

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 8 Session of 2017

INTRODUCED BY FOLMER, SCARNATI, LEACH, VULAKOVICH,
 RESCHENTHALER, WAGNER, LAUGHLIN, STEFANO, BREWSTER,
 BARTOLOTTA, BOSCOLA, MENSCH AND BROWNE, JANUARY 26, 2017

REFERRED TO JUDICIARY, JANUARY 26, 2017

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

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

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

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

15 § 1518. Prohibited acts; penalties.

16 * * *

17 (f) Property subject to seizure, confiscation, destruction
18 or forfeiture.--Any equipment, device or apparatus, money,
19 material, gaming proceeds or substituted proceeds or real or
20 personal property used, obtained or received or any attempt to
21 use, obtain or receive the device, apparatus, money, material,
22 proceeds or real or personal property in violation of this part
23 shall be subject to [seizure, confiscation, destruction or
24 forfeiture.] the provisions of 42 Pa.C.S. §§ 5803 (relating to
25 asset forfeiture), 5805 (relating to forfeiture procedure), 5806
26 (relating to motion for return of property), 5807 (relating to
27 restrictions on use), 5807.1 (relating to prohibition on
28 adoptive seizures) and 5808 (relating to exceptions).

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

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

32 * * *

33 (c.1) Forfeiture of unlawful telecommunication devices.--
34 Upon conviction of a defendant under this section, the court
35 may, in addition to any other sentence authorized by law, direct

1 that the defendant forfeit any unlawful telecommunication
2 devices in the defendant's possession or control which were
3 involved in the violation for which the defendant was convicted.
4 The forfeiture shall be conducted in accordance with 42 Pa.C.S.
5 §§ 5803 (relating to asset forfeiture), 5805 (relating to
6 forfeiture procedure), 5806 (relating to motion for return of
7 property), 5807 (relating to restrictions on use), 5807.1
8 (relating to prohibition on adoptive seizures) and 5808
9 (relating to exceptions).

10 * * *

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

13 § 2717. Terrorism.

14 * * *

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

23 (1) Each foreign or domestic asset:

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

29 (ii) Acquired or maintained by a person with the
30 intent and for the purpose of supporting, planning,

1 conducting or concealing an act in this Commonwealth
2 which violates this section.

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

6 (2) Each asset within this Commonwealth:

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

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

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

15 * * *

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

17 § 3141. General rule.

18 A person:

19 (1) convicted under section 3121 (relating to rape),
20 3122.1 (relating to statutory sexual assault), 3123 (relating
21 to involuntary deviate sexual intercourse), 3124.1 (relating
22 to sexual assault), 3125 (relating to aggravated indecent
23 assault) or 3126 (relating to indecent assault); or

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

27 may be required to forfeit property rights in any property or
28 assets used to implement or facilitate commission of the crime
29 or crimes of which the person has been convicted. [Such property
30 may include, but is not limited to, a computer or computers,

1 telephone equipment, firearms, licit or illicit prescription
2 drugs or controlled substances, a motor vehicle or such other
3 property or assets as determined by the court of common pleas to
4 have facilitated the person's criminal misconduct.] The
5 forfeiture shall be conducted in accordance with 42 Pa.C.S. §§
6 5803 (relating to asset forfeiture), 5805 (relating to
7 forfeiture procedure), 5806 (relating to motion for return of
8 property), 5807 (relating to restrictions on use), 5807.1
9 (relating to prohibition on adoptive seizures) and 5808
10 (relating to exceptions).

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

13 [§ 3142. Process and seizure.

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

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

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

29 § 3143. Custody of property.

30 Property taken or detained under this subchapter is deemed to

1 be the property of the law enforcement authority having custody
2 thereof and is subject only to the court of common pleas having
3 jurisdiction over the criminal or forfeiture proceedings, the
4 district attorney in the matter or the Attorney General.

5 § 3144. Disposal of property.

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

14 Section 6. Sections 4116(i), 4119(f)(2)(i), 5513(b), 5707,
15 6314(f), 6501(b)(5) and (d), 7508(e) and 7707 of Title 18 are
16 amended to read:

17 § 4116. Copying; recording devices.

18 * * *

19 (i) Forfeiture.--

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

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

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

8 § 4119. Trademark counterfeiting.

9 * * *

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

11 * * *

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

22 * * *

23 § 5513. Gambling devices, gambling, etc.

24 * * *

25 (b) Confiscation of gambling devices.--Any gambling device
26 possessed or used in violation of the provisions of subsection
27 (a) [of this section] shall be seized and forfeited to the
28 Commonwealth. [All provisions of law relating to the seizure,
29 summary and judicial forfeiture, and condemnation of
30 intoxicating liquor shall apply to seizures and forfeitures

1 under the provisions of this section.] The forfeiture shall be
2 conducted in accordance with 42 Pa.C.S. §§ 5803 (relating to
3 asset forfeiture), 5805 (relating to forfeiture procedure), 5806
4 (relating to motion for return of property), 5807 (relating to
5 restrictions on use), 5807.1 (relating to prohibition on
6 adoptive seizures) and 5808 (relating to exceptions).

7 * * *

8 § 5707. Seizure and forfeiture of electronic, mechanical or
9 other devices.

10 Any electronic, mechanical or other device possessed, used,
11 sent, distributed, manufactured, or assembled in violation of
12 this chapter is hereby declared to be contraband and may be
13 seized and forfeited to the Commonwealth[.] in accordance with
14 42 Pa.C.S. §§ 5803 (relating to asset forfeiture), 5805
15 (relating to forfeiture procedure), 5806 (relating to motion for
16 return of property), 5807 (relating to restrictions on use),
17 5807.1 (relating to prohibition on adoptive seizures) and 5808
18 (relating to exceptions).

19 § 6314. Sentencing and penalties for trafficking drugs to
20 minors.

21 * * *

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

27 * * *

28 § 6501. Scattering rubbish.

29 * * *

30 (b) Penalty.--

1 * * *

2 (5) Any vehicle, equipment or conveyance, including any
3 private automobile and small truck, used for the
4 transportation or disposal of trash, garbage or debris in the
5 commission of a second or subsequent offense under subsection
6 (a) (3) may be deemed contraband and forfeited in accordance
7 with [the provisions set forth in this section.] 42 Pa.C.S.
8 §§ 5803 (relating to asset forfeiture), 5805 (relating to
9 forfeiture procedure), 5806 (relating to motion for return of
10 property), 5807 (relating to restrictions on use), 5807.1
11 (relating to prohibition on adoptive seizures) and 5808
12 (relating to exceptions).

13 * * *

14 [(d) Forfeiture.--

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

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

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

28 or

29 (ii) require that the district attorney take custody
30 of the property and remove it to an appropriate location

1 for disposition in accordance with law.

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

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

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

30 (5) A copy of the petition required under paragraph (4)

1 shall be served personally or by certified mail on the owner
2 or upon the person or persons in possession at the time of
3 the seizure. The copy shall have endorsed a notice, as
4 follows:

5 To the Claimant of within Described Property:

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

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

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

1 summarily forfeit to the Commonwealth.

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

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

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

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

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

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

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

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

29 (ii) That the claimant lawfully acquired the
30 property.

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

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

27 * * *

28 § 7508. Drug trafficking sentencing and penalties.

29 * * *

30 (e) Forfeiture.--Assets against which a petition seeking

1 forfeiture [petition] has been filed and is pending or against
2 which the Commonwealth has indicated an intention to file a
3 [forfeiture] petition seeking forfeiture shall not be subject to
4 a fine. Nothing in this section shall prevent a fine from being
5 imposed on assets which have been subject to an unsuccessful
6 forfeiture petition.

7 * * *

8 § 7707. Loss of property rights to Commonwealth.

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

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

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

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

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

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

1 [(b) Exceptions.--

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

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

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

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

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

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

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

29 (d) Seizure without process.--In the event seizure without
30 process occurs as provided in this chapter, proceeding for the

1 issuance thereof shall be instituted forthwith.

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

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

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

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

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

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

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

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

26 (i) Retain the property for official use.

27 (ii) Sell any forfeited property which is not
28 required to be destroyed by law and which is not harmful
29 to the public, but the proceeds from any such sale must
30 be used to pay all proper expenses of the proceeding for

1 forfeiture and sale, including expenses of seizure,
2 maintenance of custody, advertising and court costs. The
3 balance of the proceeds shall be dealt with in accordance
4 with subsections (g) and (h).

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

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

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

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

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

24 Section 7. Section 7708 of Title 18 is repealed:
25 [§ 7708. Procedure with respect to seized property subject to
26 liens and rights of lienholders.

27 (a) General procedure.--The proceedings for the forfeiture
28 or condemnation of property, the sale of which is provided for
29 under this chapter, shall be in rem in which the Commonwealth
30 shall be the plaintiff and the property the defendant. The

1 Pennsylvania Rules of Civil Procedure shall apply to all
2 forfeiture proceedings brought under this chapter. A petition
3 shall be filed in the court of common pleas of the judicial
4 district where the property is located, verified by oath or
5 affirmation of an officer or citizen, containing the following:

- 6 (1) A description of the property seized.
- 7 (2) A statement of the time and place where seized.
- 8 (3) The owner, if known.
- 9 (4) The person or persons in possession, if known.
- 10 (5) An allegation that the property is subject to
11 forfeiture under section 7707 (relating to loss of property
12 rights to Commonwealth) and an averment of material facts
13 upon which the forfeiture action is based.
- 14 (6) A prayer for an order of forfeiture that the
15 property be adjudged forfeited to the Commonwealth and
16 condemned and be ordered sold according to law unless cause
17 be shown to the contrary.

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

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

30 The notice shall be signed by the Attorney General, Deputy

1 Attorney General, district attorney, deputy district attorney or
2 assistant district attorney.

3 (c) Substitute notice.--

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

14 (2) The notice shall:

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

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

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

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

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

30 (2) A personal service is attempted once but cannot be

1 made at the last known address.

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

4 (e) Notice automatically waived.--

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

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

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

13 (1) Upon application of the Commonwealth, the court may
14 enter a restraining order or injunction, require the
15 execution of a satisfactory performance bond or take any
16 other action to preserve the availability of property
17 described in section 7707 for forfeiture under this section
18 either:

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

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

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

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

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

12 (g) Temporary restraining order.--

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

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

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

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

25 (i) extended for good cause shown; or

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

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

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

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

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

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

16 (2) The claimant lawfully acquired the property.

17 (3) It was not unlawfully used or possessed by the
18 claimant. In the event that it shall appear that the property
19 was unlawfully used or possessed by a person other than the
20 claimant, then the claimant must show that the unlawful use
21 or possession was without the claimant's knowledge or
22 consent. Such absence of knowledge or consent must be
23 reasonable under the circumstances presented.

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

25 (1) If a person claiming the ownership of or right of
26 possession to or claiming to be the holder of a chattel
27 mortgage or contract of conditional sale upon the property,
28 the disposition of which is provided for in this section,
29 prior to the sale presents a petition to the court alleging
30 over the property lawful ownership, right of possession, a

1 lien or reservation of title and if, upon public hearing, due
2 notice of which having been given to the Office of Attorney
3 General or the district attorney, the claimant proves by
4 competent evidence to the satisfaction of the court:

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

7 (ii) if it appears that the property was unlawfully
8 used by a person other than the claimant, that the
9 unlawful use was without the claimant's knowledge or
10 consent,

11 then the court may order the property returned or delivered
12 to the claimant.

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

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

18 § 927. Forfeiture of fish and devices.

19 (a) General rule.--A person convicted of an offense under
20 this title shall forfeit any fish seized under section [901(6)]
21 901(a)(6) (relating to powers and duties of waterways
22 [patrolmen] conservation officers and deputies) and any device
23 confiscated under this title. Forfeitures shall be conducted in
24 accordance with 42 Pa.C.S. §§ 5803 (relating to asset
25 forfeiture), 5805 (relating to forfeiture procedure), 5806
26 (relating to motion for return of property), 5807 (relating to
27 restrictions on use), 5807.1 (relating to prohibition on
28 adoptive seizures) and 5808 (relating to exceptions).

29 [(b) Disposition of confiscated property.--Any property
30 confiscated by the commission under this title shall be sold or

1 otherwise disposed of by the executive director. These
2 dispositions shall be recorded on the books of the commission.]

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

4 CHAPTER 58

5 FORFEITURE OF ASSETS

6 Sec.

7 5801. Scope of chapter.

8 5802. Controlled substances forfeiture.

9 5803. Asset forfeiture.

10 5804. (Reserved).

11 5805. Forfeiture procedure.

12 5806. Motion for return of property.

13 5806.1. (Reserved).

14 5806.2. (Reserved).

15 5807. Restrictions on use.

16 5807.1. Prohibition on adoptive seizures.

17 5807.2. Federal reporting requirements.

18 5808. Exceptions.

19 § 5801. Scope of chapter.

20 This chapter relates to asset forfeiture.

21 § 5802. Controlled substances forfeiture.

22 The following shall be subject to forfeiture to the

23 Commonwealth and no property right shall exist in them:

24 (1) All drug paraphernalia, controlled substances or
25 other drugs which have been manufactured, distributed,
26 dispensed or acquired in violation of the act of April 14,
27 1972 (P.L.233, No.64), known as The Controlled Substance,
28 Drug, Device and Cosmetic Act.

29 (2) All raw materials, products and equipment of any
30 kind which are used or intended for use in manufacturing,

1 compounding, processing, delivering, importing or exporting
2 any controlled substance or other drug in violation of The
3 Controlled Substance, Drug, Device and Cosmetic Act.

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

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

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

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

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

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

28 (A) Money, negotiable instruments, securities or
29 other things of value furnished or intended to be
30 furnished by any person in exchange for a controlled

1 substance in violation of The Controlled Substance,
2 Drug, Device and Cosmetic Act, and all proceeds
3 traceable to such an exchange.

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

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

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

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

1 avoid forfeiture under this chapter shall be invalid.

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

15 § 5803. Asset forfeiture.

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

19 (1) 4 Pa.C.S. § 1518 (relating to prohibited acts;
20 penalties).

21 (2) 18 Pa.C.S. § 910 (relating to manufacture,
22 distribution, use or possession of devices for theft of
23 telecommunications services).

24 (3) 18 Pa.C.S. § 2717 (relating to terrorism).

25 (4) 18 Pa.C.S. § 3141 (relating to general rule).

26 (5) 18 Pa.C.S. § 4116 (relating to copying; recording
27 devices).

28 (6) 18 Pa.C.S. § 4119 (relating to trademark
29 counterfeiting).

30 (7) 18 Pa.C.S. § 5513 (relating to gambling devices,

1 gambling, etc.).

2 (8) 18 Pa.C.S. § 5707 (relating to seizure and
3 forfeiture of electronic, mechanical or other devices).

4 (9) 18 Pa.C.S. § 6501 (relating to scattering rubbish).

5 (10) 18 Pa.C.S. § 7707 (relating to loss of property
6 rights to Commonwealth).

7 (11) 30 Pa.C.S. § 927 (relating to forfeiture of fish
8 and devices).

9 (12) Section 5802 (relating to controlled substances
10 forfeiture).

11 (13) 75 Pa.C.S. § 4909 (relating to transporting
12 foodstuffs in vehicles used to transport waste).

13 (14) 75 Pa.C.S. § 9405 (relating to forfeitures; process
14 and procedures).

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

18 (1) The seizure is incident to an arrest or a search
19 under a search warrant or inspection under an administrative
20 inspection warrant and there is reason to believe the
21 property is subject to forfeiture.

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

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

30 (4) There is probable cause to believe that the property

1 has been used or is intended to be used in violation of the
2 act of April 14, 1972 (P.L.233, No.64), known as The
3 Controlled Substance, Drug, Device and Cosmetic Act, or
4 another offense for which forfeiture is expressly authorized
5 as a sanction.

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

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

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

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

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

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

29 (ii) the court:

30 (A) after causing notice to be served on the

1 property owner and posted on the property and
2 conducting a hearing in which the property owner has
3 a meaningful opportunity to be heard, authorizes such
4 seizure; or

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

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

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

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

28 (d) Custody of property.--Property taken or detained under
29 this section shall not be subject to replevin and is deemed to
30 be in the custody of the law enforcement authority subject only

1 to the orders and decrees of the court of common pleas having
2 jurisdiction over the forfeiture proceedings of the district
3 attorney or the Attorney General. When property is seized under
4 this chapter, the law enforcement authority shall place the
5 property in a secure area or facility and either:

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

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

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

20 (f) Use of property held in custody.--When property is
21 forfeited under this chapter, the property shall be transferred
22 to the custody of the district attorney, if the law enforcement
23 authority seizing the property has local or county jurisdiction,
24 or the Attorney General, if the law enforcement authority
25 seizing the property has Statewide jurisdiction. The district
26 attorney or the Attorney General, where appropriate, may:

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

28 (2) sell any forfeited property which is not required to
29 be destroyed by law and which is not harmful to the public,
30 except that the proceeds from the sale shall be used to pay

1 all proper expenses of the proceedings for forfeiture and
2 sale, including expenses of seizure, maintenance of custody,
3 advertising and court costs. The balance of the proceeds
4 shall be used and distributed in accordance with this
5 chapter.

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

10 (g) Use of cash or proceeds of property.--Cash or proceeds
11 of property, subject to forfeiture under section 5802 and
12 transferred to the custody of the district attorney under
13 subsection (f) shall be placed in the operating fund of the
14 county in which the district attorney is elected. The
15 appropriate county authority shall immediately release from the
16 operating fund, without restriction, a like amount for the use
17 of the district attorney for the enforcement of or prevention of
18 a violation of the provisions of The Controlled Substance, Drug,
19 Device and Cosmetic Act. The funds shall be maintained in an
20 account or accounts separate from other revenues of the office.
21 The entity having budgetary control shall not anticipate future
22 forfeitures or proceeds from future forfeitures in adoption and
23 approval of the budget for the district attorney.

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

30 (i) Authorization to utilize property.--Cash or proceeds of

1 property subject to forfeiture under section 5802 and
2 transferred to the custody of the district attorney or Attorney
3 General under subsection (f) shall be utilized by the district
4 attorney or Attorney General for the enforcement of or
5 prevention of a violation of the provisions of The Controlled
6 Substance, Drug, Device and Cosmetic Act. In appropriate cases,
7 the district attorney and the Attorney General may designate
8 proceeds from the forfeited property to be utilized by
9 community-based drug and crime-fighting programs and for
10 relocation and protection of witnesses in criminal cases. Real
11 property may be transferred to a nonprofit organization to
12 alleviate blight resulting from violations of The Controlled
13 Substance, Drug, Device and Cosmetic Act.

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

27 (1) The type of property forfeited.

28 (2) The approximate value.

29 (3) The alleged criminal behavior with which the
30 property is associated.

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

2 (5) Whether the forfeiture was related to a criminal
3 case.

4 (k) Annual report and confidential information.--The
5 Attorney General shall annually submit a report to the
6 Appropriations Committee and Judiciary Committee of the Senate
7 and to the Appropriations Committee and Judiciary Committee of
8 the House of Representatives specifying the forfeited property
9 or proceeds of the forfeited property obtained under this
10 chapter during the fiscal year beginning July 1 and the
11 following shall apply:

12 (1) The report shall include all information required
13 under subsection (j) subject to the limitations provided
14 under paragraph (2).

15 (2) The Attorney General shall adopt procedures and
16 guidelines, which shall be public, governing the release of
17 information by the Attorney General or the district attorney
18 to protect the confidentiality of forfeited property or
19 proceeds used in ongoing law enforcement activities.

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

26 (l) Proceeds and appropriations.--The proceeds or future
27 proceeds from forfeited property under this chapter shall be in
28 addition to any appropriation made to the Office of Attorney
29 General. The Attorney General shall maintain proceeds from
30 property forfeited to the Office of Attorney General in an

1 account or accounts separate from any other account maintained
2 by the Office of Attorney General.

3 § 5804. (Reserved).

4 § 5805. Forfeiture procedure.

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

19 (1) Each forfeiture petition shall contain the
20 following:

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

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

29 (iii) The owner, if known.

30 (iv) The person or persons in possession at the time

1 of seizure, if known.

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

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

8 (2) The following shall apply:

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

15 (ii) The following shall apply:

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

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

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

27 (b) Notice to property owners.--

28 (1) A copy of the forfeiture petition required under
29 subsection (a) shall be served personally or by certified
30 mail on the owner, if known, and on each person in possession

1 at the time of the seizure, if known. The copy shall have
2 endorsed a notice, as follows:

3 To the claimant of within described property:

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

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

14 (c) Substitute notice.--

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

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

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

1 the first publication.

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

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

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

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

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

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

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

24 (f) Release of seized property pending conclusion of
25 proceedings.--

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

29 (i) the claimant has a possessory interest in the
30 property;

1 (ii) the claimant has sufficient ties to the
2 community to provide assurance that the property will be
3 available at the time of the trial;

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

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

16 (v) none of the conditions under paragraph (6)
17 apply.

18 (2) The following shall apply:

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

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

29 (3) If the Commonwealth establishes that the claimant's
30 motion is meritless, the court shall deny the motion. In

1 response to a motion under this subsection, the Commonwealth
2 may, in appropriate cases, submit evidence ex parte in order
3 to avoid disclosing any matter that may adversely affect an
4 ongoing criminal investigation or pending criminal trial.

5 (4) The following shall apply:

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

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

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

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

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

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

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

26 (B) fixing a bond; and

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

29 (ii) the Commonwealth may place a lien against the
30 property or file a lis pendens to ensure that the

1 property is not transferred to another person; and
2 (iii) if the property in question is currency,
3 monetary instruments or electronic funds, the court shall
4 fix a bond as provided under paragraph (5.1).

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

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

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

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

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

25 (i) is contraband;

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

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

30 (iv) is likely to be used to commit additional

1 criminal acts if returned to the claimant.

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

6 (g) (Reserved).

7 (h) (Reserved).

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

13 (j) Burden of proof.--

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

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

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

24 (ii) the claimant lawfully acquired the property.

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

30 (4) If the Commonwealth satisfies the burden under

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

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

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

11 (k) Proportionality.--

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

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

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

23 (m) Procedure following acquittal.--The following shall
24 apply:

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

29 (2) If the owner of the property is acquitted of all
30 crimes which authorize forfeiture, the owner shall be

1 entitled to a hearing under section 5806 (relating to motion
2 for return of property).

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

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

10 § 5806. Motion for return of property.

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

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

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

18 (3) Upon proof of service, the court shall schedule a
19 prompt hearing on the motion and shall notify the
20 Commonwealth. A hearing on the motion shall, to the extent
21 practicable and consistent with the interests of justice, be
22 held within 30 days of the filing of the motion.

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

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

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

30 (1) Be signed by the petitioner under penalty of

1 perjury.

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

8 (i) A description of the property seized.

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

11 (iii) The owner, if known.

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

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

14 (i) Return of the petitioner's property.

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

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

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

21 § 5806.1. (Reserved).

22 § 5806.2. (Reserved).

23 § 5807. Restrictions on use.

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

29 (1) A Federal law which authorizes the sharing or
30 transfer of all or a portion of forfeited property or the

1 proceeds of the sale of forfeited property to a State law
2 enforcement authority.

3 (2) A State law which authorizes forfeiture.

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 § 5807.2. Federal reporting requirements.

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

16 § 5808. Exceptions.

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

19 (1) Items bearing a counterfeit mark under 18 Pa.C.S. §
20 4119 (relating to trademark counterfeiting).

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

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

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

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

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

7 [§ 6801. Controlled substances forfeiture.

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

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

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

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

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

28 (i) no conveyance used by any person as a common
29 carrier in the transaction of business as a common
30 carrier shall be forfeited under the provisions of this

1 section unless it shall appear that the owner or other
2 person in charge of such conveyance was a consenting
3 party or privy to a violation of The Controlled
4 Substance, Drug, Device and Cosmetic Act;

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

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

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

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

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

28 (A) Money, negotiable instruments, securities or
29 other things of value furnished or intended to be
30 furnished by any person in exchange for a controlled

1 substance in violation of The Controlled Substance,
2 Drug, Device and Cosmetic Act, and all proceeds
3 traceable to such an exchange.

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

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

19 (ii) No property shall be forfeited under this
20 paragraph, to the extent of the interest of an owner, by
21 reason of any act or omission established by the owner to
22 have been committed or omitted without the knowledge or
23 consent of that owner. Such money and negotiable
24 instruments found in close proximity to controlled
25 substances possessed in violation of The Controlled
26 Substance, Drug, Device and Cosmetic Act shall be
27 rebuttably presumed to be proceeds derived from the
28 selling of a controlled substance in violation of The
29 Controlled Substance, Drug, Device and 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. (relating to crimes and offenses), which are
8 used or intended for use to facilitate a violation of The
9 Controlled Substance, Drug, Device and Cosmetic Act. Such
10 operable firearms as are found in close proximity to
11 illegally possessed controlled substances shall be rebuttably
12 presumed to be used or intended for use to facilitate a
13 violation of The Controlled Substance, Drug, Device and
14 Cosmetic Act. All weapons forfeited under this section shall
15 be immediately destroyed by the receiving law enforcement
16 agency.

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

22 (1) the seizure is incident to an arrest or a search
23 under a search warrant or inspection under an administrative
24 inspection warrant;

25 (2) the property subject to seizure has been the subject
26 of a prior judgment in favor of the Commonwealth in a
27 criminal injunction or forfeiture proceeding under this
28 chapter;

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

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

4 (c) Seizure without process.--In the event seizure without
5 process occurs, as provided herein, proceedings for the issuance
6 thereof shall be instituted forthwith.

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

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

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

19 (e) Use of property held in custody.--Whenever property is
20 forfeited under this chapter, the property shall be transferred
21 to the custody of the district attorney, if the law enforcement
22 authority seizing the property has local or county jurisdiction,
23 or the Attorney General, if the law enforcement authority
24 seizing the property has Statewide jurisdiction. The district
25 attorney or the Attorney General, where appropriate, may:

26 (1) Retain the property for official use.

27 (2) Sell any forfeited property which is not required to
28 be destroyed by law and which is not harmful to the public,
29 but the proceeds from any such sale shall be used to pay all
30 proper expenses of the proceedings for forfeiture and sale,

1 including expenses of seizure, maintenance of custody,
2 advertising and court costs. The balance of the proceeds
3 shall be dealt with in accordance with subsections (f) and
4 (g).

5 (f) Use of cash or proceeds of property.--Cash or proceeds
6 of forfeited property transferred to the custody of the district
7 attorney pursuant to subsection (e) shall be placed in the
8 operating fund of the county in which the district attorney is
9 elected. The appropriate county authority shall immediately
10 release from the operating fund, without restriction, a like
11 amount for the use of the district attorney enforcing the
12 provisions of The Controlled Substance, Drug, Device and
13 Cosmetic Act. The entity having budgetary control shall not
14 anticipate future forfeitures or proceeds therefrom in adoption
15 and approval of the budget for the district attorney.

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

22 (h) Authorization to utilize property.--The district
23 attorney and the Attorney General shall utilize forfeited
24 property or proceeds thereof for the purpose of enforcing the
25 provisions of The Controlled Substance, Drug, Device and
26 Cosmetic Act. In appropriate cases, the district attorney and
27 the Attorney General may designate proceeds from forfeited
28 property to be utilized by community-based drug and crime-
29 fighting programs and for relocation and protection of witnesses
30 in criminal cases.

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

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

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

27 § 6801.1. Terrorism forfeiture.

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

1 (1) All assets, foreign or domestic:

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

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

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

14 (2) All assets within this Commonwealth:

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

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

21 (iii) Derived from, involved in or used or intended
22 to be used to commit an act which violates 18 Pa.C.S. §
23 2717.

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

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

1 inspection warrant.

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

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

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

11 (c) Seizure without process.--In the event seizure is made
12 without process, proceedings for the issuance of process shall
13 be instituted forthwith.

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

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

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

27 (e) Use of property held in custody.--Whenever property is
28 forfeited under this section, it shall be transferred to the
29 custody of the district attorney if the law enforcement
30 authority seizing the property has local or county jurisdiction

1 or of the Attorney General if the law enforcement authority
2 seizing the property has Statewide jurisdiction. The district
3 attorney or the Attorney General, where appropriate, may:

4 (1) Retain the property for official use.

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

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

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

29 (h) Authorization to utilize property.--The district
30 attorney and the Attorney General shall utilize forfeited

1 property or proceeds thereof for the purpose of enforcing the
2 provisions of 18 Pa.C.S. § 2717, section 6802 (relating to
3 procedure with respect to seized property subject to liens and
4 rights of lienholders) and this section. In appropriate cases,
5 the district attorney and the Attorney General may designate
6 proceeds from forfeited property to be utilized for
7 antiterrorism public safety programs and for relocation and
8 protection of witnesses in criminal cases.

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

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

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

5 § 6802. Procedure with respect to seized property subject to
6 liens and rights of lienholders.

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

15 (1) A description of the property seized.

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

17 (3) The owner, if known.

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

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

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

28 (b) Notice to property owners.--A copy of the petition
29 required under subsection (a) shall be served personally or by
30 certified mail on the owner or upon the person or persons in

1 possession at the time of the seizure. The copy shall have
2 endorsed a notice, as follows:

3 To the Claimant of within Described Property:

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

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

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

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

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

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

8 (3) a copy of the petition is left at the last known
9 address.

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

16 (f) Preservation of the property subject for forfeiture.--
17 Upon application of the Commonwealth, the court may enter a
18 restraining order or injunction, require the execution of a
19 satisfactory performance bond or take any other action to
20 preserve the availability of property described in section
21 6801(a) or 6801.1(a) for forfeiture under this section either:

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

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

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

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

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

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

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

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

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

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

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

17 (3) That it was not unlawfully used or possessed by him.

18 In the event that it shall appear that the property was
19 unlawfully used or possessed by a person other than the
20 claimant, then the claimant shall show that the unlawful use
21 or possession was without his knowledge or consent. Such
22 absence of knowledge or consent must be reasonable under the
23 circumstances presented.

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

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

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

14 § 4909. Transporting foodstuffs in vehicles used to transport
15 waste.

16 * * *

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

30 * * *

1 § 9405. Forfeitures; process and procedures.

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

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

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

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

23 (ii) no bona fide security interest retained or
24 acquired under Title 13 (relating to commercial code) by
25 any merchant dealing in new or used vehicles or vessels,
26 or retained or acquired by any licensed or regulated
27 finance company, bank, lending institution or by any
28 other business regularly engaged in the financing of or
29 lending on the security of such vehicles or vessels,
30 shall be subject to forfeiture or impairment.] Forfeiture

1 of such conveyances shall be conducted in accordance with
2 42 Pa.C.S. §§ 5803 (relating to asset forfeiture), 5805
3 (relating to forfeiture procedure), 5806 (relating to
4 motion for return of property), 5807 (relating to
5 restrictions on use), 5807.1 (relating to prohibition on
6 adoptive seizures) and 5808 (relating to exceptions).

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

13 (c) Limit on return of property.--

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

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

28 (d) In rem proceedings.--The proceedings for the forfeiture
29 of any liquid fuels or fuels or conveyances seized under this
30 section shall be in rem. The Commonwealth shall be the plaintiff

1 and the property shall be the defendant. A petition shall be
2 filed, within five days after seizure, in the court of common
3 pleas of the county in which the property was seized by revenue
4 agents of the Department of Revenue, verified by oath or
5 affirmation of any revenue agent. In the event that the petition
6 is not filed within the time prescribed herein, the seized
7 property shall be immediately returned to the person from whom
8 seized or the owner thereof.

9 (e) Contents of petition.--The petition shall contain the
10 following:

11 (1) The description of the property seized.

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

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

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

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

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

21 (f) Service of process.--A copy of the petition shall be
22 served on the owner if he can be found within this Commonwealth
23 in any manner provided by law for service of process or a
24 complaint in an action in assumpsit. If the owner cannot be
25 found within this Commonwealth, a copy of the petition shall be
26 served on the owner by registered mail or certified mail, return
27 receipt requested, addressed to the last known address of the
28 owner. The person in possession of the property and all
29 encumbrance holders having a perfected security interest in the
30 property confiscated shall be notified in a like manner. Copies

1 shall have endorsed thereon a notice substantially similar to
2 the following:

3 To the claimant of the within property: You are required
4 to file an answer to this petition setting forth your
5 title in and right to possession of the property within
6 20 days from the service hereof, and you are also
7 notified that, if you fail to file an answer, a decree of
8 forfeiture will be entered against the property.

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

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

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

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

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

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

1 § 9406. Disposition of fines and forfeitures.

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

6 Section 12. Notwithstanding any other provision of law to
7 the contrary, the following forfeitures shall be conducted in
8 accordance with 42 Pa.C.S. §§ 5803, 5805, 5806, 5807, 5807.1 and
9 5808:

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

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

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

22 (4) The forfeiture of property specified in section 1715
23 of the act of July 28, 1988 (P.L.556, No.101), known as the
24 Municipal Waste Planning, Recycling and Waste Reduction Act.
25 Section 13. Repeals are as follows:

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

29 (2) Sections 602 and 603 of the act of April 12, 1951
30 (P.L.90, No.21), known as the Liquor Code, are repealed to

1 the extent of any inconsistency with this act.

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

8 Section 14. This act shall take effect as follows:

9 (1) This section shall take effect immediately.

10 (2) The remainder of this act shall take effect July 1,
11 2017, or immediately, whichever is later.