
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 38 Session of
2017

INTRODUCED BY HUTCHINSON, LANGERHOLC, SCHWANK, VULAKOVICH AND
RAFFERTY, JANUARY 12, 2017

REFERRED TO TRANSPORTATION, JANUARY 12, 2017

AN ACT

1 Amending Title 75 (Vehicles) of the Pennsylvania Consolidated
2 Statutes, in general provisions, further providing for
3 definitions; in licensing of drivers, further providing for
4 driving while operating privilege is suspended or revoked and
5 for chemical testing to determine amount of alcohol or
6 controlled substance; in commercial drivers, further
7 providing for implied consent requirements for commercial
8 motor vehicle drivers; in miscellaneous provisions, further
9 providing for reports by emergency room personnel; in driving
10 after imbibing alcohol or utilizing drugs, further providing
11 for driving under influence of alcohol or controlled
12 substance, for grading and for penalties; and, in powers of
13 Department of Transportation and local authorities, further
14 providing for enforcement agreements.

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

17 Section 1. The definition of "chemical test or testing" in
18 section 102 of Title 75 of the Pennsylvania Consolidated
19 Statutes is amended to read:

20 § 102. Definitions.

21 Subject to additional definitions contained in subsequent
22 provisions of this title which are applicable to specific
23 provisions of this title, the following words and phrases when
24 used in this title shall have, unless the context clearly

1 indicates otherwise, the meanings given to them in this section:

2 * * *

3 "Chemical test or testing." Analysis performed on a
4 biological material, including but not limited to breath,
5 saliva, blood or urine, to determine the identity or
6 concentration or both of particular constituents such as alcohol
7 or controlled substances. Test procedures may rely on one or
8 more physical or chemical properties of the constituent and
9 utilize instrumental or chemical analysis techniques to
10 accomplish the determination.

11 * * *

12 Section 2. Section 1543(b)(1.1)(i) of Title 75 is amended to
13 read:

14 § 1543. Driving while operating privilege is suspended or
15 revoked.

16 * * *

17 (b) Certain offenses.--

18 * * *

19 (1.1) (i) A person who has an amount of alcohol by
20 weight in his blood that is equal to or greater than .02%
21 at the time of testing or who at the time of testing has
22 in his blood or saliva any amount of a Schedule I or
23 nonprescribed Schedule II or III controlled substance, as
24 defined in the act of April 14, 1972 (P.L.233, No.64),
25 known as The Controlled Substance, Drug, Device and
26 Cosmetic Act, or its metabolite or who refuses testing of
27 blood, saliva or breath and who drives a motor vehicle on
28 any highway or trafficway of this Commonwealth at a time
29 when the person's operating privilege is suspended or
30 revoked as a condition of acceptance of Accelerated

1 Rehabilitative Disposition for a violation of section
2 3802 or former section 3731 or because of a violation of
3 section 1547(b) (1) or 3802 or former section 3731 or is
4 suspended under section 1581 for an offense substantially
5 similar to a violation of section 3802 or former section
6 3731 shall, upon a first conviction, be guilty of a
7 summary offense and shall be sentenced to pay a fine of
8 \$1,000 and to undergo imprisonment for a period of not
9 less than 90 days.

10 * * *

11 Section 3. Section 1547(a) introductory paragraph, (c), (h),
12 (i) and (j) of Title 75, amended May 25, 2016 (P.L.236, No.33),
13 are amended to read:

14 § 1547. Chemical testing to determine amount of alcohol or
15 controlled substance.

16 (a) General rule.--Any person who drives, operates or is in
17 actual physical control of the movement of a vehicle in this
18 Commonwealth shall be deemed to have given consent to one or
19 more chemical tests of breath, saliva or blood for the purpose
20 of determining the alcoholic content of blood or the presence of
21 a controlled substance if a police officer has reasonable
22 grounds to believe the person to have been driving, operating or
23 in actual physical control of the movement of a vehicle:

24 * * *

25 (c) Test results admissible in evidence.--In any summary
26 proceeding or criminal proceeding in which the defendant is
27 charged with a violation of section 3802 or any other violation
28 of this title arising out of the same action, the amount of
29 alcohol or controlled substance in the defendant's blood, as
30 shown by chemical testing of the person's breath, saliva or

1 blood, which tests were conducted by qualified persons using
2 approved equipment, shall be admissible in evidence.

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

18 (2) (i) Chemical tests of blood or saliva, if conducted
19 by a facility located in this Commonwealth, 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 saliva testing,
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 saliva 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 of
3 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 (3) Chemical tests of blood or saliva, if conducted by a
10 facility located outside this Commonwealth, shall be
11 performed:

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

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

18 (4) For purposes of blood and saliva testing to
19 determine the amount of a Schedule I or nonprescribed
20 Schedule II or III controlled substance or a metabolite of
21 such a substance, the Department of Health shall prescribe
22 minimum levels of these substances which must be present in a
23 person's blood or saliva in order for the test results to be
24 admissible in a prosecution for a violation of section
25 1543(b) (1.1), 3802(d) (1), (2) or (3) or 3808(a) (2).

26 * * *

27 (h) Test by personal physician.--The person tested shall be
28 permitted to have a physician of his own choosing administer an
29 additional breath, saliva or blood chemical test and the results
30 of the test shall also be admissible in evidence. The chemical

1 testing given at the direction of the police officer shall not
2 be delayed by a person's attempt to obtain an additional test.

3 (i) Request by driver for test.--Any person involved in an
4 accident or placed under arrest for a violation of section
5 1543(b)(1.1), 3802 or 3808(a)(2) may request a chemical test of
6 his breath, saliva or blood. Such requests shall be honored when
7 it is reasonably practicable to do so.

8 (j) Immunity from civil liability and reports.--No
9 physician, nurse or technician or hospital employing such
10 physician, nurse or technician, and no other employer of such
11 physician, nurse or technician shall be civilly liable for
12 withdrawing blood or obtaining a saliva sample and reporting
13 test results to the police at the request of a police officer
14 pursuant to this section. No physician, nurse or technician or
15 hospital employing such physician, nurse or technician may
16 administratively refuse to perform such tests and provide the
17 results to the police officer except as may be reasonably
18 expected from unusual circumstances that pertain at the time the
19 request is made.

20 * * *

21 Section 4. Sections 1613(a), 3755 and 3802(a)(2), (b), (c),
22 (d)(1), (e), (f)(1) and (g) introductory paragraph of Title 75
23 are amended to read:

24 § 1613. Implied consent requirements for commercial motor
25 vehicle drivers.

26 (a) Implied consent.--A person who drives a commercial motor
27 vehicle in this Commonwealth is deemed to have given consent to
28 take a test or tests of the person's breath, blood, saliva or
29 urine for the purpose of determining the person's alcohol
30 concentration or the presence of other controlled substances.

1 * * *

2 § 3755. Reports by emergency room personnel.

3 (a) General rule.--If, as a result of a motor vehicle
4 accident, the person who drove, operated or was in actual
5 physical control of the movement of any involved motor vehicle
6 requires medical treatment in an emergency room of a hospital
7 and if probable cause exists to believe a violation of section
8 3802 (relating to driving under influence of alcohol or
9 controlled substance) was involved, the emergency room physician
10 or his designee shall promptly take blood and saliva samples
11 from those persons and transmit them within 24 hours for testing
12 to the Department of Health or a clinical laboratory licensed
13 and approved by the Department of Health and specifically
14 designated for this purpose. This section shall be applicable to
15 all injured occupants who were capable of motor vehicle
16 operation if the operator or person in actual physical control
17 of the movement of the motor vehicle cannot be determined. Test
18 results shall be released upon request of the person tested, his
19 attorney, his physician or governmental officials or agencies.

20 (b) Immunity from civil or criminal liability.--No
21 physician, nurse or technician or hospital employing such
22 physician, nurse or technician and no other employer of such
23 physician, nurse or technician shall be civilly or criminally
24 liable for withdrawing blood or obtaining a urine or saliva
25 sample and reporting test results to the police pursuant to this
26 section or for performing any other duty imposed by this
27 section. No physician, nurse or technician or hospital employing
28 such physician, nurse or technician may administratively refuse
29 to perform such tests and provide the results to the police
30 officer except as may be reasonably expected from unusual

1 circumstances that pertain at the time of admission.

2 § 3802. Driving under influence of alcohol or controlled
3 substance.

4 (a) General impairment.--

5 * * *

6 (2) An individual may not drive, operate or be in actual
7 physical control of the movement of a vehicle after imbibing
8 a sufficient amount of alcohol such that the alcohol
9 concentration in the individual's blood, saliva or breath is
10 at least 0.08% but less than 0.10% within two hours after the
11 individual has driven, operated or been in actual physical
12 control of the movement of the vehicle.

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

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

27 (d) Controlled substances.--An individual may not drive,
28 operate or be in actual physical control of the movement of a
29 vehicle under any of the following circumstances:

30 (1) There is in the individual's blood or saliva any

1 amount of a:

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

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

9 (iii) metabolite of a substance under subparagraph

10 (i) or (ii).

11 * * *

12 (e) Minors.--A minor may not drive, operate or be in actual
13 physical control of the movement of a vehicle after imbibing a
14 sufficient amount of alcohol such that the alcohol concentration
15 in the minor's blood, saliva or breath is 0.02% or higher within
16 two hours after the minor has driven, operated or been in actual
17 physical control of the movement of the vehicle.

18 (f) Commercial or school vehicles.--An individual may not
19 drive, operate or be in actual physical control of the movement
20 of a commercial vehicle, school bus or school vehicle in any of
21 the following circumstances:

22 (1) After the individual has imbibed a sufficient amount
23 of alcohol such that the alcohol concentration in the
24 individual's blood, saliva or breath is:

25 (i) 0.04% or greater within two hours after the
26 individual has driven, operated or been in actual
27 physical control of the movement of a commercial vehicle
28 other than a school bus or a school vehicle.

29 (ii) 0.02% or greater within two hours after the
30 individual has driven, operated or been in actual

1 physical control of the movement of a school bus or a
2 school vehicle.

3 * * *

4 (g) Exception to two-hour rule.--Notwithstanding the
5 provisions of subsection (a), (b), (c), (e) or (f), where
6 alcohol or controlled substance concentration in an individual's
7 blood, saliva or breath is an element of the offense, evidence
8 of such alcohol or controlled substance concentration more than
9 two hours after the individual has driven, operated or been in
10 actual physical control of the movement of the vehicle is
11 sufficient to establish that element of the offense under the
12 following circumstances:

13 * * *

14 Section 5. Section 3803(b)(2) and (4) of Title 75 are
15 amended and the subsection is amended by adding a paragraph to
16 read:

17 § 3803. Grading.

18 * * *

19 (b) Other offenses.--

20 * * *

21 (2) An individual who violates section 3802(a)(1) where
22 the individual refused testing of blood, saliva or breath, or
23 who violates section 3802(c) or (d) and who has no prior
24 offenses commits a misdemeanor for which the individual may
25 be sentenced to a term of imprisonment of not more than six
26 months and to pay a fine under section 3804.

27 * * *

28 (4) An individual who violates section 3802(a)(1) where
29 the individual refused testing of blood, saliva or breath[,]
30 or, except as set forth in paragraph (4.1), who violates

1 section 3802(c) or (d) and who has one or more prior offenses
2 commits a misdemeanor of the first degree.

3 (4.1) An individual who violates section 3802(d) commits
4 a felony of the third degree for a third or subsequent
5 offense in a 10-year period.

6 * * *

7 Section 6. Section 3804(c) and (e) of Title 75 are amended
8 and the section is amended by adding a subsection to read:
9 § 3804. Penalties.

10 * * *

11 (c) Incapacity; highest blood alcohol[; controlled
12 substances].--An individual who violates section 3802(a)(1) and
13 refused testing of blood, saliva or breath or an individual who
14 violates section 3802(c) [or (d)] shall be sentenced as follows:

15 (1) For a first offense, to:

16 (i) undergo imprisonment of not less than 72
17 consecutive hours;

18 (ii) pay a fine of not less than \$1,000 nor more
19 than \$5,000;

20 (iii) attend an alcohol highway safety school
21 approved by the department; and

22 (iv) comply with all drug and alcohol treatment
23 requirements imposed under sections 3814 and 3815.

24 (2) For a second offense, to:

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

26 (ii) pay a fine of not less than \$1,500;

27 (iii) attend an alcohol highway safety school
28 approved by the department; and

29 (iv) comply with all drug and alcohol treatment
30 requirements imposed under sections 3814 and 3815.

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

2 (i) undergo imprisonment of not less than one year;

3 (ii) pay a fine of not less than \$2,500; and

4 (iii) comply with all drug and alcohol treatment
5 requirements imposed under sections 3814 and 3815.

6 * * *

7 (c.2) Controlled substances.--An individual who violates
8 section 3802(d) shall be sentenced as follows:

9 (1) For a first offense, to:

10 (i) undergo imprisonment of not less than 72
11 consecutive hours;

12 (ii) pay a fine of not less than \$1,000 nor more
13 than \$5,000;

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

16 (iv) comply with all drug and alcohol treatment
17 requirements imposed under sections 3814 and 3815.

18 (2) For a second offense, to:

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

20 (ii) pay a fine of not less than \$1,500;

21 (iii) attend an alcohol highway safety school
22 approved by the department; and

23 (iv) comply with all drug and alcohol treatment
24 requirements imposed under sections 3814 and 3815.

25 (3) For a third offense, to:

26 (i) undergo imprisonment of not less than one year;

27 (ii) pay a fine of not less than \$2,500; and

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

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

1 (i) undergo imprisonment for a term of not less than
2 two years;
3 (ii) pay a fine of not less than \$5,000; and
4 (iii) comply with all drug and alcohol treatment
5 requirements imposed under sections 3814 and 3815.

6 * * *

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

8 * * *

9 (2) Suspension under paragraph (1) shall be in
10 accordance with the following:

11 (i) Except as provided for in subparagraph [(iii)]
12 (v), 12 months for an ungraded misdemeanor or misdemeanor
13 of the second degree under this chapter.

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

16 (iii) 18 to 24 months for a felony of the third
17 degree for a third offense under section 3802(d) within
18 10 years.

19 (iv) 18 to 36 months for a felony of the third
20 degree for a fourth or subsequent offense under section
21 3802(d) within 10 years.

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

26 [(iv)] (vi) For suspensions imposed under paragraph
27 (1)(ii), notwithstanding any provision of law or
28 enforcement agreement to the contrary, all of the
29 following apply:

30 (A) Suspensions shall be in accordance with

1 Subchapter D of Chapter 15 (relating to the Driver's
2 License Compact).

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

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

15 * * *

16 Section 7. Section 6146(5) of Title 75 is amended to read:

17 § 6146. Enforcement agreements.

18 The secretary may enter into agreements relating to
19 enforcement of this title, including, but not limited to:

20 * * *

21 (5) agreements to take measures to assure taking of
22 chemical tests of breath, blood, saliva or urine and payment
23 of fines or attendance at hearings by persons charged with
24 these or other violations.

25 Section 8. This act shall take effect in 60 days.