

VEHICLE CODE (75 PA.C.S.) - OMNIBUS AMENDMENTS

Act of Oct. 24, 2018, P.L. 925, No. 153

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Session of 2018

No. 2018-153

SB 961

AN ACT

Amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, in licensing of drivers, further providing for learners' permits and for driving while operating privilege is suspended or revoked; in miscellaneous provisions, further providing for the offenses of homicide by vehicle, aggravated assault by vehicle, homicide by vehicle while driving under influence, aggravated assault by vehicle while driving under the influence, for accidents involving death or personal injury while not properly licensed and for accidents involving certain vehicles; and, in driving after imbibing alcohol or utilizing drugs, further providing for grading and for penalties.

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

Section 1. Sections 1505(b), 1543(b)(1), 3732(b), 3732.1(b) and 3735(a) of Title 75 of the Pennsylvania Consolidated Statutes are amended to read:

§ 1505. Learners' permits.

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(b) Learner must be accompanied.--A learner's permit entitles the person to whom it was issued to drive vehicles and combinations of vehicles of the class or classes specified, but only while the holder of the learner's permit is accompanied by and under the immediate supervision of a person who:

(1) is at least 21 years of age or, if the spouse of the learner's permit holder, is at least 18 years of age; or, if a parent, guardian or person in loco parentis of the learner's permit holder, is at least 18 years of age;

(2) is licensed to drive vehicles of the class then being driven by the holder of the learner's permit; [and]

(3) is actually occupying a seat beside the holder of the learner's permit unless the vehicle is a motorcycle[.];

and

(4) is not manifestly under the influence of alcohol or drugs to the degree that the person may endanger themselves or others.

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§ 1543. Driving while operating privilege is suspended or revoked.

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(b) Certain offenses.--

(1) **The following shall apply:**

(i) A person who drives a motor vehicle on a highway or trafficway of this Commonwealth at a time when the person's operating privilege is suspended or revoked as a condition of acceptance of Accelerated Rehabilitative Disposition for a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) or the former section 3731, because of a violation of section 1547(b)(1) (relating to suspension for refusal) or 3802 or former section 3731 or is

suspended under section 1581 (relating to Driver's License Compact) for an offense substantially similar to a violation of section 3802 or former section 3731 shall, upon **a first** conviction, be guilty of a summary offense and shall be sentenced to pay a fine of \$500 and to undergo imprisonment for a period of not less than 60 days nor more than 90 days.

(ii) **A second violation of this paragraph shall constitute a summary offense and, upon conviction of this paragraph, a person shall be sentenced to pay a fine of \$1,000 and to undergo imprisonment for not less than 90 days.**

(iii) **A third or subsequent violation of this paragraph shall constitute a misdemeanor of the third degree and, upon conviction of this paragraph, a person shall be sentenced to pay a fine of \$2,500 and to undergo imprisonment for not less than six months.**

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§ 3732. Homicide by vehicle.

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(b) Sentencing.--

(1) In addition to any other penalty provided by law, a person convicted of a violation of subsection (a) may be sentenced to an additional term not to exceed five years' confinement if at trial the prosecution proves beyond a reasonable doubt that the offense occurred in an active work zone.

(1.1) In addition to any other penalty provided by law, a person convicted of a violation of subsection (a) [as the result of a violation of section] **who is also convicted of a violation of section 1501 (relating to drivers required to be licensed), 1543 (relating to driving while operating privilege is suspended or revoked), 3316 (relating to prohibiting text-based communications), 3325 (relating to duty of driver on approach of emergency vehicle) or 3327 (relating to duty of driver in emergency response areas) [and who is convicted of violating section 3316, 3325 or 3327] may be sentenced to an additional term not to exceed five years' confinement [when the violation resulted in death].**

(2) The prosecution must indicate intent to proceed under this section in the indictment or information which commences the prosecution.

(3) The Pennsylvania Commission on Sentencing, pursuant to 42 Pa.C.S. § 2154 (relating to adoption of guidelines for sentencing), shall provide for a sentencing enhancement for an offense under this section when the violation occurred in an active work zone or [was the result of a violation of section] **the individual was also convicted of a violation of section 1501, 1543, 3316, 3325 or 3327.**

§ 3732.1. Aggravated assault by vehicle.

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(b) Sentencing.--

(1) In addition to any other penalty provided by law, a person convicted of a violation of subsection (a) may be sentenced to an additional term not to exceed two years' confinement if at trial the prosecution proves beyond a reasonable doubt that the offense occurred in an active work zone.

(2) In addition to any other penalty provided by law, a person convicted of a violation of subsection (a) [as the result of a violation of section] **who is also convicted of**

a violation of section 1501 (relating to drivers required to be licensed), 1543 (relating to driving while operating privilege is suspended or revoked), 3316 (relating to prohibiting text-based communications), 3325 (relating to duty of driver on approach of emergency vehicle) or 3327 (relating to duty of driver in emergency response areas) [and who is convicted of violating section 3316, 3325 or 3327] may be sentenced to an additional term not to exceed two years' confinement [when the violation resulted in serious bodily injury].

(3) The prosecution must indicate intent to proceed under this section in the indictment or information which commences the prosecution.

(4) The Pennsylvania Commission on Sentencing, under 42 Pa.C.S. § 2154 (relating to adoption of guidelines for sentencing), shall provide for a sentencing enhancement for an offense under this section when the violation occurred in an active work zone or [was the result of a violation of section] **the individual was also convicted of a violation of section 1501, 1543, 3316, 3325 or 3327.**

§ 3735. Homicide by vehicle while driving under influence.

(a) Offense defined.--[Any person who unintentionally causes the death of another person as the result of a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) and who is convicted of violating section 3802 is guilty of a felony of the second degree when the violation is the cause of death and the sentencing court shall order the person to serve a minimum term of imprisonment of not less than three years. A consecutive three-year term of imprisonment shall be imposed for each victim whose death is the result of the violation of section 3802.]

(1) **A person who unintentionally causes the death of another person as the result of a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) and who is convicted of violating section 3802:**

(i) is guilty of a felony of the second degree; or

(ii) is guilty of a felony of the first degree if, before sentencing on the present violation, the person has incurred a conviction, adjudication of delinquency, juvenile consent decree, acceptance of Accelerated Rehabilitative Disposition or other form of preliminary disposition for any of the following:

(A) An offense under section 3802.

(B) An offense under former section 3731 (relating to driving under influence of alcohol or controlled substance).

(C) An offense which constitutes a felony under this subchapter.

(D) An offense substantially similar to an offense under clause (A), (B) or (C) in another jurisdiction.

(E) Any combination of the offenses under clause (A), (B), (C) or (D).

(2) The sentencing court shall order a person convicted under paragraph (1)(i) to serve a minimum term of imprisonment of not less than three years. A consecutive three-year term of imprisonment shall be imposed for each victim whose death is the result of a violation of section 3802.

(3) The sentencing court shall order a person convicted under paragraph (1)(ii) to serve a minimum term of imprisonment of:

(i) Not less than five years if, before sentencing on the present violation, the person has one prior conviction, adjudication of delinquency, juvenile consent decree, acceptance of Accelerated Rehabilitative Disposition or other form of preliminary disposition for any of the offenses listed under paragraph (1)(ii)(A), (B), (C), (D) or (E). A consecutive five-year term of imprisonment shall be imposed for each victim whose death is the result of a violation of section 3802.

(ii) Not less than seven years if, before sentencing on the present violation, the person has incurred at least two prior convictions, adjudications of delinquency, juvenile consent decrees, acceptances of Accelerated Rehabilitative Disposition or other forms of preliminary disposition for any of the offenses listed under paragraph (1)(ii)(A), (B), (C), (D) or (E). A consecutive seven-year term of imprisonment shall be imposed for each victim whose death is the result of a violation of section 3802.

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Section 2. Section 3735.1 of Title 75 is amended by adding a subsection to read:

§ 3735.1. Aggravated assault by vehicle while driving under the influence.

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(a.1) Sentencing.--In addition to any other penalty provided by law, a person convicted of a violation of subsection (a) and a violation of section 1501 (relating to drivers required to be licensed) or 1543 (relating to driving while operating privilege is suspended or revoked) when committed at the same time and place may be sentenced to an additional term not to exceed two years' confinement.

Section 3. Sections 3742.1, 3756, 3803 and 3804(e)(2)(ii) of Title 75 are amended to read:

§ 3742.1. Accidents involving death or personal injury while not properly licensed.

(a) Offense defined.--A person whose operating privilege was disqualified, canceled, recalled, revoked or suspended and not restored or who does not hold a valid driver's license and applicable endorsements for the type and class of vehicle being operated commits an offense under this section if the person was the driver of any vehicle and [caused an accident resulting in injury or death of any person.]:

(1) caused an accident resulting in injury or death of a person; or

(2) acted with negligence that contributed to causing the accident resulting in injury or death of a person.

(b) Penalties.--

(1) Except as otherwise provided in this section, any person violating subsection [(a)] (a)(1) commits a misdemeanor of the second degree.

(2) If the victim suffers serious bodily injury or death, any person violating subsection [(a)] (a)(1) commits a felony of the third degree.

(2.1) A person violating subsection (a)(2) resulting in the serious bodily injury of a person commits a misdemeanor of the third degree.

(2.2) A person violating subsection (a)(2) resulting in the death of a person commits a misdemeanor of the second degree.

(3) Any motor vehicle, as defined in section 102 (relating to definitions), used in the commission of an

offense under this section may be deemed contraband and forfeited in accordance with the provisions set forth in 18 Pa.C.S. § 6501(d) (relating to scattering rubbish).

§ 3756. [Accidents involving certain vehicles] **Post-accident testing.**

[(a) Testing requirement.--A police officer investigating an accident involving a motor carrier vehicle, bus, school bus or a vehicle transporting hazardous materials required to be placarded by department regulations and required to be investigated under this subchapter shall request that the driver of the vehicle submit to testing for alcohol and controlled substances. Costs for testing under this section shall be borne by the driver's employer.

(b) Penalty.--A driver who refuses to submit to alcohol or controlled substances testing under this section commits a summary offense and shall, upon conviction, be sentenced to pay a fine of up to \$200.] **The department shall promulgate regulations consistent with 49 CFR 382.303 (relating to post-accident testing).**

§ 3803. Grading.

(a) Basic offenses.--Except as provided in subsection (b):

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

(2) An individual who violates section 3802(a) and has [more than one prior offense] **two prior offenses** commits a misdemeanor of the second degree.

(3) **An individual who violates section 3802 and has three or more prior offenses or has previously been convicted of a violation of section 3735 (relating to homicide by vehicle while driving under influence) commits a felony of the third degree.**

(b) Other offenses.--

(1) 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 in damage to a vehicle or other property, or who violates section 3802(b), (e) or (f) and who has [no more than] one prior offense commits a misdemeanor for which the individual may be sentenced to a term of imprisonment of not more than six months and to pay a fine under section 3804.

(2) An individual who violates section 3802(a)(1) where the individual refused testing of [blood or] breath **or chemical testing pursuant to a valid search warrant, court order or any other basis permissible by the Constitution of the United States and the Constitution of Pennsylvania**, or who violates section 3802(c) or (d) and who has no prior offenses commits a misdemeanor for which the individual may be sentenced to a term of imprisonment of not more than six months and to pay a fine under section 3804.

(3) 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 in damage to a vehicle or other property, or who violates section 3802(b), (e) or (f) and who has [more than one prior offense] **two prior offenses** commits a misdemeanor of the first degree.

(4) An individual who violates section 3802(a)(1) where the individual refused testing of [blood or] breath **or chemical testing pursuant to a valid search warrant, court**

order or any other basis permissible by the Constitution of the United States and the Constitution of Pennsylvania, or who violates section 3802(c) or (d) and who has one [or more] prior [offenses] **offense** commits a misdemeanor of the first degree.

(4.1) **An individual who violates section 3802(a)(1) where the individual refused testing of breath or chemical testing pursuant to a valid search warrant, court order or any other basis permissible by the Constitution of the United States and the Constitution of Pennsylvania, or who violates section 3802(c) or (d) and who has two or more prior offenses commits a felony of the third degree.**

(5) An individual who violates section 3802 where a minor under 18 years of age was an occupant in the vehicle when the violation occurred commits [a misdemeanor of the first degree.]:

(i) **A misdemeanor of the first degree if the individual has no more than one prior offense.**

(ii) **A felony of the third degree if the individual has two or more prior offenses.**

§ 3804. Penalties.

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

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

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(ii) 18 months for a misdemeanor of the first degree **or felony of the third degree** under this chapter.

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Section 4. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) The amendment of 75 Pa.C.S. § 3756.

(ii) This section.

(2) The remainder of this act shall take effect in 60 days.

APPROVED--The 24th day of October, A.D. 2018.

TOM WOLF