

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

HOUSE BILL

No. 188 Session of  
2013

---

INTRODUCED BY PAYNE, KAUFFMAN, HARHART, MUNDY, SWANGER, V.  
BROWN, STEPHENS, WATSON, GROVE, PETRI, R. BROWN, MILNE AND  
HICKERNELL, JANUARY 22, 2013

---

REFERRED TO COMMITTEE ON TRANSPORTATION, JANUARY 22, 2013

---

AN ACT

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

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

7 Section 1. Sections 3803 and 3804 of Title 75 of the  
8 Pennsylvania Consolidated Statutes, amended May 8, 2012  
9 (P.L.255, No.39), are amended to read:

10 § 3803. Grading.

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

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

1           (2) An individual who violates section 3802(a) and has  
2 more than one prior offense commits a misdemeanor of the  
3 second degree.

4           (b) Other offenses.--

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

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

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

25           (4) An individual who violates section 3802(a)(1) where  
26 the individual refused testing of blood or breath, or who  
27 violates section 3802(c) or (d) and who has one or more prior  
28 offenses commits a misdemeanor of the first degree[.], except  
29 as provided under paragraph (6).

30           (5) An individual who violates section 3802 where a

1 minor under 18 years of age was an occupant in the vehicle  
2 when the violation occurred commits a misdemeanor of the  
3 first degree.

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

8 (7) An individual who violates section 3802(c) for a  
9 fourth or subsequent time commits a felony of the second  
10 degree.

11 § 3804. Penalties.

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

16 (1) For a first offense, to:

17 (i) undergo a mandatory minimum term of six months'  
18 probation;

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

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 (relating to  
24 drug and alcohol assessments) and 3815 (relating to  
25 mandatory sentencing).

26 (2) For a second offense, to:

27 (i) undergo imprisonment for not less than five  
28 days;

29 (ii) pay a fine of not less than \$300 nor more than  
30 \$2,500;

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

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

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

6 (i) undergo imprisonment of not less than ten days;

7 (ii) pay a fine of not less than \$500 nor more than  
8 \$5,000; and

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

11 (b) High rate of blood alcohol; minors; commercial vehicles  
12 and school buses and school vehicles; accidents.--Except as set  
13 forth in subsection (c), an individual who violates section  
14 3802(a)(1) where there was an accident resulting in bodily  
15 injury, serious bodily injury or death of any person or damage  
16 to a vehicle or other property or who violates section 3802(b),  
17 (e) or (f) shall be sentenced as follows:

18 (1) For a first offense, to:

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

21 (ii) pay a fine of not less than \$500 nor more than  
22 \$5,000;

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

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

27 (2) For a second offense, to:

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

29 (ii) pay a fine of not less than \$750 nor more than  
30 \$5,000;

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

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

5 (3) For a third offense, to:

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

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

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

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

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

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

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

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

21 (1) For a first offense, to:

22 (i) undergo imprisonment of not less than 72  
23 consecutive hours;

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

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 (2) For a second 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 and  
3 not more than \$10,000;

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

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

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

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

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

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

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

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

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

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

21 (iv) undergo a Court Reporting Network evaluation.

22 (c.1) Violation involving minor occupant.--An individual who  
23 violates section 3803(b) (5) (relating to grading), in addition  
24 to any penalty imposed in this chapter, shall be sentenced as  
25 follows:

26 (1) For a first offense, to:

27 (i) pay a fine of not less than \$1,000; and

28 (ii) complete 100 hours of community service.

29 (2) For a second offense, to:

30 (i) pay a fine of not less than \$2,500; and

1           (ii) undergo imprisonment of not less than one month  
2           nor more than six months.

3           (3) For a third or subsequent offense, undergo  
4           imprisonment of not less than six months nor more than two  
5           years.

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

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

18               (1) The department shall suspend the operating privilege  
19               of an individual under paragraph (2) upon receiving a  
20               certified record of the individual's conviction of or an  
21               adjudication of delinquency for:

22                       (i) an offense under section 3802; or

23                       (ii) an offense which is substantially similar to an  
24                       offense enumerated in section 3802 reported to the  
25                       department under Article III of the compact in section  
26                       1581 (relating to Driver's License Compact).

27               (2) Suspension under paragraph (1) shall be in  
28               accordance with the following:

29                       (i) Except as provided for in subparagraph (iii), 12  
30                       months for an ungraded misdemeanor or misdemeanor of the

1 second degree under this chapter.

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

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

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

8 (iii) There shall be no suspension for an ungraded  
9 misdemeanor under section 3802(a) where the person is  
10 subject to the penalties provided in subsection (a) and  
11 the person has no prior offense.

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

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

18 (B) In calculating the term of a suspension for  
19 an offense that is substantially similar to an  
20 offense enumerated in section 3802, the department  
21 shall presume that if the conduct reported had  
22 occurred in this Commonwealth then the person would  
23 have been convicted under section 3802(a)(2).

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

30 (f) Community service assignments.--In addition to the

1 penalties set forth in this section, the sentencing judge may  
2 impose up to 150 hours of community service. Where the  
3 individual has been ordered to drug and alcohol treatment  
4 pursuant to sections 3814 and 3815, the community service shall  
5 be certified by the drug and alcohol treatment program as  
6 consistent with any drug and alcohol treatment requirements  
7 imposed under sections 3814 and 3815.

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

9 (1) In addition to any other penalty imposed under this  
10 section, the court may order a person who violates section  
11 3802 to attend a victim impact panel program.

12 (2) A victim impact panel program shall provide a  
13 nonconfrontational forum for driving under the influence  
14 crash victims, their family members, their friends or other  
15 pertinent persons to speak to driving under the influence  
16 offenders about the impact of the crash on victims' lives and  
17 on the lives of families, friends and neighbors.

18 (3) A victim impact panel shall be administrated through  
19 the local office of probation and parole or other office as  
20 the court shall determine and shall be operated in  
21 consultation with the Mothers Against Drunk Driving -  
22 Pennsylvania State Organization.

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

27 (5) The department shall develop standards and  
28 incentives to encourage counties to establish victim impact  
29 panel programs. In developing these standards, the department  
30 shall establish and chair a coordinating committee among

1 pertinent agencies and organizations, including the  
2 Department of Health, the Pennsylvania Commission on Crime  
3 and Delinquency, the Office of Victim Advocate, the  
4 Administrative Office of Pennsylvania Courts, county  
5 officials, the Mothers Against Drunk Driving - Pennsylvania  
6 State Organization and the Pennsylvania DUI Association. The  
7 standards shall address items including all of the following:

8 (i) Prototype design and structure standards for  
9 victim impact panels.

10 (ii) Training standards and curricula for  
11 presenters, facilitators and administrators.

12 (iii) Operations policy and guidelines manual.

13 (iv) Evaluation standards, design and structure  
14 allowing for the tracking and analysis of recidivism  
15 data.

16 (v) Standards for counseling and debriefing  
17 activities for victim presenters.

18 (vi) Standards for reimbursing reasonable costs to  
19 victims for participation in panels.

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

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

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

1 accordance with the provisions of this section.

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

17 (j) Additional conditions.--In addition to any other penalty  
18 imposed under law, the court may sentence a person who violates  
19 section 3802 to any other requirement or condition consistent  
20 with the treatment needs of the person, the restoration of the  
21 victim to preoffense status or the protection of the public.

22 (k) Nonapplicability.--Except for subsection (e), this  
23 section shall not apply to dispositions resulting from  
24 proceedings under 42 Pa.C.S. Ch. 63.

25 Section 2. Section 3805 of Title 75 is amended to read:  
26 § 3805. Ignition interlock.

27 (a) General rule.--If a person violates section 3802  
28 (relating to driving under influence of alcohol or controlled  
29 substance) and either is convicted under section 3802(c) for a  
30 first offense or, within the past ten years, has a prior offense

1 as defined in section 3806(a) (relating to prior offenses) or  
2 has had their operating privileges suspended pursuant to section  
3 1547(b.1) (relating to chemical testing to determine amount of  
4 alcohol or controlled substance) or 3808(c) (relating to  
5 illegally operating a motor vehicle not equipped with ignition  
6 interlock) and the person seeks a restoration of operating  
7 privileges, the department shall require as a condition of  
8 issuing a restricted license pursuant to this section that the  
9 following occur:

10 (1) Each motor vehicle owned by the person or registered  
11 to the person has been equipped with an ignition interlock  
12 system and remains so for the duration of the restricted  
13 license period.

14 (2) If there are no motor vehicles owned by the person  
15 or registered to the person that the person so certify to the  
16 department. A person so certifying shall be deemed to have  
17 satisfied the requirement that all motor vehicles owned by  
18 the person or registered to the person be equipped with an  
19 ignition interlock system as required by this subsection.

20 (b) Application for a restricted license.--A person subject  
21 to this section shall apply to the department for an ignition  
22 interlock restricted license under section 1951 (relating to  
23 driver's license and learner's permit), which shall be clearly  
24 marked to restrict the person to only driving, operating or  
25 being in actual physical control of the movement of motor  
26 vehicles equipped with an ignition interlock system. Upon  
27 issuance of an ignition interlock restricted license to any  
28 person, the department shall notify the person that until the  
29 person obtains an unrestricted license the person may not own,  
30 register, drive, operate or be in actual physical control of the

1 movement of any motor vehicle which is not equipped with an  
2 ignition interlock system.

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

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

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

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

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

18 (d) Prohibition.--Except as set forth in subsections (e) and  
19 (f), until the person obtains an unrestricted license, the  
20 person may not own, register, drive, operate or be in actual  
21 physical control of the movement of any motor vehicle within  
22 this Commonwealth unless the motor vehicle is equipped with an  
23 ignition interlock system.

24 (e) Economic hardship exemption.--A person subject to the  
25 requirements of subsection (a) may apply to the department for a  
26 hardship exemption to the requirement that an ignition interlock  
27 system must be installed in each of the person's motor vehicles.  
28 Where the department determines that the applicant establishes  
29 that such a requirement would result in undue financial  
30 hardship, the department may permit the applicant to install an

1 ignition interlock system on only one of the applicant's motor  
2 vehicles. However, the applicant in accordance with section 3808  
3 (relating to illegally operating a motor vehicle not equipped  
4 with ignition interlock) shall be prohibited from driving,  
5 operating or being in actual physical control of the movement of  
6 any motor vehicle, including any of the applicant's motor  
7 vehicles, which is not equipped with an ignition interlock  
8 system.

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

14 (1) Except as set forth in paragraph (2), the person may  
15 drive, operate or be in actual physical control of the  
16 movement of that motor vehicle in the course and scope of  
17 employment without installation of an ignition interlock  
18 system if:

19 (i) the employer has been notified that the employee  
20 is restricted; and

21 (ii) the employee has proof of the notification in  
22 the employee's possession while driving, operating or  
23 being in actual physical control of the movement of the  
24 employer's motor vehicle. Proof of the notification may  
25 be established only by the notarized signature of the  
26 employer acknowledging notification on a form which shall  
27 be provided by the department for this purpose and shall  
28 include a contact telephone number of the employer.

29 (2) Paragraph (1) does not apply in any of the following  
30 circumstances:

1 (i) To the extent that an employer-owned motor  
2 vehicle is made available to the employee for personal  
3 use.

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

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

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

15 (h) Department approval.--An ignition interlock system  
16 required to be installed under this title must be a system which  
17 has been approved by the department. The department's approval  
18 of ignition interlock systems shall be published in the  
19 Pennsylvania Bulletin. Systems approved for use under former 42  
20 Pa.C.S. § 7002(d) (relating to ignition interlock systems for  
21 driving under the influence) and any contracts for the  
22 installation, maintenance and inspection of the systems in  
23 effect as of the effective date of this section shall continue  
24 to be approved and in effect until the department again  
25 publishes approval of ignition interlock systems in the  
26 Pennsylvania Bulletin and enters into new contracts in support  
27 of the systems.

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

29 (1) Approved service providers of department-certified  
30 manufacturers of ignition interlock systems shall be

1 permitted to provide mobile installation of ignition  
2 interlock systems within this Commonwealth.

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

6 (3) Approved service providers of mobile installation of  
7 ignition interlock systems shall not permit the program  
8 participant or any unauthorized personnel to witness the  
9 installation of the ignition interlock system.

10 (4) Regular maintenance of ignition interlocks after  
11 mobile installation shall be performed according to the  
12 specifications established by the department.

13 (i) Offenses committed during a period for which an ignition  
14 interlock restricted license has been issued.--Except as  
15 provided in sections 1547(b.1) and 3808(c) (relating to  
16 illegally operating a motor vehicle not equipped with ignition  
17 interlock), any driver who has been issued an ignition interlock  
18 restricted license and as to whom the department receives a  
19 certified record of a conviction of an offense for which the  
20 penalty is a cancellation, disqualification, recall, suspension  
21 or revocation of operating privileges shall have the ignition  
22 interlock restricted license recalled, and the driver shall  
23 surrender the ignition interlock restricted license to the  
24 department or its agents designated under the authority of  
25 section 1540 (relating to surrender of license). Following the  
26 completion of the cancellation, disqualification, recall,  
27 suspension or revocation which resulted in the recall of the  
28 ignition interlock restricted license, the department shall  
29 require that the person complete the balance of the ignition  
30 interlock restricted license period previously imposed prior to

1 the issuance of a replacement license under section 1951(d) that  
2 does not contain an ignition interlock restriction.

3 Section 3. This act shall take effect in 60 days.