

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL****No. 1372** Session of  
1998

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INTRODUCED BY HOLL, AFFLERBACH, TOMLINSON, WHITE, STOUT,  
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GERLACH, STAPLETON, THOMPSON AND KASUNIC, MARCH 16, 1998

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SENATOR TILGHMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,  
JUNE 1, 1998

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## AN ACT

1 Relating to the unlawful disposition of motor vehicles; and  
2 providing penalties.

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

5 Section 1. Short title.

6 This act shall be known and may be cited as the Motor Vehicle  
7 Chop Shop and Illegally Obtained and Altered Property Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall  
10 have the meanings given to them in this section unless the  
11 context clearly indicates otherwise:

12 "Chop shop." Any building, lot or other premises where one  
13 or more persons engage in altering, destroying, disassembling,  
14 dismantling, reassembling, storing or possessing any motor  
15 vehicle or motor vehicle part known by such persons or persons  
16 to be illegally obtained, in order to either:

17 (1) alter, counterfeit, deface, destroy, disguise,

1 falsify, forge, obliterate or remove the identification,  
2 including the vehicle identification number of the motor  
3 vehicle or motor vehicle part in order to misrepresent the  
4 identity of the motor vehicle or motor vehicle part or to  
5 prevent the identification of the motor vehicle or motor  
6 vehicle part; or

7 (2) sell or dispose of the motor vehicle or motor  
8 vehicle part.

9 "Motor vehicle." A vehicle which is self-propelled except  
10 one which is propelled solely by human power or by electric  
11 power obtained from overhead trolley wires but not operated upon  
12 rails.

13 "Person." A natural person, firm, copartnership, association  
14 or corporation.

15 "Vehicle identification number." A combination of numerals  
16 or letters, or both, which the manufacturer assigns to a vehicle  
17 for identification purposes or, in the absence of a manufacturer  
18 assigned number, which the Department of Transportation assigns  
19 to a vehicle for identification purposes.

20 Section 3. Owning, operating or conducting a chop shop;  
21 penalty.

22 Any person who knowingly:

23 (1) owns, operates or conducts a chop shop; or

24 (2) transports, sells, transfers, purchases or receives  
25 any motor vehicle or motor vehicle part that was illegally  
26 obtained either to or from a chop shop commits a felony of  
27 the second degree and, upon conviction, shall be sentenced to  
28 imprisonment for not more than ten years or a fine of not  
29 more than \$100,000, or both.

30 Section 4. Altered or illegally obtained property; penalty.

1 (a) Alteration or destruction of vehicle identification  
2 number.--Any person who alters, counterfeits, defaces, destroys,  
3 disguises, falsifies, forges, obliterates or removes a vehicle  
4 identification number with the intent to conceal or misrepresent  
5 the identity or prevent the identification of a motor vehicle or  
6 motor vehicle part commits a felony of the third degree and,  
7 upon conviction, shall be sentenced to imprisonment for not more  
8 than seven years or a fine of not more than \$50,000, or both.

9 (b) Disposition of vehicle.--Any person who purchases,  
10 receives, disposes, sells, transfers or possesses a motor  
11 vehicle or motor vehicle part with knowledge that the vehicle  
12 identification number of the motor vehicle or motor vehicle part  
13 has been altered, counterfeited, defaced, destroyed, disguised,  
14 falsified, forged, obliterates or removed with the intent to  
15 conceal or misrepresent the identity or prevent the  
16 identification of a motor vehicle or motor vehicle part commits  
17 a felony of the third degree and, upon conviction, shall be  
18 sentenced to imprisonment for not more than seven years or a  
19 fine of not more than \$50,000, or both.

20 Section 5. Exceptions.

21 (a) Scrap processor.--The provisions of section 3 shall not  
22 apply to a motor vehicle scrap processor who, in the normal  
23 legal course of business and in good faith, processes a motor  
24 vehicle or motor vehicle part by crushing, compacting or other  
25 similar methods, provided that any vehicle identification number  
26 is not removed from the motor vehicle or motor vehicle part  
27 prior to or during any such processing.

28 (b) Repair of vehicle.--The provisions of section 3 do not  
29 prohibit the removal of a ~~metal~~ vehicle identification number  
30 plate from a vehicle part that is damaged when such removal is

<—

1 necessary for proper repair or matching identification of a  
2 replacement vehicle part, but such removal is only allowed if  
3 the proper matching ~~metal~~ vehicle identification number plate is <—  
4 immediately and properly secured to the repaired or replacement  
5 part.

6 Section 6. Presumptions.

7 (a) Vehicles.--Any person or persons who transport, sell,  
8 transfer, purchase, possess or receive any motor vehicle or  
9 motor vehicle part upon which the vehicle identification number  
10 has been altered, counterfeited, defaced, destroyed, disguised,  
11 falsified, forged, obliterated or removed or who fails to keep,  
12 possess or produce the records required to be kept, possessed or  
13 produced for the motor vehicle or motor vehicle part pursuant to  
14 75 Pa. C.S. § 6308 (relating to investigation by police  
15 officers) shall be prima facie evidence under section 3 of that  
16 person's or persons' knowledge that the motor vehicle or motor  
17 vehicle part was illegally obtained.

18 ~~(b) Vehicle identification numbers. Possessing any motor <—~~  
19 ~~vehicle or motor vehicle part upon which the vehicle~~  
20 ~~identification number has been altered, counterfeited, defaced,~~  
21 ~~destroyed, disguised, falsified, forged, obliterated or removed~~  
22 ~~shall be prima facie evidence of the intent of the possessor to~~  
23 ~~conceal or misrepresent the identity or prevent the~~  
24 ~~identification of a motor vehicle or motor vehicle part and that~~  
25 ~~the possessor had knowledge of the condition.~~

26 ~~(c)~~ (B) Police report.--A police report which indicates that <—  
27 a motor vehicle or motor vehicle part was reported to police to  
28 be in a stolen status at the time it was possessed shall be  
29 prima facie evidence that the motor vehicle or motor vehicle  
30 part was possessed without permission of the owner.

1 Section 7. Loss of property rights to Commonwealth.

2 (a) Forfeitures generally.--The following shall be subject  
3 to forfeiture to the Commonwealth and no property right shall  
4 exist in them:

5 (1) Any tool, implement or instrumentality, including,  
6 but not limited to, a motor vehicle or motor vehicle part,  
7 used or possessed in connection with any violation of this  
8 act.

9 (2) All materials, products and equipment of any kind  
10 which are used, or intended for use, in violation of this  
11 act.

12 (3) All books, records, microfilm, tapes and data which  
13 are used or intended for use in violation of this act.

14 (4) All money, negotiable instruments, securities or  
15 other things of value used or intended to be used to  
16 facilitate any violation of this act and all proceeds  
17 traceable to any transactions in violation of this act.

18 (5) All real property used, or intended to be used, to  
19 facilitate any violation of this act, including structures or  
20 other improvements thereon, and including any right, title  
21 and interest in the whole or any lot or tract of land and any  
22 appurtenances or improvements, which are used, or intended to  
23 be used, in any manner or part, to commit or to facilitate  
24 the commission of a violation of this act.

25 (b) Exceptions.--

26 (1) No property shall be forfeited under this section,  
27 to the extent of the interest of an owner, by reason of any  
28 act or omission established by the owner to have been  
29 committed or omitted without the knowledge or consent of that  
30 owner.

1           (2) No valid lien or encumbrance on real property shall  
2       be subject to forfeiture or impairment under this paragraph.  
3       A lien which is fraudulent or intended to avoid forfeiture  
4       under this section shall be invalid.

5       (c) Process and seizure.--Property subject to forfeiture  
6       under this act may be seized by the law enforcement authority  
7       upon process issued by a court of common pleas having  
8       jurisdiction over the property. Seizure without process may be  
9       made if:

10           (1) the seizure is incident to an arrest or a search  
11       warrant or inspection pursuant to 75 Pa.C.S. § 6308 (relating  
12       to investigation of police officers) or any other  
13       administrative inspection;

14           (2) the property subject to seizure has been the subject  
15       of a proper judgment in favor of the Commonwealth in a  
16       criminal injunction or forfeiture proceeding under this act;

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

19           (4) there is probable cause to believe that the property  
20       has been used, or is intended to be used, in violation of  
21       this act.

22       (d) Seizure without process.--In the event seizure without  
23       process occurs, as provided in this act, proceeding for the  
24       issuance thereof shall be instituted forthwith.

25       (e) Custody of property.--Property taken or detained under  
26       this section shall not be subject to replevin but is deemed to  
27       be in the custody of the law enforcement authority subject only  
28       to the orders and decrees of the court of common pleas having  
29       jurisdiction over the forfeiture proceedings and of the district  
30       attorney or the Office of Attorney General. When property is

1 seized under this act, the law enforcement authority shall place  
2 the property under seal and either:

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

4 (2) require that the district attorney or the Office of  
5 Attorney General take custody of the property and remove it  
6 to an appropriate location for disposition in accordance with  
7 law.

8 (f) Use of property held in custody.--Whenever property is  
9 forfeited under this act, the property shall be transferred to  
10 the custody of the district attorney if the law enforcement  
11 authority seizing the property has local or county jurisdiction,  
12 or the Office of Attorney General if the law enforcement  
13 authority seizing the property has Statewide jurisdiction. The  
14 district attorney or the Office of Attorney General, where  
15 appropriate, may:

16 (1) Retain the property for official use.

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

25 (g) Use of cash, property or proceeds of property.--Cash or  
26 proceeds of forfeited property transferred to the custody of the  
27 district attorney pursuant to subsection (f) shall be placed in  
28 the operating fund of the county in which the district attorney  
29 is elected. The appropriate county authority shall immediately  
30 release from the operating fund, without restriction, a like

1 amount for the use of the district attorney in enforcing the  
2 criminal laws of this Commonwealth. The entity having budgetary  
3 control shall not anticipate future forfeitures or proceeds  
4 therefrom in adoption and approval of the budget for the  
5 district attorney.

6 (h) Distribution of property among law enforcement  
7 authorities.--If both State and municipal law enforcement  
8 authorities were substantially involved in effecting the  
9 seizure, the court having jurisdiction over the forfeiture  
10 proceedings shall equitably distribute the property between the  
11 district attorney and the Office of Attorney General.

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

22 (j) Annual report; confidential information regarding  
23 property.--The Office of Attorney General shall annually submit  
24 a report to the Appropriations and Judiciary Committees of the  
25 Senate and to the Appropriations and Judiciary Committees of the  
26 House of Representatives, specifying the forfeited property or  
27 proceeds thereof obtained under this section. The report shall  
28 give an accounting of all proceeds derived from the sale of  
29 forfeited property and the use made of unsold forfeited  
30 property. The Office of Attorney General shall adopt procedures



1 and guidelines governing the release of information by the  
2 district attorney to protect the confidentiality of forfeited  
3 property or proceeds used in ongoing enforcement activities.

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

8 Section 8. Procedure with respect to seized property subject to  
9 liens and rights of lienholders.

10 (a) General procedure.--The proceedings for the forfeiture  
11 or condemnation of property, the sale of which is provided for  
12 under this act, shall be in rem, in which the Commonwealth shall  
13 be the plaintiff and the property the defendant. The  
14 Pennsylvania Rules of Civil Procedure shall apply to all  
15 forfeiture proceedings brought under this act. A petition shall  
16 be filed in the court of common pleas of the judicial district  
17 where the property is located, verified by oath or affirmation  
18 of an officer or citizen, containing the following:

19 (1) A description of the property seized.

20 (2) A statement of the time and place where seized.

21 (3) The owner, if known.

22 (4) The person or persons in possession, if known.

23 (5) An allegation that the property is subject to  
24 forfeiture pursuant to section 7 and an averment of material  
25 facts upon which the forfeiture action is based.

26 (6) A prayer for an order of forfeiture that the  
27 property be adjudged forfeited to the Commonwealth and  
28 condemned and be ordered sold according to law unless cause  
29 be shown to the contrary.

30 (b) Notice to property owners.--A copy of the petition

1 required under subsection (a) shall be served personally or by  
2 certified mail on the owner or upon the person or persons in  
3 possession at the time of the seizure. The copy shall have  
4 endorsed a notice, as follows:

5           To the claimant of within described property: You are  
6           required to file an answer to this petition, setting  
7           forth your title in and right to possession of, said  
8           property within 30 days from the service hereof, and  
9           you are also notified that if you fail to file said  
10          answer, a decree of forfeiture and condemnation will  
11          be entered against said property.

12 The notice shall be signed by the Attorney General, Deputy  
13 Attorney General, district attorney, deputy district attorney or  
14 assistant district attorney.

15       (c) Substitute notice.--If the owner of the property is  
16 unknown or there was no person in possession of the property  
17 when seized or if the owner or such person or persons in  
18 possession at the time of the seizure cannot be personally  
19 served or located within the jurisdiction of the court, notice  
20 of the petition shall be given by the Commonwealth through an  
21 advertisement in only one newspaper of general circulation  
22 published in the county where the property was seized once a  
23 week for two successive weeks. No other advertisement of any  
24 sort shall be necessary, any other law to the contrary  
25 notwithstanding. The notice shall contain a statement of the  
26 seizure of the property with a description of the property and  
27 the place and date of seizure and shall direct any claimants to  
28 the property to file a claim on or before a date given in the  
29 notice, which date shall not be less than 30 days from the date  
30 of the first publication. If no claims are filed within 30 days

1 of publication, the property shall summarily forfeit to the  
2 Commonwealth.

3 (d) Property owners not in jurisdiction.--For purposes of  
4 this section, the owner or other such person cannot be found in  
5 the jurisdiction of the court if:

6 (1) A copy of the petition is mailed to the last known  
7 address by certified mail and is returned without a delivery.

8 (2) A personal service is attempted once, but cannot be  
9 made at the last known address.

10 (3) A copy of the petition is left at the last known  
11 address.

12 (e) Notice automatically waived.--The notice provisions of  
13 this section are automatically waived when the owner, without  
14 good cause, fails to appear in court in response to a subpoena  
15 on the underlying criminal charges. Forty-five days after such a  
16 failure to appear, if good cause has not been demonstrated, the  
17 property shall summarily forfeit to the Commonwealth.

18 (f) Preservation of the property subject for forfeiture.--  
19 Upon application of the Commonwealth, the court may enter a  
20 restraining order or injunction, require the execution of a  
21 satisfactory performance bond or take any other action to  
22 preserve the availability of property described in section 7 for  
23 forfeiture under this section either:

24 (1) upon the filing of an information or in indictment  
25 charging a violation of this act for which criminal  
26 forfeiture may be ordered under this act and alleging that  
27 the property with respect to which the order is sought would  
28 be subject to forfeiture; or

29 (2) prior to the filing of such an indictment or  
30 information, if, after notice to persons appearing to have an

1 interest in the property and an opportunity for a hearing,  
2 the court determines that:

3 (i) There is a substantial probability that the  
4 Commonwealth will prevail on the issue of forfeiture and  
5 that failure to enter the order will result in the  
6 property being destroyed, removed from the jurisdiction  
7 of the court or otherwise made unavailable for  
8 forfeiture.

9 (ii) The need to preserve the availability of the  
10 property through the entry of the requested order  
11 outweighs the hardship on any party against whom the  
12 order is to be entered.

13 However, an order entered pursuant to this subsection shall be  
14 effective for not more than 90 days unless extended by the court  
15 for good cause shown or unless an indictment or information  
16 described in paragraph (1) has been filed.

17 (g) Temporary restraining order.--A temporary restraining  
18 order under subsection (f) may be entered upon application of  
19 the Commonwealth without notice or opportunity for a hearing  
20 when an information or indictment has not yet been filed with  
21 respect to the property if the Commonwealth demonstrates that  
22 there is probable cause to believe that the property with  
23 respect to which the order is sought would be subject to  
24 forfeiture under this act and that provision of notice will  
25 jeopardize the availability of the property for forfeiture. Such  
26 a temporary order shall expire not more than ten days after the  
27 date on which it is entered unless extended for good cause shown  
28 or unless the party against whom it is entered consents to an  
29 extension for a longer period. A hearing requested concerning an  
30 order entered under this subsection shall be held at the

1 earliest possible time and prior to the expiration of the  
2 temporary order.

3 (h) Hearing regarding property; rules of evidence.--The  
4 court may receive and consider at a hearing held pursuant to  
5 subsections (f) or (g) evidence and information that would be  
6 inadmissible under the rules of evidence.

7 (i) Hearing time set.--Upon the filing of a claim for the  
8 property setting forth a right of possession, the case shall be  
9 deemed at issue and a time shall be fixed for the hearing.

10 (j) Owner's burden of proof.--At the time of the hearing if  
11 the Commonwealth produces evidence that the property in question  
12 was unlawfully used, possessed or otherwise subject to  
13 forfeiture under section 6, the burden shall be upon the  
14 claimant to show:

15 (1) That the claimant is the owner of the property or  
16 the holder of a chattel mortgage or contract of conditional  
17 sale thereon.

18 (2) That the claimant lawfully acquired the property.

19 (3) That it was not unlawfully used or possessed by the  
20 claimant. In the event that it shall appear that the property  
21 was unlawfully used or possessed by a person other than the  
22 claimant, then the claimant shall show that the unlawful use  
23 or possession was without his knowledge or consent. Such  
24 absence of knowledge or consent must be reasonable under the  
25 circumstances presented.

26 (k) Court-ordered release of property.--If a person claiming  
27 the ownership of or right of possession to or claiming to be the  
28 holder of a chattel mortgage or contract of conditional sale  
29 upon the property, the disposition of which is provided for in  
30 this section, prior to the sale presents a petition to the court

1 alleging over the property lawful ownership, right of  
2 possession, a lien or reservation of title and if, upon public  
3 hearing, due notice of which having been given to the Office of  
4 Attorney General or the district attorney, the claimant shall  
5 prove by competent evidence to the satisfaction of the court  
6 that the property was lawfully acquired, possessed and used by  
7 him or, it appearing that the property was unlawfully used by a  
8 person other than the claimant, that the unlawful use was  
9 without the claimant's knowledge or consent, then the court may  
10 order the property returned or delivered to the claimant. Such  
11 absence of knowledge or consent must be reasonable under the  
12 circumstances presented. Otherwise, it shall be retained for  
13 official use or sold in accordance with section 7(f).

14 Section 9. Effective date.

15 This act shall take effect in 60 days.