

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 778 Session of
2007

INTRODUCED BY STABACK, BIANCUCCI, CALTAGIRONE, CASORIO, COHEN, CREIGHTON, DeLUCA, GEIST, GEORGE, GIBBONS, HERSHEY, HESS, JAMES, KIRKLAND, KOTIK, MARKOSEK, MENSCH, MUNDY, PALLONE, PHILLIPS, READSHAW, RUBLEY, SAINATO, SOLOBAY, SONNEY, STERN, THOMAS, TRUE, WATSON, WOJNAROSKI, K. SMITH, SIPTROTH AND MURT, MARCH 19, 2007

REFERRED TO COMMITTEE ON GAME AND FISHERIES, MARCH 19, 2007

AN ACT

1 Amending Title 30 (Fish) of the Pennsylvania Consolidated
2 Statutes, further providing for classification of offenses
3 and penalties, for chemical testing to determine amount of
4 alcohol or controlled substances and for operating watercraft
5 under influence of alcohol or controlled substance.

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

8 Section 1. Section 923(a)(6) and (7) and (d) of Title 30 of
9 the Pennsylvania Consolidated Statutes are amended to read:

10 § 923. Classification of offenses and penalties.

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

13 * * *

14 (6) For a misdemeanor of the second degree, a fine of
15 not less than \$500 nor more than [~~\$7,500~~] \$5,000, or
16 imprisonment not exceeding two years, or both.

17 (7) For a misdemeanor of the first degree, a fine of not

1 less than [\$2,500] \$1,500 nor more than \$10,000, or
2 imprisonment not exceeding five years, or both.

3 * * *

4 (d) Repeat offenders.--[A] Except as provided in section
5 5502 (relating to operating watercraft under influence of
6 alcohol or controlled substance), a person who is convicted or
7 acknowledges guilt of a second or subsequent violation of this
8 title or the regulations promulgated under this title within 12
9 months of a prior offense under this title shall be sentenced as
10 a repeat offender. An extract from commission records maintained
11 in the ordinary course of business showing that the person was
12 convicted or acknowledged guilt of two or more offenses under
13 this title on separate occasions within a 12-month period shall
14 be prima facie evidence that the person is a repeat offender. In
15 addition to the fine set forth in subsection (a), a repeat
16 offender may be sentenced to pay an additional fine as follows:

17 (1) \$200 if all the offenses committed within the 12-
18 month period were classified as summary offenses under this
19 title.

20 (2) \$1,000 if any of the offenses committed within the
21 12-month period were classified as misdemeanors of the third
22 degree and none were classified as misdemeanors of the first
23 or second degree or felonies.

24 (3) \$2,500 if any of the offenses committed within the
25 12-month period were classified as misdemeanors of the first
26 or second degree or felonies.

27 * * *

28 Section 2. Section 5125(a) and (c) of Title 30, amended
29 November 9, 2006 (P.L.1375, No.149), are amended to read:

30 § 5125. Chemical testing to determine amount of alcohol or

1 controlled substance.

2 (a) General rule.--Any person who operates or is in actual
3 physical control of the movement of a watercraft, upon, in or
4 through the waters of this Commonwealth, shall be deemed to have
5 given consent to one or more chemical tests of breath, blood or
6 urine for the purpose of determining the alcoholic content of
7 blood or the presence of a controlled substance if [a waterways
8 conservation officer has reasonable grounds to believe the
9 person has been operating or in actual physical control of the
10 movement of a watercraft:

11 (1) in violation of section 5502 (relating to operating
12 watercraft under influence of alcohol or controlled
13 substance); or

14 (2) which was involved in an accident in which the
15 operator, passenger or any other person required treatment at
16 a medical facility or was killed.] one of the following
17 applies:

18 (1) a waterways conservation officer has reasonable
19 grounds to believe the person operated or was in actual
20 physical control of the movement of a watercraft in violation
21 of section 5502 (relating to operating watercraft under
22 influence of alcohol or controlled substance); or

23 (2) the person operated or was in actual physical
24 control of the movement of a watercraft which was involved in
25 an accident in which the operator, passenger or any other
26 person required treatment at a medical facility or was
27 killed.

28 * * *

29 (c) Test results admissible in evidence.--In any summary
30 proceeding or criminal proceeding in which the defendant is

1 charged with a violation of section 5502 or any other violation
2 of this title arising out of the same action, the amount of
3 alcohol or controlled substance in the defendant's blood, as
4 shown by chemical testing of the person's breath, blood or urine
5 by tests conducted by qualified persons using approved
6 equipment, shall be admissible in evidence.

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

22 (2) (i) Chemical tests of blood or urine shall be
23 performed by a clinical laboratory licensed and approved
24 by the Department of Health for this purpose using
25 procedures and equipment prescribed by the Department of
26 Health or by a Pennsylvania State Police criminal
27 laboratory. For purposes of blood and urine testing, a
28 qualified person means an individual who is authorized to
29 perform those chemical tests under the act of September
30 26, 1951 (P.L.1539, No.389), known as The Clinical

1 Laboratory Act.

2 (ii) For purposes of blood and urine testing to
3 determine blood alcohol or controlled substance content
4 levels, the procedures and equipment prescribed by the
5 Department of Health shall be reviewed [within 120 days
6 of the effective date of this subparagraph and at least
7 every two years thereafter to ensure that consideration
8 is given to scientific and technological advances so that
9 testing conducted in accordance with the prescribed
10 procedures utilizing the prescribed equipment will be as
11 accurate and reliable as science and technology permit.]
12 as provided for by 75 Pa.C.S. § 1547(c)(2)(ii) (relating
13 to chemical testing to determine amount of alcohol or
14 controlled substance).

15 (3) Chemical [test] tests of blood or urine, if
16 conducted by a facility located outside this Commonwealth,
17 shall be performed:

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

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

24 (4) For purposes of blood testing to determine the
25 amount of a Schedule I or nonprescribed Schedule II or III
26 controlled substance or a metabolite of such a substance, the
27 [Department of Health shall prescribe] minimum levels of
28 these substances which must be present in a person's blood in
29 order for the test results to be admissible in a prosecution
30 for a violation of section 5502 or any other violation of

1 this title arising out of the same action shall be the same
2 as prescribed by the department under 75 Pa.C.S. §
3 1547(c)(4).

4 * * *

5 Section 3. Section 5502(a.5) and (c) of Title 30, amended or
6 added November 9, 2006 (P.L.1375, No.149), are amended and the
7 section is amended by adding a subsection to read:

8 § 5502. Operating watercraft under influence of alcohol or
9 controlled substance.

10 * * *

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

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

23 (2) where the Commonwealth establishes that the
24 individual did not imbibe any alcohol or utilize a controlled
25 substance between the time the individual was arrested and
26 the time the sample was obtained.

27 * * *

28 [(c) Grading and penalties.--

29 (1) Except as set forth in paragraph (2) or (3), an
30 individual who violates subsection (a) shall be sentenced as

1 follows:

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

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

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

14 (2) Except as set forth in paragraph (3), an individual
15 who violates subsection (a)(1) where there was an accident
16 resulting in bodily injury, serious bodily injury or death of
17 any person or damage to a watercraft or other property or who
18 violates subsection (a.1) or (a.4) shall be sentenced as
19 follows:

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

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

28 (iii) For a third offense, to undergo imprisonment
29 for not less than 90 days and to pay a fine of not less
30 than \$1,500 nor more than \$10,000 and successfully

1 complete an approved boating safety course.

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

6 (3) An individual who violates subsection (a)(1) and
7 refused testing of blood or breath or an individual who
8 violates subsection (a.2) or (a.3) shall be sentenced as
9 follows:

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

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

18 (iii) For a third or subsequent offense, to undergo
19 imprisonment for not less than one year and to pay a fine
20 of not less than \$2,500 and successfully complete an
21 approved boating safety course.]

22 (c) Grading.--

23 (1) Notwithstanding the provisions of paragraph (2):

24 (i) An individual who violates subsection (a) and
25 has no more than one prior offense commits a misdemeanor
26 for which the individual may be sentenced to a term of
27 imprisonment for not more than six months and to pay a
28 fine under subsection (c.1).

29 (ii) An individual who violates subsection (a) and
30 has more than one prior offense commits a misdemeanor of

1 the second degree.

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

10 (ii) An individual who violates subsection (a.1) or
11 (a.4) and has no more than one prior offense commits a
12 misdemeanor for which the individual may be sentenced to
13 a term of imprisonment for not more than six months and
14 to pay a fine under subsection (c.1).

15 (iii) An individual who violates subsection (a)(1)
16 where the individual refused testing of blood or breath
17 and has no prior offenses commits a misdemeanor for which
18 the individual may be sentenced to a term of imprisonment
19 for not more than six months and to pay a fine under
20 subsection (c.1).

21 (iv) An individual who violates subsection (a.2) or
22 (a.3) and has no prior offenses commits a misdemeanor for
23 which the individual may be sentenced to a term of
24 imprisonment for not more than six months and to pay a
25 fine under subsection (c.1).

26 (v) An individual who violates subsection (a)(1)
27 where there was an accident resulting in bodily injury,
28 serious bodily injury or death of any person or in damage
29 to a watercraft or other property and has more than one
30 prior offense commits a misdemeanor of the first degree.

1 (vi) An individual who violates subsection (a.1) or
2 (a.4) and has more than one prior offense commits a
3 misdemeanor of the first degree.

4 (vii) An individual who violates subsection (a)(1)
5 where the individual refused testing of blood or breath
6 and has one or more prior offenses commits a misdemeanor
7 of the first degree.

8 (viii) An individual who violates subsection (a.2)
9 or (a.3) and has one or more prior offenses commits a
10 misdemeanor of the first degree.

11 (c.1) Penalties.--

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

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

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

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

27 (2) Except as set forth in paragraph (3), an individual
28 who violates subsection (a)(1) where there was an accident
29 resulting in bodily injury, serious bodily injury or death of
30 any person or damage to a watercraft or other property or who

1 violates subsection (a.1) or (a.4) shall be sentenced as
2 follows:

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

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

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

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

19 (3) An individual who violates subsection (a)(1) and
20 refused testing of blood or breath or an individual who
21 violates subsection (a.2) or (a.3) shall be sentenced as
22 follows:

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

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

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

5 * * *

6 Section 4. This act shall take effect immediately.