

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 214 Session of 2013

INTRODUCED BY GROVE, MOUL, FARINA, D. COSTA, HICKERNELL,  
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JANUARY 22, 2013

REFERRED TO COMMITTEE ON TRANSPORTATION, JANUARY 22, 2013

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

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 2. Title 42 is amended by adding a section to read:  
§ 6801.2. 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 or operating or was in actual  
physical control of at the time of the commission of an offense  
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) No vehicle used by any person as a common carrier in  
the transaction of business as a common carrier shall be  
forfeited under this section unless it appears that the owner  
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

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

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

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

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

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

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

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