



|| SENATE OF PENNSYLVANIA || BILL SUMMARY

Senate Bill 8 Printer's No. 181

Prime Sponsor: Senators Folmer and Scarnati
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. Foreign and domestic assets related to terrorism are subject to forfeiture.

Chapter 58: Asset Forfeiture

Criminal Asset Forfeiture: 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. Forfeited firearms must be destroyed immediately. The proceeds of the sale of forfeited property 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: 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. If a defendant disclaims ownership of the property in the criminal trial, the defendant may not claim ownership of the property in the forfeiture proceeding.
- *Right to Jury Trial*: The defendant shall have the right to a jury trial of the forfeiture proceeding.
- *Procedure after Acquittal*: If the owner of the property is acquitted of all crimes which authorize forfeiture, there shall be a rebuttable presumption that the property was lawfully used or possessed by the claimant and the owner shall be entitled to a hearing with regard to the return of the property.

Notice: Commonwealth shall notify the owner or person in possession of the forfeiture petition. If the owner is unknown and there was no person in possession of the property, the Commonwealth may effect notice by advertisement. The notice shall describe the property and direct the person to file a claim.

AMENDMENTS:

Amendment A00060: This amendment pertains to the contents of the annual audit of forfeited property. Under the amendment, the annual audit must include: the date of the forfeiture, the type of property forfeited, where the forfeiture occurred, the approximate value, the alleged criminal behavior with which the property is associated, the outcome of the criminal case, the disposition or use of the property received, whether the forfeiture was related to a criminal case, and the date of the forfeiture decision.

EFFECTIVE DATE:

This bill is effective on July 1, 2017, or immediately, whichever is later.

BILL HISTORY:

None.

Prepared by: Cawley 1/27/2017