

LEGISLATIVE REFERENCE BUREAU

L.R.B. Form No. 4 (Rev. 3/25/10)

No. _____

AN ACT

LEGISLATIVE REFERENCE BUREAU

Amending Titles 42 (Judiciary and Judicial Procedure) and 75 (Vehicles) of the Pennsylvania Consolidated Statutes, in forfeitures, further providing for controlled substance forfeiture; providing for vehicle forfeiture when driving under the influence; further providing for procedure with respect to seized property subject to liens and rights of lienholders; and, in driving after imbibing alcohol or utilizing drugs, further providing for grading and for penalties; and making editorial changes.

INTRODUCED _____ 20 _____

By _____ District NO. _____

By _____ District NO. _____

By _____ District NO. _____

By _____ District NO. _____

See next page for additional co-sponsors.

Referred to Committee on	
Date _____	20 _____
Reported _____	20 _____
As Committed-Amended	
Recommendation	

By Hon. _____	

AN ACT

1 Amending Titles 42 (Judiciary and Judicial Procedure) and 75
2 (Vehicles) of the Pennsylvania Consolidated Statutes, in
3 forfeitures, further providing for controlled substance
4 forfeiture; providing for vehicle forfeiture when driving
5 under the influence; further providing for procedure with
6 respect to seized property subject to liens and rights of
7 lienholders; and, in driving after imbibing alcohol or
8 utilizing drugs, further providing for grading and for
9 penalties; and making editorial changes.

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

12 Section 1. Section 6801(b), (d), (e) and (k) of Title 42 of
13 the Pennsylvania Consolidated Statutes are amended to read:

14 § 6801. Controlled substances forfeiture.

15 * * *

16 (b) Process and seizure.--Property subject to forfeiture
17 under this [chapter] section may be seized by the law
18 enforcement authority upon process issued by any court of common
19 pleas having jurisdiction over the property. Seizure without
20 process may be made if:

21 (1) the seizure is incident to an arrest or a search

1 under a search warrant or inspection under an administrative
2 inspection warrant;

3 (2) the property subject to seizure has been the subject
4 of a prior judgment in favor of the Commonwealth in a
5 criminal injunction or forfeiture proceeding under this
6 [chapter] section;

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

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

12 * * *

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

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

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

25 (e) Use of property held in custody.--Whenever property is
26 forfeited under this [chapter] section, the property shall be
27 transferred to the custody of the district attorney, if the law
28 enforcement authority seizing the property has local or county
29 jurisdiction, or the Attorney General, if the law enforcement
30 authority seizing the property has Statewide jurisdiction. The

1 district attorney or the Attorney General, where appropriate,
2 may:

3 (1) Retain the property for official use.

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

12 * * *

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

17 Section 2. Title 42 is amended by adding a section to read:
18 § 6801.2. Vehicle forfeiture.

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

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

27 (1) No vehicle used by any person as a common carrier in
28 the transaction of business as a common carrier shall be
29 forfeited under this section unless it appears that the owner
30 or other person in charge of the conveyance was a consenting

1 party or privy to a violation of 75 Pa.C.S. (relating to
2 vehicles).

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

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

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

12 (ii) By any licensed or regulated finance company,
13 bank or lending institution or by any other business
14 regularly engaged in the financing of or lending on the
15 security of the vehicle.

16 (c) Process and seizure.--

17 (1) Property subject to forfeiture under this section
18 may be seized by the law enforcement authority upon process
19 issued by any court of common pleas having jurisdiction over
20 the property.

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

23 (i) The seizure is incident to an arrest or a search
24 under a search warrant or inspection under an
25 administrative inspection warrant.

26 (ii) The property subject to seizure has been the
27 subject of a prior judgment in favor of the Commonwealth
28 in a criminal injunction or forfeiture proceeding under
29 this section.

30 (iii) There is probable cause to believe that the

1 property has been used or is intended to be used in
2 violation of 75 Pa.C.S. § 3802 (relating to driving under
3 influence of alcohol or controlled substance).

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

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

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

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

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

27 (1) Retain the property for official use.

28 (2) Sell any forfeited property. The proceeds from any
29 sale shall be used to pay all proper expenses of the
30 proceedings for forfeiture and sale, including expenses of

1 seizure, maintenance of custody, advertising and court costs.

2 The balance of the proceeds shall be dealt with in accordance
3 with subsections (f) and (g).

4 (f) Use of cash or proceeds of property.--Cash or proceeds
5 of forfeited property transferred to the custody of the district
6 attorney under subsection (e) shall be placed in the operating
7 fund of the county in which the district attorney is elected.

8 The appropriate county authority shall immediately release from
9 the operating fund, without restriction, a like amount for the
10 use of the district attorney enforcing the driving under the
11 influence provisions of 75 Pa.C.S. The entity having budgetary
12 control shall not anticipate future forfeitures or proceeds from
13 future forfeitures in adopting and approving the budget for the
14 district attorney.

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

21 (h) Authorization to utilize property or proceeds.--The
22 district attorney and the Attorney General shall utilize
23 forfeited property or proceeds from forfeited property for the
24 purpose of enforcing the provisions of 75 Pa.C.S. In appropriate
25 cases, the district attorney and the Attorney General may
26 designate proceeds from forfeited property to be utilized by
27 community-based drug and alcohol programs and crime-fighting
28 programs and for relocation and protection of witnesses in
29 criminal cases.

30 (i) Annual audit.--It shall be the responsibility of every

1 county in this Commonwealth to provide, through the controller,
2 board of auditors or other appropriate auditor and the district
3 attorney, an annual audit of all forfeited property and proceeds
4 obtained under this section. The audit shall not be made public
5 but shall be submitted to the Office of Attorney General. The
6 county shall report all forfeited property and proceeds obtained
7 under this section and the disposition of the property and
8 proceeds to the Attorney General by September 30 of each year.

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

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

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

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

27 Section 3. Section 6802(a)(5), (f) introductory paragraph,
28 (j) introductory paragraph and (k) of Title 42 are amended to
29 read:

30 § 6802. Procedure with respect to seized property subject to

1 liens and rights of lienholders.

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

10 * * *

11 (5) An allegation that the property is subject to
12 forfeiture [pursuant to section 6801(a) (relating to
13 controlled substances forfeiture) or 6801.1(a) (relating to
14 terrorism forfeiture)] under this chapter and an averment of
15 material facts upon which the forfeiture action is based.

16 * * *

17 (f) Preservation of the property subject for forfeiture.--
18 Upon application of the Commonwealth, the court may enter a
19 restraining order or injunction, require the execution of a
20 satisfactory performance bond or take any other action to
21 preserve the availability of property [described in section
22 6801(a) or 6801.1(a)] under this chapter for forfeiture under
23 this section either:

24 * * *

25 (j) Owner's burden of proof.--At the time of the hearing, if
26 the Commonwealth produces evidence that the property in question
27 was unlawfully used, possessed or otherwise subject to
28 forfeiture under [section 6801(a) or 6801.1(a)] this chapter,
29 the burden shall be upon the claimant to show:

30 * * *

1 (k) Court-ordered release of property.--If a person claiming
2 the ownership of or right of possession to or claiming to be the
3 holder of a chattel mortgage or contract of conditional sale
4 upon the property, the disposition of which is provided for in
5 this section, prior to the sale presents a petition to the court
6 alleging over the property lawful ownership, right of
7 possession, a lien or reservation of title and if, upon public
8 hearing, due notice of which having been given to the Attorney
9 General or the district attorney, the claimant shall prove by
10 competent evidence to the satisfaction of the court that the
11 property was lawfully acquired, possessed and used by him or, it
12 appearing that the property was unlawfully used by a person
13 other than the claimant, that the unlawful use was without the
14 claimant's knowledge or consent, then the court may order the
15 property returned or delivered to the claimant. Such absence of
16 knowledge or consent must be reasonable under the circumstances
17 presented. Otherwise, it shall be retained for official use or
18 sold in accordance with [section 6801(e) or 6801.1(f)] this
19 chapter.

20 Section 4. Section 3803(a) introductory paragraph of Title
21 75 is amended and the section is amended by adding a subsection
22 to read:

23 § 3803. Grading.

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

26 * * *

27 (c) Habitual offender.--

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

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

5 Section 5. Section 3804(b)(4) and (c)(3) of Title 75 are
6 amended and the subsections are amended by adding paragraphs to
7 read:

8 § 3804. Penalties.

9 * * *

10 (b) High rate of blood alcohol; minors; commercial vehicles
11 and school buses and school vehicles; accidents.--Except as set
12 forth in subsection (c), an individual who violates section
13 3802(a)(1) where there was an accident resulting in bodily
14 injury, serious bodily injury or death of any person or damage
15 to a vehicle or other property or who violates section 3802(b),
16 (e) or (f) shall be sentenced as follows:

17 * * *

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

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

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

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

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

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

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

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

30 (c) Incapacity; highest blood alcohol; controlled

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

4 * * *

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

- 6 (i) undergo imprisonment of not less than one year;
7 (ii) pay a fine of not less than \$2,500; and
8 (iii) comply with all drug and alcohol treatment
9 requirements imposed under sections 3814 and 3815.

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

- 11 (i) undergo imprisonment of not less than two years;
12 (ii) pay a fine of not less than \$5,000; and
13 (iii) comply with all drug and alcohol treatment
14 requirements imposed under sections 3814 and 3815.

15 * * *

16 Section 6. The following provisions shall apply to all
17 offenses committed on or after the effective date of this
18 section:

19 (1) The amendment of 42 Pa.C.S. § 6801(b), (d), (e) and
20 (k).

21 (2) The addition of 42 Pa.C.S. § 6801.2.

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

24 (4) The amendment or addition of 75 Pa.C.S. § 3803(a)
25 and (c).

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

28 Section 7. This act shall take effect in 60 days.