
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1262 Session of
2006

INTRODUCED BY CONTI AND PIPPY, JUNE 19, 2006

REFERRED TO GAME AND FISHERIES, JUNE 19, 2006

AN ACT

1 Amending Title 30 (Fish) of the Pennsylvania Consolidated
2 Statutes, further providing for chemical testing to determine
3 amounts of alcohol or controlled substances and for operating
4 a watercraft under the influence of alcohol or controlled
5 substances; and providing for aggravated assault by
6 watercraft while operating under influence.

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

9 Section 1. Section 5125(a), (b), (c), (d), (h) and (k) of
10 Title 30 of the Pennsylvania Consolidated Statutes are amended
11 to read:

12 § 5125. Chemical testing to determine amount of alcohol or
13 controlled substance.

14 (a) General rule.--Any person who operates or is in actual
15 physical control of the movement of a watercraft, upon, in or
16 through the waters of this Commonwealth, shall be deemed to have
17 given consent to one or more chemical tests of breath, blood or
18 urine for the purpose of determining the alcoholic content of
19 blood or the presence of a controlled substance if a waterways

1 [patrolman] conservation officer has reasonable grounds to
2 believe the person has been operating or in actual physical
3 control of the movement of a watercraft:

4 (1) [while under the influence of alcohol or a
5 controlled substance or both] in violation of section 5502
6 (relating to operating watercraft under influence of alcohol
7 or controlled substance); or

8 (2) which was involved in an accident in which the
9 operator, passenger or any other person [involved] required
10 treatment at a medical facility or was killed.

11 (b) Suspension for refusal.--

12 (1) If any person placed under arrest for a violation of
13 section 5502 [(relating to operating watercraft under
14 influence of alcohol or controlled substance)] is requested
15 to submit to chemical testing and refuses to do so, the
16 testing shall not be conducted but, upon notice by the
17 waterways [patrolman] conservation officer, the commission
18 shall suspend the boating privileges of the person [for a
19 period of 12 months.] as follows:

20 (i) Except as set forth in subparagraph (ii), for a
21 period of 12 months.

22 (ii) For a period of 18 months if any of the
23 following apply:

24 (A) The person's boating privileges have
25 previously been suspended under this subsection.

26 (B) The person has, prior to the refusal under
27 this paragraph, been sentenced for an offense under
28 section 5502.

29 (2) It is the duty of the waterways [patrolman]
30 conservation officer to inform the person that:

1 (i) the person's boating privileges will be
2 suspended upon refusal to submit to chemical testing[.];
3 and

4 (ii) if the person refuses to submit to chemical
5 testing, upon conviction or plea for violating section
6 5502(a)(1), the person will be subject to the penalties
7 provided in section 5502(c)(3).

8 (3) Any person whose boating privileges are suspended
9 under this section shall have the same right of appeal as
10 provided for in cases of suspension for other reasons.

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

19 (1) Chemical tests of breath shall be performed on
20 devices approved by the Department of Health using procedures
21 prescribed jointly by regulations of the Department of Health
22 and the [commission] Department of Transportation. Devices
23 shall have been tested for accuracy within a period of time
24 and in a manner specified by regulations of the Department of
25 Health and the [commission] Department of Transportation. For
26 purposes of breath testing, a qualified person means a person
27 who has fulfilled the training requirement in the use of the
28 equipment in a training program approved by the Department of
29 Health and the [commission] Department of Transportation. A
30 certificate or log showing that a device was tested for

1 accuracy and that the device was accurate shall be
2 presumptive evidence of those facts in every proceeding in
3 which a violation of this title is charged.

4 (2) (i) Chemical tests of blood or urine shall be
5 performed by a clinical laboratory licensed and approved
6 by the Department of Health for this purpose using
7 procedures and equipment prescribed by the Department of
8 Health. For purposes of blood and urine testing, a
9 qualified person means an individual who is authorized to
10 perform those chemical tests under the act of September
11 26, 1951 (P.L.1539, No.389), known as The Clinical
12 Laboratory Act.

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

23 (3) Chemical test of blood or urine, if conducted by a
24 facility located outside this Commonwealth, shall be
25 performed:

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

28 (ii) by a facility licensed to conduct the tests by
29 the state in which the facility is located and licensed
30 pursuant to the Clinical Laboratory Improvement

1 Amendments of 1988 (Public Law 100-578, 102 Stat. 2903).

2 (4) For purposes of blood testing to determine the
3 amount of a Schedule I or nonprescribed Schedule II or III
4 controlled substance or a metabolite of such a substance, the
5 Department of Health shall prescribe minimum levels of these
6 substances which must be present in a person's blood in order
7 for the test results to be admissible in a prosecution for a
8 violation of section 5502 or any other violation of this
9 title arising out of the same action.

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

12 (1) That the amount of alcohol by weight in the blood of
13 the person tested is 0.05% or less, it shall be presumed that
14 the person tested was not under influence of alcohol and the
15 person shall not be charged with any violation under section
16 5502(a)(1) or (4) or, if the person was so charged prior to
17 the test, the charge shall be void ab initio. This fact shall
18 not give rise to any presumption concerning a violation of
19 section 5502(a)(2) or (3).

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

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

1 * * *

2 (h) Test by personal physician.--The person tested shall be
3 permitted to have a physician of his own choosing administer an
4 additional breath, blood or urine chemical test and the results
5 of the test shall also be admissible in evidence. The chemical
6 testing given at the direction of the waterways [patrolman]
7 conservation officer shall not be delayed by a person's attempt
8 to obtain an additional test.

9 * * *

10 (k) Prearrest breath test authorized.--A waterways
11 [patrolman] conservation officer, having reasonable suspicion to
12 believe a person is operating or in actual physical control of
13 the movement of a watercraft while under the influence of
14 alcohol, may require that person, prior to arrest, to submit to
15 a preliminary breath test on a device approved by the Department
16 of Health for this purpose. The sole purpose of this preliminary
17 breath test is to assist the waterways [patrolman] conservation
18 officer in determining whether or not the person should be
19 placed under arrest. The preliminary breath test shall be in
20 addition to any other requirements of this title. No person has
21 any right to expect or demand a preliminary breath test. Refusal
22 to submit to the test shall not be considered for purposes of
23 subsections (b) and (e).

24 Section 2. Section 5502(a), (a.1) and (c) of Title 30 are
25 amended and the section is amended by adding subsections to
26 read:

27 § 5502. Operating watercraft under influence of alcohol or
28 controlled substance.

29 [(a) General rule.--No person shall operate or be in actual
30 physical control of the movement of a watercraft upon, in or

1 through the waters of this Commonwealth:

2 (1) while under the influence of alcohol to a degree
3 which renders the person incapable of safe operation of a
4 watercraft;

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

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

13 (4) while the amount of alcohol by weight in the blood
14 of:

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

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

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

18 (1) It is prima facie evidence that:

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

26 (ii) a minor had 0.02% or more by weight of alcohol
27 in his or her blood at the time of operating or being in
28 actual physical control of the movement of a watercraft
29 if the amount of alcohol by weight in the blood of the
30 minor is equal to or greater than 0.02% at the time a

1 chemical test is performed on a sample of the person's
2 breath, blood or urine.

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

8 (a) General impairment.--

9 (1) An individual may not operate or be in actual
10 physical control of the movement of a watercraft after
11 imbibing a sufficient amount of alcohol such that the
12 individual is rendered incapable of safely operating or being
13 in actual physical control of the movement of the watercraft.

14 (2) An individual may not operate or be in actual
15 physical control of the movement of a watercraft after
16 imbibing a sufficient amount of alcohol such that the alcohol
17 concentration in the individual's blood or breath is at least
18 0.08% but less than 0.10% within two hours after the
19 individual has operated or been in actual physical control of
20 the movement of the watercraft.

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

28 (a.2) Highest rate of alcohol.--An individual may not
29 operate or be in actual physical control of the movement of a
30 watercraft after imbibing a sufficient amount of alcohol such

1 that the alcohol concentration in the individual's blood or
2 breath is 0.16% or higher within two hours after the individual
3 has operated or been in actual physical control of the movement
4 of the watercraft.

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

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

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

12 (ii) Schedule II or III controlled substance, as
13 defined in The Controlled Substance, Drug, Device and
14 Cosmetic Act, which has not been medically prescribed for
15 the individual; or

16 (iii) metabolite of a substance under subparagraph
17 (i) or (ii).

18 (2) The individual is under the influence of a drug or
19 combination of drugs to a degree which impairs the
20 individual's ability to safely operate or be in actual
21 physical control of the movement of the watercraft.

22 (3) The individual is under the combined influence of
23 alcohol and a drug or combination of drugs to a degree which
24 impairs the individual's ability to safely operate or be in
25 actual physical control of the movement of the watercraft.

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

30 (a.4) Minors.--A minor may not operate or be in actual

1 physical control of the movement of a watercraft after imbibing
2 a sufficient amount of alcohol such that the alcohol
3 concentration in the minor's blood or breath is 0.02% or higher
4 within two hours after the minor has operated or been in actual
5 physical control of the movement of the watercraft.

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

15 (1) where the Commonwealth shows good cause explaining
16 why the chemical test could not be performed within two
17 hours; and

18 (2) where the Commonwealth establishes that the
19 individual did not imbibe any alcohol or utilize a controlled
20 substance between the time the individual was arrested and
21 the time the sample was obtained.

22 * * *

23 (c) Grading and penalties.--

24 [(1) A person violating any of the provisions of this
25 section commits a misdemeanor of the second degree except a
26 person who meets the requirements of paragraph (2). The
27 sentencing court shall order the person to pay a fine of not
28 less than \$500 and to serve a minimum term of imprisonment
29 of:

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

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

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

20 (1) Except as set forth in paragraph (2) or (3), an
21 individual who violates subsection (a) shall be sentenced as
22 follows:

23 (i) For a first offense, to undergo a mandatory
24 minimum term of six months' probation and to pay a fine
25 of \$300 and successfully complete an approved boating
26 safety course.

27 (ii) For a second offense, to undergo imprisonment
28 for not less than five days and to pay a fine of not less
29 than \$300 nor more than \$2,500 and successfully complete
30 an approved boating safety course.

1 (iii) For a third or subsequent offense, to undergo
2 imprisonment for not less than ten days and to pay a fine
3 of not less than \$500 nor more than \$5,000 and
4 successfully complete an approved boating safety course.

5 (2) Except as set forth in paragraph (3), an individual
6 who violates subsection (a)(1) where there was an accident
7 resulting in bodily injury, serious bodily injury or death of
8 any person or damage to a watercraft or other property or who
9 violates subsection (a.1) or (a.4) shall be sentenced as
10 follows:

11 (i) For a first offense, to undergo imprisonment for
12 not less than 48 consecutive hours and to pay a fine of
13 not less than \$500 nor more than \$5,000 and successfully
14 complete an approved boating safety course.

15 (ii) For a second offense, to undergo imprisonment
16 for not less than 30 days and to pay a fine of not less
17 than \$750 nor more than \$5,000 and successfully complete
18 an approved boating safety course.

19 (iii) For a third offense, to undergo imprisonment
20 for not less than 90 days and to pay a fine of not less
21 than \$1,500 nor more than \$10,000 and successfully
22 complete an approved boating safety course.

23 (iv) For a fourth or subsequent offense, to undergo
24 imprisonment for not less than one year and to pay a fine
25 of not less than \$1,500 nor more than \$10,000 and
26 successfully complete an approved boating safety course.

27 (3) An individual who violates subsection (a)(1) and
28 refused testing of blood or breath or an individual who
29 violates subsection (a.2) or (a.3) shall be sentenced as
30 follows:

1 (i) For a first offense, to undergo imprisonment for
2 not less than 72 consecutive hours and to pay a fine of
3 not less than \$1,000 nor more than \$5,000 and
4 successfully complete an approved boating safety course.

5 (ii) For a second offense, to undergo imprisonment
6 for not less than 90 days and to pay a fine of not less
7 than \$1,500 and successfully complete an approved boating
8 safety course.

9 (iii) For a third or subsequent offense, to undergo
10 imprisonment for not less than one year and to pay a fine
11 of not less than \$2,500 and successfully complete an
12 approved boating safety course.

13 * * *

14 Section 3. Title 30 is amended by adding a section to read:

15 § 5502.3. Aggravated assault by watercraft while operating
16 under influence.

17 (a) Offense defined.--Any person who negligently causes
18 serious bodily injury to another person as the result of a
19 violation of section 5502 (relating to operating watercraft
20 under influence of alcohol or controlled substance) and who is
21 convicted of violating section 5502 commits a felony of the
22 second degree when the violation is the cause of the injury.

23 (b) Definition.--As used in this section, the term "serious
24 bodily injury" means any bodily injury that creates a
25 substantial risk of death or that causes serious permanent
26 disfigurement or protracted loss or impairment of the function
27 of any bodily member or organ.

28 Section 4. This act shall take effect in 60 days.