

No. 1990-219

AN ACT

HB 2617

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, providing for insurance fraud; further providing for unlawful collection agency practices; prohibiting the disclosure of confidential tax information by certain persons; regulating storage, consumption and sale of alcoholic beverages between the hours of 2 a.m. and 8 a.m. on unlicensed premises; and further providing for drug sentencing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 4117 of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 4117. **[Motor vehicle insurance] Insurance** fraud.

(a) Offense defined.—A person commits an offense if the person does any of the following:

(1) Knowingly and with the intent to defraud a State or local government agency files, presents or causes to be filed with or presented to the government agency a document that contains false, incomplete or misleading information concerning any fact or thing material to the agency's determination in approving or disapproving a motor vehicle insurance rate filing, a motor vehicle insurance transaction or other motor vehicle insurance action which is required or filed in response to an agency's request.

(2) Knowingly and with the intent to defraud any insurer, presents or causes to be presented to any insurer any statement forming a part of, or in support of, **[a motor vehicle] an** insurance claim that contains any false, incomplete or misleading information concerning any fact or thing material to the **[motor vehicle] insurance claim**.

(3) Knowingly and with the intent to defraud any insurer, assists, abets, solicits or conspires with another to prepare or make any statement that is intended to be presented to any insurer in connection with, or in support of, **[a motor vehicle] an** insurance claim that contains any false, incomplete or misleading information concerning any fact or thing material to the **[motor vehicle] insurance claim**.

(4) Engages in unlicensed agent or broker activity as defined by the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of one thousand nine hundred and twenty-one, knowingly and with the intent to defraud **[a motor vehicle] an** insurer or the public.

(5) Knowingly benefits, directly or indirectly, from the proceeds derived from a violation of this section due to the assistance, conspiracy or urging of any person.

(6) Is the owner, administrator or employee of any health care facility and knowingly allows the use of such facility by any person in furtherance of a scheme or conspiracy to violate any of the provisions of this section.

(7) Borrows or uses another person's financial responsibility *or other insurance* identification card or permits his financial responsibility *or other insurance* identification card to be used by another, knowingly and with intent to present a fraudulent [motor vehicle] insurance claim to an insurer.

(b) Additional offenses defined.—

(1) **[In a claim arising out of a motor vehicle accident, a] A lawyer may not compensate or give anything of value to a nonlawyer to recommend or secure employment by a client or as a reward for having made a recommendation resulting in employment by a client; except that the lawyer may pay:**

- (i) the reasonable cost of advertising or written communication as permitted by the rules of professional conduct; or
- (ii) the usual charges of a not-for-profit lawyer referral service or other legal service organization.

Upon a conviction of an offense provided for by this paragraph, the prosecutor shall certify such conviction to the disciplinary board of the Supreme Court for appropriate action. Such action may include a suspension or disbarment.

(2) With respect to [a motor vehicle] *an* insurance benefit or claim, a health care provider may not compensate or give anything of value to a person to recommend or secure the provider's service to or employment by a patient or as a reward for having made a recommendation resulting in the provider's service to or employment by a patient; except that the provider may pay the reasonable cost of advertising or written communication as permitted by rules of professional conduct. Upon a conviction of an offense provided for by this paragraph, the prosecutor shall certify such conviction to the appropriate licensing board in the Department of State which shall suspend or revoke the health care provider's license.

(3) **[A person may not receive compensation, a reward or anything of value in return for providing names, addresses, telephone numbers or other identifying information of victims involved in motor vehicle accidents to a lawyer or health care provider which results in employment of the lawyer or health care provider by the victims for purposes of a motor vehicle insurance claim or suit.] A lawyer or health care provider may not compensate or give anything of value to a person for providing names, addresses, telephone numbers or other identifying information of individuals seeking or receiving medical or rehabilitative care for accident, sickness or disease, except to the extent a referral and receipt of compensation is permitted under applicable professional rules of conduct. A person may not knowingly transmit such referral information to a lawyer or health care professional for the purpose of receiving compensation or anything of value. Attempts to circumvent this paragraph through use of any other person, including, but not limited to, employees, agents or servants, shall also be prohibited. [This provision shall not prohibit a lawyer or health care provider from making a referral and receiving compensation as is permitted under applicable professional rules of conduct.]**

(c) **Electronic claims submission.**—If [a motor vehicle] *an* insurance claim is made by means of computer billing tapes or other electronic means, it shall be a rebuttable presumption that the person knowingly made the claim if the person has advised the insurer in writing that claims will be submitted by use of computer billing tapes or other electronic means.

(d) **Grading.**—An offense under subsection (a)(1) through (7) is a felony of the third degree. An offense under subsection (b) is a misdemeanor of the first degree.

(e) **Restitution.**—The court may, in addition to any other sentence authorized by law, sentence a person convicted of violating this section to make restitution under section 1106 (relating to restitution for injuries to person or property).

(f) **Immunity.**—An insurer, and any agent, servant or employee thereof acting in the course and scope of his employment, *and the Motor Vehicle Fraud Index Bureau, as designated by the Insurance Commissioner pursuant to 75 Pa. C.S. § 1821 (relating to designation), acting pursuant to its plan of operation*, shall be immune from civil or criminal liability arising from the supply or release of written or oral information to any entity duly authorized to receive such information by Federal or State law, or by Insurance Department regulations, only if both of the following conditions exist:

(1) the information is supplied to the agency in connection with an allegation of fraudulent conduct on the part of any person relating to a violation of this section; and

(2) the insurer, agent, servant or employee *or the Motor Vehicle Fraud Index Bureau* has reason to believe that the information supplied is related to the allegation of fraud.

(g) **Civil action.**—An insurer damaged as a result of a violation of this section may sue therefor in any court of competent jurisdiction to recover compensatory damages, which may include reasonable investigation expenses, costs of suit and attorney fees. An insurer may recover damages if the court determines that the defendant has engaged in a pattern of violating this section.

(h) **Criminal action.**—

(1) The district attorneys of the several counties shall have authority to investigate and to institute criminal proceedings for any violation of this section.

(2) In addition to the authority conferred upon the Attorney General by the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, the Attorney General shall have the authority to investigate and to institute criminal proceedings for any violation of this section or any series of such violations involving more than one county of the Commonwealth or involving any county of the Commonwealth and another state. No person charged with a violation of this section by the Attorney General shall have standing to challenge the authority of the Attorney General to investigate or prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of the Commonwealth to the person making the challenge.

(i) Regulatory and investigative powers additional to those now existing.—Nothing contained in this section shall be construed to limit the regulatory or investigative authority of any department or agency of the Commonwealth whose functions might relate to persons, enterprises or matters falling within the scope of this section.

(j) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Insurance claim.” *A claim for payment or other benefit pursuant to an insurance policy or agreement for coverage of health or hospital services.*

“Insurance policy.” *A document setting forth the terms and conditions of a contract of insurance or agreement for the coverage of health or hospital services.*

“Insurer.” *A company, association or exchange defined by section 101 of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921; an unincorporated association of underwriting members; a hospital plan corporation; a professional health services plan corporation; a health maintenance organization; a fraternal benefit society; and a self-insured health care entity under the act of October 15, 1975 (P.L.390, No.111), known as the Health Care Services Malpractice Act.*

“Motor vehicle insurance claim.” *A claim for payment or other benefit pursuant to a motor vehicle insurance policy.]*

“Person.” *An individual, corporation, partnership, association, joint-stock company, trust or unincorporated organization. The term includes any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd’s insurer, fraternal benefit society, beneficial association and any other legal entity engaged or proposing to become engaged, either directly or indirectly, in the business of insurance, including agents, brokers, adjusters and health care plans as defined in 40 Pa.C.S. Chs. 61 (relating to hospital plan corporations), 63 (relating to professional health services plan corporations), 65 (relating to fraternal benefit societies) and 67 (relating to beneficial societies) and the act of December 29, 1972 (P.L.1701, No.364), known as the Health Maintenance Organization Act. For purposes of this section, health care plans, fraternal benefit societies and beneficial societies shall be deemed to be engaged in the business of insurance.*

“Statement.” *Any oral or written presentation or other evidence of loss, injury or expense, including, but not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, X-ray, test result or computer-generated documents.*

Section 2. Section 7311(a) and (b) of Title 18 are amended and the section is amended by adding a subsection to read:

§ 7311. Unlawful collection agency practices.

(a) **[Appearance for creditor.—It is unlawful for a collection agency to appear for or represent a creditor or other person in any proceeding, or in any action or proceeding for or growing out of the appointment of a receiver or trustee, or in connection with an assignment for the benefit of creditors, or to present any claim or to vote on behalf of a creditor, whether an assignee**

or transferee of such claim or by virtue of a proxy or otherwise, or to represent any creditor in any action or proceeding in any court, or before any justice of the peace or magistrate, or to solicit from any creditor any claim for any of the purposes forbidden by this section.] *Assignments of claims.*—It is lawful for a collection agency, for the purpose of collecting or enforcing the payment thereof, to take an assignment of any such claim from a creditor, if all of the following apply:

(1) *The assignment between the creditors and collection agency is in writing.*

(2) *The original agreement between the creditor and debtor does not prohibit assignments.*

(3) *The collection agency complies with the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law, and with the regulations promulgated under that act.*

(b) [Assignments of claims.—It is unlawful for a collection agency, for the purpose of collecting or enforcing the payment thereof, directly or indirectly, to buy, take an assignment of, or to become in any manner interested in the buying or taking of an assignment of any such claim.] *Appearance for creditor.*—It is unlawful for a collection agency to appear for or represent a creditor in any manner whatsoever, but a collection agency, pursuant to subsection (a), may bring legal action on claims assigned to it and not be in violation of subsection (c) if the agency appears by an attorney.

(b.1) *Unfair or deceptive collection methods.*—It is unlawful for a collector to collect any amount, including any interest, fee, charge or expense incidental to the principal obligation, unless such amount is expressly provided in the agreement creating the debt or is permitted by law.

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Section 3. Title 18 is amended by adding sections to read:

§ 7326. *Disclosure of confidential tax information.*

(a) *Offense defined.*—A person commits a misdemeanor of the third degree if he discloses, except to authorized persons for official governmental purposes, any tax information that is:

(1) *designated as confidential by a statute or ordinance of a city of the second class; and*

(2) *obtained by him in conjunction with any declaration, return, audit, hearing or verification required or authorized by statute or ordinance.*

(b) *Exception.*—Subsection (a) shall not apply where disclosure is required by law or by court order.

(c) *Definition.*—As used in this section, the term “person” includes, but is not limited to, a current or former officer or employee of the Commonwealth or any of its political subdivisions and any other individual who has access to confidential tax information.

§ 7327. *Storage, consumption and sale of alcoholic beverages on unlicensed business premises.*

(a) *Storage.*—A person commits a summary offense if he stores or permits storage by others of liquor or malt or brewed beverages for the

purpose of consumption between the hours of 2 a.m. and 8 a.m. on business premises owned, operated, leased or controlled by such person which are not licensed under the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code.

(b) Consumption.—A person commits a summary offense if he allows another to consume liquor or malt or brewed beverages, after payment of an entry fee, cover charge or membership fee, between the hours of 2 a.m. and 8 a.m. on business premises owned, operated, leased or controlled by such person which are not licensed under the Liquor Code.

(c) Sale.—A person commits a summary offense if he sells or offers to sell any liquor or malt or brewed beverages between the hours of 2 a.m. and 8 a.m. on business premises owned, operated, leased or controlled by such person which are not licensed under the Liquor Code.

Section 4. Section 7508 of Title 18 is amended to read:

§ 7508. Drug trafficking sentencing and penalties.

(a) General rule.—Notwithstanding any other provisions of this or any other act to the contrary, the following provisions shall apply:

(1) A person who is convicted of violating section 13(a)(14) [or (30)], (30) or (37) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, where the controlled substance is marijuana shall, upon conviction, be sentenced to a mandatory minimum term of imprisonment and a fine as set forth in this subsection:

(i) [upon the first conviction] when the amount of marijuana involved is at least two pounds, but less than ten pounds, *or at least ten live plants but less than 21 live plants*; one year in prison and a fine of \$5,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity [and, upon conviction for another offense subject to sentencing under this section]; *however, if at the time of sentencing the defendant has been convicted of another drug trafficking offense: two years in prison and a fine of \$10,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity;*

(ii) [upon the first conviction] when the amount of marijuana involved is at least ten pounds, but less than 50 pounds, *or at least 21 live plants but less than 51 live plants*; three years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity [and, upon conviction for another offense subject to sentencing under this section]; *however, if at the time of sentencing the defendant has been convicted of another drug trafficking offense: four years in prison and a fine of \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; and*

(iii) [upon conviction] when the amount of marijuana involved is at least 50 pounds, *or at least 51 live plants*; five years in prison and a fine of \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity.

(2) A person who is convicted of violating section 13(a)(14) [or (30)], (30) or (37) of The Controlled Substance, Drug, Device and Cosmetic Act where the controlled substance or a mixture containing it is classified in Schedule I or Schedule II under section 4 of that act and is a narcotic drug shall, upon conviction, be sentenced to a mandatory minimum term of imprisonment and a fine as set forth in this subsection:

(i) [upon the first conviction] when the [amount of] *aggregate weight of the compound or mixture containing* the substance involved is at least 2.0 grams and less than ten grams; two years in prison and a fine of \$5,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity [and, upon conviction for another offense subject to sentencing under this section;]; *however, if at the time of sentencing the defendant has been convicted of another drug trafficking offense:* three years in prison and \$10,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity;

(ii) [upon the first conviction] when the [amount of] *aggregate weight of the compound or mixture containing* the substance involved is at least ten grams and less than 100 grams; three years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity [and, upon conviction for another offense subject to sentencing under this section;]; *however, if at the time of sentencing the defendant has been convicted of another drug trafficking offense:* five years in prison and \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; and

(iii) [upon the first conviction] when the [amount of] *aggregate weight of the compound or mixture containing* the substance involved is at least 100 grams; five years in prison and a fine of \$25,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity [and, upon conviction for another offense subject to sentencing under this section;]; *however, if at the time of sentencing the defendant has been convicted of another drug trafficking offense:* seven years in prison and \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity.

(3) A person who is convicted of violating section 13(a)(14) [or (30)], (30) or (37) of The Controlled Substance, Drug, Device and Cosmetic Act where the controlled substance is coca leaves or is any salt, compound, derivative or preparation of coca leaves or is any salt, compound, derivative or preparation which is chemically equivalent or identical with any of these substances or is any mixture containing any of these substances except decocainized coca leaves or extracts of coca leaves which (extracts) do not contain cocaine or ecgonine shall, upon conviction, be sentenced to a mandatory minimum term of imprisonment and a fine as set forth in this subsection:

(i) **[upon the first conviction]** when the **[amount of]** *aggregate weight of the compound or mixture containing* the substance involved is at least 2.0 grams and less than ten grams; one year in prison and a fine of \$5,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity **[and, upon conviction for another offense subject to sentencing under this section;];** *however, if at the time of sentencing the defendant has been convicted of another drug trafficking offense:* three years in prison and \$10,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity;

(ii) **[upon the first conviction]** when the **[amount of]** *aggregate weight of the compound or mixture containing* the substance involved is at least ten grams and less than 100 grams; three years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity **[and, upon conviction for another offense subject to sentencing under this section;];** *however, if at the time of sentencing the defendant has been convicted of another drug trafficking offense:* five years in prison and \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; and

(iii) **[upon the first conviction]** when the **[amount of]** *aggregate weight of the compound or mixture of* the substance involved is at least 100 grams; four years in prison and a fine of \$25,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity **[and, upon conviction for another offense subject to sentencing under this section;];** *however, if at the time of sentencing the defendant has been convicted of another drug trafficking offense:* seven years in prison and \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity.

(4) A person who is convicted of violating section 13(a)(14) **[or (30), (30) or (37)]** of The Controlled Substance, Drug, Device and Cosmetic Act where the controlled substance is methamphetamine *or phencyclidine* or is a salt, isomer or salt of an isomer of methamphetamine or **[is]** phencyclidine or is a mixture containing methamphetamine *or phencyclidine*, containing a salt of methamphetamine *or phencyclidine*, containing an isomer of methamphetamine *or phencyclidine*, containing a salt of an isomer of methamphetamine or **[containing]** phencyclidine shall, upon conviction, be sentenced to a mandatory minimum term of imprisonment and a fine as set forth in this subsection:

(i) **[upon the first conviction]** when the **[amount of]** *aggregate weight of the compound or mixture containing* the substance involved is at least five grams and less than ten grams; three years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity **[and, upon conviction for another offense subject to sentencing under this section;];** *however, if at the time of sentencing the defendant has been*

convicted of another drug trafficking offense: five years in prison and \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity;

(ii) **[upon the first conviction]** when the **[amount of] aggregate weight of the compound or mixture containing** the substance involved is at least ten grams and less than 100 grams; four years in prison and a fine of \$25,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity **[and, upon conviction for another offense subject to sentencing under this section;];** *however, if at the time of sentencing the defendant has been convicted of another drug trafficking offense*: seven years in prison and \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; and

(iii) **[upon the first conviction]** when the **[amount of] aggregate weight of the compound or mixture containing** the substance involved is at least 100 grams; five years in prison and a fine of \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity **[and, upon conviction for another offense subject to sentencing under this section;];** *however, if at the time of sentencing the defendant has been convicted of another drug trafficking offense*: eight years in prison and \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity.

(5) A person who is convicted of violating section 13(a)(14) **[or (30), (30) or (37)]** of The Controlled Substance, Drug, Device and Cosmetic Act, and who, in the course of the offense, manufactures, delivers, brings into this Commonwealth or possesses with intent to manufacture or deliver amphetamine or any salt, optical isomer, or salt of an optical isomer, or a mixture containing any such substances shall, **[upon the first conviction]** when the **[amount of] aggregate weight of the compound or mixture containing** the substance involved is at least five grams, be sentenced to two and one-half years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity **[and, upon conviction for a subsequent offense under this section,];** *however, if at the time of sentencing the defendant has been convicted of another drug trafficking offense*: be sentenced to five years in prison and \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity.

(6) A person who is convicted of violating section 13(a)(14) **[or (30), (30) or (37)]** of The Controlled Substance, Drug, Device and Cosmetic Act where the controlled substance is methaqualone shall, upon conviction, be sentenced to a mandatory minimum term of imprisonment and a fine as set forth in this subsection:

(i) **[upon the first conviction]** when the **[amount of] aggregate weight of the compound or mixture containing** the substance involved is at least 50 tablets, capsules, caplets or other dosage units, or **[the equivalent quantity] 25 grams** and less than 200 tablets, capsules, caplets or

other dosage units, or [the equivalent quantity] 100 grams; one year in prison and a fine of \$2,500 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity [and, upon conviction for another offense subject to sentencing under this section]; *however, if at the time of sentencing the defendant has been convicted of another drug trafficking offense:* three years in prison and \$5,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; and

(ii) [upon the first conviction] when the [amount of] *aggregate weight of the compound or mixture containing* the substance involved is at least 200 tablets, capsules, caplets or other dosage units, or [the equivalent quantity] *more than 100 grams*; two and one-half years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity [and, upon conviction for another offense subject to sentencing under this section]; *however, if at the time of sentencing the defendant has been convicted of another drug trafficking offense:* five years in prison and \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity.

(a.1) Previous conviction.—For purposes of this section, it shall be deemed that a defendant has been convicted of another drug trafficking offense when the defendant has been convicted of another offense under section 13(a)(14), (30) or (37) of The Controlled Substance, Drug, Device and Cosmetic Act, or of a similar offense under any statute of any state or the United States, whether or not judgment of sentence has been imposed concerning that offense.

(b) Proof of sentencing.—Provisions of this section shall not be an element of the crime. Notice of the applicability of this section to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The court shall consider evidence presented at trial, shall afford the Commonwealth and the defendant an opportunity to present necessary additional evidence and shall determine, by a preponderance of the evidence, if this section is applicable.

(c) Mandatory sentencing.—There shall be no authority in any court to impose on an offender to which this section is applicable a lesser sentence than provided for herein or to place the offender on probation, parole, work release or prerelease or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than provided herein. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided herein. Disposition under section 17 or 18 of The Controlled Substance, Drug, Device and Cosmetic Act shall not be available to a defendant to which this section applies.

(d) Appellate review.—If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review

of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

(e) Forfeiture.—Assets against which a forfeiture petition has been filed and is pending or against which the Commonwealth has indicated an intention to file a forfeiture petition shall not be subject to a fine. *Nothing in this section shall prevent a fine from being imposed on assets which have been subject to an unsuccessful forfeiture petition.*

(f) *Growing plants.—When the controlled substance is marijuana in the form of growing plants and the number of plants is nine or less, weighing may be accomplished by law enforcement officials utilizing any certified scale convenient to the place of arrest for the purpose of determining the weight of the growing marijuana plant. The aggregate weight of the plant is to include the whole plant including the root system if possible. The weight is not to include any substance not a part of the growing plant.*

Section 5. This act shall take effect immediately.

APPROVED—The 19th day of December, A. D. 1990.

ROBERT P. CASEY