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HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 115

AN ACT TO AMEND TITLES 11 AND 16 RELATING TO CIVIL ASSET FORFEITURE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 4784, Title 16 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 4784. Forfeitures.

4 (a) The following ~~shall be~~ are subject to forfeiture to the State ~~and no property rights shall exist in them:~~ pursuant
5 to the procedure and limitations set forth in this section:

6 (1) All controlled substances which have been manufactured, distributed, possessed, ~~dispensed~~ dispensed, or
7 acquired in violation of this ~~chapter;~~ chapter.

8 (2) All raw materials, ~~products~~ products, and equipment of any kind which are used, or intended for use, in
9 manufacturing, compounding, processing, delivering, ~~importing~~ importing, or exporting any controlled substance in
10 violation of this ~~chapter;~~ chapter.

11 (3) Any property which is used, or intended for use, as a container for property described in paragraph (a)(1),
12 ~~(2)-(2),~~ or (6) of this ~~section;~~ section.

13 (4) ~~Any~~ Except as provided by paragraphs (a)(4)a. through (a)(4)d. of this section, any conveyances, including
14 aircraft, vehicles, or ~~vessels-~~ vessels, which are used, or are intended for use, to transport, or in any manner to facilitate
15 the transportation, sale, or possession with intent to deliver property described in paragraph (a)(1) or (2) of this ~~section~~
16 ~~except that:~~ section.

17 a. ~~No~~ A vehicle used by any person as a common carrier in the transaction of business as a common
18 carrier is subject to forfeiture under this section ~~unless only if the State proves by clear and convincing evidence~~
19 that the owner or other person in charge of the vehicle is a consenting party or privy to a violation of ~~the~~
20 ~~Controlled Substances Act;~~ this chapter.

21 b. ~~No~~ A vehicle is subject to forfeiture under this section ~~by reason of any act or omission only if the~~
22 State establishes by clear and convincing evidence that a violation of this chapter occurred with ~~established by the~~
23 ~~owner thereof to have been committed or omitted without the owner's knowledge or~~ consent.

24 c. A vehicle is not subject to forfeiture for a violation of § 4761(a) or (b) ~~[repealed]~~, 4761, § 4763 or §
25 4764 of this title; and title.

26 d. A forfeiture of a vehicle encumbered by a bona fide security interest is subject to the interest of the
27 secured party if the secured party neither had knowledge of nor consented to the unlawful act or ~~omission;~~
28 omission.

29 (5) All books, records, and research products and materials including formulas, microfilm, tapes and data
30 which are used or intended for use in violation of this ~~chapter;~~ chapter.

31 (6) All drug paraphernalia as defined in § 4701(18) of this ~~title;~~ title.

32 (7) a. All moneys, negotiable instruments, ~~securities~~ securities, or any other thing of value furnished, or
33 intended to be furnished, in exchange for a controlled substance or drug paraphernalia in violation of this chapter; all
34 profits or proceeds traceable to securities, ~~assets~~ assets, or interest used, or intended to be used, to facilitate any
35 violation of this chapter. However, ~~no a property interest of an owner;~~ owner of items listed in this paragraph (a)(7)
36 is not subject to forfeiture by reason of any criminal act or omission established by the owner to be committed or
37 ~~omitted without~~ unless the State establishes by clear and convincing evidence that the act or omission occurred with the
38 owner's knowledge or consent. ~~consent shall be forfeited in the items listed in this paragraph. Further provided that~~
39 currency in an amount less than \$1,000 may not be forfeited under this section.

40 ~~a. All moneys, negotiable instruments or securities found in close proximity to forfeitable controlled~~
41 ~~substances, or to forfeitable records of the importation, manufacture or distribution of controlled substances are~~
42 ~~presumed to be forfeitable under this paragraph. The burden of proof is upon claimant of the property to rebut this~~
43 ~~presumption.~~

44 ~~b. All moneys, negotiable instruments or securities found to have trace amounts of controlled substances~~
45 ~~on them are presumed to be forfeitable under this paragraph. The burden of proof is upon the claimant of the~~
46 ~~property to rebut this presumption.~~

47 ~~e. b.~~ To the extent that If assets, interests, ~~profits~~ profits, and proceeds forfeitable under this paragraph ~~(i)~~
48 cannot be located, ~~(ii)~~ have been transferred, sold ~~to~~ to, or deposited with third parties, or ~~(iii)~~ have been placed
49 beyond the jurisdiction of the State, the court, following conviction of the individual charged, may direct forfeiture
50 of such other assets of the defendant as may be available, limited in value to those assets that would otherwise be

51 forfeited under this paragraph. Upon petition of the defendant, the court may authorize redemption of assets
52 forfeited under this paragraph, provided the assets described in this paragraph are surrendered or otherwise
53 remitted by such defendant to the jurisdiction of the ~~court~~, and court.

54 (8) ~~Any Except as provided by paragraphs (a)(8)a. through (a)(8)d. of this section, any real property which is~~
55 used, or is intended for use, to store, grow, manufacture, compound, process, deliver, import, or export any controlled
56 substance in violation of this ~~chapter~~ ~~except that:~~ chapter.

57 a. ~~No real~~ Real property is subject to forfeiture under this section only if the State proves by clear and
58 convincing evidence that the criminal ~~by reason of any act or omission established by any owner thereof to have~~
59 ~~been~~ was committed or omitted ~~without~~ with the owner's knowledge or consent;

60 b. ~~No real~~ Real property being leased out by its owner shall be subject to forfeiture under this section
61 ~~unless the~~ only if the State proves by clear and convincing evidence that the owner of the real property is a
62 consenting party or privy to the violation of the ~~Controlled Substances Act;~~ this chapter.

63 c. No real property shall be subject to forfeiture for a violation of § 4759, § 4761(a), ~~§ 4763~~ 4761, §
64 4763 or § 4764 of this title; and

65 d. A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the
66 secured party if the secured party neither had knowledge of nor consented to the unlawful act or omission.

67 (b) ~~Notwithstanding any other provisions of the laws of this State or rules of court, the procedures listed in~~
68 ~~subsections (e)-(j) of this section are applicable to the administrative forfeiture of property subject to forfeiture under this~~
69 ~~section.~~ Except for property listed in paragraphs (a)(1) and (a)(2) of this section, property may not be forfeited pursuant to
70 this section unless charges have been brought and one of the following has occurred in the underlying criminal case:

71 (1) A plea of guilty or no contest has been entered.

72 (2) A verdict of guilty has been rendered.

73 (3) Charges are dismissed after the completion of a pretrial diversionary program.

74 (c) Property subject to forfeiture under this chapter may be seized by the Secretary upon process issued by any
75 Superior Court having jurisdiction over the property. Seizure without process may be made ~~if:~~ in any of the following
76 circumstances:

77 (1) ~~The seizure made is pursuant~~ Pursuant to a warrant or arrest under ~~to~~ subchapter I of Chapter 23 of Title

78 11,

79 (2) ~~or an inspection under~~ Pursuant to an administrative inspection ~~warrant;~~ warrant.

80 (2) ~~(3)~~ The property subject to seizure has been the subject of a prior judgment in favor of the State in a
81 criminal, ~~injunction~~ injunction, or forfeiture proceeding based upon this ~~chapter~~; chapter.

82 (3) ~~(4)~~ The Secretary has probable cause to believe that the property is directly or indirectly dangerous to
83 health or ~~safety~~; or safety.

84 (4) ~~(5)~~ The Secretary has probable cause to believe that the property was used or intended to be used in
85 violation of this ~~chapter~~; chapter and an arrest or warrant related to the use or intended use of the property has issued.

86 (d) ~~In the event of~~ If a seizure pursuant to ~~under~~ subsection (c) of this ~~section~~; section occurs, proceedings under
87 subsections (e) and (j) of this section ~~shall~~ must be instituted promptly.

88 (e) Property taken or detained under this section ~~shall not be~~ is not subject to replevin, but is deemed to be in the
89 custody of the Secretary subject only to the orders and decrees of the Superior Court. When property is seized under this
90 chapter, the Secretary ~~may~~; may do any of the following:

91 (1) Place the property under ~~seal~~; seal.

92 (2) Remove the property to a place designated by the ~~Secretary~~; or Secretary.

93 (3) Require the Department of Safety and Homeland Security to take custody of the property and remove it to
94 an appropriate location for disposition in accordance with law.

95 (f) When property is forfeited under this chapter, the Secretary ~~may~~; may do any of the following.

96 (1) Retain it for official ~~use~~; use.

97 (2) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds
98 ~~shall~~ must be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of
99 seizure, maintenance of custody, ~~advertising and court costs~~; advertising, and court costs, and any remainder shall be
100 deposited to the General Fund.

101 (3) Allow the arresting agency or any other law-enforcement ~~division~~ agency to use the property for the
102 purpose of law enforcement provided that any proceeds remaining after the payment of expenses and any other money
103 forfeited or realized from forfeited property ~~shall~~ must be deposited to the ~~Special Law Enforcement Assistance Fund~~
104 ~~for the use of the State for the purposes as established by the Attorney General with the concurrence of the Director of~~
105 ~~the Office of Management and Budget and the Controller General~~; General Fund.

106 (4) Require the Department of Safety and Homeland Security to take custody of the property and remove it for
107 disposition in accordance with ~~law~~; or law.

108 (5) Forward it to the Administration for disposition. Unless seized property under this section is United States
109 currency in excess of \$100,000, a law enforcement agency, state agency, county, or municipality may not enter into an

110 agreement to transfer or refer property seized under this section to a federal agency directly, indirectly, through
111 adoption, through an intergovernmental joint task force, or by other means that circumvent the provisions of this
112 section.

113 (g) The following are contraband and are to be summarily forfeited to the State:

114 (1) Controlled substances listed in Schedule I that are possessed, transferred, sold, sold, or offered for sale in
115 violation of this chapter are contraband and shall be seized and summarily forfeited to the State. chapter.

116 (2) Controlled substances listed in Schedule I, the owners of which are unknown, which are seized or come
117 into the possession of the State are contraband and shall be summarily forfeited to the State. State.

118 (h) (3) Species of plants from which controlled substances in Schedules I and II may be derived which have
119 been planted or cultivated in violation of this chapter or of which the owners or cultivators are unknown or which are
120 wild growths may be seized and summarily forfeited to the State. growths. (i) The failure, upon demand by the
121 Secretary or the Secretary's authorized agent, of the person in occupancy or in control of land or premises upon which
122 the species of plants are growing or being stored to produce an appropriate registration or proof that the person is the
123 holder thereof constitutes authority for the seizure and forfeiture of the plants.

124 (j) (h)(1) Property seized pursuant to this section that is not summarily forfeited pursuant to subject to summary
125 forfeiture under subsection (f)-(g) of this section shall be automatically may be forfeited to the State upon application a
126 petition to the Superior Court if, within 45 days of notification of seizure to all known parties having possessory interest in
127 the seized property by registered or certified mail to the last known post office address of the parties in interest and by
128 publication in a newspaper of general circulation in this State, the person or persons claiming title to the seized property do
129 not institute proceedings in the Superior Court to establish:

130 (1) That they have the lawful possessory interest in the seized property; and

131 (2) The property was unlawfully seized or not subject to forfeiture pursuant to this section.

132 Court. A proceeding pursuant to such petition is an *in rem* civil proceeding.

133 (2) The State shall notify the criminal defendant, the attorney of record in the criminal case, if any, and all
134 identifiable owners of property subject to a petition and any other person that appears to have an interest in such
135 property by certified or registered mail or personal service within 30 days of the seizure of property or the filing of a
136 petition, whichever is earlier.

137 (3) The Court shall hold a hearing on the petition not more than 2 weeks after the related criminal proceeding
138 has been concluded, dismissed, or otherwise finally disposed of. An owner or person with interest in the property who

139 is not a defendant may request an earlier hearing seeking return of the property before the conclusion of the criminal
140 proceeding.

141 (4) a. If the Court finds the State has proven the allegations in the petition by clear and convincing evidence
142 and the criminal proceeding concludes with a disposition set forth in paragraphs (b)(1) through (3) of this section, the
143 Court shall render judgement that the property be forfeited to the State for disposition in accordance with subsection (f)
144 of this section.

145 b. The Court shall deny the petition and order the property returned to its owner if any of the following
146 occur:

147 1. The criminal case does not result in a guilty or no contest plea, a conviction, or pretrial diversion.

148 2. Irrespective of the findings in the criminal proceeding, the Court finds that the State has not
149 carried its burden of showing that the property is a means, instrumentality, or proceeds of a violation of this
150 chapter.

151 3. The property is the property of a person who is not a defendant and whom the State has not proved
152 had knowledge of or consented to the criminal act or omission that is the basis for forfeiture.

153 4. The value of the property to be forfeit unreasonably exceeds any of the following:

154 A. The pecuniary gain derived or sought to be derived by the crime.

155 B. The pecuniary loss caused or sought to be caused by the crime.

156 C. The value of the convicted owner's interest in the property.

157 c. Property ordered by the Court to be returned to its owner must be returned forthwith and the party in
158 possession of the property pending the determination is responsible and personally liable for the property from the
159 time of seizure to the time of return.

160 (5) When a defendant in a criminal case is represented by the Office of Defense Services, the Office of
161 Defense Services shall represent the defendant in any related forfeiture proceedings. If an unrepresented defendant
162 appears in a forfeiture proceeding, the Court may refer the Defendant to the Office of Defense Services for an
163 eligibility determination for representation.

164 Section 2. Amend § 4785, Title 16 of the Delaware Code by making deletions as shown by strike through and
165 insertions as shown by underline as follows:

166 § 4785. Burden of proof; ~~liabilities;~~ liabilities; attorneys fees.

167 ~~(a) It is not necessary for the State to negate any exemption or exception in this chapter in any complaint,~~
168 ~~information, indictment or other pleading or in any trial, hearing or other proceeding under this chapter. The burden of~~

169 going forward with the evidence to establish any exemption or exception is upon the person claiming it. The State has the
170 burden to prove all material facts in a forfeiture proceeding by clear and convincing evidence.

171 ~~(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form~~
172 ~~issued under this chapter, such person is presumed not to be the holder of the registration or form. The burden of proof is~~
173 ~~upon the person to rebut the presumption. Where the property subject to a proceeding is claimed to be the property of a~~
174 person who is not a criminal defendant, that person has the burden of production to show one of the following:

175 (1) The person held a legal right, title, or interest in the property seized at the time the illegal conduct that
176 gave rise to the seizure of the property occurred.

177 (2) The person acquired as a bona fide purchaser for value a legal right, title, or interest in the property subject
178 to forfeiture after the commission of the crime that gave rise to the seizure of the property.

179 (c) If a person meets the burden of production to show they are an innocent owner pursuant to subsection (b) of
180 this section, the State must prove by clear and convincing evidence that the owner had knowledge of or consented to the
181 unlawful acts or omissions that gave rise to the forfeiture.

182 ~~(e) (d) No~~ Other than the liability set forth in § 4784(h)(4)c. of this title, no liability is imposed by this chapter
183 upon any authorized state, county or municipal officer engaged in the lawful performance of the officer's duties.

184 (e) Where property is ordered by the Court to be returned under § 4784(h)(4)b., the Court shall order the prevailing
185 party's reasonable attorney fees and costs for the forfeiture action to be paid by the State.

186 (f) The Court may refer a person claiming property under this section who is not a criminal defendant to the Office
187 of Defense Services for an eligibility determination for representation in forfeiture proceedings.

188 Section 3. Amend Subchapter VI, Chapter 47, Title 16 of the Delaware Code by making deletions as shown by
189 strike through and insertions as shown by underline as follows:

190 § 4788. Public reporting.

191 (a) The Attorney General shall compile and publish on its website an annual report that includes all of the
192 following information:

193 (1) The number of seizures made pursuant to this subchapter or any other provision of Delaware law and
194 whether the property seized was currency, a conveyance, real estate, or other property. Where the property seized is
195 non-monetary, an estimated value of the seized property.

196 (2) The lead charge in the criminal case associated with each seizure.

197 (3) Aggregate data on the race, ethnicity, age, and gender of persons whose property was seized.

198 (4) The number of seizures where the criminal case ended in each of the following: a conviction, guilty or no
199 contest plea, or entry into a pretrial diversion program.

200 (5) The number of cases where each of the following occurred:

201 a. Property was ordered forfeited by the Court.

202 b. Property was forfeited pursuant to a plea or non-prosecution agreement.

203 c. The property was ordered by the Court to be returned to the owner.

204 d. The property was returned to the owner without a court order.

205 (6) The number of seizures by each law enforcement agency in the State.

206 (7) The number of seizures referred, transferred, or otherwise diverted to a federal agency for prosecution or
207 forfeiture proceedings and a description of the property.

208 (8) The number of respondents in forfeiture proceedings who were represented by counsel and the number
209 who proceeded *pro se*.

210 (b) The Attorney General shall deliver a copy of the report to the Governor, the chair of the Senate Corrections &
211 Public Safety Committee, the chair of the House Public Safety and Homeland Security Committee, the Director of the
212 Division of Research, and the Public Archives.

213 Section 4. Amend Subchapter II, Title 11 of the Delaware Code by making deletions as shown by strike through
214 and insertions as shown by underline as follows:

215 § 4112. Source of funds.

216 ~~(a) Upon the forfeiture of any money in a criminal case in any court of this State, the same shall be paid over to the~~
217 ~~Prothonotary or clerk of the court, as the case may be, who shall collect the same and transmit it to the State Treasurer to be~~
218 ~~held as special funds for the purposes referred to in §§ 4110 and 4111 of this title. The Special Law Enforcement~~
219 ~~Assistance Fund shall not include fines, court costs or restitution ordered by the court in any criminal case, nor shall it~~
220 ~~include bail forfeitures. It shall, however, include any money or the proceeds obtained from the sale or other disposition of~~
221 ~~any property which is forfeited to the State by determination of the court that the property was:~~

222 ~~(1) Used for criminal purposes; or~~

223 ~~(2) Obtained as the fruits of a criminal enterprise.~~

224 ~~(b) Upon the signing of any forfeiture order pursuant to this section, the clerk of the court or the Prothonotary in~~
225 ~~which the order was signed shall transmit a copy of said order to the State Treasurer. If the forfeited money is not in the~~
226 ~~possession of the court clerk or Prothonotary, the money shall be transmitted to the State Treasurer, for deposit into the~~

227 ~~Special Law Enforcement Assistance Fund directly by the law enforcement agency which is in possession of the money.~~
228 The General Assembly may appropriate funds to the Special Law Enforcement Assistance Fund.

229 (d) ~~The methods and procedures established for the application and expenditure of this Fund are not subject to the~~
230 ~~normal accounting practices set forth in Chapter 65 of Title 29. [Repealed.]~~

231 § 4116. ~~Excess funds. [Repealed.]~~

232 If at any time the amount of funds segregated in the Special Law Enforcement Assistance Fund exceeds \$500,000,
233 the excess shall be deposited in the General Fund.

234 Section 5. Amend Subchapter II, Chapter 23, Title 11 of the Delaware Code by making deletions as shown by
235 strike through and insertions as shown by underline as follows:

236 § 2323. Transportation of controlled substances as grounds for seizure.

237 Whenever any vehicle, as defined in this subchapter, is used or intended for use to transport or in any manner to
238 facilitate the transportation of any controlled substance in violation of subchapter IV of Chapter 47 of Title 16, it shall
239 forthwith be seized and taken into custody by the peace officer or officers having knowledge of the facts of such use, ~~but~~
240 and any forfeiture proceeding shall be conducted in accordance with subchapter VI of Chapter 47 of Title 16.

241 (1) ~~No vehicle used by any person as a common carrier in the transaction of business as a common carrier is~~
242 ~~subject to forfeiture under this section unless it appears that the owner or other person in charge of the vehicle is a~~
243 ~~consenting party or privy to a violation of the Controlled Substances Act;~~

244 (2) ~~No vehicle is subject to forfeiture under this section by reason of any act or omission established by the~~
245 ~~owner thereof to have been committed or omitted without the owner's knowledge or consent;~~

246 (3) ~~A vehicle is not subject to forfeiture for a violation of §§ 4761(a) or (b), 4763, 4764 of Title 16; and~~

247 (4) ~~A forfeiture of a vehicle encumbered by a bona fide security interest is subject to the interest of the~~
248 ~~secured party if the secured party neither had knowledge of nor consented to the act or omission.~~

249 § 2324. Condemnation proceedings; rule-making power of Superior Court.

250 The vehicle seized under this subchapter shall be proceeded against by the Attorney General on behalf of this
251 State, by libel in the Superior Court for the condemnation and forfeiture of the vehicle to this State. The Superior Court
252 may by rule provide for the practice and procedure under this subchapter, including the giving of notice of the pendency of
253 the libel of condemnation to all parties in interest, and in any event notice by registered United States mail to the last known
254 post office address of the party in interest, or by publication in a newspaper of general circulation in this State as the Court
255 by rule or order prescribes ~~shall be sufficient.~~ under the same procedures and limitations set forth in §§ 4784 and 4785 of
256 Title 16.

257 § 2325. Disposition of seized vehicles.

258 Upon the judgment of the Superior Court, the vehicle so seized and all of the rights, title and interest therein, or
259 any right, title or interest in and to any such motor vehicle, as the Court determines, ~~shall be~~ is forfeited to the State and the
260 vehicle ~~shall be~~ is committed to the custody of the Department of Safety and Homeland Security, Division of State Police
261 for its use. If the Department of Safety and Homeland Security, Division of State Police determines that such seized vehicle
262 is not suitable for its purposes, custody will be transferred to the State Treasurer, who may allocate the same to and for the
263 use of any other state bureau, department, agency or officer or may sell the same and deposit the proceeds into the ~~Special~~
264 ~~Law Enforcement Assistance Fund.~~ General Fund.

265 § 2326. Application of subchapter.

266 This subchapter with respect to condemnation and forfeiture ~~shall does~~ not apply to or against the owner of a
267 vehicle unless the State proves by clear and convincing evidence that the owner who has not knowingly used or permitted
268 the vehicle to be used in, or in connection with, the commission of a felony, or ~~who has not~~ knowingly and voluntarily used
269 or permitted the vehicle to be used in, or in connection with, the flight or escape of any person who has committed any such
270 felony or in the transporting of cigarettes in violation of Chapter 53 of Title 30, or in a violation of § 1343 of this title, or in
271 a violation of § 4172 of Title 21 in a manner meeting the criteria set forth in § 4172(g) of Title 21. Nothing in this
272 subchapter ~~shall~~ may be construed as authorizing the condemnation and forfeiture of the interest of any bona fide
273 mortgagee or lienholder with respect to the vehicle ~~but the burden in all such cases shall be upon such~~ unless the State
274 proves by clear and convincing evidence that the mortgagee or lienholder to show that it did not know or have cause to
275 know, knew or had cause to know, at the time its interest accrued, of a contemplated unlawful use of ~~such~~ the vehicle.

276 Section 6. Amend § 5915, Title 11 of the Delaware Code by making deletions as shown by strike through and
277 insertions as shown by underline as follows:

278 § 5915. Fines, costs and restitution; collection and disposition.

279 (a) All fines, costs, restitution, penalties, charges and emoluments imposed or levied by the Justice of the Peace
280 Court, including those costs now levied for constables, shall be for such amounts as are provided by law, and all such
281 amounts imposed or levied shall be collected by the Justice of the Peace Court imposing the same for which a proper
282 receipt shall be given to the person paying the same. Every and all amounts so collected shall be recorded showing the
283 purpose for which the amounts were collected, the name of the person paying same and such other information as the
284 Justice of the Peace Court may require. The information so maintained shall be open to inspection by the State Treasurer
285 and the State Auditor or their authorized agents at all times. All fines and penalties collected for each calendar month shall
286 be paid over by the Justice of the Peace Court to the State Treasurer within 15 days after the first day of the succeeding

287 calendar month, provided that any such fines or forfeitures which, by the laws of this State, are due and payable to a county
288 or municipality thereof shall be paid by the Justice of the Peace Court to the county or municipality entitled thereto.

289 (b) All fines collected for the violation of any of this title, in the limits of any county, incorporated city or town in
290 this State where arrests are procured by the authorized representatives of that county, incorporated city or town, shall be
291 paid to that county, incorporated city or town within which such offense was committed for the use of that county,
292 incorporated city or town. Nothing in this subsection shall be construed to entitle any county to fines, penalties or
293 forfeitures arising from an arrest made under this title by an authorized representative of that county for a violation
294 committed within any incorporated city or town. All the fines, penalties and forfeitures imposed and collected in any county
295 of this State for violation of any of the laws of this title, where the arrests are procured by the authorized representatives of
296 the Department of Safety and Homeland Security, shall inure and be paid to the State Treasurer for the General Fund. Such
297 fines, penalties and forfeitures shall be collected as other fines, penalties and forfeitures are collected under the laws of this
298 State, and the officers collecting them shall make a monthly report thereof to the State Treasurer on blanks to be furnished
299 for that purpose by the Department of Safety and Homeland Security. All costs collected for the violation of any of this title
300 shall be paid to the jurisdiction whose court imposed said costs.

301 Section 7. This Act is effective on January 1 following its enactment.

302

SYNOPSIS

This Act does all of the following:

Requires a conviction before forfeiture. (plea of guilty or no contest, conviction, or dismissal because of completion of a diversion program all count)

Puts the burden on the state to prove all facts by clear and convincing evidence.

Requires the state to prove by clear and convincing evidence that a non-defendant owner knew about or consented to the unlawful activity before the property may be forfeit.

Strikes the presumption that cash with trace amount of drugs on it is presumed to be drug proceeds.

Strikes the presumption that money that is in proximity to controlled substances is drug proceeds. The state can still forfeit money if they have other evidence or circumstances that show it is drug proceeds.

Prohibits the use of the civil asset forfeiture proceeding for cash in any amount less than \$1,000.

Changes the process so there is always a hearing before forfeiture. Under current law, there is only a hearing if an owner affirmatively requests one be held.

Requires the court to conduct a proportionality analysis prior to ordering a forfeiture – i.e., is the value of the property sought to be forfeit in line with the gravity of the crime.

Requires the State to pay reasonable attorney fees to a prevailing party in a forfeiture proceeding.

Directs forfeiture proceeds into the General Fund, rather than SLEAF to eliminate the perception that law enforcement might pursue a forfeiture for personal gain. Retains SLEAF and the process of application and distribution, but only where the General Assembly funds it in the regular appropriations process.

Makes changes to Title 11 provisions relating to vehicle forfeitures to align with the Title 16 process and the same new procedural protections.

Prohibits directing seized property to federal agencies for forfeiture and equitable sharing except for currency in excess of \$100,000.

Requires the Attorney General to annually compile and publish a report regarding the number and type of forfeiture cases, case outcomes, and demographic data on persons whose property is seized pursuant to civil forfeiture laws.

Directs the Office of Defense Services to provide representation in forfeiture proceedings to a defendant they represent in a related criminal matter.

