

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 968 Session of  
2005

INTRODUCED BY RAFFERTY, LOGAN, PICCOLA, ERICKSON, ARMSTRONG,  
COSTA, LEMMOND, FONTANA, WENGER, ORIE, RHOADES, REGOLA,  
WONDERLING AND STACK, NOVEMBER 15, 2005

REFERRED TO JUDICIARY, NOVEMBER 15, 2005

AN ACT

1 Amending Title 75 (Vehicles) of the Pennsylvania Consolidated  
2 Statutes, further providing for grading and penalties for  
3 driving under influence of alcohol or controlled substance.

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

6 Section 1. Sections 3803(b) and 3804 of Title 75 of the  
7 Pennsylvania Consolidated Statutes are amended to read:

8 § 3803. Grading.

9 \* \* \*

10 (b) Other offenses.--

11 (1) An individual who violates section 3802(a)(1) where  
12 there was an accident resulting in bodily injury, serious  
13 bodily injury or death of any person or in damage to a  
14 vehicle or other property, or who violates section 3802(b),  
15 (e) or (f) and who has no more than one prior offense commits  
16 a misdemeanor for which the individual may be sentenced to a  
17 term of imprisonment of not more than six months and to pay a  
18 fine under section 3804.

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 no prior offenses  
4           commits a misdemeanor for which the individual may be  
5           sentenced to a term of imprisonment of not more than six  
6           months and to pay a fine under section 3804.

7           (3) An individual who violates section 3802(a)(1) where  
8           there was an accident resulting in bodily injury, serious  
9           bodily injury or death of any person or in damage to a  
10          vehicle or other property, or who violates section 3802(b),  
11          (e) or (f) and who has more than one prior offense commits a  
12          misdemeanor of the first degree.

13          (4) An individual who violates section 3802(a)(1) where  
14          the individual refused testing of blood or breath, or who  
15          violates section 3802(c) or (d) and who has one or more prior  
16          offenses commits a misdemeanor of the first degree.

17          (5) An individual who violates section 3802 where a  
18          minor under 18 years of age was an occupant in the vehicle  
19          when the violation occurred commits a misdemeanor of the  
20          first degree.

21 § 3804. Penalties.

22          (a) General impairment.--Except as set forth in subsection  
23          (b) or (c), an individual who violates section 3802(a) (relating  
24          to driving under influence of alcohol or controlled substance)  
25          shall be sentenced as follows:

26                  (1) For a first offense, to:

27                          (i) undergo a mandatory minimum term of six months'  
28                  probation;

29                          (ii) pay a fine of \$300;

30                          (iii) attend an alcohol highway safety school

approved by the department; and

(iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 (relating to drug and alcohol assessments) and 3815 (relating to mandatory sentencing).

(2) For a second offense, to:

(i) undergo imprisonment for not less than five days;

(ii) pay a fine of not less than \$300 nor more than \$2,500;

(iii) attend an alcohol highway safety school approved by the department; and

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

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

(i) undergo imprisonment of not less than ten days;

(ii) pay a fine of not less than \$500 nor more than \$5,000; and

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

(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:

(1) For a first offense, to:

(i) undergo imprisonment of not less than 48 consecutive hours;

(ii) pay a fine of not less than \$500 nor more than \$5,000;

(iii) attend an alcohol highway safety school approved by the department; and

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

(2) For a second offense, to:

(i) undergo imprisonment of not less than 30 days;

(ii) pay a fine of not less than \$750 nor more than \$5,000;

(iii) attend an alcohol highway safety school approved by the department; and

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

(3) For a third offense, to:

(i) undergo imprisonment of not less than 90 days;

(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.

(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.

(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:

(1) For a first offense, to:

(i) undergo imprisonment of not less than 72 consecutive hours;

(ii) pay a fine of not less than \$1,000 nor more than \$5,000;

(iii) attend an alcohol highway safety school approved by the department; and

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

(2) For a second offense, to:

(i) undergo imprisonment of not less than 90 days;

(ii) pay a fine of not less than \$1,500;

(iii) attend an alcohol highway safety school approved by the department; and

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

(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.

(c.1) Violation involving minor occupant.--An individual who violates section 3803(b)(5) (relating to grading), in addition to any penalty imposed in this chapter, shall be sentenced as follows:

(1) For a first offense, to:

(i) pay a fine of not less than \$1,000; and

(ii) complete 100 hours of community service.

(2) For a second offense, to:

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

1           (ii) undergo imprisonment of not less than one month  
2           nor more than six months.

3           (3) For a third or subsequent offense, undergo  
4           imprisonment of not less than six months nor more than two  
5           years.

6           (d) Extended supervision of court.--If a person is sentenced  
7 pursuant to this chapter and, after the initial assessment  
8 required by section 3814(1), the person is determined to be in  
9 need of additional treatment pursuant to section 3814(2), the  
10 judge shall impose a minimum sentence as provided by law and a  
11 maximum sentence equal to the statutorily available maximum. A  
12 sentence to the statutorily available maximum imposed pursuant  
13 to this subsection may, in the discretion of the sentencing  
14 court, be ordered to be served in a county prison,  
15 notwithstanding the provisions of 42 Pa.C.S. § 9762 (relating to  
16 sentencing proceeding; place of confinement).

17           (e) Suspension of operating privileges upon conviction.--

18           (1) The department shall suspend the operating privilege  
19 of an individual under paragraph (2) upon receiving a  
20 certified record of the individual's conviction of or an  
21 adjudication of delinquency for:

22                   (i) an offense under section 3802; or

23                   (ii) an offense which is substantially similar to an  
24 offense enumerated in section 3802 reported to the  
25 department under Article III of the compact in section  
26 1581 (relating to Driver's License Compact).

27           (2) Suspension under paragraph (1) shall be in  
28 accordance with the following:

29                   (i) Except as provided for in subparagraph (iii), 12  
30 months for an ungraded misdemeanor or misdemeanor of the

1 second degree under this chapter.

2 (ii) 18 months for a misdemeanor of the first degree  
3 under this chapter.

4 (iii) There shall be no suspension for an ungraded  
5 misdemeanor under section 3802(a) where the person is  
6 subject to the penalties provided in subsection (a) and  
7 the person has no prior offense.

8 (iv) For suspensions imposed under paragraph  
9 (1)(ii), notwithstanding any provision of law or  
10 enforcement agreement to the contrary, all of the  
11 following apply:

12 (A) Suspensions shall be in accordance with  
13 Subchapter D of Chapter 15 (relating to the Driver's  
14 License Compact).

15 (B) In calculating the term of a suspension for  
16 an offense that is substantially similar to an  
17 offense enumerated in section 3802, the department  
18 shall presume that if the conduct reported had  
19 occurred in this Commonwealth then the person would  
20 have been convicted under section 3802(a)(2).

21 (v) Notwithstanding any other provision of law or  
22 enforcement agreement to the contrary, the department  
23 shall suspend the operating privilege of a driver for six  
24 months upon receiving a certified record of a consent  
25 decree granted under 42 Pa.C.S. Ch. 63 (relating to  
26 juvenile matters) based on section 3802.

27 (f) Community service assignments.--In addition to the  
28 penalties set forth in this section, the sentencing judge may  
29 impose up to 150 hours of community service. Where the  
30 individual has been ordered to drug and alcohol treatment

1 pursuant to sections 3814 and 3815, the community service shall  
2 be certified by the drug and alcohol treatment program as  
3 consistent with any drug and alcohol treatment requirements  
4 imposed under sections 3814 and 3815.

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

8 (h) Appeal.--The Commonwealth has the right to appeal  
9 directly to the Superior Court any order of court which imposes  
10 a sentence for violation of this section which does not meet the  
11 requirements of this section. The Superior Court shall remand  
12 the case to the sentencing court for imposition of a sentence in  
13 accordance with the provisions of this section.

14 (i) First class cities.--Notwithstanding the provision for  
15 direct appeal to the Superior Court, if, in a city of the first  
16 class, a person appeals from a judgment of sentence under this  
17 section from the municipal court to the common pleas court for a  
18 trial de novo, the Commonwealth shall have the right to appeal  
19 directly to the Superior Court from the order of the common  
20 pleas court if the sentence imposed is in violation of this  
21 section. If, in a city of the first class, a person appeals to  
22 the court of common pleas after conviction of a violation of  
23 this section in the municipal court and thereafter withdraws his  
24 appeal to the common pleas court, thereby reinstating the  
25 judgment of sentence of the municipal court, the Commonwealth  
26 shall have 30 days from the date of the withdrawal to appeal to  
27 the Superior Court if the sentence is in violation of this  
28 section.

29 (j) Additional conditions.--In addition to any other penalty  
30 imposed under law, the court may sentence a person who violates



1 section 3802 to any other requirement or condition consistent  
2 with the treatment needs of the person, the restoration of the  
3 victim to preoffense status or the protection of the public.

4 (k) Nonapplicability.--Except for subsection (e), this  
5 section shall not apply to dispositions resulting from  
6 proceedings under 42 Pa.C.S. Ch. 63 (relating to juvenile  
7 matters).

8 Section 2. This act shall take effect in 60 days.