

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, MURT, KORTZ, ROHRER, PEIFER, GERGELY AND MELIO, MARCH 19, 2007

SENATOR McILHINNEY, GAME AND FISHERIES, IN SENATE, AS AMENDED, JUNE 19, 2007

AN ACT

1 Amending ~~Title 30 (Fish)~~ TITLES 30 (FISH) AND 42 (JUDICIARY AND <—  
2 JUDICIAL PROCEDURE) of the Pennsylvania Consolidated  
3 Statutes, further providing for classification of offenses  
4 and penalties, for chemical testing to determine amount of  
5 alcohol or controlled substances and, for operating <—  
6 watercraft under influence of alcohol or controlled substance  
7 AND FOR COUNTY INTERMEDIATE PUNISHMENT PROGRAMS. <—

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

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

12 § 923. Classification of offenses and penalties.

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

15 \* \* \*

16 (6) For a misdemeanor of the second degree, a fine of  
17 not less than \$500 nor more than [\$7,500] \$5,000, or

1 imprisonment not exceeding two years, or both.

2 (7) For a misdemeanor of the first degree, a fine of not  
3 less than [\$2,500] \$1,500 nor more than \$10,000, or  
4 imprisonment not exceeding five years, or both.

5 \* \* \*

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

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

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

26 (3) \$2,500 if any of the offenses committed within the  
27 12-month period were classified as misdemeanors of the first  
28 or second degree or felonies.

29 \* \* \*

30 Section 2. Section 5125(a) and (c) of Title 30, ~~amended~~

<—

1 ~~November 9, 2006 (P.L.1375, No.149)~~, are amended to read:

2 § 5125. Chemical testing to determine amount of alcohol or  
3 controlled substance.

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

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

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

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

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

30 \* \* \*

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

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

24 (2) (i) Chemical tests of blood or urine shall be  
25 performed by a clinical laboratory licensed and approved  
26 by the Department of Health for this purpose using  
27 procedures and equipment prescribed by the Department of  
28 Health or by a Pennsylvania State Police criminal  
29 laboratory. For purposes of blood and urine testing, a  
30 qualified person means an individual who is authorized to

1 perform those chemical tests under the act of September  
2 26, 1951 (P.L.1539, No.389), known as The Clinical  
3 Laboratory Act.

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

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

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

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

26 (4) For purposes of blood testing to determine the  
27 amount of a Schedule I or nonprescribed Schedule II or III  
28 controlled substance or a metabolite of such a substance, the  
29 [Department of Health shall prescribe] minimum levels of  
30 these substances which must be present in a person's blood in

1 order for the test results to be admissible in a prosecution  
2 for a violation of section 5502 or any other violation of  
3 this title arising out of the same action shall be the same  
4 as prescribed by the department under 75 Pa.C.S. §  
5 1547(c)(4).

6 \* \* \*

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

10 § 5502. Operating watercraft under influence of alcohol or  
11 controlled substance.

12 \* \* \*

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

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

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

29 \* \* \*

30 [(c) Grading and penalties.--

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

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

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

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

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

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

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

30 (iii) For a third offense, to undergo imprisonment

1 for not less than 90 days and to pay a fine of not less  
2 than \$1,500 nor more than \$10,000 and successfully  
3 complete an approved boating safety course.

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

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

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

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

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

24 (c) Grading.--

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

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

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

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

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

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

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

28           (v) An individual who violates subsection (a)(1)  
29 where there was an accident resulting in bodily injury,  
30 serious bodily injury or death of any person or in damage

1 to a watercraft or other property and has more than one  
2 prior offense commits a misdemeanor of the first degree.

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

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

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

13 (c.1) Penalties.--

14 (1) Except as set forth in paragraph (2) ~~or (3)~~, (3) OR ←  
15 (4), an individual who violates subsection (a) shall be  
16 sentenced as follows:

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

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

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

29 (2) Except as set forth in paragraph (3) OR (4), an ←  
30 individual who violates subsection (a)(1) where there was an

1 accident resulting in bodily injury, serious bodily injury or  
2 death of any person or damage to a watercraft or other  
3 property or who violates subsection (a.1) or (a.4) shall be  
4 sentenced as follows:

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

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

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

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

21 (3) ~~An~~ EXCEPT AS SET FORTH IN PARAGRAPH (4), AN ←  
22 individual who violates subsection (a)(1) and refused testing  
23 of blood or breath or an individual who violates subsection  
24 (a.2) or (a.3) shall be sentenced as follows:

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

29 (ii) For a second offense, to undergo imprisonment  
30 for not less than 90 days and to pay a fine of not less

1           than \$1,500 and successfully complete an approved boating  
2           safety course.

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

7           (4) NOTWITHSTANDING THE PROVISIONS OF THIS SUBSECTION           <—  
8           RELATING TO MANDATORY MINIMUM SENTENCES, IF THE COURT MAKES A  
9           FINDING THAT THE COUNTY JAIL POPULATION EXCEEDS ITS CAPACITY,  
10          THE COURT MAY ALLOW AN INDIVIDUAL WHO VIOLATED THIS SECTION  
11          AND IS SERVING A MANDATORY MINIMUM TERM OF IMPRISONMENT TO BE  
12          RELEASED ON PAROLE TO SERVE SOME OR ALL OF THE INDIVIDUAL'S  
13          TERM OF IMPRISONMENT ON HOUSE ARREST WITH ELECTRONIC  
14          SURVEILLANCE.

15          \* \* \*

16          SECTION 4. SECTION 9804(B)(4)(III) AND (5) OF TITLE 42 ARE           <—  
17          AMENDED TO READ:

18          § 9804. COUNTY INTERMEDIATE PUNISHMENT PROGRAMS.

19          \* \* \*

20          (B) ELIGIBILITY.--

21                  \* \* \*

22                  (4) \* \* \*

23                          (III) IF THE DEFENDANT IS DETERMINED NOT TO BE IN  
24                          NEED OF DRUG AND ALCOHOL TREATMENT OR IF THE DEFENDANT  
25                          RECEIVES A PENALTY IMPOSED UNDER 30 PA.C.S. § 5502(C.1)  
26                          (RELATING TO OPERATING WATERCRAFT UNDER INFLUENCE OF  
27                          ALCOHOL OR CONTROLLED SUBSTANCE), THE DEFENDANT MAY ONLY  
28                          BE SENTENCED TO A COUNTY INTERMEDIATE PUNISHMENT PROGRAM  
29                          IN:

30                                  (A) HOUSE ARREST WITH ELECTRONIC SURVEILLANCE;

1 (B) PARTIAL CONFINEMENT PROGRAMS SUCH AS WORK  
2 RELEASE, WORK CAMPS AND HALFWAY FACILITIES; OR

3 (C) ANY COMBINATION OF THE PROGRAMS SET FORTH IN  
4 THIS PARAGRAPH.

5 (5) A DEFENDANT SUBJECT TO 75 PA.C.S. § 3804 (RELATING  
6 TO PENALTIES) OR 30 PA.C.S. § 5502(C.1) MAY ONLY BE SENTENCED  
7 TO COUNTY INTERMEDIATE PUNISHMENT FOR A FIRST, SECOND OR  
8 THIRD OFFENSE UNDER 75 PA.C.S. CH. 38 (RELATING TO DRIVING  
9 AFTER IMBIBING ALCOHOL OR UTILIZING DRUGS) OR 30 PA.C.S. §  
10 5502.

11 Section 4 5. This act shall take effect immediately.

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