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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 924

Session of  
1983

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INTRODUCED BY FISHER, GREENLEAF, BRIGHTBILL, SHUMAKER, PECORA  
AND KUSSE, JULY 6, 1983

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AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
NOVEMBER 28, 1984

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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 offenses, penalties and forfeiture procedures.

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

14 Section 1. Section 13 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 30, 1974, (P.L.1041, No.340),  
17 November 26, 1978 (P.L.1392, No.328), December 4, 1980  
18 (P.L.1093, No.186), February 16, 1982 (P.L.38, No.23) and  
19 December 20, 1982 (P.L.1448, No.329), is amended to read:

20 Section 13. Prohibited Acts; Penalties.--(a) The following  
21 acts and the causing thereof within the Commonwealth are hereby

1 prohibited:

2 (1) The manufacture, sale or delivery, holding, offering for  
3 sale, or possession of any controlled substance, other drug,  
4 device or cosmetic that is adulterated or misbranded.

5 (2) The adulteration or misbranding of any controlled  
6 substance, other drug, device or cosmetic.

7 (3) The dissemination or publication of any false or  
8 materially misleading advertisement.

9 (4) The removal or disposal of a detained or embargoed  
10 substance or article, whether or not such substance or article  
11 is in fact adulterated or misbranded.

12 (5) The adulteration, mutilation, destruction, obliteration  
13 or removal of the whole or any part of the labeling of, or the  
14 doing of any other act with respect to a controlled substance,  
15 other drug, device or cosmetic, if such act is done while such  
16 substance or article is held for sale and results in such  
17 substance or article being adulterated or misbranded.

18 (6) Forging, counterfeiting, simulating or falsely  
19 representing, or without proper authority using any mark, stamp,  
20 tag, label or other identification symbol authorized or required  
21 by regulation promulgated under the provisions of this act.

22 (7) Placing or causing to be placed upon any controlled  
23 substance, other drug, device or cosmetic, or upon the container  
24 of any controlled substance, other drug, device or cosmetic,  
25 with intent to defraud, the trademark, trade name or other  
26 identifying mark, imprint or symbol of another, or any likeness  
27 of any of the foregoing.

28 (8) Selling, dispensing, disposing of or causing to be sold,  
29 dispensed or disposed of, or keeping in possession, control or  
30 custody, or concealing any controlled substance, other drug,

1 device or cosmetic or any container of any drug, device or  
2 cosmetic with knowledge that the trademark, trade name or other  
3 identifying mark, imprint or symbol of another, or any likeness  
4 of any of the foregoing, has been placed thereon in a manner  
5 prohibited by clause (7) hereof.

6 (9) Making, selling, disposing of or causing to be made,  
7 sold, or disposed of, or keeping in possession, control or  
8 custody, or concealing with intent to defraud, any punch, die,  
9 plate, stone or other thing designed to print, imprint or  
10 reproduce the trademark, trade name or other identifying mark,  
11 imprint or symbol of another or any likeness of any of the  
12 foregoing upon any controlled substance, other drug, device or  
13 cosmetic or container thereof.

14 (10) The sale at retail of a nonproprietary drug except by a  
15 registered pharmacist in a licensed pharmacy or by a  
16 practitioner.

17 (11) The operation of a drug manufacturing, distributing or  
18 retailing establishment, except by registered pharmacists in a  
19 licensed pharmacy, without conforming with such standards  
20 respecting sanitation, materials, equipment and supplies as the  
21 secretary, after consultation with the board, may establish by  
22 regulation for the protection of the public health and safety.

23 (12) The acquisition or obtaining of possession of a  
24 controlled substance by misrepresentation, fraud, forgery,  
25 deception or subterfuge.

26 (13) The sale, dispensing, distribution, prescription or  
27 gift by any practitioner otherwise authorized by law so to do of  
28 any controlled substance to any person known to such  
29 practitioner to be or whom such practitioner has reason to know  
30 is a drug dependent person, unless said drug is prescribed,

1 administered, dispensed or given, for the cure or treatment of  
2 some malady other than drug dependency, except that the council,  
3 in accordance with Federal narcotic and food and drug laws,  
4 shall allocate the responsibility for approving and designating  
5 certain clinics, and shall provide or allocate the  
6 responsibility for providing regulations for such clinics at  
7 which controlled substances, including but not limited to  
8 methadone, may be prescribed, administered or dispensed for the  
9 treatment of drug dependency. This clause shall not prohibit any  
10 practitioner from prescribing, distributing or dispensing any  
11 controlled substance for a period of time not to exceed fourteen  
12 days pending confirmed admission of the patient to a hospital or  
13 rehabilitation center.

14 (14) The administration, dispensing, delivery, gift or  
15 prescription of any controlled substance by any practitioner or  
16 professional assistant under the practitioner's direction and  
17 supervision unless done (i) in good faith in the course of his  
18 professional practice; (ii) within the scope of the patient  
19 relationship; (iii) in accordance with treatment principles  
20 accepted by a responsible segment of the medical profession.

21 (15) The sale at retail or dispensing of any controlled  
22 substance listed in Schedules II, III and IV to any person,  
23 except to one authorized by law to sell, dispense, prescribe or  
24 possess such substances, unless upon the written or oral  
25 prescription of a person licensed by law to prescribe such drug  
26 and unless compounded or dispensed by a registered pharmacist or  
27 pharmacy intern under the immediate personal supervision of a  
28 registered pharmacist, or the refilling of a written or oral  
29 prescription order for a drug, unless such refilling is  
30 authorized by the prescriber either in the original written

1 prescription order or by written confirmation of the original  
2 oral prescription order. The provisions of this subsection shall  
3 not apply to a practitioner licensed to prescribe or dispense  
4 such drugs, who keeps a record of the amount of such drugs  
5 purchased and a dispensing record showing the date, name, and  
6 quantity of the drug dispensed and the name and address of the  
7 patient, as required by this act.

8 (16) Knowingly or intentionally possessing a controlled or  
9 counterfeit substance by a person not registered under this act,  
10 or a practitioner not registered or licensed by the appropriate  
11 State board, unless the substance was obtained directly from, or  
12 pursuant to, a valid prescription order or order of a  
13 practitioner, or except as otherwise authorized by this act.

14 (17) The wilful dispensing of a controlled substance by a  
15 practitioner otherwise authorized by law so to do without  
16 affixing to the container in which the drug is sold or dispensed  
17 a label bearing the name and address of the practitioner, the  
18 date dispensed, the name of the patient and the directions for  
19 the use of the drug by the patient.

20 (18) The selling by a pharmacy or distributor of any  
21 controlled substance or other drug unless the container bears a  
22 label, securely attached thereto, stating the specific name of  
23 the drug and the proportion or amount thereof unless otherwise  
24 specifically directed in writing by the practitioner.

25 (19) The intentional purchase or knowing receipt in commerce  
26 by any person of any controlled substance, other drug or device  
27 from any person not authorized by law to sell, distribute,  
28 dispense or otherwise deal in such controlled substance, other  
29 drug or device.

30 (20) The using by any person to his own advantage, or

1 revealing other than to the secretary or officers or employes of  
2 the department or to the council or to the board or to courts or  
3 a hearing examiner when relevant to proceedings under this act  
4 any information acquired under authority of this act concerning  
5 any method or process which as a trade secret is entitled to  
6 protection. Such information obtained under the authority of  
7 this act shall not be admitted in evidence in any proceeding  
8 before any court of the Commonwealth except in proceedings under  
9 this act.

10 (21) The refusal or failure to make, keep or furnish any  
11 record, notification, order form, statement, invoice or  
12 information required under this act.

13 (22) The refusal of entry into any premises for any  
14 inspection authorized by this act.

15 (23) The unauthorized removing, breaking, injuring, or  
16 defacing a seal placed upon embargoed substances or the removal  
17 or disposal of substances so placed under seal.

18 (24) The failure by a manufacturer or distributor to  
19 register or obtain a license as required by this act.

20 (25) The manufacture of a controlled substance by a  
21 registrant who knows or who has reason to know, the  
22 manufacturing is not authorized by his registration, or who  
23 knowingly distributes a controlled substance not authorized by  
24 his registration to another registrant or other authorized  
25 person.

26 (26) The knowing distribution by a registrant of a  
27 controlled substance classified in Schedules I or II, except  
28 pursuant to an order form as required by this act.

29 (27) The use in the course of the manufacture or  
30 distribution of a controlled substance of a registration number

1 which is fictitious, revoked, suspended, or issued to another  
2 person.

3 (28) The furnishing of false or fraudulent material  
4 information in, or omission of any material information from any  
5 application, report, or other document required to be kept or  
6 filed under this act, or any record required to be kept by this  
7 act.

8 (29) The intentional making, distributing, or possessing of  
9 any punch, die, plate, stone, or other thing designed to print,  
10 imprint, or reproduce the trademark, trade name, or other  
11 identifying mark, imprint, or symbol of another or any likeness  
12 of any of the foregoing upon any drug or container or labeling  
13 thereof so as to render the drug a counterfeit substance.

14 (30) Except as authorized by this act, the manufacture,  
15 delivery, or possession with intent to manufacture or deliver, a  
16 controlled substance by a person not registered under this act,  
17 or a practitioner not registered or licensed by the appropriate  
18 State board, or knowingly creating, delivering or possessing  
19 with intent to deliver, a counterfeit controlled substance.

20 (31) Notwithstanding other subsections of this section, (i)  
21 the possession of a small amount of marihuana only for personal  
22 use; (ii) the possession of a small amount of marihuana with the  
23 intent to distribute it but not to sell it; or (iii) the  
24 distribution of a small amount of marihuana but not for sale.

25 For purposes of this subsection, thirty (30) grams of  
26 marihuana or eight (8) grams of hashish shall be considered a  
27 small amount of marihuana.

28 (32) The use of, or possession with intent to use, drug  
29 paraphernalia for the purpose of planting, propagating,  
30 cultivating, growing, harvesting, manufacturing, compounding,

1 converting, producing, processing, preparing, testing,  
2 analyzing, packing, repacking, storing, containing, concealing,  
3 injecting, ingesting, inhaling or otherwise introducing into the  
4 human body a controlled substance in violation of this act.

5 (33) The delivery of, possession with intent to deliver, or  
6 manufacture with intent to deliver, drug paraphernalia, knowing,  
7 or under circumstances where one reasonably should know, that it  
8 would be used to plant, propagate, cultivate, grow, harvest,  
9 manufacture, compound, convert, produce, process, prepare, test,  
10 analyze, pack, repack, store, contain, conceal, inject, ingest,  
11 inhale or otherwise introduce into the human body a controlled  
12 substance in violation of this act.

13 (34) The placing in any newspaper, magazine, handbill or  
14 other publication any advertisement, knowing, or under  
15 circumstances where one reasonably should know, that the purpose  
16 of the advertisement, in whole or in part is to promote the sale  
17 of objects designed or intended for use as drug paraphernalia.

18 (35) (i) Except as otherwise provided by law, [no person  
19 shall manufacture, process, package, distribute, process with  
20 intent to distribute or sell] manufacturing, processing,  
21 packaging, distributing, processing with intent to distribute or  
22 selling a noncontrolled substance that has a stimulant or  
23 depressant effect on humans, other than a prescription drug,  
24 which, or the label or container of which, substantially  
25 resembles a specific controlled substance. In determining  
26 whether there has been a violation of this subclause, the  
27 following factors shall be considered:

28 (A) Whether the noncontrolled substance in its overall  
29 finished dosage appearance is substantially similar in size,  
30 shape, color and markings or lack thereof to a specific



1 controlled substance.

2 (B) Whether the noncontrolled substance in its finished  
3 dosage form is packaged in a container which, or the labeling of  
4 which, bears markings or printed material substantially similar  
5 to that accompanying or containing a specific controlled  
6 substance.

7 (ii) Except as otherwise provided by law, no person shall  
8 knowingly distribute or sell a noncontrolled substance upon the  
9 express or implied representation that the substance is a  
10 controlled substance. In determining whether there has been a  
11 violation of this subclause, the following factors shall be  
12 considered:

13 (A) Whether the noncontrolled substance in its overall  
14 finished dosage appearance is substantially similar in size,  
15 shape, color and markings or lack thereof to a specific  
16 controlled substance.

17 (B) Whether the noncontrolled substance in its finished  
18 dosage form is packaged in a container which, or the labeling of  
19 which, bears markings or printed material substantially similar  
20 to that accompanying or containing a specific controlled  
21 substance.

22 (C) Whether the noncontrolled substance is packaged in a  
23 manner ordinarily used for the illegal delivery of a controlled  
24 substance.

25 (D) Whether the consideration tendered in exchange for the  
26 noncontrolled substance substantially exceeds the reasonable  
27 value of the substance, considering the actual chemical  
28 composition of the substance and, where applicable, the price at  
29 which over-the-counter substances of like chemical composition  
30 sell.

1 (E) Whether the consideration tendered in exchange for the  
2 noncontrolled substance approximates or exceeds the price at  
3 which the substance would sell upon illegal delivery were it  
4 actually the specific controlled substance it physically  
5 resembles.

6 (iii) Except as otherwise provided by law, no person shall  
7 knowingly distribute or sell a noncontrolled substance upon the  
8 express representation that the recipient, in turn, will be able  
9 to distribute or sell the substance as a controlled substance.

10 (iv) In any criminal prosecution brought under this clause,  
11 it shall not be a defense that the defendant believed the  
12 noncontrolled substance actually to be a controlled substance.

13 (v) The provisions of this clause shall not be applicable  
14 to:

15 (A) Law enforcement officers acting in the course and  
16 legitimate scope of their employment.

17 (B) Persons who manufacture, process, package, distribute or  
18 sell noncontrolled substances to licensed medical practitioners  
19 for use as placebos in the course of professional practice or  
20 research or for use in FDA approved investigational new drug  
21 trials.

22 (C) Licensed medical practitioners, pharmacists and other  
23 persons authorized to dispense or administer controlled  
24 substances and acting in the legitimate performance of their  
25 professional license pursuant to subclause (v)(B).

26 (D) A noncontrolled substance that was initially introduced  
27 into commerce prior to the initial introduction into commerce of  
28 the controlled substance which it is alleged to imitate.

29 ~~(36) The use of any communication facility in committing,~~ <—  
30 ~~causing or facilitating the commission of any act constituting a~~

~~felony under this act. Each separate use of a communication facility shall be a separate offense under this clause. For purposes of this clause, the term "communication facility" means public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures or sound and includes mail, telephone, wire, radio and all other means of communication.~~

~~(37) The attempting, soliciting or conspiring to commit an offense defined in this act.~~

~~(38) The engaging in a continuing criminal enterprise. For purposes of this subsection, a person is engaged in a continuing criminal enterprise if:~~

~~(i) The person violates any provision of this act the punishment for which is a felony;~~

~~(ii) The violation is a part of a continuing series of violations of this act:~~

~~(A) Which are undertaken by such person in concert with five or more other persons with respect to whom the person occupies a position of organizer, a supervisory position or any other position of management.~~

~~(B) From which such person obtains substantial income or resources.~~

(b) Any person who violates any of the provisions of clauses (1) through (11), (13) and (15) through (20) of subsection (a) shall be guilty of a misdemeanor, and except for clauses (4), (6), (7), (8), (9) and (19) shall, on conviction thereof, be sentenced to imprisonment not exceeding one year or to pay a fine not exceeding five thousand dollars (\$5,000), or both, and for clauses (4), (6), (7), (8), (9) and (19) shall, on conviction thereof, be sentenced to imprisonment not exceeding

1 three years or to pay a fine not exceeding five thousand dollars  
2 (\$5,000), or both; but, if the violation is committed after a  
3 prior conviction of such person for a violation of this act  
4 under this section has become final, such person shall be  
5 sentenced to imprisonment not exceeding three years or to pay a  
6 fine not exceeding twenty-five thousand dollars (\$25,000), or  
7 both.

8 (c) Any person who violates the provisions of clauses (21),  
9 (22) and (24) of subsection (a) shall be guilty of a  
10 misdemeanor, and shall, on conviction thereof, be punished only  
11 as follows:

12 (1) Upon conviction of the first such offense, he shall be  
13 sentenced to imprisonment not exceeding six months, or to pay a  
14 fine not exceeding ten thousand dollars (\$10,000), or both.

15 (2) Upon conviction of the second and subsequent offense, he  
16 shall be sentenced to imprisonment not exceeding two years, or  
17 to pay a fine not exceeding twenty-five thousand dollars  
18 (\$25,000), or both.

19 (d) Any person who knowingly or intentionally violates  
20 clause (23) of subsection (a) is guilty of a misdemeanor and  
21 upon conviction thereof shall be sentenced to imprisonment not  
22 exceeding three years, or to pay a fine not exceeding fifteen  
23 thousand dollars (\$15,000), or both.

24 (e) Any person who violates clauses (25) through (29) of  
25 subsection (a) is guilty of a misdemeanor and upon conviction  
26 shall be sentenced to imprisonment not exceeding three years, or  
27 to pay a fine not exceeding twenty-five thousand dollars  
28 (\$25,000), or both.

29 (f) Any person who violates clause (12), (14) or [clause]  
30 (30) of subsection (a) with respect to:

1 (1) A controlled substance or counterfeit substance  
2 classified in Schedule I or II which is a narcotic drug, is  
3 guilty of a felony and upon conviction thereof shall be  
4 sentenced to imprisonment not exceeding fifteen years, or to pay  
5 a fine not exceeding two hundred fifty thousand dollars  
6 (\$250,000), or both or such larger amount as is sufficient to  
7 exhaust the assets utilized in and the profits obtained from the  
8 illegal activity.

9 (1.1) Phencyclidine [and] ; methamphetamine, including its  
10 salts, isomers and salts of isomers[,]; cocoa leaves AND any <—  
11 salt, compound, derivative or preparation of cocoa leaves; any  
12 salt, compound, derivative or preparation of the preceding which  
13 is chemically equivalent or identical with any of these  
14 substances except decocanized cocoa leaves or extracts of cocoa  
15 leaves, which extracts do not contain cocaine or ecgonine; and  
16 marihuana in a quantity in excess of one thousand (1,000)  
17 pounds, is guilty of a felony and upon conviction thereof shall  
18 be sentenced to imprisonment not exceeding ten years, or to pay  
19 a fine not exceeding one hundred thousand dollars (\$100,000), or  
20 both, or such larger amount as is sufficient to exhaust the  
21 assets utilized in and the profits obtained from the illegal  
22 manufacture or distribution of these substances.

23 (2) Any other controlled substance or counterfeit substance  
24 classified in Schedule I, II, or III, is guilty of a felony and  
25 upon conviction thereof shall be sentenced to imprisonment not  
26 exceeding five years, or to pay a fine not exceeding fifteen  
27 thousand dollars (\$15,000), or both.

28 (3) A controlled substance or counterfeit substance  
29 classified in Schedule IV, is guilty of a felony and upon  
30 conviction thereof shall be sentenced to imprisonment not

1 exceeding three years, or to pay a fine not exceeding ten  
2 thousand dollars (\$10,000), or both.

3 (4) A controlled substance or counterfeit substance  
4 classified in Schedule V, is guilty of a misdemeanor and upon  
5 conviction thereof shall be sentenced to imprisonment not  
6 exceeding one year, or to pay a fine not exceeding five thousand  
7 dollars (\$5,000), or both.

8 (g) Any person who violates clause (31) of subsection (a) is  
9 guilty of a misdemeanor and upon conviction thereof shall be  
10 sentenced to imprisonment not exceeding thirty days, or to pay a  
11 fine not exceeding five hundred dollars (\$500), or both.

12 (h) Any penalty imposed for violation of this act shall be  
13 in addition to, and not in lieu of, any civil or administrative  
14 penalty or sanction authorized by law.

15 (i) Any person who violates clauses (32), (33) and (34) of  
16 subsection (a) is guilty of a misdemeanor and upon conviction  
17 thereof shall be sentenced to pay a fine not exceeding two  
18 thousand five hundred dollars (\$2,500) or to imprisonment not  
19 exceeding one (1) year, or [to] both. Any person who violates  
20 clause (33) by delivering drug paraphernalia to a person under  
21 eighteen (18) years of age who is three (3) or more years his  
22 junior shall be guilty of a misdemeanor of the second degree and  
23 upon conviction thereof shall be sentenced to pay a fine not  
24 exceeding five thousand dollars (\$5,000) or to imprisonment not  
25 exceeding two (2) years, or [to] both.

26 (j) Any person who violates any provisions of subclause (i)  
27 or (ii) or (iii) of clause (35) of subsection (a) is guilty of a  
28 felony, and upon conviction thereof shall be sentenced to  
29 imprisonment not exceeding five years, or to pay a fine not  
30 exceeding ten thousand dollars (\$10,000), or both.

~~(k) Any person who violates clause (36) of subsection (a) shall, on conviction thereof, be sentenced to imprisonment of not more than four (4) years or pay a fine not exceeding thirty thousand dollars (\$30,000), or both; except that if any person commits a violation after one (1) or more prior convictions for violation of this section or for a felony under any other provision of this act or a similar offense under any other statute of the United States or of any state, the person shall be sentenced to imprisonment of not more than eight (8) years or pay a fine not exceeding sixty thousand dollars (\$60,000), or both.~~

~~(l) Any person who violates clause (37) of subsection (a) shall be punished by imprisonment or fine, or both, which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt, solicitation or conspiracy.~~

~~(m) (1) Any person who violates clause (38) shall be sentenced to a term of imprisonment which may not be less than ten (10) years and which may be up to life imprisonment, to a fine not exceeding one hundred thousand dollars (\$100,000), and to the forfeiture prescribed in clause (2); except that if any person engages in such activity after one (1) or more prior convictions under clause (38) of subsection (a) have become final, the person shall, upon conviction thereof, be sentenced to imprisonment which may not be less than twenty (20) years and which may be up to life imprisonment, to a fine of not more than two hundred thousand dollars (\$200,000) and to the forfeiture prescribed in clause (2).~~

~~(2) Any person who is convicted under clause (38) of subsection (a) of engaging in a continuing criminal enterprise~~

1 ~~shall forfeit to the Commonwealth:~~

2 ~~(i) The profits obtained by him in the enterprise;~~

3 ~~(ii) Any of his interest in, claim against or property or~~  
4 ~~contractual rights of any kind affording a source of influence~~  
5 ~~over the enterprise.~~

6 ~~(3) In the case of a sentence imposed under this subsection,~~  
7 ~~imposition or execution of sentence shall not be suspended and~~  
8 ~~probation shall not be granted.~~

9 ~~(K) ANY PERSON CONVICTED OF MANUFACTURE OF AMPHETAMINE SHALL~~ <—  
10 ~~BE SENTENCED TO AT LEAST TWO YEARS OF TOTAL CONFINEMENT~~  
11 ~~NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT OR OTHER STATUTE~~  
12 ~~TO THE CONTRARY.~~

13 Section 2. Section 28 (d) and (e) of the act are amended,  
14 subsection (a) is amended by adding a clause and the section is  
15 amended by adding subsections to read:

16 Section 28. Forfeiture.--(a) The following shall be subject  
17 to forfeiture to the Commonwealth and no property right shall  
18 exist in them:

19 \* \* \*

20 (6) (i) Consideration as follows:

21 (A) Money, negotiable instruments, securities or other  
22 things of value furnished or intended to be furnished by any  
23 person in exchange for a controlled substance in violation of  
24 this act.

25 (B) Proceeds traceable to such an exchange.

26 (C) Money, negotiable instruments and securities used or  
27 intended to be used to facilitate any violation of this act.

28 (D) Real property, including things growing on, affixed to  
29 and found in the land.

30 (ii) No property shall be forfeited under this clause to the



1 extent of the interest of an owner, by reason of any act or  
2 omission established by the owner to have been committed or  
3 omitted without the knowledge or consent of that owner. Such  
4 money and negotiable instruments found in close proximity to  
5 controlled substances possessed in violation of this act shall  
6 be rebuttably presumed to be proceeds derived from the selling  
7 of a controlled substance in violation of this act.

8 \* \* \*

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

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

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

18 (3) Require that the [department] district attorney or  
19 Attorney General take custody of the property and remove it to  
20 an appropriate location for disposition in accordance with law.

21 (e) Whenever property is forfeited under this act, the  
22 property shall be transferred to the custody of the [department  
23 and the secretary may:] district attorney, if the law  
24 enforcement authority seizing the property has local or county  
25 jurisdiction, or the Attorney General, if the law enforcement  
26 authority seizing the property has Statewide jurisdiction. The  
27 district attorney or the Attorney General, where appropriate,  
28 may:

29 (1) Retain the property for official use;

30 (2) Sell any forfeited property which is not required to be

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

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

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

22 (h) The district attorney and the Attorney General shall  
23 utilize forfeited property or proceeds thereof for the purpose  
24 of enforcing the provisions of this act.

25 (I) THE ATTORNEY GENERAL SHALL ANNUALLY SUBMIT A REPORT TO <—  
26 THE APPROPRIATIONS AND JUDICIARY COMMITTEES OF THE SENATE AND TO  
27 THE APPROPRIATIONS AND JUDICIARY COMMITTEES OF THE HOUSE OF  
28 REPRESENTATIVES SPECIFYING THE FORFEITED PROPERTY OR PROCEEDS  
29 THEREOF OBTAINED UNDER THIS SECTION. THE REPORT SHALL GIVE AN  
30 ACCOUNTING OF ALL PROCEEDS DERIVED FROM THE SALE OF FORFEITED

1 PROPERTY AND THE USE MADE OF UNSOLD FORFEITED PROPERTY.

2 Section 3. Section 29 of the act is amended to read:

3 Section 29. Procedure With Respect to Seized Property

4 Subject to Liens and Rights of Lienholders.--[(a) The person  
5 who seized said property shall notify the registered owner and  
6 lienholder, where possible, and shall publish notice in a  
7 newspaper of general circulation in the county or the city,  
8 where seized, of any vehicle, vessel or aircraft confiscated  
9 informing interested persons of the seizure and right to file a  
10 claim protesting the confiscation of said vehicle, vessel or  
11 aircraft.

12 (b) Any lawful lienholder, or other person showing a legal  
13 right, title or interest in a vehicle, vessel or aircraft,  
14 confiscated pursuant to this subtitle may, within thirty days of  
15 publication of notice file a claim protesting such seizure with  
16 the court or with the person having jurisdiction thereof. When  
17 such a claim is filed, the court of common pleas of the county  
18 wherein the property was confiscated, shall proceed in rem to  
19 hear and determine the question of forfeiture.

20 (c) If the court determines any property is subject to  
21 forfeiture it shall also determine whether any lawful lienholder  
22 who has filed a timely claim and protest had knowledge of such  
23 intended unlawful use. If the court shall find such knowledge  
24 then the lienholder's right, title and interest to the property  
25 shall likewise be deemed forfeited. If the court does not find  
26 such knowledge and the property is otherwise subject to  
27 forfeiture, it shall be forfeited and the person having custody  
28 of such property shall either pay the outstanding indebtedness  
29 secured by such lawful lien and keep the property or deliver the  
30 property to the said lienholder.]

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

8         (1) A description of the property seized;

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

10        (3) The owner, if known;

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

12        (5) An allegation that the property is subject to forfeiture  
13 pursuant to subsection (a) of section 28 and an averment of  
14 material facts upon which the forfeiture action is based;

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

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

23                To the Claimant of within Described Property:

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

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

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

(c) If the owner of the property is unknown or there was no person in possession of the property when seized, notice of the petition shall be given by the Commonwealth through an advertisement in the newspaper of general circulation published in the county where the property shall have been seized, once a week for three successive weeks. The notice shall contain a statement of the seizure of the property with a description of the property and the place and date of seizure and shall direct any claimants to the property to file a claim on or before a date given in the notice, which date shall not be less than thirty (30) days from the date of the first publication. If no claims are filed within thirty (30) days of publication, the property shall summarily forfeit to the Commonwealth.

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

(e) At the time of the hearing, if the Commonwealth produces evidence that the property in question was unlawfully used or possessed, the burden shall be upon the claimant to show:

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

(2) That the claimant lawfully acquired the property;

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

(4) In the event that it shall appear that the property was unlawfully used or possessed by a person other than the claimant, then the claimant shall show that the unlawful use or possession was without his knowledge or consent.

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

18     Section 4. This act shall take effect in 60 days.