

No. 1996-93

AN ACT

HB 2360

Amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for chemical testing to determine amount of alcohol or controlled substance; prohibiting a person under 21 years of age from driving with any alcohol in the person's system; further providing for driving under the influence of alcohol or controlled substances and for impoundment of vehicles.

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

Section 1. Section 1547(d) of Title 75 of the Pennsylvania Consolidated Statutes is amended and the section is amended by adding a subsection to read:

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

* * *

(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] an adult** is 0.05% or less, it shall be presumed that the **[person tested] adult** was not under *the* influence of alcohol and the **[person] adult** shall not be charged with any violation under section 3731(a)(1), (4) or (5) (relating to driving under influence of alcohol or controlled substance), or, if the **[person] adult** 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 3731(a)(2) or (3) or (i).

(2) That the amount of alcohol by weight in the blood of **[the person tested] an adult** is in excess of 0.05% but less than 0.10%, this fact shall not give rise to any presumption that the **[person tested] adult** was or was not under the influence of alcohol, but this fact may be considered with other competent evidence in determining whether the **[person] adult** was or was not under the influence of alcohol. This provision shall not negate the provisions of section 3731(i).

(3) That the amount of alcohol by weight in the blood of **[the person tested]**:

(i) *an adult* is 0.10% or more**[, this]; or**

(ii) *a minor* is 0.02% or more.

This fact may be introduced into evidence if the person is charged with violating section 3731.

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(l) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Adult.” A person 21 years of age or older.

“Minor.” A person under 21 years of age.

Section 2. Title 75 is amended by adding a section to read:

§ 3718. *Minor prohibited from operating with any alcohol in system.*

(a) Offense defined.—Notwithstanding any other provision of this title, a minor shall not drive, operate or be in physical control of a motor vehicle while having any alcohol in his system.

(b) Penalty.—A person who violates subsection (a) commits a summary offense and shall, upon conviction, be sentenced to pay a fine of \$100.

(c) Definition.—As used in this section, the term “minor” means a person under 21 years of age.

Section 3. Section 3731(a) and (a.1) are amended and the section is amended by adding a subsection to read:

§ 3731. *Driving under influence of alcohol or controlled substance.*

(a) Offense defined.—A person shall not drive, operate or be in actual physical control of the movement of [any vehicle] a vehicle in any of the following circumstances:

(1) [while] While under the influence of alcohol to a degree which renders the person incapable of safe driving[;].

(2) [while] While under the influence of any 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, to a degree which renders the person incapable of safe driving[;].

(3) [while] While under the combined influence of alcohol and any controlled substance to a degree which renders the person incapable of safe driving[;].

(4) [while] While the amount of alcohol by weight in the blood of [the person]:

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

(ii) a minor is 0.02% or greater.

(5) [if] If all of the following apply:

(i) At the time of a chemical test of a sample of the person’s breath, blood or urine, the amount of alcohol by weight in the blood of [the person]:

(A) an adult is 0.10% or greater [at the time of a chemical test of a sample of the person’s breath, blood or urine, which sample is]; or

(B) a minor is 0.02% or greater.

(ii) Either:

[(i)] (A) the sample is obtained within three hours after the person drove, operated or was in actual physical control of the vehicle; or

[(ii) if] (B) the circumstances of the incident prevent collecting the sample within three hours, obtained within a reasonable additional time after the person drove, operated or was in actual physical control of the vehicle.

(a.1) Defense.—It shall be a defense to a prosecution under subsection (a)(5) if the person proves by a preponderance of evidence [that the] *all of the following*:

(1) *The person consumed alcohol after the last instance in which he drove, operated or was in actual physical control of the vehicle[and that the].*

(2) *The amount of alcohol by weight in [his]:*

(i) *an adult's blood would not have exceeded 0.10% at the time of the test but for such consumption; or*

(ii) *a minor's blood would not have exceeded 0.02% at the time of the test but for such consumption.*

* * *

(j) *Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:*

“Adult.” A person 21 years of age or older.

“Minor.” A person under 21 years of age.

Section 4. Section 6309 of Title 75 is amended to read:

§ 6309. Impoundment [of vehicles] for nonpayment of fines; *vehicles or combinations with a gross vehicle weight rating of 17,001 pounds or more.*

(a) General rule.—Upon imposition of a fine in excess of \$250 imposed pursuant to section 1301 (relating to registration and certificate of title required), 1371 (relating to operation following suspension of registration), 4107(b) (relating to unlawful activities) or Chapter 49 (relating to size, weight and load), the defendant shall be allowed 24 hours *either* to obtain the funds and pay the fine and costs of prosecution *or to make arrangements with the issuing authority to pay in installments as provided by the Pennsylvania Rules of Criminal Procedure*, during which time the *defendant's* vehicle or combination shall be rendered temporarily [inoperative] *inoperable* by such police officer, *sheriff* or constable as the issuing authority shall designate. [On default of payment within the 24-hour period,] *If the defendant neither makes payment nor makes arrangements for payment within the 24-hour period or defaults on such payment*, the issuing authority may [impound the vehicle or combination and order a police officer or constable to seize it] *issue an impoundment order and direct enforcement of the order by a police officer, constable or an impoundment official as authorized by the issuing authority.*

(b) Storage.—Upon impoundment, the issuing authority shall forthwith notify the [sheriff] *appropriate law enforcement officer* of the county in which the violation occurred, who shall store the impounded vehicle or

combination. *In cities of the first class, notification shall be made to the appropriate law enforcement officer.*

(c) Notice of impoundment.—The [sheriff] *appropriate law enforcement officer* shall give immediate notice by the most expeditious means and by certified mail, return receipt requested, of the impoundment and location of the vehicle or combination to the owner of the vehicle or combination and the owner of the load *and any lienholders* if the names and addresses of the owner *and any lienholder* are known or can be ascertained by [the sheriff.] *investigation. In cities of the first class, notice shall be given in the same manner by the issuing authority.*

(d) Cost.—The police officer's, constable's and [sheriff's] *appropriate law enforcement officer's* costs, reasonable storage costs and all other reasonable costs incident to seizure and impounding under subsections (a) and (b) shall be recoverable in addition to costs of prosecution.

[(e) **Applicability.**—This section shall not apply in the case of a vehicle duly registered in this Commonwealth.]

Section 5. Title 75 is amended by adding sections to read:

§ 6309.1. *Impoundment for nonpayment of fines; vehicles or combinations with a gross vehicle weight rating of 17,000 pounds or less.*

(a) *Applicability.*—

(1) *This section shall be mandatory in cities of the first class.*

(2) *This section shall be applicable in municipalities other than counties, and other than cities of the first class, within which the governing body has adopted an ordinance electing to be subject to the provisions of this section.*

(b) *General rule.*—*Upon conviction of or entry of a plea of guilty or nolo contendere for one or more of the following offenses and upon imposition of a fine or fines which, separately or together with any other outstanding or unpaid fines imposed for the following offenses, total in excess of \$250, the defendant shall be allowed 24 hours either to obtain the funds and pay the fine or fines and costs of prosecution or to make arrangements with the issuing authority to pay in installments as provided by the Pennsylvania Rules of Criminal Procedure, during which time the defendant's vehicle or combination may be rendered temporarily inoperable by such police officer, sheriff or constable as the issuing authority shall designate:*

Section 1301 (relating to registration and certificate of title required).

Section 1332 (relating to display of registration plate).

Section 1371 (relating to operation following suspension of registration).

Section 1501 (relating to drivers required to be licensed).

Section 1543 (relating to driving while operating privilege is suspended or revoked).

Section 1786 (relating to required financial responsibility).

Section 7124 (relating to fraudulent use or removal of registration plate).

If the defendant neither makes payment nor makes arrangements for payment within the 24-hour period or defaults upon such payment, the issuing authority may issue an impoundment order for the defendant's vehicle and direct enforcement of the order by a police officer, constable or an impoundment official as authorized by the issuing authority.

(c) Storage.—Upon impoundment, the issuing authority shall forthwith notify the appropriate law enforcement officer of the county in which the violation occurred, who shall store the impounded vehicle or combination. In cities of the first class, such notification shall be made to the appropriate law enforcement officer.

(d) Notice of impoundment.—The appropriate law enforcement officer shall give immediate notice by the most expeditious means and by certified mail, return receipt requested, of the impoundment and location of the vehicle or combination to the owner of the vehicle or combination and any lienholder and, if applicable, the owner of the load, if the names and addresses of the owner and any lienholder are known or can be ascertained by investigation. In cities of the first class, such notice shall be given in the same manner by the issuing authority.

(e) Cost.—The police officer's, constable's and sheriff's costs, reasonable storage costs and all other reasonable costs incident to seizure and impounding under subsections (b) and (c) shall be recoverable in addition to costs of prosecution.

§ 6309.2. Immobilization, towing and storage of vehicle for driving without operating privileges or registration.

(a) General rule.—Subject to subsection (d), the following shall apply:

(1) If a person operates a motor vehicle or combination on a highway or trafficway of this Commonwealth while the person's operating privilege is suspended, revoked, canceled, recalled or disqualified or where the person is unlicensed, as verified by an appropriate law enforcement officer in cooperation with the department, the law enforcement officer shall immobilize the vehicle, and the appropriate judicial authority shall be so notified.

(2) If a motor vehicle or combination for which there is no valid registration or for which the registration is suspended for failing to maintain financial responsibility or where no financial responsibility has been secured, as verified by an appropriate law enforcement officer, is operated on a highway or trafficway of this Commonwealth, the motor vehicle or combination shall be immobilized by the law enforcement authority, and the appropriate judicial authority shall be so notified.

(b) Procedure upon immobilization.—

(1) When a vehicle is immobilized pursuant to subsection (a)(1), the operator of the vehicle may appear before the appropriate judicial

authority within 24 hours from the time the vehicle was immobilized. The judicial authority may issue a certificate of release upon:

(i) the furnishing of proof of registration and financial responsibility by the owner of the vehicle; and

(ii) receipt of evidence that the operator of the vehicle has complied with the pertinent provisions of Title 42 (relating to judiciary and judicial procedure) and this title.

(2) When a vehicle is immobilized pursuant to subsection (a)(2), the owner of the vehicle may appear before the appropriate judicial authority within 24 hours from the time the vehicle was immobilized. The appropriate judicial authority may issue a certificate of release upon:

(i) the furnishing of proof of registration and financial responsibility by the owner of the vehicle; and

(ii) receipt of evidence that the operator of the vehicle has complied with the pertinent provisions of Title 42 and this title.

(3) If a certification of release is not obtained within 24 hours from the time the vehicle was immobilized, the vehicle shall be towed and stored by the appropriate impounding agent under subsection (c).

(c) Procedure upon towing and storage.—

(1) Except as provided in paragraph (2), the following steps shall be taken:

(i) The appropriate judicial authority shall notify the appropriate law enforcement officer of the county in which the violation occurred.

(ii) The officer notified under subparagraph (i) shall notify the appropriate impounding agent to tow and store the vehicle or combination and provide notice by the most expeditious means and by first class mail, proof of service, of the towing, storage and location of the vehicle or combination to any owner whose name and address is known or can be ascertained by investigation, or any lienholder whose name and address is known or can be ascertained by investigation and to the owner of a load being carried.

(2) In a city of the first class, the following steps shall be taken:

(i) The appropriate judicial authority shall notify the appropriate towing agent.

(ii) The agent notified under subparagraph (i) shall tow and store the vehicle or combination and provide notice by the most expeditious means and by first class mail, proof of service, of the towing, storage and location of the vehicle or combination to any owner whose name and address is known or can be ascertained by investigation or any lienholder whose name and address is known or can be ascertained by investigation and to the owner of a load being carried.

(d) Recovery of towed and stored vehicle.—

(1) The owner of any vehicle or combination which has been towed and stored under this section may obtain possession of the vehicle or combination by doing all of the following:

(i) Furnish proof of valid registration and financial responsibility.

(ii) Pay all fines, together with costs as provided by local ordinance, associated with the towing and storage of the vehicle or make arrangements with the appropriate judicial authority to make payments of all fines and costs by installments as provided by the Pennsylvania Rules of Criminal Procedure.

(2) Any vehicle not recovered under this subsection may be sold as unclaimed vehicle or load under section 6310 (relating to disposition of impounded vehicles and loads) or the applicable local ordinance. The proceeds of the sale shall be applied to the payment of the fines and costs associated with the towing and storage of the vehicle.

(e) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Appropriate judicial authority.” In counties of the first class, the Philadelphia Traffic Court. In all other counties, the district justice in whose district the violation occurred.

“Appropriate towing and storage agent.” In counties of the first class, the Philadelphia Traffic Court or any agency appointed by the traffic court. In other municipalities, towing and storage agent designated by local ordinance.

Section 6. This act shall take effect as follows:

(1) The addition of 75 Pa.C.S. § 6309.2 shall take effect as follows:

(i) In cities of the first class, in 120 days.

(ii) In all other areas of this Commonwealth, upon adoption of a local ordinance electing applicability of section 6309.2.

(2) The amendment or addition of 75 Pa.C.S. §§ 1547(d), 3718, 3731(a), (a.1) and (j) shall take effect in 30 days.

(3) This section shall take effect immediately.

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

APPROVED—The 2nd day of July, A.D. 1996.

THOMAS J. RIDGE