

No. 2006-149

AN ACT

SB 1262

Amending Title 30 (Fish) of the Pennsylvania Consolidated Statutes, further providing for chemical testing to determine amounts of alcohol or controlled substances and for operating a watercraft under the influence of alcohol or controlled substances; and providing for aggravated assault by watercraft while operating under influence.

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

Section 1. Section 5125(a), (b), (c), (d), (h) and (k) of Title 30 of the Pennsylvania Consolidated Statutes are amended to read:

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

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

(1) **[while under the influence of alcohol or a controlled substance or both] in violation of section 5502 (relating to operating watercraft under influence of alcohol or controlled substance);** or

(2) which was involved in an accident in which the operator, **passenger** or any **other** person **[involved]** required treatment at a medical facility or was killed.

(b) Suspension for refusal.—

(1) If any person placed under arrest for a violation of section 5502 **[(relating to operating watercraft under influence of alcohol or controlled substance)]** is requested to submit to chemical testing and refuses to do so, the testing shall not be conducted but, upon notice by the waterways **[patrolman] conservation officer**, the commission shall suspend the boating privileges of the person **[for a period of 12 months.]** as follows:

(i) **Except as set forth in subparagraph (ii), for a period of 12 months.**

(ii) **For a period of 18 months if any of the following apply:**

(A) **The person's boating privileges have previously been suspended under this subsection.**

(B) The person has, prior to the refusal under this paragraph, been sentenced for an offense under section 5502.

(2) It is the duty of the waterways [patrolman] *conservation officer* to inform the person that:

(i) the person's boating privileges will be suspended upon refusal to submit to chemical testing[.]; and

(ii) if the person refuses to submit to chemical testing, upon conviction or plea for violating section 5502(a)(1), the person will be subject to the penalties provided in section 5502(c)(3).

(3) Any person whose boating privileges are suspended under this section shall have the same right of appeal as provided for in cases of suspension for other reasons.

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

(1) Chemical tests of breath shall be performed on devices approved by the Department of Health using procedures prescribed jointly by regulations of the Department of Health and the [commission] *Department of Transportation*. Devices shall have been tested for accuracy within a period of time and in a manner specified by regulations of the Department of Health and the [commission] *Department of Transportation*. For purposes of breath testing, a qualified person means a person who has fulfilled the training requirement in the use of the equipment in a training program approved by the Department of Health and the [commission] *Department of Transportation*. A certificate or log showing that a device was tested for accuracy and that the device was accurate shall be presumptive evidence of those facts in every proceeding in which a violation of this title is charged.

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

(ii) For purposes of blood and urine testing to determine blood alcohol or controlled substance content levels, the procedures and equipment prescribed by the Department of Health shall be reviewed within 120 days of the effective date of this subparagraph and at least every two years thereafter to ensure that consideration is given to scientific and technological advances so that testing conducted in

accordance with the prescribed procedures utilizing the prescribed equipment will be as accurate and reliable as science and technology permit.

(3) Chemical test of blood or urine, if conducted by a facility located outside this Commonwealth, shall be performed:

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

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

(4) For purposes of blood testing to determine the amount of a Schedule I or nonprescribed Schedule II or III controlled substance or a metabolite of such a substance, the Department of Health shall prescribe minimum levels of these substances which must be present in a person's blood in order for the test results to be admissible in a prosecution for a violation of section 5502 or any other violation of this title arising out of the same action.

[(d) Presumptions from amount of alcohol.—If chemical testing of a person's breath, blood or urine shows:

(1) That the amount of alcohol by weight in the blood of the person tested is 0.05% or less, it shall be presumed that the person tested was not under influence of alcohol and the person shall not be charged with any violation under section 5502(a)(1) or (4) or, if the person was so charged prior to the test, the charge shall be void ab initio. This fact shall not give rise to any presumption concerning a violation of section 5502(a)(2) or (3).

(2) That the amount of alcohol by weight in the blood of the person tested is in excess of 0.05% but less than 0.10%, this fact shall not give rise to any presumption that the person tested was or was not under the influence of alcohol, but this fact may be considered with other competent evidence in determining whether the person was or was not under the influence of alcohol.

(3) That the amount of alcohol by weight in the blood of the person tested is 0.10% or more, this fact may be introduced into evidence if the person is charged with violating section 5502.]

(h) Test by personal physician.—The person tested shall be permitted to have a physician of his own choosing administer an additional breath, blood or urine chemical test and the results of the test shall also be admissible in evidence. The chemical testing given at the direction of the waterways [patrolman] conservation officer shall not be delayed by a person's attempt to obtain an additional test.

(k) **Prearrest breath test authorized.**—A waterways **[patrolman] conservation officer**, having reasonable suspicion to believe a person is operating or in actual physical control of the movement of a watercraft while under the influence of alcohol, may require that person, prior to arrest, to submit to a preliminary breath test on a device approved by the Department of Health for this purpose. The sole purpose of this preliminary breath test is to assist the waterways **[patrolman] conservation officer** in determining whether or not the person should be placed under arrest. The preliminary breath test shall be in addition to any other requirements of this title. No person has any right to expect or demand a preliminary breath test. Refusal to submit to the test shall not be considered for purposes of subsections (b) and (e).

Section 2. Section 5502(a), (a.1) and (c) of Title 30 are amended and the section is amended by adding subsections to read:

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

[(a) General rule.—No person shall operate or be in actual physical control of the movement of a watercraft upon, in or through the waters of this Commonwealth:

(1) while under the influence of alcohol to a degree which renders the person incapable of safe operation of a watercraft;

(2) while under the influence of any controlled substance, as defined by the laws of this Commonwealth and rules and regulations promulgated thereunder, to a degree which renders the person incapable of safe operation of a watercraft;

(3) while under the combined influence of alcohol and a controlled substance to a degree which renders the person incapable of safe operation of a watercraft; or

(4) while the amount of alcohol by weight in the blood of:

(i) an adult is 0.10% or greater; or

(ii) a minor is 0.02% or greater.

(a.1) Prima facie evidence.—

(1) It is prima facie evidence that:

(i) an adult had 0.10% or more by weight of alcohol in his or her blood at the time of operating or being in actual physical control of the movement of a watercraft if the amount of alcohol by weight in the blood of the person is equal to or greater than 0.10% at the time a chemical test is performed on a sample of the person's breath, blood or urine; and

(ii) a minor had 0.02% or more by weight of alcohol in his or her blood at the time of operating or being in actual physical control of the movement of a watercraft if the amount of alcohol by weight in the blood of the minor is equal to or greater than 0.02% at the time a chemical test is performed on a sample of the person's breath, blood or urine.

(2) For the purposes of this section, the chemical test of the sample of the person's breath, blood or urine shall be from a sample obtained within three hours after the person drove, operated or was in actual physical control of the watercraft.]

(a) *General impairment.*—

(1) *An individual may not operate or be in actual physical control of the movement of a watercraft after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely operating or being in actual physical control of the movement of the watercraft.*

(2) *An individual may not operate or be in actual physical control of the movement of a watercraft after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least 0.08% but less than 0.10% within two hours after the individual has operated or been in actual physical control of the movement of the watercraft.*

(a.1) *High rate of alcohol.*—*An individual may not operate or be in actual physical control of the movement of a watercraft after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least 0.10% but less than 0.16% within two hours after the individual has operated or been in actual physical control of the movement of the watercraft.*

(a.2) *Highest rate of alcohol.*—*An individual may not operate or be in actual physical control of the movement of a watercraft after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is 0.16% or higher within two hours after the individual has operated or been in actual physical control of the movement of the watercraft.*

(a.3) *Controlled substances.*—*An individual may not operate or be in actual physical control of the movement of a watercraft under any of the following circumstances:*

(1) *There is in the individual's blood any amount of a:*

(i) *Schedule I controlled substance, as defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act;*

(ii) *Schedule II or III controlled substance, as defined in The Controlled Substance, Drug, Device and Cosmetic Act, which has not been medically prescribed for the individual; or*

(iii) *metabolite of a substance under subparagraph (i) or (ii).*

(2) *The individual is under the influence of a drug or combination of drugs to a degree which impairs the individual's ability to safely operate or be in actual physical control of the movement of the watercraft.*

(3) *The individual is under the combined influence of alcohol and a drug or combination of drugs to a degree which impairs the individual's*

ability to safely operate or be in actual physical control of the movement of the watercraft.

(4) The individual is under the influence of a solvent or noxious substance in violation of 18 Pa.C.S. § 7303 (relating to sale or illegal use of certain solvents and noxious substances).

(a.4) Minors.—A minor may not operate or be in actual physical control of the movement of a watercraft after imbibing a sufficient amount of alcohol such that the alcohol concentration in the minor's blood or breath is 0.02% or higher within two hours after the minor has operated or been in actual physical control of the movement of the watercraft.

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

(1) where the Commonwealth shows good cause explaining why the chemical test could not be performed within two hours; and

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

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(c) Grading and penalties.—

[(1) A person violating any of the provisions of this section commits a misdemeanor of the second degree except a person who meets the requirements of paragraph (2). The sentencing court shall order the person to pay a fine of not less than \$500 and to serve a minimum term of imprisonment of:

(i) not less than 48 consecutive hours; or

(ii) not less than 30 days if the person had previously accepted Accelerated Rehabilitative Disposition or any other form of preliminary disposition or had been convicted of, adjudicated delinquent or granted a consent decree under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) based on an offense under this section or an equivalent offense in this or other jurisdictions within the previous seven years calculated from the date of acceptance, conviction, adjudication or grant.

(2) If the person has two or more times previously been convicted of, adjudicated delinquent or granted a consent decree under 42 Pa.C.S. Ch. 63 based on an offense under this section or an equivalent offense in this or other jurisdictions within the previous seven years, a person commits a misdemeanor of the first degree. The sentencing court shall order the person to pay a fine of not less than \$2,500 nor

more than \$10,000 and to serve a minimum term of imprisonment of not less than 90 days.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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Section 3. Title 30 is amended by adding a section to read:

§ 5502.3. *Aggravated assault by watercraft while operating under influence.*

(a) Offense defined.—Any person who negligently causes serious bodily injury to another person as the result of a violation of section 5502 (relating to operating watercraft under influence of alcohol or controlled substance) and who is convicted of violating section 5502 commits a felony of the second degree when the violation is the cause of the injury.

(b) Definition.—As used in this section, the term “serious bodily injury” means any bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

Section 4. This act shall take effect in 60 days.

APPROVED—The 9th day of November, A.D. 2006.

EDWARD G. RENDELL