SPONSOR: Rep. K. Williams & Rep. Wilson-Anton &
Rep. Longhurst & Rep. Minor-Brown & Rep. Bush &
Sen. Gay & Sen. Townsend & Sen. Lockman
Reps. Baumbach, Cooke, Griffith, Heffernan, K. Johnson,
Lambert, Morrison, Osienski, Phillips, Romer; Sens.
Hoffner, Sokola, Sturgeon, Walsh

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 280
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 11 AND 16 OF THE DELAWARE CODE RELATING TO CIVIL ASSET FORFEITURE.

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

Section 1. Amend Subchapter VI, Chapter 47, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4784. Forfeitures.

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

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

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

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

c. A vehicle is not subject to forfeiture for a violation of § ~~4761(a) or (b) [repealed],~~ 4761, § 4763 or § 4764 of this ~~title; and~~ title.

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d. A forfeiture of a vehicle encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the unlawful act or ~~omission;~~ omission. The burden is on the State to prove the secured party's knowledge of or consent to the unlawful act or omission;

(7) ~~All moneys,~~ Moneys, negotiable instruments, securities or any other thing of value furnished, or intended to be furnished, in exchange for a controlled substance or drug paraphernalia in violation of this chapter; all profits or proceeds traceable to securities, assets or interest used, or intended to be used, to facilitate any violation of this chapter. However, ~~no~~ a property interest ~~or~~ of an ~~owner,~~ owner in items listed in this paragraph is not subject to forfeiture by reason of any unlawful act or omission ~~established by the owner to be committed or omitted without~~ unless the State establishes by a preponderance of the evidence that the act or omission occurred with the owner's knowledge or consent. ~~consent shall be forfeited in the items listed in this paragraph.~~ Currency in an amount less than $500 may not be forfeited under this section.

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

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

c. To the extent that assets, interests, profits and proceeds forfeitable under this paragraph (i) cannot be located, (ii) have been transferred, sold to or deposited with third parties, or (iii) have been placed beyond the jurisdiction of the State, the court, following conviction of the individual charged, may direct forfeiture of such other assets of the defendant as may be available, limited in value to those assets that would otherwise be forfeited under this paragraph. Upon petition of the defendant, the court may authorize redemption of assets forfeited under this paragraph, provided the assets described in this paragraph are surrendered or otherwise remitted by such defendant to the jurisdiction of the court; and

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

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

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

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

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

(b) Notwithstanding any other provisions of the laws of this State or rules of court, the procedures listed in subsections ~~(c) (j)~~ (c) through (l) of this section are applicable to the administrative forfeiture of property subject to forfeiture under this section.

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

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

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds ~~shall~~ may be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, ~~advertising and court costs;~~ advertising, and court costs.

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

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

(5) Forward it to the Administration for disposition.

(g) Controlled substances listed in Schedule I that are possessed, transferred, sold or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the State. Controlled substances listed in Schedule I, the owners of which are unknown, which are seized or come into the possession of the State are contraband and shall be summarily forfeited to the State.

(h) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter or of which the owners or cultivators are unknown or which are wild growths may be seized and summarily forfeited to the State.

(i) The failure, upon demand by the Secretary or the Secretary's authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that the person is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(j) Property seized pursuant to this section that is not summarily forfeited pursuant to subsection ~~(f)~~ (g) or (h) of this section shall be ~~automatically~~ forfeited to the State upon application to the Superior ~~Court if,~~ Court. The application must include, for each item requested to be forfeited, a statement of the unlawful act or omission to which it is alleged to be connected and, if the item is not currency, the approximate value of the item. If, within 45 days of notification of seizure to all known parties having possessory interest in the seized property by registered or certified mail to the last known post-office address of the parties in interest and by publication in a newspaper of general circulation in this State, no person has instituted proceedings in the Superior Court for return of property, the Court may order the property automatically forfeited if the application is facially sufficient. ~~the person or persons claiming title to the seized property do not institute proceedings in the Superior Court to establish:~~

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

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

(k) Other than property subject to summary forfeiture under subsection (g) or (h) of this section, property may not be seized or forfeited pursuant to this chapter unless a criminal offense is charged.

(*l*) Property ordered by the Court to be returned to its owner must be returned forthwith and the party in possession of the property pending the determination is responsible and personally liable for the property from the time of seizure to the time of return, including any fees associated with towing, storage, or maintenance of the property.

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

(a) ~~It is not necessary for the State to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under this chapter. The burden of going forward with the evidence to establish any exemption or exception is upon the person claiming it.~~ The State has the burden to prove all material facts in a forfeiture proceeding by a preponderance of the evidence.

(b) ~~In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, such person is presumed not to be the holder of the registration or form. The burden of proof is~~

~~upon the person to rebut the presumption.~~ Where the property subject to a proceeding is claimed to be the property of a person who is not a criminal defendant, that person has the burden of production to show one of the following:

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

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

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

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

(e) In any civil proceeding to forfeit property in which the claimant property owner substantially prevails, the State shall be liable for reasonable attorney fees and other litigation costs reasonably incurred by the claimant.

§ 4788. Public reporting.

(a) The Department of Justice shall compile and publish on its website an annual report that includes all of the following information:

(1) The number of seizures made pursuant to this subchapter or any other provision of Delaware law and whether the property seized was currency, a conveyance, real estate, or other property.

(2) The amount of currency seized in each instance, or where the property seized is non-monetary, an estimated value of the seized property.

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

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

(5) The number of seizures where the associated criminal case ended in each of the following:

a. A conviction, guilty or no contest plea, or entry into a pretrial diversion program.

b. A dismissal, acquittal, or non-prosecution.

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

a. Property was ordered forfeited by the Court after a petition for return of property is filed under § 4784(j) of this title.

b. Property was ordered forfeited by the Court after failure to file a petition for return of property under § 4784(j). of this title.

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

d. Property was ordered by the Court to be returned to the owner.

e. Property was returned to the owner without a court order.

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

(8) The number of seizures referred, transferred, or otherwise diverted to a federal agency for prosecution or forfeiture proceedings and a description of the property and an accounting of any funds returned to any State or local agency as a result of the federal forfeiture.

(9) In forfeiture proceedings that were contested, the number of petitioners who were represented by counsel and the number who proceeded *pro se*.

(10) The total number of applications for forfeiture made by the State and the number of applications in which any party filed a petition for return of property. For this purpose, where an application for forfeiture contains property from more than 1 seizure, the property from each separate seizure should be counted as 1 application.

(11) Total value of proceeds collected from the sale of forfeited property and total proceeds delivered to the General Fund from the sale of forfeited property.

(b) The Department of Justice shall deliver a copy of the annual report to the Governor, the Chief Justice, the Office of Defense Services, the Chair of the Senate Corrections & Public Safety Committee, the Chair of the House Public Safety and Homeland Security Committee, the Director and Librarian of the Division of Research, and the Public Archives.

Section 2. Amend Subchapter II, Chapter 23, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

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

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

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

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

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

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

The vehicle seized under this subchapter shall be proceeded against by the Attorney General on behalf of this ~~State, by libel in the Superior Court for the condemnation and forfeiture of the vehicle to this State. The Superior Court may by rule provide for the practice and procedure under this subchapter, including the giving of notice of the pendency of the libel of condemnation to all parties in interest, and in any event notice by registered United States mail to the last known post-office address of the party in interest, or by publication in a newspaper of general circulation in this State as the Court by rule or order prescribes shall be sufficient.~~ State in accordance with the procedure set forth in subchapter VI of Chapter 47 of Title 16.

§ 2326. Application of subchapter.

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

Section 3. This Act takes effect January 1 following its enactment into law.