

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1203 Session of 2020

INTRODUCED BY A. WILLIAMS, TARTAGLIONE, KEARNEY, COSTA, MENSCH, FARNESE, STREET, FONTANA AND BOSCOLA, JUNE 22, 2020

REFERRED TO JUDICIARY, JUNE 22, 2020

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, in  
 4 administration and enforcement relating to gaming, further  
 5 providing for prohibited acts and penalties; in inchoate  
 6 crimes, further providing for the offense of manufacture,  
 7 distribution, use of possession of devices for theft of  
 8 telecommunication services; in criminal homicide, further  
 9 providing for drug delivery resulting in death; in loss of  
 10 property rights relating to sexual offenses, further  
 11 providing for general rule; in forgery and fraudulent  
 12 practices, further providing for the offenses of copying and  
 13 recording devices and of trademark counterfeiting; in riot,  
 14 disorderly conduct and related offenses, further providing  
 15 for the offense of gambling devices, gambling, etc; in  
 16 wiretapping and electronic surveillance, further providing  
 17 for seizure and forfeiture of electronic, mechanical or other  
 18 devices; in minors, further providing for sentencing and  
 19 penalties for trafficking drugs to minors; in nuisances,  
 20 further providing for the offense of scattering rubbish; in  
 21 other offenses, further providing for drug trafficking  
 22 sentencing and penalties; in vehicle chop shop and illegally  
 23 obtained and altered property, further providing for loss of  
 24 property rights to Commonwealth; in enforcement relating to  
 25 Fish and Boat Code, further providing for forfeiture of fish  
 26 and devices; repealing provisions relating to forfeiture of  
 27 assets; adding provisions relating to asset forfeiture in  
 28 Judicial Code; in size, weight and load relating to Vehicle  
 29 Code, further providing for transporting foodstuffs in  
 30 vehicles used to transport waste; in liquid fuels and fuel  
 31 use tax enforcement, further providing for forfeitures,  
 32 process and procedures; and making inconsistent repeals.

33 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

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

4 § 1518. Prohibited acts; penalties.

5 \* \* \*

6 (f) Property subject to seizure, confiscation, destruction  
7 or forfeiture.--Any equipment, device or apparatus, money,  
8 material, gaming proceeds or substituted proceeds or real or  
9 personal property used, obtained or received or any attempt to  
10 use, obtain or receive the device, apparatus, money, material,  
11 proceeds or real or personal property in violation of this part  
12 shall be subject to the provisions of 42 Pa.C.S. [§§ 5803  
13 (relating to asset forfeiture), 5805 (relating to forfeiture  
14 procedure), 5806 (relating to motion for return of property),  
15 5807 (relating to restrictions on use), 5807.1 (relating to  
16 prohibition on adoptive seizures) and 5808 (relating to  
17 exceptions)] Ch. 58A (relating to forfeiture of assets).

18 Section 2. Sections 910(c.1), 2506(f), 3141, 4116(i)(1),  
19 4119(f)(1) and (2)(i), 5513(b), 5707, 6314(f), 6501(b)(5),  
20 7508(e) and 7707 of Title 18 are amended to read:

21 § 910. Manufacture, distribution, use or possession of devices  
22 for theft of telecommunications services.

23 \* \* \*

24 (c.1) Forfeiture of unlawful telecommunication devices.--  
25 Upon conviction of a defendant under this section, the court  
26 may, in addition to any other sentence authorized by law, direct  
27 that the defendant forfeit any unlawful telecommunication  
28 devices in the defendant's possession or control which were  
29 involved in the violation for which the defendant was convicted.  
30 The forfeiture shall be conducted in accordance with 42 Pa.C.S.

1 [ §§ 5803 (relating to asset forfeiture), 5805 (relating to  
2 forfeiture procedure), 5806 (relating to motion for return of  
3 property), 5807 (relating to restrictions on use), 5807.1  
4 (relating to prohibition on adoptive seizures) and 5808  
5 (relating to exceptions)] with 42 Pa.C.S. Ch. 58A (relating to  
6 asset forfeiture.

7 \* \* \*

8 § 2506. Drug delivery resulting in death.

9 \* \* \*

10 (f) Forfeiture.--Assets against which [a forfeiture  
11 petition] an information or indictment seeking forfeiture has  
12 been filed and is pending or against which the Commonwealth has  
13 indicated an intention to file [a forfeiture petition] an  
14 information or indictment seeking a forfeiture shall not be  
15 subject to a fine. Nothing in this section shall prevent a fine  
16 from being imposed on assets which have been subject to an  
17 unsuccessful forfeiture [petition] proceeding.

18 § 3141. General rule.

19 A person:

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

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

29 may be required to forfeit property rights in any property or  
30 assets used to implement or facilitate commission of the crime

1 or crimes of which the person has been convicted. The forfeiture  
2 shall be conducted in accordance with 42 Pa.C.S. [§§ 5803  
3 (relating to asset forfeiture), 5805 (relating to forfeiture  
4 procedure), 5806 (relating to motion for return of property),  
5 5807 (relating to restrictions on use), 5807.1 (relating to  
6 prohibition on adoptive seizures) and 5808 (relating to  
7 exceptions)] Ch. 58A (relating to asset forfeiture).

8 § 4116. Copying; recording devices.

9 \* \* \*

10 (i) Forfeiture.--

11 (1) No property right shall exist in any property used  
12 or intended for use in the commission of a violation of this  
13 section or in any proceeds traceable to a violation of this  
14 section, and the same shall be deemed contraband and  
15 forfeited in accordance with the provisions of 42 Pa.C.S. [§§  
16 5803 (relating to asset forfeiture), 5805 (relating to  
17 forfeiture procedure), 5806 (relating to motion for return of  
18 property), 5807 (relating to restrictions on use), 5807.1  
19 (relating to prohibition on adoptive seizures) and 5808  
20 (relating to exceptions)] Ch. 58A (relating to asset  
21 forfeiture).

22 \* \* \*

23 § 4119. Trademark counterfeiting.

24 \* \* \*

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

26 (1) Any items bearing a counterfeit mark, any property  
27 constituting or derived from any proceeds obtained[, directly  
28 or indirectly,] as the result of an offense under this  
29 section and all personal property, including, but not limited  
30 to, any items, objects, tools, machines, equipment,

1 instrumentalities or vehicles of any kind, used in connection  
2 with a violation of this section shall be seized by a law  
3 enforcement officer.

4 (2) (i) All seized personal property and property  
5 constituting or derived from any proceeds referenced in  
6 paragraph (1) shall be forfeited in accordance with 42  
7 Pa.C.S. [§§ 5803 (relating to asset forfeiture), 5805  
8 (relating to forfeiture procedure), 5806 (relating to  
9 motion for return of property), 5807 (relating to  
10 restrictions on use), 5807.1 (relating to prohibition on  
11 adoptive seizures) and 5808 (relating to exceptions)] Ch.  
12 58A (relating to asset forfeiture).

13 \* \* \*

14 § 5513. Gambling devices, gambling, etc.

15 \* \* \*

16 (b) Confiscation of gambling devices.--Any gambling device  
17 possessed or used in violation of the provisions of subsection  
18 (a) shall be seized and forfeited to the Commonwealth. The  
19 forfeiture shall be conducted in accordance with 42 Pa.C.S. [§§  
20 5803 (relating to asset forfeiture), 5805 (relating to  
21 forfeiture procedure), 5806 (relating to motion for return of  
22 property), 5807 (relating to restrictions on use), 5807.1  
23 (relating to prohibition on adoptive seizures) and 5808  
24 (relating to exceptions)] Ch. 58A (relating to asset  
25 forfeiture).

26 \* \* \*

27 § 5707. Seizure and forfeiture of electronic, mechanical or  
28 other devices.

29 Any electronic, mechanical or other device possessed, used,  
30 sent, distributed, manufactured, or assembled in violation of

1 this chapter is hereby declared to be contraband and may be  
2 seized and forfeited to the Commonwealth in accordance with 42  
3 Pa.C.S. [§§ 5803 (relating to asset forfeiture), 5805 (relating  
4 to forfeiture procedure), 5806 (relating to motion for return of  
5 property), 5807 (relating to restrictions on use), 5807.1  
6 (relating to prohibition on adoptive seizures) and 5808  
7 (relating to exceptions)] Ch. 58A (relating to asset  
8 forfeiture).

9 § 6314. Sentencing and penalties for trafficking drugs to  
10 minors.

11 \* \* \*

12 (f) Forfeiture.--Assets against which [a petition seeking  
13 forfeiture] an information or indictment seeking forfeiture has  
14 been filed and is pending or against which the Commonwealth has  
15 indicated an intention to file [a petition] an information or  
16 indictment seeking forfeiture shall not be subject to a fine  
17 under this section.

18 \* \* \*

19 § 6501. Scattering rubbish.

20 \* \* \*

21 (b) Penalty.--

22 \* \* \*

23  
24 (5) Any vehicle, equipment or conveyance, including any  
25 private automobile and small truck, used for the  
26 transportation or disposal of trash, garbage or debris in the  
27 commission of a second or subsequent offense under subsection  
28 (a) (3) may be deemed contraband and forfeited in accordance  
29 with 42 Pa.C.S. [§§ 5803 (relating to asset forfeiture), 5805  
30 (relating to forfeiture procedure), 5806 (relating to motion

1 for return of property), 5807 (relating to restrictions on  
2 use), 5807.1 (relating to prohibition on adoptive seizures)  
3 and 5808 (relating to exceptions)] Ch. 58A (relating to asset  
4 forfeiture).

5 \* \* \*

6 § 7508. Drug trafficking sentencing and penalties.

7 \* \* \*

8 (e) Forfeiture.--Assets against which [a petition] an  
9 information or indictment seeking forfeiture has been filed and  
10 is pending or against which the Commonwealth has indicated an  
11 intention to file [a petition] an information or indictment  
12 seeking forfeiture shall not be subject to a fine. Nothing in  
13 this section shall prevent a fine from being imposed on assets  
14 which have been subject to an unsuccessful forfeiture [petition]  
15 proceeding.

16 \* \* \*

17 § 7707. Loss of property rights to Commonwealth.

18 [(a) Forfeitures generally.--The following shall be subject  
19 to forfeiture to the Commonwealth, and no property right shall  
20 exist in them:

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

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

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

29 (4) All money, negotiable instruments, securities or  
30 other things of value used or intended to be used to

1 facilitate any violation of this chapter and all proceeds  
2 traceable to any transactions in violation of this chapter.

3 (5) All real property used or intended to be used to  
4 facilitate any violation of this chapter, including  
5 structures or other improvements thereon and including any  
6 right, title and interest in the whole or any lot or tract of  
7 land and any appurtenances or improvements which are used or  
8 intended to be used in any manner or part to commit or to  
9 facilitate the commission of a violation of this chapter.]

10 (a.1) Conduct of forfeiture.--Forfeiture of property shall  
11 be authorized for a violation of this chapter and conducted in  
12 accordance with 42 Pa.C.S. [§§ 5803 (relating to asset  
13 forfeiture), 5805 (relating to forfeiture procedure), 5806  
14 (relating to motion for return of property), 5807 (relating to  
15 restrictions on use), 5807.1 (relating to prohibition on  
16 adoptive seizures) and 5808 (relating to exceptions).] Ch. 58A  
17 (relating to asset forfeiture).

18 \* \* \*

19 Section 3. Section 927(a) of Title 30 is amended to read:  
20 § 927. Forfeiture of fish and devices.

21 (a) General rule.--A person convicted of an offense under  
22 this title shall forfeit any fish seized under section 901(a)(6)  
23 (relating to powers and duties of waterways conservation  
24 officers and deputies) and any device confiscated under this  
25 title. Forfeitures shall be conducted in accordance with 42  
26 Pa.C.S. [§§ 5803 (relating to asset forfeiture), 5805 (relating  
27 to forfeiture procedure), 5806 (relating to motion for return of  
28 property), 5807 (relating to restrictions on use), 5807.1  
29 (relating to prohibition on adoptive seizures) and 5808  
30 (relating to exceptions).] Ch. 58A (relating to asset



1 forfeiture).

2 Section 4. Chapter 58 of Title 42 is repealed:

3 [CHAPTER 58

4 FORFEITURE OF ASSETS

5 § 5801. Scope of chapter.

6 This chapter relates to asset forfeiture.

7 § 5802. Controlled substances forfeiture.

8 The following shall be subject to forfeiture to the  
9 Commonwealth and no property right shall exist in them:

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

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

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

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

27 (i) no bona fide security interest retained or  
28 acquired under 13 Pa.C.S. (relating to commercial code)  
29 by any merchant dealing in new or used aircraft, vehicles  
30 or vessels, or retained or acquired by any licensed or

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

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

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

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

14 (A) Money, negotiable instruments, securities or  
15 other things of value furnished or intended to be  
16 furnished by any person in exchange for a controlled  
17 substance in violation of The Controlled Substance,  
18 Drug, Device and Cosmetic Act, and all proceeds  
19 traceable to such an exchange.

20 (B) Money, negotiable instruments, securities or  
21 other things of value used or intended to be used to  
22 facilitate any violation of The Controlled Substance,  
23 Drug, Device and Cosmetic Act.

24 (C) Real property used or intended to be used to  
25 facilitate any violation of The Controlled Substance,  
26 Drug, Device and Cosmetic Act other than a violation  
27 of section 13(a)(16) or (31) of The Controlled  
28 Substance, Drug, Device and Cosmetic Act, including  
29 structures or other improvements thereon, and  
30 including any right, title and interest in the whole

1 or any lot or tract of land and any appurtenances or  
2 improvements, which is used or intended to be used in  
3 any manner or part to commit or to facilitate the  
4 commission of a violation of The Controlled  
5 Substance, Drug, Device and Cosmetic Act, and things  
6 growing on, affixed to and found in the land.

7 (ii) The money and negotiable instruments found in  
8 close proximity to controlled substances possessed in  
9 violation of The Controlled Substance, Drug, Device and  
10 Cosmetic Act shall be rebuttably presumed to be proceeds  
11 derived from the selling of a controlled substance in  
12 violation of The Controlled Substance, Drug, Device and  
13 Cosmetic Act.

14 (iii) No valid lien or encumbrance on real property  
15 shall be subject to forfeiture or impairment under this  
16 paragraph. A lien which is fraudulent or intended to  
17 avoid forfeiture under this chapter shall be invalid.

18 (7) Any firearms, including, but not limited to, rifles,  
19 shotguns, pistols, revolvers, machine guns, zip guns or any  
20 type of prohibited offensive weapon, as that term is defined  
21 in 18 Pa.C.S. § 6105 (relating to persons not to possess,  
22 use, manufacture, control, sell or transfer firearms), which  
23 are used or intended for use to facilitate a violation of The  
24 Controlled Substance, Drug, Device and Cosmetic Act. Firearms  
25 as are found in close proximity to illegally possessed  
26 controlled substances shall be rebuttably presumed to be used  
27 or intended for use to facilitate a violation of The  
28 Controlled Substance, Drug, Device and Cosmetic Act. All  
29 weapons forfeited under this chapter shall be immediately  
30 destroyed by the receiving law enforcement agency.

1 § 5803. Asset forfeiture.

2 (a) Applicability.--Notwithstanding any law to the contrary,  
3 this section shall apply to forfeitures conducted under the  
4 following:

5 (1) 4 Pa.C.S. § 1518 (relating to prohibited acts;  
6 penalties).

7 (2) 18 Pa.C.S. § 910 (relating to manufacture,  
8 distribution, use or possession of devices for theft of  
9 telecommunications services).

10 (3) 18 Pa.C.S. § 2717 (relating to terrorism).

11 (3.1) 18 Pa.C.S. § 2807 (relating to forfeiture).

12 (4) 18 Pa.C.S. § 3141 (relating to general rule).

13 (5) 18 Pa.C.S. § 4116 (relating to copying; recording  
14 devices).

15 (6) 18 Pa.C.S. § 4119 (relating to trademark  
16 counterfeiting).

17 (7) 18 Pa.C.S. § 5513 (relating to gambling devices,  
18 gambling, etc.).

19 (8) 18 Pa.C.S. § 5707 (relating to seizure and  
20 forfeiture of electronic, mechanical or other devices).

21 (9) 18 Pa.C.S. § 6501 (relating to scattering rubbish).

22 (10) 18 Pa.C.S. § 7707 (relating to loss of property  
23 rights to Commonwealth).

24 (11) 30 Pa.C.S. § 927 (relating to forfeiture of fish  
25 and devices).

26 (12) Section 5802 (relating to controlled substances  
27 forfeiture).

28 (13) 75 Pa.C.S. § 4909 (relating to transporting  
29 foodstuffs in vehicles used to transport waste).

30 (14) 75 Pa.C.S. § 9405 (relating to forfeitures; process

1 and procedures).

2 (b) Process and seizure of money and personal property.--

3 Property subject to forfeiture may be seized by a law  
4 enforcement authority if any of the following apply:

5 (1) The seizure is incident to an arrest or a search  
6 under a search warrant or inspection under an administrative  
7 inspection warrant and there is reason to believe the  
8 property is subject to forfeiture.

9 (2) The property subject to seizure has been the subject  
10 of a prior judgment in favor of the Commonwealth in a  
11 criminal injunction or forfeiture proceeding under this  
12 chapter.

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

17 (4) There is probable cause to believe that the property  
18 has been used or is intended to be used in violation of the  
19 act of April 14, 1972 (P.L.233, No.64), known as The  
20 Controlled Substance, Drug, Device and Cosmetic Act, or  
21 another offense for which forfeiture is expressly authorized  
22 as a sanction.

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

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

28 (b.1) Process and seizure of real property.--Real property  
29 subject to forfeiture under this chapter may be seized by the  
30 law enforcement authority upon process issued by a court of

1 common pleas having jurisdiction over the property. Except as  
2 provided under this section, real property subject to forfeiture  
3 shall not be seized before the entry of an order of forfeiture  
4 and the owners or occupants of the real property shall not be  
5 evicted from or otherwise deprived of the use and enjoyment of  
6 real property that is the subject of a pending forfeiture  
7 action. The following shall apply:

8 (1) The filing of a lis pendens or the issuance of a  
9 temporary restraining order shall not constitute a seizure  
10 under this subsection.

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

13 (i) the district attorney or the Attorney General  
14 notifies the court that it intends to seize the property  
15 before a trial; and

16 (ii) the court:

17 (A) after causing notice to be served on the  
18 property owner and posted on the property and  
19 conducting a hearing in which the property owner has  
20 a meaningful opportunity to be heard, authorizes such  
21 seizure; or

22 (B) makes an ex parte determination that there  
23 is probable cause to believe that a nexus exists  
24 between the property and the criminal activity for  
25 which forfeiture is authorized and that exigent  
26 circumstances are presented that permit the district  
27 attorney or the Attorney General to seize the  
28 property without prior notice and an opportunity for  
29 the property owner to be heard.

30 (3) For purposes of paragraph (2) (ii) (B), exigent

1 circumstances are presented where the district attorney or  
2 the Attorney General demonstrates that less restrictive  
3 measures, such as a lis pendens, temporary restraining order  
4 or security bond, would not suffice to protect the  
5 Commonwealth's interest in preventing the sale, destruction  
6 or continued unlawful use of the real property.

7 (4) If the court authorizes a seizure of real property  
8 under paragraph (2)(ii)(B), it shall conduct a prompt  
9 postseizure hearing at which the claimant shall have an  
10 opportunity to contest the Commonwealth's continuing custody  
11 of the property.

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

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

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

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

29 (e) Receipt.--When property is seized, the law enforcement  
30 authority shall provide a receipt to the person in possession of

1 the property or, in the absence of a person, leave a receipt in  
2 the place where the property was found, if reasonably possible.  
3 The receipt shall provide notice of the right of interest  
4 holders to seek the return of the seized property under this  
5 chapter. This section shall not apply if law enforcement is  
6 otherwise required to provide a receipt for the property.

7 (f) Use of property held in custody.--When property is  
8 forfeited under this chapter, the property shall be transferred  
9 to the custody of the district attorney, if the law enforcement  
10 authority seizing the property has local or county jurisdiction,  
11 or the Attorney General, if the law enforcement authority  
12 seizing the property has Statewide jurisdiction. The district  
13 attorney or the Attorney General, where appropriate, may:

- 14 (1) retain the property for official use; or  
15 (2) sell any forfeited property which is not required to  
16 be destroyed by law and which is not harmful to the public,  
17 except that the proceeds from the sale shall be used to pay  
18 all proper expenses of the proceedings for forfeiture and  
19 sale, including expenses of seizure, maintenance of custody,  
20 advertising and court costs. The balance of the proceeds  
21 shall be used and distributed in accordance with this  
22 chapter.

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

27 (g) Use of cash or proceeds of property.--Cash or proceeds  
28 of property, subject to forfeiture under section 5802 and  
29 transferred to the custody of the district attorney under  
30 subsection (f) shall be placed in the operating fund of the



1 county in which the district attorney is elected. The  
2 appropriate county authority shall immediately release from the  
3 operating fund, without restriction, a like amount for the use  
4 of the district attorney for the enforcement of or prevention of  
5 a violation of the provisions of The Controlled Substance, Drug,  
6 Device and Cosmetic Act. The funds shall be maintained in an  
7 account or accounts separate from other revenues of the office.  
8 The entity having budgetary control shall not anticipate future  
9 forfeitures or proceeds from future forfeitures in adoption and  
10 approval of the budget for the district attorney.

11 (h) Distribution of property among law enforcement  
12 authorities.--If both State and municipal law enforcement  
13 authorities were substantially involved in effecting the  
14 seizure, the court having jurisdiction over the forfeiture  
15 proceedings shall equitably distribute the property between the  
16 district attorney and the Attorney General.

17 (i) Authorization to utilize property.--Cash or proceeds of  
18 property subject to forfeiture under section 5802 and  
19 transferred to the custody of the district attorney or Attorney  
20 General under subsection (f) shall be utilized by the district  
21 attorney or Attorney General for the enforcement of or  
22 prevention of a violation of the provisions of The Controlled  
23 Substance, Drug, Device and Cosmetic Act. In appropriate cases,  
24 the district attorney and the Attorney General may designate  
25 proceeds from the forfeited property to be utilized by  
26 community-based drug and crime-fighting programs and for  
27 relocation and protection of witnesses in criminal cases. Real  
28 property may be transferred to a nonprofit organization to  
29 alleviate blight resulting from violations of The Controlled  
30 Substance, Drug, Device and Cosmetic Act.

1 (j) Annual audit of forfeited property.--Every county in  
2 this Commonwealth shall provide, through the controller, board  
3 of auditors or other appropriate auditor and the district  
4 attorney, an annual audit of all forfeited property and proceeds  
5 obtained under this chapter. The audit shall not be made public  
6 but shall be submitted to the Office of Attorney General. By  
7 September 30 of each year, the county shall report all forfeited  
8 property and proceeds obtained under this chapter and the  
9 disposition of the property during the preceding year to the  
10 Attorney General. The Attorney General and each district  
11 attorney shall maintain and create appropriate records to  
12 account for the property forfeited in a fiscal year and the use  
13 made of the property forfeited. Each audit shall include:

14 (1) Date property was seized.

15 (2) The type of property seized.

16 (3) Where property was seized.

17 (4) The approximate value.

18 (5) The alleged criminal behavior with which the  
19 property is associated.

20 (6) The disposition or use of property forfeited.

21 (7) Whether the forfeiture was related to a criminal  
22 case and the outcome of the criminal case.

23 (8) Date of forfeiture decision.

24 (k) Annual report and confidential information.--The  
25 Attorney General shall annually submit a report to the  
26 Appropriations Committee and Judiciary Committee of the Senate  
27 and to the Appropriations Committee and Judiciary Committee of  
28 the House of Representatives specifying the forfeited property  
29 or proceeds of the forfeited property obtained under this  
30 chapter during the fiscal year beginning July 1, and the

1 following shall apply:

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

5 (2) The Attorney General shall adopt procedures and  
6 guidelines, which shall be public, governing the release of  
7 information by the Attorney General or the district attorney  
8 to protect the confidentiality of forfeited property or  
9 proceeds used in ongoing law enforcement activities.

10 (k.1) Reporting.--By November 30 of each year, the Office of  
11 Attorney General shall notify the Appropriations Committee and  
12 Judiciary Committee of the Senate and the Appropriations  
13 Committee and Judiciary Committee of the House of  
14 Representatives of any county which has not submitted an audit  
15 and complied with the requirements in subsection (j).

16 (l) Proceeds and appropriations.--The proceeds or future  
17 proceeds from forfeited property under this chapter shall be in  
18 addition to any appropriation made to the Office of Attorney  
19 General. The Attorney General shall maintain proceeds from  
20 property forfeited to the Office of Attorney General in an  
21 account or accounts separate from any other account maintained  
22 by the Office of Attorney General.

23 § 5804. (Reserved).

24 § 5805. Forfeiture procedure.

25 (a) General procedure.--The proceedings for the forfeiture  
26 or condemnation of property, the sale of which is provided for  
27 in this chapter, shall be in rem, in which the Commonwealth  
28 shall be the plaintiff and the property the defendant. A  
29 forfeiture petition signed by the Attorney General, deputy  
30 attorney general, district attorney or assistant district

1 attorney shall be filed in the court of common pleas of the  
2 judicial district where the property is seized or located,  
3 verified by oath or affirmation of an officer. If criminal  
4 charges have been filed and a prosecution is pending, the  
5 petition shall be filed in the same judicial district as the  
6 criminal charges in all instances except those involving real  
7 property. Each petition relating to real property shall be filed  
8 in the jurisdiction where the real property is located.

9 (1) Each forfeiture petition shall contain the  
10 following:

11 (i) A description of the property actually seized or  
12 constructively seized, including, but not limited to, if  
13 known, the address of any real property, the exact dollar  
14 amount of any United States currency, or the approximate  
15 value of any negotiable instrument or security and the  
16 make, model, year and license plate number of any  
17 vehicle.

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

19 (iii) The owner, if known.

20 (iv) The person or persons in possession at the time  
21 of seizure, if known.

22 (v) An allegation that the property is subject to  
23 forfeiture and an averment of material facts supporting  
24 the forfeiture action.

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

28 (2) The following shall apply:

29 (i) A claimant shall file an answer setting forth a  
30 right of possession of the property within 30 days of

1 service of the forfeiture petition. The answer shall be  
2 in writing and filed to the docket number in the court of  
3 common pleas and shall be signed by the claimant or the  
4 claimant's attorney.

5 (ii) The following shall apply:

6 (A) Prior to filing an answer to a forfeiture  
7 petition, a claimant may file a motion to stay the  
8 forfeiture proceedings if the claimant has been  
9 criminally charged in a case associated with the  
10 forfeiture matter. If the motion is properly filed,  
11 it shall be granted.

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

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

17 (b) Notice to property owners.--

18 (1) A copy of the forfeiture petition required under  
19 subsection (a) shall be served personally or by certified  
20 mail on the owner, if known, and on each person in possession  
21 at the time of the seizure, if known. The copy shall have  
22 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 30 days from the service hereof, and  
27 you are also notified that, if you fail to file the  
28 answer, a decree of forfeiture and condemnation will be  
29 entered against the property.

30 (2) The notice under paragraph (1) must be signed by the

1 Attorney General, deputy attorney general, district attorney,  
2 deputy district attorney or assistant district attorney and  
3 contain accurate contact information for the signatory.

4 (c) Substitute notice.--

5 (1) If the owner of the property is unknown, there was  
6 no person in possession of the property when seized or the  
7 owner or each person in possession at the time of the seizure  
8 cannot be personally served or located within the  
9 jurisdiction of the court, notice of the petition shall be  
10 given by the Commonwealth through an advertisement in at  
11 least one newspaper of general circulation published in the  
12 county where the property has been seized, once a week for  
13 two successive weeks.

14 (2) Notwithstanding any other law, no other  
15 advertisement shall be necessary.

16 (3) The notice shall contain a statement of the seizure  
17 of the property with a description of the property and the  
18 place and date of seizure and shall direct any claimants to  
19 the property to file a claim on or before a date given in the  
20 notice, which shall not be less than 30 days from the date of  
21 the first publication.

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

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

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

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

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

3 (d.1) Proof of notice.--The Commonwealth shall file proof of  
4 notice with the court. Forfeiture shall not be ordered if the  
5 court finds that proof does not exist that the notice  
6 requirements contained under subsections (b), (c) and (d), if  
7 applicable, have been met.

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

14 (f) Release of seized property pending conclusion of  
15 proceedings.--

16 (1) A claimant to property subject to forfeiture is  
17 permitted to seek the immediate release of seized property  
18 if:

19 (i) the claimant has a possessory interest in the  
20 property;

21 (ii) the claimant has sufficient ties to the  
22 community to provide assurance that the property will be  
23 available at the time of the trial;

24 (iii) the continued possession by the Commonwealth  
25 pending the final disposition of forfeiture proceedings  
26 will cause substantial hardship to the claimant, such as  
27 preventing the functioning of a legitimate business,  
28 preventing the claimant from working or leaving the  
29 claimant homeless;

30 (iv) the claimant's likely hardship from the

1 continued possession by the Commonwealth of the seized  
2 property outweighs the risk that the property will be  
3 destroyed, damaged, lost, concealed or transferred if the  
4 property is returned to the claimant during the pendency  
5 of the forfeiture proceeding; and

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

8 (2) The following shall apply:

9 (i) The claimant under paragraph (1) may file a  
10 motion in the court of common pleas in which the  
11 forfeiture petition has been filed or, if no forfeiture  
12 petition has been filed, in the court of common pleas in  
13 the jurisdiction in which the property was seized. The  
14 motion shall be served upon the district attorney or  
15 Attorney General who has jurisdiction over the case.

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

19 (3) If the Commonwealth establishes that the claimant's  
20 motion is meritless, the court shall deny the motion. In  
21 response to a motion under this subsection, the Commonwealth  
22 may, in appropriate cases, submit evidence ex parte in order  
23 to avoid disclosing any matter that may adversely affect an  
24 ongoing criminal investigation or pending criminal trial.

25 (4) The following shall apply:

26 (i) The court shall order that the property be  
27 returned to the claimant pending completion of the  
28 forfeiture proceeding if:

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

30 (B) following a hearing, the claimant has



1 demonstrated that the requirements of paragraph (1)  
2 have been met.

3 (ii) If the motion addresses currency, monetary  
4 instruments or electronic funds, the claimant must  
5 establish by a preponderance of the evidence a documented  
6 and noncriminal source of the currency, monetary  
7 instrument or electronic fund. The requirement under this  
8 subparagraph shall be in addition to the requirements  
9 under subparagraph (i).

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

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

14 (A) permitting the inspection, photographing and  
15 the taking of inventory of the property;

16 (B) fixing a bond; and

17 (C) requiring the claimant to obtain or maintain  
18 insurance on the subject property;

19 (ii) the Commonwealth may place a lien against the  
20 property or file a lis pendens to ensure that the  
21 property is not transferred to another person; and

22 (iii) if the property in question is currency,  
23 monetary instruments or electronic funds, the court shall  
24 fix a bond as provided under paragraph (5.1).

25 (5.1) For the purposes of paragraph (5)(iii), the  
26 following shall apply to the fixing of a bond sufficient to  
27 secure the value of the currency, monetary instruments or  
28 electronic funds:

29 (i) If the value of the currency, monetary  
30 instruments or electronic funds is less than \$2,000, the

1 court may order the fixing of a bond.

2 (ii) If the value of the currency, monetary  
3 instruments or electronic funds is at least \$2,000, but  
4 less than \$5,000, the court may order the fixing of a  
5 bond. If the court finds that the claimant has not  
6 demonstrated his or her ability to ensure the  
7 availability of the currency at the time of the  
8 forfeiture trial, the court shall order the fixing of a  
9 bond.

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

13 (6) This subsection shall not apply if the seized  
14 property:

15 (i) is contraband;

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

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

20 (iv) is likely to be used to commit additional  
21 criminal acts if returned to the claimant.

22 (7) A party to a proceeding under this subsection shall  
23 not be estopped from raising in any other proceeding any  
24 claim or issue presented to or decided by the court under  
25 this subsection.

26 (g) (Reserved).

27 (h) (Reserved).

28 (i) Trial time.--On the filing of an answer setting forth a  
29 right of possession, the case shall be deemed at issue and a  
30 time shall be fixed for the trial. A judicial district shall not

1 require the parties to proceed through local rules of  
2 arbitration.

3 (j) Burden of proof.--

4 (1) The burden shall be on the Commonwealth to establish  
5 in the forfeiture petition that the property is subject to  
6 forfeiture.

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

10 (i) the claimant is the owner of the property or the  
11 holder of a chattel mortgage or contract of conditional  
12 sale on the property or holds some other documented  
13 interest in the property; and

14 (ii) the claimant lawfully acquired the property.

15 (3) If the claimant satisfies the burden under paragraph  
16 (2), the burden shall be on the Commonwealth to establish by  
17 clear and convincing evidence that the property in question  
18 was unlawfully used, possessed or otherwise subject to the  
19 forfeiture.

20 (4) If the Commonwealth satisfies the burden under  
21 paragraph (3) and the claimant alleges that he did not have  
22 knowledge of the unlawful activity or consent to the unlawful  
23 activity, the burden shall be on the Commonwealth to  
24 establish by clear and convincing evidence:

25 (i) that the property was unlawfully used or  
26 possessed by the claimant; or

27 (ii) if it appears that the property was unlawfully  
28 used or possessed by a person other than the claimant,  
29 that the person unlawfully used or possessed the property  
30 with the claimant's knowledge and consent.

1 (k) Proportionality.--

2 (1) If the court determines that the forfeiture petition  
3 shall be granted, the claimant, prior to entry of an order of  
4 forfeiture, may petition the court to determine whether the  
5 forfeiture is constitutionally excessive.

6 (2) If the court finds that the forfeiture is grossly  
7 disproportional to the offense, the court shall reduce or  
8 eliminate the forfeiture as necessary to avoid a  
9 constitutional violation.

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

13 (m) Procedure following acquittal.--The following shall  
14 apply:

15 (1) If the owner of the property is acquitted of all  
16 crimes which authorize forfeiture, there shall be a  
17 rebuttable presumption that the property was lawfully used or  
18 possessed by the claimant.

19 (2) If the owner of the property is acquitted of all  
20 crimes which authorize forfeiture, the owner shall be  
21 entitled to a hearing under section 5806 (relating to motion  
22 for return of property).

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

26 (4) As used in this subsection, the term "acquittal"  
27 shall not include plea agreements, acceptance of Accelerated  
28 Rehabilitative Disposition or any other form of preliminary  
29 disposition.

30 § 5806. Motion for return of property.

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

2 (1) A person aggrieved by a search and seizure may move  
3 for the return of the property seized by filing a motion in  
4 the court of common pleas in the judicial district where the  
5 property is located.

6 (2) The filer under paragraph (1) must serve the  
7 Commonwealth.

8 (3) Upon proof of service, the court shall schedule a  
9 prompt hearing on the motion and shall notify the  
10 Commonwealth. A hearing on the motion shall, to the extent  
11 practicable and consistent with the interests of justice, be  
12 held within 30 days of the filing of the motion.

13 (4) The assigned judge may require the filing of an  
14 answer.

15 (5) If a forfeiture petition was filed by the  
16 Commonwealth before the filing of a motion for return of  
17 property, the motion shall be assigned to the same judge for  
18 disposition, as practicable.

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

20 (1) Be signed by the petitioner under penalty of  
21 perjury.

22 (2) Describe the nature and extent of the petitioner's  
23 right, title or interest in the property, the time and  
24 circumstances of the petitioner's acquisition of the right,  
25 title or interest in the property and any additional facts  
26 supporting the petitioner's claim. The information shall  
27 include:

28 (i) A description of the property seized.

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

1 (iii) The owner, if known.

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

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

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

5 (ii) Reimbursement for the petitioner's legal  
6 interest in the property.

7 (iii) Severance of the petitioner's property from  
8 the forfeited property.

9 (iv) Any relief the court deems appropriate and  
10 just.

11 § 5806.1. (Reserved).

12 § 5806.2. (Reserved).

13 § 5807. Restrictions on use.

14 Property, money or other things of value received by a State  
15 law enforcement authority under any of the following laws may  
16 not be used for contributions to political campaigns, expenses  
17 related to judicial trainings or the purchase of alcoholic  
18 beverages:

19 (1) A Federal law which authorizes the sharing or  
20 transfer of all or a portion of forfeited property or the  
21 proceeds of the sale of forfeited property to a State law  
22 enforcement authority.

23 (2) A State law which authorizes forfeiture.

24 § 5807.1. Prohibition on adoptive seizures.

25 State law enforcement authorities shall not refer seized  
26 property to a Federal agency seeking the adoption by the Federal  
27 agency of the seized property. Nothing under this chapter shall  
28 prohibit the Federal Government or any of its agencies from  
29 seeking Federal forfeiture of the same property under any  
30 Federal forfeiture law.

1 § 5807.2. Federal reporting requirements.

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

6 § 5808. Exceptions.

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

9 (1) Items bearing a counterfeit mark under 18 Pa.C.S. §  
10 4119 (relating to trademark counterfeiting).

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

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

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

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

25 Section 5. Title 42 is amended by adding a chapter to read:

26 CHAPTER 58A

27 ASSET FORFEITURE

28 Sec.

29 58A01. Scope of criminal asset forfeiture.

30 58A02. Criminal asset forfeiture in general.

1 58A03. Process for criminal asset forfeiture.

2 58A04. Process for third-party interest holders.

3 58A05. Interaction with the Federal Government.

4 § 58A01. Scope of criminal asset forfeiture.

5 (a) Certain forfeitures exempted.--Forfeitures of property  
6 shall be conducted in accordance with this chapter, except for  
7 forfeitures authorized by:

8 (1) Section 3 of the act of July 8, 1978 (P.L.752,  
9 No.140), known as the Public Employee Pension Forfeiture Act.

10 (2) Section 6 of the act of April 6, 1980 (P.L.102,  
11 No.39), entitled "An act restricting the acquisition by  
12 certain aliens of an interest in agricultural lands."

13 (3) 18 Pa.C.S. § 3021 (relating to asset forfeiture).

14 (4) 18 Pa.C.S. § 5511 (relating to cruelty to animals).

15 (5) 18 Pa.C.S. § 6321 (relating to transmission of  
16 sexually explicit images by minor).

17 (6) 27 Pa.C.S. § 6208 (relating to penalties).

18 (7) 37 Pa.C.S. § 511 (relating to criminal penalties).

19 (8) 42 Pa.C.S. § 6801.1 (relating to terrorism  
20 forfeiture).

21 (b) Contraband per se exempted.--Nothing in this chapter  
22 shall be construed to apply to the forfeiture of contraband per  
23 se, the possession of which is inherently unlawful. Such  
24 forfeiture includes, but is not limited to, forfeiture of the  
25 following:

26 (1) items bearing a counterfeit mark under 18 Pa.C.S. §  
27 4119 (relating to trademark counterfeiting).

28 (2) liquor, alcohol or malt or brewed beverages  
29 illegally manufactured or possessed under section 601 of the  
30 act of April 12, 1951 (P.L.90, No.21), known as the Liquor



1 Code.

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

5 (4) unstamped cigarettes under section 1285 of the act  
6 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code  
7 of 1971.

8 (c) Conflicting law superseded.--The procedures in this  
9 chapter shall supersede any conflicting provisions of other  
10 State laws.

11 (d) Preemption.--This chapter preempts any local ordinance  
12 or regulation insofar as it is inconsistent with this chapter,  
13 irrespective of the effective date of the ordinance or  
14 regulation.

15 § 58A02. Criminal asset forfeiture in general.

16 (a) Criminal in form.--Unless otherwise provided,  
17 forfeitures under this chapter are criminal.

18 (b) Forfeiture disfavored.--Forfeitures are not favored  
19 under State law and any ambiguity in this chapter shall be  
20 strictly construed against the Commonwealth.

21 (c) Forfeitures generally.--

22 (1) After a person is convicted of an offense for which  
23 forfeiture is expressly authorized as a penalty, the  
24 following shall be subject to forfeiture to the Commonwealth  
25 and no property right shall exist in them:

26 (i) The convicted person's property constituting or  
27 derived from any proceeds obtained directly from the  
28 commission of the offense.

29 (ii) The convicted person's property that:

30 (A) Was used or intended to be used to commit or

1 facilitate the commission of the offense.

2 (B) Bears a significant relationship to the  
3 offense.

4 (2) No additional penalties, including, but not limited  
5 to, personal money judgments, shall be authorized under this  
6 chapter except as provided by section 58A03(k) (relating to  
7 process for criminal asset forfeiture). Any restitution made  
8 to a victim using property forfeited under this chapter shall  
9 serve to satisfy in part or in whole any restitution order  
10 against the convicted person.

11 (3) Nothing in this section shall be construed to  
12 prevent property from being forfeited by the terms of a plea  
13 agreement approved by a court or of any other agreement of  
14 the parties to a criminal proceeding. Forfeiture by agreement  
15 shall be subject to the requirements of section 58A04  
16 (relating to process for third-party interest holders).

17 (d) Claims for damage, loss or impermissible sale of  
18 property.--After a finding under this chapter that seized  
19 property is not subject to forfeiture, the property owner may  
20 bring a claim against the law enforcement authority that had  
21 custody of the property and lost, damaged or impermissibly sold  
22 it.

23 (e) Use of property held in custody.--

24 (1) Whenever property is forfeited under this chapter  
25 and after all ancillary proceedings under section 58A04 are  
26 concluded, the property shall be transferred to the custody  
27 of the district attorney, if the law enforcement authority  
28 seizing the property has local or county jurisdiction, or the  
29 Attorney General, if the law enforcement authority seizing  
30 the property has Statewide jurisdiction.

1       (2) The district attorney or the Attorney General, as  
2 applicable, shall sell any forfeited property that is not  
3 required to be destroyed by law and is not harmful to the  
4 public.

5       (3) Sale of forfeited property to an employee of the  
6 district attorney or Attorney General, a person related to an  
7 employee by blood or marriage or another law enforcement  
8 authority is prohibited.

9       (4) The proceeds from sale shall be used to pay all  
10 reasonable expenses related to the maintenance of custody and  
11 sale of such property. The balance of the proceeds shall be  
12 subject to subsection (f).

13       (f) Use of cash or proceeds or property.--Cash or proceeds  
14 of forfeited property transferred under subsection (e) shall be  
15 distributed in the following order:

16           (1) To satisfy any restitution orders for victims of the  
17 underlying offense.

18           (2) To pay any liabilities owed by the Commonwealth to  
19 defendants or claimants who substantially prevail under  
20 subsection (1).

21           (3) Either:

22               (i) if, in the custody of the Attorney General, to  
23 the Department of Revenue for deposit into the General  
24 Fund; or

25               (ii) if, in the custody of the district attorney, to  
26 the operating fund of the county in which the district  
27 attorney is elected.

28       (g) Distribution of property among law enforcement  
29 authorities.--If both municipal and State law enforcement  
30 authorities were substantially involved in effecting the

1 seizure, the court having jurisdiction over the forfeiture  
2 proceedings shall equitably distribute the property between the  
3 district attorney and the Attorney General who shall dispose of  
4 the property in accordance with subsections (e) and (f).

5 (h) Annual audit of forfeited property.--A county of this  
6 Commonwealth shall provide, through the controller, board of  
7 auditors or other appropriate auditor and the district attorney,  
8 an annual audit of all forfeited property and proceeds obtained  
9 under this section and the disposition thereof, as well as of  
10 all fees awarded under subsection (l). The audit shall be  
11 submitted to the Office of Attorney General by September 30 of  
12 each year.

13 (i) Annual report.--The Attorney General shall annually  
14 submit a report to the Appropriations Committee and Judiciary  
15 Committee of the Senate and the Appropriations Committee and  
16 Judiciary Committee of the House of Representatives describing  
17 the forfeited property or proceeds thereof obtained under this  
18 section, as well as the fees awarded under subsection (l). The  
19 report shall include an accounting of all proceeds derived from  
20 the sale of forfeited property.

21 (j) Public access.--All accounting and audit records  
22 generated under subsections (h) and (i) shall be subject to the  
23 act of February 14, 2008 (P.L.6, No.3), known as the Right-to-  
24 Know Law.

25 (k) Taxpayer standing.--A taxpayer of this Commonwealth has  
26 standing to challenge in court any action contrary to subsection  
27 (e), (f), (g), (h), (i) or (j).

28 (l) Fee shifting.--In any forfeiture proceeding under this  
29 chapter in which the defendant or claimant substantially  
30 prevails, the Commonwealth shall be liable for:

1       (1) Reasonable attorney fees and other litigation costs  
2 reasonably incurred by the defendant or claimant.

3       (2) Postjudgment interest.

4       (3) In cases involving currency or other negotiable  
5 instruments:

6           (i) Interest actually paid to the Commonwealth, from  
7 the date of seizure or arrest of the property, that  
8 results from the investment of the property in an  
9 interest-bearing account or instrument.

10           (ii) An imputed amount of interest that the  
11 currency, instruments or proceeds would have earned at  
12 the rate applicable to the 30-day Treasury Bill, for any  
13 period during which no interest was paid, not including  
14 any period when the property reasonably was in use as  
15 evidence in an official proceeding or in conducting  
16 scientific tests for the purpose of collecting evidence,  
17 commencing 15 days after the property was seized by a  
18 State law enforcement authority or was turned over to a  
19 State law enforcement authority by a Federal law  
20 enforcement authority.

21 § 58A03. Process for criminal asset forfeiture.

22       (a) Seizure.--

23           (1) Property subject to forfeiture under this chapter  
24 may be seized by a law enforcement authority upon process  
25 issued by any court of common pleas having jurisdiction.

26           (2) Seizure without process may be made if:

27           (i) the seizure is incident to an arrest or a search  
28 under a search warrant or inspection under an  
29 administrative inspection warrant and there is probable  
30 cause to believe that the property is subject to

1 forfeiture under section 58A02(c)(1) (relating to  
2 criminal asset forfeiture in general);

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

7 (iii) there is probable cause to believe that the  
8 property is subject to forfeiture under section 58A02(c)  
9 (1) and process or delay is likely to result in the  
10 destruction or removal of the property or in its  
11 otherwise being made unavailable for forfeiture.

12 (b) Seizure of real property.--Absent exigent circumstances,  
13 no real property subject to forfeiture shall be seized unless  
14 the Commonwealth first provides property owners and occupants  
15 with notice and an opportunity for a hearing. The hearing shall  
16 be conducted in accordance with subsections (d) and (e).

17 (c) Receipt for seized property.--When property is seized,  
18 the law enforcement authority shall provide an itemized receipt  
19 to the person in possession of the property or, in the absence  
20 of any person, leave a receipt in the place where the property  
21 was found, if reasonably possible. The receipt shall provide  
22 notice of the right of interest holders to move for the return  
23 of seized property under subsections (d) and (e).

24 (d) Pretrial motion for return of seized property.--When  
25 property has been seized for forfeiture and the defendant or  
26 another putative interest holder in the property files a  
27 pretrial motion for its return, the property shall promptly be  
28 returned unless the Commonwealth proves that there is probable  
29 cause that the property is subject to forfeiture.

30 (e) Hardship release of property subject to forfeiture.--

1 When the defendant or another putative interest holder in the  
2 property files a motion for the hardship release of property,  
3 the court shall order the release of seized property from the  
4 seizing law enforcement authority pending the final  
5 determination of forfeiture, if the putative interest holder  
6 establishes by a preponderance of the evidence that:

7       (1) The putative interest holder has a possessory  
8 interest in the property.

9       (2) Continued possession by the law enforcement  
10 authority pending the final disposition of the forfeiture  
11 proceedings will cause substantial hardship to the interest  
12 holder, such as:

13           (i) preventing the functioning of a legitimate  
14 business;

15           (ii) preventing an individual from working;

16           (iii) preventing a minor child or student from  
17 attending school;

18           (iv) preventing or hindering an individual from  
19 receiving necessary medical care;

20           (v) hindering the care of an elderly or disabled  
21 dependent child or adult;

22           (vi) leaving an individual homeless; or

23           (vii) any other condition that the court determines  
24 causes a substantial hardship;

25       (3) The hardship from the continued possession by the  
26 law enforcement authority of the seized property outweighs  
27 the risk that the property will be unlawfully used, destroyed  
28 or removed from the jurisdiction of the court or otherwise  
29 made unavailable for forfeiture if it is returned to the  
30 owner during the pendency of the proceeding.

1 (f) Initiation of forfeiture.--

2 (1) The proceedings for forfeiture of property shall be  
3 tried in the same proceeding as the criminal case concerning  
4 the determination of the defendant's guilt or innocence for  
5 the underlying offense, unless the defendant moves to  
6 bifurcate the trial of the forfeiture from the trial of the  
7 underlying criminal case.

8 (2) An information or an indictment charging the  
9 defendant with an offense shall include notice to the  
10 defendant that the Commonwealth will seek forfeiture as part  
11 of any sentence. The notice shall include:

12 (i) An itemized list of the specific property  
13 subject to forfeiture, including, but not limited to, the  
14 address of any real property, the exact dollar amount of  
15 any money, negotiable instrument or security and the  
16 make, model, year and license plate number of any  
17 vehicle.

18 (ii) A statement of the time and place of the  
19 offense.

20 (iii) A description of the particular use of the  
21 property in the commission of the offense or derivation  
22 therefrom.

23 (g) Forfeiture phase of criminal proceeding.--After a person  
24 is convicted on any count in an indictment or information for  
25 which forfeiture is sought, the Commonwealth must establish at a  
26 forfeiture hearing by clear and convincing evidence that the  
27 property is forfeitable under section 58A02(c)(1) before the  
28 court enters a preliminary order of forfeiture.

29 (h) Extent of forfeitable interest.--If the court determines  
30 it is in the interests of judicial economy, the court or jury



1 may determine the extent of the convicted person's forfeitable  
2 interest in the property before a preliminary order of  
3 forfeiture is entered. The determination shall be subject to  
4 amendments under section 58A04 (relating to process for third-  
5 party interest holders).

6 (i) Right to trial by jury.--

7 (1) At the forfeiture hearing, the defendant shall have  
8 the right to trial by jury of the forfeiture.

9 (2) The defendant may waive this right while preserving  
10 the right to trial by jury of the offense charged or other  
11 sentencing issues.

12 (3) Alternatively, the defendant may preserve this right  
13 while waiving the right to trial by jury of the offense  
14 charged or other sentencing issues.

15 (j) Excessive fines.--

16 (1) In order to enter a preliminary order of forfeiture  
17 under section 58A02(c)(1)(ii), the court must make a  
18 determination that the forfeiture is not grossly  
19 disproportional to the gravity of the underlying offense.

20 (2) The Commonwealth shall have the burden of  
21 establishing proportionality by clear and convincing  
22 evidence.

23 (3) The value of property forfeited shall be determined  
24 by considering, among other factors:

25 (i) Its market value.

26 (ii) Its subjective value to the defendant and the  
27 defendant's family members.

28 (4) The gravity of the offense shall be determined by  
29 considering, among other factors:

30 (i) The penalty imposed as compared to the maximum

1 penalty available for the offense upon which the  
2 forfeiture is based.

3 (ii) Whether the offense was isolated or part of a  
4 pattern of criminal conduct.

5 (iii) The specific harm resulting from the offense  
6 upon which the forfeiture is based.

7 (k) Forfeiture of substitute property.--

8 (1) After entering a preliminary order of forfeiture,  
9 the court may order the forfeiture of substitute property up  
10 to the value of the property subject to the order, if the  
11 Commonwealth establishes by clear and convincing evidence  
12 that:

13 (i) The convicted person intentionally transferred,  
14 sold or deposited the property to avoid the court's  
15 jurisdiction.

16 (ii) The substitute property is owned solely by the  
17 convicted person.

18 (2) No codefendant shall be subject to joint and several  
19 liability for forfeiture judgments owed by other defendants  
20 under this subsection.

21 § 58A04. Process for third-party interest holders.

22 (a) Notice to third parties.--After the court enters a  
23 preliminary order of forfeiture, the Commonwealth shall send  
24 notice to any person who reasonably appears to be a potential  
25 claimant with standing to contest the forfeiture in an ancillary  
26 proceeding under subsection (i). Potential claimants include,  
27 but are not limited to:

28 (1) Partial or joint owners of the property subject to  
29 the preliminary order of forfeiture.

30 (2) Holders of a bona fide security interest in the

1 property subject to the preliminary order of forfeiture.

2 (3) Bona fide purchasers for value of the property  
3 subject to the preliminary order of forfeiture.

4 (4) Obligees of court-ordered child support from the  
5 convicted person.

6 (5) Claimants of employment-related compensation from  
7 the convicted person.

8 (b) Contents of notice.--Notice shall include:

9 (1) A description of the specific property subject to  
10 the preliminary order of forfeiture including, but not  
11 limited to, the address of any real property, the exact  
12 dollar amount of any money, negotiable instrument or  
13 securities and the make, model, year and license plate number  
14 of any vehicle.

15 (2) A statement that either:

16 (i) a petition contesting forfeiture must be filed  
17 within 60 days of the date of receipt of certified mail  
18 or personal service; or

19 (ii) in the case the service fails, a petition  
20 contesting forfeiture must be filed within 60 days of the  
21 date of final publication of substitute notice;

22 (3) A statement describing the required contents of a  
23 petition contesting forfeiture as set forth in subsection  
24 (h).

25 (4) The name and contact information for the  
26 Commonwealth attorney to be served with the petition.

27 (5) The signature of the Attorney General, Deputy  
28 Attorney General, district attorney, deputy district attorney  
29 or assistant district attorney.

30 (c) Means of serving notice.--Notice shall be served

1 personally or by certified mail on the potential claimant.

2 (d) Substitute notice.--If a potential claimant cannot be  
3 personally served or located within the jurisdiction of the  
4 court, notice of the petition shall be provided by the  
5 Commonwealth through an advertisement reasonably calculated to  
6 provide notice to the potential claimant:

7 (1) in a newspaper of general circulation published in  
8 the county where the property was seized, once a week for two  
9 successive weeks; and

10 (2) on the publicly accessible Internet website of the  
11 prosecuting attorney for a period of two weeks.

12 (e) Potential claimants not in jurisdiction.--For purposes  
13 of this section, it shall be deemed that a potential claimant  
14 cannot be located in the jurisdiction of the court if:

15 (1) A copy of the petition is mailed to the potential  
16 claimant's last known address by certified mail and is  
17 returned without delivery.

18 (2) Personal service is attempted once, but cannot be  
19 made at the last known address.

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

22 (f) Proof of notice.--The Commonwealth shall file proof of  
23 notice with the court. No forfeiture order shall be final until  
24 the court finds that such proof satisfies the notice  
25 requirements under subsections (a), (b), (c), (d) and (e).

26 (g) Petitioning for hearing.--A person, other than the  
27 defendant, asserting a legal interest in property subject to a  
28 preliminary order of forfeiture under section 5803(g) (relating  
29 to process for criminal asset forfeiture) may, within 60 days of  
30 the date of receipt of certified mail or personal service or, in

1 the case such service fails, the date of final publication of  
2 substitute notice, petition the court for a hearing to  
3 adjudicate the validity of the person's alleged interest in the  
4 property.

5 (h) Contents of third-party claimant petition.--The petition  
6 shall:

7 (1) Be signed by the petitioner under penalty of  
8 perjury.

9 (2) Describe the nature and extent of the petitioner's  
10 right, title or interest in the property, the time and  
11 circumstances of the petitioner's acquisition of the right,  
12 title or interest in the property and any additional facts  
13 supporting the petitioner's claim.

14 (3) Identify the relief sought, which may include, but  
15 need not be limited to:

16 (i) return of the petitioner's property;

17 (ii) reimbursement for the petitioner's legal  
18 interest in the forfeited property;

19 (iii) severance of the petitioner's property from  
20 the forfeited property;

21 (iv) retention of the property by the petitioner  
22 subject to a lien in favor of the State to the extent of  
23 the forfeitable interest; or

24 (v) any relief the court deems appropriate and just.

25 (i) Ancillary proceeding in general.--

26 (1) If a third-party claimant timely files a petition  
27 asserting a legal interest in property to be forfeited, the  
28 court shall conduct an ancillary proceeding, no later than  
29 four months after entry of the preliminary order of  
30 forfeiture. The hearing shall be a civil proceeding and the

1 petitioner shall have a right to a jury trial.

2 (2) The hearing on the petition shall, to the extent  
3 practicable and consistent with the interests of justice, be  
4 held within 30 days of the filing of the petition. The court  
5 may consolidate the hearing on the petition with a hearing on  
6 any other petition filed under this subsection related to the  
7 same underlying offense.

8 (3) At the hearing, the petitioner may testify and  
9 present evidence and witnesses on the petitioner's own  
10 behalf, and cross-examine witnesses who appear at the  
11 hearing. The Commonwealth may present evidence and witnesses  
12 in rebuttal and in defense of its claim to forfeit the  
13 property and may cross-examine witnesses who appear at the  
14 hearing. In addition to testimony and evidence presented at  
15 the hearing, the court shall consider any relevant portions  
16 of the record of the criminal case that resulted in the order  
17 of forfeiture.

18 (4) If, after the hearing, the court determines that the  
19 petitioner has established by a preponderance of the evidence  
20 that:

21 (i) the petitioner has a legal right, title or  
22 interest in the property and such right, title or  
23 interest renders the preliminary order of forfeiture  
24 invalid in whole or in part because the right, title or  
25 interest was vested in the petitioner rather than the  
26 defendant or was superior to any right, title or interest  
27 of the defendant at the time of the commission of the  
28 acts which gave rise to the forfeiture of the property  
29 under this chapter; or

30 (ii) the petitioner is a bona fide purchaser for

1 value of the right, title or interest in the property and  
2 was at the time of purchase reasonably without cause to  
3 believe that the property was subject to forfeiture under  
4 this section.

5 The court shall amend the order of forfeiture in accordance  
6 with its determination.

7 (j) Entering a final order.--

8 (1) When the ancillary proceeding ends, the court shall  
9 enter a final order of forfeiture by amending the preliminary  
10 order as necessary to account for any third-party rights or  
11 interests.

12 (2) If no third party files a timely petition, the  
13 preliminary order shall become the final order of forfeiture.

14 § 58A05. Interaction with the Federal Government.

15 (a) Prohibition on adoptive seizures.--State law enforcement  
16 authorities shall not refer seized property to a Federal agency  
17 seeking the adoption by the Federal agency of the seized  
18 property. Nothing in this chapter shall be construed to prohibit  
19 the Federal Government, or any of its agencies, from seeking  
20 Federal forfeiture.

21 (b) Sharing of seized property.--All property, money or  
22 other things of value received by a State law enforcement  
23 authority under Federal law which authorizes the sharing or  
24 transfer of all or a portion of forfeited property or the  
25 proceeds of the sale of forfeited property to a State law  
26 enforcement authority shall be promptly transferred, sold and  
27 deposited as set forth in section 58A03(e), (f), (g), (h) and  
28 (i) (relating to process for criminal asset forfeiture), if  
29 Federal law prohibits compliance with section 58A03(e), (f),  
30 (g), (h) and (i), State law enforcement authorities shall not

1 seek forfeited property or proceeds of the sale of forfeited  
2 property shared or transferred under Federal law.

3 (c) Civil and criminal liability.--Any law enforcement  
4 authority that violates subsection (a) is civilly liable to the  
5 State for three times the amount of the forfeiture diverted and  
6 for costs of suit and reasonable attorney fees. Any damages  
7 awarded to the State shall be paid to the State Treasury to the  
8 credit of the General Fund. Any agent, including a State law  
9 enforcement officer who is detached to, deputized or  
10 commissioned by, or working in conjunction with a Federal law  
11 enforcement authority, who knowingly transfers or otherwise  
12 trades seized property in violation of subsection (a) or who  
13 receives property, money or other things of value under  
14 subsection (b) and knowingly fails to transfer such property in  
15 accordance with that subsection is guilty of a misdemeanor of  
16 the second degree.

17 Section 6. Sections 4909(c) and 9405(a)(2) of Title 75 are  
18 amended to read:

19 § 4909. Transporting foodstuffs in vehicles used to transport  
20 waste.

21 \* \* \*

22 (c) Vehicle forfeiture.--Any vehicle or conveyance used in  
23 the commission of an offense under this section shall be deemed  
24 contraband and forfeited in accordance with 42 Pa.C.S. [§§ 5803  
25 (relating to asset forfeiture), 5805 (relating to forfeiture  
26 procedure), 5806 (relating to motion for return of property),  
27 5807 (relating to restrictions on use), 5807.1 (relating to  
28 prohibition on adoptive seizures) and 5808 (relating to  
29 exceptions)] Ch. 58A (relating to asset forfeiture).

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 \* \* \*

6 (2) All conveyances, including vehicles or vessels, used  
7 to transport liquid fuels or fuels as described in paragraph  
8 (1). Forfeiture of such conveyances shall be conducted in  
9 accordance with 42 Pa.C.S. [§§ 5803 (relating to asset  
10 forfeiture), 5805 (relating to forfeiture procedure), 5806  
11 (relating to motion for return of property), 5807 (relating  
12 to restrictions on use), 5807.1 (relating to prohibition on  
13 adoptive seizures) and 5808 (relating to exceptions)] Ch. 58A  
14 (relating to asset forfeiture).

15 \* \* \*

16 Section 7. Notwithstanding any other provision of law to the  
17 contrary, the following forfeitures shall be conducted in  
18 accordance with 42 Pa.C.S. Ch. 58A:

19 (1) The forfeiture of property specified in section 1 of  
20 the act of July 3, 1941 (P.L.263, No.121), entitled "An act  
21 providing for the forfeiture and condemnation of vehicles  
22 used to store, possess or transport narcotics or drugs, the  
23 possession or transportation of which is in violation of  
24 law."

25 (2) The seizure of property specified in sections 211(a)  
26 (3) and 601 of the act of April 12, 1951 (P.L.90, No.21),  
27 known as the Liquor Code.

28 (3) The forfeiture of property specified in section 1285  
29 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax  
30 Reform Code of 1971.

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

4           (5) The forfeiture of property specified in section 1715  
5 of the act of July 28, 1988 (P.L.556, No.101), known as the  
6 Municipal Waste Planning, Recycling and Waste Reduction Act.

7           (6) The forfeiture of property specified in section 1 of  
8 the act of December 1, 2004 (P.L.1766, No.227), entitled "An  
9 act authorizing cities of the first class that have adopted a  
10 home rule charter to enforce ordinances, rules and  
11 regulations prohibiting dumping or disposal of waste, trash  
12 or debris."

13       Section 8. The addition of 48 Pa.C.S. Ch. 58A shall apply to  
14 property subject to forfeiture on or after the effective date of  
15 this section.

16       Section 9. Repeals are as follows:

17           (1) The General Assembly finds that the repeals under  
18 paragraph (2) are necessary to effectuate the addition of 42  
19 Pa.C.S. Ch. 58A.

20           (2) Sections 602 and 603(a) and (b) of the act of April  
21 12, 1951 (P.L.90, No.21), known as the Liquor Code, are  
22 repealed to the extent of any inconsistency with this act.

23       Section 10. This act shall take effect in 90 days.