

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 456 Session of 2005

INTRODUCED BY GOOD, BAKER, BARRAR, BASTIAN, BEBKO-JONES, BELFANTI, BOYD, BROWNE, BUNT, CALTAGIRONE, CAPPELLI, CLYMER, DALEY, J. EVANS, FABRIZIO, FRANKEL, FREEMAN, GINGRICH, GODSHALL, GOODMAN, HARRIS, LEACH, MANN, MILLARD, S. MILLER, PHILLIPS, READSHAW, REICHLEY, ROSS, SCHRODER, SEMMEL, B. SMITH, STABACK, STERN, E. Z. TAYLOR, WATSON, WILT, YOUNGBLOOD, YUDICHAK, ZUG, PICKETT, GEIST AND SAYLOR, FEBRUARY 14, 2005

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 14, 2005

AN ACT

1 ~~Amending Title 42 (Judiciary and Judicial Procedure) of the~~ <—
2 ~~Pennsylvania Consolidated Statutes, providing for sentencing~~
3 ~~for terrorism and for penalties.~~
4 AMENDING TITLES 18 (CRIMES AND OFFENSES) AND 42 (JUDICIARY AND <—
5 JUDICIAL PROCEDURE) OF THE PENNSYLVANIA CONSOLIDATED
6 STATUTES, PROVIDING FOR THE OFFENSE OF TERRORISM; FURTHER
7 PROVIDING IN CONTROLLED SUBSTANCES FORFEITURES FOR LOSS OF
8 PROPERTY RIGHTS TO COMMONWEALTH; PROVIDING FOR TERRORISM
9 FORFEITURE; FURTHER PROVIDING FOR PROCEDURE WITH RESPECT TO
10 SEIZED PROPERTY SUBJECT TO LIENS AND RIGHTS OF LIENHOLDERS;
11 AND PROVIDING FOR PENALTIES.
12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:
14 ~~Section 1. Title 42 of the Pennsylvania Consolidated~~ <—
15 ~~Statutes is amended by adding a section to read:~~
16 ~~§ 9720.2. Sentence enhancement for terrorism.~~
17 ~~(a) General rule. In addition to any penalty provided by~~
18 ~~law, a person may be sentenced to an additional term not to~~
19 ~~exceed ten years' confinement and an additional fine not to~~

1 ~~exceed \$100,000 for an offense if, at trial, the prosecution~~
2 ~~proves beyond a reasonable doubt that the person committed the~~
3 ~~offense with the intent to do any of the following:~~

4 ~~(1) Intimidate or coerce a civilian population by~~
5 ~~violence or threat of violence.~~

6 ~~(2) Influence the policy of a unit of government by~~
7 ~~intimidation or coercion by violence or threat of violence.~~

8 ~~(3) Affect the conduct of a unit of government by mass~~
9 ~~destruction, assassination or kidnapping.~~

10 ~~(b) Inchoate crimes. Subsection (a) applies to any attempt,~~
11 ~~conspiracy or solicitation to commit an offense.~~

12 ~~(c) Procedure. The prosecution must indicate intent to~~
13 ~~proceed under this section in the indictment or information~~
14 ~~which commences the prosecution.~~

15 ~~(d) Forfeiture.—~~

16 ~~(1) The following property may be deemed contraband and~~
17 ~~forfeited under this section:~~

18 ~~(i) All assets, foreign or domestic:~~

19 ~~(A) Of an individual, entity or organization~~
20 ~~engaged in planning or perpetrating an act in this~~
21 ~~Commonwealth to which subsection (a) is applicable~~
22 ~~and all assets, foreign or domestic, affording a~~
23 ~~person a source of influence over such an entity or~~
24 ~~organization.~~

25 ~~(B) Acquired or maintained in this Commonwealth~~
26 ~~by a person with the intent and for the purpose of~~
27 ~~supporting, planning, conducting or concealing an act~~
28 ~~to which subsection (a) is applicable.~~

29 ~~(C) Derived from, involved in or used or~~
30 ~~intended to be used to commit an act in this~~

1 ~~Commonwealth to which subsection (a) is applicable.~~

2 ~~(ii) All assets within this Commonwealth:~~

3 ~~(A) Of an individual, entity or organization~~
4 ~~engaged in planning or perpetrating an unlawful act,~~
5 ~~either foreign or domestic, with the intent to do any~~
6 ~~of the following:~~

7 ~~(I) Intimidate or coerce a civilian~~
8 ~~population, either foreign or domestic, by~~
9 ~~violence or threat of violence.~~

10 ~~(II) Influence the policy of a unit of~~
11 ~~government by intimidation or coercion, either~~
12 ~~foreign or domestic, by violence or threat of~~
13 ~~violence.~~

14 ~~(III) Affect the conduct of a unit of~~
15 ~~government, either foreign or domestic, by mass~~
16 ~~destruction, assassination or kidnapping.~~

17 ~~(B) Acquired or maintained with the intent and~~
18 ~~for the purpose of supporting, planning, conducting~~
19 ~~or concealing an unlawful act under clause (A); or~~

20 ~~(C) Derived from, involved in or used or~~
21 ~~intended to be used to commit an unlawful act under~~
22 ~~clause (A).~~

23 ~~(2) (i) Property subject to forfeiture under this~~
24 ~~section may be seized by the law enforcement authority~~
25 ~~upon process issued by a court of common pleas having~~
26 ~~jurisdiction over the property.~~

27 ~~(ii) Seizure without process may be made if any of~~
28 ~~the following apply:~~

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

1 ~~an administrative inspection warrant.~~

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

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

8 ~~(D) There is probable cause to believe that the~~
9 ~~property has been or is intended to be used in the~~
10 ~~commission of an action to which subsection (a) is~~
11 ~~applicable.~~

12 ~~(iii) In the event seizure is made without process,~~
13 ~~proceedings for the issuance of process shall be~~
14 ~~instituted forthwith.~~

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

23 ~~(i) remove the property to a place determined by the~~
24 ~~law enforcement authority; or~~

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

29 ~~(4) Property forfeited under this chapter shall be~~
30 ~~transferred to the custody of the district attorney if the~~

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

6 ~~(i) Retain the property for official use.~~

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

15 ~~(5) Cash or proceeds of forfeited property transferred~~
16 ~~to the custody of the district attorney under paragraph (4)~~
17 ~~shall be placed in the operating fund of the county in which~~
18 ~~the district attorney is elected. The appropriate county~~
19 ~~authority shall immediately release from the operating fund,~~
20 ~~without restriction, a like amount for the use of the~~
21 ~~district attorney in enforcing the criminal laws of the~~
22 ~~Commonwealth of Pennsylvania. The entity having budgetary~~
23 ~~control shall not anticipate future forfeitures or proceeds~~
24 ~~therefrom in adoption and approval of the budget for the~~
25 ~~district attorney.~~

26 ~~(6) If both municipal and State law enforcement~~
27 ~~authorities were substantially involved in effecting the~~
28 ~~seizure, the court having jurisdiction over the forfeiture~~
29 ~~proceedings shall equitably distribute the property between~~
30 ~~the district attorney and the Attorney General.~~

1 ~~(7) The district attorney and the Attorney General shall~~
2 ~~utilize forfeited property or proceeds thereof for the~~
3 ~~purpose of enforcing the provisions of this act. In~~
4 ~~appropriate cases, the district attorney and the Attorney~~
5 ~~General may designate proceeds from forfeited property to be~~
6 ~~utilized for antiterrorism public safety programs and for~~
7 ~~relocation and protection of witnesses in criminal cases.~~

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

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

29 ~~(10) The proceeds or future proceeds from property~~
30 ~~forfeited under this chapter shall be in addition to any~~

1 ~~appropriation made to the Office of Attorney General.~~

2 ~~(c) Procedure with respect to seized property subject to~~
3 ~~liens and rights of lienholders.—~~

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

12 ~~(i) A description of the property seized.~~

13 ~~(ii) A statement of the time and place seized.~~

14 ~~(iii) The owner, if known.~~

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

16 ~~(v) An allegation that the property is subject to~~
17 ~~forfeiture under subsection (d) and an averment of~~
18 ~~material facts upon which the forfeiture action is based.~~

19 ~~(vi) A prayer for an order that the property be~~
20 ~~adjudged forfeited to the Commonwealth, condemned and~~
21 ~~sold according to law, unless cause be shown to the~~
22 ~~contrary.~~

23 ~~(2) A copy of the petition required under subsection (a)~~
24 ~~shall be served personally or by certified mail on the owner~~
25 ~~or upon the person or persons in possession at the time of~~
26 ~~the seizure. The copy shall have endorsed a notice, as~~
27 ~~follows:~~

28 ~~To the Claimant of Within Described Property:~~

29 ~~You are required to file an answer to this petition,~~
30 ~~setting forth your title in and right to possession of~~

1 ~~the property within 30 days from the service of this~~
2 ~~notice, and you are further notified that, if you fail to~~
3 ~~file an answer, a decree of forfeiture and condemnation~~
4 ~~will be entered against the property.~~

5 ~~The notice shall be signed by the Attorney General, Deputy~~
6 ~~Attorney General, district attorney, deputy district attorney~~
7 ~~or assistant district attorney.~~

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

25 ~~(4) For purposes of this section, the owner or person in~~
26 ~~possession cannot be found in the jurisdiction of the court~~
27 ~~if all of the following steps are taken:~~

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

1 ~~(ii) Personal service is attempted once, but cannot~~
2 ~~be made at the last known address.~~

3 ~~(iii) A copy of the petition is left at the last~~
4 ~~known address.~~

5 ~~(5) The notice provisions of this section are~~
6 ~~automatically waived when the owner or person in possession,~~
7 ~~without good cause, fails to appear in court in response to a~~
8 ~~subpoena on the underlying criminal charges. Unless good~~
9 ~~cause is demonstrated, the property shall summarily forfeit~~
10 ~~to the Commonwealth 45 days after such a failure to appear.~~

11 ~~(6) (i) Upon application of the Commonwealth, the court~~
12 ~~may enter a restraining order or injunction, require the~~
13 ~~execution of a satisfactory performance bond or take any~~
14 ~~other action to preserve the availability of property~~
15 ~~described in subsection (d) for forfeiture under this~~
16 ~~section:~~

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

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

27 ~~(I) there is a substantial probability that~~
28 ~~the Commonwealth will prevail on the issue of~~
29 ~~forfeiture and that failure to enter the order~~
30 ~~will result in the property being destroyed,~~

1 ~~removed from the jurisdiction of the court or~~
2 ~~otherwise made unavailable for forfeiture; and~~

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

7 ~~(ii) An order entered under this paragraph shall be~~
8 ~~effective for not more than 90 days unless extended by~~
9 ~~the court for good cause shown or an indictment or~~
10 ~~information described in clause (A) has been filed.~~

11 ~~(7) (i) A temporary restraining order under paragraph~~
12 ~~(6) may be entered upon application of the Commonwealth~~
13 ~~without notice or opportunity for a hearing if an~~
14 ~~information or indictment has not yet been filed with~~
15 ~~respect to the property and if the Commonwealth~~
16 ~~demonstrates that there is probable cause to believe that~~
17 ~~the property with respect to which the order is sought~~
18 ~~would be subject to forfeiture under this chapter and~~
19 ~~that provision of notice will jeopardize the availability~~
20 ~~of the property for forfeiture.~~

21 ~~(ii) A temporary order under subparagraph (i) shall~~
22 ~~expire not more than ten days after the date on which it~~
23 ~~is entered, unless extended for good cause shown or~~
24 ~~unless the party against whom it is entered consents to~~
25 ~~an extension for a longer period. A hearing requested~~
26 ~~concerning an order entered under this paragraph shall be~~
27 ~~held at the earliest possible time and prior to the~~
28 ~~expiration of the temporary order.~~

29 ~~(8) The court may receive and consider, at a hearing~~
30 ~~held under paragraph (6) or (7), evidence and information~~

1 ~~that would be inadmissible under the rules of evidence.~~

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

5 ~~(10) At the time of the hearing, if the Commonwealth~~
6 ~~produces evidence that the property in question was~~
7 ~~unlawfully used, possessed or otherwise subject to forfeiture~~
8 ~~under subsection (d), the burden shall be upon the claimant~~
9 ~~to show:~~

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

13 ~~(ii) That the claimant lawfully acquired the~~
14 ~~property.~~

15 ~~(iii) That the property was not unlawfully used or~~
16 ~~possessed by the claimant. In the event that it appears~~
17 ~~that the property was unlawfully used or possessed by a~~
18 ~~person other than the claimant, the claimant must show~~
19 ~~that the unlawful use or possession was without his~~
20 ~~knowledge or consent. The absence of knowledge or consent~~
21 ~~must be reasonable under the circumstances.~~

22 ~~(11) If, prior to the sale of property the disposition~~
23 ~~of which is provided for in this section, a person claiming~~
24 ~~the ownership of or right of possession to or claiming to be~~
25 ~~the holder of a chattel mortgage or contract of conditional~~
26 ~~sale upon the property presents a petition to the court~~
27 ~~alleging lawful ownership or right of possession of a lien~~
28 ~~against or reservation of title to the property and if, upon~~
29 ~~public hearing, due notice of which having been given to the~~
30 ~~Attorney General or the district attorney, the claimant~~

~~proves by competent evidence to the satisfaction of the court that the property was lawfully acquired, possessed and used by the claimant and that the property was unlawfully used by a person other than the claimant and the unlawful use was without the claimant's knowledge or consent, the court may order the property returned or delivered to the claimant. Absence of knowledge or consent must be reasonable under the circumstances.~~

SECTION 1. TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED

<—

STATUTES IS AMENDED BY ADDING A SECTION TO READ:

§ 2717. TERRORISM.

(A) GENERAL RULE.--A PERSON IS GUILTY OF TERRORISM IF HE COMMITS A VIOLENT OFFENSE INTENDING TO DO ANY OF THE FOLLOWING:

(1) INTIMIDATE OR COERCE A CIVILIAN POPULATION.

(2) INFLUENCE THE POLICY OF A GOVERNMENT BY INTIMIDATION OR COERCION.

(3) AFFECT THE CONDUCT OF A GOVERNMENT.

(B) GRADING AND PENALTY.--

(1) IF THE VIOLENT OFFENSE IS A MISDEMEANOR OR A FELONY OF THE THIRD OR SECOND DEGREE, AN OFFENSE UNDER THIS SECTION SHALL BE CLASSIFIED ONE DEGREE HIGHER THAN THE CLASSIFICATION OF THE VIOLENT OFFENSE SPECIFIED IN SECTION 106 (RELATING TO CLASSES OF OFFENSES).

(2) IF THE VIOLENT OFFENSE IS A FELONY OF THE FIRST DEGREE, A PERSON CONVICTED OF AN OFFENSE UNDER THIS SECTION SHALL BE SENTENCED TO A TERM OF IMPRISONMENT FIXED BY THE COURT AT NOT MORE THAN 40 YEARS AND MAY BE SENTENCED TO PAY A FINE OF NOT MORE THAN \$100,000.

(C) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS

1 SUBSECTION:

2 "DANGEROUS TO HUMAN LIFE OR PROPERTY." A VIOLENT ACT OR AN
3 ACT WHICH IS INTENDED TO OR LIKELY TO CAUSE DEATH, SERIOUS
4 BODILY INJURY OR MASS DESTRUCTION.

5 "MASS DESTRUCTION." AN ACT WHICH IS INTENDED TO OR LIKELY TO
6 DESTROY OR CAUSE SERIOUS DAMAGE TO TRANSPORTATION-RELATED
7 INFRASTRUCTURE OR FACILITIES, ENERGY-RELATED INFRASTRUCTURE OR
8 FACILITIES, PUBLIC OR PRIVATE BUILDINGS, PLACES OF PUBLIC
9 ACCOMMODATION OR PUBLIC WORKS UNDER CIRCUMSTANCES EVINCING
10 DEPRAVED INDIFFERENCE TO HUMAN LIFE OR PROPERTY.

11 "VIOLENT OFFENSE." AN OFFENSE UNDER THIS PART, INCLUDING AN
12 ATTEMPT, CONSPIRACY OR SOLICITATION TO COMMIT ANY SUCH OFFENSE,
13 WHICH IS PUNISHABLE BY IMPRISONMENT OF MORE THAN ONE YEAR AND
14 INVOLVES AN ACT DANGEROUS TO HUMAN LIFE OR PROPERTY.

15 SECTION 2. THE HEADING OF CHAPTER 68 OF TITLE 42 IS AMENDED
16 TO READ:

17 CHAPTER 68

18 [CONTROLLED SUBSTANCES] FORFEITURES

19 SECTION 3. THE HEADING OF SECTION 6801 OF TITLE 42 IS
20 AMENDED TO READ:

21 § 6801. [LOSS OF PROPERTY RIGHTS TO COMMONWEALTH] CONTROLLED
22 SUBSTANCES FORFEITURE.

23 SECTION 4. TITLE 42 IS AMENDED BY ADDING A SECTION TO READ:

24 § 6801.1. TERRORISM FORFEITURE.

25 (A) FORFEITURES GENERALLY.--THE FOLLOWING SHALL BE SUBJECT
26 TO FORFEITURES TO THE COMMONWEALTH AND NO PROPERTY RIGHT SHALL
27 EXIST IN THEM:

28 (1) ALL ASSETS, FOREIGN OR DOMESTIC:

29 (I) OF AN INDIVIDUAL, ENTITY OR ORGANIZATION ENGAGED
30 IN PLANNING OR PERPETRATING AN ACT IN THIS COMMONWEALTH

1 WHICH VIOLATES 18 PA.C.S. § 2717 (RELATING TO TERRORISM)
2 AND ALL ASSETS, FOREIGN OR DOMESTIC, AFFORDING A PERSON A
3 SOURCE OF INFLUENCE OVER SUCH AN ENTITY OR ORGANIZATION.

4 (II) ACQUIRED OR MAINTAINED BY A PERSON WITH THE
5 INTENT AND FOR THE PURPOSE OF SUPPORTING, PLANNING,
6 CONDUCTING OR CONCEALING AN ACT IN THIS COMMONWEALTH
7 WHICH VIOLATES 18 PA.C.S. § 2717.

8 (III) DERIVED FROM, INVOLVED IN OR USED OR INTENDED
9 TO BE USED TO COMMIT AN ACT IN THIS COMMONWEALTH
10 WHICH VIOLATES 18 PA.C.S. § 2717.

11 (2) ALL ASSETS WITHIN THIS COMMONWEALTH:

12 (I) OF AN INDIVIDUAL, ENTITY OR ORGANIZATION ENGAGED
13 IN PLANNING OR PERPETRATING AN ACT WHICH VIOLATES 18
14 PA.C.S. § 2717.

15 (II) ACQUIRED OR MAINTAINED WITH THE INTENT AND FOR
16 THE PURPOSE OF SUPPORTING, PLANNING, CONDUCTING OR
17 CONCEALING AN ACT WHICH VIOLATES 18 PA.C.S. § 2717.

18 (III) DERIVED FROM, INVOLVED IN OR USED OR INTENDED
19 TO BE USED TO COMMIT AN ACT WHICH VIOLATES 18 PA.C.S. §
20 2717.

21 (B) PROCESS AND SEIZURES.--PROPERTY SUBJECT TO FORFEITURE
22 UNDER THIS SECTION MAY BE SEIZED BY THE LAW ENFORCEMENT
23 AUTHORITY UPON PROCESS ISSUED BY A COURT OF COMMON PLEAS HAVING
24 JURISDICTION OVER THE PROPERTY. SEIZURE WITHOUT PROCESS MAY BE
25 MADE IF ANY OF THE FOLLOWING APPLY:

26 (1) THE SEIZURE IS INCIDENT TO AN ARREST, A SEARCH UNDER
27 A SEARCH WARRANT OR AN INSPECTION UNDER AN ADMINISTRATIVE
28 INSPECTION WARRANT.

29 (2) THE PROPERTY SUBJECT TO SEIZURE HAS BEEN THE SUBJECT
30 OF A PRIOR JUDGMENT IN FAVOR OF THE COMMONWEALTH IN A

CRIMINAL INJUNCTION OR FORFEITURE PROCEEDING UNDER THIS
CHAPTER.

(3) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PROPERTY
IS DANGEROUS TO HEALTH OR SAFETY.

(4) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PROPERTY
HAS BEEN OR IS INTENDED TO BE USED IN THE COMMISSION OF AN
ACT WHICH VIOLATES 18 PA.C.S. § 2717.

(C) SEIZURE WITHOUT PROCESS.--IN THE EVENT SEIZURE IS MADE
WITHOUT PROCESS, PROCEEDINGS FOR THE ISSUANCE OF PROCESS SHALL
BE INSTITUTED FORTHWITH.

(D) CUSTODY OF PROPERTY.--PROPERTY TAKEN OR DETAINED UNDER
THIS SECTION SHALL NOT BE SUBJECT TO REPLEVIN, BUT IS DEEMED TO
BE IN THE CUSTODY OF THE LAW ENFORCEMENT AUTHORITY, SUBJECT ONLY
TO THE ORDERS AND DECREES OF THE COURT OF COMMON PLEAS HAVING
JURISDICTION OVER THE FORFEITURE PROCEEDINGS AND OF THE DISTRICT
ATTORNEY OR THE ATTORNEY GENERAL. WHEN PROPERTY IS SEIZED UNDER
THIS SECTION, THE LAW ENFORCEMENT AUTHORITY SHALL PLACE THE
PROPERTY UNDER SEAL AND EITHER:

(1) REMOVE THE PROPERTY TO A PLACE DETERMINED BY THE LAW
ENFORCEMENT AUTHORITY; OR

(2) REQUEST 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.

(E) USE OF PROPERTY HELD IN CUSTODY.--WHENEVER PROPERTY IS
FORFEITED UNDER THIS SECTION, IT SHALL BE TRANSFERRED TO THE
CUSTODY OF THE DISTRICT ATTORNEY IF THE LAW ENFORCEMENT
AUTHORITY SEIZING THE PROPERTY HAS LOCAL OR COUNTY JURISDICTION,
OR OF THE ATTORNEY GENERAL IF THE LAW ENFORCEMENT AUTHORITY
SEIZING THE PROPERTY HAS STATEWIDE JURISDICTION. THE DISTRICT
ATTORNEY OR THE ATTORNEY GENERAL, WHERE APPROPRIATE, MAY:

1 (1) RETAIN THE PROPERTY FOR OFFICIAL USE.

2 (2) SELL ANY FORFEITED PROPERTY WHICH IS NOT REQUIRED TO
3 BE DESTROYED BY LAW AND WHICH IS NOT HARMFUL TO THE PUBLIC,
4 THE PROCEEDS FROM ANY SUCH SALE TO BE USED TO PAY ALL PROPER
5 EXPENSES OF THE PROCEEDINGS FOR FORFEITURE AND SALE,
6 INCLUDING EXPENSES OF SEIZURE, MAINTENANCE OF CUSTODY,
7 ADVERTISING AND COURT COSTS. THE BALANCE OF THE PROCEEDS
8 SHALL BE DEALT WITH UNDER SUBSECTIONS (F) AND (G).

9 (F) USE OF CASH OR PROCEEDS OF PROPERTY.--CASH OR PROCEEDS
10 OF FORFEITED PROPERTY TRANSFERRED TO THE CUSTODY OF THE DISTRICT
11 ATTORNEY UNDER SUBSECTION (E) SHALL BE PLACED IN THE OPERATING
12 FUND OF THE COUNTY IN WHICH THE DISTRICT ATTORNEY IS ELECTED.
13 THE APPROPRIATE COUNTY AUTHORITY SHALL IMMEDIATELY RELEASE FROM
14 THE OPERATING FUND, WITHOUT RESTRICTION, A LIKE AMOUNT FOR THE
15 USE OF THE DISTRICT ATTORNEY IN ENFORCING THE CRIMINAL LAWS OF
16 THE COMMONWEALTH OF PENNSYLVANIA. THE ENTITY HAVING BUDGETARY
17 CONTROL SHALL NOT ANTICIPATE FUTURE FORFEITURES OR PROCEEDS
18 THEREFROM IN ADOPTION AND APPROVAL OF THE BUDGET FOR THE
19 DISTRICT ATTORNEY.

20 (G) DISTRIBUTION OF PROPERTY AMONG LAW ENFORCEMENT
21 AUTHORITIES.--IF BOTH MUNICIPAL AND STATE LAW ENFORCEMENT
22 AUTHORITIES WERE SUBSTANTIALLY INVOLVED IN EFFECTING THE
23 SEIZURE, THE COURT HAVING JURISDICTION OVER THE FORFEITURE
24 PROCEEDINGS SHALL EQUITABLY DISTRIBUTE THE PROPERTY BETWEEN THE
25 DISTRICT ATTORNEY AND THE ATTORNEY GENERAL.

26 (H) AUTHORIZATION TO UTILIZE PROPERTY.--THE DISTRICT
27 ATTORNEY AND THE ATTORNEY GENERAL SHALL UTILIZE FORFEITED
28 PROPERTY OR PROCEEDS THEREOF FOR THE PURPOSE OF ENFORCING THE
29 PROVISIONS OF THIS ACT. IN APPROPRIATE CASES, THE DISTRICT
30 ATTORNEY AND THE ATTORNEY GENERAL MAY DESIGNATE PROCEEDS FROM

1 FORFEITED PROPERTY TO BE UTILIZED FOR ANTITERRORISM PUBLIC
2 SAFETY PROGRAMS AND FOR RELOCATION AND PROTECTION OF WITNESSES
3 IN CRIMINAL CASES.

4 (I) ANNUAL AUDIT OF FORFEITED PROPERTY.--IT SHALL BE THE
5 RESPONSIBILITY OF EVERY COUNTY IN THIS COMMONWEALTH TO PROVIDE,
6 THROUGH THE CONTROLLER, BOARD OF AUDITORS OR OTHER APPROPRIATE
7 AUDITOR AND THE DISTRICT ATTORNEY, AN ANNUAL AUDIT OF ALL
8 FORFEITED PROPERTY AND PROCEEDS OBTAINED UNDER THIS SECTION. THE
9 AUDIT SHALL NOT BE MADE PUBLIC BUT SHALL BE SUBMITTED TO THE
10 OFFICE OF ATTORNEY GENERAL. THE COUNTY SHALL REPORT ALL
11 FORFEITED PROPERTY AND PROCEEDS OBTAINED UNDER THIS SECTION AND
12 THE DISPOSITION THEREOF TO THE ATTORNEY GENERAL BY SEPTEMBER 30
13 OF EACH YEAR.

14 (J) ANNUAL REPORT; CONFIDENTIAL INFORMATION REGARDING
15 PROPERTY.--THE ATTORNEY GENERAL SHALL ANNUALLY SUBMIT A REPORT
16 TO THE APPROPRIATIONS COMMITTEE AND JUDICIARY COMMITTEE OF THE
17 SENATE AND THE APPROPRIATIONS COMMITTEE AND JUDICIARY COMMITTEE
18 OF THE HOUSE OF REPRESENTATIVES SPECIFYING THE FORFEITED
19 PROPERTY OR PROCEEDS THEREOF OBTAINED UNDER THIS SECTION. THE
20 REPORT SHALL GIVE AN ACCOUNTING OF ALL PROCEEDS DERIVED FROM THE
21 SALE OF FORFEITED PROPERTY AND THE USE MADE OF UNSOLD FORFEITED
22 PROPERTY. THE ATTORNEY GENERAL SHALL ADOPT PROCEDURES AND
23 GUIDELINES GOVERNING THE RELEASE OF INFORMATION BY THE DISTRICT
24 ATTORNEY TO PROTECT THE CONFIDENTIALITY OF FORFEITED PROPERTY OR
25 PROCEEDS USED IN ONGOING ANTITERRORIST ACTIVITIES.

26 (K) PROCEEDS AND APPROPRIATIONS.--THE PROCEEDS OR FUTURE
27 PROCEEDS FROM PROPERTY FORFEITED UNDER THIS SECTION SHALL BE IN
28 ADDITION TO ANY APPROPRIATION MADE TO THE OFFICE OF ATTORNEY
29 GENERAL.

30 SECTION 5. SECTION 6802(A)(5), (F), (J) AND (K) OF TITLE 42

1 ARE AMENDED TO READ:

2 § 6802. PROCEDURE WITH RESPECT TO SEIZED PROPERTY SUBJECT TO
3 LIENS AND RIGHTS OF LIENHOLDERS.

4 (A) GENERAL PROCEDURE.--THE PROCEEDINGS FOR THE FORFEITURE
5 OR CONDEMNATION OF PROPERTY, THE SALE OF WHICH IS PROVIDED FOR
6 IN THIS CHAPTER, SHALL BE IN REM, IN WHICH THE COMMONWEALTH
7 SHALL BE THE PLAINTIFF AND THE PROPERTY THE DEFENDANT. A
8 PETITION SHALL BE FILED IN THE COURT OF COMMON PLEAS OF THE
9 JUDICIAL DISTRICT WHERE THE PROPERTY IS LOCATED, VERIFIED BY
10 OATH OR AFFIRMATION OF AN OFFICER OR CITIZEN, CONTAINING THE
11 FOLLOWING:

12 * * *

13 (5) AN ALLEGATION THAT THE PROPERTY IS SUBJECT TO
14 FORFEITURE PURSUANT TO [SECTION 6801(A) (RELATING TO LOSS OF
15 PROPERTY RIGHTS TO COMMONWEALTH)] SECTION 6801(A) (RELATING
16 TO CONTROLLED SUBSTANCES FORFEITURE) OR 6801.1(A) (RELATING
17 TO TERRORISM FORFEITURE) AND AN AVERMENT OF MATERIAL FACTS
18 UPON WHICH THE FORFEITURE ACTION IS BASED.

19 * * *

20 (F) PRESERVATION OF THE PROPERTY SUBJECT FOR FORFEITURE.--
21 UPON APPLICATION OF THE COMMONWEALTH, THE COURT MAY ENTER A
22 RESTRAINING ORDER OR INJUNCTION, REQUIRE THE EXECUTION OF A
23 SATISFACTORY PERFORMANCE BOND OR TAKE ANY OTHER ACTION TO
24 PRESERVE THE AVAILABILITY OF PROPERTY DESCRIBED IN SECTION
25 6801(A) OR 6801.1(A) FOR FORFEITURE UNDER THIS SECTION EITHER:

26 (1) UPON THE FILING OF AN INFORMATION OR AN INDICTMENT
27 CHARGING [A VIOLATION OF THE ACT OF APRIL 14, 1972 (P.L.233,
28 NO.64), KNOWN AS THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND
29 COSMETIC ACT,] AN OFFENSE IN THIS COMMONWEALTH FOR WHICH
30 CRIMINAL FORFEITURE MAY BE ORDERED UNDER THIS CHAPTER AND

1 ALLEGING THAT THE PROPERTY WITH RESPECT TO WHICH THE ORDER IS
2 SOUGHT WOULD BE SUBJECT TO FORFEITURE; OR

3 (2) PRIOR TO THE FILING OF SUCH AN INDICTMENT OR
4 INFORMATION, IF, AFTER NOTICE TO PERSONS APPEARING TO HAVE AN
5 INTEREST IN THE PROPERTY AND AN OPPORTUNITY FOR A HEARING,
6 THE COURT DETERMINES THAT:

7 (I) THERE IS A SUBSTANTIAL PROBABILITY THAT THE
8 COMMONWEALTH WILL PREVAIL ON THE ISSUE OF FORFEITURE AND
9 THAT FAILURE TO ENTER THE ORDER WILL RESULT IN THE
10 PROPERTY BEING DESTROYED, REMOVED FROM THE JURISDICTION
11 OF THE COURT OR OTHERWISE MADE UNAVAILABLE FOR
12 FORFEITURE; AND

13 (II) THE NEED TO PRESERVE THE AVAILABILITY OF THE
14 PROPERTY THROUGH THE ENTRY OF THE REQUESTED ORDER
15 OUTWEIGHS THE HARDSHIP ON ANY PARTY AGAINST WHOM THE
16 ORDER IS TO BE ENTERED.

17 HOWEVER, AN ORDER ENTERED PURSUANT TO THIS PARAGRAPH SHALL BE
18 EFFECTIVE FOR NOT MORE THAN 90 DAYS UNLESS EXTENDED BY THE
19 COURT FOR GOOD CAUSE SHOWN OR UNLESS AN INDICTMENT OR
20 INFORMATION DESCRIBED IN PARAGRAPH (1) HAS BEEN FILED.

21 * * *

22 (J) OWNER'S BURDEN OF PROOF.--AT THE TIME OF THE HEARING, IF
23 THE COMMONWEALTH PRODUCES EVIDENCE THAT THE PROPERTY IN QUESTION
24 WAS UNLAWFULLY USED, POSSESSED OR OTHERWISE SUBJECT TO
25 FORFEITURE UNDER SECTION 6801(A) OR 6801.1(A), THE BURDEN SHALL
26 BE UPON THE CLAIMANT TO SHOW:

27 (1) THAT THE CLAIMANT IS THE OWNER OF THE PROPERTY OR
28 THE HOLDER OF A CHATTEL MORTGAGE OR CONTRACT OF CONDITIONAL
29 SALE THEREON.

30 (2) THAT THE CLAIMANT LAWFULLY ACQUIRED THE PROPERTY.

1 (3) THAT IT WAS NOT UNLAWFULLY USED OR POSSESSED BY HIM.
2 IN THE EVENT THAT IT SHALL APPEAR THAT THE PROPERTY WAS
3 UNLAWFULLY USED OR POSSESSED BY A PERSON OTHER THAN THE
4 CLAIMANT, THEN THE CLAIMANT SHALL SHOW THAT THE UNLAWFUL USE
5 OR POSSESSION WAS WITHOUT HIS KNOWLEDGE OR CONSENT. SUCH
6 ABSENCE OF KNOWLEDGE OR CONSENT MUST BE REASONABLE UNDER THE
7 CIRCUMSTANCES PRESENTED.

8 (K) COURT-ORDERED RELEASE OF PROPERTY.--IF A PERSON CLAIMING
9 THE OWNERSHIP OF OR RIGHT OF POSSESSION TO OR CLAIMING TO BE THE
10 HOLDER OF A CHATTEL MORTGAGE OR CONTRACT OF CONDITIONAL SALE
11 UPON THE PROPERTY, THE DISPOSITION OF WHICH IS PROVIDED FOR IN
12 THIS SECTION, PRIOR TO THE SALE PRESENTS A PETITION TO THE COURT
13 ALLEGING OVER THE PROPERTY LAWFUL OWNERSHIP, RIGHT OF
14 POSSESSION, A LIEN OR RESERVATION OF TITLE AND IF, UPON PUBLIC
15 HEARING, DUE NOTICE OF WHICH HAVING BEEN GIVEN TO THE ATTORNEY
16 GENERAL OR THE DISTRICT ATTORNEY, THE CLAIMANT SHALL PROVE BY
17 COMPETENT EVIDENCE TO THE SATISFACTION OF THE COURT THAT THE
18 PROPERTY WAS LAWFULLY ACQUIRED, POSSESSED AND USED BY HIM OR, IT
19 APPEARING THAT THE PROPERTY WAS UNLAWFULLY USED BY A PERSON
20 OTHER THAN THE CLAIMANT, THAT THE UNLAWFUL USE WAS WITHOUT THE
21 CLAIMANT'S KNOWLEDGE OR CONSENT, THEN THE COURT MAY ORDER THE
22 PROPERTY RETURNED OR DELIVERED TO THE CLAIMANT. SUCH ABSENCE OF
23 KNOWLEDGE OR CONSENT MUST BE REASONABLE UNDER THE CIRCUMSTANCES
24 PRESENTED. OTHERWISE, IT SHALL BE RETAINED FOR OFFICIAL USE OR
25 SOLD IN ACCORDANCE WITH SECTION 6801(E) OR 6801.1(F).

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

←