

No. 1988-79

AN ACT

HB 1308

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for the cost of certain journals published for district justices; codifying provisions relating to the Judicial Computer System Augmentation Account; providing for deposits into the account; providing a statute of limitations regarding the institution of lawsuits against professional land surveyors and landscape architects; providing for affidavit of noninvolvement for construction design professionals; further providing for corporate directors' liability and for probation; providing for forfeitures, for property subject to forfeiture and for the procedure with respect to seized property; and making certain repeals.

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

Section 1. Section 3532 of Title 42 of the Pennsylvania Consolidated Statutes is amended to read:

§ 3532. Expenses.

The Office of the Pennsylvania Supreme Court Administrator shall pay the annual registration fee **[up to \$100]** of \$150 to the Special Court Judges of Pennsylvania Association for each district justice, Philadelphia Municipal Court Judge and Philadelphia Traffic Court Judge position authorized as of January 31 of each year. Payment shall be made on the first day of a new fiscal year including July 1, **[1982] 1988**. In addition the Office of the Pennsylvania Supreme Court Administrator shall pay **[up to \$10,000]** the annual cost for the publishing of a monthly journal containing the update and revision of laws and State Supreme Court rule changes. **[Funding] Except for the funding of the publication of the monthly journal which shall be a direct cost of the Office of the Pennsylvania Supreme Court Administrator, all other funding for the other expenses set forth in this section shall come from the annual appropriation made to the district justices.**

Section 2. Chapter 37 of Title 42 is amended by adding a subchapter to read:

CHAPTER 37
FACILITIES AND SUPPLIES

* * *

SUBCHAPTER C
JUDICIAL COMPUTER SYSTEM

Sec.

- 3731. Establishment of restricted receipt account.
- 3732. Utilization of funds in account.
- 3733. Deposits into account.
- 3734. Annual appropriations.
- 3735. Review of plan and contracts.

§ 3731. Establishment of restricted receipt account.

There is hereby established within the General Fund a restricted receipt account to be known as the Judicial Computer System Augmentation Account.

§ 3732. Utilization of funds in account.

(a) General rule.—Except for the repayments under subsection (b), all moneys deposited into the Judicial Computer System Augmentation Account shall be used only for the initial startup and the ongoing operations of the Statewide judicial computer system.

(b) General Fund repayments.—Any funds appropriated by the General Assembly from the General Fund for the startup and operation of the Statewide judicial computer system shall be repaid to the General Fund from the Judicial Computer System Augmentation Account over a five-year period beginning 24 months after the initial appropriation from the General Fund.

§ 3733. Deposits into account.

(a) General rule.—Beginning July 1, 1987, and thereafter, the total of all fines, fees and costs collected by any division of the unified judicial system which are in excess of the amount collected from such sources in the fiscal year 1986-1987 shall be deposited in the Judicial Computer System Augmentation Account. Any fines, fees or costs which are allocated by law or otherwise directed to counties and municipalities, to the Crime Victim's Compensation Board, to the Commission on Crime and Delinquency for victim-witness services grants under section 477.15(c) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, to rape crisis centers, to the Emergency Medical Services Operating Fund or to domestic violence shelters shall not be affected by this subchapter.

(b) Limitation on total amount in account.—Until July 1, 1994, the total amount of funds annually deposited into the Judicial Computer System Augmentation Account shall not exceed \$20,000,000 per year. For the period July 1, 1994, and thereafter, the total amount of funds annually deposited into the Judicial Computer System Augmentation Account shall not exceed \$10,000,000 per year. All moneys in excess of these amounts shall be deposited into the appropriate funds designated by law.

§ 3734. Annual appropriations.

Beginning with the fiscal year 1987-1988, the General Assembly shall appropriate initially from the General Fund and thereafter from the Judicial Computer System Augmentation Account funds sufficient to meet the costs of the initial startup and the ongoing operations of the Statewide judicial computer system.

§ 3735. Review of plan and contracts.

A copy of the plan for expenditure of appropriated funds and a copy of each contract prior to execution shall be submitted to the respective Chairmen of the Majority and Minority Appropriations Committees in the House of Representatives and the Senate, allowing a reasonable time for their review and comment.

Section 3. Title 42 is amended by adding sections to read:

§ 5537. *Land surveying.*

All actions to recover any or all damages against any person engaged in the practice of land surveying occurring as the result of any deficiency, defect, omission, error or miscalculation shall be commenced within 21 years from the time the services are performed. Any such action not commenced within this 21-year period shall be forever barred. The cause of action in such cases shall accrue when the services are performed. Furthermore, any action shall be commenced within four years from the time that such cause of action was discovered, but no later than during this 21-year limitation period. In any event, no action shall be commenced after the 21 years from the time that the services are performed. The term "practice of land surveying" shall be the same as defined under the act of May 23, 1945 (P.L.913, No.367), known as the Professional Engineers Registration Law.

§ 5538. *Landscape architecture.*

(a) *General rule.*—All actions to recover any or all damages against any person engaged in the practice of landscape architecture occurring as the result of any deficiency, defect, omission, error or miscalculation shall be commenced within 12 years from the time the services are performed. Any such action not commenced within this 12-year period shall be forever barred. The cause of action shall accrue upon substantial completion of the project. Nothing in this section shall be construed as extending the period prescribed by the laws of this Commonwealth for the bringing of any action. The term "practice of landscape architecture" shall be the same as defined in the act of January 24, 1966 (1965 P.L.1527, No.535), known as the Landscape Architects' Registration Law.

(b) *Exception.*—The limitation prescribed by subsection (a) shall not be asserted by way of defense by any person in actual possession or control, as owner, tenant or otherwise, of such an improvement at the time any deficiency in such an improvement constitutes the proximate cause of the injury or wrongful death for which it is proposed to commence an action or proceeding.

Section 4. Title 42 is amended by adding a chapter to read:

CHAPTER 68
CONTROLLED SUBSTANCES FORFEITURES

Sec.

6801. Loss of property rights to Commonwealth.

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

§ 6801. Loss of property rights to Commonwealth.

(a) *Forfeitures generally.*—The following shall be subject to forfeiture to the Commonwealth and no property right shall exist in them:

(1) All drug paraphernalia, controlled substances or other drugs which have been manufactured, distributed, dispensed or acquired in violation of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance or other drug in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2).

(4) All conveyances, including aircraft, vehicles or vessels, which are used or are intended for use to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of, property described in paragraph (1) or (2), except that:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of The Controlled Substance, Drug, Device and Cosmetic Act;

(ii) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent, which absence of knowledge or consent must be reasonable under the circumstances presented;

(iii) no bona fide security interest retained or acquired under 13 Pa.C.S. (relating to commercial code) by any merchant dealing in new or used aircraft, vehicles or vessels, or retained or acquired by any licensed or regulated finance company, bank or lending institution, or by any other business regularly engaged in the financing of, or lending on the security of, such aircraft, vehicles or vessels, shall be subject to forfeiture or impairment; and

(iv) no conveyance shall be forfeited under this section for violation of section 13(a)(31) of The Controlled Substance, Drug, Device and Cosmetic Act.

(5) All books, records and research, including formulas, microfilm, tapes and data, which are used or intended for use in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(6) (i) All of the following:

(A) Money, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act, and all proceeds traceable to such an exchange.

(B) Money, negotiable instruments, securities or other things of value used or intended to be used to facilitate any violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(C) Real property used or intended to be used to facilitate any violation of The Controlled Substance, Drug, Device and Cosmetic Act, including structures or other improvements thereon, and including any right, title and interest in the whole or any lot or tract of land

and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of The Controlled Substance, Drug, Device and Cosmetic Act, and things growing on, affixed to and found in the land.

(ii) No property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without the knowledge or consent of that owner. Such money and negotiable instruments found in close proximity to controlled substances possessed in violation of The Controlled Substance, Drug, Device and Cosmetic Act shall be rebuttably presumed to be proceeds derived from the selling of a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

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

(7) Any firearms, including, but not limited to, rifles, shotguns, pistols, revolvers, machine guns, zip guns or any type of prohibited offensive weapon, as that term is defined in 18 Pa.C.S. (relating to crimes and offenses), which are used or intended for use to facilitate a violation of The Controlled Substance, Drug, Device and Cosmetic Act. Such operable firearms as are found in close proximity to illegally possessed controlled substances shall be rebuttably presumed to be used or intended for use to facilitate a violation of The Controlled Substance, Drug, Device and Cosmetic Act. All weapons forfeited under this section shall be immediately destroyed by the receiving law enforcement agency.

(b) Process and seizure.—Property subject to forfeiture under this chapter may be seized by the law enforcement authority upon process issued by any court of common pleas having jurisdiction over the property. Seizure without process may be made if:

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

(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.

(c) Seizure without process.—In the event seizure without process occurs, as provided herein, proceedings for the issuance thereof shall be instituted forthwith.

(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, 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, 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, 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).

(f) Use of cash or proceeds of property.—Cash or proceeds of forfeited property transferred to the custody of the district attorney pursuant to subsection (e) shall be placed in the operating fund of the county in which the district attorney is elected. The appropriate county authority shall immediately release from the operating fund, without restriction, a like amount for the use of the district attorney enforcing the provisions of The Controlled Substance, Drug, Device and Cosmetic Act. The entity having budgetary control shall not anticipate future forfeitures or proceeds therefrom in adoption and approval of the budget for the district attorney.

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

(h) Authorization to utilize property.—The district attorney and the Attorney General shall utilize forfeited property or proceeds thereof for the purpose of enforcing the provisions of The Controlled Substance, Drug, Device and Cosmetic Act.

(i) Annual audit of forfeited property.—It shall be the responsibility of every county in this Commonwealth to provide, through the controller, board of auditors or other appropriate auditor, an annual audit of all forfeited property and proceeds obtained under this section. The audit shall not be made public but shall be submitted to the Office of Attorney General. The county shall report all forfeited property and proceeds obtained under this section and the disposition thereof to the Attorney General by September 30 of each year.

(j) Annual report; confidential information regarding property.—The Attorney General shall annually submit a report, to the Appropriations and Judiciary Committees of the Senate and to the Appropriations and Judiciary Committees of the House of Representatives, specifying the forfeited property or proceeds thereof obtained under this section. The report shall give an accounting of all proceeds derived from the sale of forfeited property and the use made of unsold forfeited property. The Attorney General shall adopt procedures and guidelines governing the release of information by the district attorney to protect the confidentiality of forfeited property or proceeds used in ongoing drug enforcement activities.

(k) Proceeds and appropriations.—The proceeds or future proceeds from forfeited property under this chapter shall be in addition to any appropriation made to the Office of Attorney General.

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

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

- (1) A description of the property seized.
- (2) A statement of the time and place where seized.
- (3) The owner, if known.
- (4) The person or persons in possession, if known.
- (5) An allegation that the property is subject to forfeiture pursuant to section 6801(a) (relating to loss of property rights to Commonwealth) and an averment of material facts upon which the forfeiture action is based.
- (6) A prayer for an order of forfeiture that the property be adjudged forfeited to the Commonwealth and condemned and be ordered sold according to law, unless cause be shown to the contrary.

(b) Notice to property owners.—A copy of the petition required under subsection (a) shall be served personally or by certified mail on the owner or upon the person or persons in possession at the time of the seizure. The copy shall have endorsed a notice, as follows:

To the Claimant of within Described Property:

You are required to file an answer to this petition, setting forth your title in, and right to possession of, said property within 30 days from the service hereof, and you are also notified that, if you fail to file said answer, a decree of forfeiture and condemnation will be entered against said property.

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

(c) Substitute notice.—If the owner of the property is unknown or there was no person in possession of the property when seized or if the owner or such person or persons in possession at the time of the seizure cannot be per-

sonally served or located within the jurisdiction of the court, notice of the petition shall be 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.

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

- (1) a copy of the petition is mailed to the last known address by certified mail and is returned without delivery;
- (2) personal service is attempted once, but cannot be made at the last known address; and
- (3) a copy of the petition is left at the last known address.

(e) Notice automatically waived.—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.

(f) Preservation of the property subject for forfeiture.—Upon application of the Commonwealth, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond or take any other action to preserve the availability of property described in section 6801(a) for forfeiture under this section either:

(1) upon the filing of an information or an indictment charging a violation of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, for which criminal forfeiture may be ordered under this chapter and alleging that the property with respect to which the order is sought would be subject to forfeiture; or

(2) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and an opportunity for a hearing, the court determines that:

(i) there is a substantial probability that the Commonwealth will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court or otherwise made unavailable for forfeiture; and

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

However, an order entered pursuant to this paragraph shall be effective for not more than 90 days unless extended by the court for good cause

shown or unless an indictment or information described in paragraph (1) has been filed.

(g) **Temporary restraining order.**—A temporary restraining order under subsection (f) may be entered upon application of the Commonwealth without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the Commonwealth demonstrates that there is probable cause to believe that the property with respect to which the order is sought would be subject to forfeiture under this chapter and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this subsection shall be held at the earliest possible time and prior to the expiration of the temporary order.

(h) **Hearing regarding property; rules of evidence.**—The court may receive and consider, at a hearing held pursuant to subsection (f) or (g), evidence and information that would be inadmissible under the rules of evidence.

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

(j) **Owner's burden of proof.**—At the time of the hearing, if the Commonwealth produces evidence that the property in question was unlawfully used, possessed or otherwise subject to forfeiture under section 6801(a), the burden shall be upon the claimant to show:

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

(2) That the claimant lawfully acquired the property.

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

(k) **Court-ordered release of property.**—If a person claiming the ownership of or right of possession to or claiming to be the holder of a chattel mortgage or contract of conditional sale upon the property, the disposition of which is provided for in this section, prior to the sale presents a petition to the court alleging over the property lawful ownership, right of possession, a lien or reservation of title and if, upon public hearing, due notice of which having been given to the Attorney General or the district attorney, the claimant shall prove by competent evidence to the satisfaction of the court that the property was lawfully acquired, possessed and used by him or, it appearing that the property was unlawfully used by a person other than the claimant, that the unlawful use was without the claimant's knowledge or consent, then the court may order the property returned or delivered to the claimant. Such

absence of knowledge or consent must be reasonable under the circumstances presented. Otherwise, it shall be retained for official use or sold in accordance with section 6801(e).

Section 5. Title 42 is amended by adding a section to read:

§ 7502. *Affidavit of noninvolvement.*

(a) *Dismissal by affidavit.*—*In any action for negligence, any construction design professional who is retained to perform professional services on a construction project may have the action against such construction design professional dismissed upon the filing of an affidavit of noninvolvement.*

(b) *Tolling statute.*—*The filing of such affidavit shall have the effect of tolling the statute of limitations as to the affiant with respect to the claim at issue.*

(c) *Reinstatement.*—*If the court determines that the statements made in any affidavit filed under subsection (a) are inaccurate, the court shall immediately reinstate the action against the affiant. In any action where the affiant is found by the court to have knowingly filed a false affidavit, such conduct shall constitute just cause for the court to instruct the jury that it may award exemplary damages in relation to such conduct.*

(d) *Discovery.*—*In any action reinstated pursuant to subsection (c), or in any case where the construction design professional is later joined as a defendant, all discovery taken in such action prior to the reinstatement or joinder may be used for any purpose permissible under any statute or rule of court as if the reinstated or joined defendant had participated fully in the action from the date of filing.*

(e) *Definitions.*—*As used in this section, the following words and phrases shall have the meanings given to them in this subsection:*

“Affidavit of noninvolvement.” A statement, in writing, setting forth with particularity facts which demonstrate that the construction design professional is misidentified or otherwise was not involved with regard to the cause of the injury or damage, individually or through its servants or employees, in the performance of professional services which forms the subject matter of the action, signed by the party making it, and sworn to or affirmed before an officer authorized by the laws of this Commonwealth to take acknowledgments of deeds or to administer oaths.

“Construction design professional.”

(1) *Any person who is an architect, professional engineer, landscape architect or land surveyor licensed by the appropriate State board to practice such profession in this Commonwealth.*

(2) *Any corporation organized to render professional services through the practice of one or more of such professions in this Commonwealth.*

(3) *Any employee of such professional who is assisting or representing the professional in the performance of professional services on the site of the construction project.*

Section 6. Section 8362 of Title 42 is amended and section 9754(c) is amended by adding a paragraph to read:

§ 8362. Definitions of subchapter.

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

“Business corporation.” Any corporation subject to *the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921*, the act of May 5, 1933 (P.L.364, No.106), known as the Business Corporation Law, the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965, or the act of December 14, 1967 (P.L.746, No.345), known as the Savings Association Code of 1967.

“Nonprofit corporation.” A corporation subject to 15 Pa.C.S. Part III (relating to corporations not-for-profit) *or any fraternal benefit society subject to the act of July 29, 1977 (P.L.105, No.38), known as the Fraternal Benefit Society Code.*

§ 9754. Order of probation.

* * *

(c) Specific conditions.—The court may as a condition of its order require the defendant:

* * *

(14) *To remain within the premises of his residence during the hours designated by the court.*

* * *

Section 7. Sections 28 and 29 of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, are repealed.

Section 8. Sections 2 and 9 of this act shall be retroactive to July 13, 1987.

Section 9. The act of July 13, 1987 (P.L.340, No.64), entitled “An act providing for the establishment, funding and operation of a special restricted receipt account within the General Fund to support the establishment and operation of a Statewide judicial computer system; providing for annual appropriations from the restricted funds; and providing for the payment of a portion of all fines, fees and costs collected by the judiciary into the restricted receipt account,” is repealed.

Section 10. This act shall take effect immediately.

APPROVED—The 30th day of June, A. D. 1988.

ROBERT P. CASEY