

§ 5803. Asset forfeiture.

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

- (1) 4 Pa.C.S. § 1518 (relating to prohibited acts; penalties).
- (2) 18 Pa.C.S. § 910 (relating to manufacture, distribution, use or possession of devices for theft of telecommunications services).
- (3) 18 Pa.C.S. § 2717 (relating to terrorism).
- (3.1) 18 Pa.C.S. § 2807 (relating to forfeiture).
- (4) 18 Pa.C.S. § 3141 (relating to general rule).
- (5) 18 Pa.C.S. § 4116 (relating to copying; recording devices).
- (6) 18 Pa.C.S. § 4119 (relating to trademark counterfeiting).
- (7) 18 Pa.C.S. § 5513 (relating to gambling devices, gambling, etc.).
- (8) 18 Pa.C.S. § 5707 (relating to seizure and forfeiture of electronic, mechanical or other devices).
- (9) 18 Pa.C.S. § 6501 (relating to scattering rubbish).
- (10) 18 Pa.C.S. § 7707 (relating to loss of property rights to Commonwealth).
- (11) 30 Pa.C.S. § 927 (relating to forfeiture of fish and devices).
- (12) Section 5802 (relating to controlled substances forfeiture).
- (13) 75 Pa.C.S. § 4909 (relating to transporting foodstuffs in vehicles used to transport waste).
- (13.1) 75 Pa.C.S. § 3722 (relating to off-road vehicles in urban municipalities).
- (14) 75 Pa.C.S. § 9405 (relating to forfeitures; process and procedures).

(b) Process and seizure of money and personal property.--Property subject to forfeiture may be seized by a law enforcement authority if any of the following apply:

- (1) The seizure is incident to an arrest or a search under a search warrant or inspection under an administrative inspection warrant and there is reason to believe the property is subject to forfeiture.
- (2) The property subject to seizure has been the subject of a prior judgment in favor of the Commonwealth in a criminal injunction or forfeiture proceeding under this chapter.
- (3) There is probable cause to believe that the property is dangerous to health and safety and exigencies are likely to result in the destruction or removal of the property or in the property otherwise being made unavailable for forfeiture.
- (4) There is probable cause to believe that the property has been used or is intended to be used in violation of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or another offense for which forfeiture is expressly authorized as a sanction.
- (5) There is a warrant issued by a court of common pleas with appropriate jurisdiction.
- (6) There is probable cause to believe that the property is subject to forfeiture and exigencies are likely to result in the destruction or removal of the property.

(b.1) Process and seizure of real property.--Real property subject to forfeiture under this chapter may be seized by the law enforcement authority upon process issued by a court of common pleas having jurisdiction over the property. Except as provided under this section, real property subject to forfeiture shall not

be seized before the entry of an order of forfeiture and the owners or occupants of the real property shall not be evicted from or otherwise deprived of the use and enjoyment of real property that is the subject of a pending forfeiture action. The following shall apply:

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

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

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

(ii) the court:

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

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

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

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

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

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

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

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

(e) Receipt.--When property is seized, the law enforcement authority shall provide a receipt to the person in possession of the property or, in the absence of a person, leave a receipt in the place where the property was found, if reasonably possible. The receipt shall provide notice of the right of interest holders to seek the return of the seized property under this chapter. This section shall not apply if law enforcement is otherwise required to provide a receipt for the property.

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

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

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

(g) Use of cash or proceeds of property.--Cash or proceeds of property, subject to forfeiture under section 5802 and transferred to the custody of the district attorney under subsection (f) shall be placed in the operating fund of the county in which the district attorney is elected. The appropriate county authority shall immediately release from the operating fund, without restriction, a like amount for the use of the district attorney for the enforcement of or prevention of a violation of the provisions of The Controlled Substance, Drug, Device and Cosmetic Act. The funds shall be maintained in an account or accounts separate from other revenues of the office. The entity having budgetary control shall not anticipate future forfeitures or proceeds from future forfeitures in adoption and approval of the budget for the district attorney.

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

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

(j) Annual audit of forfeited property.--Every county in this Commonwealth shall provide, through the controller, board of auditors or other appropriate auditor and the district attorney, an annual audit of all forfeited property and proceeds obtained under this chapter. The audit shall not be made public but shall be submitted to the Office of Attorney General. By September 30 of each year, the county shall report all forfeited property and proceeds obtained under this chapter and the disposition of the property during the preceding year to the Attorney General. The Attorney General and each district attorney shall maintain and

create appropriate records to account for the property forfeited in a fiscal year and the use made of the property forfeited. Each audit shall include:

- (1) Date property was seized.
- (2) The type of property seized.
- (3) Where property was seized.
- (4) The approximate value.
- (5) The alleged criminal behavior with which the property is associated.
- (6) The disposition or use of property forfeited.
- (7) Whether the forfeiture was related to a criminal case and the outcome of the criminal case.
- (8) Date of forfeiture decision.

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

- (1) The report shall include all information required under subsection (j) subject to the limitations provided under paragraph (2).
- (2) The Attorney General shall adopt procedures and guidelines, which shall be public, governing the release of information by the Attorney General or the district attorney to protect the confidentiality of forfeited property or proceeds used in ongoing law enforcement activities.

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

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

(Oct. 19, 2018, P.L.535, No.80, eff. 30 days; July 11, 2022, P.L.1596, No.92, eff. 60 days)

2022 Amendment. Act 92 added subsec. (a)(13.1).

2018 Amendment. Act 80 added subsec. (a)(3.1). Act 80 of 2018 shall be referred to as the "Timothy J. Piazza Antihazing Law." Section 7 of Act 80 provided that the addition of subsec. (a)(3.1) shall apply to causes of action which accrue on or after the effective date of section 7.

Special Provisions in Appendix. See section 12 of Act 13 of 2017 in the appendix to this title for special provisions relating to forfeitures.

Cross References. Section 5803 is referred to in section 5807.2 of this title; section 1518 of Title 4 (Amusements); sections 910, 2717, 2807, 3141, 4116, 4119, 5513, 5707, 6501, 7707 of Title 18 (Crimes and Offenses); section 927 of Title 30 (Fish); sections 3722, 4909, 9405 of Title 75 (Vehicles).