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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1185 Session of  
2019

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INTRODUCED BY MENTZER, BENNINGHOFF, GILLESPIE, KORTZ, MURT,  
BERNSTINE, MILLARD, PICKETT, READSHAW, FEE, DeLUCA,  
ZIMMERMAN, NEILSON, ECKER, BOBACK, HICKERNELL, GREINER AND  
B. MILLER, APRIL 10, 2019

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REFERRED TO COMMITTEE ON GAME AND FISHERIES, APRIL 10, 2019

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AN ACT

1 Amending Title 30 (Fish) of the Pennsylvania Consolidated  
2 Statutes, in property and waters, further providing for the  
3 offense of damage to property; in protection of property and  
4 waters, further providing for the offense of littering; in  
5 preliminary provisions relating to boats and boating, further  
6 providing for boating education; and, in operation of boats,  
7 further providing for the offense of operating watercraft  
8 under influence of alcohol or controlled substance and  
9 providing for the offense of aggravated assault by  
10 watercraft.

11 The General Assembly of the Commonwealth of Pennsylvania  
12 hereby enacts as follows:

13 Section 1. Sections 703 and 2503(c) of Title 30 of the  
14 Pennsylvania Consolidated Statutes are amended to read:

15 § 703. Damage to property.

16 (a) Unlawful act.--It is unlawful to intentionally or  
17 recklessly destroy or cause damage to property owned, leased or  
18 otherwise controlled by the commission or any improvements  
19 thereon. Any person who intentionally causes pecuniary loss in  
20 excess of \$5,000 commits a felony of the third degree. Any  
21 person who intentionally causes pecuniary loss in excess of

1 \$1,000 commits a misdemeanor of the second degree. Any person  
2 who intentionally or recklessly causes pecuniary loss in excess  
3 of \$500 commits a misdemeanor of the third degree. Otherwise  
4 destroying or causing damage to commission property or any  
5 improvements thereon is a summary offense of the first degree.

6 (b) Restitution.--A person who intentionally or recklessly  
7 destroys or causes damages to commission property, or an  
8 improvement on commission property, shall, upon conviction, make  
9 restitution in addition to paying the penalty under section 923  
10 (relating to classification of offenses and penalties).  
11 Restitution shall be based on the total cost to repair or  
12 replace the destroyed or damaged property or improvement.

13 § 2503. Littering.

14 \* \* \*

15 (c) Penalty.--Any person who deposits or otherwise disposes  
16 of a thing or substance in violation of this section which  
17 causes or may cause damage to, or destruction of, fish commits a  
18 summary offense of the first degree. Any person who transports  
19 household refuse or garbage from another location and disposes  
20 of it by leaving it on lands or waters open to fishing or  
21 boating commits a summary offense of the second degree. Any  
22 person who otherwise violates this section commits a summary  
23 offense of the third degree. In addition to the penalties set  
24 forth in section 923 (relating to classification of offenses and  
25 penalties), an additional penalty of not less than \$20 nor more  
26 than \$50 for each item or piece of litter thrown, discarded,  
27 left, emitted or deposited in violation of this section may be  
28 imposed on any person who is convicted or acknowledges guilt of  
29 a violation of this section. In addition to the penalties under  
30 section 923, a person who is convicted or acknowledges guilt of

1 a violation of this section shall be liable to pay, upon demand  
2 of the person having legal control of the land or water, a sum  
3 equal to the cost of disposal of the discarded item.

4 Section 2. Section 5103(a) and (j) of Title 30 are amended,  
5 and the section is amended by adding a subsection to read:

6 § 5103. Boating education.

7 (a) Mandatory program of boater education.--Except as  
8 otherwise provided in this section, [on or after January 1,  
9 2003,] any person born on or after January 1, 1982, shall not  
10 operate, on the waters of this Commonwealth, a motorboat without  
11 first obtaining a certificate of boating safety education.

12 \* \* \*

13 (j) Penalty.--[On or after January 1, 2003, a person who is  
14 subject to the provisions of subsection (a) and who operates, on  
15 waters of this Commonwealth, a motorboat in violation of any  
16 requirement of this section commits a summary offense of the  
17 second degree.]

18 (1) A person who is subject to the provisions of  
19 subsection (a) and who operates a motorboat on waters of this  
20 Commonwealth without first obtaining a certificate of boating  
21 safety education commits a summary offense of the second  
22 degree.

23 (2) A person who is subject to the provisions of  
24 subsection (a) and who operates a motorboat on waters of this  
25 Commonwealth without having a valid certificate of boating  
26 safety education in the person's possession commits a summary  
27 offense of the fourth degree.

28 \* \* \*

29 (1) Boating without a certificate on board.--If a person who  
30 is subject to the provisions of subsection (a) is operating a

1 motorboat without a certificate of boating safety education in  
2 the person's possession and claims that the person has obtained  
3 a certificate of boating safety education, the waterways  
4 conservation officer or other law enforcement officer shall give  
5 the operator seven days to produce the original certificate. If  
6 it is inconvenient for the operator to produce the certificate  
7 in person, the officer may permit the operator to mail the  
8 original certificate to the officer for verification. If the  
9 operator fails to send the original certificate within the  
10 seven-day period, the officer may institute summary proceeding  
11 against the operator in the manner prescribed by law.

12 Section 3. Sections 5502(b), (b.1), (b.2), (c), (c.1), (d),  
13 (g), (j), (m), and (n) of Title 30 are amended to read:

14 § 5502. Operating watercraft under influence of alcohol or  
15 controlled substance.

16 \* \* \*

17 (b) Authorized use not a defense.--The fact that any  
18 [person] individual charged with violating this section is or  
19 has been legally entitled to use alcohol or controlled  
20 substances is not a defense to a charge of violating this  
21 section.

22 (b.1) Certain arrests authorized.--In addition to any other  
23 powers of arrest, an officer authorized to enforce this title is  
24 hereby authorized to arrest without a warrant any [person]  
25 individual who the officer has probable cause to believe has  
26 violated the provisions of this section, regardless of whether  
27 the alleged violation was committed in the presence of such  
28 officer. This authority to arrest extends to any hospital or  
29 other medical treatment facility located beyond the territorial  
30 limits of the officer's political subdivision where the [person]

1 individual to be arrested is found or was taken for purposes of  
2 emergency treatment, examination or evaluation, provided there  
3 is probable cause to believe that the violation of this section  
4 occurred within the police officer's political subdivision.

5 (b.2) Certain disposition prohibited.--The attorney for the  
6 Commonwealth shall not submit a charge brought under this  
7 section for Accelerated Rehabilitative Disposition if:

8 (1) The defendant has been found guilty of or accepted  
9 Accelerated Rehabilitative Disposition of a charge brought  
10 under this section or 75 Pa.C.S. § 3802 (relating to driving  
11 under influence of alcohol or controlled substance) within  
12 [seven] 10 years of the date of the current offense unless  
13 the charge was for an ungraded misdemeanor under 75 Pa.C.S. §  
14 3802(a)(2) and was the defendant's first offense under this  
15 section or 75 Pa.C.S. § 3802.

16 (2) An accident occurred in connection with the events  
17 surrounding the current offense and any [person] individual  
18 other than the defendant was killed or seriously injured as a  
19 result of the accident.

20 (3) There was a passenger under 14 years of age in the  
21 watercraft the defendant was operating.

22 (c) Grading.--

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

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

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

1 of 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] individual  
5 or in damage to a watercraft or other property and who  
6 has no more than one prior offense commits a misdemeanor  
7 for which the individual may be sentenced to a term of  
8 imprisonment for not more than six months and to pay a  
9 fine under subsection (c.1).

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

21 (iv) An individual who violates subsection (a.2) or  
22 (a.3) and who has no prior offenses 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 (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] individual  
29 or in damage to a watercraft or other property and who  
30 has more than one prior offense commits a misdemeanor of

1 the first degree.

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

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

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

12 (ix) An individual who violates this section when a  
13 minor under 18 years of age was a passenger in the  
14 watercraft when the violation occurred commits a  
15 misdemeanor of the first degree.

16 (c.1) Penalties.--

17 (1) Except as set forth in paragraph (2), (3) [or], (4)  
18 or (5), an individual who violates subsection (a) shall be  
19 sentenced as follows:

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

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

28 (iii) For a third or subsequent offense, to undergo  
29 imprisonment for not less than ten days and to pay a fine  
30 of not less than \$500 nor more than \$5,000 and

1           successfully complete an approved boating safety course.

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

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

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

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

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

24           (3) Except as set forth in paragraph (4), an individual  
25 who violates subsection (a)(1) and refused testing of blood  
26 or breath or an individual who violates subsection (a.2) or  
27 (a.3) shall be sentenced as follows:

28           (i) For a first offense, to undergo imprisonment for  
29 not less than 72 consecutive hours and to pay a fine of  
30 not less than \$1,000 nor more than \$5,000 and



1 successfully complete an approved boating safety course.

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

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

10 (4) Notwithstanding the provisions of this subsection  
11 relating to mandatory minimum sentences, if the court makes a  
12 finding that the county jail population exceeds its capacity,  
13 the court may allow an individual who violated this section  
14 and is serving a mandatory minimum term of imprisonment to be  
15 released on parole to serve some or all of the individual's  
16 term of imprisonment on house arrest with electronic  
17 surveillance. This shall not apply to an individual who  
18 violates subsection (a) (1) where there was an accident  
19 resulting in serious bodily injury or the death of any  
20 [person] individual.

21 (5) An individual who violates this section when a minor  
22 under 18 years of age was a passenger in the watercraft when  
23 the violation occurred, in addition to any penalty imposed  
24 under this section, shall be sentenced as follows:

25 (i) For the first offense:

26 (A) Pay a fine of not less than \$1,000.

27 (B) Complete 100 hours of community service.

28 (ii) For a second offense:

29 (A) Pay a fine of not less than \$2,500.

30 (B) Undergo imprisonment for not less than one

1 month nor more than six months.

2 (iii) For a third or subsequent offense, undergo  
3 imprisonment for not less than six months nor more than  
4 two years.

5 (d) Subsequent conviction.--Acceptance of Accelerated  
6 Rehabilitative Disposition, an adjudication of delinquency or a  
7 consent decree under 42 Pa.C.S. Ch. 63 or any other form of  
8 preliminary disposition of any charge brought under this section  
9 or a conviction or guilty plea under 75 Pa.C.S. § 3802  
10 [(relating to driving under influence of alcohol or controlled  
11 substance)] shall be considered a first conviction for the  
12 purpose of computing whether a subsequent conviction of a  
13 violation of this section shall be considered a second, third or  
14 subsequent conviction.

15 \* \* \*

16 (g) City of first class.--Notwithstanding the provision for  
17 direct appeal to the Superior Court, if, in a city of the first  
18 class, [a person] an individual appeals from a judgment of  
19 sentence under this section from the municipal court to the  
20 common pleas court for a trial de novo, the Commonwealth shall  
21 have the right to appeal directly to the Superior Court from the  
22 order of the common pleas court if the sentence imposed is in  
23 violation of this section. If, in a city of the first class, [a  
24 person] an individual appeals to the court of common pleas after  
25 conviction of a violation of this section in the municipal court  
26 and thereafter withdraws his appeal to the common pleas court,  
27 thereby reinstating the judgment of sentence of the municipal  
28 court, the Commonwealth shall have 30 days from the date of the  
29 withdrawal to appeal to the Superior Court if the sentence is in  
30 violation of this section.

1 \* \* \*

2 (j) Litter collection program.--In addition to the  
3 conditions set forth under subsection (i) for Accelerated  
4 Rehabilitative Disposition of any charge brought under this  
5 section, the judge may impose and the [person] individual shall  
6 accept the condition that the [person] individual engage in a  
7 program of collecting litter from public and private property  
8 along Commonwealth waterways, especially property which is  
9 littered with alcoholic beverage containers. The duration of the  
10 [person's] individual's participation in a litter collection  
11 program shall not exceed the duration of the probationary period  
12 imposed on the [person] individual under Accelerated  
13 Rehabilitative Disposition.

14 \* \* \*

15 (m) Work release.--In any case in which [a person] an  
16 individual is sentenced to a period of imprisonment as a result  
17 of a conviction for violating any provision of this section, the  
18 judicial officer imposing that sentence shall consider assigning  
19 that [person] individual to a daytime work release program  
20 pursuant to which the [person] individual would be required to  
21 collect litter from public and private property, especially  
22 property which is littered with alcoholic beverage containers.

23 (n) Definitions.--As used in this section, the following  
24 words and phrases shall have the meanings given to them in this  
25 subsection:

26 "Adult." [A person] An individual 21 years of age or older.

27 "Minor." [A person] An individual under 21 years of age.

28 Section 4. Title 30 is amended by adding a section to read:

29 § 5502.4. Aggravated assault by watercraft.

30 (a) Offense defined.--An individual who recklessly or with

1 gross negligence causes serious bodily injury to another person  
2 while engaged in the violation of a provision of this title or  
3 regulations promulgated under this title applying to the  
4 operation or equipment of boats or watercraft, except section  
5 5502 (relating to operating watercraft under influence of  
6 alcohol or controlled substance), commits aggravated assault by  
7 watercraft, a felony of the third degree, when the violation is  
8 the cause of the injury.

9 (b) Definition.--As used in this section, the term "serious  
10 bodily injury" means any bodily injury that creates a  
11 substantial risk of death or that causes serious permanent  
12 disfigurement or protracted loss or impairment of the function  
13 of any bodily member or organ.

14 Section 5. This act shall take effect in 60 days.