

Substituted by the House, on motion of Mr. Pressman of Chelsea, for the Bill authorizing the seizure of vehicles, boats, vessels, aircraft and other properties used in violation of the narcotics drug laws (House, No. 1302) and passed by the House to be engrossed. August 11.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Eight.

AN ACT AUTHORIZING THE SEIZURE OF CERTAIN VEHICLES USED IN TRANSPORTING CERTAIN CONTRABAND IN VIOLATION OF THE NARCOTICS DRUG LAW.

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

1 Chapter 94 of the General Laws is hereby amended by insert-
2 ing after section 218 the following section: —

3 *Section 218A.* (1) Except as authorized by this chapter, it
4 shall be unlawful to transport, carry, or convey in, upon, or by
5 means of any vehicle, vessel or aircraft, or to conceal or possess
6 in or upon any vehicle, vessel or aircraft, or upon the person of
7 anyone in or upon any vehicle, vessel or aircraft, or to use any
8 vehicle, vessel or aircraft to facilitate the transportation, car-
9 riage, conveyance, concealment, receipt, possession, purchase,
10 sale, barter, exchange, or giving away of any narcotic drug or
11 any articles, implements, paraphernalia and other property the
12 use of which is a violation of the narcotics drug law.

13 (2) Any vehicle, vessel or aircraft which has been or is being
14 used in violation of paragraph (1), except a vehicle, vessel or
15 aircraft used by any person as a common carrier in the trans-
16 action of business as such common carrier, shall be seized by any
17 inspector or police officer authorized to enforce said law, and
18 forfeited as hereinafter provided.

19 (3) The seized property shall be delivered by said inspector or
20 officer having made the seizure to the custody of the district

21 attorney of the county wherein the seizure was made, together
22 with a report of all the facts and circumstances of the seizure.

23 (4) It shall be the duty of the district attorney of the county
24 wherein the seizure is made to inquire into the facts of the seizure
25 so reported to him, and if it appears probable that a forfeiture
26 has been incurred by reason of a violation of this section (for
27 the determination of which the institution of proceedings in the
28 superior court is necessary) to cause the proper proceedings to
29 be commenced and prosecuted, at any time after thirty days
30 from the date of seizure, to declare such forfeiture, unless, upon
31 inquiry and examination, such district attorney decides that such
32 proceedings can not probably be sustained or that the ends of
33 public justice do not require that they should be instituted or
34 prosecuted, in which case, the district attorney shall cause such
35 seized property to be returned to the owner thereof.

36 (5) Notice of the institution of the forfeiture proceeding shall
37 be served either personally on the owners of the seized property,
38 or by registered mail to the owners' last known address and by
39 publication of the notice once a week for two successive weeks
40 in a newspaper published or circulated in the county wherein
41 the seizure was made.

42 (6) Forfeiture shall not be adjudged where the owners es-
43 tablish by preponderance of the evidence that the use of such
44 seized property, in violation of paragraph (1), was not inten-
45 tional on the part of any owner, or said seized property was used
46 in violation of said paragraph (1) by any person other than an
47 owner thereof, while such seized property was unlawfully in the
48 possession of a person who acquired possession thereof in viola-
49 tion of the criminal laws of the United States, or of any state.

50 (7) The district attorney having custody of the seized prop-
51 erty after such judicial determination of forfeiture shall turn
52 over said seized property to the department. The department
53 shall receive for the commonwealth and keep records of all
54 property or properties forfeited under this section, such records
55 to contain the date and by whose order the property or properties
56 was delivered, a description of the property or properties and
57 the final disposition of the same. The department may use in
58 the enforcement of the narcotic laws any property or properties
59 so received or may deliver the same, or any part thereof to the

60 commissioner of public safety for disposal in accordance with
61 the provisions of section seven of chapter two hundred and
62 seventy-six.

63 (8) Whenever any person interested in any property which is
64 seized and declared forfeited under the provisions of this section
65 files with a justice of the superior court a petition for the re-
66 covery of such forfeited property, said justice may restore said
67 forfeited property upon such terms and conditions as he deems
68 reasonable and just, if the petitioner establishes either of the
69 affirmative defenses set forth in paragraph (6) and that the pe-
70 titioner was without personal or actual knowledge of the for-
71 feiture proceeding. If the petition is filed after the sale of the
72 forfeited property, any judgment in favor of the petitioner shall
73 be limited to the net proceeds of such sale, after deduction of the
74 lawful expenses and costs incurred by the district attorney or the
75 department.

76 (9) No suit or action under this section for wrongful seizure
77 shall be instituted unless such suit or action is commenced within
78 two years after the time when the property was seized.

