

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1263 Session of
1995

INTRODUCED BY MASLAND, GORDNER, PETTIT, MARSICO, STRITTMATTER,
COLAIZZO, STETLER, BELARDI, MELIO, FAJT, DEMPSEY,
E. Z. TAYLOR, MERRY, TRUE, BUNT, READSHAW, PISTELLA, STURLA,
BATTISTO, ITKIN, BROWNE, EGOLF, HERSHEY, DeLUCA, CORPORA,
SERAFINI, BELFANTI, HUTCHINSON, SATHER, DiGIROLAMO, BEBKO-
JONES, STEIL, RUBLEY, FARGO, MILLER, CORNELL, CLARK, SAYLOR,
WAUGH, CLYMER, PLATTS, MAITLAND, KENNEY, NICKOL AND LYNCH,
MARCH 21, 1995

REFERRED TO COMMITTEE ON TRANSPORTATION, MARCH 21, 1995

AN ACT

1 Amending Title 75 (Vehicles) of the Pennsylvania Consolidated
2 Statutes, providing for administrative suspension of drivers'
3 licenses for driving under the influence independent of any
4 criminal proceedings.

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

7 Section 1. Section 1532(b)(3) of Title 75 of the
8 Pennsylvania Consolidated Statutes, amended December 27, 1994
9 (P.L. , No.154), is amended to read:

10 § 1532. Revocation or suspension of operating privilege.

11 * * *

12 (b) Suspension.--

13 * * *

14 (3) The department shall suspend the operating privilege
15 of any driver for 12 months upon receiving a certified record
16 of the driver's conviction of section 3731 (relating to

1 driving under influence of alcohol or controlled substance)
2 or 3733 (relating to fleeing or attempting to elude police
3 officer) or an adjudication of delinquency based on section
4 3731 or 3733, except that, if the driver is serving or has
5 served a period of suspension for the same offense under the
6 provisions of section 1583 (relating to suspension on
7 administrative determination), he shall be credited with the
8 suspension time served under the section 1583 suspension. The
9 department shall suspend the operating privilege of any
10 driver for six months upon receiving a certified record of a
11 consent decree granted under 42 Pa.C.S. Ch. 63 (relating to
12 juvenile matters) based on section 3731 or 3733.

13 * * *

14 Section 2. Sections 1542(d) and (e) and 1543(b)(1) of Title
15 75, amended December 12, 1994 (P.L. , No.143), are amended to
16 read:

17 § 1542. Revocation of habitual offender's license.

18 * * *

19 (d) Period of revocation.--The operating privilege of any
20 person found to be a habitual offender under the provisions of
21 this section shall be revoked by the department for a period of
22 five years, except that, if the person is serving or has served
23 a period of suspension for the same offense under the provisions
24 of section 1583 (relating to suspension on administrative
25 determination), he shall be credited with the suspension time
26 served under the section 1583 suspension against the five-year
27 revocation.

28 (e) Additional offenses.--Each additional offense committed
29 within a period of five years, as measured from the date of any
30 previous offense, shall result in a revocation for an additional

1 period of two years, except that, if the person is serving or
2 has served a period of suspension for the same offense under the
3 provisions of section 1583, he shall be credited with the
4 suspension time served under the section 1583 suspension against
5 the additional two-year revocation.

6 § 1543. Driving while operating privilege is suspended or
7 revoked.

8 * * *

9 (b) Certain offenses.--

10 (1) Any person who drives a motor vehicle on any highway
11 or trafficway of this Commonwealth at a time when their
12 operating privilege is suspended or revoked as a condition of
13 acceptance of Accelerated Rehabilitative Disposition for a
14 violation of section 3731 (relating to driving under
15 influence of alcohol or controlled substance) or because of a
16 violation of section 1547(b)(1) (relating to suspension for
17 refusal) [or 3731], 1583 (relating to suspension on
18 administrative determination), 3731 or 3735 (relating to
19 homicide by vehicle while driving under influence) shall,
20 upon conviction, be guilty of a summary offense and shall be
21 sentenced to pay a fine of \$1,000 and to undergo imprisonment
22 for a period of not less than 90 days.

23 * * *

24 Section 3. Section 1547 of Title 75 is amended to read:

25 § 1547. Chemical testing to determine amount of alcohol or
26 controlled substance.

27 * * *

28 (b) Suspension for refusal.--

29 (1) If any person placed under arrest for a violation of
30 section 3731 (relating to driving under influence of alcohol

or controlled substance) is requested to submit to chemical testing and refuses to do so, the testing shall not be conducted but upon notice by the police officer, the department shall suspend the operating privilege of the person for a period of 12 months, except that, if the person is serving or has served a period of suspension for the same offense under the provisions of section 1583 (relating to suspension on administrative determination), he shall be credited with the suspension time served under the section 1583 suspension.

* * *

Section 4. Chapter 15 of Title 75 is amended by adding a subchapter to read:

CHAPTER 15

LICENSING OF DRIVERS

* * *

SUBCHAPTER D

DRIVING UNDER INFLUENCE SUSPENSIONS

Sec.

1581. Definitions.

1582. Report by police officer.

1583. Suspension on administrative determination.

1584. Notice of suspension served by police officer.

1585. Notice of suspension or rescission.

1586. Period of suspension.

1587. Restoration of license.

1588. Administrative review.

1589. Hearing.

1590. Severability.

§ 1581. Definitions.

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

4 "Administrative determination." An informal determination by
5 the department upon which the initial determination to suspend
6 shall be made.

7 "Administrative hearing." A formal administrative
8 determination by the department. Administrative hearings under
9 this subchapter are exempt from the provisions of Title 2
10 (relating to administrative law and procedure).

11 "Administrative review." A review of the administrative
12 determination of suspension by the department based on the
13 documents supplied by the arresting officer and the arrested
14 person.

15 § 1582. Report by police officer.

16 (a) Content.--If a police officer makes an arrest under
17 section 3731 (relating to driving under influence of alcohol or
18 controlled substance) and the officer determines that:

19 (1) the person drove, operated or was in actual physical
20 control of a motor vehicle while the amount of alcohol by
21 weight in the blood of the person was 0.10% or more;

22 (2) the amount of alcohol by weight in the blood of the
23 person is 0.10% or greater at the time of a chemical test of
24 a sample of the person's breath, blood or urine, which sample
25 is:

26 (i) obtained within three hours after the person
27 drove, operated or was in actual physical control of the
28 vehicle; or

29 (ii) if the circumstances of the incident prevent
30 collecting the sample within three hours, obtained within

1 a reasonable additional time after the person drove,
2 operated or was in actual physical control of the
3 vehicle; or

4 (3) the person refused to submit to a chemical test to
5 determine the amount of alcohol or presence of a controlled
6 substance in the blood in accordance with the procedure
7 established in section 1547 (relating to chemical testing to
8 determine amount of alcohol or controlled substance);

9 the officer shall, in the performance of his official duty,
10 forward to the department a sworn report of all information
11 relevant to the administrative determination, including
12 information which adequately identifies the defendant, a
13 statement of the officer's grounds for belief that the person
14 violated section 1547 or 3731, the results of any chemical tests
15 which were conducted or information regarding the refusal to
16 submit to chemical testing, a copy of the complaint filed with
17 the court and the individual's driver's license.

18 (b) Forms.--The report required by this section shall be
19 made on forms supplied by the department or in a manner
20 specified in department regulations.

21 (c) Official record.--The report required by this section
22 shall constitute an official record of the department and,
23 consistent with Title 42 (relating to judiciary and judicial
24 procedure), shall be admitted into evidence in any hearing
25 conducted under section 1589 (relating to hearing).

26 § 1583. Suspension on administrative determination.

27 (a) General rule.--The department shall suspend the
28 operating privilege of any person upon making an administrative
29 determination that:

30 (1) the person drove, operated or was in actual physical

1 control of a motor vehicle while the amount of alcohol by
2 weight in the blood of that person was 0.10% or more;

3 (2) the amount of alcohol by weight in the blood of the
4 person is 0.10% or greater at the time of a chemical test of
5 a sample of the person's breath, blood or urine, which sample
6 is:

7 (i) obtained within three hours after the person
8 drove, operated or was in actual physical control of the
9 vehicle; or

10 (ii) if the circumstances of the incident prevent
11 collecting the sample within three hours, obtained within
12 a reasonable additional time after the person drove,
13 operated or was in actual physical control of the
14 vehicle; or

15 (3) the person refused to submit to a chemical test to
16 determine the amount of alcohol or presence of a controlled
17 substance in the blood in accordance with the procedure
18 established in section 1547 (relating to chemical testing to
19 determine amount of alcohol or controlled substance).

20 (b) Determination.--Upon receipt of the report forwarded
21 under section 1582 (relating to report by police officer), the
22 department shall make an administrative determination of every
23 violation of sections 1547 and 3731 (relating to driving under
24 influence of alcohol or controlled substance) on the basis of
25 the report of a police officer as required in section 1582. The
26 administrative determination shall be final unless an
27 administrative review is requested under section 1588 (relating
28 to administrative review) or a hearing is held under section
29 1589 (relating to hearing).

30 (c) Criminal charges.--The department's administrative

determination is independent of any determination of the same or similar facts in any criminal proceedings arising from the same occurrence. The disposition of the criminal proceedings shall not affect any administrative determination under this section.

§ 1584. Notice of suspension served by police officer.

(a) Personal service.--The police officer, acting on behalf of the department, shall, if practicable, serve a notice of suspension of the person's operating privilege personally on the defendant whenever:

(1) the chemical test results for a person who is being charged with a violation of section 3731 (relating to driving under influence of alcohol or controlled substance) show an alcohol concentration of 0.10% or more; or

(2) the person violated section 1547(b) (relating to chemical testing to determine amount of alcohol or controlled substance).

(b) Notice.--The notice of suspension shall contain the information required under section 1585(1)(ii) (relating to notice of suspension or rescission).

(c) Seizure of license.--

(1) When the police officer serves the notice of suspension, the officer shall seize any driver's license issued by the department which is possessed by the person. When the officer seizes a valid driver's license issued by the department, the officer, acting on behalf of the department, shall issue a temporary permit to a licensed driver which shall be valid for 30 days and shall indicate that an identification card may be obtained from the department.

(2) A copy of the notice of suspension, a copy of any

temporary permit form and any driver's license seized under this section shall be forwarded to the department by the officer.

(d) Forms.--The department shall provide notice of suspension forms, applications for identification cards and temporary permits to law enforcement agencies.

§ 1585. Notice of suspension or rescission.

In making the administrative determination described in section 1583 (relating to suspension on administrative determination):

(1) If the department determines that the person is subject to suspension under section 1583 and if notice of suspension of the person's operating privilege has not already been served upon the person by the police officer as required in section 1584 (relating to notice of suspension served by police officer), the department shall issue a notice of suspension as provided for in section 1540(b) (relating to surrender of license), which notice shall be deemed to be received three days after mailing.

(i) The notice of suspension shall be mailed by the department in accordance with section 1540.

(ii) The notice of suspension shall specify the reason and statutory grounds for the administrative determination of suspension, the effective date of the suspension, the right of the person to request administrative review or an administrative hearing, the procedure for requesting administrative review or an administrative hearing and the time within which a request for administrative review must be made in order to receive a review prior to the effective date of the

1 suspension.

2 (2) If the department determines that the person is not
3 subject to suspension, the department shall notify the person
4 of its administrative determination, shall rescind any order
5 of suspension served upon the person by the police officer
6 and shall return any driver's license taken from the person
7 under section 1584(b)(1).

8 § 1586. Period of suspension.

9 (a) General rule.--The suspension shall become effective 30
10 days after the defendant has received the notice of suspension
11 as provided in section 1584 (relating to notice of suspension
12 served by police officer) or 33 days after the notice of
13 suspension is mailed as provided in section 1585 (relating to
14 notice of suspension or rescission).

15 (b) Period.--The period of license suspension under this
16 section shall be as follows:

17 (1) If the suspension is imposed under the provisions of
18 section 1583(a)(1) or (2) (relating to suspension on
19 administrative determination), the period shall be 90 days if
20 the person's driving record shows no alcohol-related or drug-
21 related driving offenses during the immediately preceding
22 seven years. The period shall be 12 months if the person's
23 driving record shows one or more alcohol-related or drug-
24 related driving offenses during the immediately preceding
25 seven years.

26 (2) If the suspension is imposed under the provisions of
27 section 1583(a)(3), the period of suspension shall be 12
28 months.

29 (c) Special provisions.--In accordance with the provisions
30 of sections 1540 (relating to surrender of license) and 1541

1 (relating to period of revocation or suspension of operating
2 privilege), if the person has no license in his possession at
3 the time of the arrest, if the license confiscated by the police
4 officer is not the latest license or if the person receives
5 another license after the seizure, the suspension shall
6 nonetheless commence in accordance with the provisions of this
7 section, and the suspension will continue indefinitely until the
8 person submits all valid licenses to the department and
9 thereafter for the appropriate period provided in subsection
10 (b). If the person has no license issued by the department to
11 surrender, a suspension shall commence in accordance with the
12 provisions of this section and shall continue indefinitely until
13 the person submits an affidavit attesting to the lack of a
14 license and acknowledging the suspension to the department and
15 thereafter for the appropriate period provided in subsection
16 (b).

17 (d) Definition.--As used in this section, the term "alcohol-
18 related or drug-related driving offense" shall include any
19 administrative suspension under this title, any suspension or
20 revocation entered in this or any other state for a refusal to
21 submit to chemical testing under an implied consent law and any
22 conviction or other adjudication in this or any other state for
23 a violation which involves driving a vehicle while having an
24 unlawful alcohol concentration or while under the influence of
25 alcohol or a controlled substance or alcohol and a controlled
26 substance.

27 § 1587. Restoration of license.

28 The periods of suspension specified by section 1586 (relating
29 to period of suspension) are intended to be minimum periods of
30 suspension for the described conduct. No operating privilege

1 shall be restored under any circumstances until the period of
2 suspension is served, and no occupational limited license shall
3 be issued during the suspension period. No driving privilege may
4 be restored until all applicable reinstatement fees have been
5 paid.

6 § 1588. Administrative review.

7 (a) General rule.--Any person who has received a notice of
8 suspension under this subchapter may request an administrative
9 review. The request may be accompanied by a sworn statement or
10 statements and any other relevant evidence which the person
11 wants the department to consider in reviewing the determination
12 made under section 1583 (relating to suspension on
13 administrative determination). The scope of the administrative
14 review shall be limited to the issues of whether:

15 (1) the person drove, operated or was in actual physical
16 control of a motor vehicle while the amount of alcohol by
17 weight in the blood of the person was 0.10% or more;

18 (2) the amount of alcohol by weight in the blood of the
19 person is 0.10% or greater at the time of a chemical test of
20 a sample of the person's breath, blood or urine, which sample
21 is:

22 (i) obtained within three hours after the person
23 drove, operated or was in actual physical control of the
24 vehicle; or

25 (ii) if the circumstances of the incident prevent
26 collecting the sample within three hours, obtained within
27 a reasonable additional time after the person drove,
28 operated or was in actual physical control of the
29 vehicle; or

30 (3) the person refused to submit to a chemical test to

1 determine the amount of alcohol or presence of a controlled
2 substance in the blood in accordance with the procedure
3 established in section 1547 (relating to chemical testing to
4 determine amount of alcohol or controlled substance).

5 (b) Evidence.--When a request for administrative review is
6 made, the department shall review the determination made under
7 section 1583. In the review, the department shall give
8 consideration to any relevant sworn statement or other evidence
9 accompanying the request for the review and to the sworn
10 statement of the police officer required by section 1582
11 (relating to report by police officer). If the department
12 determines, by the preponderance of the evidence, that:

13 (1) the person drove, operated or was in actual physical
14 control of a motor vehicle while the amount of alcohol by
15 weight in the blood of the person was 0.10% or more;

16 (2) the amount of alcohol by weight in the blood of the
17 person is 0.10% or greater at the time of a chemical test of
18 a sample of the person's breath, blood or urine, which sample
19 is:

20 (i) obtained within three hours after the person
21 drove, operated or was in actual physical control of the
22 vehicle; or

23 (ii) if the circumstances of the incident prevent
24 collecting the sample within three hours, obtained within
25 a reasonable additional time after the person drove,
26 operated or was in actual physical control of the
27 vehicle; or

28 (3) the person refused to submit to a chemical test to
29 determine the amount of alcohol or presence of a controlled
30 substance in the blood in accordance with the procedure

1 established in section 1547;
2 the department shall sustain the order of suspension. The
3 determination of the department upon administrative review is
4 final unless a hearing is requested under section 1589 (relating
5 to hearing).

6 (c) Time.--The department shall complete an administrative
7 review prior to the effective date of the suspension order if
8 the request for the review is received by the department within
9 eight days following service of the notice of suspension. Where
10 the request for administrative review is received by the
11 department more than eight days following service of the notice
12 of suspension, the department shall make its determination
13 within 30 days following the receipt of the request for review.

14 (d) Effect of request.--A request for administrative review
15 shall not stay the license suspension, except that, if the
16 department is unable to make a determination within the time
17 limits specified in subsection (c), the suspension shall be
18 stayed pending the determination and the department shall issue
19 another temporary license to a licensed driver.

20 (e) Limitation on use of sworn statement.--No sworn
21 statement given by any witness may be used in any other action
22 or proceeding.

23 (f) Forms.--The request for administrative review shall be
24 made by mail to an address specified by the department. The
25 department shall provide forms which the person shall use to
26 request an administrative review and to submit a sworn
27 statement.

28 (g) Hearing.--A person may request and be granted a hearing
29 under section 1589 without first requesting administrative
30 review under this section. Administrative review is not

1 available after a hearing is held.

2 § 1589. Hearing.

3 (a) General rule.--A person who has received a notice of
4 suspension may make a written request for an administrative
5 hearing. The request shall be made on a form available at
6 designated offices of the department and must specify the
7 reasons for which the suspension is being contested. The request
8 shall be accompanied by a \$100 filing fee. If the person's
9 driver's license has not been previously surrendered, it shall
10 be surrendered at the time the request for a hearing is made. A
11 request for a hearing shall not stay the license suspension. The
12 scope of the administrative hearing shall be limited to the
13 issues raised in the request for the hearing and in no case
14 shall look beyond the issues of whether:

15 (1) the person drove, operated or was in actual physical
16 control of a motor vehicle while the amount of alcohol by
17 weight in the blood of the person was 0.10% or more;

18 (2) the amount of alcohol by weight in the blood of the
19 person is 0.10% or greater at the time of a chemical test of
20 a sample of the person's breath, blood or urine, which sample
21 is:

22 (i) obtained within three hours after the person
23 drove, operated or was in actual physical control of the
24 vehicle; or

25 (ii) if the circumstances of the incident prevent
26 collecting the sample within three hours, obtained within
27 a reasonable additional time after the person drove,
28 operated or was in actual physical control of the
29 vehicle; or

30 (3) the person refused to submit to a chemical test to

1 determine the amount of alcohol or presence of a controlled
2 substance in the blood in accordance with the procedure
3 established in section 1547 (relating to chemical testing to
4 determine amount of alcohol or controlled substance).

5 (b) Notice.--The hearing shall be scheduled to be held as
6 soon as practicable. If the department cannot conduct the
7 hearing within 30 days of the filing of the request for a
8 hearing, the department shall issue a temporary license to a
9 licensed driver which shall be valid until the hearing is
10 conducted, except that a temporary license shall not be issued
11 to a person who sought and obtained a continuance of the
12 hearing. The hearing shall be held at a place designated by the
13 department. The department shall provide a written notice of the
14 time and place of the hearing to the person requesting the
15 hearing at least ten days prior to the scheduled hearing, unless
16 the person agrees to waive this requirement.

17 (c) Hearing officer.--The hearing officer shall be
18 designated by the secretary. The hearing officer shall have
19 authority to administer oaths and affirmations, to examine
20 witnesses and take testimony, to receive relevant evidence, to
21 issue subpoenas, take depositions or cause depositions to be
22 taken or interrogatories to be answered, to regulate the course
23 and conduct of the hearing and to make a final ruling on the
24 issue.

25 (d) Evidence.--The sole issue at the hearing shall be
26 whether by a preponderance of the evidence:

27 (1) the person drove, operated or was in actual physical
28 control of a motor vehicle while the amount of alcohol by
29 weight in the blood of the person was 0.10% or more;

30 (2) the amount of alcohol by weight in the blood of the

1 person is 0.10% or greater at the time of a chemical test of
2 a sample of the person's breath, blood or urine, which sample
3 is:

4 (i) obtained within three hours after the person
5 drove, operated or was in actual physical control of the
6 vehicle; or

7 (ii) if the circumstances of the incident prevent
8 collecting the sample within three hours, obtained within
9 a reasonable additional time after the person drove,
10 operated or was in actual physical control of the
11 vehicle; or

12 (3) the person refused to submit to a chemical test to
13 determine the amount of alcohol or presence of a controlled
14 substance in the blood in accordance with the procedure
15 established in section 1547.

16 A prima facie case in the affirmative on any of these issues
17 shall be established by the sworn report of a police officer
18 which is in conformity with the requirements of section 1582
19 (relating to report by police officer). The person challenging
20 the suspension may introduce any relevant or admissible
21 testimony or other evidence in support of the reasons for which
22 the suspension is being contested as set forth in the written
23 hearing request. It shall be the responsibility of the person
24 challenging a suspension to arrange for the attendance of any
25 witnesses, including the police officer who submitted the sworn
26 report and the availability of any other evidence to be
27 presented in opposition to the suspension action. Application
28 may be made to the hearing officer to secure the attendance of
29 witnesses and assure the availability of other evidence
30 consistent with the authority of the hearing officer to issue

1 subpoenas or take other action necessary to regulate the course
2 and conduct of the hearing. If the hearing officer finds in the
3 affirmative on any of the above issues, the suspension order
4 will be sustained. If the hearing officer finds in the negative
5 on a pertinent issue, the suspension order will be rescinded.

6 (e) Decision.--The hearing shall be recorded. The cost of
7 transcription services shall be borne by the defendant. The
8 decision of the hearing officer shall be rendered in writing and
9 provided to the person who requested the hearing.

10 (f) Limitation on testimony.--No testimony given by any
11 witness may be used in any other action or proceeding.

12 (g) Failure to appear.--If the person who requested the
13 administrative hearing fails to appear without just cause, the
14 right to a hearing shall be waived, and the department's
15 administrative determination shall be final.

16 (h) Exemption.--Hearings under this section are exempt from
17 the requirements of Title 2 (relating to administrative law and
18 procedure) and 67 Pa. Code Ch. 491 (relating to administrative
19 practice and procedure).

20 (i) Appeals.--An appeal from a decision of a hearing officer
21 may be taken in the manner provided in 42 Pa.C.S. § 763(a)
22 (relating to direct appeals from government agencies). Appeals
23 under this subchapter are exempt from the provisions of section
24 1550(b) (relating to judicial review) and from the provisions of
25 42 Pa.C.S. § 933 (relating to appeals from government agencies).
26 § 1590. Severability.

27 If any provision of this subchapter or the application
28 thereof to any person or circumstance is held invalid, the
29 invalidity shall not affect other provisions or applications of
30 this subchapter which can be given effect without the invalid

1 provision or application, provided however, that, if the
2 provisions of section 1589(e) (relating to hearing) are declared
3 to be unconstitutional by the Supreme Court of Pennsylvania, the
4 provisions shall be considered unseverable from the rest of this
5 subchapter, and this subchapter will be invalid and of no
6 effect. If the provisions of section 1589(e) are found to be
7 unconstitutional by the Commonwealth Court, there shall be a
8 direct appeal to the Supreme Court.

9 Section 5. Section 3731(e)(6)(ii) of Title 75 is amended to
10 read:

11 § 3731. Driving under influence of alcohol or controlled
12 substance.

13 * * *

14 (e) Penalty.--

15 * * *

16 (6) Any person who accepts Accelerated Rehabilitative
17 Disposition of any charge brought under this section shall
18 accept as conditions the imposition of and the judge shall
19 impose in addition to any other conditions all of the
20 following:

21 * * *

22 (ii) A mandatory suspension of operating privilege
23 for a period of not less than [one month] three months
24 but not more than 12 months.

25 * * *

26 Section 6. This act shall take effect in one year.