

## No. 1998-110

## AN ACT

## SB 1372

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

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

**Section 1. Short title.**

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

**Section 2. Definitions.**

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

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

(1) alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate or remove the identification, including the vehicle identification number of the motor vehicle or motor vehicle part, in order to misrepresent the identity of the motor vehicle or motor vehicle part or to prevent the identification of the motor vehicle or motor vehicle part; or

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

“Motor vehicle.” A vehicle which is self-propelled except one which is propelled solely by human power or by electric power obtained from overhead trolley wires but not operated upon rails.

“Person.” A natural person, firm, copartnership, association or corporation.

“Vehicle identification number.” A combination of numerals or letters, or both, which the manufacturer assigns to a vehicle for identification purposes or, in the absence of a manufacturer assigned number, which the Department of Transportation assigns to a vehicle for identification purposes.

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

Any person who knowingly:

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

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

Section 4. Altered or illegally obtained property; penalty.

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

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

Section 5. Exceptions.

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

(b) Repair of vehicle.—The provisions of section 3 do not prohibit the removal of a vehicle identification number plate from a vehicle part that is damaged when such removal is necessary for proper repair or matching identification of a replacement vehicle part, but such removal is only allowed if the proper matching vehicle identification number plate is immediately and properly secured to the repaired or replacement part.

Section 6. Presumptions.

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

(b) Police report.—A police report which indicates that a motor vehicle or motor vehicle part was reported to police to be in a stolen status at the time it was possessed shall be prima facie evidence that the motor vehicle or motor vehicle part was possessed without permission of the owner.

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

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

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

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

(5) All real property used or intended to be used to facilitate any violation of this 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 are used or intended to be used in any manner or part to commit or to facilitate the commission of a violation of this act.

(b) Exceptions.—

(1) No property shall be forfeited under this section, 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.

(2) 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.

(c) Process and seizure.—Property subject to forfeiture under this act may be seized by the law enforcement authority upon process issued by a 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 warrant or inspection pursuant to 75 Pa.C.S. § 6308 (relating to investigation by police officers) or any other administrative inspection;

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

(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 this act.

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

(e) 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 Office of Attorney General. When property is seized under this act, 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 the Office of Attorney General take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(f) Use of property held in custody.—Whenever property is forfeited under this act, 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 Office of Attorney General if the law enforcement authority seizing the property has Statewide jurisdiction. The district attorney or the Office of 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 proceeding 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 (g) and (h).

(g) Use of cash, property or proceeds of property.—Cash or proceeds of forfeited property transferred to the custody of the district attorney pursuant to subsection (f) 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 in enforcing the criminal laws of this Commonwealth. The entity having budgetary control shall not anticipate future forfeitures or proceeds therefrom in adoption and approval of the budget for the district attorney.

(h) Distribution of property among law enforcement authorities.—If both State and municipal 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 Office of Attorney General.

(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 and the district attorney, 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 Office of Attorney General by September 30 of each year.

(j) Annual report; confidential information regarding property.—The Office of 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 Office of 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 enforcement activities.

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

#### Section 8. 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 under this act, shall be in rem in which the Commonwealth shall be the plaintiff and the property the defendant. The Pennsylvania Rules of Civil Procedure shall apply to all forfeiture proceedings brought under this act. 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 7 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 personally 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 was 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 a delivery.

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

(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 to 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 7 for forfeiture under this section either:

(1) upon the filing of an information or an indictment charging a violation of this act for which criminal forfeiture may be ordered under this act 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.

(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 subsection 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 act 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 subsections (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 6, 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 the claimant. 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 Office of 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 7(f).

Section 9. Effective date.

This act shall take effect in 60 days.

APPROVED—The 24th day of November, A.D. 1998.

THOMAS J. RIDGE