

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL  
No. 1242 Session of  
2009

INTRODUCED BY PAYNE, D. COSTA, CREIGHTON, GILLESPIE, GROVE,  
KAUFFMAN, MAJOR, MILNE, MOUL, PYLE, READSHAW, ROCK, SCAVELLO,  
SIPTROTH, K. SMITH, SOLOBAY, SWANGER, TRUE AND VULAKOVICH,  
APRIL 8, 2009

REFERRED TO COMMITTEE ON TRANSPORTATION, APRIL 8, 2009

AN ACT

1 Amending Title 75 (Vehicles) of the Pennsylvania Consolidated  
2 Statutes, further providing, in driving after imbibing  
3 alcohol or utilizing drugs, for grading, for penalties and  
4 for ignition interlock.

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

7 Section 1. Sections 3803, 3804 and 3805 of Title 75 of the  
8 Pennsylvania Consolidated Statutes are amended to read:

9 § 3803. Grading.

10 (a) Basic offenses.--Notwithstanding the provisions of  
11 subsection (b):

12 (1) An individual who violates section 3802(a) (relating  
13 to driving under influence of alcohol or controlled  
14 substance) and has no more than one prior offense commits a  
15 misdemeanor for which the individual may be sentenced to a  
16 term of imprisonment of not more than six months and to pay a  
17 fine under section 3804 (relating to penalties).

18 (2) An individual who violates section 3802(a) and has

1 more than one prior offense commits a misdemeanor of the  
2 second degree.

3 (b) Other offenses.--

4 (1) An individual who violates section 3802(a)(1) where  
5 there was an accident resulting in bodily injury, serious  
6 bodily injury or death of any person or in damage to a  
7 vehicle or other property, or who violates section 3802(b),  
8 (e) or (f) and who has no more than one prior offense commits  
9 a misdemeanor for which the individual may be sentenced to a  
10 term of imprisonment of not more than six months and to pay a  
11 fine under section 3804.

12 (2) An individual who violates section 3802(a)(1) where  
13 the individual refused testing of blood or breath, or who  
14 violates section 3802(c) or (d) and who has no prior offenses  
15 commits a misdemeanor for which the individual may be  
16 sentenced to a term of imprisonment of not more than six  
17 months and to pay a fine under section 3804.

18 (3) An individual who violates section 3802(a)(1) where  
19 there was an accident resulting in bodily injury, serious  
20 bodily injury or death of any person or in damage to a  
21 vehicle or other property, or who violates section 3802(b),  
22 (e) or (f) and who has more than one prior offense commits a  
23 misdemeanor of the first degree.

24 (4) An individual who violates section 3802(a)(1) where  
25 the individual refused testing of blood or breath, or who  
26 violates section 3802(c) or (d) and who has one or more prior  
27 offenses commits a misdemeanor of the first degree, except as  
28 provided under paragraph (5).

29 (5) An individual who violates section 3802(b) for the  
30 fourth or subsequent time or who violates section 3802(c) for

1 the third or subsequent time commits a felony of the third  
2 degree.

3 (6) An individual who violates section 3802(c) for a  
4 fourth or subsequent time commits a felony of the second  
5 degree.

6 § 3804. Penalties.

7 (a) General impairment.--Except as set forth in subsection  
8 (b) or (c), an individual who violates section 3802(a) (relating  
9 to driving under influence of alcohol or controlled substance)  
10 shall be sentenced as follows:

11 (1) For a first offense, to:

12 (i) undergo a mandatory minimum term of six months'  
13 probation;

14 (ii) pay a fine of \$300;

15 (iii) attend an alcohol highway safety school  
16 approved by the department; and

17 (iv) comply with all drug and alcohol treatment  
18 requirements imposed under sections 3814 (relating to  
19 drug and alcohol assessments) and 3815 (relating to  
20 mandatory sentencing).

21 (2) For a second offense, to:

22 (i) undergo imprisonment for not less than five  
23 days;

24 (ii) pay a fine of not less than \$300 nor more than  
25 \$2,500;

26 (iii) attend an alcohol highway safety school  
27 approved by the department; and

28 (iv) comply with all drug and alcohol treatment  
29 requirements imposed under sections 3814 and 3815.

30 (3) For a third or subsequent offense, to:

(i) undergo imprisonment of not less than ten days;  
(ii) pay a fine of not less than \$500 nor more than \$5,000; and

(iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(b) High rate of blood alcohol; minors; commercial vehicles and school buses and school vehicles; accidents.--Except as set forth in subsection (c), an individual who violates section 3802(a)(1) where there was an accident resulting in bodily injury, serious bodily injury or death of any person or damage to a vehicle or other property or who violates section 3802(b), (e) or (f) shall be sentenced as follows:

(1) For a first offense, to:

(i) undergo imprisonment of not less than 48 consecutive hours;

(ii) pay a fine of not less than \$500 nor more than \$5,000;

(iii) attend an alcohol highway safety school approved by the department; and

(iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(2) For a second offense, to:

(i) undergo imprisonment of not less than 30 days;

(ii) pay a fine of not less than \$750 nor more than \$5,000;

(iii) attend an alcohol highway safety school approved by the department; and

(iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(3) For a third offense, to:

1 (i) undergo imprisonment of not less than 90 days;  
2 (ii) pay a fine of not less than [\$1,500] \$5,000 nor  
3 more than \$10,000; and

4 (iii) comply with all drug and alcohol treatment  
5 requirements imposed under sections 3814 and 3815.

6 (4) For a fourth or subsequent offense, to:

7 (i) undergo imprisonment of not less than one year;  
8 (ii) pay a fine of not less than [\$1,500] \$10,000  
9 nor more than [\$10,000] \$15,000; and

10 (iii) comply with all drug and alcohol treatment  
11 requirements imposed under sections 3814 and 3815.

12 (c) Incapacity; highest blood alcohol; controlled  
13 substances.--An individual who violates section 3802(a)(1) and  
14 refused testing of blood or breath or an individual who violates  
15 section 3802(c) or (d) shall be sentenced as follows:

16 (1) For a first offense, to:

17 (i) undergo imprisonment of not less than 72  
18 consecutive hours;  
19 (ii) pay a fine of not less than \$1,000 nor more  
20 than \$5,000;

21 (iii) attend an alcohol highway safety school  
22 approved by the department; and

23 (iv) comply with all drug and alcohol treatment  
24 requirements imposed under sections 3814 and 3815.

25 (2) For a second offense, to:

26 (i) undergo imprisonment of not less than 90 days;  
27 (ii) pay a fine of not less than [\$1,500] \$5,000 and  
28 not more than \$10,000;

29 (iii) attend an alcohol highway safety school  
30 approved by the department; and

(iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(3) For a third [or subsequent] offense, to:

(i) undergo imprisonment of not less than one year;

(ii) pay a fine of not less than [\$2,500] \$10,000 and not more than \$15,000; and

(iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(4) For a fourth or subsequent offense, to:

(i) undergo imprisonment for not less than two years;

(ii) pay a fine of not less than \$15,000 and not more than \$20,000;

(iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815; and

(iv) undergo a Court Reporting Network evaluation.

(d) Extended supervision of court.--If a person is sentenced pursuant to this chapter and, after the initial assessment required by section 3814(1), the person is determined to be in need of additional treatment pursuant to section 3814(2), the judge shall impose a minimum sentence as provided by law and a maximum sentence equal to the statutorily available maximum. A sentence to the statutorily available maximum imposed pursuant to this subsection may, in the discretion of the sentencing court, be ordered to be served in a county prison, notwithstanding the provisions of 42 Pa.C.S. § 9762 (relating to sentencing proceeding; place of confinement).

(e) Suspension of operating privileges upon conviction.--

(1) The department shall suspend the operating privilege of an individual under paragraph (2) upon receiving a

1 certified record of the individual's conviction of or an  
2 adjudication of delinquency for:

3 (i) an offense under section 3802; or

4 (ii) an offense which is substantially similar to an  
5 offense enumerated in section 3802 reported to the  
6 department under Article III of the compact in section  
7 1581 (relating to Driver's License Compact).

8 (2) Suspension under paragraph (1) shall be in  
9 accordance with the following:

10 (i) Except as provided for in subparagraph (iii), 12  
11 months for an ungraded misdemeanor or misdemeanor of the  
12 second degree under this chapter.

13 (ii) 18 months for a misdemeanor of the first degree  
14 under this chapter.

15 (ii.1) 24 months for a felony of the third degree  
16 under this chapter.

17 (ii.2) 36 months for a felony of the second degree  
18 under this chapter.

19 (iii) There shall be no suspension for an ungraded  
20 misdemeanor under section 3802(a) where the person is  
21 subject to the penalties provided in subsection (a) and  
22 the person has no prior offense.

23 (iv) For suspensions imposed under paragraph (1)  
24 (ii), notwithstanding any provision of law or enforcement  
25 agreement to the contrary, all of the following apply:

26 (A) Suspensions shall be in accordance with  
27 Subchapter D of Chapter 15 (relating to the Driver's  
28 License Compact).

29 (B) In calculating the term of a suspension for  
30 an offense that is substantially similar to an

1 offense enumerated in section 3802, the department  
2 shall presume that if the conduct reported had  
3 occurred in this Commonwealth then the person would  
4 have been convicted under section 3802(a)(2).

5 (v) Notwithstanding any other provision of law or  
6 enforcement agreement to the contrary, the department  
7 shall suspend the operating privilege of a driver for six  
8 months upon receiving a certified record of a consent  
9 decree granted under 42 Pa.C.S. Ch. 63 (relating to  
10 juvenile matters) based on section 3802.

11 (f) Community service assignments.--In addition to the  
12 penalties set forth in this section, the sentencing judge may  
13 impose up to 150 hours of community service. Where the  
14 individual has been ordered to drug and alcohol treatment  
15 pursuant to sections 3814 and 3815, the community service shall  
16 be certified by the drug and alcohol treatment program as  
17 consistent with any drug and alcohol treatment requirements  
18 imposed under sections 3814 and 3815.

19 (f.1) Victim impact panels.--

20 (1) In addition to any other penalty imposed under this  
21 section, the court may order a person who violates section  
22 3802 to attend a victim impact panel program.

23 (2) A victim impact panel program shall provide a  
24 nonconfrontational forum for driving under the influence  
25 crash victims, their family members, their friends or other  
26 pertinent persons to speak to driving under the influence  
27 offenders about the impact of the crash on victims' lives and  
28 on the lives of families, friends and neighbors.

29 (3) A victim impact panel shall be administrated through  
30 the local office of probation and parole or other office as



1 the court shall determine and shall be operated in  
2 consultation with the Mothers Against Drunk Driving -  
3 Pennsylvania State Organization.

4 (4) A victim impact panel program may assess a  
5 reasonable participation fee to achieve program self-  
6 sufficiency but may not operate for profit. The department  
7 shall establish an acceptable range of fees.

8 (5) The department shall develop standards and  
9 incentives to encourage counties to establish victim impact  
10 panel programs. In developing these standards, the department  
11 shall establish and chair a coordinating committee among  
12 pertinent agencies and organizations, including the  
13 Department of Health, the Pennsylvania Commission on Crime  
14 and Delinquency, the Office of Victim Advocate, the  
15 Administrative Office of Pennsylvania Courts, county  
16 officials, the Mothers Against Drunk Driving - Pennsylvania  
17 State Organization and the Pennsylvania DUI Association. The  
18 standards shall address items including all of the following:

19 (i) Prototype design and structure standards for  
20 victim impact panels.

21 (ii) Training standards and curricula for  
22 presenters, facilitators and administrators.

23 (iii) Operations policy and guidelines manual.

24 (iv) Evaluation standards, design and structure  
25 allowing for the tracking and analysis of recidivism  
26 data.

27 (v) Standards for counseling and debriefing  
28 activities for victim presenters.

29 (vi) Standards for reimbursing reasonable costs to  
30 victims for participation in panels.

(vii) Assistance to counties through coordinating potential Federal and State funding streams to carry out this subsection and to assist counties as may be needed.

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

(h) Appeal.--The Commonwealth has the right to appeal directly to the Superior Court any order of court which imposes a sentence for violation of this section which does not meet the requirements of this section. The Superior Court shall remand the case to the sentencing court for imposition of a sentence in accordance with the provisions of this section.

(i) First class cities.--Notwithstanding the provision for direct appeal to the Superior Court, if, in a city of the first class, a person 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, a person 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) Additional conditions.--In addition to any other penalty imposed under law, the court may sentence a person who violates section 3802 to any other requirement or condition consistent

1 with the treatment needs of the person, the restoration of the  
2 victim to preoffense status or the protection of the public.

3 (k) Nonapplicability.--Except for subsection (e), this  
4 section shall not apply to dispositions resulting from  
5 proceedings under 42 Pa.C.S. Ch. 63 (relating to juvenile  
6 matters).

7 § 3805. Ignition interlock.

8 (a) General rule.--If a person violates section 3802  
9 (relating to driving under influence of alcohol or controlled  
10 substance) and either is convicted under section 3802(c) for a  
11 first offense or, within the past ten years, has a prior offense  
12 as defined in section 3806(a) (relating to prior offenses) or  
13 has had their operating privileges suspended pursuant to section  
14 1547(b.1) (relating to chemical testing to determine amount of  
15 alcohol or controlled substance) or 3808(c) (relating to  
16 illegally operating a motor vehicle not equipped with ignition  
17 interlock) and the person seeks a restoration of operating  
18 privileges, the department shall require as a condition of  
19 issuing a restricted license pursuant to this section that the  
20 following occur:

21 (1) Each motor vehicle owned by the person or registered  
22 to the person has been equipped with an ignition interlock  
23 system and remains so for the duration of the restricted  
24 license period.

25 (2) If there are no motor vehicles owned by the person  
26 or registered to the person that the person so certify to the  
27 department. A person so certifying shall be deemed to have  
28 satisfied the requirement that all motor vehicles owned by  
29 the person or registered to the person be equipped with an  
30 ignition interlock system as required by this subsection.

1 (b) Application for a restricted license.--A person subject  
2 to this section shall apply to the department for an ignition  
3 interlock restricted license under section 1951 (relating to  
4 driver's license and learner's permit), which shall be clearly  
5 marked to restrict the person to only driving, operating or  
6 being in actual physical control of the movement of motor  
7 vehicles equipped with an ignition interlock system. Upon  
8 issuance of an ignition interlock restricted license to any  
9 person, the department shall notify the person that until the  
10 person obtains an unrestricted license the person may not own,  
11 register, drive, operate or be in actual physical control of the  
12 movement of any motor vehicle which is not equipped with an  
13 ignition interlock system.

14 (c) Issuance of unrestricted license.--[One]

15 (1) Except as provided under paragraphs (2), (3) and  
16 (4), one year from the date of issuance of an ignition  
17 interlock restricted license under this section, if otherwise  
18 eligible, a person may be issued a replacement license under  
19 section 1951(d) that does not contain the ignition interlock  
20 system restriction.

21 (2) For the third violation of section 3802(b) and for  
22 the second violation of 3802(c), the restricted license  
23 period shall be two years.

24 (3) For the fourth violation of section 3802(b) and for  
25 the third violation of section 3802(c), the restricted  
26 license period shall be five years.

27 (4) For the fourth violation of section 3802(c), the  
28 restricted license period shall never expire.

29 (d) Prohibition.--Except as set forth in subsections (e) and  
30 (f), until the person obtains an unrestricted license, the

1 person may not own, register, drive, operate or be in actual  
2 physical control of the movement of any motor vehicle within  
3 this Commonwealth unless the motor vehicle is equipped with an  
4 ignition interlock system.

5 (e) Economic hardship exemption.--A person subject to the  
6 requirements of subsection (a) may apply to the department for a  
7 hardship exemption to the requirement that an ignition interlock  
8 system must be installed in each of the person's motor vehicles.  
9 Where the department determines that the applicant establishes  
10 that such a requirement would result in undue financial  
11 hardship, the department may permit the applicant to install an  
12 ignition interlock system on only one of the applicant's motor  
13 vehicles. However, the applicant in accordance with section 3808  
14 (relating to illegally operating a motor vehicle not equipped  
15 with ignition interlock) shall be prohibited from driving,  
16 operating or being in actual physical control of the movement of  
17 any motor vehicle, including any of the applicant's motor  
18 vehicles, which is not equipped with an ignition interlock  
19 system.

20 (f) Employment exemption.--If a person with a restricted  
21 license is required in the course and scope of employment to  
22 drive, operate or be in actual physical control of the movement  
23 of a motor vehicle owned by the person's employer, the following  
24 apply:

25 (1) Except as set forth in paragraph (2), the person may  
26 drive, operate or be in actual physical control of the  
27 movement of that motor vehicle in the course and scope of  
28 employment without installation of an ignition interlock  
29 system if:

30 (i) the employer has been notified that the employee

1 is restricted; and

2 (ii) the employee has proof of the notification in  
3 the employee's possession while driving, operating or  
4 being in actual physical control of the movement of the  
5 employer's motor vehicle. Proof of the notification may  
6 be established only by the notarized signature of the  
7 employer acknowledging notification on a form which shall  
8 be provided by the department for this purpose and shall  
9 include a contact telephone number of the employer.

10 (2) Paragraph (1) does not apply in any of the following  
11 circumstances:

12 (i) To the extent that an employer-owned motor  
13 vehicle is made available to the employee for personal  
14 use.

15 (ii) If the employer-owned motor vehicle is owned by  
16 an entity which is wholly or partially owned by the  
17 person subject to this section.

18 (iii) If the employer-owned motor vehicle is a  
19 school bus; a school vehicle; or a vehicle designed to  
20 transport more than 15 passengers, including the driver.

21 (g) Prohibition of authorization.--This section shall not  
22 give the department authorization to impose an ignition  
23 interlock requirement on a person that has committed an offense  
24 under former section 3731 prior to October 1, 2003, without the  
25 issuance of a court order.

26 (h) Department approval.--An ignition interlock system  
27 required to be installed under this title must be a system which  
28 has been approved by the department. The department's approval  
29 of ignition interlock systems shall be published in the  
30 Pennsylvania Bulletin. Systems approved for use under former 42

1 Pa.C.S. § 7002(d) (relating to ignition interlock systems for  
2 driving under the influence) and any contracts for the  
3 installation, maintenance and inspection of the systems in  
4 effect as of the effective date of this section shall continue  
5 to be approved and in effect until the department again  
6 publishes approval of ignition interlock systems in the  
7 Pennsylvania Bulletin and enters into new contracts in support  
8 of the systems.

9 (h.1) Mobile installation services.--

10 (1) Approved service providers of department-certified  
11 manufacturers of ignition interlock systems shall be  
12 permitted to provide mobile installation of ignition  
13 interlock systems within this Commonwealth.

14 (2) Mobile installation of ignition interlock systems  
15 shall be held to the same security and procedural standards  
16 as provided in specifications of the department.

17 (3) Approved service providers of mobile installation of  
18 ignition interlock systems shall not permit the program  
19 participant or any unauthorized personnel to witness the  
20 installation of the ignition interlock system.

21 (4) Regular maintenance of ignition interlocks after  
22 mobile installation shall be performed according to the  
23 specifications established by the department.

24 (i) Offenses committed during a period for which an ignition  
25 interlock restricted license has been issued.--Except as  
26 provided in sections 1547(b.1) and 3808(c) (relating to  
27 illegally operating a motor vehicle not equipped with ignition  
28 interlock), any driver who has been issued an ignition interlock  
29 restricted license and as to whom the department receives a  
30 certified record of a conviction of an offense for which the

1 penalty is a cancellation, disqualification, recall, suspension  
2 or revocation of operating privileges shall have the ignition  
3 interlock restricted license recalled, and the driver shall  
4 surrender the ignition interlock restricted license to the  
5 department or its agents designated under the authority of  
6 section 1540 (relating to surrender of license). Following the  
7 completion of the cancellation, disqualification, recall,  
8 suspension or revocation which resulted in the recall of the  
9 ignition interlock restricted license, the department shall  
10 require that the person complete the balance of the ignition  
11 interlock restricted license period previously imposed prior to  
12 the issuance of a replacement license under section 1951(d) that  
13 does not contain an ignition interlock restriction.

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