

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 869 Session of 2015

INTRODUCED BY FOLMER, WILLIAMS, LEACH, FARNESE, COSTA, MENSCH, WOZNIAK, BARTOLOTTA, HAYWOOD, DINNIMAN AND BLAKE, JUNE 4, 2015

SENATOR BROWNE, APPROPRIATIONS, RE-REPORTED AS AMENDED, SEPTEMBER 27, 2016

AN ACT

1 Amending Titles 4 (Amusements), 18 (Crimes and Offenses), 30
2 (Fish), 42 (Judiciary and Judicial Procedure) and 75
3 (Vehicles) of the Pennsylvania Consolidated Statutes, in
4 administration and enforcement relating to gaming, further
5 providing for prohibited acts and penalties; in inchoate
6 crimes, further providing for the offense of manufacture,
7 distribution, use or possession of devices for theft of
8 telecommunications services; in assault, further providing
9 for the offense of terrorism; in loss of property rights
10 relating to sexual offenses, further providing for general
11 rule, repealing provisions relating to process and seizure,
12 to custody of property and to disposal of property; in
13 forgery and fraudulent practices, further providing for the
14 offenses of copying and recording devices and for trademark
15 counterfeiting; in riot, disorderly conduct and related
16 offenses, further providing for the offense of gambling
17 devices, gambling, etc.; in wiretapping and electronic
18 surveillance, further providing for seizure and forfeiture of
19 electronic, mechanical or other devices; in minors, further
20 providing for sentencing and penalties for trafficking drugs
21 to minors; in nuisances, further providing for the offense of
22 scattering rubbish; in other offenses, further providing for
23 drug trafficking sentencing and penalties; in vehicle chop
24 shop and illegally obtained and altered property, further
25 providing for loss of property rights to Commonwealth and
26 repealing provisions relating to procedure with respect to
27 seized property subject to liens and rights of lienholders;
28 in enforcement relating to Fish and Boat Code, further
29 providing for forfeiture of fish and devices; in actions,
30 proceedings and other matters generally relating to Judicial
31 Code, adding provisions relating to forfeiture of assets; in
32 forfeitures, further providing for controlled substances

1 forfeiture and repealing provisions relating to terrorism  
2 forfeiture and to procedure with respect to seized property  
3 subject to liens and rights of lienholders; in size, weight  
4 and load relating to Vehicle Code, further providing for  
5 transporting foodstuffs in vehicles used to transport waste;  
6 in liquid fuels and fuel use tax enforcement, further  
7 providing for forfeitures and process and procedures and for  
8 disposition of fines and forfeitures; providing for conduct  
9 of forfeiture; and making repeals of provisions of the Liquor  
10 Code, the Tax Reform Code of 1971 and another act relating to  
11 certain forfeiture of property.

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

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

16 § 1518. Prohibited acts; penalties.

17 \* \* \*

18 (f) Property subject to seizure, confiscation, destruction  
19 or forfeiture.--Any equipment, device or apparatus, money,  
20 material, gaming proceeds or substituted proceeds or real or  
21 personal property used, obtained or received or any attempt to  
22 use, obtain or receive the device, apparatus, money, material,  
23 proceeds or real or personal property in violation of this part  
24 shall be subject to [seizure, confiscation, destruction or  
25 forfeiture] the provisions of 42 Pa.C.S. Ch. 58 (relating to  
26 forfeiture of assets).

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

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

30 \* \* \*

31 (c.1) Forfeiture of unlawful telecommunication devices.--  
32 Upon conviction of a defendant under this section, the court  
33 may, in addition to any other sentence authorized by law, direct  
34 that the defendant forfeit any unlawful telecommunication  
35 devices in the defendant's possession or control which were

1 involved in the violation for which the defendant was convicted.  
2 The forfeiture shall be conducted in accordance with 42 Pa.C.S.  
3 Ch. 58 (relating to forfeiture of assets).

4 \* \* \*

5 Section 2.1. Section 2717 of Title 18 is amended by adding a  
6 subsection to read:

7 § 2717. Terrorism.

8 \* \* \*

9 (b.1) Forfeiture.--Each foreign or domestic asset related to  
10 terrorism, including the following, shall be subject to  
11 forfeiture under 42 Pa.C.S. Ch. 58 (relating to forfeiture of  
12 assets) and no property right shall exist in the asset:

13 (1) Each foreign or domestic asset:

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

19 (ii) Acquired or maintained by a person with the  
20 intent and for the purpose of supporting, planning,  
21 conducting or concealing an act in this Commonwealth  
22 which violates this section.

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

26 (2) Each asset within this Commonwealth:

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

30 (ii) Acquired or maintained with the intent and for

1 the purpose of supporting, planning, conducting or  
2 concealing an act which violates this section.

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

5 \* \* \*

6 Section 2.2. Section 3141 of Title 18 is amended to read:

7 § 3141. General rule.

8 A person:

9 (1) convicted under section 3121 (relating to rape),  
10 3122.1 (relating to statutory sexual assault), 3123 (relating  
11 to involuntary deviate sexual intercourse), 3124.1 (relating  
12 to sexual assault), 3125 (relating to aggravated indecent  
13 assault) or 3126 (relating to indecent assault); or

14 (2) required to register with the Pennsylvania State  
15 Police under 42 Pa.C.S. Ch. 97 Subch. H (relating to  
16 registration of sexual offenders);

17 may be required to forfeit property rights in any property or  
18 assets used to implement or facilitate commission of the crime  
19 or crimes of which the person has been convicted. [Such property  
20 may include, but is not limited to, a computer or computers,  
21 telephone equipment, firearms, licit or illicit prescription  
22 drugs or controlled substances, a motor vehicle or such other  
23 property or assets as determined by the court of common pleas to  
24 have facilitated the person's criminal misconduct.] The  
25 forfeiture shall be conducted in accordance with 42 Pa.C.S. Ch.  
26 58 (relating to forfeiture of assets).

27 Section 3. Sections 3142, 3143 and 3144 of Title 18 are  
28 repealed:

29 [§ 3142. Process and seizure.

30 (a) Seizure.--Property subject to forfeiture under this

1 section may be seized by law enforcement authority upon process  
2 issued by the court of common pleas having jurisdiction over the  
3 person or property.

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

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

15 § 3143. Custody of property.

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

21 § 3144. Disposal of property.

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

30 Section 4. Sections 4116(i), 4119(f)(2)(i), 5513(b), 5707,

1 6314(f), 6501(b)(5) and (d), 7508(e) and 7707 of Title 18 are  
2 amended to read:

3 § 4116. Copying; recording devices.

4 \* \* \*

5 (i) Forfeiture.--

6 (1) No property right shall exist in any property used  
7 or intended for use in the commission of a violation of this  
8 section or in any proceeds traceable to a violation of this  
9 section, and the same shall be deemed contraband and  
10 forfeited in accordance with the provisions [set forth in  
11 section 6501(d) (relating to scattering rubbish)] of 42  
12 Pa.C.S. Ch. 58 (relating to forfeiture of assets).

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

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

20 § 4119. Trademark counterfeiting.

21 \* \* \*

22 (f) Seizure, forfeiture and disposition.--

23 \* \* \*

24 (2) (i) All seized personal property and property  
25 constituting or derived from any proceeds referenced in  
26 paragraph (1) shall be forfeited in accordance with [the  
27 procedures set forth in section 6501(d) (relating to  
28 scattering rubbish)] 42 Pa.C.S. Ch. 58 (relating to  
29 forfeiture of assets).

30 \* \* \*

1 § 5513. Gambling devices, gambling, etc.

2 \* \* \*

3 (b) Confiscation of gambling devices.--Any gambling device  
4 possessed or used in violation of the provisions of subsection  
5 (a) [of this section] shall be seized and forfeited to the  
6 Commonwealth. [All provisions of law relating to the seizure,  
7 summary and judicial forfeiture, and condemnation of  
8 intoxicating liquor shall apply to seizures and forfeitures  
9 under the provisions of this section.] The forfeiture shall be  
10 conducted in accordance with 42 Pa.C.S. Ch. 58 (relating to  
11 forfeiture of assets).

12 \* \* \*

13 § 5707. Seizure and forfeiture of electronic, mechanical or  
14 other devices.

15 Any electronic, mechanical or other device possessed, used,  
16 sent, distributed, manufactured, or assembled in violation of  
17 this chapter is hereby declared to be contraband and may be  
18 seized and forfeited to the Commonwealth in accordance with 42  
19 Pa.C.S. Ch. 58 (relating to forfeiture of assets).

20 § 6314. Sentencing and penalties for trafficking drugs to  
21 minors.

22 \* \* \*

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

28 \* \* \*

29 § 6501. Scattering rubbish.

30 \* \* \*

1 (b) Penalty.--

2 \* \* \*

3 (5) Any vehicle, equipment or conveyance, including any  
4 private automobile and small truck, used for the  
5 transportation or disposal of trash, garbage or debris in the  
6 commission of a second or subsequent offense under subsection  
7 (a) (3) may be deemed contraband and forfeited in accordance  
8 with [the provisions set forth in this section] 42 Pa.C.S.  
9 Ch. 58 (relating to forfeiture of assets).

10 \* \* \*

11 [(d) Forfeiture.--

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

16 (2) Property taken or detained under this section shall  
17 not be subject to replevin but is deemed to be in the custody  
18 of the law enforcement authority subject only to the orders  
19 and decrees of the court of common pleas having jurisdiction  
20 over the forfeiture proceedings and of the district attorney.  
21 When property is seized under this section, the law  
22 enforcement authority shall place the property under seal and  
23 either:

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

25 or

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

29 (3) Whenever property is forfeited under this section,  
30 the property shall be transferred to the custody of the



1 municipal corporation. The municipal corporation shall sell  
2 any forfeited property, but the proceeds from any such sale  
3 shall be used to pay all proper expenses of the proceedings  
4 for forfeiture and sale, including expenses of seizure,  
5 maintenance of custody, advertising and court costs. The  
6 balance of the proceeds shall be used for the enforcement of  
7 this act.

8 (4) The proceedings for the forfeiture or condemnation  
9 of property, the sale of which is provided for in this  
10 section, shall be in rem, in which the Commonwealth shall be  
11 the plaintiff and the property the defendant. A petition  
12 shall be filed in the court of common pleas of the judicial  
13 district where the property is located, verified by oath or  
14 affirmation of an officer or citizen, containing the  
15 following:

16 (i) A description of the property seized.

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

18 (iii) The owner, if known.

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

20 (v) An allegation that the property is subject to  
21 forfeiture pursuant to this subsection and an averment of  
22 material facts upon which the forfeiture action is based.

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

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

1 follows:

2 To the Claimant of within Described Property:

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

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

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

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

1 if:

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

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

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

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

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

18 (10) At the time of the hearing, if the Commonwealth  
19 produces evidence that the property in question was  
20 unlawfully used, possessed or otherwise subject to forfeiture  
21 under this section, the burden shall be upon the claimant to  
22 show:

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

26 (ii) That the claimant lawfully acquired the  
27 property.

28 (iii) That it was not unlawfully used or possessed  
29 by him. In the event that it shall appear that the  
30 property was unlawfully used or possessed by a person

1 other than the claimant, then the claimant shall show  
2 that the unlawful use or possession was without his  
3 knowledge or consent. Such absence of knowledge or  
4 consent must be reasonable under the circumstances  
5 presented.

6 (11) If a person claiming the ownership of or right of  
7 possession to or claiming to be the holder of a chattel  
8 mortgage or contract of conditional sale upon the property,  
9 the disposition of which is provided for in this section,  
10 prior to the sale presents a petition to the court alleging  
11 over the property lawful ownership, right of possession, a  
12 lien or reservation of title and if, upon public hearing, due  
13 notice of which having been given to the district attorney,  
14 the claimant shall prove by competent evidence to the  
15 satisfaction of the court that the property was lawfully  
16 acquired, possessed and used by him or, it appearing that the  
17 property was unlawfully used by a person other than the  
18 claimant, that the unlawful use was without the claimant's  
19 knowledge or consent, then the court may order the property  
20 returned or delivered to the claimant. Such absence of  
21 knowledge or consent must be reasonable under the  
22 circumstances presented. Otherwise, it shall be retained for  
23 official use or sold in accordance with paragraph (4).]

24 \* \* \*

25 § 7508. Drug trafficking sentencing and penalties.

26 \* \* \*

27 (e) Forfeiture.--Assets against which a petition seeking  
28 forfeiture [petition] has been filed and is pending or against  
29 which the Commonwealth has indicated an intention to file a  
30 [forfeiture] petition seeking forfeiture shall not be subject to

1 a fine. Nothing in this section shall prevent a fine from being  
2 imposed on assets which have been subject to an unsuccessful  
3 forfeiture petition.

4 \* \* \*

5 § 7707. Loss of property rights to Commonwealth.

6 †(a) Forfeitures generally.--The following shall be subject <--  
7 to forfeiture to the Commonwealth, and no property right shall  
8 exist in them:

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

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

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

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

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

28 [(b) Exceptions.--

<--

29 (1) No property shall be forfeited under this section,  
30 to the extent of the interest of an owner, by reason of any

1 act or omission established by the owner to have been  
2 committed or omitted without the knowledge or consent of that  
3 owner.

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

8 (c) Process and seizure.--Property subject to forfeiture  
9 under this chapter may be seized by the law enforcement  
10 authority upon process issued by a court of common pleas having  
11 jurisdiction over the property. Seizure without process may be  
12 made if:

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

17 (2) the property subject to seizure has been the subject  
18 of a proper judgment in favor of the Commonwealth in a  
19 criminal injunction or forfeiture proceeding under this  
20 chapter;

21 (3) there is probable cause to believe that the property  
22 is dangerous to health or safety; or

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

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

29 (e) Custody of property.--Property taken or detained under  
30 this section shall not be subject to replevin but is deemed to

1 be in the custody of the law enforcement authority, subject only  
2 to the orders and decrees of the court of common pleas having  
3 jurisdiction over the forfeiture proceedings and of the district  
4 attorney or the Office of Attorney General. When property is  
5 seized under this chapter, the law enforcement authority shall  
6 place the property under seal and either:

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

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

12 (f) Use of property held in custody.--

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

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

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

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

23 (i) Retain the property for official use.

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

1 with subsections (g) and (h).

2 (g) Use of cash, property or proceeds of property.--Cash or  
3 proceeds of forfeited property transferred to the custody of the  
4 district attorney under subsection (f) shall be placed in the  
5 operating fund of the county in which the district attorney is  
6 elected. The appropriate county authority shall immediately  
7 release from the operating fund, without restriction, a like  
8 amount for the use of the district attorney in enforcing the  
9 criminal laws of this Commonwealth. The entity having budgetary  
10 control shall not anticipate future forfeitures or proceeds from  
11 such forfeitures in adoption and approval of the budget for the  
12 district attorney.

13 (h) Distribution of property among law enforcement  
14 authorities.--If both State and municipal law enforcement  
15 authorities were substantially involved in effecting the  
16 seizure, the court having jurisdiction over the forfeiture  
17 proceedings shall equitably distribute the property between the  
18 district attorney and the Office of Attorney General.

19 (i) Annual audit of forfeited property.--A county shall  
20 provide, through the controller, board of auditors or other  
21 appropriate auditor and the district attorney, an annual audit  
22 of all forfeited property and proceeds obtained under this  
23 section. The audit shall not be made public but shall be  
24 submitted to the Office of Attorney General. The county shall  
25 report all forfeited property and proceeds obtained under this  
26 section and the disposition thereof to the Office of Attorney  
27 General by September 30 of each year.

28 (j) Annual report; confidential information regarding  
29 property.--The Office of Attorney General shall annually submit  
30 a report to the Appropriations Committee of the Senate, the



1 Appropriations Committee of the House of Representatives, the  
2 Judiciary Committee of the Senate and the Judiciary Committee of  
3 the House of Representatives specifying the forfeited property  
4 or proceeds thereof obtained under this section. The report  
5 shall give an account of all proceeds derived from the sale of  
6 forfeited property and the use made of unsold forfeited  
7 property. The Office of Attorney General shall adopt procedures  
8 and guidelines governing the release of information by the  
9 district attorney to protect the confidentiality of forfeited  
10 property or proceeds used in ongoing enforcement activities.

11 (k) Proceeds and appropriations.--The proceeds or future  
12 proceeds from forfeited property under this chapter shall be in  
13 addition to any appropriation made to the Office of Attorney  
14 General.] (A.1) CONDUCT OF FORFEITURE.--Forfeiture of property <--  
15 shall be authorized for violation of this chapter and conducted  
16 in accordance with 42 Pa.C.S. Ch. 58 (relating to forfeiture of  
17 assets).

18 Section 5. Section 7708 of Title 18 is repealed:  
19 [§ 7708. Procedure with respect to seized property subject to  
20 liens and rights of lienholders.

21 (a) General procedure.--The proceedings for the forfeiture  
22 or condemnation of property, the sale of which is provided for  
23 under this chapter, shall be in rem in which the Commonwealth  
24 shall be the plaintiff and the property the defendant. The  
25 Pennsylvania Rules of Civil Procedure shall apply to all  
26 forfeiture proceedings brought under this chapter. A petition  
27 shall be filed in the court of common pleas of the judicial  
28 district where the property is located, verified by oath or  
29 affirmation of an officer or citizen, containing the following:

30 (1) A description of the property seized.

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

2 (3) The owner, if known.

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

4 (5) An allegation that the property is subject to  
5 forfeiture under section 7707 (relating to loss of property  
6 rights to Commonwealth) and an averment of material facts  
7 upon which the forfeiture action is based.

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

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

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

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

27 (c) Substitute notice.--

28 (1) If the owner of the property is unknown or there was  
29 no person in possession of the property when seized or if the  
30 owner or such person or persons in possession at the time of

1 the seizure cannot be personally served or located within the  
2 jurisdiction of the court, notice of the petition shall be  
3 given by the Commonwealth through an advertisement in only  
4 one newspaper of general circulation published in the county  
5 where the property was seized once a week for two successive  
6 weeks. No other advertisement of any sort shall be necessary,  
7 any other law to the contrary notwithstanding.

8 (2) The notice shall:

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

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

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

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

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

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

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

28 (e) Notice automatically waived.--

29 (1) The notice provisions of this section are  
30 automatically waived when the owner, without good cause,

1 fails to appear in court in response to a subpoena on the  
2 underlying criminal charges.

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

6 (f) Preservation of the property subject for forfeiture.--

7 (1) Upon application of the Commonwealth, the court may  
8 enter a restraining order or injunction, require the  
9 execution of a satisfactory performance bond or take any  
10 other action to preserve the availability of property  
11 described in section 7707 for forfeiture under this section  
12 either:

13 (i) upon the filing of an information or an  
14 indictment charging a violation of this chapter for which  
15 criminal forfeiture may be ordered under this chapter and  
16 alleging that the property with respect to which the  
17 order is sought would be subject to forfeiture; or

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

22 (A) There is a substantial probability that the  
23 Commonwealth will prevail on the issue of forfeiture  
24 and that failure to enter the order will result in  
25 the property being destroyed, removed from the  
26 jurisdiction of the court or otherwise made  
27 unavailable for forfeiture.

28 (B) The need to preserve the availability of the  
29 property through the entry of the requested order  
30 outweighs the hardship on any party against whom the

1 order is to be entered.

2 (2) An order entered under this subsection shall be  
3 effective for not more than 90 days unless extended by the  
4 court for good cause shown or unless an indictment or  
5 information described in paragraph (1)(i) has been filed.

6 (g) Temporary restraining order.--

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

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

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

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

19 (i) extended for good cause shown; or

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

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

25 (h) Hearing regarding property; rules of evidence.--The  
26 court may receive and consider at a hearing held under  
27 subsection (f) or (g) evidence and information that would be  
28 inadmissible under the rules of evidence.

29 (i) Hearing time set.--Upon the filing of a claim for the  
30 property setting forth a right of possession, the case shall be

1 deemed at issue, and a time shall be fixed for the hearing.

2 (j) Owner's burden of proof.--At the time of the hearing, if  
3 the Commonwealth produces evidence that the property in question  
4 was unlawfully used, possessed or otherwise subject to  
5 forfeiture under section 7706 (relating to presumptions), the  
6 burden shall be upon the claimant to show that:

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

10 (2) The claimant lawfully acquired the property.

11 (3) It was not unlawfully used or possessed by the  
12 claimant. In the event that it shall appear that the property  
13 was unlawfully used or possessed by a person other than the  
14 claimant, then the claimant must show that the unlawful use  
15 or possession was without the claimant's knowledge or  
16 consent. Such absence of knowledge or consent must be  
17 reasonable under the circumstances presented.

18 (k) Court-ordered release of property.--

19 (1) If a person claiming the ownership of or right of  
20 possession to or claiming to be the holder of a chattel  
21 mortgage or contract of conditional sale upon the property,  
22 the disposition of which is provided for in this section,  
23 prior to the sale presents a petition to the court alleging  
24 over the property lawful ownership, right of possession, a  
25 lien or reservation of title and if, upon public hearing, due  
26 notice of which having been given to the Office of Attorney  
27 General or the district attorney, the claimant proves by  
28 competent evidence to the satisfaction of the court:

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

1 (ii) if it appears that the property was unlawfully  
2 used by a person other than the claimant, that the  
3 unlawful use was without the claimant's knowledge or  
4 consent,  
5 then the court may order the property returned or delivered  
6 to the claimant.

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

11 Section 6. Section 927 of Title 30 is amended to read:

12 § 927. Forfeiture of fish and devices.

13 (a) General rule.--A person convicted of an offense under  
14 this title shall forfeit any fish seized under section 901(6)  
15 (relating to powers and duties of waterways [patrolmen]  
16 conservation officers and deputies) and any device confiscated  
17 under this title. Forfeitures shall be conducted in accordance  
18 with 42 Pa.C.S. Ch. 58 (relating to forfeiture of assets).

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

23 Section 7. Title 42 is amended by adding a chapter to read:

24 CHAPTER 58

25 FORFEITURE OF ASSETS

26 Sec.

27 5801. Scope of chapter.

28 5802. Controlled substances forfeiture.

29 5803. Asset forfeiture.

30 5804. (Reserved).

1 5805. Forfeiture procedure.

2 5806. Motion for return of property.

3 5806.1. Procedure following acquittal.

4 5806.2. Representation.

5 5807. Restrictions on use.

6 5807.1. Prohibition on adoptive seizures.

7 5808. Exceptions.

8 § 5801. Scope of chapter.

9 This chapter relates to asset forfeiture.

10 § 5802. Controlled substances forfeiture.

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

13 (1) All drug paraphernalia, controlled substances or  
14 other drugs which have been manufactured, distributed,  
15 dispensed or acquired in violation of the act of April 14,  
16 1972 (P.L.233, No.64), known as The Controlled Substance,  
17 Drug, Device and Cosmetic Act.

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

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

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

30 (i) no bona fide security interest retained or



1 acquired under 13 Pa.C.S. (relating to commercial code)  
2 by any merchant dealing in new or used aircraft, vehicles  
3 or vessels, or retained or acquired by any licensed or  
4 regulated finance company, bank or lending institution,  
5 or by any other business regularly engaged in the  
6 financing or lending on the security of such aircraft,  
7 vehicles or vessels, shall be subject to forfeiture or  
8 impairment; and

9 ~~(ii) in order to establish the requisite nexus at a~~ <--  
10 ~~forfeiture hearing under this section, the Commonwealth~~  
11 ~~must establish a violation of The Controlled Substance,~~  
12 ~~Drug, Device and Cosmetic Act other than a violation~~  
13 ~~under section 13(a)(31) of The Controlled Substance,~~  
14 ~~Drug, Device and Cosmetic Act. NO CONVEYANCE SHALL BE~~ <--  
15 ~~FORFEITED UNDER THIS SECTION IN VIOLATION OF SECTION~~  
16 ~~13(A)(31) OF THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND~~  
17 ~~COSMETIC ACT.~~

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

22 (6) (i) All of the following:

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

29 (B) Money, negotiable instruments, securities or  
30 other things of value used or intended to be used to

1 facilitate any violation of The Controlled Substance,  
2 Drug, Device and Cosmetic Act.

3 (C) Real property used or intended to be used to  
4 facilitate any violation of The Controlled Substance,  
5 Drug, Device and Cosmetic Act OTHER THAN A VIOLATION <--  
6 OF SECTION 13(A)(16) OR (31) OF THE CONTROLLED  
7 SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT, including  
8 structures or other improvements thereon, and  
9 including any right, title and interest in the whole  
10 or any lot or tract of land and any appurtenances or  
11 improvements, which is used or intended to be used in  
12 any manner or part to commit or to facilitate the  
13 commission of a violation of The Controlled  
14 Substance, Drug, Device and Cosmetic Act, and things  
15 growing on, affixed to and found in the land. <--  
16 ~~order to establish the requisite nexus at a~~  
17 ~~forfeiture hearing under The Controlled Substance,~~  
18 ~~Drug, Device and Cosmetic Act, the Commonwealth must~~  
19 ~~establish a violation of The Controlled Substance,~~  
20 ~~Drug, Device and Cosmetic Act other than a violation~~  
21 ~~under section 13(a)(16) and (31) of The Controlled~~  
22 ~~Substance, Drug, Device and Cosmetic Act.~~

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

30 (iii) No valid lien or encumbrance on real property

1 shall be subject to forfeiture or impairment under this  
2 paragraph. A lien which is fraudulent or intended to  
3 avoid forfeiture under this section shall be invalid.

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

17 § 5803. Asset forfeiture.

18 (a) Applicability.--This section shall apply to each case  
19 for which forfeiture is expressly authorized as a sanction.

20 (b) Process and seizure of money and personal property.--  
21 Property subject to forfeiture may be seized by a law  
22 enforcement authority if:

23 (1) The seizure is incident to an arrest or a search  
24 under a search warrant or inspection under an administrative  
25 inspection warrant and there is reason to believe the  
26 property is subject to forfeiture.

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

1           (3) There is probable cause to believe that the property  
2 is dangerous to health and safety and exigencies are likely  
3 to result in the destruction or removal of the property or in  
4 the property otherwise being made unavailable for forfeiture.

5           (4) There is probable cause to believe that the property  
6 has been used or is intended to be used in violation of the  
7 act of April 14, 1972 (P.L.233, No.64), known as The  
8 Controlled Substance, Drug, Device and Cosmetic Act, or  
9 another offense for which forfeiture is expressly authorized  
10 as a sanction.

11           (5) There is a warrant issued by a court of common pleas  
12 with appropriate jurisdiction.

13           (6) There is probable cause to believe that the property  
14 is subject to forfeiture and exigencies are likely to result  
15 in the destruction or removal of the property.

16           (b.1) Process and seizure of real property.--Real property  
17 subject to forfeiture under this chapter may be seized by the  
18 law enforcement authority upon process issued by a court of  
19 common pleas having jurisdiction over the property. Except as  
20 provided under this section, real property subject to forfeiture  
21 shall not be seized before the entry of an order of forfeiture  
22 and the owners or occupants of the real property shall not be  
23 evicted from or otherwise deprived of the use and enjoyment of  
24 real property that is the subject of a pending forfeiture  
25 action. The following shall apply:

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

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

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

4           (ii) the court:

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

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

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

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

30           (c) Issuance of process.--If seizure without process occurs

1 under subsection (b) or (b.1), proceedings for the issuance of  
2 process shall be instituted as soon as feasible.

3 (d) Custody of property.--Property taken or detained under  
4 this section shall not be subject to replevin and is deemed to  
5 be in the custody of the law enforcement authority subject only  
6 to the orders and decrees of the court of common pleas having  
7 jurisdiction over the forfeiture proceedings of the district  
8 attorney or the Attorney General. When property is seized under  
9 this chapter, the law enforcement authority shall place the  
10 property in a secure area or facility and either:

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

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

17 (e) Receipt.--When property is seized, the law enforcement  
18 authority shall provide a receipt to the person in possession of  
19 the property or, in the absence of a person, leave a receipt in  
20 the place where the property was found, if reasonably possible.  
21 The receipt shall provide notice of the right of interest  
22 holders to seek the return of the seized property under this  
23 chapter. This section shall not apply if law enforcement is  
24 otherwise required to provide a receipt for the property.

25 (f) Use of property held in custody.--If property is  
26 forfeited under this chapter, the property shall be transferred  
27 to the custody of the district attorney, if the law enforcement  
28 authority seizing the property has local or county jurisdiction,  
29 or the Attorney General, if the law enforcement authority  
30 seizing the property has Statewide jurisdiction. The district

1 attorney or the Attorney General, where appropriate, may:

2 (1) retain the property for official use; or

3 (2) sell any forfeited property which is not required to

4 be destroyed by law and which is not harmful to the public,

5 except that the proceeds from the sale shall be used to pay

6 all proper expenses of the proceedings for forfeiture and

7 sale, including expenses of seizure, maintenance of custody,

8 advertising and court costs. The balance of the proceeds

9 shall be used and distributed in accordance with subsections

10 (g) and (h).

11 (f.1) Prohibited sales.--Sale of forfeited property to an

12 employee of the district attorney or Attorney General, an

13 individual related to an employee by blood or marriage or an

14 employee of another law enforcement authority is prohibited.

15 (g) Use of cash or proceeds of property.--Except as provided

16 under section 5807 (relating to restrictions on use), cash or

17 proceeds of forfeited property transferred to the custody of the

18 district attorney under subsection (f) shall be placed in the

19 operating fund of the county in which the district attorney is

20 elected. The appropriate county authority shall immediately

21 release from the operating fund, without restriction, a like

22 amount for the use of the district attorney for the enforcement

23 of or prevention of a violation of the provisions of The

24 Controlled Substance, Drug, Device and Cosmetic Act. The funds

25 shall be maintained in an account separate from other revenues

26 of the office. The entity having budgetary control shall not

27 anticipate future forfeitures or proceeds from future

28 forfeitures in adoption and approval of the budget for the

29 district attorney.

30 (h) Distribution of property among law enforcement

1 authorities.--If both State and municipal law enforcement  
2 authorities were substantially involved in effecting the  
3 seizure, the court having jurisdiction over the forfeiture  
4 proceedings shall equitably distribute the property between the  
5 district attorney and the Attorney General.

6 (i) Authorization to utilize property.--Except as provided  
7 under section 5807, the district attorney and the Attorney  
8 General shall utilize forfeited property or proceeds from  
9 forfeited property for the enforcement of or prevention of a  
10 violation of the provisions of The Controlled Substance, Drug,  
11 Device and Cosmetic Act. In appropriate cases, the district  
12 attorney and the Attorney General may designate proceeds from  
13 forfeited property to be utilized by community-based drug and  
14 crime-fighting programs and for relocation and protection of  
15 witnesses in criminal cases. Forfeited real property may be  
16 transferred to a nonprofit organization to alleviate blight  
17 resulting from violations of The Controlled Substance, Drug,  
18 Device and Cosmetic Act.

19 (j) Annual audit of forfeited property.--Every county in  
20 this Commonwealth shall provide, through the controller, board  
21 of auditors or other appropriate auditor and the district  
22 attorney, an annual audit of all forfeited property and proceeds  
23 obtained under this section. The audit shall not be made public  
24 but shall be submitted to the Office of Attorney General. By  
25 September 30 of each year, the county shall report all forfeited  
26 property and proceeds obtained under this section and the  
27 disposition of the property during the preceding year to the  
28 Attorney General. The Attorney General and each district  
29 attorney shall maintain and create appropriate records to  
30 account for the property forfeited in a fiscal year and the use



1 made of the property forfeited. Each audit shall include:

2 (1) The type of property forfeited.

3 (2) The approximate value.

4 (3) The alleged criminal behavior with which the  
5 property is allegedly associated.

6 (4) The disposition or use of property received.

7 (5) Whether the forfeiture was related to a criminal  
8 case.

9 (k) Annual report and confidential information.--The

10 Attorney General shall annually submit a report to the

11 Appropriations Committee and Judiciary Committee of the Senate

12 and to the Appropriations Committee and Judiciary Committee of

13 the House of Representatives specifying the forfeited property

14 or proceeds of forfeited property obtained under this section

15 during the fiscal year beginning July 1. The report shall give <--

16 an accounting of all proceeds derived from the sale of forfeited

17 property and the use made of unsold forfeited property. INCLUDE <--

18 ALL INFORMATION REQUIRED UNDER SUBSECTION (J). The Attorney

19 General shall adopt procedures and guidelines, WHICH SHALL BE <--

20 PUBLIC, governing the release of information by the district

21 attorney to protect the confidentiality of forfeited property or

22 proceeds used in ongoing drug enforcement activities, which

23 shall be public information.

24 (k.1) Reporting.--By November 30 of each year, the Office of

25 Attorney General shall notify the Appropriations Committee and

26 Judiciary Committee of the Senate and the Appropriations

27 Committee and Judiciary Committee of the House of

28 Representatives of any county which has not submitted an audit

29 and complied with the requirements in subsection ~~(k)~~ (J). <--

30 (l) Proceeds and appropriations.--The proceeds or future

1 proceeds from forfeited property under this chapter shall be in  
2 addition to any appropriation made to the Office of Attorney  
3 General. The Attorney General shall maintain proceeds from  
4 property forfeited to the Office of Attorney General in an  
5 account separate from any other account maintained by the Office  
6 of Attorney General.

7 § 5804. (Reserved).

8 § 5805. Forfeiture procedure.

9 (a) General procedure.--The proceedings for the forfeiture  
10 or condemnation of property, the sale of which is provided for  
11 in this chapter, shall be in rem, in which the Commonwealth  
12 shall be the plaintiff and the property the defendant. A  
13 forfeiture petition signed by the Attorney General, deputy  
14 attorney general, district attorney or assistant district  
15 attorney shall be filed in the court of common pleas of the  
16 judicial district where the property is seized or located,  
17 verified by oath or affirmation of an officer. If criminal  
18 charges have been filed and a prosecution is pending, the  
19 petition shall be filed in the same judicial district as the  
20 criminal charges in all instances except those involving real  
21 property. Each petition relating to real property shall be filed  
22 in the jurisdiction where the real property is located.

23 (1) Each forfeiture petition shall contain the  
24 following:

25 (i) A description of the property actually seized or  
26 constructively seized, including, but not limited to, if  
27 known, the address of any real property, the exact dollar  
28 amount of any ~~money,~~ UNITED STATES CURRENCY, OR THE <--  
29 APPROXIMATE VALUE OF ANY negotiable instrument or  
30 ~~securities~~ SECURITY and the make, model, year and license <--

1 plate number of any vehicle.

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

3 (iii) The owner, if known.

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

5 (v) An allegation that the property is subject to  
6 forfeiture and an averment of material facts on which the <--  
7 forfeiture action is based SUPPORTING THE FORFEITURE <--  
8 ACTION.

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

13 (2) The following shall apply:

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

20 (ii) The following shall apply:

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

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

30 (3) After the answer is filed, the parties shall be

1 permitted to conduct discovery.

2 (b) Notice to property owners.--

3 (1) A copy of the forfeiture petition required under  
4 subsection (a) shall be served personally or by certified  
5 mail on the owner, if known, and on each person in possession  
6 at the time of the seizure, if known. The copy shall have  
7 endorsed a notice, as follows:

8 To the claimant of within described property:

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

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

19 (c) Substitute notice.--

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

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

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

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

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

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

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

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

18       (d.1) Proof of notice.--The Commonwealth shall file proof of  
19 notice with the court. ~~A forfeiture order shall not be final~~ <--

20 ~~until the court finds that proof exists that satisfies~~

21 FORFEITURE SHALL NOT BE ORDERED IF THE COURT FINDS THAT PROOF <--

22 DOES NOT EXIST THAT the notice requirements contained under

23 subsections (b), (c) and (d) HAVE BEEN MET. <--

24       (e) Notice automatically waived.--The notice provisions of  
25 this section shall be automatically waived if the owner, without

26 good cause, fails to appear in court in response to a subpoena  
27 and a bench warrant is issued on the underlying criminal

28 charges. If good cause has not been demonstrated, the

29 Commonwealth may move for default judgment.

30       (f) Release of seized property.--

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

3           (i) the claimant has a possessory interest in the  
4 property;

5           (ii) the claimant has sufficient ties to the  
6 community to provide assurance that the property will be  
7 available at the time of the trial;

8           (iii) the continued possession by the Commonwealth  
9 pending the final disposition of forfeiture proceedings  
10 will cause substantial hardship to the claimant, such as  
11 preventing the functioning of a legitimate business,  
12 preventing the claimant from working or leaving the  
13 claimant homeless;

14           (iv) the claimant's likely hardship from the  
15 continued possession by the Commonwealth of the seized  
16 property outweighs the risk that the property will be  
17 destroyed, damaged, lost, concealed or transferred if the  
18 property is returned to the claimant during the pendency  
19 of the forfeiture proceeding; and

20           (v) none of the conditions under paragraph (6)  
21 apply.

22           (2) The following shall apply:

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

30           (ii) The motion described in this subsection shall

1 set forth the basis on which the requirements of  
2 paragraph (1) have been met.

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

10 (4) The following shall apply:

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

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

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

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

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

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

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

1                   (B) fixing a bond as provided under paragraph  
2                   (5.1); and

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

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

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

11                   (5.1) For the purposes of paragraph (5)(i)(B) and (iii),  
12                   the following shall apply to the fixing of a bond sufficient  
13                   to secure the value of the ~~property~~ CURRENCY, MONETARY <--  
14                   INSTRUMENTS OR ELECTRONIC FUNDS:

15                   (i) If the value of the ~~property~~ CURRENCY, MONETARY <--  
16                   INSTRUMENTS OR ELECTRONIC FUNDS is less than \$2,000, the  
17                   court may order the fixing of a bond.

18                   (ii) If the value of the ~~property~~ CURRENCY, MONETARY <--  
19                   INSTRUMENTS OR ELECTRONIC FUNDS is at least \$2,000, but  
20                   less than \$5,000, the court may order the fixing of a  
21                   bond. If the court finds that the claimant has not  
22                   demonstrated his or her ability to ensure the  
23                   availability of the ~~cash~~ CURRENCY at the time of the <--  
24                   forfeiture trial, the court shall order the fixing of a  
25                   bond.

26                   (iii) If the value of the ~~property~~ CURRENCY, <--  
27                   MONETARY INSTRUMENTS OR ELECTRONIC FUNDS is \$5,000 or  
28                   more, the court shall order the fixing of a bond.

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



1           (i) is contraband;

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

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

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

8           (G) (RESERVED).

<--

9           (H) (RESERVED).

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

15          (j) Burden of proof.--

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

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

22           (i) the claimant is the owner of the property or the  
23           holder of a chattel mortgage or contract of conditional  
24           sale on the property OR HOLDS SOME OTHER INTEREST IN THE <--  
25           PROPERTY; and

26           (ii) the claimant lawfully acquired the property.

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

1 forfeiture.

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

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

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

13 (k) Proportionality.--

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

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

22 (L) DISCLAIMED PROPERTY.--A DEFENDANT IN A CRIMINAL CASE WHO <--  
23 DISCLAIMS OWNERSHIP OF PROPERTY DURING THE CRIMINAL CASE MAY NOT  
24 CLAIM OWNERSHIP DURING A SUBSEQUENT FORFEITURE PROCEEDING.

25 § 5806. Motion for return of property.

26 (a) Motion.--The following shall apply:

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

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

3           (3) Upon proof of service, the court shall schedule a  
4 prompt hearing on the motion and shall notify the  
5 Commonwealth. A hearing on the motion shall, to the extent  
6 practicable and consistent with the interests of justice, be  
7 held within 30 days of the filing of the motion.

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

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

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

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

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

23           (i) A description of the property seized.

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

26           (iii) The owner, if known.

27           (iv) The person in possession, if known.

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

29           (i) return of the petitioner's property;

30           (ii) reimbursement for the petitioner's legal

- 1 interest in the property;  
2 (iii) severance of the petitioner's property from  
3 the forfeited property;  
4 (iv) any relief the court deems appropriate and  
5 just; or  
6 (v) any relief the court deems appropriate.

7 § 5806.1. Procedure following acquittal.

8 (a) Presumption against forfeiture.--If the owner of the  
9 property is acquitted of all crimes which authorize forfeiture,  
10 there shall be a rebuttable presumption that the property was  
11 lawfully used or possessed by the claimant.

12 (b) Automatic motion.--If the owner of the property is  
13 acquitted of all crimes which authorize forfeiture, the owner  
14 shall be entitled to a hearing under section 5806 (relating to  
15 motion for return of property).

16 (c) Applicability.--If the forfeiture petition relating to  
17 the property at issue has already been litigated, this section  
18 shall not apply.

19 (d) Definitions.--As used in this section, the term  
20 "acquittal" shall not include acceptance of Accelerated  
21 Rehabilitative Disposition or any other form of preliminary  
22 disposition, including plea agreements.

23 § 5806.2. Representation.

24 Notwithstanding the act of December 2, 1968 (P.L.1144,  
25 No.358), known as the Public Defender Act, the following shall  
26 apply:

27 (1) If a person with standing to contest the forfeiture  
28 of property in a civil forfeiture proceeding under this  
29 chapter is financially unable to obtain representation by an  
30 attorney and the property subject to forfeiture is real

1 property, the court, at the request of the person, shall  
2 ensure that the person is represented by an attorney with  
3 respect to the claim.

4 (2) If a person who has not been charged in a related  
5 criminal case and who has standing to contest the forfeiture  
6 of property in a civil forfeiture proceeding under this  
7 chapter is financially unable to obtain representation by an  
8 attorney, the court may authorize an attorney to represent  
9 that person with respect to the claim.

10 (3) In determining whether to authorize an attorney to  
11 represent a person under this section, the court shall take  
12 into account the following factors:

13 (i) the person's standing to contest the forfeiture;

14 and

15 (ii) whether the claim appears to be made in good  
16 faith.

17 § 5807. Restrictions on use.

18 The audit required under section 5803(j) (relating to asset  
19 forfeiture) shall include a copy of each Equitable Sharing  
20 Agreement and Certification form filed with the United States  
21 Department of Justice within the last 12 months. Property, money  
22 or other things of value received by a State law enforcement  
23 authority under any of the following LAWS may not be used for <--  
24 contributions to political campaigns, expenses related to  
25 judicial trainings or the purchase of alcoholic beverages:

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

30 (2) Except for section 5802 (relating to controlled

1 substances forfeiture), a forfeiture authorized under 18  
2 Pa.C.S. (relating to crimes and offenses) or 4 Pa.C.S.  
3 (relating to amusements).

4 § 5807.1. Prohibition on adoptive seizures.

5 State law enforcement authorities shall not refer seized  
6 property to a Federal agency seeking the adoption by the Federal  
7 agency of the seized property. Nothing under this chapter shall  
8 prohibit the Federal Government or any of its agencies from  
9 seeking Federal forfeiture OF THE SAME PROPERTY UNDER ANY <--  
10 FEDERAL FORFEITURE LAW.

11 § 5808. Exceptions.

12 (a) Forfeitures exempted.--Forfeitures of property shall be  
13 conducted in accordance with this chapter, except for  
14 forfeitures authorized by:

15 (1) Section 3 of the act of July 8, 1978 (P.L.752,  
16 No.140), known as the Public Employee Pension Forfeiture Act.

17 (2) Section 6 of the act of April 6, 1980 (P.L.102,  
18 No.39), referred to as the Agricultural Land Acquisition by  
19 Aliens Law.

20 (3) Sections 207, 211 and 505-A of the act of December  
21 7, 1982 (P.L.784, No.225), known as the Dog Law.

22 (4) 18 Pa.C.S. § 3021 (relating to asset forfeiture);

23 (5) 18 Pa.C.S. § 5511 (relating to cruelty to animals);

24 (6) 18 Pa.C.S. § 6110.1 (relating to possession of  
25 firearm by minor);

26 (7) 18 Pa.C.S. § 6321 (relating to transmission of  
27 sexually explicit images by minor);

28 (8) 27 Pa.C.S. § 6208 (relating to penalties);

29 (9) 37 Pa.C.S. § 511 (relating to criminal penalties);

30 (10) 75 Pa.C.S. § 9405 (relating to forfeitures; process

1 and procedures).

2 (b) Contraband.--Nothing in this chapter shall be construed  
3 to apply to the forfeiture of the following:

4 (1) Items bearing a counterfeit mark under 18 Pa.C.S. §  
5 4119 (relating to trademark counterfeiting).

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

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

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

16 (c) Abandoned and unclaimed property.--This chapter shall  
17 not apply to abandoned or unclaimed property under Article  
18 XIII.1 of the act of April 9, 1929 (P.L.343, No.176), known as  
19 The Fiscal Code. ~~A defendant in a criminal case who disclaims~~ <--  
20 ~~ownership of property during the criminal case may not claim~~  
21 ~~ownership during a subsequent forfeiture proceeding.~~

22 Section 8. Section 6801(a) and (b) of Title 42 are amended  
23 to read:

24 § 6801. Controlled substances forfeiture.

25 [(a) Forfeitures generally.--The following shall be subject  
26 to forfeiture to the Commonwealth and no property right shall  
27 exist in them:

28 (1) All drug paraphernalia, controlled substances or  
29 other drugs which have been manufactured, distributed,  
30 dispensed or acquired in violation of the act of April 14,

1 1972 (P.L.233, No.64), known as The Controlled Substance,  
2 Drug, Device and Cosmetic Act.

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

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

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

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

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

28 (iii) no bona fide security interest retained or  
29 acquired under 13 Pa.C.S. (relating to commercial code)  
30 by any merchant dealing in new or used aircraft, vehicles



1 or vessels, or retained or acquired by any licensed or  
2 regulated finance company, bank or lending institution,  
3 or by any other business regularly engaged in the  
4 financing of, or lending on the security of, such  
5 aircraft, vehicles or vessels, shall be subject to  
6 forfeiture or impairment; and

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

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

14 (6) (i) All of the following:

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

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

25 (C) Real property used or intended to be used to  
26 facilitate any violation of The Controlled Substance,  
27 Drug, Device and Cosmetic Act, including structures  
28 or other improvements thereon, and including any  
29 right, title and interest in the whole or any lot or  
30 tract of land and any appurtenances or improvements,

1           which is used, or intended to be used, in any manner  
2           or part, to commit, or to facilitate the commission  
3           of, a violation of The Controlled Substance, Drug,  
4           Device and Cosmetic Act, and things growing on,  
5           affixed to and found in the land.

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

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

21          (7) Any firearms, including, but not limited to, rifles,  
22          shotguns, pistols, revolvers, machine guns, zip guns or any  
23          type of prohibited offensive weapon, as that term is defined  
24          in 18 Pa.C.S. (relating to crimes and offenses), which are  
25          used or intended for use to facilitate a violation of The  
26          Controlled Substance, Drug, Device and Cosmetic Act. Such  
27          operable firearms as are found in close proximity to  
28          illegally possessed controlled substances shall be rebuttably  
29          presumed to be used or intended for use to facilitate a  
30          violation of The Controlled Substance, Drug, Device and

1 Cosmetic Act. All weapons forfeited under this section shall  
2 be immediately destroyed by the receiving law enforcement  
3 agency.

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

9 (1) the seizure is incident to an arrest or a search  
10 under a search warrant or inspection under an administrative  
11 inspection warrant;

12 (2) the property subject to seizure has been the subject  
13 of a prior judgment in favor of the Commonwealth in a  
14 criminal injunction or forfeiture proceeding under this  
15 chapter;

16 (3) there is probable cause to believe that the property  
17 is dangerous to health or safety; or

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

21 \* \* \*

22 Section 8.1. Sections 6801.1 and 6802 of Title 42 are  
23 repealed:

24 [§ 6801.1. Terrorism forfeiture.

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

28 (1) All assets, foreign or domestic:

29 (i) Of an individual, entity or organization engaged  
30 in planning or perpetrating an act in this Commonwealth

1 which violates 18 Pa.C.S. § 2717 (relating to terrorism)  
2 and all assets, foreign or domestic, affording a person a  
3 source of influence over such an entity or organization.

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

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

11 (2) All assets within this Commonwealth:

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

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

18 (iii) Derived from, involved in or used or intended  
19 to be used to commit an act which violates 18 Pa.C.S. §  
20 2717.

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

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

29 (2) The property subject to seizure has been the subject  
30 of a prior judgment in favor of the Commonwealth in a

1 criminal injunction or forfeiture proceeding under this  
2 chapter.

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

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

8 (c) Seizure without process.--In the event seizure is made  
9 without process, proceedings for the issuance of process shall  
10 be instituted forthwith.

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

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

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

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

1 (1) Retain the property for official use.

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

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

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

26 (h) Authorization to utilize property.--The district  
27 attorney and the Attorney General shall utilize forfeited  
28 property or proceeds thereof for the purpose of enforcing the  
29 provisions of 18 Pa.C.S. § 2717, section 6802 (relating to  
30 procedure with respect to seized property subject to liens and

1 rights of lienholders) and this section. In appropriate cases,  
2 the district attorney and the Attorney General may designate  
3 proceeds from forfeited property to be utilized for  
4 antiterrorism public safety programs and for relocation and  
5 protection of witnesses in criminal cases.

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

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

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

1 General.

2 § 6802. Procedure with respect to seized property subject to  
3 liens and rights of lienholders.

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

12 (1) A description of the property seized.

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

14 (3) The owner, if known.

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

16 (5) An allegation that the property is subject to  
17 forfeiture pursuant to section 6801(a) (relating to  
18 controlled substances forfeiture) or 6801.1(a) (relating to  
19 terrorism forfeiture) and an averment of material facts upon  
20 which the forfeiture action is based.

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

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

30 To the Claimant of within Described Property:



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

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

10 (c) Substitute notice.--If the owner of the property is  
11 unknown or there was no person in possession of the property  
12 when seized or if the owner or such person or persons in  
13 possession at the time of the seizure cannot be personally  
14 served or located within the jurisdiction of the court, notice  
15 of the petition shall be given by the Commonwealth through an  
16 advertisement in only one newspaper of general circulation  
17 published in the county where the property shall have been  
18 seized, once a week for two successive weeks. No other  
19 advertisement of any sort shall be necessary, any other law to  
20 the contrary notwithstanding. The notice shall contain a  
21 statement of the seizure of the property with a description of  
22 the property and the place and date of seizure and shall direct  
23 any claimants to the property to file a claim on or before a  
24 date given in the notice, which date shall not be less than 30  
25 days from the date of the first publication. If no claims are  
26 filed within 30 days of publication, the property shall  
27 summarily forfeit to the Commonwealth.

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

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

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

5 (3) a copy of the petition is left at the last known  
6 address.

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

13 (f) Preservation of the property subject for forfeiture.--  
14 Upon application of the Commonwealth, the court may enter a  
15 restraining order or injunction, require the execution of a  
16 satisfactory performance bond or take any other action to  
17 preserve the availability of property described in section  
18 6801(a) or 6801.1(a) for forfeiture under this section either:

19 (1) upon the filing of an information or an indictment  
20 charging an offense in this Commonwealth for which criminal  
21 forfeiture may be ordered under this chapter and alleging  
22 that the property with respect to which the order is sought  
23 would be subject to forfeiture; or

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

28 (i) there is a substantial probability that the  
29 Commonwealth will prevail on the issue of forfeiture and  
30 that failure to enter the order will result in the

1 property being destroyed, removed from the jurisdiction  
2 of the court or otherwise made unavailable for  
3 forfeiture; and

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

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

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

28 (h) Hearing regarding property; rules of evidence.--The  
29 court may receive and consider, at a hearing held pursuant to  
30 subsection (f) or (g), evidence and information that would be

1 inadmissible under the rules of evidence.

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

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

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

13 (2) That the claimant lawfully acquired the property.

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

21 (k) Court-ordered release of property.--If a person claiming  
22 the ownership of or right of possession to or claiming to be the  
23 holder of a chattel mortgage or contract of conditional sale  
24 upon the property, the disposition of which is provided for in  
25 this section, prior to the sale presents a petition to the court  
26 alleging over the property lawful ownership, right of  
27 possession, a lien or reservation of title and if, upon public  
28 hearing, due notice of which having been given to the Attorney  
29 General or the district attorney, the claimant shall prove by  
30 competent evidence to the satisfaction of the court that the

1 property was lawfully acquired, possessed and used by him or, it  
2 appearing that the property was unlawfully used by a person  
3 other than the claimant, that the unlawful use was without the  
4 claimant's knowledge or consent, then the court may order the  
5 property returned or delivered to the claimant. Such absence of  
6 knowledge or consent must be reasonable under the circumstances  
7 presented. Otherwise, it shall be retained for official use or  
8 sold in accordance with section 6801(e) or 6801.1(f).]

9 Section 9. Sections 4909(c), 9405(a), (b), (c)(1), (d), (i)  
10 and (j) and 9406 of Title 75 are amended to read:

11 § 4909. Transporting foodstuffs in vehicles used to transport  
12 waste.

13 \* \* \*

14 (c) Vehicle forfeiture.--Any vehicle or conveyance used in  
15 the commission of an offense under this section shall be deemed  
16 contraband and forfeited [to the Department of Environmental  
17 Resources. The provisions of law relating to the seizure,  
18 summary and judicial forfeiture, and condemnation of  
19 intoxicating liquor shall apply to seizures and forfeitures  
20 under this section. Proceeds from the sale of forfeited vehicles  
21 or conveyances shall be deposited in the Solid Waste Abatement  
22 Fund] in accordance with 42 Pa.C.S. Ch. 58 (relating to  
23 forfeiture of assets).

24 \* \* \*

25 § 9405. Forfeitures; process and procedures.

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

29 (1) Any liquid fuels or fuels produced in or imported  
30 into this Commonwealth by any distributor who does not

1 possess a valid liquid fuels tax permit or fuels permit as  
2 required by section 9003 (relating to liquid fuels and fuels  
3 permits; bond or deposit of securities), except liquid fuels  
4 or fuels imported in barrels, drums or similar containers  
5 with a capacity of not more than 55 gallons in each barrel,  
6 drum or container.

7 (2) All conveyances, including vehicles or vessels, used  
8 to transport liquid fuels or fuels as described in paragraph

9 (1) [except:

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

17 (ii) no bona fide security interest retained or  
18 acquired under Title 13 (relating to commercial code) by  
19 any merchant dealing in new or used vehicles or vessels,  
20 or retained or acquired by any licensed or regulated  
21 finance company, bank, lending institution or by any  
22 other business regularly engaged in the financing of or  
23 lending on the security of such vehicles or vessels,  
24 shall be subject to forfeiture or impairment.] Forfeiture  
25 of such conveyances shall be conducted in accordance with  
26 42 Pa.C.S. Ch. 58 (relating to forfeiture of assets).

27 (b) Method of seizure.--[Property] Liquid fuels or fuels  
28 subject to forfeiture under this section may be seized by the  
29 Department of Revenue upon process issued by any court of common  
30 pleas having jurisdiction over the property. Seizure without

1 process may be made if the seizure is incident to an inspection  
2 or arrest for a violation of this chapter or Chapter 90.

3 (c) Limit on return of [property] liquid fuels or fuels.--

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

9 \* \* \*

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

21 \* \* \*

22 (i) Standard of proof.--The claimant shall have the burden  
23 of proving that he is not subject to the provisions of this  
24 section, but the burden of proof shall be upon the Commonwealth  
25 to prove all other facts necessary for the forfeiture of the  
26 property. In the event that the Commonwealth has not met its  
27 burden by a preponderance of the evidence or the claimant has  
28 proved that he is not subject to the provisions of this section,  
29 the court shall order the property returned to the claimant;  
30 otherwise, the court shall order the property forfeited to the

1 Commonwealth. [In the case of a motor vehicle, vessel or  
2 conveyance, should the claimant prove to the satisfaction of the  
3 court that he is the registered owner of the motor vehicle,  
4 vessel or conveyance and that he did not know or have reason to  
5 know that it was being used to transport liquid fuels or fuels  
6 in violation of the provisions of section 9404 (relating to  
7 violations and penalties) or 9019 (relating to diesel fuel  
8 importers and transporters; prohibiting use of dyed diesel fuel  
9 on highways; violations and penalties), the court in its  
10 discretion may order the motor vehicle, vessel or conveyance  
11 returned to the claimant.

12 (j) Encumbered motor vehicle.--In the case of a motor  
13 vehicle, should the claimant prove that he holds a valid  
14 encumbrance upon such motor vehicle, notice of which encumbrance  
15 has been duly noted on the certificate of title to the motor  
16 vehicle in accordance with the provisions of Chapter 11  
17 (relating to certificate of title and security interests), the  
18 forfeiture shall be subject to such encumbrance as of the date  
19 of the seizure less prepaid or unearned interest. Before the  
20 motor vehicle may be sold, exchanged or otherwise transferred or  
21 retained for use by the Commonwealth, the outstanding amount of  
22 the encumbrance shall be paid to the claimant or possession of  
23 the motor vehicle shall be turned over to the claimant who shall  
24 expose the same to public sale and shall pay over to the  
25 Commonwealth any amount realized in excess of the outstanding  
26 amount of such encumbrance less the reasonable costs incurred by  
27 claimant in conducting such sale.]

28 § 9406. Disposition of fines and forfeitures.

29 All fines imposed under this chapter and the net proceeds  
30 received from the sale of forfeited [property] liquid fuels or



1 fuels shall be payable to the Commonwealth and credited to the  
2 Motor License Fund.

3 Section 10. Notwithstanding any other provision of law to  
4 the contrary, the following forfeitures shall be conducted in  
5 accordance with 42 Pa.C.S. Ch. 58:

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

12 (2) The seizure of property specified in sections 211(a)  
13 (3) and 601 of the act of April 12, 1951 (P.L.90, No.21),  
14 known as the Liquor Code.

15 (3) The forfeiture of property specified in section 1285  
16 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax  
17 Reform Code of 1971.

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

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

24 (6) The forfeiture of property specified in section 1 of  
25 the act of December 1, 2004 (P.L.1766, No.227), entitled "An  
26 act authorizing cities of the first class that have adopted a  
27 home rule charter to enforce ordinances, rules and  
28 regulations prohibiting dumping or disposal of waste, trash  
29 or debris."

30 Section 11. Repeals are as follows:

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

4           (2) Sections 602 and 603(a) and (b) of the act of April  
5 12, 1951 (P.L.90, No.21), known as the Liquor Code, are  
6 repealed to the extent of any inconsistency with this act.

7           (3) The following acts and parts of acts are repealed  
8 absolutely:

9           (i) Sections 2, 3, 4 and 5 of the act of July 3,  
10 1941 (P.L.263, No.121), entitled "An act providing for  
11 the forfeiture and condemnation of vehicles used to  
12 store, possess or transport narcotics or drugs, the  
13 possession or transportation of which is in violation of  
14 law."

15           (ii) Section 603(c) of the act of April 12, 1951  
16 (P.L.90, No.21), known as the Liquor Code.

17           (iii) Section 1285(f), (g), (h), (i), (j), (k), (l),  
18 (m) and (n) of the act of March 4, 1971 (P.L.6, No.2),  
19 known as the Tax Reform Code of 1971.

20 Section 12. This act shall take effect in 90 days.