
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1480 Session of
1983

INTRODUCED BY MORRIS, PITTS, E. Z. TAYLOR, VROON, FLICK AND
HERSHEY, SEPTEMBER 27, 1983

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 27, 1983

AN ACT

1 Amending the act of April 14, 1972 (P.L.233, No.64), entitled
2 "An act relating to the manufacture, sale and possession of
3 controlled substances, other drugs, devices and cosmetics;
4 conferring powers on the courts and the secretary and
5 Department of Health, and a newly created Pennsylvania Drug,
6 Device and Cosmetic Board; establishing schedules of
7 controlled substances; providing penalties; requiring
8 registration of persons engaged in the drug trade and for the
9 revocation or suspension of certain licenses and
10 registrations; and repealing an act," further providing for
11 forfeiture.

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

14 Section 1. Section 28 of the act of April 14, 1972 (P.L.233,
15 No.64), known as The Controlled Substance, Drug, Device and
16 Cosmetic Act, amended December 4, 1980 (P.L.1093, No.186), is
17 amended to read:

18 Section 28. Forfeiture.--(a) The following shall be subject
19 to forfeiture to the Commonwealth, the district attorney
20 prosecuting the case or the police agency making the arrest
21 under order of the court, and no property right shall exist in
22 them:

1 (1) All drug paraphernalia, controlled substances or other
2 drugs which have been manufactured, distributed, dispensed, or
3 acquired in violation of this act.

4 (2) All raw materials, products, and equipment of any kind
5 which are used, or intended for use in manufacturing,
6 compounding, processing, delivering, transportation, importing,
7 or exporting any controlled substance or other drug in violation
8 of this act.

9 (3) All property which is used, or intended for use, as a
10 container for property described in clause (1) or (2) of this
11 subsection.

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

17 (i) no conveyance used by any person as a common carrier in
18 the transaction of business as a common carrier shall be
19 forfeited under the provisions of this section unless it shall
20 appear that the owner or other person in charge of such
21 conveyance was a consenting party or privy to a violation of
22 this title;

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

27 (iii) no bona fide security interest retained or acquired
28 under the Uniform Commercial Code by any merchant dealing in new
29 or used aircraft, vehicles or vessels, or retained or acquired
30 by any licensed or regulated finance company, bank, lending

1 institution, or by any other business regularly engaged in the
2 financing of, or lending on the security of, such aircraft,
3 vehicles or vessels, shall be subject to forfeiture or
4 impairment; and

5 (iv) no conveyance shall be forfeited under this section for
6 violation of clauses (16) and (31) of subsection (a) of section
7 13.

8 (5) All books, records, and research, including formulas,
9 microfilm, tapes and data which are used, or intended for use,
10 in violation of this act.

11 (6) Any and all cash found on the person of the accused,
12 provided that he is adjudicated guilty and sentence is imposed,
13 and provided that the Commonwealth establishes by a
14 preponderance of the evidence the cash was directly derived from
15 the sale of a controlled substance or was possessed by the
16 accused for the purposes of conducting cash transactions in
17 controlled substances.

18 (7) Any and all cash found in the place or premises searched
19 provided that controlled substances were found there and
20 provided that the Commonwealth establishes by a preponderance of
21 the evidence that the cash found was directly derived from the
22 sale of a controlled substance or was available for the purpose
23 of conducting cash transactions in controlled substances.

24 (8) In determining whether or not the Commonwealth has met
25 its burden of proof under clauses (6) and (7) the hearing court
26 may infer that cash was possessed or available for the conduct
27 of cash transactions in controlled substances from the size of
28 the cash sums found, alone. Such an inference may also be drawn
29 from the location of the cash in relation to any controlled
30 substances found, the manner in which it was kept, and such

1 other evidence as may be logically relevant. Nothing contained
2 herein shall prevent the accused from presenting evidence which,
3 if found credible, may rebut any inference that the cash was
4 possessed or available for the conduct of cash transactions in
5 controlled substances.

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

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

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

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

18 (4) There is probable cause to believe that the property has
19 been used or is intended to be used in violation of this act.

20 (c) In the event seizure without process occurs, as provided
21 herein, proceedings for the issuance thereof shall be instituted
22 forthwith.

23 (d) Property taken or detained under this section shall not
24 be subject to replevin, but is deemed to be in the custody of
25 the law enforcement authority subject only to the orders and
26 decrees of the court of common pleas having jurisdiction over
27 the forfeiture proceedings and of the secretary. When property
28 is seized under this act, the law enforcement authority shall:

29 (1) Place the property under seal; and either

30 (2) Remove the property to a place designated by it; or

1 (3) Require that the department take custody of the property
2 and remove it to an appropriate location for disposition in
3 accordance with law.

4 (e) [Whenever property is forfeited under this act, the
5 property shall be transferred to the custody of the department
6 and the secretary may:

7 (1) Retain the property for official use;

8 (2) Sell any forfeited property which is not required to be
9 destroyed by law and which is not harmful to the public, but the
10 proceeds from any such sale shall be used to pay all proper
11 expenses of the proceedings for forfeiture and sale including
12 expenses of seizure, maintenance of custody, advertising and
13 court costs.] (1) Whenever the district attorney effecting the

14 forfeiture deems it necessary or expedient to sell the property
15 forfeited rather than to retain it for the use of the law
16 enforcement agency, or if the property is subject to a lien
17 which has been preserved by the court, he shall cause a notice
18 of the sale to be made by publication as provided by law and
19 thereafter shall dispose of the property at public auction to
20 the highest bidder for cash without appraisal. The proceeds of
21 the sale shall be applied to payment of:

22 (i) The balance due on any lien preserved by the court in
23 the forfeiture proceedings.

24 (ii) The cost incurred by the seizing agency in connection
25 with the storage, maintenance, security and forfeiture of such
26 property.

27 (iii) The cost incurred by the district attorney.

28 (iv) The costs incurred by the court.

29 The remaining proceeds shall be deposited in a special law
30 enforcement trust fund established by the district attorney and

1 shall be used for law enforcement purposes only. These funds may
2 be expended only upon appropriation to defray the costs of
3 protracted or complex investigations, to provide additional
4 technical equipment or expertise and shall not be considered a
5 source of revenue to meet normal operating needs.

6 (2) If more than one agency was substantially involved in
7 effecting the forfeiture, the court having jurisdiction over the
8 forfeiture proceeding shall equitably distribute the property
9 among the seizing agencies. Any forfeited money or currency or
10 any proceeds remaining after the sale of the property shall be
11 equitably distributed to the participating municipalities for
12 deposit into their respective law enforcement agencies.

13 (3) Upon the sale of any vessel, motor vehicle or aircraft,
14 the Commonwealth shall issue a title certificate to the
15 purchaser. Upon the request of any law enforcement agency which
16 elects to retain titled property after the forfeiture, the
17 Commonwealth shall issue a title certificate for such property
18 to the agency.

19 (4) Any law enforcement agency receiving forfeited property
20 or proceeds from the sale of forfeited property in accordance
21 with this act shall submit a quarterly report to the entity
22 which has budgetary authority over such agency, which report
23 shall specify for such period the type and approximate value of
24 the property received and the amount of any proceeds received.
25 Neither the law enforcement agency nor the entity having
26 budgetary control shall anticipate future forfeitures or
27 proceeds therefrom in adoption and approval of the budget for
28 the law enforcement agency.

29 (f) Notwithstanding subsection (e), the hearing court, in
30 its discretion, may direct that all or a portion of the cash

1 forfeited under the provisions of clauses (6), (7) and (8) of
2 subsection (a), be given to a municipal police department, the
3 Pennsylvania State Police or the district attorney for use in
4 conducting controlled substance investigations, including
5 undercover controlled substance purchases.

6 Section 2. This act shall take effect in 60 days.