

# SENATE . . . . . No. 2460

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Ten  
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An Act Text of amendment (143 offered by Mr. Timilty to the pending Senate Ways and Means amendment (Senate, No. 4) to the House Bill making appropriations for the fiscal year 2010 for the maintenance of the departments, boards, commissions, institutions and certain activities of the Commonwealth, for interest, sinking fund and serial bond requirements and for certain permanent improvements.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           conveyance used by any person as a common carrier in the transaction of business as a  
2   common carrier shall be forfeited unless it shall appear that the owner or other person in charge  
3   of such conveyance was a consenting party to, or privy to, a violation of this chapter.

4           No conveyance shall be forfeited by reason of any act or omission established by the  
5   owner thereof to have been committed or omitted by any person other than such owner while  
6   such conveyance was unlawfully in the possession of a person other than the owner in violation  
7   of the criminal laws of the United States, or of the commonwealth or of any other state.

8           No conveyance or real property shall be subject to forfeiture unless the owner thereof  
9   knew, or should have known, that such conveyance or real property was used in and for the  
10   business of secondary metals dealing in violation of this chapter. Proof that the conveyance or  
11   real property was used to facilitate a violation of this chapter on 3 or more different dates shall be

prima facie evidence that the conveyance or real property was used in and for the business of unlawful secondary metals dealing.

(e) (1) The attorney general, a district attorney or a municipality may petition the superior court in the name of the commonwealth or, in the case of a municipality, in such municipality's name, in the nature of a proceeding in rem to order forfeiture of property subject to forfeiture under subsection (a). Such petition shall be filed in the court having jurisdiction over such property or having final jurisdiction over any related criminal proceeding brought under this chapter. If the property is claimed by any person, other than the commonwealth, the plaintiff in all such suits shall have the burden of proving to the court the existence of probable cause to institute the action and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to subsection (a). The owner of such property, or other person claiming thereunder, shall have the burden of proof as to the exceptions set forth in subsections (d) and (i). The court shall order the forfeiture petitioner to give notice, by certified or registered mail, to the owner of the property which is the subject of the forfeiture proceeding and to such other persons as appear to have an interest therein and the court shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition. Upon the motion of the owner of such property, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of this chapter. At such hearing, the court shall hear evidence and make conclusions of law and shall thereupon issue a final order from which the parties shall have a right of appeal. In all such suits in which a final order results in an order of forfeiture, the final order shall provide for disposition of such property by the commonweal, or any subdivision thereof, in any manner not prohibited by law, including official use by authorized law enforcement or other public agency or sale at public auction or by competitive bidding. The

proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice and the balance thereof shall be distributed as provided in subparagraph (2).

(2) The final order of the court shall provide that moneys and the proceeds of any sale conducted pursuant to subparagraph (1) shall be distributed equally among the prosecuting district attorney or attorney general, the municipal or state police department involved in the seizure and the municipality in which such property is located. If more than 1 police department was substantially involved in the seizure, the court having jurisdiction over the forfeiture proceeding shall equitably divide, among each of the departments involved, the 1/3 share of the money and proceeds of such sale that would be distributed as if a single department was involved in the seizure.

(3) There shall be established, within the office of the state treasurer, separate special law enforcement trust funds for each district attorney and for the attorney general. All such monies and proceeds received by the attorney general or any prosecuting district attorney pursuant to this subparagraph shall be deposited into such a trust fund and may be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or such other law enforcement purposes as the attorney general or such district attorney deems appropriate.

All such moneys and proceeds received by any police department pursuant to this subparagraph shall be deposited into a special law enforcement trust fund and may be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants,

or to accomplish such other law enforcement purposes as the colonel of state police or applicable chief of police deems appropriate, but such funds shall not be considered a source of revenue to meet the operating needs of such department.

(f) Any officer, department, or municipality having custody of any property subject to forfeiture under this chapter or having disposed of such property shall keep and maintain full and complete records showing from whom it received such property, under what authority it held or received or disposed of such property, to whom it delivered such property, the date and manner of destruction or disposition of such property, and the exact kind, quantity and form of such property. The records shall be open to inspection by the attorney general and state officers charged with enforcement of this chapter. Persons making final disposition or destruction of such property under court order shall report, under oath, to the court the exact circumstances of such disposition.

(g) (1) During the pendency of forfeiture proceedings, the court may issue, at the request of the petitioner, ex parte, any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought and to provide for its custody including, but not limited to: an order that the petitioner remove the property, if possible, and safeguard it in a secure location in a reasonable fashion; that monies be deposited in an interest-bearing escrow account and; that a substitute custodian be appointed to manage such property or a business enterprise. Property taken or detained under this section shall not be repleviable, but once seized shall be deemed to be lawfully in the custody of the petitioner pending forfeiture, subject only to the orders and decrees of the court having jurisdiction thereof. Process for seizure of such property shall issue only upon a showing of probable cause, and the application therefore and the issuance, execution, and return thereof shall be subject to chapter 276, so far as applicable.

(2) The office of seized property management within the division of capital asset management and maintenance, established under section 47 of chapter 94C, shall preserve and manage property seized pursuant to this chapter, in a reasonable fashion, dispose of such property upon a judgment ordering forfeiture issued pursuant to this chapter and enter into contracts to preserve, manage and dispose of such property. The office of seized property management shall be funded by a portion of the proceeds of each sale of such managed property to the extent provided as payment of reasonable expenses under subsection (e).

(h) The owner of any real property which is the principal domicile of the immediate family of the owner and which is subject to forfeiture under this section may file a petition for homestead exemption with the court having jurisdiction over such forfeiture. The court may, in its discretion, allow the petition exempting from forfeiture an amount allowed under section 1 of chapter 188. The value of the balance of such principal domicile, if any, shall be forfeited as provided in this section. Such homestead exemption may be acquired on only 1 principal domicile for the benefit of the immediate family of the owner.

(i) A forfeiture proceeding affecting the title to real property or the use and occupation thereof, or the buildings thereon, shall not have any effect except against the parties thereto and persons having actual notice thereof, until a memorandum containing the names of the parties to such proceeding, the name of the municipality wherein the affected real property lies, and a description of such real property sufficiently accurate for identification is recorded in the registry of deeds for the county or district wherein the real property lies. At any time after a judgment on the merits, or after the discontinuance, dismissal or other final disposition is recorded by the court having jurisdiction over such matter, the clerk of such court shall issue a certificate of such judgment, discontinuance, dismissal or other final disposition and that certificate shall be

103 recorded in the registry in which the original memorandum recorded pursuant to this section was  
104 filed.

105 Section 8. The chapter shall not apply to a person who is required under the federal  
106 Banking Secrecy Act, Public Law 91-508, as amended by 12 U.S.C. 1829B, 12 U.S.C. 1951-  
107 1959 and 31 U.S.C. 5311-5314, 5316-5332 to maintain an anti-money laundering program that  
108 vets customers and transactions in metals.

109 SECTION 64B. Section 202 of said chapter 140, as appearing in the 2008 Official  
110 Edition, is hereby amended by striking out, in line 2, the words “, old metals.”

111 SECTION 64C. Said section 202 of said chapter 140, as so appearing, is hereby further  
112 amended by inserting after the word “pawnbrokers”, in line 2, the words”- , secondary metals  
113 dealing.”;

114 By inserting after Section 89 the following 2 sections:-

115 “SECTION 89A. Chapter 266 of the General Laws is hereby amended by striking out  
116 section 142A.

117 SECTION 89B. Section 70C of chapter 277 of the General Laws, as appearing in the  
118 2008 Official Edition, is hereby amended by inserting after the second sentence the following  
119 sentence:- This section may apply to a violator of chapter 140B½ once only; provided, however,  
120 that any such violator who agrees to treat such violation as a civil offense shall be assessed a  
121 fine of \$500, which fine shall not be waived; and provided further, that notwithstanding any  
122 general or special law to the contrary, 100 per cent of such fine shall be forwarded to the state

123 treasurer for deposit into the Secondary Metals Registry Trust Fund, established under section  
124 35LL of chapter 10.”;

125 By inserting after Section 107 the following section:-

126 “SECTION 107A. Notwithstanding any general or special law to the contrary, the  
127 attorney general shall establish a 2 year pilot program to implement a state “Massachusetts  
128 abandoned property registry”, hereinafter referred to as MAP. Such registry shall require all  
129 property owners, including lenders, trustees, and service companies, to properly register and  
130 maintain vacant and/or foreclosing properties located in the state.

131 The attorney general shall have enforcement authority of the pilot program, and shall  
132 establish rules governing the implementation and administration of the MAP pilot program.

133 The MAP pilot program shall be implemented 120 days after passage, and shall expire 2  
134 years thereafter.”;

135 And by inserting after Section 157 the following 3 sections:-

136 “SECTION 157A. Sections 4A, 7A, 64B, 64C, 89A, 89B and 107A shall take effect on  
137 July 1, 2011.

138 SECTION 157B. Proposed sections 1 and 3 to 8, inclusive, of chapter 140B1/2 of the  
139 General Laws, as inserted by Section 64A, shall take effect on July 1, 2011.

140 SECTION 157C. Proposed section 2 of chapter 140B1/2 of the General Laws, as inserted  
141 by Section 64A, shall take effect on January 1, 2011.”