

§ 3802. **Driving under influence of alcohol or controlled substance.**

(a) General impairment.--

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

(2) An individual may not drive, operate or be in actual physical control of the movement of a vehicle 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 driven, operated or been in actual physical control of the movement of the vehicle.

(b) High rate of alcohol.--An individual may not drive, operate or be in actual physical control of the movement of a vehicle 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 driven, operated or been in actual physical control of the movement of the vehicle.

(c) Highest rate of alcohol.--An individual may not drive, operate or be in actual physical control of the movement of a vehicle 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 driven, operated or been in actual physical control of the movement of the vehicle.

(d) Controlled substances.--An individual may not drive, operate or be in actual physical control of the movement of a vehicle 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 Schedule 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 drive, operate or be in actual physical control of the movement of the vehicle.

(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 drive, operate or be in actual physical control of the movement of the vehicle.

(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).

(e) Minors.--A minor may not drive, operate or be in actual physical control of the movement of a vehicle 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 driven, operated or been in actual physical control of the movement of the vehicle.

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

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

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

(ii) 0.02% or greater within two hours after the individual has driven, operated or been in actual physical control of the movement of a school bus or a school vehicle.

(2) After the individual has imbibed a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.

(3) While the individual is under the influence of a controlled substance or combination of controlled substances, as defined in section 1603 (relating to definitions).

(4) While the individual is under the combined influence of alcohol and a controlled substance or combination of controlled substances, as defined in section 1603.

(g) Exception to two-hour rule.--Notwithstanding the provisions of subsection (a), (b), (c), (e) or (f), 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 driven, operated or been in actual physical control of the movement of the vehicle 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 sample could not be obtained 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.

(May 11, 2006, P.L.155, No.36, eff. imd.)

2006 Amendment. Act 36 amended subsec. (g)(1). See the preamble to Act 36 in the appendix to this title for special provisions relating to legislative intent.

Cross References. Section 3802 is referred to in sections 102, 1534, 1539, 1541, 1543, 1547, 1552, 1553, 1554, 1556, 1575, 1586, 1611, 3326, 3327, 3716, 3732, 3732.1, 3733, 3735, 3735.1, 3755, 3803, 3804, 3805, 3806, 3807, 3811, 3812, 3814, 3815, 3816, 3817, 6506 of this title; sections 6105, 7508.1 of Title 18 (Crimes and Offenses); section 5502 of Title 30 (Fish); section 8137 of Title 35 (Health and Safety); sections 933, 1515, 1725.3, 1725.5, 3571, 3573 of Title 42 (Judiciary and Judicial Procedure).