

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

(a) General rule.--Any person who drives, operates or is in actual physical control of the movement of a vehicle in this Commonwealth shall be deemed to have given consent to one or more chemical tests of breath or blood for the purpose of determining the alcoholic content of blood or the presence of a controlled substance if a police officer has reasonable grounds to believe the person to have been driving, operating or in actual physical control of the movement of a vehicle in violation of section 1543(b)(1.1) (relating to driving while operating privilege is suspended or revoked), 3802 (relating to driving under influence of alcohol or controlled substance) or 3808(a)(2) (relating to illegally operating a motor vehicle not equipped with ignition interlock).

(1) (Deleted by amendment).

(2) (Deleted by amendment).

(b) Civil penalties for refusal.--

(1) If any person placed under arrest for a violation of section 3802 is requested to submit to chemical testing and refuses to do so, the testing shall not be conducted but upon notice by the police officer, the department shall suspend the operating privilege of the person 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 operating privileges have previously been suspended under this subsection.

(B) The person has, prior to the refusal under this paragraph, been sentenced for:

(I) an offense under section 3802;

(II) an offense under former section 3731;

(III) an offense equivalent to an offense under subclause (I) or (II); or

(IV) a combination of the offenses set forth in this clause.

(2) It shall be the duty of the police officer to inform the person that:

(i) the person's operating privilege will be suspended upon refusal to submit to chemical testing and the person will be subject to a restoration fee of up to \$2,000; and

(ii) if the person refuses to submit to chemical breath testing, upon conviction or plea for violating section 3802(a)(1), the person will be subject to the penalties provided in section 3804(c) (relating to penalties).

(3) Any person whose operating privilege is suspended under the provisions of this section shall have the same right of appeal as provided for in cases of suspension for other reasons.

(b.1) Other civil penalties for refusal.--

(1) If any person placed under arrest for a violation of section 1543(b)(1.1) or 3808(a)(2) is requested to submit to chemical testing and refuses to do so, the testing shall not be conducted; but, upon notice by the police officer and provided no suspension is imposed pursuant to subsection (b), the department shall suspend the operating privilege of the person for a period of six months.

(2) It shall be the duty of the police officer to inform the person that the person's operating privileges will be

suspended upon refusal to submit to chemical testing and the person will be subject to a restoration fee of up to \$2,000.

(3) Notwithstanding section 3805(c) (relating to ignition interlock), if any person receives a suspension pursuant to this subsection who at the time of the offense was required to comply with the provisions of section 3805 prior to obtaining a replacement license under section 1951(d) (relating to driver's license and learner's license) that does not contain an ignition interlock restriction, the suspension imposed pursuant to this subsection shall result in the recall of any ignition interlock restricted license previously issued and the driver shall surrender the ignition interlock restricted license to the department and, prior to the issuance of a replacement license under section 1951(d) that does not contain an ignition interlock restriction, the department shall require that the person comply with the provisions of section 3805.

(b.2) Restoration fees.--

(1) A person whose operating privilege has been suspended in accordance with subsection (b) or (b.1) shall:

(i) Except as provided in subparagraph (ii) or (iii), pay a restoration fee of \$500.

(ii) If the department has previously suspended the person's operating privilege under this section on one occasion, pay a restoration fee of \$1,000.

(iii) If the department has previously suspended the person's operating privilege under this section on two or more occasions, pay a restoration fee of \$2,000.

(2) All restoration fees imposed under this section must be paid prior to the reinstatement of an individual's unrestricted operating privilege or in accordance with section 1556(b)(3) (relating to ignition interlock limited license).

(b.3) Limitation.--Nothing in this section shall be construed as limiting the ability of law enforcement to obtain chemical testing pursuant to a valid search warrant, court order or any other basis permissible by the Constitution of the United States and the Constitution of Pennsylvania.

(c) Test results admissible in evidence.--In any summary proceeding or criminal proceeding in which the defendant is charged with a violation of section 3802 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 or blood, which tests were 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 Departments of Health and Transportation. Devices shall have been calibrated and tested for accuracy within a period of time and in a manner specified by regulations of the Departments of Health and 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 Departments of Health and Transportation. A certificate or log showing that a device was calibrated and 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, if conducted by a facility located in this Commonwealth, 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 or by a

Pennsylvania State Police criminal laboratory. For purposes of blood testing, 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 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 tests of blood, 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 1543(b)(1.1), 3802(d)(1), (2) or (3) or 3808(a)(2).

(d) Presumptions from amount of alcohol.--(Repealed).

(e) Refusal admissible in evidence.--In any summary proceeding or criminal proceeding in which the defendant is charged with a violation of section 3802 or any other violation of this title arising out of the same action, the fact that the defendant refused to submit to chemical testing as required by subsection (a) may be introduced in evidence along with other testimony concerning the circumstances of the refusal. No presumptions shall arise from this evidence but it may be considered along with other factors concerning the charge.

(f) Other evidence admissible.--Subsections (a) through (i) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of alcohol.

(g) Test results available to defendant.--Upon the request of the person tested, the results of any chemical test shall be made available to him or his attorney.

(g.1) Cost of testing.--The cost of chemical testing, including the drawing of blood, performed under this section shall be paid as follows:

(1) By the individual tested, if the individual was convicted of or placed into any preadjudication program or adjudicated delinquent for a violation of section 3802.

(2) By the requesting authority, if the individual was found not guilty under section 3802 or had the charges dismissed or withdrawn.

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

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

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

(k) Prearrest breath test authorized.--A police officer, having reasonable suspicion to believe a person is driving or in actual physical control of the movement of a motor vehicle 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 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).

(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.

(Dec. 15, 1982, P.L.1268, No.289, eff. 30 days; Feb. 12, 1984, P.L.53, No.12, eff. imd.; May 30, 1990, P.L.173, No.42, eff. Apr. 1, 1992; Dec. 18, 1992, P.L.1411, No.174, eff. 60 days; July 2, 1996, P.L.535, No.93; July 11, 1996, P.L.660, No.115, eff. 30 days; Dec. 21, 1998, P.L.1126, No.151, eff. imd.; Oct. 4, 2002, P.L.845, No.123, eff. 60 days; Sept. 30, 2003, P.L.120, No.24; Nov. 29, 2004, P.L.1369, No.177, eff. imd.; May 11, 2006, P.L.164, No.40, eff. 60 days; May 25, 2016, P.L.236, No.33, eff. imd.; July 20, 2017, P.L.333, No.30)

2017 Amendment. Act 30 amended subsecs. (a), (b) and (b.1) and added subsecs. (b.2) and (b.3), effective immediately as to subsec. (b)(2)(ii) and six months as to subsecs. (a), (b) heading, (1), (2)(i) and (3), (b.1), (b.2) and (b.3).

2016 Amendment. Act 33 amended subsecs. (a), (c) intro. par., (2) and (3), (g.1), (h), (i) and (j).

2006 Amendment. Act 40 added subsec. (g.1).

2003 Amendment. Act 24 amended subsecs. (a), (b)(1) and (2), (c), (d), (e) and (i) and added subsec. (b.1), effective Sept. 30, 2003, as to subsec. (d) and February 1, 2004, as to the remainder of the section.

2003 Repeal. Act 24 repealed subsec. (d), effective February 1, 2004.

1996 Amendments. Act 93 amended subsec. (d) and added subsec. (1), effective in 30 days as to subsec. (d) and 60 days as to subsec. (1), and Act 115 amended subsec. (d) and added subsec. (1). Act 115 overlooked the amendment by Act 93 to subsec. (d), but the amendments do not conflict in substance and have both been given effect in setting forth the text of subsec. (d). The

addition by Acts 93 and 115 of subsec. (l) are identical and therefore have been merged.

1984 Amendment. Act 12 amended subsec. (j). Section 12 of Act 12 provided that the amendment to section 1547 shall be retroactive to January 14, 1983.

Cross References. Section 1547 is referred to in sections 102, 1508, 1543, 1553, 1554, 1556, 1613, 3804, 3805 of this title; section 5125 of Title 30 (Fish); section 933 of Title 42 (Judiciary and Judicial Procedure).