

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1262 Session of  
2011

INTRODUCED BY ORIE, WASHINGTON, ERICKSON, BRUBAKER, WAUGH AND  
MENSCH, SEPTEMBER 28, 2011

REFERRED TO TRANSPORTATION, SEPTEMBER 28, 2011

AN ACT

1 Amending Title 75 (Vehicles) of the Pennsylvania Consolidated  
2 Statutes, further providing for definitions, for driving  
3 under the influence of alcohol or controlled substance, for  
4 penalties, for ignition interlock, for accelerated  
5 rehabilitative disposition, for illegally operating a motor  
6 vehicle not equipped with ignition interlock and for drug and  
7 alcohol assessments; and making an editorial change.

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

10 Section 1. Sections 3801, 3802(b) and (c) and 3804(a), (b),  
11 (c) and (e) of Title 75 of the Pennsylvania Consolidated  
12 Statutes are amended to read:

13 § 3801. Definitions.

14 The following words and phrases when used in this chapter  
15 shall have the meanings given to them in this section unless the  
16 context clearly indicates otherwise:

17 "Adult." An individual who is at least 21 years of age.

18 "Department." The Department of Transportation of the  
19 Commonwealth.

20 "Ignition interlock system." A system approved by the

1 department which prevents a vehicle from being started [or  
2 operated] unless the operator first provides a breath sample  
3 indicating that the operator has an alcohol level less than  
4 0.025%.

5 "Minor." An individual who is under 21 years of age.

6 § 3802. Driving under influence of alcohol or controlled  
7 substance.

8 \* \* \*

9 (b) High rate of alcohol.--An individual may not drive,  
10 operate or be in actual physical control of the movement of a  
11 vehicle after imbibing a sufficient amount of alcohol such that  
12 the alcohol concentration in the individual's blood or breath is  
13 at least 0.10% but less than [0.16%] 0.15% within two hours  
14 after the individual has driven, operated or been in actual  
15 physical control of the movement of the vehicle.

16 (c) Highest rate of alcohol.--An individual may not drive,  
17 operate or be in actual physical control of the movement of a  
18 vehicle after imbibing a sufficient amount of alcohol such that  
19 the alcohol concentration in the individual's blood or breath is  
20 [0.16%] 0.15% or higher within two hours after the individual  
21 has driven, operated or been in actual physical control of the  
22 movement of the vehicle.

23 \* \* \*

24 § 3804. Penalties.

25 (a) General impairment.--Except as set forth in subsection  
26 (b) or (c), an individual who violates section 3802(a) (relating  
27 to driving under influence of alcohol or controlled substance)  
28 shall be sentenced as follows:

29 (1) For a first offense, to:

30 (i) undergo a mandatory minimum term of six months'

1 probation;

2 (ii) pay a fine of \$300;

3 (iii) attend an alcohol highway safety school  
4 approved by the department; [and]

5 (iv) comply with all drug and alcohol treatment  
6 requirements imposed under sections 3814 (relating to  
7 drug and alcohol assessments) and 3815 (relating to  
8 mandatory sentencing) [.] and

9 (v) participate in and comply with the ignition  
10 interlock program under section 3805 (relating to  
11 ignition interlock).

12 (2) For a second offense, to:

13 (i) undergo imprisonment for not less than five  
14 days;

15 (ii) pay a fine of not less than \$300 nor more than  
16 \$2,500;

17 (iii) attend an alcohol highway safety school  
18 approved by the department; [and]

19 (iv) comply with all drug and alcohol treatment  
20 requirements imposed under sections 3814 and 3815[.] and

21 (v) participate in and comply with the ignition  
22 interlock program under section 3805.

23 (3) For a third or subsequent offense, to:

24 (i) undergo imprisonment of not less than ten days;

25 (ii) pay a fine of not less than \$500 nor more than  
26 \$5,000; [and]

27 (iii) comply with all drug and alcohol treatment  
28 requirements imposed under sections 3814 and 3815[.] and

29 (iv) participate in and comply with the ignition  
30 interlock program under section 3805.

1 (b) High rate of blood alcohol; minors; commercial vehicles  
2 and school buses and school vehicles; accidents.--Except as set  
3 forth in subsection (c), an individual who violates section  
4 3802(a)(1) where there was an accident resulting in bodily  
5 injury, serious bodily injury or death of any person or damage  
6 to a vehicle or other property or who violates section 3802(b),  
7 (e) or (f) shall be sentenced as follows:

8 (1) For a first offense, to:

9 (i) undergo imprisonment of not less than 48  
10 consecutive hours;

11 (ii) pay a fine of not less than \$500 nor more than  
12 \$5,000;

13 (iii) attend an alcohol highway safety school  
14 approved by the department; [and]

15 (iv) comply with all drug and alcohol treatment  
16 requirements imposed under sections 3814 and 3815[.]; and

17 (v) participate in and comply with the ignition  
18 interlock program under section 3805.

19 (2) For a second offense, to:

20 (i) undergo imprisonment of not less than 30 days;

21 (ii) pay a fine of not less than \$750 nor more than  
22 \$5,000;

23 (iii) attend an alcohol highway safety school  
24 approved by the department; [and]

25 (iv) comply with all drug and alcohol treatment  
26 requirements imposed under sections 3814 and 3815[.]; and

27 (v) participate in and comply with the ignition  
28 interlock program under section 3805.

29 (3) For a third offense, to:

30 (i) undergo imprisonment of not less than 90 days;

1           (ii) pay a fine of not less than \$1,500 nor more  
2 than \$10,000; [and]  
3           (iii) comply with all drug and alcohol treatment  
4 requirements imposed under sections 3814 and 3815[.]; and  
5           (iv) participate in and comply with the ignition  
6 interlock program under section 3805.

7       (4) For a fourth or subsequent offense, to:

8           (i) undergo imprisonment of not less than one year;  
9           (ii) pay a fine of not less than \$1,500 nor more  
10 than \$10,000; [and]  
11           (iii) comply with all drug and alcohol treatment  
12 requirements imposed under sections 3814 and 3815[.]; and  
13           (iv) participate in and comply with the ignition  
14 interlock program under section 3805.

15       (c) Incapacity; highest blood alcohol; controlled  
16 substances.--An individual who violates section 3802(a)(1) and  
17 refused testing of blood or breath or an individual who violates  
18 section 3802(c) or (d) shall be sentenced as follows:

19       (1) For a first offense, to:

20           (i) undergo imprisonment of not less than 72  
21 consecutive hours;  
22           (ii) pay a fine of not less than \$1,000 nor more  
23 than \$5,000;  
24           (iii) attend an alcohol highway safety school  
25 approved by the department; [and]  
26           (iv) comply with all drug and alcohol treatment  
27 requirements imposed under sections 3814 and 3815[.]; and  
28           (v) participate in and comply with the ignition  
29 interlock program under section 3805.

30       (2) For a second offense, to:

1 (i) undergo imprisonment of not less than 90 days;  
2 (ii) pay a fine of not less than \$1,500;  
3 (iii) attend an alcohol highway safety school  
4 approved by the department; [and]  
5 (iv) comply with all drug and alcohol treatment  
6 requirements imposed under sections 3814 and 3815[.]; and  
7 (v) participate in and comply with the ignition  
8 interlock program under section 3805.

9 (3) For a third or subsequent offense, to:

10 (i) undergo imprisonment of not less than one year;  
11 (ii) pay a fine of not less than \$2,500; [and]  
12 (iii) comply with all drug and alcohol treatment  
13 requirements imposed under sections 3814 and 3815[.]; and  
14 (iv) participate in and comply with the ignition  
15 interlock program under section 3805.

16 \* \* \*

17 (e) Suspension of operating privileges upon conviction.--

18 (1) The department shall suspend the operating privilege  
19 of an individual under paragraph (2) upon receiving a  
20 certified record of the individual's conviction of or an  
21 adjudication of delinquency for:

22 (i) an offense under section 3802; or  
23 (ii) an offense which is substantially similar to an  
24 offense enumerated in section 3802 reported to the  
25 department under Article III of the compact in section  
26 1581 (relating to Driver's License Compact).

27 (2) Suspension under paragraph (1) shall be in  
28 accordance with the following:

29 (i) Except as provided for in subparagraph (iii), 12  
30 months for an ungraded misdemeanor or misdemeanor of the

second degree under this chapter.

(ii) 18 months for a misdemeanor of the first degree under this chapter.

(iii) [There shall be no suspension] 15 days for an ungraded misdemeanor under section 3802(a) where the person is subject to the penalties provided in subsection (a) and the person has no prior offense.

(iv) For suspensions imposed under paragraph (1) (ii), notwithstanding any provision of law or enforcement agreement to the contrary, all of the following apply:

(A) Suspensions shall be in accordance with Subchapter D of Chapter 15 (relating to [the] Driver's License Compact).

(B) In calculating the term of a suspension for an offense that is substantially similar to an offense enumerated in section 3802, the department shall presume that if the conduct reported had occurred in this Commonwealth then the person would have been convicted under section 3802(a)(2).

(v) Notwithstanding any other provision of law or enforcement agreement to the contrary, the department shall suspend the operating privilege of a driver for six months upon receiving a certified record of a consent decree granted under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) based on section 3802.

\* \* \*

Section 2. Section 3805(a), (b) and (c) of Title 75 are amended and the section is amended by adding a subsection to read:

§ 3805. Ignition interlock.

1 (a) General rule.--If a person violates section 3802  
2 (relating to driving under influence of alcohol or controlled  
3 substance) [and, within the past ten years, has a prior offense  
4 as defined in section 3806(a) (relating to prior offenses)] or  
5 has had their operating privileges suspended pursuant to section  
6 1547(b.1) (relating to chemical testing to determine amount of  
7 alcohol or controlled substance) or 3808(c) (relating to  
8 illegally operating a motor vehicle not equipped with ignition  
9 interlock) and the person seeks a restoration of operating  
10 privileges, the department shall require as a condition of  
11 issuing a restricted license pursuant to this section that [the  
12 following occur:

13 (1) Each] each motor vehicle owned by the person or  
14 registered to the person has been equipped with an ignition  
15 interlock system and remains so for the duration of the  
16 restricted license period.

17 [(2) If there are no motor vehicles owned by the person  
18 or registered to the person that the person so certify to the  
19 department. A person so certifying shall be deemed to have  
20 satisfied the requirement that all motor vehicles owned by  
21 the person or registered to the person be equipped with an  
22 ignition interlock system as required by this subsection.]

23 (b) Application for a restricted license.--A person subject  
24 to this section shall apply to the department for an ignition  
25 interlock restricted license under section 1951 (relating to  
26 driver's license and learner's permit), which shall be clearly  
27 marked to restrict the person to only driving, operating or  
28 being in actual physical control of the movement of motor  
29 vehicles equipped with an ignition interlock system[.] and shall  
30 pay an application fee of \$50 to the department. The department



1 shall:

2       (1) Upon issuance of an ignition interlock restricted  
3       license to any person, [the department shall] notify the  
4       person that until the person obtains an unrestricted license  
5       the person may not own, register, drive, operate or be in  
6       actual physical control of the movement of any motor vehicle  
7       which is not equipped with an ignition interlock system.

8       (2) Require that a person subject to the requirements of  
9       subsection (j) maintain an ignition interlock restricted  
10       license for the following periods:

11           (i) An individual sentenced under section 3804(a)(1)  
12           or (b)(1) (relating to penalties) shall be required to  
13           maintain a restricted license for six months.

14           (ii) An individual sentenced under section 3804(a)  
15           (2) or (b)(2) shall be required to maintain a restricted  
16           license for 12 months.

17           (iii) An individual sentenced under section 3804(c)  
18           (1) shall be required to maintain a restricted license  
19           for 18 months.

20           (iv) An individual sentenced under section 3804(a)  
21           (3), 3804(b)(3) or (4) or (c)(2) shall be required to  
22           maintain a restricted license for 24 months.

23           (v) An individual sentenced under section 3804(c)(3)  
24           shall be required to maintain a restricted license for 36  
25           months.

26       (3) Take into consideration the requirements under 23  
27       U.S.C. §§ 164 (relating to minimum penalties for repeat  
28       offenders for driving while intoxicated or driving under the  
29       influence) and 410 (relating to alcohol-impaired driving  
30       countermeasures) and, notwithstanding section 3804(e)(2), may

reduce the suspension times from 12 and 18 months to 45 days  
and apply restrictions as to driving purposes.

(c) Issuance of unrestricted license.--[One year from the  
date of issuance of an ignition interlock restricted license]  
The department shall not issue an unrestricted license until a  
person has presented proof that the person has completed the  
ignition interlock restricted license period as specified in  
this section and fulfilled all obligations under the rental  
agreement with the company that provided the ignition interlock  
device. Upon completion of the restricted license requirements  
under this section, if otherwise eligible, a person may be  
issued a replacement license under section 1951(d) that does not  
contain the ignition interlock system restriction.

\* \* \*

(j) Ignition interlock program compliance.--A person with an  
ignition interlock restricted license shall report to the  
company responsible for servicing the ignition interlock system  
no less frequently than every 60 days at which time the data  
recorded by the device will be downloaded and the device and  
vehicle will be inspected for tampering or circumvention.  
Program compliance shall be based on monitor reports from  
calendar months, or partial months in the case of the first or  
last month. A violation of the program shall include:

(1) Any single event of tampering or circumvention in a  
monitor report.

(2) Any missed running retest where the vehicle is still  
running five minutes after the period allotted for the test  
in a monitor report.

(3) Any failed running retest where the vehicle is still  
running five minutes after the period allotted for the test

1 in a monitor report.

2 (4) Failure to report for service of the interlock  
3 device within five days after the scheduled service date.

4 (5) Three failed breath alcohol tests provided while  
5 attempting to start the vehicle in a monitor report.

6 An individual shall not be assigned more than one violation per  
7 monitor report. Each time an individual accumulates three  
8 violations in 12 or less months the individual shall be subject  
9 to a 90-day extension of the ignition interlock restricted  
10 license requirement. An individual whose interlock restricted  
11 license is extended by the department may petition the  
12 department for a hearing to reconsider the extension. The  
13 department shall develop rules defining necessary terms and  
14 procedures and may consider extenuating and mitigating  
15 circumstances in determining whether an extension to the  
16 ignition interlock restricted license period should be assessed.

17 Section 3. Sections 3807(b)(2) and (d), 3808(c)(1) and  
18 3814(2) of Title 75 are amended to read:

19 § 3807. Accelerated Rehabilitative Disposition.

20 \* \* \*

21 (b) Evaluation and treatment.--

22 \* \* \*

23 (2) The defendant shall be subject to a full assessment  
24 for alcohol and drug addiction if any of the following apply:

25 (i) The evaluation under paragraph (1)(ii) indicates  
26 a likelihood that the defendant is addicted to alcohol or  
27 other drugs.

28 (ii) The defendant's blood alcohol content at the  
29 time of the offense was at least [0.16%] 0.15%.

30 \* \* \*

(d) Mandatory suspension of operating privileges and  
ignition interlock requirement.--As a condition of participation  
in an Accelerated Rehabilitative Disposition program, the court  
shall order the defendant's license suspended as follows:

(1) There shall be no license suspension if the  
defendant's blood alcohol concentration at the time of  
testing was less than 0.10%.

(2) For [30] 15 days if the defendant's blood alcohol  
concentration at the time of testing was at least 0.10% but  
less than [0.16%] 0.15%.

(3) For [60] 45 days after which the defendant shall  
participate in and comply with the ignition interlock program  
under section 3805 (relating to ignition interlock) for 12  
months if:

(i) the defendant's blood alcohol concentration at  
the time of testing was [0.16%] 0.15% or higher;

(ii) the defendant's blood alcohol concentration is  
not known;

(iii) an accident which resulted in bodily injury or  
in damage to a vehicle or other property occurred in  
connection with the events surrounding the current  
offense; or

(iv) the defendant was charged pursuant to section  
3802(d).

(4) For 90 days if the defendant was a minor at the time  
of the offense.

\* \* \*

§ 3808. Illegally operating a motor vehicle not equipped with  
ignition interlock.

\* \* \*

(c) Suspension of operating privilege.--Notwithstanding  
section 3805(c) and (i):

(1) If a person who is required to only drive, operate  
or be in actual physical control of the movement of a motor  
vehicle equipped with an ignition interlock system violates  
this section, upon receipt of a certified record of the  
conviction, the department shall not issue a replacement  
license to the person under section 1951(d) (relating to  
driver's license and learner's permit) [that does not contain  
an ignition interlock restriction for a period of one year  
from the date of conviction.] until the person has complied  
with the requirements of section 3805.

\* \* \*

§ 3814. Drug and alcohol assessments.

If a defendant is convicted or pleads guilty or no contest to  
a violation of section 3802 (relating to driving under influence  
of alcohol or controlled substance), the following apply prior  
to sentencing:

\* \* \*

(2) The defendant shall be subject to a full assessment  
for alcohol and drug addiction if any of the following  
subparagraphs apply:

(i) The defendant, within ten years prior to the  
offense for which sentence is being imposed, has been  
sentenced for an offense under:

(A) section 3802;

(B) former section 3731; or

(C) an equivalent offense in another  
jurisdiction.

(ii) Either:

1                   (A) the evaluation under paragraph (1) indicates  
2                   there is a need for counseling or treatment; or

3                   (B) the defendant's blood alcohol content at the  
4                   time of the offense was at least [0.16%] 0.15%.

5                   \* \* \*

6       Section 4. This act shall take effect as follows:

7       (1) The addition of 75 Pa.C.S. § 3805(j) shall take effect  
8       in 365 days.

9       (2) The remainder of this act shall take effect in 60 days.