

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2921 Session of
2004

INTRODUCED BY B. SMITH, STABACK, GEIST, DeLUCA, ALLEN,
R. MILLER, HERSHEY, JAMES, SCHRODER, HENNESSEY, WATSON,
BENNINGHOFF, SATHER, TRUE, RUBLEY, GINGRICH, BAKER, BARD,
BASTIAN, CRAHALLA, CREIGHTON, DENLINGER, GILLESPIE, GOOD,
HARRIS, HESS, KELLER, MAJOR, MARSICO, S. MILLER, O'NEILL,
PICKETT, SCAVELLO, E. Z. TAYLOR, J. TAYLOR, WASHINGTON,
YOUNGBLOOD, PISTELLA AND BALDWIN, OCTOBER 18, 2004

REFERRED TO COMMITTEE ON GAME AND FISHERIES, OCTOBER 18, 2004

AN ACT

1 Amending Title 30 (Fish) of the Pennsylvania Consolidated
2 Statutes, further providing for the fines and penalties
3 applicable to ungraded misdemeanors, for chemical testing to
4 determine amounts of alcohol or controlled substances and for
5 operating a watercraft under the influence of alcohol or
6 controlled substances.

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

9 Section 1. Section 923(a) of Title 30 of the Pennsylvania
10 Consolidated Statutes is amended by adding a paragraph to read:

11 § 923. Classification of offenses and penalties.

12 (a) General rule.--The following penalties shall be imposed
13 for violations of this title:

14 * * *

15 (4.1) For an ungraded misdemeanor, a fine of not less
16 than \$300 nor more than \$5,000, or imprisonment not exceeding
17 two years, or both.

1 * * *

2 Section 2. Section 5125(c) and (d) of Title 30 are amended
3 to read:

4 § 5125. Chemical testing to determine amount of alcohol or
5 controlled substance.

6 * * *

7 (c) Test results admissible in evidence.--In any summary
8 proceeding or criminal proceeding in which the defendant is
9 charged with a violation of section 5502 or any other violation
10 of this title arising out of the same action, the amount of
11 alcohol or controlled substance in the defendant's blood, as
12 shown by chemical testing of the person's breath, blood or urine
13 by tests conducted by qualified persons using approved
14 equipment, shall be admissible in evidence.

15 (1) Chemical tests of breath shall be performed on
16 devices approved by the Department of Health using procedures
17 prescribed jointly by regulations of the Department of Health
18 and the commission. Devices shall have been tested for
19 accuracy within a period of time and in a manner specified by
20 regulations of the Department of Health and the commission.
21 For purposes of breath testing, a qualified person means a
22 person who has fulfilled the training requirement in the use
23 of the equipment in a training program approved by the
24 Department of Health and the commission. A certificate or log
25 showing that a device was tested for accuracy and that the
26 device was accurate shall be presumptive evidence of those
27 facts in every proceeding in which a violation of this title
28 is charged.

29 (2) (i) Chemical tests of blood or urine shall be
30 performed by a clinical laboratory licensed and approved

1 by the Department of Health for this purpose using
2 procedures and equipment prescribed by the Department of
3 Health. For purposes of blood and urine testing, a
4 qualified person means an individual who is authorized to
5 perform those chemical tests under the act of September
6 26, 1951 (P.L.1539, No.389), known as The Clinical
7 Laboratory Act.

8 (ii) For purposes of blood and urine testing to
9 determine blood alcohol or controlled substance content
10 levels, the procedures and equipment prescribed by the
11 Department of Health shall be reviewed within 120 days of
12 the effective date of this subparagraph and at least
13 every two years thereafter to ensure that consideration
14 is given to scientific and technological advances so that
15 testing conducted in accordance with the prescribed
16 procedures utilizing the prescribed equipment will be as
17 accurate and reliable as science and technology permit.

18 (3) Chemical test of blood or urine, if conducted by a
19 facility located outside this Commonwealth, shall be
20 performed:

21 (i) by a facility licensed and approved by the
22 Department of Health for this purpose; or

23 (ii) by a facility licensed to conduct the tests by
24 the state in which the facility is located and licensed
25 pursuant to the Clinical Laboratory Improvement
26 Amendments of 1988 (Public Law 100-578, 102 Stat. 2903).

27 (4) For purposes of blood testing to determine the
28 amount of a Schedule I or nonprescribed Schedule II or III
29 controlled substance or a metabolite of such a substance, the
30 Department of Health shall prescribe minimum levels of these

1 substances which must be present in a person's blood in order
2 for the test results to be admissible in a prosecution for a
3 violation of section 5502 or any other violation of this
4 title arising out of the same action.

5 [(d) Presumptions from amount of alcohol.--If chemical
6 testing of a person's breath, blood or urine shows:

7 (1) That the amount of alcohol by weight in the blood of
8 the person tested is 0.05% or less, it shall be presumed that
9 the person tested was not under influence of alcohol and the
10 person shall not be charged with any violation under section
11 5502(a)(1) or (4) or, if the person was so charged prior to
12 the test, the charge shall be void ab initio. This fact shall
13 not give rise to any presumption concerning a violation of
14 section 5502(a)(2) or (3).

15 (2) That the amount of alcohol by weight in the blood of
16 the person tested is in excess of 0.05% but less than 0.10%,
17 this fact shall not give rise to any presumption that the
18 person tested was or was not under the influence of alcohol,
19 but this fact may be considered with other competent evidence
20 in determining whether the person was or was not under the
21 influence of alcohol.

22 (3) That the amount of alcohol by weight in the blood of
23 the person tested is 0.10% or more, this fact may be
24 introduced into evidence if the person is charged with
25 violating section 5502.]

26 * * *

27 Section 3. Section 5502 heading, (a), (a.1) and (c) of Title
28 30 are amended and the section is amended by adding subsections
29 to read:

30 § 5502. Operating watercraft [under influence of alcohol or

1 controlled substance] after imbibing alcohol or using
2 drugs.

3 [(a) General rule.--No person shall operate or be in actual
4 physical control of the movement of a watercraft upon, in or
5 through the waters of this Commonwealth:

6 (1) while under the influence of alcohol to a degree
7 which renders the person incapable of safe operation of a
8 watercraft;

9 (2) while under the influence of any controlled
10 substance, as defined by the laws of this Commonwealth and
11 rules and regulations promulgated thereunder, to a degree
12 which renders the person incapable of safe operation of a
13 watercraft;

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

17 (4) while the amount of alcohol by weight in the blood
18 of:

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

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

21 (a.1) Prima facie evidence.--

22 (1) It is prima facie evidence that:

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

30 (ii) a minor had 0.02% or more by weight of alcohol

1 in his or her blood at the time of operating or being in
2 actual physical control of the movement of a watercraft
3 if the amount of alcohol by weight in the blood of the
4 minor is equal to or greater than 0.02% at the time a
5 chemical test is performed on a sample of the person's
6 breath, blood or urine.

7 (2) For the purposes of this section, the chemical test
8 of the sample of the person's breath, blood or urine shall be
9 from a sample obtained within three hours after the person
10 drove, operated or was in actual physical control of the
11 watercraft.]

12 (a) General impairment.--

13 (1) An individual may not operate or be in actual
14 physical control of the movement of a watercraft after
15 imbibing a sufficient amount of alcohol such that the
16 individual was incapable of safely driving, operating or
17 being in actual physical control of the movement of the
18 watercraft.

19 (2) An individual may not operate or be in actual
20 physical control of the movement of a watercraft after
21 imbibing a sufficient amount of alcohol such that the alcohol
22 concentration in the individual's blood or breath is at least
23 0.08% but less than 0.10% within two hours after the
24 individual has operated or been in actual physical control of
25 the movement of the watercraft.

26 (a.1) High rate of alcohol.--An individual may not operate
27 or be in actual physical control of the movement of a watercraft
28 after imbibing a sufficient amount of alcohol such that the
29 alcohol concentration in the individual's blood or breath is at
30 least 0.10% but less than 0.16% within two hours after the

1 individual has operated or been in actual physical control of
2 the movement of the watercraft.

3 (a.2) Highest rate of alcohol.--An individual may not
4 operate or be in actual physical control of the movement of a
5 watercraft after imbibing a sufficient amount of alcohol such
6 that the alcohol concentration in the individual's blood or
7 breath is 0.16% or higher within two hours after the individual
8 has operated or been in actual physical control of the movement
9 of the watercraft.

10 (a.3) Controlled substances.--An individual may not operate
11 or be in actual physical control of the movement of a watercraft
12 under any of the following circumstances:

13 (1) There is in the individual's blood any amount of a:

14 (i) Schedule I controlled substance, as defined in
15 the act of April 14, 1972 (P.L.233, No.64), known as The
16 Controlled Substance, Drug, Device and Cosmetic Act;

17 (ii) Schedule II or III controlled substance, as
18 defined in The Controlled Substance, Drug, Device and
19 Cosmetic Act, which has not been medically prescribed for
20 the individual; or

21 (iii) metabolite of a substance under subparagraph
22 (i) or (ii).

23 (2) The individual is under the influence of a drug or
24 combination of drugs to a degree which impairs the
25 individual's ability to safely drive, operate or be in actual
26 physical control of the movement of the watercraft.

27 (3) The individual is under the combined influence of
28 alcohol and a drug or combination of drugs to a degree which
29 impairs the individual's ability to safely drive, operate or
30 be in actual physical control of the movement of the

1 watercraft.

2 (4) The individual is under the influence of a solvent
3 or noxious substance in violation of 18 Pa.C.S. § 7303
4 (relating to sale or illegal use of certain solvents and
5 noxious substances).

6 (a.4) Minors.--A minor may not drive, operate or be in
7 actual physical control of the movement of a watercraft after
8 imbibing a sufficient amount of alcohol such that the alcohol
9 concentration in the minor's blood or breath is 0.02% or higher
10 within two hours after the minor has driven, operated or been in
11 actual physical control of the movement of the watercraft.

12 (a.5) Exception to two-hour rule.--Notwithstanding the
13 provisions of subsection (a), (a.1), (a.2) or (a.4) where
14 alcohol concentration in an individual's blood or breath is an
15 element of the offense, evidence of such alcohol concentration
16 more than two hours after the individual has driven, operated or
17 been in actual physical control of the movement of the
18 watercraft is sufficient to establish that element of the
19 offense under the following circumstances:

20 (1) where the Commonwealth shows good cause explaining
21 why the chemical test could not be performed within two
22 hours; and

23 (2) where the Commonwealth establishes that the
24 individual did not imbibe any alcohol between the time the
25 individual was arrested and the time the test was performed.

26 * * *

27 (c) Grading and penalties.--

28 [(1) A person violating any of the provisions of this
29 section commits a misdemeanor of the second degree except a
30 person who meets the requirements of paragraph (2). The

1 sentencing court shall order the person to pay a fine of not
2 less than \$500 and to serve a minimum term of imprisonment
3 of:

4 (i) not less than 48 consecutive hours; or

5 (ii) not less than 30 days if the person had
6 previously accepted Accelerated Rehabilitative
7 Disposition or any other form of preliminary disposition
8 or had been convicted of, adjudicated delinquent or
9 granted a consent decree under 42 Pa.C.S. Ch. 63
10 (relating to juvenile matters) based on an offense under
11 this section or an equivalent offense in this or other
12 jurisdictions within the previous seven years calculated
13 from the date of acceptance, conviction, adjudication or
14 grant.

15 (2) If the person has two or more times previously been
16 convicted of, adjudicated delinquent or granted a consent
17 decree under 42 Pa.C.S. Ch. 63 based on an offense under this
18 section or an equivalent offense in this or other
19 jurisdictions within the previous seven years, a person
20 commits a misdemeanor of the first degree. The sentencing
21 court shall order the person to pay a fine of not less than
22 \$2,500 nor more than \$10,000 and to serve a minimum term of
23 imprisonment of not less than 90 days.]

24 (1) An individual who violates subsection (a) commits an
25 ungraded misdemeanor and shall be sentenced as follows:

26 (i) For a first offense, to undergo a period of
27 probation not to exceed six months and to pay a fine of
28 \$300.

29 (ii) For a second offense, to undergo imprisonment
30 for not less than five days nor more than six months and

1 to pay a fine of not less than \$300 nor more than \$2,500.

2 (iii) For a third or subsequent offense, to undergo
3 imprisonment for not less than ten days nor more than two
4 years and to pay a fine of not less than \$500 nor more
5 than \$5,000.

6 (2) An individual who violates subsection (a.1), (a.3)
7 or (a.4) commits a misdemeanor of the second degree and shall
8 be sentenced as follows:

9 (i) For a first offense, to undergo imprisonment for
10 not less than 72 consecutive hours nor more than six
11 months and pay a fine of not less than \$500 nor more than
12 \$5,000.

13 (ii) For a second offense, to undergo imprisonment
14 for not less than 30 days nor more than six months and to
15 pay a fine of not less than \$750 nor more than \$5,000.

16 (iii) For a third or subsequent offense, to undergo
17 imprisonment for not less than 120 days nor more than
18 five years and to pay a fine of not less than \$1,500 nor
19 more than \$7,500.

20 (3) An individual who violates subsection (a.2) commits
21 a misdemeanor of the first degree and shall be sentenced as
22 follows:

23 (i) For a first offense, to undergo imprisonment of
24 not less than five consecutive days nor more than six
25 months and pay a fine for not less than \$1,000 nor more
26 than \$5,000.

27 (ii) For a second offense, to undergo imprisonment
28 for not less 90 days nor more than five years and to pay
29 a fine of not less than \$1,500 nor more than \$5,000.

30 (iii) For a third or subsequent offense, to undergo

1 imprisonment for not less than one year nor more than
2 five years and to pay a fine of not less than \$2,500 nor
3 more than \$10,000.

4 * * *

5 Section 4. This act shall apply to all license years
6 beginning after December 31, 2004.

7 Section 5. This act shall take effect in 60 days.