

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1193 Session of
2006

INTRODUCED BY ERICKSON, RAFFERTY, PICCOLA, PILEGGI, REGOLA,
CORMAN, WENGER, WASHINGTON, WAUGH, C. WILLIAMS AND RHOADES,
APRIL 17, 2006

REFERRED TO TRANSPORTATION, APRIL 17, 2006

AN ACT

1 Amending Titles 42 (Judiciary and Judicial Procedure) and 75
2 (Vehicles) of the Pennsylvania Consolidated Statutes, making
3 an editorial change; further providing for loss of property
4 rights to Commonwealth; providing for vehicle forfeiture when
5 driving under the influence; and further providing for
6 procedure with respect to seized property subject to liens
7 and rights of lienholders, for grading and for penalties.

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

10 Section 1. The heading of Chapter 68 of Title 42 of the
11 Pennsylvania Consolidated Statutes is amended to read:

12 CHAPTER 68

13 [CONTROLLED SUBSTANCES] FORFEITURES

14 Section 2. Section 6801 heading and (b), (d), (e) and (k) of
15 Title 42 are amended to read:

16 § 6801. [Loss of property rights to Commonwealth] Controlled
17 substance forfeiture.

18 * * *

19 (b) Process and seizure.--Property subject to forfeiture
20 under this [chapter] section may be seized by the law

1 enforcement authority upon process issued by any court of common
2 pleas having jurisdiction over the property. Seizure without
3 process may be made if:

4 (1) the seizure is incident to an arrest or a search
5 under a search warrant or inspection under an administrative
6 inspection warrant;

7 (2) the property subject to seizure has been the subject
8 of a prior judgment in favor of the Commonwealth in a
9 criminal injunction or forfeiture proceeding under this
10 [chapter] section;

11 (3) there is probable cause to believe that the property
12 is dangerous to health or safety; or

13 (4) there is probable cause to believe that the property
14 has been used or is intended to be used in violation of The
15 Controlled Substance, Drug, Device and Cosmetic Act.

16 * * *

17 (d) Custody of property.--Property taken or detained under
18 this section shall not be subject to replevin, but is deemed to
19 be in the custody of the law enforcement authority subject only
20 to the orders and decrees of the court of common pleas having
21 jurisdiction over the forfeiture proceedings and of the district
22 attorney or the Attorney General. When property is seized under
23 this [chapter] section, the law enforcement authority shall
24 place the property under seal and either:

25 (1) remove the property to a place designated by it; or

26 (2) require that the district attorney or Attorney
27 General take custody of the property and remove it to an
28 appropriate location for disposition in accordance with law.

29 (e) Use of property held in custody.--Whenever property is
30 forfeited under this [chapter] section, the property shall be

transferred to the custody of the district attorney, if the law enforcement authority seizing the property has local or county jurisdiction, or the Attorney General, if the law enforcement authority seizing the property has Statewide jurisdiction. The district attorney or the Attorney General, where appropriate, may:

(1) Retain the property for official use.

(2) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, but the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs. The balance of the proceeds shall be dealt with in accordance with subsections (f) and (g).

* * *

(k) Proceeds and appropriations.--The proceeds or future proceeds from forfeited property under this [chapter] section shall be in addition to any appropriation made to the Office of Attorney General.

Section 3. Title 42 is amended by adding a section to read:
§ 6801.1. Vehicle forfeiture.

(a) Forfeiture generally.--Except as provided in subsection (b), in addition to any other penalty imposed under law, the court shall order forfeiture of a vehicle to the Commonwealth which an individual was driving, operating or was in actual physical control of at the time of the commission of an offense and which is classified as a felony of the third degree under 75 Pa.C.S. § 3803(c) (relating to grading).

(b) Exceptions.--The following shall apply:

1 (1) No vehicle used by any person as a common carrier in
2 the transaction of business as a common carrier shall be
3 forfeited under this section unless it appears that the owner
4 or other person in charge of the conveyance was a consenting
5 party or privy to a violation of 75 Pa.C.S. (relating to
6 vehicles).

7 (2) No vehicle shall be forfeited under this section by
8 reason of any act or omission which the owner of the vehicle
9 establishes to have been committed or omitted without the
10 owner's reasonable knowledge or consent.

11 (3) No bona fide security interest shall be subject to
12 forfeiture or impairment if it was retained or acquired in
13 any of the following circumstances:

14 (i) Under 13 Pa.C.S. (relating to commercial code)
15 by any merchant dealing in new or used vehicles.

16 (ii) By any licensed or regulated finance company,
17 bank or lending institution or by any other business
18 regularly engaged in the financing of or lending on the
19 security of the vehicle.

20 (c) Process and seizure.--

21 (1) Property subject to forfeiture under this section
22 may be seized by the law enforcement authority upon process
23 issued by any court of common pleas having jurisdiction over
24 the property.

25 (2) Seizure without process may be made if any of the
26 following apply:

27 (i) The seizure is incident to an arrest or a search
28 under a search warrant or inspection under an
29 administrative inspection warrant.

30 (ii) The property subject to seizure has been the

1 subject of a prior judgment in favor of the Commonwealth
2 in a criminal injunction or forfeiture proceeding under
3 this section.

4 (iii) There is probable cause to believe that the
5 property has been used or is intended to be used in
6 violation of 75 Pa.C.S. § 3802 (relating to driving under
7 influence of alcohol or controlled substance).

8 (3) In the event seizure without process occurs under
9 paragraph (2), proceedings for the issuance of process shall
10 be instituted as soon as possible.

11 (d) Custody.--Property taken or detained under this section
12 shall not be subject to replevin but is deemed to be in the
13 custody of the law enforcement authority, subject only to the
14 orders and decrees of the court of common pleas having
15 jurisdiction over the forfeiture proceedings and of the district
16 attorney or the Attorney General. When property is seized under
17 this section, the law enforcement authority shall place the
18 property under seal and either:

19 (1) remove the property to a place designated by it; or

20 (2) require that the district attorney or Attorney
21 General take custody of the property and remove it to an
22 appropriate location for disposition in accordance with law.

23 (e) Use or sale of property.--Whenever property is forfeited
24 under this section, the property shall be transferred to the
25 custody of the district attorney, if the law enforcement
26 authority seizing the property has local or county jurisdiction,
27 or to the Attorney General, if the law enforcement authority
28 seizing the property has Statewide jurisdiction. The district
29 attorney or the Attorney General, where appropriate, may do any
30 of the following:

1 (1) Retain the property for official use.

2 (2) Sell any forfeited property. The proceeds from any
3 sale shall be used to pay all proper expenses of the
4 proceedings for forfeiture and sale, including expenses of
5 seizure, maintenance of custody, advertising and court costs.
6 The balance of the proceeds shall be dealt with in accordance
7 with subsections (f) and (g).

8 (f) Use of cash or proceeds of property.--Cash or proceeds
9 of forfeited property transferred to the custody of the district
10 attorney under subsection (e) shall be placed in the operating
11 fund of the county in which the district attorney is elected.
12 The appropriate county authority shall immediately release from
13 the operating fund, without restriction, a like amount for the
14 use of the district attorney enforcing the driving under the
15 influence provisions of 75 Pa.C.S. The entity having budgetary
16 control shall not anticipate future forfeitures or proceeds from
17 future forfeitures in adopting and approving the budget for the
18 district attorney.

19 (g) Distribution of property among law enforcement
20 authorities.--If both municipal and State law enforcement
21 authorities were substantially involved in effecting the
22 seizure, the court having jurisdiction over the forfeiture
23 proceedings shall equitably distribute the property between the
24 district attorney and the Attorney General.

25 (h) Authorization to utilize property or proceeds.--The
26 district attorney and the Attorney General shall utilize
27 forfeited property or proceeds from forfeited property for the
28 purpose of enforcing the provisions of 75 Pa.C.S. In appropriate
29 cases, the district attorney and the Attorney General may
30 designate proceeds from forfeited property to be utilized by

community-based drug and alcohol programs and crime-fighting programs and for relocation and protection of witnesses in criminal cases.

(i) Annual audit.--It shall be the responsibility of every county in this Commonwealth to provide, through the controller, board of auditors or other appropriate auditor and the district attorney, an annual audit of all forfeited property and proceeds obtained under this section. The audit shall not be made public but shall be submitted to the Office of Attorney General. The county shall report all forfeited property and proceeds obtained under this section and the disposition of the property and proceeds to the Attorney General by September 30 of each year.

(j) Annual report and confidential information.--The Attorney General shall do all of the following:

(1) Annually submit a report to the Appropriations and Judiciary Committees of the Senate and the Appropriations and Judiciary Committees of the House of Representatives specifying the forfeited property or proceeds of forfeited property obtained under this section. The report shall give an accounting of all proceeds derived from the sale of forfeited property and the use made of unsold forfeited property.

(2) Adopt procedures and guidelines governing the release of information by the district attorney to protect the confidentiality of forfeited property or proceeds used in ongoing law enforcement activities.

(k) Proceeds and appropriations.--The proceeds or future proceeds from forfeited property under this section shall be in addition to any appropriation made to the Office of Attorney General.

1 Section 4. Section 6802(a)(5), (f) introductory paragraph
2 and (1), (j) introductory paragraph and (k) of Title 42 are
3 amended to read:

4 § 6802. Procedure with respect to seized property subject to
5 liens and rights of lienholders.

6 (a) General procedure.--The proceedings for the forfeiture
7 or condemnation of property, the sale of which is provided for
8 in this chapter, shall be in rem, in which the Commonwealth
9 shall be the plaintiff and the property the defendant. A
10 petition shall be filed in the court of common pleas of the
11 judicial district where the property is located, verified by
12 oath or affirmation of an officer or citizen, containing the
13 following:

14 * * *

15 (5) An allegation that the property is subject to
16 forfeiture [pursuant to section 6801(a) (relating to loss of
17 property rights to Commonwealth)] under this chapter and an
18 averment of material facts upon which the forfeiture action
19 is based.

20 * * *

21 (f) Preservation of the property subject for forfeiture.--
22 Upon application of the Commonwealth, the court may enter a
23 restraining order or injunction, require the execution of a
24 satisfactory performance bond or take any other action to
25 preserve the availability of property described in [section
26 6801(a)] this chapter for forfeiture under this section either:

27 (1) upon the filing of an information or an indictment
28 charging a violation [of the act of April 14, 1972 (P.L.233,
29 No.64), known as The Controlled Substance, Drug, Device and
30 Cosmetic Act,] for which criminal forfeiture may be ordered

1 under this chapter and alleging that the property with
2 respect to which the order is sought would be subject to
3 forfeiture; or

4 * * *

5 (j) Owner's burden of proof.--At the time of the hearing, if
6 the Commonwealth produces evidence that the property in question
7 was unlawfully used, possessed or otherwise subject to
8 forfeiture under [section 6801(a)] this chapter, the burden
9 shall be upon the claimant to show:

10 * * *

11 (k) Court-ordered release of property.--If a person claiming
12 the ownership of or right of possession to or claiming to be the
13 holder of a chattel mortgage or contract of conditional sale
14 upon the property, the disposition of which is provided for in
15 this section, prior to the sale presents a petition to the court
16 alleging over the property lawful ownership, right of
17 possession, a lien or reservation of title and if, upon public
18 hearing, due notice of which having been given to the Attorney
19 General or the district attorney, the claimant shall prove by
20 competent evidence to the satisfaction of the court that the
21 property was lawfully acquired, possessed and used by him or, it
22 appearing that the property was unlawfully used by a person
23 other than the claimant, that the unlawful use was without the
24 claimant's knowledge or consent, then the court may order the
25 property returned or delivered to the claimant. Such absence of
26 knowledge or consent must be reasonable under the circumstances
27 presented. Otherwise, it shall be retained for official use or
28 sold in accordance with [section 6801(e)] this chapter.

29 Section 5. Section 3803(a) introductory paragraph of Title
30 75 is amended and the section is amended by adding a subsection

1 to read:

2 § 3803. Grading.

3 (a) Basic offenses.--Notwithstanding the provisions of
4 [subsection (b)] subsections (b) and (c):

5 * * *

6 (c) Habitual offender.--

7 (1) An individual who violates section 3802(b) and who
8 has four or more prior offenses commits a felony of the third
9 degree.

10 (2) An individual who violates section 3802(a)(1), where
11 the individual refused testing of blood or breath, or who
12 violates section 3802(c) or (d) and who has three or more
13 prior offenses commits a felony of the third degree.

14 Section 6. Section 3804(b)(4) and (c)(3) of Title 75 are
15 amended and the subsections are amended by adding paragraphs to
16 read:

17 § 3804. Penalties.

18 * * *

19 (b) High rate of blood alcohol; minors; commercial vehicles
20 and school buses and school vehicles; accidents.--Except as set
21 forth in subsection (c), an individual who violates section
22 3802(a)(1) where there was an accident resulting in bodily
23 injury, serious bodily injury or death of any person or damage
24 to a vehicle or other property or who violates section 3802(b),
25 (e) or (f) shall be sentenced as follows:

26 * * *

27 (4) For a fourth [or subsequent] offense, to:

28 (i) undergo imprisonment of not less than one year;

29 (ii) pay a fine of not less than \$1,500 nor more
30 than \$10,000; and

(iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(5) For a fifth or subsequent offense, to:

(i) undergo imprisonment of not less than two years;

(ii) pay a fine of not less than \$2,500 nor more than \$15,000; and

(iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(c) Incapacity; highest blood alcohol; controlled substances.--An individual who violates section 3802(a)(1) and refused testing of blood or breath or an individual who violates section 3802(c) or (d) shall be sentenced as follows:

* * *

(3) For a third [or subsequent] offense, to:

(i) undergo imprisonment of not less than one year;

(ii) pay a fine of not less than \$2,500; and

(iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(4) For a fourth or subsequent offense, to:

(i) undergo imprisonment of not less than two years;

(ii) pay a fine of not less than \$5,000; and

(iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

* * *

Section 7. The following provisions shall apply to all offenses committed on or after the effective date of this act:

(1) The amendment of the heading of 42 Pa.C.S. Ch. 68.

(2) The amendment of 42 Pa.C.S. § 6801 heading and subsections (b), (d), (e) and (k).

(3) The addition of 42 Pa.C.S. § 6801.1.

1 (4) The amendment of 42 Pa.C.S. § 6802(a)(5), (f)
2 introductory paragraph and (1), (j) introductory paragraph
3 and (k).

4 (5) The amendment or addition of 75 Pa.C.S. § 3803(a)
5 introductory paragraph and (c).

6 (6) The amendment or addition of 75 Pa.C.S. § 3804(b)(4)
7 and (5) and (c)(3) and (4).

8 Section 8. This act shall take effect in 60 days.