

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, LEMMOND AND ARMSTRONG,
JANUARY 15, 1997

SENATOR TILGHMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,
MARCH 17, 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, for chemical
4 testing ~~and reports~~ and for classification of offenses and <—
5 penalties.

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

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

10 § 923. Classification of offenses and penalties.

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

13 (1) For a summary offense of the first degree, a fine of
14 \$100 or imprisonment not exceeding 90 days.

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

17 (3) For a summary offense of the third degree, a fine of
18 \$25.

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

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

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

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

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

15 * * *

16 Section 2. Title 30 is amended by adding a section to read:
17 § 5124.1. Liquor or malt or brewed beverages.

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

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

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

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

30 (c) Applicability.--The provisions of this section shall

1 apply to proceedings brought by officers authorized to enforce
2 this title under this title, Titles 18 (relating to crimes and
3 offenses), 42 (relating to judiciary and judicial procedure) and
4 75 (relating to vehicles) and the act of April 12, 1951 (P.L.90,
5 No.21), known as the Liquor Code.

6 Section 3. ~~Section 5125(j) of Title 30 is~~ SECTIONS 5125(J) <—
7 AND 5502 OF TITLE 30 ARE amended to read:

8 § 5125. Chemical testing to determine amount of alcohol or
9 controlled substance.

10 * * *

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

26 * * *

27 ~~Section 4. Section 5126 heading of Title 30 is amended and~~ <—
28 ~~the section is amended by adding a subsection to read:~~
29 ~~§ 5126. Reports by emergency room and medical personnel.~~

30 * * *

~~(c) Toxicology tests of victims. If one or more persons die as a result of a watercraft accident, any emergency room or other medical facility in which the deceased victim is treated shall take blood samples of such victims and transmit them within 24 hours for testing to the Department of Health or a clinical laboratory approved by the Department of Health and specifically designated for such purpose to determine the drug and alcohol contents of the blood. The provisions of subsection (b) shall apply to all medical personnel who perform duties under this subsection.~~

~~Section 5. Section 5502 of Title 30 is amended to read:~~
§ 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

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

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

3 (1) It is prima facie evidence that:

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

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

18 (2) For the purposes of this section, the chemical test
19 of the sample of the person's breath, blood or urine shall be
20 from a sample obtained WITHIN THREE HOURS AFTER THE PERSON <—
21 DROVE, OPERATED OR WAS IN ACTUAL PHYSICAL CONTROL OF THE
22 WATERCRAFT.

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

27 (b.1) Certain arrests authorized.--In addition to any other
28 powers of arrest, an officer authorized to enforce this title is
29 hereby authorized to arrest without a warrant any person who the
30 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.] second degree, except that a person convicted of a third or subsequent offense commits a misdemeanor of the first degree and the sentencing court shall order the person to pay a fine of not less than \$500 and serve a minimum term of imprisonment of:

(1) Not less than 48 consecutive hours.

(2) Not less than 30 days if the person has previously accepted Accelerated Rehabilitative Disposition or any other form of preliminary disposition, been convicted of,

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

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

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

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

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

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

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

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

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

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

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

28 (4) Court supervision for a period of not less than six
29 months. In cases where the defendant is required to make
30 restitution or submit to counseling or treatment, the court

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

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

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

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

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

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

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

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

1 Section ~~6~~ 4. This act shall take effect in 60 days.

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