



Senate Transportation Committee

Senator Robert C. Wonderling

Chairman

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Bill Summary

Senate Bill 765

Sponsor: Senator Fontana

Printers Number 861

Referred: 04/03/09

Summary

Senate Bill 765, amends Pa.C.S. Title 75 seeking to address an inadvertent scenario where a repeat offender is able to escape higher fines simply by refusing to submit to a blood alcohol test. Currently, Title 75, Chapter 38 provides that a person who is a DUI/license-suspended repeat offender (3rd or subsequent offense) who has a blood alcohol content (BAC) of .02 or greater at the time of the offense would be sentenced to a first degree misdemeanor, pay a fine of \$5,000 and receive jail time of not less than two years.

If the person refuses to submit to the chemical test, he or she may only be subject to the summary offense. Without the results of a blood alcohol test, he or she could avoid the heightened sentence, fine and jail time in the law. This problem occurs in a similar section of the law dealing with second offenses as well. The amendment will remove the .02 BAC criteria for repeat offenders (2nd or subsequent offense) so that District Attorneys have these heightened provisions as an additional enforcement tool.

See Attachment #1 below.

Effective Date:

60 Days

MEMORANDUM

TO: STEPHEN A. ZAPPALA, JR., DISTRICT ATTORNEY
FROM: THOMAS T. SWAN, DEPUTY DISTRICT ATTORNEY
SUBJECT: LOOP HOLE IN PENNSYLVANIA CONSOLIDATED STATUTE TITLE 75
SECTION 1543 OF THE VEHICLE CODE
DATE: 6/15/2009

75 Pa. C.S.A. §1543(b)(1.1)(i), a subsection addressing DUI/license-suspended recidivists, states that any person who has an “alcohol by weight” blood level of .02 or greater at the time of his current offense and is driving under a license suspension for Driving Under the Influence, and its his third or subsequent DUI-related suspension, shall, upon conviction of driving with a suspended license/DUI-related, be sentenced to a first degree misdemeanor and pay a fine of \$5,000.00 and imprisonment of not less than two years.

Since this recidivist provision requires a blood alcohol reading for the current DUI for which the defendant was arrested, a person convicted for his current DUI offense stemming from a refusal to submit to chemical testing cannot be subject to the recidivism section of 1543(b)(1.1)(iii). Thus, a person who refuses to submit to chemical testing pursuant to an arrest for DUI may only be subject to a summary offense if convicted under this subsection of 1543(b). Whereas, a person who submits to chemical testing and is tested at .02 or greater, would be guilty of a first degree misdemeanor and a mandatory minimum sentence of two years in prison and a fine of \$5,000.00.

Similarly, subsection (ii) of 75 Pa.C.S.A. § 1543(b)(1.1) is a recidivist penalty for second time offenders, with the same limitation that excludes persons who refuse testing from falling under this recidivist subsection as well. Subsection (ii) mandates that, upon conviction, a person is guilty of a misdemeanor of the third degree with a mandatory sentence of six months imprisonment and a \$2,500 fine.

Question: Did the legislature purposely exclude individuals who refuse chemical testing from these recidivist subsections of 1543(b) or was it an inadvertent omission?