

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL****No. 55**Session of  
1997

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

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AS AMENDED ON THIRD CONSIDERATION, APRIL 8, 1997

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## 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 for classification of offenses and penalties.

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

7 Section 1. Section 923(a) of Title 30 of the Pennsylvania  
8 Consolidated Statutes is 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

of \$10.

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

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

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

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

\* \* \*

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

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

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

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

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

(c) Applicability.--The provisions of this section shall apply to proceedings brought by officers authorized to enforce

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

5 Section 3. Sections 5125(j) and 5502 of Title 30 are amended  
6 to read:

7 § 5125. Chemical testing to determine amount of alcohol or  
8 controlled substance.

9 \* \* \*

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

25 \* \* \*

26 § 5502. Operating watercraft under influence of alcohol or  
27 controlled substance.

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

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

4           (2) while under the influence of any controlled  
5       substance, as defined by the laws of this Commonwealth and  
6       rules and regulations promulgated thereunder, to a degree  
7       which renders the person incapable of safe operation of a  
8       watercraft;

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

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

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

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

16      (a.1) Prima facie evidence.--

17          (1) It is prima facie evidence that:

18           (i) an adult had 0.10% or more by weight of alcohol  
19           in his or her blood at the time of operating or being in  
20           actual physical control of the movement of a watercraft  
21           if the amount of alcohol by weight in the blood of the  
22           person is equal to or greater than 0.10% at the time a  
23           chemical test is performed on a sample of the person's  
24           breath, blood or urine; and

25           (ii) a minor had 0.02% or more by weight of alcohol  
26           in his or her blood at the time of operating or being in  
27           actual physical control of the movement of a watercraft  
28           if the amount of alcohol by weight in the blood of the  
29           minor is equal to or greater than 0.02% at the time a  
30           chemical test is performed on a sample of the person's

1           breath, blood or urine.

2           (2) For the purposes of this section, the chemical test  
3           of the sample of the person's breath, blood or urine shall be  
4           from a sample obtained within three hours after the person  
5           drove, operated or was in actual physical control of the  
6           watercraft.

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

11          (b.1) Certain arrests authorized.--In addition to any other  
12          powers of arrest, an officer authorized to enforce this title is  
13          hereby authorized to arrest without a warrant any person who the  
14          officer has probable cause to believe has violated the  
15          provisions of this section, regardless of whether the alleged  
16          violation was committed in the presence of such officer. This  
17          authority to arrest extends to any hospital or other medical  
18          treatment facility located beyond the territorial limits of the  
19          officer's political subdivision where the person to be arrested  
20          is found or was taken for purposes of emergency treatment,  
21          examination or evaluation, provided there is probable cause to  
22          believe that the violation of this section occurred within the  
23          police officer's political subdivision.

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

27                (1) The defendant has been found guilty of or accepted  
28                Accelerated Rehabilitative Disposition of a charge brought  
29                under this section within seven years of the date of the  
30                current offense.

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

5       [(c) Penalty.--A person violating any of the provisions of       <—  
6 this section commits a misdemeanor of the {third degree.} second       <—  
7 degree, except that a person convicted of a third or subsequent  
8 offense commits a misdemeanor of the first degree and the  
9 sentencing court shall order the person to pay a fine of not  
10 less than \$500 and serve a minimum term of imprisonment of:

11       (1) Not less than 48 consecutive hours.

12       (2) Not less than 30 days if the person has previously  
13 accepted Accelerated Rehabilitative Disposition or any other  
14 form of preliminary disposition, been convicted of,  
15 adjudicated delinquent or granted a consent decree under 42  
16 Pa.C.S. Ch. 63 (relating to juvenile matters) based on an  
17 offense under this section or an equivalent offense in this  
18 or other jurisdictions within the previous seven years.

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

24       (C) GRADING AND PENALTIES.--       <—

25       (1) A PERSON VIOLATING ANY OF THE PROVISIONS OF THIS  
26 SECTION COMMITS A MISDEMEANOR OF THE SECOND DEGREE, EXCEPT A  
27 PERSON WHO MEETS THE REQUIREMENTS OF PARAGRAPH (2). THE  
28 SENTENCING COURT SHALL ORDER THE PERSON TO PAY A FINE OF NOT  
29 LESS THAN \$500 AND TO SERVE A MINIMUM TERM OF IMPRISONMENT  
30 OF:

1           (I) NOT LESS THAN 48 CONSECUTIVE HOURS; OR  
2           (II) NOT LESS THAN 30 DAYS IF THE PERSON HAD  
3           PREVIOUSLY ACCEPTED ACCELERATED REHABILITATIVE  
4           DISPOSITION OR ANY OTHER FORM OF PRELIMINARY DISPOSITION  
5           OR HAD BEEN CONVICTED OF, ADJUDICATED DELINQUENT OR  
6           GRANTED A CONSENT DECREE UNDER 42 PA.C.S. CH. 63  
7           (RELATING TO JUVENILE MATTERS) BASED ON AN OFFENSE UNDER  
8           THIS SECTION OR AN EQUIVALENT OFFENSE IN THIS OR OTHER  
9           JURISDICTIONS WITHIN THE PREVIOUS SEVEN YEARS CALCULATED  
10          FROM THE DATE OF ACCEPTANCE, CONVICTION, ADJUDICATION OR  
11          GRANT.

12          (2) IF THE PERSON HAS TWO OR MORE TIMES PREVIOUSLY BEEN  
13          CONVICTED OF, ADJUDICATED DELINQUENT OR GRANTED A CONSENT  
14          DECREE UNDER 42 PA.C.S. CH. 63 BASED ON AN OFFENSE UNDER THIS  
15          SECTION OR AN EQUIVALENT OFFENSE IN THIS OR OTHER  
16          JURISDICTIONS WITHIN THE PREVIOUS SEVEN YEARS, A PERSON  
17          COMMITTS A MISDEMEANOR OF THE FIRST DEGREE. THE SENTENCING  
18          COURT SHALL ORDER THE PERSON TO PAY A FINE OF NOT LESS THAN  
19          \$2,500 NOR MORE THAN \$10,000 AND TO SERVE A MINIMUM TERM OF  
20          IMPRISONMENT OF NOT LESS THAN 90 DAYS.

21          (d) Subsequent conviction.--Acceptance of Accelerated  
22          Rehabilitative Disposition, an adjudication of delinquency or a  
23          consent decree under 42 Pa.C.S. Ch. 63 or any other form of  
24          preliminary disposition of any charge brought under this section  
25          shall be considered a first conviction for the purpose of  
26          computing whether a subsequent conviction of a violation of this  
27          section shall be considered a second, third or subsequent  
28          conviction.

29          (e) Sentencing guidelines.--The sentencing guidelines  
30          promulgated by the Pennsylvania Commission on Sentencing shall

1 not supersede the mandatory penalties of this section.

2 (f) Direct appeal.--The Commonwealth has the right to appeal  
3 directly to the Superior Court any order of court which imposes  
4 a sentence for violation of this section which does not meet the  
5 requirements of this section. The Superior Court shall remand  
6 the case to the sentencing court for imposition of a sentence in  
7 accordance with the provisions of this section.

8 (g) City of first class.--Notwithstanding the provision for  
9 direct appeal to the Superior Court, if, in a city of the first  
10 class, a person appeals from a judgment of sentence under this  
11 section from the municipal court to the common pleas court for a  
12 trial de novo, the Commonwealth shall have the right to appeal  
13 directly to the Superior Court from the order of the common  
14 pleas court if the sentence imposed is in violation of this  
15 section. If, in a city of the first class, a person appeals to  
16 the court of common pleas after conviction of a violation of  
17 this section in the municipal court and thereafter withdraws his  
18 appeal to the common pleas court, thereby reinstating the  
19 judgment of sentence of the municipal court, the Commonwealth  
20 shall have 30 days from the date of the withdrawal to appeal to  
21 the Superior Court if the sentence is in violation of this  
22 section.

23 (h) Acceptance of ARD.--Any person who accepts Accelerated  
24 Rehabilitative Disposition of any charge brought under this  
25 section shall accept as conditions the imposition of, and the  
26 judge shall impose in addition to any other condition, all of  
27 the following:

28 (1) A mandatory suspension of watercraft operating  
29 privileges for a period of not less than six months but not  
30 more than 12 months.



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

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

9       (4) Court supervision for a period of not less than six  
10 months. In cases where the defendant is required to make  
11 restitution or submit to counseling or treatment, the court  
12 supervision shall be for a period of not less than 12 months  
13 or until the treatment or counseling is completed and the  
14 restitution is paid in full, whichever is longer.

15       (i) Preliminary disposition revoked.--Accelerated  
16 Rehabilitative Disposition or other preliminary disposition of  
17 any charge of violating this section may be revoked and the  
18 court shall direct the attorney for the Commonwealth to proceed  
19 on the charges as prescribed in general rules if any of the  
20 following circumstances occur:

21       (1) The defendant is charged with or commits an offense  
22 which violates the provisions of this section, any crime  
23 enumerated in 18 Pa.C.S. (relating to crimes and offenses) or  
24 any crime enumerated in 75 Pa.C.S. § 1542 (relating to  
25 revocation of habitual offender's license) within the  
26 probationary period.

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

29       (3) The defendant fails to successfully complete the  
30 boating safety course.

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

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

6       (j) Litter collection program.--In addition to the  
7       conditions set forth under subsection (i) for Accelerated  
8       Rehabilitative Disposition of any charge brought under this  
9       section, the judge may impose and the person shall accept the  
10       condition that the person engage in a program of collecting  
11       litter from public and private property along Commonwealth  
12       waterways, especially property which is littered with alcoholic  
13       beverage containers. The duration of the person's participation  
14       in a litter collection program shall not exceed the duration of  
15       the probationary period imposed on the person under Accelerated  
16       Rehabilitative Disposition.

17       (k) Fees to be paid into Boat Fund.--With the exception of  
18       court costs, program costs for counseling, treatment or a  
19       boating safety course or any restitution referred to in this  
20       section, any fee or financial condition imposed by a judge as a  
21       condition of Accelerated Rehabilitative Disposition or any other  
22       preliminary disposition of any charge under this section shall  
23       be paid into the Boat Fund under section 531 (relating to  
24       establishment and use of Boat Fund).

25       (l) Preliminary hearing or arraignment.--The presiding  
26       judicial officer at the preliminary hearing or preliminary  
27       arraignment relating to any charge of a violation of this  
28       section shall not reduce or modify the original charges.

29       (m) Work release.--In any case in which a person is  
30       sentenced to a period of imprisonment as a result of a

1 conviction for violating any provision of this section, the  
2 judicial officer imposing that sentence shall consider assigning  
3 that person to a daytime work release program pursuant to which  
4 the person would be required to collect litter from public and  
5 private property, especially property which is littered with  
6 alcoholic beverage containers.

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

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

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

12 Section 4. This act shall take effect in 60 days.