

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

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, JUNE 26, 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 PENALTIES FOR THREATENED AND ENDANGERED <—
5 SPECIES, for chemical testing to determine amount of alcohol
6 or controlled substances ~~and~~, for operating watercraft under <—
7 influence of alcohol or controlled substance AND FOR COUNTY <—
8 INTERMEDIATE PUNISHMENT PROGRAMS.

9 The General Assembly of the Commonwealth of Pennsylvania

10 hereby enacts as follows:

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

13 SECTION 1. SECTIONS 923(A)(6) AND (7) AND (D) AND 2305 OF <—
14 TITLE 30 OF THE PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED
15 TO READ:

16 § 923. Classification of offenses and penalties.

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

1 * * *

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

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

8 * * *

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

22 (1) \$200 if all the offenses committed within the 12-
23 month period were classified as summary offenses under this
24 title.

25 (2) \$1,000 if any of the offenses committed within the
26 12-month period were classified as misdemeanors of the third
27 degree and none were classified as misdemeanors of the first
28 or second degree or felonies.

29 (3) \$2,500 if any of the offenses committed within the
30 12-month period were classified as misdemeanors of the first

1 or second degree or felonies.

2 * * *

3 § 2305. THREATENED AND ENDANGERED SPECIES. <—

4 (A) ESTABLISHMENT AND PUBLICATION OF LISTS.--THE EXECUTIVE
5 DIRECTOR SHALL ESTABLISH A PENNSYLVANIA THREATENED SPECIES LIST
6 AND A PENNSYLVANIA ENDANGERED SPECIES LIST. THE LISTS, AND ANY
7 REVISIONS THERETO, SHALL BE PUBLISHED IN THE PENNSYLVANIA
8 BULLETIN.

9 (B) RULES, REGULATIONS AND PERMITS.--THE COMMISSION MAY
10 PROMULGATE RULES AND REGULATIONS GOVERNING THE CATCHING, TAKING,
11 KILLING, IMPORTATION, INTRODUCTION, TRANSPORTATION, REMOVAL,
12 POSSESSION, SELLING, OFFERING FOR SALE OR PURCHASING OF
13 THREATENED AND ENDANGERED SPECIES AND, IF DEEMED ADVISABLE, MAY
14 ISSUE PERMITS FOR CATCHING, TAKING OR POSSESSING ANY OF THOSE
15 SPECIES.

16 (C) PENALTY.--ANY PERSON INTENTIONALLY VIOLATING ANY RULE OR
17 REGULATION PROMULGATED UNDER THIS SECTION COMMITS A MISDEMEANOR
18 OF THE THIRD DEGREE. EACH FISH CAUGHT, TAKEN, KILLED, IMPORTED,
19 TRANSPORTED, REMOVED, INTRODUCED, POSSESSED, SOLD, OFFERED FOR
20 SALE OR PURCHASED IN VIOLATION OF ANY RULE OR REGULATION
21 PROMULGATED UNDER THIS SECTION SHALL CONSTITUTE A SEPARATE
22 OFFENSE. CATCHING A THREATENED OR ENDANGERED SPECIES SHALL NOT
23 CONSTITUTE A VIOLATION IF IT IS IMMEDIATELY RELEASED WHERE IT
24 WAS CAPTURED IN THE CONDITION IN WHICH IT WAS CAPTURED.

25 Section 2. Section 5125(a) and (c) of Title 30, ~~amended~~ <—
26 ~~November 9, 2006 (P.L.1375, No.149)~~, are amended to read:

27 § 5125. Chemical testing to determine amount of alcohol or
28 controlled substance.

29 (a) General rule.--Any person who operates or is in actual
30 physical control of the movement of a watercraft, upon, in or

1 through the waters of this Commonwealth, shall be deemed to have
2 given consent to one or more chemical tests of breath, blood or
3 urine for the purpose of determining the alcoholic content of
4 blood or the presence of a controlled substance if [a waterways
5 conservation officer has reasonable grounds to believe the
6 person has been operating or in actual physical control of the
7 movement of a watercraft:

8 (1) in violation of section 5502 (relating to operating
9 watercraft under influence of alcohol or controlled
10 substance); or

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

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

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

25 * * *

26 (c) Test results admissible in evidence.--In any summary
27 proceeding or criminal proceeding in which the defendant is
28 charged with a violation of section 5502 or any other violation
29 of this title arising out of the same action, the amount of
30 alcohol or controlled substance in the defendant's blood, as

1 shown by chemical testing of the person's breath, blood or urine
2 by tests conducted by qualified persons using approved
3 equipment, shall be admissible in evidence.

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

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

29 (ii) For purposes of blood and urine testing to
30 determine blood alcohol or controlled substance content

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

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

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

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

21 (4) For purposes of blood testing to determine the
22 amount of a Schedule I or nonprescribed Schedule II or III
23 controlled substance or a metabolite of such a substance, the
24 [Department of Health shall prescribe] minimum levels of
25 these substances which must be present in a person's blood in
26 order for the test results to be admissible in a prosecution
27 for a violation of section 5502 or any other violation of
28 this title arising out of the same action shall be the same
29 as prescribed by the department under 75 Pa.C.S. §
30 1547(c)(4).

1 * * *

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

5 § 5502. Operating watercraft under influence of alcohol or
6 controlled substance.

7 * * *

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

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

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

24 * * *

25 [(c) Grading and penalties.--

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

29 (i) For a first offense, to undergo a mandatory
30 minimum term of six months' probation and to pay a fine

1 of \$300 and successfully complete an approved boating
2 safety course.

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

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

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

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

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

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

29 (iv) For a fourth or subsequent offense, to undergo
30 imprisonment for not less than one year and to pay a fine

1 of not less than \$1,500 nor more than \$10,000 and
2 successfully complete an approved boating safety course.

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

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

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

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

19 (c) Grading.--

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

21 (i) An individual who violates subsection (a) and
22 has no more than one prior offense commits a misdemeanor
23 for 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 (ii) An individual who violates subsection (a) and
27 has more than one prior offense commits a misdemeanor of
28 the second degree.

29 (2) (i) An individual who violates subsection (a)(1)
30 where there was an accident resulting in bodily injury,

1 serious bodily injury or death of any person or in damage
2 to a watercraft or other property and has no more than
3 one prior offense commits a misdemeanor for which the
4 individual may be sentenced to a term of imprisonment for
5 not more than six months and to pay a fine under
6 subsection (c.1).

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

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

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

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

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

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

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

8 (c.1) Penalties.--

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

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

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

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

24 (2) Except as set forth in paragraph (3) OR (4), an ←
25 individual who violates subsection (a)(1) where there was an
26 accident resulting in bodily injury, serious bodily injury or
27 death of any person or damage to a watercraft or other
28 property or who violates subsection (a.1) or (a.4) shall be
29 sentenced as follows:

30 (i) For a first offense, to undergo imprisonment for

1 not less than 48 consecutive hours and to pay a fine of
2 not less than \$500 nor more than \$5,000 and successfully
3 complete an approved boating safety course.

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

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

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

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

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

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

28 (iii) For a third or subsequent offense, to undergo
29 imprisonment for not less than one year and to pay a fine
30 of not less than \$2,500 and successfully complete an

1 approved boating safety course.

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

10 * * *

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

13 § 9804. COUNTY INTERMEDIATE PUNISHMENT PROGRAMS.

14 * * *

15 (B) ELIGIBILITY.--

16 * * *

17 (4) * * *

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

25 (A) HOUSE ARREST WITH ELECTRONIC SURVEILLANCE;

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

28 (C) ANY COMBINATION OF THE PROGRAMS SET FORTH IN
29 THIS PARAGRAPH.

30 (5) A DEFENDANT SUBJECT TO 75 PA.C.S. § 3804 (RELATING

1 TO PENALTIES) OR 30 PA.C.S. § 5502(C.1) MAY ONLY BE SENTENCED
2 TO COUNTY INTERMEDIATE PUNISHMENT FOR A FIRST, SECOND OR
3 THIRD OFFENSE UNDER 75 PA.C.S. CH. 38 (RELATING TO DRIVING
4 AFTER IMBIBING ALCOHOL OR UTILIZING DRUGS) OR 30 PA.C.S. §
5 5502.

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

<—