
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 55

Session of
1997

INTRODUCED BY HELFRICK, TOMLINSON, PICCOLA, SALVATORE,
BRIGHTBILL, BELL, AFFLERBACH, JUBELIRER, HART, THOMPSON,
HECKLER, MADIGAN, MUSTO, MURPHY AND LEMMOND, JANUARY 15, 1997

REFERRED TO GAME AND FISHERIES, JANUARY 15, 1997

AN ACT

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

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

7 Section 1. Sections 923(a) and 5502 of Title 30 of the
8 Pennsylvania Consolidated Statutes are amended to read:

9 § 923. Classification of offenses and penalties.

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

12 (1) For a summary offense of the first degree, a fine of
13 \$100 or imprisonment not exceeding 90 days.

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

16 (3) For a summary offense of the third degree, a fine of
17 \$25.

18 (4) For a summary offense of the fourth degree, a fine

1 of \$10.

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

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

8 [(6)] (7) For a misdemeanor of the first degree, a fine
9 of not less than \$2,500 nor more than \$10,000, or
10 imprisonment not exceeding five years, or both.

11 [(7)] (8) For a felony of the third degree, a fine of
12 not less than \$2,500 nor exceeding \$15,000, or imprisonment
13 not exceeding seven years, or both.

14 * * *

15 § 5502. Operating watercraft under influence of alcohol or
16 controlled substance.

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

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

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

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

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

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

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

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

6 (1) It is prima facie evidence that:

7 (i) an adult had 0.10% or more by weight of alcohol
8 in his or her blood at the time of operating or being in
9 actual physical control of the movement of a watercraft
10 if the amount of alcohol by weight in the blood of the
11 person is equal to or greater than 0.10% at the time a
12 chemical test is performed on a sample of the person's
13 breath, blood or urine; and

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

21 (2) For the purposes of this section, the chemical test
22 of the sample of the person's breath, blood or urine shall be
23 from a sample obtained.

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

28 (b.1) Certain arrests authorized.--In addition to any other
29 powers of arrest, an officer authorized to enforce this title is
30 hereby authorized to arrest without a warrant any person who the

1 officer has probable cause to believe has violated the
2 provisions of this section, regardless of whether the alleged
3 violation was committed in the presence of such officer. This
4 authority to arrest extends to any hospital or other medical
5 treatment facility located beyond the territorial limits of the
6 officer's political subdivision where the person to be arrested
7 is found or was taken for purposes of emergency treatment,
8 examination or evaluation, provided there is probable cause to
9 believe that the violation of this section occurred within the
10 police officer's political subdivision.

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

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

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

22 (c) Penalty.--A person violating any of the provisions of
23 this section commits a misdemeanor of the [third degree.] second
24 degree, except that a person convicted of a third or subsequent
25 offense commits a misdemeanor of the first degree and the
26 sentencing court shall order the person to pay a fine of not
27 less than \$500 and serve a minimum term of imprisonment of:

28 (1) Not less than 48 consecutive hours.

29 (2) Not less than 30 days if the person has previously
30 accepted Accelerated Rehabilitative Disposition or any other

1 form of preliminary disposition, been convicted of,
2 adjudicated delinquent or granted a consent decree under 42
3 Pa.C.S. Ch. 63 (relating to juvenile matters) based on an
4 offense under this section or an equivalent offense in this
5 or other jurisdictions within the previous seven years.

6 (3) Not less than 90 days if the person has two or more
7 times previously been convicted of, adjudicated delinquent or
8 granted a consent decree under 42 Pa.C.S. Ch. 63 based on an
9 offense under this section or an equivalent offense in this
10 or other jurisdictions within the previous seven years.

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

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

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

28 (g) City of first class.--Notwithstanding the provision for
29 direct appeal to the Superior Court, if, in a city of the first
30 class, a person appeals from a judgment of sentence under this

1 section from the municipal court to the common pleas court for a
2 trial de novo, the Commonwealth shall have the right to appeal
3 directly to the Superior Court from the order of the common
4 pleas court if the sentence imposed is in violation of this
5 section. If, in a city of the first class, a person appeals to
6 the court of common pleas after conviction of a violation of
7 this section in the municipal court and thereafter withdraws his
8 appeal to the common pleas court, thereby reinstating the
9 judgment of sentence of the municipal court, the Commonwealth
10 shall have 30 days from the date of the withdrawal to appeal to
11 the Superior Court if the sentence is in violation of this
12 section.

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

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

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

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

29 (4) Court supervision for a period of not less than six
30 months. In cases where the defendant is required to make

1 restitution or submit to counseling or treatment, the court
2 supervision shall be for a period of not less than 12 months
3 or until the treatment or counseling is completed and the
4 restitution is paid in full, whichever is longer.

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

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

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

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

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

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

26 (j) Litter collection program.--In addition to the
27 conditions set forth under subsection (i) for Accelerated
28 Rehabilitative Disposition of any charge brought under this
29 section, the judge may impose and the person shall accept the
30 condition that the person engage in a program of collecting

1 litter from public and private property along Commonwealth
2 waterways, especially property which is littered with alcoholic
3 beverage containers. The duration of the person's participation
4 in a litter collection program shall not exceed the duration of
5 the probationary period imposed on the person under Accelerated
6 Rehabilitative Disposition.

7 (k) Fees to be paid into Boat Fund.--With the exception of
8 court costs, program costs for counseling, treatment or a
9 boating safety course or any restitution referred to in this
10 section, any fee or financial condition imposed by a judge as a
11 condition of Accelerated Rehabilitative Disposition or any other
12 preliminary disposition of any charge under this section shall
13 be paid into the Boat Fund under section 531 (relating to
14 establishment and use of Boat Fund).

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

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

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

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

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

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