

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 120 Session of 2011

INTRODUCED BY WILLIAMS, TARTAGLIONE AND KITCHEN,
JANUARY 12, 2011

REFERRED TO JUDICIARY, JANUARY 12, 2011

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for firearms not to
3 be carried without a license.

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

6 Section 1. Section 6106 of Title 18 of the Pennsylvania
7 Consolidated Statutes is amended by adding a subsection to read:
8 § 6106. Firearms not to be carried without a license.

9 * * *

10 (d.1) Vehicles used in transportation.--Any vehicle or
11 vessel used to transport a person unlawfully carrying a firearm
12 under subsection (a) may be deemed contraband and forfeited in
13 accordance with the following:

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

18 (2) Property taken or detained under this section shall

1 not be subject to replevin but is deemed to be in the custody
2 of the law enforcement authority subject only to the orders
3 and decrees of the court of common pleas having jurisdiction
4 over the forfeiture proceedings and of the district attorney.
5 When property is seized under this section, the law
6 enforcement authority shall place the property under seal and
7 either:

8 (i) remove the property to a place designated by it;

9 or

10 (ii) require that the district attorney take custody
11 of the property and remove it to an appropriate location
12 for disposition in accordance with law.

13 (3) Whenever property is forfeited under this section,
14 the property shall be transferred to the custody of the
15 municipal corporation. The municipal corporation shall sell
16 any forfeited property, but the proceeds from any such sale
17 shall be used to pay all proper expenses of the proceedings
18 for forfeiture and sale, including expenses of seizure,
19 maintenance of custody, advertising and court costs. The
20 balance of the proceeds shall be used for the enforcement of
21 this act.

22 (4) The proceedings for the forfeiture or condemnation
23 of property, the sale of which is provided for under this
24 section, shall be in rem, in which the Commonwealth shall be
25 the plaintiff and the property the defendant. A petition
26 shall be filed in the court of common pleas of the judicial
27 district where the property is located, verified by oath or
28 affirmation of an officer or citizen, containing the
29 following:

30 (i) A description of the property seized.

1 (ii) A statement of the time and place where seized.

2 (iii) The owner, if known.

3 (iv) The person or persons in possession, if known.

4 (v) An allegation that the property is subject to
5 forfeiture pursuant to this subsection and an averment of
6 material facts upon which the forfeiture action is based.

7 (vi) A prayer for an order of forfeiture that the
8 property be adjudged forfeited to the Commonwealth and
9 condemned and be ordered sold according to law, unless
10 cause be shown to the contrary.

11 (5) A copy of the petition required under paragraph (4)
12 shall be served personally or by certified mail on the owner
13 or upon the person or persons in possession at the time of
14 the seizure. The copy shall have endorsed a notice, as
15 follows:

16 To the claimant of within described property: You are
17 required to file an answer to this petition, setting
18 forth your title in, and right to possession of, the
19 property within 30 days from the service hereof, and you
20 are also notified that, if you fail to file the answer, a
21 decree of forfeiture and condemnation will be entered
22 against the property.

23 The notice shall be signed by the district attorney, deputy
24 district attorney or assistant district attorney.

25 (6) If the owner of the property is unknown or there was
26 no person in possession of the property when seized or if the
27 owner or such person or persons in possession at the time of
28 the seizure cannot be personally served or located within the
29 jurisdiction of the court, notice of the petition shall be
30 given by the Commonwealth through an advertisement in only

one newspaper of general circulation published in the county
where the property shall have been seized, once a week for
two successive weeks. No other advertisement of any sort
shall be necessary, any other law to the contrary
notwithstanding. The notice shall contain a statement of the
seizure of the property with a description of the property
and the place and date of seizure and shall direct any
claimants to the property to file a claim on or before a date
given in the notice, which date shall not be less than 30
days from the date of the first publication. If no claims are
filed within 30 days of publication, the property shall
summarily forfeit to the Commonwealth.

(7) For purposes of this section, the owner or other
such person cannot be found in the jurisdiction of the court
if:

(i) a copy of the petition is mailed to the last
known address by certified mail and is returned without
delivery;

(ii) personal service is attempted once but cannot
be made at the last known address; and

(iii) a copy of the petition is left at the last
known address.

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

(9) Upon the filing of a claim for the property setting
forth a right of possession, the case shall be deemed at

1 issue, and a time shall be fixed for the hearing.

2 (10) At the time of the hearing, if the Commonwealth
3 produces evidence that the property in question was
4 unlawfully used, possessed or otherwise subject to forfeiture
5 under this section, the burden shall be upon the claimant to
6 show:

7 (i) That the claimant is the owner of the property
8 or the holder of a secured interest or contract of
9 conditional sale thereon.

10 (ii) That the claimant lawfully acquired the
11 property.

12 (iii) That it was not unlawfully used or possessed
13 by him. In the event that it shall appear that the
14 property was unlawfully used or possessed by a person
15 other than the claimant, then the claimant shall show
16 that the unlawful use or possession was without his
17 knowledge or consent. Such absence of knowledge or
18 consent must be reasonable under the circumstances
19 presented.

20 (11) If a person claiming the ownership of or right of
21 possession to or claiming to be the holder of a secured
22 interest or contract of conditional sale upon the property,
23 the disposition of which is provided for under this section,
24 prior to the sale presents a petition to the court alleging
25 over the property lawful ownership, right of possession, a
26 lien or reservation of title and if, upon public hearing, due
27 notice of which having been given to the district attorney,
28 the claimant shall prove by competent evidence to the
29 satisfaction of the court that the property was lawfully
30 acquired, possessed and used by him or, it appearing that the

1 property was unlawfully used by a person other than the
2 claimant, that the unlawful use was without the claimant's
3 knowledge or consent, then the court may order the property
4 returned or delivered to the claimant. Such absence of
5 knowledge or consent must be reasonable under the
6 circumstances presented. Otherwise, it shall be retained for
7 official use or sold in accordance with paragraph (4).

8 * * *

9 Section 2. This act shall take effect in 60 days.