under subsection (f) shall be utilized by the district attorney or Attorney General for the enforcement of or prevention of a violation of the provisions of The Controlled Substance, Drug, Device and Cosmetic Act. In appropriate cases, the district attorney and the Attorney General may designate proceeds from the forfeited property to be utilized by community-based drug and crime-fighting programs and for relocation and protection of witnesses in criminal cases. Real property may be transferred to a nonprofit organization to alleviate

blight resulting from violations of The Controlled Substance, Drug, Device and Cosmetic Act.

(j) Annual audit of forfeited property.—Every county in this Commonwealth shall 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 chapter. The audit shall not be made public but shall be submitted to the Office of Attorney General. By September 30 of each year, the county shall report all forfeited property and proceeds obtained under this chapter and the disposition of the property during the preceding year to the Attorney General. The Attorney General and each district attorney shall maintain and create appropriate records to account for the property forfeited in a fiscal year and the use made of the property forfeited. Each audit shall include:

- (1) Date property was seized.*
- (2) The type of property seized.*
- (3) Where property was seized.*
- (4) The approximate value.*
- (5) The alleged criminal behavior with which the property is associated.*
- (6) The disposition or use of property forfeited.*
- (7) Whether the forfeiture was related to a criminal case and the outcome of the criminal case.*
- (8) Date of forfeiture decision.*

(k) Annual report and confidential information.—The Attorney General shall annually submit a report to the Appropriations Committee and Judiciary Committee of the Senate and to the Appropriations Committee and Judiciary Committee of the House of Representatives specifying the forfeited property or proceeds of the forfeited property obtained under this chapter during the fiscal year beginning July 1, and the following shall apply:

- (1) The report shall include all information required under subsection (j) subject to the limitations provided under paragraph (2).*
- (2) The Attorney General shall adopt procedures and guidelines, which shall be public, governing the release of information by the Attorney General or the district attorney to protect the confidentiality of forfeited property or proceeds used in ongoing law enforcement activities.*

(k.1) Reporting.—By November 30 of each year, the Office of Attorney General shall notify the Appropriations Committee and Judiciary Committee of the Senate and the Appropriations Committee and Judiciary Committee of the House of Representatives of any county which has not submitted an audit and complied with the requirements in subsection (j).

(l) Proceeds and appropriations.—The proceeds or future proceeds from forfeited property under this chapter shall be in addition to any appropriation made to the Office of Attorney General. The Attorney General shall maintain proceeds from property forfeited to the Office of Attorney General in an account or accounts separate from any other account maintained by the Office of Attorney General.

§ 5804. (Reserved).

§ 5805. Forfeiture procedure.

(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 forfeiture petition signed by the Attorney General, deputy attorney general, district attorney or assistant district attorney shall be filed in the court of common pleas of the judicial district where the property is seized or located, verified by oath or affirmation of an officer. If criminal charges have been filed and a prosecution is pending, the petition shall be filed in the same judicial district as the criminal charges in all instances except those involving real property. Each petition relating to real property shall be filed in the jurisdiction where the real property is located.

(1) Each forfeiture petition shall contain the following:

(i) A description of the property actually seized or constructively seized, including, but not limited to, if known, the address of any real property, the exact dollar amount of any United States currency, or the approximate value of any negotiable instrument or security and the make, model, year and license plate number of any vehicle.

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

(iii) The owner, if known.

(iv) The person or persons in possession at the time of seizure, if known.

(v) An allegation that the property is subject to forfeiture and an averment of material facts supporting the forfeiture action.

(vi) A prayer for an order of forfeiture that the property be adjudged forfeited to the Commonwealth unless cause is shown to the contrary.

(2) The following shall apply:

(i) A claimant shall file an answer setting forth a right of possession of the property within 30 days of service of the forfeiture petition. The answer shall be in writing and filed to the docket number in the court of common pleas and shall be signed by the claimant or the claimant's attorney.

(ii) The following shall apply:

(A) Prior to filing an answer to a forfeiture petition, a claimant may file a motion to stay the forfeiture proceedings if the claimant has been criminally charged in a case associated with the forfeiture matter. If the motion is properly filed, it shall be granted.

(B) The claimant shall have 30 days from the date the stay is lifted to file an answer in accordance with this paragraph.

(3) After the answer is filed, the parties shall be permitted to conduct discovery.

(b) Notice to property owners.—

(1) A copy of the forfeiture petition required under subsection (a) shall be served personally or by certified mail on the owner, if known,

and on each person in possession at the time of the seizure, if known. The copy shall have endorsed a notice, as follows:

To the claimant of within described property:

You are required to file an answer to this petition, setting forth your title in, and right to possession of, said property within 30 days from the service hereof, and you are also notified that, if you fail to file the answer, a decree of forfeiture and condemnation will be entered against the property.

(2) The notice under paragraph (1) must be signed by the Attorney General, deputy attorney general, district attorney, deputy district attorney or assistant district attorney and contain accurate contact information for the signatory.

(c) Substitute notice.—

(1) If the owner of the property is unknown, there was no person in possession of the property when seized or the owner or each person in possession at the time of the seizure cannot be personally served or located within the jurisdiction of the court, notice of the petition shall be given by the Commonwealth through an advertisement in at least one newspaper of general circulation published in the county where the property has been seized, once a week for two successive weeks.

(2) Notwithstanding any other law, no other advertisement shall be necessary.

(3) The notice shall contain a statement of the seizure of the property with a description of the property and the place and date of seizure and shall direct any claimants to the property to file a claim on or before a date given in the notice, which shall not be less than 30 days from the date of the first publication.

(4) If no claims are filed within 30 days of publication, the Commonwealth may move for default judgment.

(d) Property owners not in jurisdiction.—For purposes of this section, the owner or other person cannot be found in the jurisdiction of the court if:

(1) a copy of the petition is mailed to the last known address by certified mail and is returned without delivery;

(2) personal service is attempted once, but cannot be made at the last known address; and

(3) a copy of the petition is left at the last known address unless the address does not exist.

(d.1) Proof of notice.—The Commonwealth shall file proof of notice with the court. Forfeiture shall not be ordered if the court finds that proof does not exist that the notice requirements contained under subsections (b), (c) and (d), if applicable, have been met.

(e) Notice automatically waived.—The notice provisions of this section shall be automatically waived if the owner, without good cause, fails to appear in court in response to a subpoena and a bench warrant is issued on the underlying criminal charges. If good cause has not been demonstrated, the Commonwealth may move for default judgment.

(f) Release of seized property pending conclusion of proceedings.—

(1) A claimant to property subject to forfeiture is permitted to seek the immediate release of seized property if:

- (i) the claimant has a possessory interest in the property;*
- (ii) the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;*
- (iii) the continued possession by the Commonwealth pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a legitimate business, preventing the claimant from working or leaving the claimant homeless;*
- (iv) the claimant's likely hardship from the continued possession by the Commonwealth of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed or transferred if the property is returned to the claimant during the pendency of the forfeiture proceeding; and*
- (v) none of the conditions under paragraph (6) apply.*

(2) The following shall apply:

(i) The claimant under paragraph (1) may file a motion in the court of common pleas in which the forfeiture petition has been filed or, if no forfeiture petition has been filed, in the court of common pleas in the jurisdiction in which the property was seized. The motion shall be served upon the district attorney or Attorney General who has jurisdiction over the case.

(ii) The motion described in this subsection shall set forth the basis on which the requirements of paragraph (1) have been met.

(3) If the Commonwealth establishes that the claimant's motion is meritless, the court shall deny the motion. In response to a motion under this subsection, the Commonwealth may, in appropriate cases, submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

(4) The following shall apply:

(i) The court shall order that the property be returned to the claimant pending completion of the forfeiture proceeding if:

(A) a motion is filed under paragraph (2); and

(B) following a hearing, the claimant has demonstrated that the requirements of paragraph (1) have been met.

(ii) If the motion addresses currency, monetary instruments or electronic funds, the claimant must establish by a preponderance of the evidence a documented and noncriminal source of the currency, monetary instrument or electronic fund. The requirement under this subparagraph shall be in addition to the requirements under subparagraph (i).

(5) If the court grants a motion under paragraph (4):

(i) the court may enter any order necessary to ensure that the value of the property is maintained while the forfeiture action is pending, including:

(A) permitting the inspection, photographing and the taking of inventory of the property;

(B) fixing a bond; and

(C) requiring the claimant to obtain or maintain insurance on the subject property;

(ii) the Commonwealth may place a lien against the property or file a lis pendens to ensure that the property is not transferred to another person; and

(iii) if the property in question is currency, monetary instruments or electronic funds, the court shall fix a bond as provided under paragraph (5.1).

(5.1) For the purposes of paragraph (5)(iii), the following shall apply to the fixing of a bond sufficient to secure the value of the currency, monetary instruments or electronic funds:

(i) If the value of the currency, monetary instruments or electronic funds is less than \$2,000, the court may order the fixing of a bond.

(ii) If the value of the currency, monetary instruments or electronic funds is at least \$2,000, but less than \$5,000, the court may order the fixing of a bond. If the court finds that the claimant has not demonstrated his or her ability to ensure the availability of the currency at the time of the forfeiture trial, the court shall order the fixing of a bond.

(iii) If the value of the currency, monetary instruments or electronic funds is \$5,000 or more, the court shall order the fixing of a bond.

(6) This subsection shall not apply if the seized property:

(i) is contraband;

(ii) is evidence which shall include, but not be limited to, proceeds from a violation of law;

(iii) by reason of design or other characteristic, is particularly suited for use in illegal activities; or

(iv) is likely to be used to commit additional criminal acts if returned to the claimant.

(7) A party to a proceeding under this subsection shall not be estopped from raising in any other proceeding any claim or issue presented to or decided by the court under this subsection.

(g) (Reserved).

(h) (Reserved).

(i) Trial time.—On the filing of an answer setting forth a right of possession, the case shall be deemed at issue and a time shall be fixed for the trial. A judicial district shall not require the parties to proceed through local rules of arbitration.

(j) Burden of proof.—

(1) The burden shall be on the Commonwealth to establish in the forfeiture petition that the property is subject to forfeiture.

(2) If the Commonwealth satisfies the burden under paragraph (1), the burden shall be on the claimant to show by a preponderance of the evidence that:

(i) *the claimant is the owner of the property or the holder of a chattel mortgage or contract of conditional sale on the property or holds some other documented interest in the property; and*

(ii) *the claimant lawfully acquired the property.*

(3) *If the claimant satisfies the burden under paragraph (2), the burden shall be on the Commonwealth to establish by clear and convincing evidence that the property in question was unlawfully used, possessed or otherwise subject to the forfeiture.*

(4) *If the Commonwealth satisfies the burden under paragraph (3) and the claimant alleges that he did not have knowledge of the unlawful activity or consent to the unlawful activity, the burden shall be on the Commonwealth to establish by clear and convincing evidence:*

(i) *that the property was unlawfully used or possessed by the claimant; or*

(ii) *if it appears that the property was unlawfully used or possessed by a person other than the claimant, that the person unlawfully used or possessed the property with the claimant's knowledge and consent.*

(k) *Proportionality.—*

(1) *If the court determines that the forfeiture petition shall be granted, the claimant, prior to entry of an order of forfeiture, may petition the court to determine whether the forfeiture is constitutionally excessive.*

(2) *If the court finds that the forfeiture is grossly disproportional to the offense, the court shall reduce or eliminate the forfeiture as necessary to avoid a constitutional violation.*

(l) *Disclaimed property.—A defendant in a criminal case who disclaims ownership of property during the criminal case may not claim ownership during a subsequent forfeiture proceeding.*

(m) *Procedure following acquittal.—The following shall apply:*

(1) *If the owner of the property is acquitted of all crimes which authorize forfeiture, there shall be a rebuttable presumption that the property was lawfully used or possessed by the claimant.*

(2) *If the owner of the property is acquitted of all crimes which authorize forfeiture, the owner shall be entitled to a hearing under section 5806 (relating to motion for return of property).*

(3) *If the forfeiture petition relating to the property at issue has already been litigated, this section shall not apply.*

(4) *As used in this subsection, the term "acquittal" shall not include plea agreements, acceptance of Accelerated Rehabilitative Disposition or any other form of preliminary disposition.*

§ 5806. *Motion for return of property.*

(a) *Motion.—The following shall apply:*

(1) *A person aggrieved by a search and seizure may move for the return of the property seized by filing a motion in the court of common pleas in the judicial district where the property is located.*

(2) *The filer under paragraph (1) must serve the Commonwealth.*

(3) *Upon proof of service, the court shall schedule a prompt hearing on the motion and shall notify the Commonwealth. A hearing*

on the motion shall, to the extent practicable and consistent with the interests of justice, be held within 30 days of the filing of the motion.

(4) The assigned judge may require the filing of an answer.

(5) If a forfeiture petition was filed by the Commonwealth before the filing of a motion for return of property, the motion shall be assigned to the same judge for disposition, as practicable.

(b) Contents of motion.—A motion under this section shall:

(1) Be signed by the petitioner under penalty of perjury.

(2) Describe the nature and extent of the petitioner's right, title or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title or interest in the property and any additional facts supporting the petitioner's claim. The information shall include:

(i) A description of the property seized.

(ii) A statement of the time and place where seized, if known.

(iii) The owner, if known.

(iv) The person in possession, if known.

(3) Identify the relief sought, which may include:

(i) Return of the petitioner's property.

(ii) Reimbursement for the petitioner's legal interest in the property.

(iii) Severance of the petitioner's property from the forfeited property.

(iv) Any relief the court deems appropriate and just.

§ 5806.1. *(Reserved).*

§ 5806.2. *(Reserved).*

§ 5807. *Restrictions on use.*

Property, money or other things of value received by a State law enforcement authority under any of the following laws may not be used for contributions to political campaigns, expenses related to judicial trainings or the purchase of alcoholic beverages:

(1) A Federal law which authorizes the sharing or transfer of all or a portion of forfeited property or the proceeds of the sale of forfeited property to a State law enforcement authority.

(2) A State law which authorizes forfeiture.

§ 5807.1. *Prohibition on adoptive seizures.*

State law enforcement authorities shall not refer seized property to a Federal agency seeking the adoption by the Federal agency of the seized property. Nothing under this chapter shall prohibit the Federal Government or any of its agencies from seeking Federal forfeiture of the same property under any Federal forfeiture law.

§ 5807.2. *Federal reporting requirements.*

The audit required under section 5803(j) (relating to asset forfeiture) shall include a copy of each equitable sharing agreement and certification form filed with the United States Department of Justice within the last 12 months.

§ 5808. *Exceptions.*

(a) Contraband.—Nothing in this chapter shall be construed to apply to the forfeiture of the following:

(1) Items bearing a counterfeit mark under 18 Pa.C.S. § 4119 (relating to trademark counterfeiting).

(2) Liquor, alcohol or malt or brewed beverages illegally manufactured or possessed under section 601 of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code.

(3) Unlawfully stamped cigarettes under section 307 of the act of December 30, 2003 (P.L.441, No.64), known as the Tobacco Product Manufacturer Directory Act.

(4) Unstamped cigarettes under section 1285 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(b) Abandoned and unclaimed property.—This chapter shall not apply to abandoned or unclaimed property under Article XIII.1 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

Section 10. Sections 6801, 6801.1 and 6802 of Title 42 are repealed:

[§ 6801. Controlled substances forfeiture.

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

(1) All drug paraphernalia, controlled substances or other drugs which have been manufactured, distributed, dispensed or acquired in violation of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance or other drug in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2).

(4) All conveyances, including aircraft, vehicles or vessels, which are used or are intended for use to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of, property described in paragraph (1) or (2), except that:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of The Controlled Substance, Drug, Device and Cosmetic Act;

(ii) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent, which absence of knowledge or consent must be reasonable under the circumstances presented;

(iii) no bona fide security interest retained or acquired under 13 Pa.C.S. (relating to commercial code) by any merchant dealing in new or used aircraft, vehicles or vessels, or retained or acquired by any licensed or regulated finance company, bank or lending institution, or by any other business regularly engaged in

the financing of, or lending on the security of, such aircraft, vehicles or vessels, shall be subject to forfeiture or impairment; and

(iv) no conveyance shall be forfeited under this section for violation of section 13(a)(31) of The Controlled Substance, Drug, Device and Cosmetic Act.

(5) All books, records and research, including formulas, microfilm, tapes and data, which are used or intended for use in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(6) (i) All of the following:

(A) Money, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act, and all proceeds traceable to such an exchange.

(B) Money, negotiable instruments, securities or other things of value used or intended to be used to facilitate any violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(C) Real property used or intended to be used to facilitate any violation of The Controlled Substance, Drug, Device and Cosmetic Act, including structures or other improvements thereon, and including any right, title and interest in the whole or any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of The Controlled Substance, Drug, Device and Cosmetic Act, and things growing on, affixed to and found in the land.

(ii) No property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without the knowledge or consent of that owner. Such money and negotiable instruments found in close proximity to controlled substances possessed in violation of The Controlled Substance, Drug, Device and Cosmetic Act shall be rebuttably presumed to be proceeds derived from the selling of a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(iii) No valid lien or encumbrance on real property shall be subject to forfeiture or impairment under this paragraph. A lien which is fraudulent or intended to avoid forfeiture under this section shall be invalid.

(7) Any firearms, including, but not limited to, rifles, shotguns, pistols, revolvers, machine guns, zip guns or any type of prohibited offensive weapon, as that term is defined in 18 Pa.C.S. (relating to crimes and offenses), which are used or intended for use to facilitate a violation of The Controlled Substance, Drug, Device and Cosmetic

Act. Such operable firearms as are found in close proximity to illegally possessed controlled substances shall be rebuttably presumed to be used or intended for use to facilitate a violation of The Controlled Substance, Drug, Device and Cosmetic Act. All weapons forfeited under this section shall be immediately destroyed by the receiving law enforcement agency.

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

(1) the seizure is incident to an arrest or a search under a search warrant or 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; or

(4) there is probable cause to believe that the property has been used or is intended to be used in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(c) Seizure without process.—In the event seizure without process occurs, as provided herein, proceedings for the issuance thereof 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 chapter, the law enforcement authority shall place the property under seal and either:

(1) remove the property to a place designated by it; or

(2) require 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 chapter, the property shall be transferred to the custody of the district attorney, if the law enforcement authority seizing the property has local or county jurisdiction, or 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, but the proceeds from any such sale shall 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 in accordance with 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 pursuant to 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 enforcing the provisions of The Controlled Substance, Drug, Device and Cosmetic Act. 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 The Controlled Substance, Drug, Device and Cosmetic Act. In appropriate cases, the district attorney and the Attorney General may designate proceeds from forfeited property to be utilized by community-based drug and crime-fighting 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 and Judiciary Committees of the Senate and to the Appropriations and Judiciary Committees 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 drug enforcement activities.

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

§ 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. 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.

§ 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:

(1) A description of the property seized.

(2) A statement of the time and place where seized.

(3) The owner, if known.

(4) The person or persons in possession, if known.

(5) An allegation that the property is subject to forfeiture pursuant to 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.

(6) A prayer for an order of forfeiture that the property be adjudged forfeited to the Commonwealth and condemned and be ordered sold according to law, unless cause be shown to the contrary.

(b) **Notice to property owners.**—A copy of the petition required under subsection (a) shall be served personally or by certified mail on the owner or upon the person or persons in possession at the time of the seizure. The copy shall have endorsed a notice, as follows:

To the Claimant of within Described Property:

You are required to file an answer to this petition, setting forth your title in, and right to possession of, said property within 30 days from the service hereof, and you are also notified that, if you fail to file said answer, a decree of forfeiture and condemnation will be entered against said property.

The notice shall be signed by the Attorney General, Deputy Attorney General, district attorney, deputy district attorney or assistant district attorney.

(c) **Substitute notice.**—If the owner of the property is unknown or there was no person in possession of the property when seized or if the

owner or such person or persons in possession at the time of the seizure cannot be personally served or located within the jurisdiction of the court, notice of the petition shall be given by the Commonwealth through an advertisement in only one newspaper of general circulation published in the county where the property shall have been seized, once a week for two successive weeks. No other advertisement of any sort shall be necessary, any other law to the contrary notwithstanding. The notice shall contain a statement of the seizure of the property with a description of the property and the place and date of seizure and shall direct any claimants to the property to file a claim on or before a date given in the notice, which date shall not be less than 30 days from the date of the first publication. If no claims are filed within 30 days of publication, the property shall summarily forfeit to the Commonwealth.

(d) Property owners not in jurisdiction.—For purposes of this section, the owner or other such person cannot be found in the jurisdiction of the court if:

- (1) a copy of the petition is mailed to the last known address by certified mail and is returned without delivery;
- (2) personal service is attempted once, but cannot be made at the last known address; and
- (3) a copy of the petition is left at the last known address.

(e) Notice automatically waived.—The notice provisions of this section are automatically waived when the owner, without good cause, fails to appear in court in response to a subpoena on the underlying criminal charges. Forty-five days after such a failure to appear, if good cause has not been demonstrated, the property shall summarily forfeit to the Commonwealth.

(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 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.

(g) **Temporary restraining order.**—A temporary restraining order under subsection (f) may be entered upon application of the Commonwealth without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the Commonwealth demonstrates that there is probable cause to believe that the property with respect to which the order is sought would be subject to forfeiture under this chapter and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this subsection shall be held at the earliest possible time and prior to the expiration of the temporary order.

(h) **Hearing regarding property; rules of evidence.**—The court may receive and consider, at a hearing held pursuant to subsection (f) or (g), evidence and information that would be inadmissible under the rules of evidence.

(i) **Hearing time set.**—Upon the filing of a claim for the property setting forth a right of possession, the case shall be deemed at issue and a time shall be fixed for the hearing.

(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 11. Sections 4909(c), 9405 and 9406 of Title 75 are amended to read:

§ 4909. Transporting foodstuffs in vehicles used to transport waste.

* * *

(c) Vehicle forfeiture.—Any vehicle or conveyance used in the commission of an offense under this section shall be deemed contraband and forfeited [to the Department of Environmental Resources. The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of intoxicating liquor shall apply to seizures and forfeitures under this section. Proceeds from the sale of forfeited vehicles or conveyances shall be deposited in the Solid Waste Abatement Fund.] *in accordance with 42 Pa.C.S. §§ 5803 (relating to asset forfeiture), 5805 (relating to forfeiture procedure), 5806 (relating to motion for return of property), 5807 (relating to restrictions on use), 5807.1 (relating to prohibition on adoptive seizures) and 5808 (relating to exceptions).*

* * *

§ 9405. Forfeitures; process and procedures.

(a) Subjects of forfeiture.—The following are subject to forfeiture to the Commonwealth and no property right shall exist in them:

(1) Any liquid fuels or fuels produced in or imported into this Commonwealth by any distributor who does not possess a valid liquid fuels tax permit or fuels permit as required by section 9003 (relating to liquid fuels and fuels permits; bond or deposit of securities), except liquid fuels or fuels imported in barrels, drums or similar containers with a capacity of not more than 55 gallons in each barrel, drum or container.

(2) All conveyances, including vehicles or vessels, used to transport liquid fuels or fuels as described in paragraph (1). [except:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Chapter 90 (relating to liquid fuels and fuels tax); and

(ii) no bona fide security interest retained or acquired under Title 13 (relating to commercial code) by any merchant dealing in new or used vehicles or vessels, or retained or acquired by any licensed or regulated finance company, bank, lending institution or by any other business regularly engaged in the financing of or lending on the security of such vehicles or vessels, shall be subject to forfeiture or impairment.] *Forfeiture of such conveyances shall be conducted in accordance with 42 Pa.C.S. §§ 5803 (relating to asset forfeiture), 5805 (relating to forfeiture procedure), 5806*

(relating to motion for return of property), 5807 (relating to restrictions on use), 5807.1 (relating to prohibition on adoptive seizures) and 5808 (relating to exceptions).

(b) Method of seizure.—[Property] *Liquid fuels or fuels* subject to forfeiture under this section may be seized by the Department of Revenue upon process issued by any court of common pleas having jurisdiction over the property. [Seizure without process may be made if the seizure is incident to an inspection or arrest for a violation of this chapter or Chapter 90.

(c) Limit on return of property.—

(1) No property seized in accordance with this section, when in the custody of the Department of Revenue, shall be seized or taken therefrom by any writ of replevin or other judicial process unless a petition for forfeiture is not timely filed.

(2) Any liquid fuels or fuels seized under this section may be immediately used for any public purpose or sold to any person at the discretion of the Secretary of Revenue. If such liquid fuels or fuels are determined not to be subject to forfeiture, they need not be returned to the owner or any other person making a claim thereto, but at the option of the Secretary of Revenue an amount equal to the wholesale value of the liquid fuels or fuels as determined on the date of seizure may be returned.

(d) In rem proceedings.—The proceedings for the forfeiture of any liquid fuels or fuels or conveyances seized under this section shall be in rem. The Commonwealth shall be the plaintiff and the property shall be the defendant. A petition shall be filed, within five days after seizure, in the court of common pleas of the county in which the property was seized by revenue agents of the Department of Revenue, verified by oath or affirmation of any revenue agent. In the event that the petition is not filed within the time prescribed herein, the seized property shall be immediately returned to the person from whom seized or the owner thereof.

(e) Contents of petition.—The petition shall contain the following:

(1) The description of the property seized.

(2) A statement of the time when and the place where seized.

(3) The name and address of the owner, if known.

(4) The name and address of the person who was in possession of the property at the time of seizure, if known.

(5) A statement of the circumstances under which the property was seized.

(6) A prayer for an order forfeiting the property to the Commonwealth, unless cause be shown to the contrary.

(f) Service of process.—A copy of the petition shall be served on the owner if he can be found within this Commonwealth in any manner provided by law for service of process or a complaint in an action in assumpsit. If the owner cannot be found within this Commonwealth, a copy of the petition shall be served on the owner by registered mail or certified mail, return receipt requested, addressed to the last known address of the owner. The person in possession of the property and all

encumbrance holders having a perfected security interest in the property confiscated shall be notified in a like manner. Copies shall have endorsed thereon a notice substantially similar to the following:

To the claimant of the within property: You are required to file an answer to this petition setting forth your title in and right to possession of the property within 20 days from the service hereof, and you are also notified that, if you fail to file an answer, a decree of forfeiture will be entered against the property.

The notice shall be signed by the petitioner or his attorney.

(g) Advertisement.—If the owner of the property is unknown, notice of the petition shall also be given by an advertisement in only one newspaper of general circulation published in the county where the property was seized, once a week for two successive weeks. No other advertisement of any sort shall be necessary, any other law to the contrary notwithstanding. The notice shall contain a statement of the seizure of the property, with the description thereof and the place and date of seizure, and shall direct any claimants thereof to file a claim therefor on or before a date given in the notice which shall not be less than ten days from the date of the last publication.

(h) Hearing date.—Upon the filing of any claim for the property setting forth a right of possession thereof, the case shall be deemed at issue, and a hearing shall be held within five days thereof.

(i) Standard of proof.—The claimant shall have the burden of proving that he is not subject to the provisions of this section, but the burden of proof shall be upon the Commonwealth to prove all other facts necessary for the forfeiture of the property. In the event that the Commonwealth has not met its burden by a preponderance of the evidence or the claimant has proved that he is not subject to the provisions of this section, the court shall order the property returned to the claimant; otherwise, the court shall order the property forfeited to the Commonwealth. In the case of a motor vehicle, vessel or conveyance, should the claimant prove to the satisfaction of the court that he is the registered owner of the motor vehicle, vessel or conveyance and that he did not know or have reason to know that it was being used to transport liquid fuels or fuels in violation of the provisions of section 9404 (relating to violations and penalties) or 9019 (relating to diesel fuel importers and transporters; prohibiting use of dyed diesel fuel on highways; violations and penalties), the court in its discretion may order the motor vehicle, vessel or conveyance returned to the claimant.

(j) Encumbered motor vehicle.—In the case of a motor vehicle, should the claimant prove that he holds a valid encumbrance upon such motor vehicle, notice of which encumbrance has been duly noted on the certificate of title to the motor vehicle in accordance with the provisions of Chapter 11 (relating to certificate of title and security interests), the forfeiture shall be subject to such encumbrance as of the date of the seizure less prepaid or unearned interest. Before the motor vehicle may be sold, exchanged or otherwise transferred or retained for use by the Commonwealth, the outstanding amount of the encumbrance shall be paid to the claimant or possession of the motor vehicle shall be turned

over to the claimant who shall expose the same to public sale and shall pay over to the Commonwealth any amount realized in excess of the outstanding amount of such encumbrance less the reasonable costs incurred by claimant in conducting such sale.]

§ 9406. Disposition of fines and forfeitures.

All fines imposed under this chapter and the net proceeds received from the sale of forfeited **[property] liquid fuels or fuels** shall be payable to the Commonwealth and credited to the Motor License Fund.

Section 12. Notwithstanding any other provision of law to the contrary, the following forfeitures shall be conducted in accordance with 42 Pa.C.S. §§ 5803, 5805, 5806, 5807, 5807.1 and 5808:

(1) The forfeiture of property specified in section 1 of the act of July 3, 1941 (P.L.263, No.121), entitled "An act providing for the forfeiture and condemnation of vehicles used to store, possess or transport narcotics or drugs, the possession or transportation of which is in violation of law."

(2) The forfeiture of property specified in section 601 of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code.

(3) The forfeiture of property specified in section 614 of the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

(4) The forfeiture of property specified in section 1715 of the act of July 28, 1988 (P.L.556, No.101), known as the Municipal Waste Planning, Recycling and Waste Reduction Act.

Section 13. Repeals are as follows:

(1) The General Assembly finds that the repeals under paragraphs (2) and (3) are necessary to effectuate the addition of 42 Pa.C.S. Ch. 58.

(2) Sections 602 and 603 of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, are repealed to the extent of any inconsistency with this act.

(3) Sections 2, 3, 4 and 5 of the act of July 3, 1941 (P.L.263, No.121), entitled "An act providing for the forfeiture and condemnation of vehicles used to store, possess or transport narcotics or drugs, the possession or transportation of which is in violation of law," are repealed absolutely.

Section 14. This act shall take effect as follows:

(1) This section shall take effect immediately.

(2) The remainder of this act shall take effect July 1, 2017, or immediately, whichever is later.

APPROVED—The 29th day of June, A.D. 2017

TOM WOLF