



SENATE OF PENNSYLVANIA BILL SUMMARY

Senate Bill 869 Printer's No. 1015

Prime Sponsor: Senators Folmer and Williams
Committee: Judiciary

SYNOPSIS:

This bill amends Title 4 (Amusements), Title 18 (Crimes and Offenses), Title 30 (Fish), Title 42 (Judiciary and Judicial Procedure), and Title 75 (Vehicles) to address the seizure and forfeiture of property that is related to criminal offenses.

SUMMARY:

Technical Amendments

Sections 1 through 6 of the bill make repeals and changes to clarify that various offenses will be subject to asset forfeiture under the new Chapter 58 in Title 42.

Chapter 58: Asset Forfeiture

Criminal Asset Forfeiture (Section 5802): After conviction of an offense for which forfeiture is expressly authorized as a penalty, the property derived from proceeds of the offense or used to commit or facilitate the offense will be forfeited to the Commonwealth.

- If the seized property is not subject to forfeiture, a property owner may sue the law enforcement authority for any damage or loss related to the property.
- Forfeited property goes to the district attorney or the Attorney General, who shall sell the property. The proceeds of the sale shall be used first to satisfy restitution orders and second to be deposited in the General Fund (for Attorney General forfeitures) or the county operating fund (for District Attorney forfeitures).
- Counties shall submit an annual audit of forfeited property and proceeds to the Office of Attorney General by September 30. The Attorney General shall submit an annual report to the Appropriations and Judiciary Committees of the Senate and House of Representatives. The audit reports are subject to the Right-to-Know Law, and citizens have taxpayer standing to challenge compliance with this Act.
- Fee shifting: If the defendant prevails in a forfeiture action, the Commonwealth shall be liable for reasonable attorney fees and litigation costs and post-judgment interest.

Process for Criminal Asset Forfeiture (Section 5803): Property may be seized by a law enforcement officer with court-issued process, or without process if the seizure is incident to an arrest or search/administrative warrant and there is probable cause to believe that this Act permits seizure. The following shall apply:

- *Real Property*: Absent exigent circumstances, no real property shall be seized unless the Commonwealth first provides the owners and occupants notice and an opportunity for a hearing.
- *Receipt*: Law enforcement shall provide an itemized receipt for seized property.
- *Hardship*: When the defendant files a motion for release of property due to hardship, the property shall be released if the owner establishes that he or she has a possessory interest and continued seizure will impede the functioning of a legitimate business or other work, prevent attendance at school, interfere with medical care, or leave the person homeless.
- *Forfeiture Proceedings*: Tried in the same proceeding as the criminal case concerning the person's guilt or innocence unless the defendant moves to bifurcate the two matters. The information or indictment shall notify the defendant of the Commonwealth's intent to seek forfeiture as part of the sentence. After conviction, the Commonwealth must establish by clear and convincing evidence that the property is subject to forfeiture.
- *Right to Jury Trial*: The defendant shall have the right to a jury trial of the forfeiture proceeding.

Third Parties (Section 5804): Commonwealth shall notify anyone who appears to be a potential claimant with standing to contest the forfeiture. Potential claimants include joint owners of property, bona fide purchasers, obligees of court-ordered child support from the convicted person, and claimants of employment-related compensation from the convicted person.

- The notice shall describe the property, inform the person how to contest the forfeiture, include the contact information for the Commonwealth's attorney, and the attorney's signature. Notice shall be served personally or by certified mail.
- A third-party seeking to contest the forfeiture may petition the court within 60 days of receiving notice. The bill specifies the content of the petition. The court shall conduct an ancillary proceeding with regard to the third-party's interest, with a hearing to be held in 30 days after the filing of the petition.

AMENDMENT:

The amendment, which replaces the entirety of the bill, states as follows:

Technical Amendments

The amendment contains the same technical amendments as the bill, making certain repeals and subjecting certain offenses to the new Chapter 58 of Title 42. Terrorism offenses are added as subject to forfeiture.

Chapter 58

Controlled substances forfeiture (Section 5802): This new section subjects drug paraphernalia, raw materials and equipment for drug manufacturing and delivering, and containers and conveyances for drug delivery subject to seizure. This property includes records, research, firearms, and money related to the drug operation.

Asset forfeiture (Section 5803): Property may be seized if incident to arrest or a warrant or if probable cause exists to believe that this Act permits seizure. Real property may be seized upon the forfeiture order of the court. The owners or occupants shall not be evicted or deprived of the use of the property pending the issuance of a forfeiture order. Real property may be seized before the issuance of a forfeiture order if the owners and occupants have a hearing, or if the court determines that exigent circumstances exist (*e.g.*, less restrictive means would not prevent the destruction or sale of the property at issue).

- *Receipt*: Law enforcement shall provide a receipt for seized property.
- *Use of Property*: The district attorney (for seizures by local law enforcement) or Attorney General (for seizures by state law enforcement) may retain the property for official use, or sell the property. The cash proceeds, after paying for costs related to forfeiture, go to the county operating fund, which shall release to the district attorney a like amount. In appropriate cases, the district attorney or Attorney General may use forfeited property in community-based drug and crime-fighting programs and for the service of victims and witnesses.
- *Annual Reports*: same as in the bill.

Forfeiture procedure (Section 5805): The *in rem* proceeding will be commenced by the Commonwealth as plaintiff and the property as defendant. The amendment states the required contents of the forfeiture petition. The notice provisions are the same as in the bill, including notice to the owner of the time period and manner for contesting the forfeiture.

- *Release of Property*: A claimant to property subject to forfeiture may seek immediate release if the claimant has a possessory interest, has ties to the community to provide assurance that the property will be available, the continued seizure will create a hardship, and the hardship outweighs the risk that the property will be destroyed.
- *Currency*: if the claimant seeks the release of currency, the amendment sets forth procedures to establish that the currency stems from a noncriminal source and that it will be available for the forfeiture proceeding (including insurance or bond).
- *Burden of proof*: The burden shall be on the Commonwealth to establish that the property is subject to forfeiture; the claimant must then establish that the property was lawfully obtained; the Commonwealth must then show by clear and convincing evidence that the property was unlawfully used or possessed by the claimant.

Motion for Return of Property (Section 5806): A person aggrieved by a seizure of property may move for the return of the property, as set forth in this section.

Procedure Following Acquittal (Section 5806.1): If the owner of the property is acquitted of criminal charges which authorize forfeiture, there is a rebuttable presumption that the property was lawfully used or possessed by the claimant. The owner shall be entitled to a hearing on a motion for the return of property.

EFFECTIVE DATE:

This bill is effective in 90 days.

BILL HISTORY:

None.

Prepared by: Cawley 9/22/2016