

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1388 Session of
2011

INTRODUCED BY PAYNE, F. KELLER, MILNE, MOUL, SWANGER, TALLMAN
AND VULAKOVICH, APRIL 26, 2011

REFERRED TO COMMITTEE ON TRANSPORTATION, APRIL 26, 2011

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
19 more than one prior offense commits a misdemeanor of the

1 second degree.

2 (b) Other offenses.--

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

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

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

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

28 (5) An individual who violates section 3802(b) for the
29 fourth or subsequent time or who violates section 3802(c) for
30 the third or subsequent time commits a felony of the third

1 degree.

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

5 § 3804. Penalties.

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

10 (1) For a first offense, to:

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

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

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

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

20 (2) For a second offense, to:

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

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

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

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

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

30 (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:

(i) undergo imprisonment of not less than 90 days;

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

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

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

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

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

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

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

15 (1) For a first offense, to:

16 (i) undergo imprisonment of not less than 72
17 consecutive hours;

18 (ii) pay a fine of not less than \$1,000 nor more
19 than \$5,000;

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

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

24 (2) For a second offense, to:

25 (i) undergo imprisonment of not less than 90 days;

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

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

30 (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 certified record of the individual's conviction of or an

1 adjudication of delinquency for:

2 (i) an offense under section 3802; or

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

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

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

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

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

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

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

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

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

28 (B) In calculating the term of a suspension for
29 an offense that is substantially similar to an
30 offense enumerated in section 3802, the department

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

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

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

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

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

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

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

1 consultation with the Mothers Against Drunk Driving -
2 Pennsylvania State Organization.

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

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

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

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

22 (iii) Operations policy and guidelines manual.

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

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

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

30 (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
with the treatment needs of the person, the restoration of the

1 victim to preoffense status or the protection of the public.

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

6 § 3805. Ignition interlock.

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

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

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

30 (b) Application for a restricted license.--A person subject

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

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

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

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

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

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

28 (d) Prohibition.--Except as set forth in subsections (e) and
29 (f), until the person obtains an unrestricted license, the
30 person may not own, register, drive, operate or be in actual

1 physical control of the movement of any motor vehicle within
2 this Commonwealth unless the motor vehicle is equipped with an
3 ignition interlock system.

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

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

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

29 (i) the employer has been notified that the employee
30 is restricted; and

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

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

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

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

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

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

25 (h) Department approval.--An ignition interlock system
26 required to be installed under this title must be a system which
27 has been approved by the department. The department's approval
28 of ignition interlock systems shall be published in the
29 Pennsylvania Bulletin. Systems approved for use under former 42
30 Pa.C.S. § 7002(d) (relating to ignition interlock systems for

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

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

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

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

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

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

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

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

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