

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1160 Session of
1985

INTRODUCED BY BELL AND O'PAKE, OCTOBER 16, 1985

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, SEPTEMBER 30, 1986

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 forfeitures.

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

14 Section 1. Sections 28(a)(6) ~~and (d)~~ and 29(e) of the act of <—
15 April 14, 1972 (P.L.233, No.64), known as The Controlled
16 Substance, Drug, Device and Cosmetic Act, added or amended
17 December 14, 1984 (P.L.988, No.200), are amended to read:

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

21 * * *

22 (6) (i) [Consideration as follows] All of the following:

1 (A) Money, negotiable instruments, securities or other
2 things of value furnished or intended to be furnished by any
3 person in exchange for a controlled substance in violation of
4 this act and all proceeds traceable to such an exchange.

5 [(B) Proceeds traceable to such an exchange.]

6 ~~[(C)]~~ (B) Money, negotiable instruments ~~[and]~~, securities OR <—
7 OTHER THINGS OF VALUE used or intended to be used to facilitate
8 any violation of this act.

9 ~~[(D)]~~ (C) Real property[, including] used or intended to be <—
10 used to facilitate any violation of this act, including
11 structures or other improvements thereon, and things growing on,
12 affixed to and found in the land.

13 (ii) No property shall be forfeited under this clause, to
14 the extent of the interest of an owner, by reason of any act or
15 omission established by the owner to have been committed or
16 omitted without the knowledge or consent of that owner. Such
17 money and negotiable instruments found in close proximity to
18 controlled substances possessed in violation of this act shall
19 be rebuttably presumed to be proceeds derived from the selling
20 of a controlled substance in violation of this act.

21 (iii) No valid lien or encumbrance on real property shall be
22 subject to forfeiture or impairment under this clause. A LIEN <—
23 WHICH IS FRAUDULENT OR INTENDED TO AVOID FORFEITURE UNDER THIS
24 SECTION SHALL BE INVALID.

25 * * *

26 ~~(d) Property taken or detained under this section shall not~~ <—
27 ~~be subject to replevin, but is deemed to be in the custody of~~
28 ~~the law enforcement authority subject only to the orders and~~
29 ~~decrees of the court of common pleas having jurisdiction over~~
30 ~~the forfeiture proceedings and of the district attorney or~~

~~Attorney General. When property is seized under this act, the
law enforcement authority shall:~~

~~(1) Place the property under seal; and, except as to real
property, either~~

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

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

~~* * *~~

Section 29. Procedure With Respect to Seized Property
Subject to Liens and Rights of Lienholders.--

* * *

(e) At the time of the hearing, if the Commonwealth produces
evidence that the property in question was unlawfully used [or],
possessed or otherwise subject to forfeiture under section
28(a), the burden shall be upon the claimant to show:

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

(2) That the claimant lawfully acquired the property;

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

(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.

* * *

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