

# HOUSE . . . . . No. 6501

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## *The Commonwealth of Massachusetts*

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HOUSE OF REPRESENTATIVES, December 5, 1989.

The committee on Ways and Means, to whom was referred the Bill relative to the disposition of the proceeds of certain forfeited property (House, No. 6270), reports that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 6501).

For the committee,

JOSEPH K. MACKEY.

## The Commonwealth of Massachusetts

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In the Year One Thousand Nine Hundred and Eighty-Nine.

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AN ACT RELATIVE TO THE FORFEITURE OF PROPERTY UNDER THE CONTROLLED SUBSTANCES ACT.

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

1 SECTION 1. Subsection (a) of section 47 of chapter 94C of  
2 the General Laws is hereby amended by striking out subpara-  
3 graphs (3), (5), (6A) and (7), as appearing in the 1988 Official  
4 Edition, and inserting the following new subparagraphs (3), (5),  
5 (7), (8) and (9).

6 (3) All conveyances, including aircraft, vehicles, or vessels,  
7 used or intended for use to transport, conceal, or otherwise  
8 facilitate the manufacture, dispensing, or distribution of or  
9 possession with intent to manufacture, dispense or distribute, a  
10 controlled substance in violation of sections 32, 32A, 32B, 32C,  
11 32D, 32E, 32F, 32G, 32I, 32J, or 40 or any part thereof.

12 (5) All moneys, negotiable instruments, securities or other  
13 things of value furnished or intended to be furnished by any person  
14 in exchange for a controlled substance in violation of this chapter,  
15 all proceeds traceable to such an exchange, including real estate  
16 and other thing of value, and all moneys, negotiable instruments,  
17 and securities used or intended to be used to facilitate any  
18 violation of sections 32, 32A, 32B, 32C, 32D, 32E, 32F, 32G, 32I,  
19 32J, or 40 or any part thereof.

20 (7) All real property, including any right, title, and interest in  
21 the whole of any lot or tract of land and any appurtenances or  
22 improvements thereto, which is used, in any manner or part, to  
23 commit, or to facilitate the commission of a violation of the  
24 provisions of sections 32, 32A, 32B, 32C, 32D, 32E, 32F, 32G,  
25 32I, 32J, or 40 or any part thereof.

26 (8) All property which is used, or intended for use, as a  
27 container for property described in paragraph (1) or (2) of this  
28 Section.

29 (9) No forfeiture under this section shall extinguish a perfected  
30 security interest held by a creditor in a conveyance or in any real  
31 property at the time of the transaction which gives rise to the  
32 forfeiture.

1 SECTION 2. Said section 47 of chapter 94C, as so appearing,  
2 is hereby further amended by striking subsection (b) and inserting  
3 in its place the following subsection (b): —

4 (b) Property subject to forfeiture under subparagraphs (1), (2),  
5 (4), (5), (6), and (8) of subsection (a) shall, upon motion of the  
6 attorney general or district attorney, be declared forfeit by any  
7 court having jurisdiction over said property or having final juris-  
8 diction over any related criminal proceeding brought under any  
9 provision of this chapter. Property so forfeited under subpara-  
10 graph (5) of subsection (a) shall be distributed as provided in  
11 subparagraph (1) of subsection (a) of this section shall be  
12 destroyed, regardless of the final disposition of such related  
13 criminal proceeding, if any, unless the court for good cause shown  
14 orders otherwise.

1 SECTION 3. Said section 47 of chapter 94C, as so appearing,  
2 is hereby further amended by inserting in subsection (c) after the  
3 words “conveyances subject to the provisions of subpara-  
4 graph (3)”, the words: — and of all real property subject to the  
5 provisions of subparagraph (7).

1 SECTION 4. Said section 47 of chapter 94C, as so appearing,  
2 is hereby further amended by inserting after the word  
3 “conveyance” in lines 54, 55, 57, 61 and 64 the words: — or real  
4 property.

1 SECTION 5. Said section 47 of chapter 94C, as so appearing,  
2 is hereby further amended by striking subsection (d), and inserting  
3 in its place the following subsection (d): —

4 (d) A district attorney or the attorney general may petition the  
5 superior court in the name of the commonwealth in the nature  
6 of a proceeding in rem to order forfeiture of a conveyance, real  
7 property, moneys or other things of value subject to forfeiture  
8 under the provisions of subparagraphs (3), (5) and (7) of



9 subsection (a). Such petition shall be filed in the court having juris-  
10 diction over said conveyance, real property, moneys or other  
11 things of value, or having final jurisdiction over any related  
12 criminal proceeding brought under any provision of this chapter.  
13 Such proceeding shall be deemed a civil suit in equity. In all such  
14 suits where the property is claimed by any person, other than the  
15 Commonwealth, the Commonwealth shall have the burden of  
16 proving to the court the existence of probable cause to institute  
17 the action, and any such claimant shall then have the burden of  
18 proving that the property is not forfeitable pursuant to  
19 subparagraphs (3), (5), or (7) of subsection (a). The owner of said  
20 conveyance or real property, or other person claiming thereunder,  
21 shall also have the burden as to all exceptions set forth in  
22 subsections (c) and (i). The court shall order the commonwealth  
23 to give notice by certified or registered mail to the owner of said  
24 conveyance, real property or moneys or other things of value and  
25 to such other persons as appear to have an interest therein, and  
26 the court shall promptly, but not less than two weeks after notice,  
27 hold a hearing on the petition. At such hearing the court shall  
28 hear evidence and make findings of fact and conclusions of law,  
29 and shall thereupon issue a final order, from which the parties  
30 shall have such right of appeal as from a decree in equity. In all  
31 such suits where a final order results in a forfeiture, said final order  
32 shall provide for disposition of said conveyance, real property,  
33 moneys or any other thing of value by the commonwealth or any  
34 subdivision thereof in any manner not prohibited by law,  
35 including official use by an authorized law enforcement or other  
36 public agency, or sale at public auction or by competitive bidding.  
37 The proceeds of any such sale shall be used to pay the reasonable  
38 expenses of the forfeiture proceedings, seizure, storage,  
39 maintenance of custody, advertising, and notice, and the balance  
40 thereof shall be distributed as further provided in this section. The  
41 final order of the court shall provide that said moneys and the  
42 proceeds of any such sale shall be distributed equally between the  
43 prosecuting district attorney or attorney general and the city,  
44 town, state or metropolitan district police department involved  
45 in the seizure. If more than one department was substantially  
46 involved in the seizure, the court having jurisdiction over the  
47 forfeiture proceedings shall distribute the fifty per cent equitably  
48 among these departments.

49 There shall be established within the office of the state treasurer  
50 separate special law enforcement trust funds for each district  
51 attorney and for the attorney general. All such monies and  
52 proceeds received by any prosecuting district attorney or attorney  
53 general shall be deposited in such a trust fund and shall then be  
54 expended without further appropriation to defray the costs of  
55 protracted investigations, to provide additional technical  
56 equipment or expertise, to provide matching funds to obtain  
57 federal grants, or such other law enforcement purposes as the  
58 district attorney or attorney general deems appropriate. The  
59 district attorney or attorney general may expend up to ten per  
60 cent of the monies and proceeds for drug education and  
61 neighborhood crime watch programs which further law  
62 enforcement purposes. Within ninety days of the close of the fiscal  
63 year, each district attorney and the attorney general shall file an  
64 annual report with the house and senate committees on ways and  
65 means on the use of the monies in the trust fund for the purposes  
66 of drug education and neighborhood crime watch programs.

67 All such monies and proceeds received by any police  
68 department shall be deposited in a special law enforcement trust  
69 fund and shall be funded without further appropriation to defray  
70 the costs of protracted investigations, to provide additional  
71 technical equipment or expertise, to provide matching funds to  
72 obtain federal grants, or such other law enforcement purposes as  
73 the chief of police of such city or town, the commissioner of public  
74 safety or the superintendent of the metropolitan district police  
75 deems appropriate, but such funds shall not be considered a source  
76 of revenue to meet the operating needs of such department.

1 SECTION 6. Said section 47 of chapter 94C, as so appearing,  
2 is hereby further amended by inserting at the end thereof the  
3 following new subsections: —

4 (i) The owner of any real property which is the principal  
5 domicile of the immediate family of the owner and which is subject  
6 to forfeiture under this section may file a petition for homestead  
7 exemption with the court having its jurisdiction over such  
8 forfeiture. The court may, in its discretion, allow the petition  
9 exempting from forfeiture an amount allowed under section one  
10 of chapter one hundred and eighty-eight. The value of the balance

11 of said domicile, if any, shall be forfeited as provided in this  
12 section. Such homestead exemption may be acquired on only one  
13 principal domicile for the benefit of the immediate family of the  
14 owner.

15 (j) A forfeiture proceeding affecting the title to real property  
16 or the use and occupation thereof or the buildings thereon shall  
17 not have any effect except against the parties thereto and persons  
18 having actual notice thereof, until a memorandum containing the  
19 names of the parties to such proceedings, the name of the town  
20 where the affected real property lies, and a description of such  
21 real property sufficiently accurate for identification is recorded  
22 in the registry of deeds for the county or district where the real  
23 property lies. At any time after a judgment on the merits, or after  
24 the discontinuance, dismissal or other final disposition is recorded  
25 by the court having jurisdiction over such matter shall issue a certi-  
26 ficate of the fact of such judgment, discontinuance, dismissal or  
27 other final disposition, and such certificate shall be recorded in  
28 the registry in which the original memorandum recorded pursuant  
29 to this section was filed.

1 SECTION 7. These sections shall take effect upon passage.



