

FISH AND BOAT CODE (30 PA.C.S.) - AMEND
Act of Oct. 31, 1997, P.L. 485, No. 49
Session of 1997
No. 1997-49

Cl. 30

SB 55

AN ACT

Amending Title 30 (Fish) of the Pennsylvania Consolidated Statutes, further providing for operating watercraft under influence of alcohol or controlled substance, for chemical testing and for classification of offenses and penalties.

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

Section 1. Section 923(a) of Title 30 of the Pennsylvania Consolidated Statutes is amended to read:

§ 923. Classification of offenses and penalties.

(a) General rule.--The following penalties shall be imposed for violations of this title:

(1) For a summary offense of the first degree, a fine of \$100 or imprisonment not exceeding 90 days.

(2) For a summary offense of the second degree, a fine of \$50 or imprisonment not exceeding 20 days.

(3) For a summary offense of the third degree, a fine of \$25.

(4) For a summary offense of the fourth degree, a fine of \$10.

(5) For a misdemeanor of the third degree, a fine of not less than \$250 nor more than \$5,000, or imprisonment not exceeding 90 days, or both.

(6) For a misdemeanor of the second degree, a fine of not less than \$500 nor more than \$7,500, or imprisonment not exceeding two years, or both.

[(6)] (7) For a misdemeanor of the first degree, a fine of not less than \$2,500 nor more than \$10,000, or imprisonment not exceeding five years, or both.

[(7)] (8) For a felony of the third degree, a fine of not less than \$2,500 nor exceeding \$15,000, or imprisonment not exceeding seven years, or both.

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Section 2. Title 30 is amended by adding a section to read:

§ 5124.1. Liquor or malt or brewed beverages.

(a) General rule.--In an action or proceeding under this title in which a material element of the offense or action is that a substance is liquor or a malt or brewed beverage, all the following shall apply:

(1) Chemical analysis is not required to prove that the substance is liquor or a malt or brewed beverage.

(2) Circumstantial evidence is sufficient to prove that the substance is liquor or a malt or brewed beverage.

(b) Evidence presented by a defendant.--Notwithstanding subsection (a), nothing shall prevent a defendant from presenting evidence that a substance is not liquor or a malt or brewed beverage.

(c) Applicability.--The provisions of this section shall apply to proceedings brought by officers authorized to enforce this title under this title, Titles 18 (relating to crimes and offenses), 42 (relating to judiciary and judicial procedure) and 75 (relating to vehicles) and the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code.

Section 3. Sections 5125(j) and 5502 of Title 30 are amended to read:

§ 5125. Chemical testing to determine amount of alcohol or controlled substance.

* * *

(j) Immunity from civil liability and reports.--No physician, nurse or technician or hospital employing the physician, nurse or technician and no other employer of the physician, nurse or technician shall be civilly liable for [properly] withdrawing blood or obtaining a urine sample and reporting test results to [the waterways patrolman] **an officer authorized to enforce this title** at the request of [a waterways patrolman under this section] **the commission or an officer authorized to enforce this title**. No physician, nurse or technician or hospital employing the physician, nurse or technician may administratively refuse to perform the tests and provide the results to the [waterways patrolman] **officer authorized to enforce this title** except as may be reasonably expected from unusual circumstances that pertain at the time the request is made.

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§ 5502. Operating watercraft under influence of alcohol or controlled substance.

(a) General rule.--No person shall operate or be in actual physical control of the movement of a watercraft upon, in or through the waters of this Commonwealth [while]:

(1) **while** under the influence of alcohol to a degree which renders the person incapable of safe operation of [the] **a watercraft;**

(2) **while** under the influence of any controlled substance, as defined by the laws of this Commonwealth and rules and regulations promulgated thereunder, to a degree which renders the person incapable of safe operation of a watercraft;

(3) **while** under the combined influence of alcohol and a controlled substance **to a degree which renders the person incapable of safe operation of a watercraft** ; or

(4) **while** the amount of alcohol by weight in the blood of [the person is 0.10% or greater.] :

(i) **an adult is 0.10% or greater; or**

(ii) **a minor is 0.02% or greater.**

(a.1) **Prima facie evidence.--**

(1) **It is prima facie evidence that:**

(i) **an adult had 0.10% or more by weight of alcohol in his or her blood at the time of operating or being in**

actual physical control of the movement of a watercraft if the amount of alcohol by weight in the blood of the person is equal to or greater than 0.10% at the time a chemical test is performed on a sample of the person's breath, blood or urine; and

(ii) a minor had 0.02% or more by weight of alcohol in his or her blood at the time of operating or being in actual physical control of the movement of a watercraft if the amount of alcohol by weight in the blood of the minor is equal to or greater than 0.02% at the time a chemical test is performed on a sample of the person's breath, blood or urine.

(2) For the purposes of this section, the chemical test of the sample of the person's breath, blood or urine shall be from a sample obtained within three hours after the person drove, operated or was in actual physical control of the watercraft.

(b) [Legal use no] **Authorized use not a defense.**--The fact that any person charged with violating this section is or has been legally entitled to use alcohol or controlled substances is not a defense to a charge of violating this section.

(b.1) **Certain arrests authorized.**--In addition to any other powers of arrest, an officer authorized to enforce this title is hereby authorized to arrest without a warrant any person who the officer has probable cause to believe has violated the provisions of this section, regardless of whether the alleged violation was committed in the presence of such officer. This authority to arrest extends to any hospital or other medical treatment facility located beyond the territorial limits of the officer's political subdivision where the person to be arrested is found or was taken for purposes of emergency treatment, examination or evaluation, provided there is probable cause to believe that the violation of this section occurred within the police officer's political subdivision.

(b.2) **Certain disposition prohibited.**--The attorney for the Commonwealth shall not submit a charge brought under this section for Accelerated Rehabilitative Disposition if:

(1) The defendant has been found guilty of or accepted Accelerated Rehabilitative Disposition of a charge brought under this section within seven years of the date of the current offense.

(2) An accident occurred in connection with the events surrounding the current offense and any person other than the defendant was killed or seriously injured as a result of the accident.

[(c) **Penalty.**--A person violating any of the provisions of this section commits a misdemeanor of the third degree.]

(c) **Grading and penalties.**--

(1) A person violating any of the provisions of this section commits a misdemeanor of the second degree except a person who meets the requirements of paragraph (2). The sentencing court shall order the person to pay a fine of not less than \$500 and to serve a minimum term of imprisonment of:

(i) not less than 48 consecutive hours; or

(ii) not less than 30 days if the person had previously accepted Accelerated Rehabilitative Disposition or any other form of preliminary disposition or had been convicted of, adjudicated delinquent or granted a consent decree under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) based on an offense under this section or an equivalent offense in this or other jurisdictions within the previous seven years calculated from the date of acceptance, conviction, adjudication or grant.

(2) If the person has two or more times previously been convicted of, adjudicated delinquent or granted a consent decree under 42 Pa.C.S. Ch. 63 based on an offense under this section or an equivalent offense in this or other jurisdictions within the previous seven years, a person commits a misdemeanor of the first degree. The sentencing court shall order the person to pay a fine of not less than \$2,500 nor more than \$10,000 and to serve a minimum term of imprisonment of not less than 90 days.

(d) Subsequent conviction.--Acceptance of Accelerated Rehabilitative Disposition, an adjudication of delinquency or a consent decree under 42 Pa.C.S. Ch. 63 or any other form of preliminary disposition of any charge brought under this section shall be considered a first conviction for the purpose of computing whether a subsequent conviction of a violation of this section shall be considered a second, third or subsequent conviction.

(e) Sentencing guidelines.--The sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory penalties of this section.

(f) Direct appeal.--The Commonwealth has the right to appeal directly to the Superior Court any order of court which imposes a sentence for violation of this section which does not meet the requirements of this section. The Superior Court shall remand the case to the sentencing court for imposition of a sentence in accordance with the provisions of this section.

(g) City of first class.--Notwithstanding the provision for direct appeal to the Superior Court, if, in a city of the first class, a person appeals from a judgment of sentence under this section from the municipal court to the common pleas court for a trial de novo, the Commonwealth shall have the right to appeal directly to the Superior Court from the order of the common pleas court if the sentence imposed is in violation of this section. If, in a city of the first class, a person appeals to the court of common pleas after conviction of a violation of this section in the municipal court and thereafter withdraws his appeal to the common pleas court, thereby reinstating the judgment of sentence of the municipal court, the Commonwealth shall have 30 days from the date of the withdrawal to appeal to the Superior Court if the sentence is in violation of this section.

(h) Acceptance of ARD.--Any person who accepts Accelerated Rehabilitative Disposition of any charge brought under this section shall accept as conditions the imposition of, and the judge shall impose in addition to any other condition, all of

the following:

(1) A mandatory suspension of watercraft operating privileges for a period of not less than six months but not more than 12 months.

(2) A condition that the defendant, as a condition to entering the program, make restitution to any person who incurred determinable financial loss as a result of the defendant's actions which resulted in a charge of violating this section.

(3) A condition that the defendant, as a condition to entering the program, attend and successfully complete at his own expense a commission-approved boating safety course.

(4) Court supervision for a period of not less than six months. In cases where the defendant is required to make restitution or submit to counseling or treatment, the court supervision shall be for a period of not less than 12 months or until the treatment or counseling is completed and the restitution is paid in full, whichever is longer.

(i) Preliminary disposition revoked.--Accelerated Rehabilitative Disposition or other preliminary disposition of any charge of violating this section may be revoked and the court shall direct the attorney for the Commonwealth to proceed on the charges as prescribed in general rules if any of the following circumstances occur:

(1) The defendant is charged with or commits an offense which violates the provisions of this section, any crime enumerated in 18 Pa.C.S. (relating to crimes and offenses) or any crime enumerated in 75 Pa.C.S. § 1542 (relating to revocation of habitual offender's license) within the probationary period.

(2) The defendant fails to make restitution as provided for in this section.

(3) The defendant fails to successfully complete the boating safety course.

(4) The defendant fails to successfully complete any program of counseling or treatment, or both, required as a condition of Accelerated Rehabilitative Disposition.

(5) The defendant violates the terms and conditions of Accelerated Rehabilitative Disposition in any other way.

(j) Litter collection program.--In addition to the conditions set forth under subsection (i) for Accelerated Rehabilitative Disposition of any charge brought under this section, the judge may impose and the person shall accept the condition that the person engage in a program of collecting litter from public and private property along Commonwealth waterways, especially property which is littered with alcoholic beverage containers. The duration of the person's participation in a litter collection program shall not exceed the duration of the probationary period imposed on the person under Accelerated Rehabilitative Disposition.

(k) Fees to be paid into Boat Fund.--With the exception of court costs, program costs for counseling, treatment or a boating safety course or any restitution referred to in this section, any fee or financial condition imposed by a judge as a condition of Accelerated Rehabilitative Disposition or any other

preliminary disposition of any charge under this section shall be paid into the Boat Fund under section 531 (relating to establishment and use of Boat Fund).

(l) Preliminary hearing or arraignment.--The presiding judicial officer at the preliminary hearing or preliminary arraignment relating to any charge of a violation of this section shall not reduce or modify the original charges.

(m) Work release.--In any case in which a person is sentenced to a period of imprisonment as a result of a conviction for violating any provision of this section, the judicial officer imposing that sentence shall consider assigning that person to a daytime work release program pursuant to which the person would be required to collect litter from public and private property, especially property which is littered with alcoholic beverage containers.

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

"Adult." A person 21 years of age or older.

"Minor." A person under 21 years of age.

Section 4. This act shall take effect in 60 days.

APPROVED--The 31st day of October, A. D. 1997.

THOMAS J. RIDGE