

**§1319-U. Forfeiture; civil liability****(REALLOCATED FROM TITLE 38, SECTION 1306-C)**

**1. Property forfeited.** The following property shall be subject to forfeiture to the State and all property rights therein shall be in the State:

A. All conveyances which are used or intended for use in handling or transporting hazardous waste in violation of this subchapter and all materials, products and equipment used or intended for use in such handling or transportation or handled or transported shall be subject to forfeiture to the State; and [PL 1987, c. 517, §20 (RAL).]

B. All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in any transaction involving a hazardous waste in violation of this subchapter, all proceeds traceable to such a transaction and all moneys, negotiable instruments, securities or other things of value used or intended to be used to facilitate any violation of this subchapter. [PL 1987, c. 517, §20 (RAL).]

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**2. Jurisdiction.** Property subject to forfeiture may be declared forfeited by a court having jurisdiction over the property or having final jurisdiction over a related civil or criminal proceeding under this subchapter.

[PL 1987, c. 517, §20 (RAL).]

**3. Exceptions.** The court may order forfeiture of all property subject to forfeiture, except as follows.

A. No conveyance used by a common carrier in the transaction of business as a common carrier may be forfeited, unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to a violation of this subchapter. [PL 1987, c. 517, §20 (RAL).]

B. No conveyance may be forfeited by reason of an act or omission established by the owner to have been committed or omitted by another person while the conveyance was unlawfully in the possession of another person in violation of the criminal laws of the United States or of any state. [PL 1987, c. 517, §20 (RAL).]

C. No conveyance may be subject to forfeiture unless the owner knew or should have known that that conveyance was used in and for the handling of hazardous waste in violation of this subchapter. Proof that the conveyance was used on 3 or more occasions for the purpose of handling hazardous waste in violation of this subchapter shall be prima facie evidence that the owner knew thereof or should have known thereof. [PL 1987, c. 517, §20 (RAL).]

D. No property subject to forfeiture under subsection 1, paragraph B may be forfeited, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner. [PL 1987, c. 517, §20 (RAL).]

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**4. Procedure.** The Attorney General may seek forfeiture of a conveyance according to the procedure set forth in Title 15, section 5822, with the following exceptions.

A. A final order issued by the court under that procedure must provide for disposition of the conveyance by the Department of Administrative and Financial Services, including official use by a public agency or sale at public auction or by competitive bidding. [PL 1997, c. 364, §41 (AMD).]

B. The proceeds of a sale must be used to pay the costs of cleanup, abatement or mitigation of any threats or hazards to public health or safety or to the environment, the costs of any removal, storage,

treatment, disposal or other handling of hazardous waste or hazardous substances, as defined in section 1362, reasonable expenses for the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice, and to pay any bona fide mortgage thereon, and the balance, if any, shall be deposited in the General Fund. [PL 1997, c. 364, §41 (AMD).]

C. Records, required by Title 15, section 5825, must be open to inspection by all federal and state officers charged with enforcement of federal and state laws relating to the handling of hazardous waste. [PL 1997, c. 364, §41 (AMD).]

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**5. Civil liability.** A person who disposes of or treats hazardous waste, when that disposal or treatment, in fact, endangers the health, safety or welfare of another, is liable in a civil suit for all resulting damages. It is not necessary to prove negligence.

For the purposes of this section, damages are limited to damages to real estate or personal property or loss of income directly or indirectly as a result of a disposal or treatment of hazardous wastes. Damages awarded may be mitigated if the disposal or treatment is the result of an act of war or an act of God.

[PL 1993, c. 732, Pt. A, §9 (AMD).]

Nothing in this section shall preclude any action for damages which may be maintained under the common law or the laws of this State. [PL 1987, c. 517, §20 (RAL).]

#### SECTION HISTORY

PL 1987, c. 517, §20 (RAL). PL 1993, c. 732, §A9 (AMD). PL 1997, c. 364, §41 (AMD).

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