

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 451 Session of 2011

INTRODUCED BY ERICKSON, RAFFERTY, FONTANA, PIPPY, PICCOLA AND
FARNESE, FEBRUARY 16, 2011

REFERRED TO TRANSPORTATION, FEBRUARY 16, 2011

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

12 § 6801. Controlled substance forfeiture.

13 * * *

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

19 (1) the seizure is incident to an arrest or a search
20 under a search warrant or inspection under an administrative

inspection warrant;

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

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

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

* * *

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

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

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

(e) Use of property held in custody.--Whenever property is 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,

1 may:

2 (1) Retain the property for official use.

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

11 * * *

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

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

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

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

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

1 vehicles).

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

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

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

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

15 (c) Process and seizure.--

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

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

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

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

29 (iii) There is probable cause to believe that the
30 property has been used or is intended to be used in

1 violation of 75 Pa.C.S. § 3802 (relating to driving under
2 influence of alcohol or controlled substance).

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

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

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

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

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

26 (1) Retain the property for official use.

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

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

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

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

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

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

29 (i) Annual audit.--It shall be the responsibility of every
30 county in this Commonwealth to provide, through the controller,

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

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

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

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

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

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

29 § 6802. Procedure with respect to seized property subject to
30 liens and rights of lienholders.

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

9 * * *

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

15 * * *

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

23 * * *

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

29 * * *

30 (k) Court-ordered release of property.--If a person claiming

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

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

22 § 3803. Grading.

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

25 * * *

26 (c) Habitual offender.--

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

30 (2) An individual who violates section 3802(a)(1), where

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

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

§ 3804. Penalties.

* * *

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

* * *

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

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

(ii) pay a fine of not less than \$1,500 nor more
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

1 refused testing of blood or breath or an individual who violates
2 section 3802(c) or (d) shall be sentenced as follows:

3 * * *

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

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

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

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

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

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

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

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

14 * * *

15 Section 6. This act shall apply to any offense committed on
16 or after the effective date of this section.

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