AN ACT

1 Amending Title 30 (Fish) of the Pennsylvania Consolidated Statutes, in property and waters, further providing for damage to property; in protection of property and waters, further providing for littering; in dams, bar racks and migration devices, further providing for marking of dams; in preliminary provisions, further providing for boating education and for fees; and, in operation of boats, further providing for operating watercraft under influence of alcohol or controlled substance and providing for aggravated assault by watercraft.

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

Section 1. Sections 703, 2503(c) and 3510(h)(1) and (2) of Title 30 of the Pennsylvania Consolidated Statutes are amended to read:

§ 703. Damage to property.

(a) Unlawful act.--It is unlawful to intentionally or recklessly destroy or cause damage to property owned, leased or otherwise controlled by the commission or any improvements thereon. Any person who intentionally causes pecuniary loss in excess of $5,000 commits a felony of the third degree. Any
person who intentionally causes pecuniary loss in excess of $1,000 commits a misdemeanor of the second degree. Any person who intentionally or recklessly causes pecuniary loss in excess of $500 commits a misdemeanor of the third degree. Otherwise destroying or causing damage to commission property or any improvements thereon is a summary offense of the first degree.

(b) Restitution.--A person who intentionally or recklessly destroys or causes damages to commission property, or an improvement on commission property, shall, upon conviction, make restitution in addition to paying the penalty set forth in section 923 (relating to classification of offenses and penalties). Restitution shall be based on the total cost as determined by the commission to repair or replace the destroyed or damaged property or improvement.

§ 2503. Littering.

(c) Penalty.--Any person who deposits or otherwise disposes of a thing or substance in violation of this section which causes or may cause damage to, or destruction of, fish commits a summary offense of the first degree. Any person who transports household refuse or garbage from another location and disposes of it by leaving it on lands or waters open to fishing or boating commits a summary offense of the second degree. Any person who otherwise violates this section commits a summary offense of the third degree. In addition to the penalties set forth in section 923 (relating to classification of offenses and penalties), an additional penalty of not less than $20 nor more than $50 for each item or piece of litter thrown, discarded, left, emitted or deposited in violation of this section may be imposed on any person who is convicted or acknowledges guilt of
a violation of this section. In addition to the penalties set forth in section 923, a person who is convicted or acknowledges guilt of a violation of this section shall be liable to pay, upon demand of the person having legal control of the land or water, a sum equal to the cost of disposal of the discarded item.

§ 3510. Marking of dams.

* * *

(h) Penalties.--

(1) Any person who fails to comply with subsection (a) or (b) shall forfeit and pay a civil penalty of not less than $500 nor more than $5,000. The penalty shall be recovered by civil suit or process in the name of the Commonwealth commits a summary offense of the first degree for the first offense and a misdemeanor of the third degree for any subsequent offense. Each month of noncompliance shall constitute a separate violation.

(2) Any person who fails to comply with subsection (c) shall forfeit and pay a civil penalty of not less than $250 nor more than $5,000. The penalty shall be recovered by civil suit or process in the name of the Commonwealth commits a summary offense of the second degree for the first offense and a summary offense of the first degree for any subsequent offense. Each month of noncompliance shall constitute a separate violation.

* * *

Section 2. Section 5103(a) and (j) of Title 30 are amended and the section is amended by adding a subsection to read:

§ 5103. Boating education.

(a) Mandatory program of boater education.--Except as
otherwise provided in this section, [on or after January 1, 2003,] any person born on or after January 1, 1982, shall not operate, on the waters of this Commonwealth, a motorboat without first obtaining a certificate of boating safety education.

* * *

(j) Penalty.--[On or after January 1, 2003, a person who is subject to the provisions of subsection (a) and who operates, on waters of this Commonwealth, a motorboat in violation of any requirement of this section commits a summary offense of the second degree.]

(1) A person who is subject to the provisions of subsection (a) and who operates a motorboat on waters of this Commonwealth without first obtaining a certificate of boating safety education commits a summary offense of the second degree.

(2) A person who is subject to the provisions of subsection (a) and who operates a motorboat on waters of this Commonwealth without having a valid certificate of boating safety education in the person's possession commits a summary offense of the fourth degree.

* * *

(l) Boating without a certificate on board.--If a person who is subject to the provisions of subsection (a) is operating a motorboat without a certificate of boating safety education in the person's possession and claims that the person has obtained one, the waterways conservation officer or other law enforcement officer shall give the operator seven days to produce the original certificate. If it is inconvenient for the operator to produce the certificate in person, the officer may permit the operator to mail the original certificate to the officer for
verification. If the operator fails to send the original
certificate within the seven-day period, the officer may
institute summary proceeding against the operator in the manner
prescribed by law.

Section 3. Sections 5104(a)(7) and 5502(b), (b.1), (b.2),
(c), (c.1), (g), (j), (m) and (n) of Title 30 are amended to
read:

§ 5104. Fees.

(a) General rule.--The following fees apply to
registrations, licenses, permits and capacity plates and
certificates issued under this part and the fees collected shall
be deposited in the State Treasury in the Boat Fund:

* * *

[(7) Capacity plate, $5 each.]

* * *

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

* * *

(b) Authorized use not a defense.--The fact that any
[person] individual 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]
individual 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 individual 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 or 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance) within [seven] 10 years of the date of the current offense[.] unless the charge was for an ungraded misdemeanor under subsection (a)(2) or 75 Pa.C.S. § 3802(a)(2) and was the defendant's first offense under this section or 75 Pa.C.S. § 3802.

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

(3) There was a passenger under 14 years of age in the watercraft the defendant was operating.

(c) Grading.--

(1) Notwithstanding the provisions of paragraph (2):

(i) An individual who violates subsection (a) and who has no more than one prior offense commits a misdemeanor for which the individual may be sentenced to a term of imprisonment for not more than six months and to pay a fine under subsection (c.1).
(ii) An individual who violates subsection (a) and who has more than one prior offense commits a misdemeanor of the second degree.

(2) (i) An individual who violates subsection (a)(1) where there was an accident resulting in bodily injury, serious bodily injury or death of any [person] individual or in damage to a watercraft or other property and who has no more than one prior offense commits a misdemeanor for which the individual may be sentenced to a term of imprisonment for not more than six months and to pay a fine under subsection (c.1).

(ii) An individual who violates subsection (a.1) or (a.4) and who has no more than one prior offense commits a misdemeanor for which the individual may be sentenced to a term of imprisonment for not more than six months and to pay a fine under subsection (c.1).

(iii) An individual who violates subsection (a)(1) where the individual refused testing of blood or breath and who has no prior offenses commits a misdemeanor for which the individual may be sentenced to a term of imprisonment for not more than six months and to pay a fine under subsection (c.1).

(iv) An individual who violates subsection (a.2) or (a.3) and who has no prior offenses commits a misdemeanor for which the individual may be sentenced to a term of imprisonment for not more than six months and to pay a fine under subsection (c.1).

(v) An individual who violates subsection (a)(1) where there was an accident resulting in bodily injury, serious bodily injury or death of any [person] individual
or in damage to a watercraft or other property and who
has more than one prior offense commits a misdemeanor of
the first degree.

(vi) An individual who violates subsection (a.1) or
(a.4) and who has more than one prior offense commits a
misdemeanor of the first degree.

(vii) An individual who violates subsection (a)(1)
where the individual refused testing of blood or breath
and who has one or more prior offenses commits a
misdemeanor of the first degree.

(viii) An individual who violates subsection (a.2)
or (a.3) and who has one or more prior offenses commits a
misdemeanor of the first degree.

(ix) An individual who violates this section when a
minor under 18 years of age was a passenger in the
watercraft when the violation occurred commits a
misdemeanor of the first degree.

(c.1) Penalties.--

(1) Except as set forth in paragraph (2), (3) or (4), an
individual who violates subsection (a) shall be sentenced as
follows:

(i) For a first offense, to undergo a mandatory
minimum term of six months' probation and to pay a fine
of $300 and successfully complete an approved boating
safety course.

(ii) For a second offense, to undergo imprisonment
for not less than five days and to pay a fine of not less
than $300 nor more than $2,500 and successfully complete
an approved boating safety course.

(iii) For a third or subsequent offense, to undergo
imprisonment for not less than ten days and to pay a fine
of not less than $500 nor more than $5,000 and
successfully complete an approved boating safety course.

(2) Except as set forth in paragraph (3) or (4), an
individual who violates subsection (a)(1) where there was an
accident resulting in bodily injury, serious bodily injury or
death of any [person] individual or damage to a watercraft or
other property or who violates subsection (a.1) or (a.4)
shall be sentenced as follows:

(i) For a first offense, to undergo imprisonment for
not less than 48 consecutive hours and to pay a fine of
not less than $500 nor more than $5,000 and successfully
complete an approved boating safety course.

(ii) For a second offense, to undergo imprisonment
for not less than 30 days and to pay a fine of not less
than $750 nor more than $5,000 and successfully complete
an approved boating safety course.

(iii) For a third offense, to undergo imprisonment
for not less than 90 days and to pay a fine of not less
than $1,500 nor more than $10,000 and successfully
complete an approved boating safety course.

(iv) For a fourth or subsequent offense, to undergo
imprisonment for not less than one year and to pay a fine
of not less than $1,500 nor more than $10,000 and
successfully complete an approved boating safety course.

(3) Except as set forth in paragraph (4), an individual
who violates subsection (a)(1) and refused testing of blood
or breath or an individual who violates subsection (a.2) or
(a.3) shall be sentenced as follows:

(i) For a first offense, to undergo imprisonment for
not less than 72 consecutive hours and to pay a fine of
not less than $1,000 nor more than $5,000 and
successfully complete an approved boating safety course.

(ii) For a second offense, to undergo imprisonment
for not less than 90 days and to pay a fine of not less
than $1,500 and successfully complete an approved boating
safety course.

(iii) For a third or subsequent offense, to undergo
imprisonment for not less than one year and to pay a fine
of not less than $2,500 and successfully complete an
approved boating safety course.

(4) Notwithstanding the provisions of this subsection
relating to mandatory minimum sentences, if the court makes a
finding that the county jail population exceeds its capacity,
the court may allow an individual who violated this section
and is serving a mandatory minimum term of imprisonment to be
released on parole to serve some or all of the individual's
term of imprisonment on house arrest with electronic
surveillance. This shall not apply to an individual who
violates subsection (a)(1) where there was an accident
resulting in serious bodily injury or the death of any
[individual].

(5) An individual who violates this section when a minor
under 18 years of age was a passenger in the watercraft when
the violation occurred, in addition to any penalty imposed
under this section, shall be sentenced as follows:

(i) For the first offense to both:

(A) Pay a fine of not less than $1,000.

(B) Complete 100 hours of community service.

(ii) For a second offense to both:
(A) Pay a fine of not less than $2,500.

(B) Undergo imprisonment for not less than one month nor more than six months.

(iii) For a third or subsequent offense, undergo imprisonment for not less than six months nor more than two years.

* * *

(g) City of first class.--Notwithstanding the provision for direct appeal to the Superior Court, if, in a city of the first class, an individual 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, an individual 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.

* * *

(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 individual shall accept the condition that the individual 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] individual's participation in a litter collection program shall not exceed the duration of the probationary period imposed on the [person] individual under Accelerated Rehabilitative Disposition.

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(m) Work release.--In any case in which [a person] an individual 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] individual to a daytime work release program pursuant to which the [person] individual 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] An individual 21 years of age or older.


Section 4. Title 30 is amended by adding a section to read:

§ 5502.4. Aggravated assault by watercraft.

A person who recklessly or with gross negligence causes serious bodily injury to another person while engaged in the violation of a provision of this title or regulations promulgated under this title applying to the operation or equipment of boats or watercraft, except section 5502 (relating to operating watercraft under influence of alcohol or controlled substance), commits aggravated assault by watercraft, a felony of the third degree, when the violation is the cause of the injury.
Section 5. This act shall take effect in 60 days.