HOUSE DOCKET, NO. 3484 FILED ON: 1/20/2017

HOUSE . . . . . No. 3114

The Commonwealth of Massachusetts

PRESENTED BY:

***Leonard Mirra*, (BY REQUEST)**

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to secure property rights and to deter criminal activity.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Bradford Wyatt		*1/20/2017*

HOUSE DOCKET, NO. 3484 FILED ON: 1/20/2017

HOUSE . . . . . No. 3114

By Mr. Mirra of West Newbury (by request), a petition (accompanied by bill, House, No. 3114) of Bradford Wyatt relative to criminal forfeiture of property. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act to secure property rights and to deter criminal activity.

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

SECTION 1. Section 47, of chapter 94C as appearing in the 2016 Official Edition of Massachusetts General Laws is hereby amended by striking it in its entirety and inserting in place thereof the following:-

Section 47. This chapter shall be a law subject to forfeiture pursuant to the provisions of chapter 280A of the General Laws and in addition to any other punishment or penalty forfeiture may be a punishment or penalty.

SECTION 2. The General Laws as appearing in the 2016 Official Edition are hereby amended by inserting after chapter 280 the following chapter:-

Chapter 280A

Asset Forfeiture

Section 1. Definitions. As used in this chapter, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

“Contraband”, goods that are unlawful to import, export or possess.

“Conveyance”, a device used for transportation and includes a motor vehicle, trailer, snowmobile, airplane, and vessel and any equipment attached to it. The term does not include property that is stolen or taken in violation of the law.

“Instrumentality”, property otherwise lawful to possess that is used in an offense including but not limited to a tool, a firearm, a conveyance, a computer, computer software, a telecommunications device, money, and other means of exchange.

“law subject to forfeiture”, a law of the Commonwealth that carries a felony penalty and that explicitly includes forfeiture as a punishment or sanction for the offense.

Section 2. Purpose. The purpose of this chapter is to: (a) deter criminal activity by reducing its economic incentives;

(b) increase the pecuniary loss from criminal activity; and

(c) protect against the wrongful forfeiture of property.

Section 3. Exclusivity. Notwithstanding any other General or Special law, or rule or regulation to the contrary, this chapter sets out the exclusive process governing forfeitures in the Commonwealth.

Section 4. Criminal asset forfeiture. When a person is convicted of violating a law subject to forfeiture, the court, consistent with this chapter, shall order the person to forfeit: (a) proceeds and property the person derived directly from the commission of the crime;

(b) proceeds and property directly traceable to proceeds and property derived directly from the commission of the crime; and

(c) instrumentalities the person used in the commission of the crime.

Section 5. Conviction required; standard of proof. (a) Property used in or derived from the violation of a law is subject to forfeiture only if

(1) the violation is of a law subject to forfeiture and

(2) the violation is established by proof of a criminal conviction.

(b) The Commonwealth shall establish that seized property is forfeitable under section 4 by clear and convincing evidence.

Section 6. No civil asset forfeiture. There is no civil asset forfeiture.

Section 7. Rule of lenity. The court shall resolve any ambiguity in this chapter relating to the Commonwealth taking property through asset forfeiture in favor of the property owner.

Section 8. Court-appointed counsel. If a court determines that a person opposing forfeiture is financially unable to obtain representation by counsel, the court, at the request of the person, shall insure that the person is represented by an attorney at the Commonwealth's expense. The attorney shall submit a statement of reasonable fees and costs to the court in a manner directed by the court.

Section 9. Authorization to use forfeiture. (a) Except for federal forfeitures consistent with section 39, forfeiture may occur only pursuant to an explicit grant of authority in the laws of the Commonwealth. An ordinance enacted by a county, municipality, or other unit of government authorizing forfeiture is not valid.

(b) A prosecutor having jurisdiction over a law subject to forfeiture has authority to pursue forfeiture.

Section 10. Property subject to forfeiture; contraband. (a) Property subject to forfeiture is limited to:

(1) land, buildings, containers, conveyances, equipment, materials, products, money, securities, and negotiable instruments; and

(2) ammunition, firearms, and ammunition-and-firearm accessories used in the furtherance or commission of a violation of a law subject to forfeiture.

(b) No property right exists in contraband, including scheduled drugs without a valid prescription. Contraband is subject to seizure and must be disposed of according to the laws of the Commonwealth. Contraband is not subject to forfeiture under this chapter.

Section 11. Substitution of assets for unreachable property. Upon the Commonwealth's motion following conviction, the court may order the forfeiture of substitute property owned fully by the defendant up to the value of unreachable property only if the Commonwealth proves by a preponderance of the evidence that the defendant intentionally transferred, sold, or deposited property with a third party to avoid the court's jurisdiction.

Section 12. No additional remedies. Except as otherwise provided in this chapter, the Commonwealth may not seek additional remedies including but not limited to personal money judgments.

Section 13. No joint-and-several liability; pro rata forfeitures. (a) A defendant is not jointly and severally liable for forfeiture awards owed by other defendants.

(b) When ownership is unclear, a court may order each defendant to forfeit property on a pro rata basis proportional to the proceeds that each defendant personally received.

PROCESS

Section 14. Designating property subject to forfeiture. (a) Property subject to forfeiture must be identified by the Commonwealth in an indictment of a grand jury or by information in the court in any related criminal proceeding in which a person with an interest in the property has been simultaneously charged with a violation of a law subject to forfeiture.

(b) The indictment or information must specify the time and place of the violation, identify the property, and particularly describe its use in the commission of the crime or derivation from the commission of the crime.

(c) At any time prior to trial, the Commonwealth, with the consent of the court and any defendant with an interest in the property, may file an ancillary charge alleging that property is subject to forfeiture.

Section 15. Seizure with process. At the request of the Commonwealth, a court may issue an ex parte preliminary order to seize or secure property for which forfeiture is sought and

to provide for its custody. Application, issuance, execution, and return are subject to the laws of the Commonwealth.

Section 16. Seizure without process. Property subject to forfeiture may be seized without a court order if:

(a) the seizure is incident to a lawful arrest or a lawful search;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the Commonwealth; or

(d) the Commonwealth has probable cause to believe that the delay occasioned by the necessity to obtain process would result in the removal or destruction of the property and that the property is forfeitable under section 4.

Section 17. Receipt for seized property. When property is seized, the law enforcement officer shall give an itemized receipt to the person in possession of the property; or in the absence of any person, leave a receipt in the place where the property was found, if reasonably possible.

Section 18. Bill of particulars. A motion for a bill of particulars may be made before arraignment, within 90 days after arraignment, or at any later time that the court permits. A bill of particulars may be amended at any time subject to conditions that justice requires.

Section 19. Title. (a) At the time of seizure or entry of a restraining order, the Commonwealth acquires provisional title to the seized property. Provisional title authorizes the Commonwealth to hold and protect the property.

(b) Title to the property vests with the Commonwealth when the trier of fact renders a final forfeiture verdict and relates back to the time when the Commonwealth acquired provisional title. However, this title is subject to claims by third parties adjudicated under this chapter.

Section 20. Storage. When property is seized, the Commonwealth shall use reasonable diligence to secure the property and prevent waste.

Section 21. Records. (a) A entity of the Commonwealth having custody of seized property that is subject to forfeiture shall maintain the following records:

(1) the exact kinds, quantities, and forms of the property;

(2) the date and from whom it received the property;

(3) the violation of law that subjected the property to seizure;

(4) the liens against the seized property;

(5) the make, model, and serial number of each seized firearm;

(6) to whom and when the notice of forfeiture was given;

(7) to whom it delivered the property; and

(8) the date and manner of destruction or disposition of the property.

(b) The records required under paragraph (a) are subject to the public records law pursuant to chapter 66 of the General Laws.

Section 22. Bond by owner for possession. (a) If the owner of property that has been seized seeks its possession before the criminal trial, the owner may post bond or give substitute property in an amount equal to the fair market value of the seized property at the time the bond amount is determined.

(b) On the posting of bond or the giving of substitute property, the Commonwealth shall return the seized property to the owner within a reasonable period of time not to exceed 3 business days. The forfeiture action may then proceed against the bond or substitute property as if it were the seized property.

(c) This section does not apply to property reasonably held for investigatory purposes.

Section 23. Petition for remission or mitigation. Prior to the entry of a court's order disposing of the forfeiture action, any person who has an interest in seized property may file with the state's attorney general a petition for remission or mitigation of the forfeiture. The attorney general shall remit or mitigate the forfeiture upon terms and conditions the attorney general deems reasonable if the attorney general finds that: (a) the petitioner did not intend to violate the law or (b) extenuating circumstances justify the remission or mitigation of the forfeiture.

Section 24. Pretrial replevin hearing. (a) Following the seizure of property under this chapter, a defendant or third-party has a right to a pretrial hearing to determine the validity of the seizure.

(b) The claimant may claim at any time prior to 60 days before trial of the related criminal violation the right to possession of property by motion to the court to issue a writ of replevin.

(c) The claimant shall file a motion establishing the validity of the alleged right, title, or interest in the property.

(d) The court shall hear the motion no more than 30 days after the motion is filed.

(e) The Commonwealth shall file an answer showing probable cause for the seizure, or cross-motions at least 10 days before the hearing.

(f) The court shall grant the motion if it finds that (1) it is likely the final judgment will be that the Commonwealth must return the property to the claimant or (2) the property is the only reasonable means for a defendant to pay for legal representation in the forfeiture or criminal proceeding.

(g) In lieu of ordering the issuance of the writ, the court may order the Commonwealth to give security for satisfaction of any judgment, including damages, that may be rendered in the action, or order other relief as may be just.

Section 25. Discovery. Discovery is subject to the rules of criminal procedure.

Section 26. Right to trial by jury. Any party to a forfeiture action has a right to trial by jury.

Section 27. Trial proceedings. (a) A trial related to the forfeiture of property must be held in a single proceeding together with the trial of the related alleged crime unless the defendant moves to bifurcate the trial.

(b) The court, upon motion of a defendant, shall separate the trial of the criminal matter against the defendant from the matter related to the forfeiture of property.

(c) The court, upon motion of a defendant, shall allow a defendant to waive the right to trial by jury related to the forfeiture of property while preserving the right to trial by jury of any crime alleged.

(d) If the court bifurcates the jury trial, the court shall first instruct and submit to the jury the issue of the guilt or innocence of the defendant to be determined by proof beyond a reasonable doubt and shall restrict argument of counsel to those issues.

(e) If the court bifurcates the jury trial, each party may introduce evidence in the forfeiture phase that was not introduced in the criminal phase.

(f) If the jury finds a defendant guilty of the related criminal offense and the defendant did not waive the right to trial by jury related to the forfeiture, the court shall instruct and submit to the jury the issue of the forfeiture. The court may use interrogatories to address the forfeiture issue.

Section 28. Proportionality. (a) Following determination by the trier of fact, the owner may petition the court to determine whether the forfeiture is unconstitutionally excessive under the Constitution of the Commonwealth or U.S. constitution.

(b) The owner has the burden of establishing that the forfeiture is grossly disproportional to the seriousness of the offense by a preponderance of the evidence at a hearing conducted by the court without a jury.

(c) In determining whether the forfeiture of an instrumentality is constitutionally excessive, the court shall consider all relevant factors, including, but not limited to:

(1) the seriousness of the offense and its impact on the community, including the duration of the activity and the harm caused by the person whose property is subject to forfeiture;

(2) the extent to which the person whose property is subject to forfeiture participated in the offense;

(3) the extent to which the property was used in committing the offense;

(4) the sentence imposed for committing the crime subject to forfeiture; and

(5) whether the offense was completed or attempted.

(d) In determining the value of the instrumentality subject to forfeiture, the court shall consider relevant factors, including, but not limited to:

(1) the fair market value of the property;

(2) the value of the property to the person whose property is subject to forfeiture including hardship to the owner if the forfeiture is realized; and

(3) the hardship from the loss of a motor vehicle or other property to family members or others if the property is forfeited assets.

(e) The court may not consider the value of the instrumentality to the Commonwealth in determining whether the forfeiture of an instrumentality is constitutionally excessive.

THIRD-PARTY INTERESTS

Section 29. Secured interest. (a) A bona fide security interest is not subject to forfeiture unless the person claiming a security interest had actual knowledge that the property was subject to forfeiture at the time of the property was seized or restrained under this chapter.

(b) A person claiming a security interest bears the burden of establishing that the validity of the interest by a preponderance of the evidence.

Section 30. Ancillary hearing of third-party interests. (a) A person not charged in the indictment or information but who has an interest in property subject to forfeiture may not intervene after the criminal trial has begun.

(b) Following the entry of a verdict of forfeiture of property pursuant to this chapter or the entry of a guilty plea in court on the record, the Commonwealth shall exercise reasonable diligence to identify persons with a potential interest in the property and make reasonable efforts to give notice to potential claimants. The Commonwealth shall provide written notice of its intent to dispose of the property to any person known or alleged to have an interest in the property exempted from forfeiture under this chapter, including any person potentially making claims for (1) court-ordered child support, (2) employment-related compensation or (3) payment of unsecured debts. The notice must also be made by publication in a reasonable geographic area.

(c) A person other than the defendant asserting a legal interest in the property, within 60 days of the date of the notice, may petition the court for a hearing to adjudicate the validity of the alleged interest in the property. The request for the hearing must be signed by the petitioner under penalty of perjury and state the nature and extent of the petitioner’s right, title, or interest

in the property; the time and circumstances of the petitioner's acquisition of the right, title, or interest; and any additional facts supporting the petitioner's claim and the relief sought.

(d) Upon the filing of a petition, the court shall schedule the hearing as soon as practicable but in no event later than 6 months after the sentencing of any defendant convicted upon the same indictment. The court shall issue or amend a final order of forfeiture in accordance with its determination if, after the hearing, the court determines that:

(1) the petitioner has a legal right, title, or interest in the property, and such right, title or interest renders the order of forfeiture invalid in whole or in part because the right, title or interest was vested in the petitioner rather the defendant or was superior to any right, title or interest of the defendant at the time of the property was seized or restrained under this chapter; or

(2) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase without cause to believe that the property was subject to forfeiture under this chapter. The Commonwealth has the burden of proof with respect to the issue of whether the petitioner was without cause to believe that the property was subject to forfeiture at the time of purchase or other acquisition of value.

(e) A qualified indigent who wishes to contest the forfeiture of property and appears to have an exempt interest has a right to court-appointed counsel as provided in section 8. In addition, the court shall waive the person's court fees.

Section 31. Innocent partial or joint owner. (a) The property of an innocent partial or joint owner may not be forfeited under any forfeiture statute. The process for determining whether a person is an innocent partial or joint owner is set out in this section.

(b) A person who has any form of partial or joint interest, including joint tenancy, tenancy in common, or tenancy by the entirety, in property subject to forfeiture existing at the time the illegal conduct giving rise to forfeiture occurred and who claims to be an innocent partial or joint owner shall make a prima facie case that the person has a legal right, title, or interest in the property seized or restrained under this chapter.

(c) If paragraph (b) is satisfied and the Commonwealth seeks to proceed with the forfeiture against the person's ownership interest, the Commonwealth shall prove by a preponderance of the evidence that the person had actual knowledge of the underlying crime giving rise to the forfeiture or was willfully blind to its commission.

(d) If paragraph (c) is satisfied and the person seeks to establish the person's innocent owner status, the person shall show by a preponderance of the evidence that the person did all that reasonably could be expected under the circumstances to prohibit, abate, or terminate the illegal use of the property. The person may show that the person did all that reasonably could be expected by demonstrating, among other things, that the person, to the extent permitted by law:

(1) gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or had occurred; or

(2) in a timely fashion revoked or made a good-faith attempt to revoke permission for those engaging in the illegal conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property.

A person is not required under this paragraph to take steps that the person reasonably believes would be likely to subject the person to physical danger.

(e) If paragraph (d) is satisfied, the court shall find that the claimant was not a party to the crime and is an innocent partial or joint owner.

(f) A person who acquired an ownership interest in property after the commission of a crime giving rise to the forfeiture has occurred and who claims to be an innocent partial or joint owner, shall make a prima facie case that the person has a legal right, title, or interest in the property seized or restrained under this chapter.

(g) If paragraph (f) is satisfied and the Commonwealth seeks to proceed with the forfeiture against the person's ownership interest, the Commonwealth shall prove by a preponderance of the evidence that at the time the person acquired the property interest the person had actual knowledge that the property was subject to forfeiture or was willfully blind to the commission of the crime that subjected the property to forfeiture.

(h) If the Commonwealth fails to meet its burden in paragraph (g), the court shall find that the person was not a party to the crime and is an innocent partial or joint owner.

(i) An otherwise valid claim under paragraph (f) may not be denied on the grounds that the person gave nothing of value in exchange for the property if:

(1) the property is the person's primary residence;

(2) depriving the person of the property would deprive the person of the means to maintain reasonable shelter in the community for the person and all dependents residing with the person;

(3) the property is not, and is not traceable to, the proceeds of any criminal offense; and

(4) the person acquired interest in the property through marriage, divorce, or legal separation, or the person was the spouse or legal dependent of someone whose death resulted in the transfer of the property to the person through inheritance or probate, except that the court shall limit the value of any real property interest for which innocent ownership is recognized under this paragraph to the value necessary to maintain reasonable shelter in the community for the person and all dependents residing with the person.

(j) If the innocent joint or partial owner's claim is established under this section, the Commonwealth shall relinquish all claims of title to the property that may have vested with it.

(k) If the court determines that an innocent joint or partial owner has any form of partial or joint interest in a conveyance subject to forfeiture related to operating a conveyance while impaired, the court may order that the innocent joint or partial owner participate in the ignition interlock device program under the laws of the Commonwealth as a condition of ordering the device be returned to the innocent joint or partial owner.

(l) If the court determines that an innocent joint or partial owner has any form of partial or joint interest in property, other than property described in paragraph (k), the court shall enter an appropriate order reflecting the innocent owner's preference for:

(1) severing the property;

(2) transferring the property to the Commonwealth with a provision that the Commonwealth compensate the innocent owner to the extent of the owner's ownership interest once a final order of forfeiture has been entered and the property has been reduced to liquid assets; or

(3) permitting the innocent owner to retain the property subject to a lien in favor of the Commonwealth to the extent of the forfeitable interest in the property.

POSTFORFEITURE

Section 32. Sale of property. If a trier of fact finds that property is to be forfeited, the court shall order the Commonwealth to:

(a) return stolen property to its owner;

(b) sell all other firearms, ammunition and firearm accessories to licensed firearms dealers in a commercially reasonable manner; and

(c) sell other property in a commercially reasonable manner.

Section 33. Prohibition on retaining property; sale restrictions. The law enforcement agency that seized property forfeited under this chapter may not retain it for its own use or sell it directly or indirectly to any employee of the agency, to a person related to an employee by blood or marriage, or to another law enforcement agency.

Section 34. Disposition of proceeds. (a) Proceeds seized and proceeds from the sale of forfeited assets may be distributed only following a court order. The court shall order the funds be used to pay, in order of priority, for the following purposes:

(1) storage and sale expenses;

(2) satisfaction of valid liens against the property;

(3) restitution ordered to the victim of the criminal offense;

(4) reimbursement of investigation costs excluding salaries that the law enforcement agency incurred in the seizure of the assets subject to the forfeiture action;

(5) court-ordered child support obligations;

(6) claims for compensation by the defendant's employees; and

(7) claims for compensation by defendant's unsecured creditors.

(b) All remaining funds must be deposited into the Commonwealth's treasury and credited to the general fund.

Section 35. Reporting. (a) For each forfeiture action occurring in the Commonwealth regardless of the authority for it, the participating law enforcement agency and prosecutor shall provide a written record of the forfeiture incident to the Commonwealth reporting agency.

(b) The record must include the amount forfeited, the underlying crime or conduct, its date, and whether the property had a lien against it. The record must also list the number of firearms forfeited and the make, model, and serial number of each firearm forfeited. The record must indicate how the property was disposed.

(c) The law enforcement agency and the prosecutor shall report to the Commonwealth reporting agency all instances in which property seized for forfeiture is returned to its owner either because forfeiture is not pursued or for any other reason.

(d) For forfeitures resulting from the activities of multi-jurisdictional law enforcement entities, each entity on its own behalf shall report the information required in this section.

(e) The reporting agency of the Commonwealth may require information not specified in this section to be reported as well.

(f) Reports must be made on a monthly basis in a manner prescribed by the reporting agency of the Commonwealth.

(g) The reporting agency of the Commonwealth shall report annually to the legislature and the public on the nature and extent of forfeitures.

(h) The reporting agency of the Commonwealth shall include in its report required under paragraph (g) recommended changes to forfeiture law to better ensure that forfeiture proceedings are handled in a manner that is fair to innocent property owners, secured interest holders, citizens, and taxpayers.

(i) The reporting agency of the Commonwealth shall include in its report required under paragraph (g) information on law enforcement agencies and prosecutorial offices not in compliance with this section and shall order the Commonwealth to withhold payment of any funds to those agencies and offices until compliance is achieved.

MISCELLANEOUS PROVISIONS

Section 36. Disposing of Property of a Person Deported. (a) This section covers procedures for disposing of property when the owner is deported from the United States to a foreign country.

(b) If the owner of property is deported after being convicted of a violation of a state law that is subject to forfeiture and the property is found to be an instrumentality or proceeds of the

violation of that state law, the court shall enter an order disposing of the property in accordance with sections 33 and 34.

(c) If the owner of property is deported but the owner is not convicted of violating a state law that is subject to forfeiture or the property is not found to be an instrumentality or proceeds from the violation of a state law subject to forfeiture for which the owner of the property is convicted, the property shall be returned to the next of kin of the person deported.

(d) If the next of kin is not known or refuses the property, the Commonwealth shall exercise reasonable diligence to identify persons with a potential interest in the property and make reasonable efforts to give notice to potential claimants. The Commonwealth shall provide written notice to persons known or alleged to have an interest in the property including other family members and any person potentially making claims for court-ordered child support, employment-related compensation, or payment of debts. The notice must also be made by publication in a reasonable geographic area.

(e) If no claim is made within 60 days of the notice's publication date, the court shall enter an order disposing of the property in accordance with sections 33 and 34.

(f) A person wanting to assert a legal claim to the property shall, within 60 days of the date of the applicable notice in (d), petition the court for a hearing to adjudicate the validity of the alleged interest in the property. The petition for the hearing must be signed by the claimant under penalty of perjury. It must state the nature and extent of the claimant's right, title, or interest in the property; the time and circumstances of the claimant's acquisition of the right, title, or interest; and any additional facts supporting the claim and the relief sought.

(g) The court shall schedule a hearing as soon as practicable to determine if the claimant has a legal right, title or interest in the property or is a bona fide purchaser for value of the legal right, title or interest in the property.

Section 37. Return of property, damages, and costs. (a) The Commonwealth shall return property to the owner within a reasonable period of time not to exceed 3 business days after a court finds that:

(1) the owner had a bona fide security interest;

(2) the owner was an innocent owner;

(3) charges against the owner were dismissed; or

(4) the owner was found not guilty of the criminal charge that is the basis for the forfeiture action.

(b) If property returned under paragraph (a) has been damaged, the owner may make a claim in small claims court or court for the damages to the seized property against the agency that seized the property.

(c) The Commonwealth is responsible for any storage fees and related costs applicable to property returned under paragraph (a).

Section 38. Penalty for violations. (a) Any person acting under color of law, official title, or position who takes any action intending to conceal, transfer, withhold, retain, divert, or otherwise prevent any proceeds, conveyances, real property, or any things of value forfeited under the laws of the Commonwealth or the United States from being applied, deposited, used, or returned to the owner in accordance with this chapter is subject to a civil penalty in an amount

of three times the value of the forfeited property concealed, transferred, withheld, retained, or diverted.

(b) Any taxpayer to the Commonwealth has standing to challenge in court any action contrary to this chapter.

Section 39. Interaction with federal government. (a) No unit of government of the Commonwealth may transfer a criminal investigation or proceeding to the federal government to circumvent forfeiture law of the Commonwealth.

(b) For a government unit of the Commonwealth to transfer a criminal investigation or proceeding that includes forfeiture to the federal government, a court of the Commonwealth shall affirmatively find that:

(1) the suspected criminal activity giving rise to the forfeiture is interstate in nature and sufficiently complex to justify the transfer; or

(2) the seized property is forfeitable only as a violation of federal law.

(c) All funds paid by the federal government must be deposited into the treasury of the Commonwealth. The Commonwealth shall credit: (1) the government unit of the Commonwealth involved with the federal government sufficiently to reimburse it for investigation costs, excluding salaries, that the government unit of the Commonwealth incurred related to the seizure of the assets subject to the forfeiture action and (2) the remainder to the general fund.

(d) No government unit of the Commonwealth may accept from the federal government any

instrumentality or payment of proceeds not permitted by paragraph (c).

(e) The government unit of the Commonwealth shall report all transfers to the federal government of an investigation or criminal proceeding that involves forfeiture per the reporting requirements in section 35.

(f) Any taxpayer has standing to challenge in court the receipt of any proceeds or instrumentality by a government unit of the Commonwealth from the federal government contrary to paragraphs (c) and (d).

Section 40. Attorneys' fees. In any forfeiture proceeding under this chapter in which the claimant prevails, the Commonwealth is liable for:

(1) reasonable attorney fees and other litigation costs reasonably incurred by the claimant;

(2) postjudgment interest; and

(3) in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale: (a) interest actually paid to the Commonwealth from the date of seizure of the property that resulted from the investment of the property in an interest-bearing account or instrument; and (b) an imputed amount of interest that the currency, instruments, or proceeds would have earned at the rate applicable to the 30-day U.S. Treasury Bill, for any period during which no interest was paid (not including any period when the property reasonably was in use as evidence in an official proceeding or in conducting scientific tests for the purpose of collecting evidence), commencing 15 days after the property was seized by a law enforcement agency.

SECTION 3. The effective date of this shall be in compliance with laws regarding effective dates.