

Document:75 Pa.C.S. § 3805

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Pennsylvania Statutes, Annotated by LexisNexis® Pennsylvania Consolidated Statutes Title 75. Vehicles Part III. Operation of Vehicles Chapter 38. Driving After Imbibing Alcohol or Utilizing Drugs

Notice

 This section has more than one version with varying effective dates.

First of two versions of this section.

§ 3805. Ignition interlock.

(a) General rule. — Except as provided under subsection (a.1), if a person violates section 3802 (relating to driving under influence of alcohol or controlled substance) or has had their operating privileges suspended pursuant to section 1547 (relating to chemical testing to determine amount of alcohol or controlled substance) or 3808(c) (relating to illegally operating a motor vehicle not equipped with ignition interlock) and the person seeks a restoration of operating privileges, the department shall require as a condition of issuing a restricted license pursuant to this section that the following occur:

- (1)** Any motor vehicle to be operated by the individual has been equipped with an ignition interlock system and remains so for the duration of the restricted license period.

(2) If there are no motor vehicles owned or to be operated by the person or registered to the person that the person so certify to the department in accordance with the department's regulations.

(a.1) Exception. — Subsection (a) shall not apply to an individual who meets all of the following:

(1) Is subject to the penalties under section 3804(a)(1) (relating to penalties) or subject to mandatory suspension of operating privilege under section 3807(d) (relating to Accelerated Rehabilitative Disposition).

(2) Has not had a prior offense, as defined under section 3806 (relating to prior offenses).

(b) **Application for a restricted license.** — A person subject to this section shall apply to the department for an ignition interlock restricted license under section 1951 (relating to driver's license and learner's permit), which shall be clearly marked to restrict the person to only driving, operating or being in actual physical control of the movement of motor vehicles equipped with an ignition interlock system. Upon issuance of an ignition interlock restricted license to any person, the department shall notify the person that until the person obtains an unrestricted license the person may not drive, operate or be in actual physical control of the movement of any motor vehicle which is not equipped with an ignition interlock system.

(c) **Issuance of unrestricted license.** — One year from the date of issuance of an ignition interlock restricted license under this section, if otherwise eligible, a person may be issued a replacement license under section 1951(d) that does not contain the ignition interlock system restriction. The department shall not issue an unrestricted license until a person has presented all of the following:

(1) Proof that the person has completed the ignition interlock restricted license period under this section.

(2) Certification by the vendor that provided the ignition interlock device that the person has complied with subsection (h.2).

(d) **Prohibition.** — Except as set forth in subsections (e) and (f), until the person obtains an unrestricted license, the person may not own, register, drive, operate or be in actual physical control of the movement of any motor vehicle within this Commonwealth unless the motor vehicle is equipped with an ignition interlock system.

(e) **Economic hardship exemption.** — A person subject to the requirements of subsection (a) may apply to the department for a hardship exemption to the requirement that an ignition interlock system must be installed in each of the person's motor vehicles. Where the department determines that the applicant establishes that such a requirement would result in undue financial hardship, the department may permit the applicant to install an ignition interlock system on only one of the

applicant's motor vehicles. However, the applicant in accordance with section 3808 (relating to illegally operating a motor vehicle not equipped with ignition interlock) shall be prohibited from driving, operating or being in actual physical control of the movement of any motor vehicle, including any of the applicant's motor vehicles, which is not equipped with an ignition interlock system.

(f) *Employment exemption.* — If a person with a restricted license is required in the course and scope of employment to drive, operate or be in actual physical control of the movement of a motor vehicle owned by the person's employer, the following apply:

(1) Except as set forth in paragraph (2), the person may drive, operate or be in actual physical control of the movement of that motor vehicle in the course and scope of employment without installation of an ignition interlock system if:

- (i)** the employer has been notified that the employee is restricted; and
- (ii)** the employee has proof of the notification in the employee's possession while driving, operating or being in actual physical control of the movement of the employer's motor vehicle. Proof of the notification may be established only by the notarized signature of the employer acknowledging notification on a form which shall be provided by the department for this purpose and shall include a contact telephone number of the employer.

(2) Paragraph (1) does not apply in any of the following circumstances:

- (i)** To the extent that an employer-owned motor vehicle is made available to the employee for personal use.
- (ii)** If the employer-owned motor vehicle is owned by an entity which is wholly or partially owned or controlled by the person subject to this section.
- (iii)** If the employer-owned motor vehicle is a school bus; a school vehicle; or a vehicle designed to transport more than 15 passengers, including the driver.

(g) *Prohibition of authorization.* — This section shall not give the department authorization to impose an ignition interlock requirement on a person that has committed an offense under former section 3731 prior to October 1, 2003, without the issuance of a court order.

(h) *Department approval.* — An ignition interlock system required to be installed under this title must be a system which has been approved by the department. The department's approval of ignition interlock systems shall be published in the Pennsylvania Bulletin. Systems approved for use under former 42 Pa.C.S. § 7002(d) (relating to ignition interlock systems for driving under the influence) and any contracts for the installation, maintenance and inspection of the systems in effect as of the effective date of this section shall continue to be approved and in effect until the department again publishes approval of ignition interlock systems in the Pennsylvania Bulletin and enters into new contracts in support of the systems.

(h.1) Mobile installation services.

(1) Approved service providers of department-certified manufacturers of ignition interlock systems shall be permitted to provide mobile installation of ignition interlock systems within this Commonwealth.

(2) Mobile installation of ignition interlock systems shall be held to the same security and procedural standards as provided in specifications of the department.

(3) Approved service providers of mobile installation of ignition interlock systems shall not permit the program participant or any unauthorized personnel to witness the installation of the ignition interlock system.

(4) Regular maintenance of ignition interlocks after mobile installation shall be performed according to the specifications established by the department.

(h.2) Declaration of compliance.--Restrictions imposed under section 1556 (relating to ignition interlock limited license) shall remain in effect until the department receives a declaration from the person's ignition interlock device vendor, in a form provided or approved by the department, certifying that the following incidents have not occurred in the two consecutive months prior to the date entered on the certificate:

(1) An attempt to start the vehicle with a breath alcohol concentration of 0.08% or more, not followed within 10 minutes by a subsequent attempt with a breath alcohol concentration lower than 0.08%.

(2) Failure to take or pass any required retest.

(3) Failure of the person to appear at the ignition interlock system vendor when required for maintenance, repair, calibration, monitoring, inspection or replacement of the device such that the ignition interlock system no longer functions as required under subsection (h).

(i) Offenses committed during a period for which an ignition interlock restricted license has been issued. — Except as provided in sections 1547(b.1) and 3808(c) (relating to illegally operating a motor vehicle not equipped with ignition interlock), any driver who has been issued an ignition interlock restricted license and as to whom the department receives a certified record of a conviction of an offense for which the penalty is a cancellation, disqualification, recall, suspension or revocation of operating privileges shall have the ignition interlock restricted license recalled, and the driver shall surrender the ignition interlock restricted license to the department or its agents designated under the authority of section 1540 (relating to surrender of license). Following the completion of the cancellation, disqualification, recall, suspension or revocation which resulted in the recall of the ignition interlock restricted license, the department shall require that the person complete the balance of the ignition interlock restricted license period previously imposed prior to the

issuance of a replacement license under section 1951(d) that does not contain an ignition interlock restriction.

History

Act 2003-24 (S.B. 8), P.L. 120, § 16, approved Sept. 30, 2003, eff. Feb. 1, 2004; Act 2004-211 (S.B. 938), P.L. 1667, § 2, approved Nov. 30, 2004, eff. June 30, 2007; Act 2006-37 (H.B. 121), P.L. 159, § 3, approved May 11, 2006, eff. in 60 days; Act 2016-33 (S.B. 290), § 4, approved May 25, 2016, eff. August 25, 2017; Act 2017-30 (S.B. 553), P.L. 333, § 4, approved July 20, 2017.

▼ Annotations

LexisNexis® Notes

Notes

EDITOR'S NOTES.

Section 20(1) of Act 2003-24 provides that "[t]he Department of Transportation has the following duties: (1) In order to implement the amendment or addition of 75 Pa.C.S. §§ 1553(b)(1), (c), (d) (6), (8) and (9), (d.1), (d.2), (d.3), (e) and (f) and 3805, the following shall apply: (i) The department shall adopt and use guidelines, which shall be published in the Pennsylvania Bulletin. The guidelines shall not be subject to review under section 205 of the act of July 31, 1968 (P.L. 769, No. 240), referred to as the Commonwealth Documents Law, and the act of June 25, 1982 (P.L. 633, No. 181), known as the Regulatory Review Act. (ii) By September 30, 2004, the department shall, in accordance with law, promulgate regulations to replace the guidelines under subparagraph (i). (iii) The guidelines under subparagraph (i) shall: (A) take effect February 1, 2004, or immediately, whichever is later; and (B) expire on the earlier of: (I) the effective date of regulations under subparagraph (ii); or (II) September 30, 2005."

AMENDMENT NOTES.

The 2006 amendment added (h.1).

LexisNexis® Notes

Case Notes

⚡ Administrative Law: Judicial Review: Reviewability: Preclusion

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- ⌵ Administrative Law: Judicial Review: Reviewability: Preclusion**

Department of Transportation's imposition of an ignition interlock system pursuant to former 42 Pa.C.S. § 7002 (now 75 Pa.C.S. § 3805), of the Judicial Code, after a trial court convicted a repeat DUI offender of a second or subsequent violation of former 75 Pa.C.S. § 3731 (now 75 Pa.C.S. § 3802), was reviewable by the trial court in an appeal brought under 75 Pa.C.S. § 1550(a) of the Vehicle Code. The Commonwealth Court of Pennsylvania rejected the Department of Transportation's argument that the imposition of an ignition interlock system was not a continuation of a suspension of driving privileges that was subject to review under Section 1550(a) and the argument that it was really a condition for restoration of driving privileges that was not subject to review. *Turner v. DOT, Bureau of Driver Licensing*, 805 A.2d 671, 2002 Pa. Commw. LEXIS 675 (Pa. Commw. Ct. 2002), rev'd, 592 Pa. 17, 922 A.2d 878, 2007 Pa. LEXIS 991 (Pa. 2007).

Administrative Law: Judicial Review: Reviewability: Preservation for Review

Where the driver argued that the Pennsylvania Bureau of Driver Licensing was prohibited from considering the driver's acceptance of accelerated rehabilitative disposition as a conviction for the purposes of the Pennsylvania Ignition Interlock Law, former 42 Pa. Cons. Stat. § 7001 et seq. (now 75 Pa. Cons. Stat. § 3805), the issue was unpreserved pursuant to Pa. R. App. P. 302(a) and was not considered on appeal, as the trial court did not address whether the Bureau's imposition of the Law was impermissibly retroactive. *Conrad v. Commonwealth*, 856 A.2d 199, 2004 Pa. Commw. LEXIS 637 (Pa. Commw. Ct. 2004).

Constitutional Law: Congressional Duties & Powers: Ex Post Facto Clause & Bills of

Attainder: General Overview

Requirement that a repeat driving under the influence of alcohol offender install an interlock device as a condition of license restoration pursuant to 75 Pa.C.S. § 3805 did not offend the prohibition against ex post facto legislation because the ability to operate a motor vehicle was a privilege, not a property right; thus, the trial court erred in upholding the licensee's appeal of the directive of the Pennsylvania Department of Transportation, Bureau of Driver Licensing, that the licensee install an interlock device on all vehicles registered in the licensee's name. *Nicholas v. Commonwealth*, 2005 Pa. Commw. LEXIS 512 (Pa. Commw. Ct. Sept. 13, 2005), different results reached on reh'g, 895 A.2d 99, 2006 Pa. Commw. LEXIS 119 (Pa. Commw. Ct. 2006).

Constitutional Law: Separation of Powers

Delegation to the judiciary by 2000 Pa. Laws 63, codified at former 42 Pa.C.S. § 7001 et seq. (now 75 Pa.C.S. § 3805), of the executive functions necessary to effectuate issuance of an ignition interlock restricted license, such as, ordering installation of the interlock system(s) as a condition to applying to the department of transportation for a restricted license, verifying compliance, and apprising the department of a court's determinations, impermissibly violates the separation of powers doctrine. *Commonwealth v. Mockaitis*, 575 Pa. 5, 834 A.2d 488, 2003 Pa. LEXIS 1908 (Pa. 2003).

Imposition of an ignition interlock system pursuant to former 42 Pa.C.S. § 7002 (now 75 Pa.C.S. § 3805), when a repeat DUI offender is convicted of a second or subsequent violation of former 75 Pa.C.S. § 3731 (now 75 Pa.C.S. § 3802), of the Vehicle Code, does not violate the separation of powers doctrine by requiring that a court certify to the Department of Transportation a DUI offender's compliance with the ignition interlock requirement in former Section 7002(b). The separation of powers doctrine is based upon the recognition that the powers of the judicial, legislative, and executive branches of government are coequal and distinct from one another and as such should be kept separate, distinct, and independent of one another, and a trial court's action of certifying an offender's compliance with a mandatory condition of restoration of his operating privilege is connected with the functions of the trial court that does not cross over into the distinct and independent powers of another branch of government. *Turner v. DOT, Bureau of Driver Licensing*, 805 A.2d 671, 2002 Pa. Commw. LEXIS 675 (Pa. Commw. Ct. 2002), rev'd, 592 Pa. 17, 922 A.2d 878, 2007 Pa. LEXIS 991 (Pa. 2007).

Constitutional Law: Equal Protection: Level of Review

Although a trial court had properly found, in a holding in accord with the *Mockaitis* decision, that former 42 Pa. Cons. Stat. §§ 7001-7003 (now 74 Pa. Cons. Stat. § 3805) violated separation of powers principles, it had erred in further finding that the Act violated federal and Pennsylvania equal protection guarantees because of the expense involved in installing an interlock ignition system; the legislation bore a rational relationship to the proper governmental concern of protecting Pennsylvanians against the dangers of drunk drivers. *Probst v. DOT, Bureau of Driver Licensing*, 578 Pa. 42, 849 A.2d 1135, 2004 Pa. LEXIS 1150 (Pa. 2004).

Constitutional Law: Equal Protection: Poverty

Although a trial court had properly found, in a holding in accord with the *Mockaitis* decision, that former 42 Pa. Cons. Stat. §§ 7001-7003 (now 74 Pa. Cons. Stat. § 3805) violated separation of powers principles, it had erred in further finding that the Act violated federal and Pennsylvania equal protection guarantees because of the expense involved in installing an interlock ignition system; the legislation bore a rational relationship to the proper governmental concern of protecting Pennsylvanians against the dangers of drunk drivers. *Probst v. DOT, Bureau of Driver Licensing*, 578 Pa. 42, 849 A.2d 1135, 2004 Pa. LEXIS 1150 (Pa. 2004).

📌 Constitutional Law: Equal Protection: Scope of Protection

Although a trial court had properly found, in a holding in accord with the Mockaitis decision, that former 42 Pa. Cons. Stat. §§ 7001-7003 (now 74 Pa. Cons. Stat. § 3805) violated separation of powers principles, it had erred in further finding that the Act violated federal and Pennsylvania equal protection guarantees because of the expense involved in installing an interlock ignition system; the legislation bore a rational relationship to the proper governmental concern of protecting Pennsylvanians against the dangers of drunk drivers. *Probst v. DOT, Bureau of Driver Licensing*, 578 Pa. 42, 849 A.2d 1135, 2004 Pa. LEXIS 1150 (Pa. 2004).

Imposition of an ignition interlock system pursuant to former 42 Pa.C.S. § 7002 (now 75 Pa.C.S. § 3805), when a repeat DUI offender is convicted of a second or subsequent violation of former 75 Pa.C.S. § 3731 (now 75 Pa.C.S. § 3802), of the Vehicle Code, does not violate the constitutional guarantee of equal protection because it passes the rational basis test by promoting a legitimate state interest or public value with a classification that is reasonably related to accomplishing that articulated state interest or interest. The statute requiring the installation of ignition interlock systems for persons convicted of DUI clearly seeks to promote the compelling interest of protecting the citizens of Pennsylvania, and the citizens of its sister states, from the dangers posed by Pennsylvania-licensed intoxicated drivers and requiring this classification of DUI offenders to install ignition interlock devices into cars they own is undoubtedly reasonably related to accomplishing the objective, which is to promote public safety by keeping intoxicated drivers off of the roads. *Turner v. DOT, Bureau of Driver Licensing*, 805 A.2d 671, 2002 Pa. Commw. LEXIS 675 (Pa. Commw. Ct. 2002), *rev'd*, 592 Pa. 17, 922 A.2d 878, 2007 Pa. LEXIS 991 (Pa. 2007).

📌 Criminal Law & Procedure: Criminal Offenses: Vehicular Crimes: Driving Under the Influence: General Overview

Pennsylvania Department of Transportation (PennDOT) properly required a driver, who had nine convictions for driving under the influence, to install ignition interlock devices in his vehicles before his license could be restored. Under former 42 Pa.C.S. § 7003 (now 75 Pa.C.S. § 3805) of the prior Pennsylvania Ignition Interlock Law, PennDOT had the independent authority to enforce the interlock requirement if the trial court failed to do so. *McGrory v. DOT, Bureau of Driver Licensing*, 591 Pa. 56, 915 A.2d 1155, 2007 Pa. LEXIS 358 (Pa. 2007).

Requirement that a repeat driving under the influence of alcohol offender install an interlock device as a condition of license restoration pursuant to 75 Pa.C.S. § 3805 did not offend the prohibition against ex post facto legislation because the ability to operate a motor vehicle was a privilege, not a property right; thus, the trial court erred in upholding the licensee's appeal of the directive of the Pennsylvania Department of Transportation, Bureau of Driver Licensing, that the licensee install an interlock device on all vehicles registered in the licensee's name. *Nicholas v. Commonwealth*, 2005 Pa. Commw. LEXIS 512 (Pa. Commw. Ct. Sept. 13, 2005), different results reached on reh'g, 895 A.2d 99, 2006 Pa. Commw. LEXIS 119 (Pa. Commw. Ct. 2006).

Consideration of a driver's two prior DUI convictions as predicate offenses for purposes of determining his status as a recidivist offender under the Interlock Law was proper on the part of the Department and, therefore, a trial court erred—and the reviewing court also erred in affirming the trial court's order—that held that the Interlock Law was unlawfully applied retroactively to the driver. It was the driver's third conviction for DUI, which occurred after the enactment of the Interlock Law, that put him within the purview of the statute and, therefore, it was not error for the Department to require compliance or have the driver's license suspended for an additional year. *Alexander v. DOT, Bureau of Driver Licensing*, 583 Pa. 592, 880 A.2d 552, 2005 Pa. LEXIS 1722 (Pa. 2005).

Sentencing court was without statutory authority to order defendant to install an ignition interlock system on each motor vehicle he owned or over which he had lawful control. *Former 42 Pa.C.S. § 7002 (now 75 Pa.C.S. § 3805). Commonwealth v. Williams*, 2005 PA Super 105, 871 A.2d 254, 2005 Pa. Super. LEXIS 405 (Pa. Super. Ct. 2005).

Where the driver was twice convicted of drunk driving under former 75 Pa. Cons. Stat. § 3731(a) (now 75 Pa. Cons. Stat. § 3802), where a one-year license suspension was imposed pursuant to 75 Pa. Cons. Stat. § 1532(b)(3) by the Pennsylvania Bureau of Driver Licensing, and where the driver was required by the Bureau to install an ignition interlock device pursuant to the Pennsylvania Ignition Interlock Law, former 42 Pa. Cons. Stat. § 7001 et seq., (now 75 Pa. Cons. Stat. § 3805) on all of the driver's vehicles before the driver could resume driving after the suspension, the Bureau improperly required the driver to install the device on all vehicles; the driver was restricted to an ignition interlock restricted license instead. *Conrad v. Commonwealth*, 856 A.2d 199, 2004 Pa. Commw. LEXIS 637 (Pa. Commw. Ct. 2004).

Where the driver's drunk driving plea bargain contained a provision stating that the driver was not to be subject to the Pennsylvania Ignition Interlock Law, former 42 Pa. Cons. Stat. § 7001 et seq. (now 75 Pa. Cons. Stat. § 3805), the provision was unenforceable; the trial court in the criminal case had no authority under 75 Pa. Cons. Stat. § 1550 or any other statute to adjudicate the driver's claim for credit against operating privilege suspensions or revocations by the Pennsylvania Bureau of Driver Licensing, and neither did the prosecuting attorney. *Conrad v. Commonwealth*, 856 A.2d 199, 2004 Pa. Commw. LEXIS 637 (Pa. Commw. Ct. 2004).

Former 42 Pa. Cons. Stat. Ann. § 7002(b) provided, for a second or subsequent offense of driving under the influence, the trial court shall order installation of ignition interlock devices on all vehicles owned by the defendant, but that provision was later deemed unconstitutional. *Dwyer v. Commonwealth*, 849 A.2d 1274, 2004 Pa. Commw. LEXIS 393 (Pa. Commw. Ct. 2004).

Pennsylvania Department of Transportation, Bureau of Driver Licensing was not permitted to require the licensee to install an ignition interlock device on a specific vehicle, but it retained the authority to require the licensee to obtain a restricted license upon restoration of his driving privileges after suspension. *Mankin v. DOT, Bureau of Driver Licensing*, 845 A.2d 249, 2004 Pa. Commw. LEXIS 220 (Pa. Commw. Ct. 2004).

Where a person has been convicted of a second or subsequent violation of former 75 Pa.C.S. § 3731 (now 75 Pa.C.S. § 3802), the court shall order the installation of an approved ignition interlock device on each motor vehicle owned by the person; the Ignition Interlock Device Act, former 42 Pa.C.S. § 7001 (now 75 Pa.C.S. § 3805) to former 42 Pa.C.S. § 7003 (now 75 Pa.C.S. § 3805), requires recidivist driving under the influence offenders seeking restoration of driving privileges to apply to the Pennsylvania Department of Transportation, Bureau of Driver Licensing, for an ignition interlock restricted license. *Cinquina v. DOT, Bureau of Driver Licensing*, 840 A.2d 525, 2004 Pa. Commw. LEXIS 23 (Pa. Commw. Ct. 2004).

Severing those portions of former 42 Pa. Cons. Stat. Ann. § 7001 et seq. (now 75 Pa. Cons. Stat. Ann. § 3801 et seq.) which effectuate the delegation to a sentencing court of the license restoration-related executive responsibilities of ordering installation of ignition interlock devices and certifying that they have been installed did not render the remainder of the statute incapable of execution in accordance with legislative intent. *Commonwealth v. Lipinski*, 2004 PA Super 3, 841 A.2d 537, 2004 Pa. Super. LEXIS 4 (Pa. Super. Ct. 2004).

Language of former 42 Pa.C.S. § 7001 et seq. (now 75 Pa.C.S. § 3805), which required the trial court to order installation of interlock ignition systems on defendant's cars and to certify to department of transportation that systems had been installed, was an unconstitutional violation of separation of powers. *Commonwealth v. Mockaitis*, 575 Pa. 5, 834 A.2d 488, 2003 Pa. LEXIS 1908 (Pa. 2003).

In the context of 2000 Pa. Laws 63, codified at former 42 Pa.C.S. § 7001 et seq. (now 75 Pa.C.S. § 3805), it is notable that the general assembly has provided no funding mechanism to enable the judiciary to discharge the executive task it would delegate. *Commonwealth v. Mockaitis*, 575 Pa. 5, 834 A.2d 488, 2003 Pa. LEXIS 1908 (Pa. 2003).

Unconstitutional provisions, former 42 Pa.C.S. § 7002(b) (now 75 Pa.C.S. § 3805) and former 42 Pa.C.S. § 7003(1), (5) (now 75 Pa.C.S. § 3805), could be severed from the remainder of the 2000 Pa. Laws 63, and the remaining provisions still authorized the department to impose an ignition interlock restriction, and the Commonwealth had available to it ample means of enforcing that provision. *Commonwealth v. Mockaitis*, 575 Pa. 5, 834 A.2d 488, 2003 Pa. LEXIS 1908 (Pa. 2003).

Language of 2000 Pa. Laws 63, codified at former 42 Pa.C.S. § 7001 et seq. (now 75 Pa.C.S. § 3805), amended the Pennsylvania Judicial Code to require sentencing courts to order installation of interlock ignition systems on a serial driving under the influence offender's motor vehicles and then to certify to the department that such systems had been installed. *Commonwealth v. Mockaitis*, 575 Pa. 5, 834 A.2d 488, 2003 Pa. LEXIS 1908 (Pa. 2003).

Determination that the portions of the 2000 Pa. Laws 63, codified at former 42 Pa. C.S. § 7001 et seq. (now 75 Pa.C.S. § 3805), which delegate responsibility to the trial courts to perform executive functions relating to the installation of ignition interlock systems cannot stand does not render the ignition interlock requirement of 2000 Pa. Laws 63 unenforceable. *Commonwealth v. Mockaitis*, 575 Pa. 5, 834 A.2d 488, 2003 Pa. LEXIS 1908 (Pa. 2003).

In the context of 2000 Pa. Laws 63, codified at former 42 Pa.C.S. § 7001 et seq. (now 75 Pa.C.S. § 3805), if an offender applies to the department of transportation for restoration of his driving privileges after his automatic one-year of suspension has expired, the act further requires a sentencing court to provide the administrative agency with a "certification" that an appropriate ignition interlock system has been installed on each motor vehicle owned by the offender. *Commonwealth v. Mockaitis*, 575 Pa. 5, 834 A.2d 488, 2003 Pa. LEXIS 1908 (Pa. 2003).

Language of 2000 Pa. Laws 63, codified at former 42 Pa.C.S. § 7001 et seq. (now 75 Pa.C.S. § 3805), imposes, among other things, an obligation upon the sentencing court to order installation of ignition interlock devices on all motor vehicles owned by the serial driving under the influence offender. Since compliance with the ignition interlock requirement is a prerequisite to even a conditional restoration of driving privileges under 2000 Pa. Laws 63, apprising an offender of the requirement in the sentencing order provides essential notice of the condition. *Commonwealth v. Mockaitis*, 575 Pa. 5, 834 A.2d 488, 2003 Pa. LEXIS 1908 (Pa. 2003).

Delegation to the judiciary by 2000 Pa. Laws 63, codified at former 42 Pa.C.S. § 7001 et seq. (now 75 Pa.C.S. § 3805), of the executive functions necessary to effectuate issuance of an ignition interlock restricted license, such as, ordering installation of the interlock system(s) as a condition to applying to the department of transportation for a restricted license, verifying compliance, and apprising the department of a court's determinations, impermissibly violates the separation of powers doctrine. *Commonwealth v. Mockaitis*, 575 Pa. 5, 834 A.2d 488, 2003 Pa. LEXIS 1908 (Pa. 2003).

Trial court did not err in rescinding an ignition interlock device requirement from restoration of licensee's operating privilege following his conviction for driving under the influence in New Jersey because the authority and responsibility to impose the ignition interlock requirement was vested solely in trial court. *Sloan v. DOT, Bureau of Driver Licensing*, 822 A.2d 105, 2003 Pa. Commw. LEXIS 242 (Pa. Commw. Ct. 2003), rev'd, 591 Pa. 652, 921 A.2d 1181, 2007 Pa. LEXIS 977 (Pa. 2007).

Pursuant to the Ignition Interlock Law, acceptance into the Accelerated Rehabilitative Disposition program following an arrest for driving under the influence, in violation of former 75 Pa.C.S. § 3731 (now Pa.C.S. § 3802), is a "conviction." *Alexander v. DOT, Bureau of Driver Licensing*, 822 A.2d 92, 2003 Pa. Commw. LEXIS 158 (Pa. Commw. Ct. 2003), rev'd, 583 Pa. 592, 880 A.2d 552, 2005 Pa. LEXIS 1722 (Pa. 2005), abrogated as stated in *Commonwealth v. McLaughlin*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 90 (Pa. County Ct. Mar. 6, 2007).

Driver's convictions for driving under the influence, in violation of former 75 Pa.C.S. § 3731 (now Pa.C.S. § 3802), which occurred prior to the effective date of the Ignition Interlock Law, could not be considered in imposing the ignition interlock requirement; the provisions of the Ignition Interlock Law did not apply retroactively. *Alexander v. DOT, Bureau of Driver Licensing*, 822 A.2d 92, 2003 Pa. Commw. LEXIS 158 (Pa. Commw. Ct. 2003), rev'd, 583 Pa. 592, 880 A.2d 552, 2005 Pa. LEXIS 1722 (Pa. 2005), abrogated as stated in *Commonwealth v. McLaughlin*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 90 (Pa. County Ct. Mar. 6, 2007).

Department of Transportation's imposition of an ignition interlock system pursuant to former 42 Pa.C.S. § 7002 (now 75 Pa.C.S. § 3805), of the Judicial Code, after a trial court convicted a repeat DUI offender of a second or subsequent violation of former 75 Pa.C.S. § 3731 (now 75 Pa.C.S. § 3802), was reviewable by the trial court in an appeal brought under 75 Pa.C.S. § 1550(a) of the Vehicle Code. The Commonwealth Court of Pennsylvania rejected the Department of Transportation's argument that the imposition of an ignition interlock system was not a continuation of a suspension of driving privileges that was subject to review under Section 1550(a) and the argument that it was really a condition for restoration of driving privileges that was not subject to review. *Turner v. DOT, Bureau of Driver Licensing*, 805 A.2d 671, 2002 Pa. Commw. LEXIS 675 (Pa. Commw. Ct. 2002), rev'd, 592 Pa. 17, 922 A.2d 878, 2007 Pa. LEXIS 991 (Pa. 2007).

Former 42 Pa.C.S. § 7002 (now 75 Pa.C.S. § 3805), gives a trial court the sole authority to impose the installation of an ignition interlock system upon a repeat DUI offender convicted of a second or subsequent violation of former 75 Pa.C.S. § 3731 (now 75 Pa.C.S. § 3802), and the Pennsylvania Department of Transportation has no unilateral authority to impose ignition interlock device requirements if the trial court fails to do so. If the trial court fails to impose this requirement in a criminal proceeding, the district attorney can appeal the trial court's failure to do so as it would if the trial court failed to impose any other mandatory sentence, but the Department of Transportation is not permitted to override the trial court's order and require the installation of the ignition interlock device. *Turner v. DOT, Bureau of Driver Licensing*, 805 A.2d 671, 2002 Pa. Commw. LEXIS 675 (Pa. Commw. Ct. 2002), rev'd, 592 Pa. 17, 922 A.2d 878, 2007 Pa. LEXIS 991 (Pa. 2007).

Imposition of an ignition interlock system pursuant to former 42 Pa.C.S. § 7002 (now 75 Pa.C.S. § 3805), when a repeat DUI offender is convicted of a second or subsequent violation of former 75 Pa.C.S. § 3731 (now 75 Pa.C.S. § 3802), of the Vehicle Code, does not violate the constitutional guarantee of equal protection because it passes the rational basis test by promoting a legitimate state interest or public value with a classification that is reasonably related to accomplishing that articulated state interest or interest. The statute requiring the installation of ignition interlock systems for persons convicted of DUI clearly seeks to promote the compelling interest of protecting the citizens of Pennsylvania, and the citizens of its sister states, from the dangers posed by Pennsylvania-licensed intoxicated drivers and requiring this classification of DUI offenders to install ignition interlock devices into cars they own is undoubtedly reasonably related to accomplishing the objective, which is to promote public safety by keeping intoxicated drivers off of the roads. *Turner v.*

DOT, Bureau of Driver Licensing, 805 A.2d 671, 2002 Pa. Commw. LEXIS 675 (Pa. Commw. Ct. 2002), rev'd, 592 Pa. 17, 922 A.2d 878, 2007 Pa. LEXIS 991 (Pa. 2007).

Imposition of an Ignition interlock system pursuant to former 42 Pa.C.S. § 7002 (now 75 Pa.C.S. § 3805), when a repeat DUI offender is convicted of a second or subsequent violation of former 75 Pa.C.S. § 3731 (now 75 Pa.C.S. § 3802), of the Vehicle Code, does not violate the separation of powers doctrine by requiring that a court certify to the Department of Transportation a DUI offender's compliance with the ignition interlock requirement in former Section 7002(b). The separation of powers doctrine is based upon the recognition that the powers of the judicial, legislative, and executive branches of government are coequal and distinct from one another and as such should be kept separate, distinct, and independent of one another, and a trial court's action of certifying an offender's compliance with a mandatory condition of restoration of his operating privilege is connected with the functions of the trial court that does not cross over into the distinct and independent powers of another branch of government. *Turner v. DOT, Bureau of Driver Licensing, 805 A.2d 671, 2002 Pa. Commw. LEXIS 675 (Pa. Commw. Ct. 2002)*, rev'd, 592 Pa. 17, 922 A.2d 878, 2007 Pa. LEXIS 991 (Pa. 2007).

⚖ Criminal Law & Procedure: Criminal Offenses: Vehicular Crimes: Driving Under the

Influence: Penalties

Trial court erred by allowing a licensee's appeal challenging the installation of an ignition interlock system under the Vehicle Code, 75 Pa.C.S. § 3805(a), because although she was convicted on the same date for two separate Driving Under the Influence (DUI) offenses, she was sentenced for each offense on two separate dates and had, thus, been sentenced already for the first DUI offense, which constituted a prior offense under the Vehicle Code, 75 Pa.C.S. § 3806(a). *Smith v. DOT, Bureau of Driver Licensing, 41 A.3d 924, 2012 Pa. Commw. LEXIS 95 (Pa. Commw. Ct. 2012)*.

As a driver's acceptance into an accelerated rehabilitative disposition program pursuant to 75 Pa.C.S. § 3807 following a second charge of driving under the influence of alcohol constituted a DUI violation under 75 Pa.C.S. § 3802, the requirement for installation of an ignition interlock system as a condition of license restoration was triggered under 75 Pa.C.S. § 3805. *Whalen v. DOT, Bureau of Driver Licensing, 613 Pa. 64, 32 A.3d 677, 2011 Pa. LEXIS 2829 (Pa. 2011)*.

Judicial determination of a violation of 75 Pa.C.S. § 3802 for driving under the influence is necessary to require a licensee to be subject to the ignition interlock law and if a licensee is accepted into the Accepted Rehabilitative Disposition program, he is not convicted under § 3802 and, therefore, is not subject to the interlock law. *Whalen v. Commonwealth, 990 A.2d 826, 2010 Pa. Commw. LEXIS 72 (Pa. Commw. Ct. 2010)*, rev'd, 613 Pa. 64, 32 A.3d 677, 2011 Pa. LEXIS 2829 (Pa. 2011).

In an appeal brought by the Pennsylvania, Department of Transportation, Bureau of Driver Licensing, challenging a trial court's determination that the Department failed to prove that a licensee violated 75 Pa.C.S. § 3802, regarding driving under the influence, for purposes of being subjected to the ignition interlock law, the trial court's determination was upheld since the licensee was accepted into the Accepted Rehabilitative Disposition program, thus, he was not convicted under § 3802. A judicial determination of a violation of § 3802 was necessary to subject a licensee to the interlock law, thus, the trial court's determination was proper. *Whalen v. Commonwealth, 990 A.2d 826, 2010 Pa. Commw. LEXIS 72 (Pa. Commw. Ct. 2010)*, rev'd, 613 Pa. 64, 32 A.3d 677, 2011 Pa. LEXIS 2829 (Pa. 2011).

Because a licensee was convicted of violating 75 Pa.C.S. § 3802 after the effective date of 75 Pa.C.S. § 3805, and because a prior conviction qualified as a prior offense under 75 Pa.C.S. §§ 3805, 3806(a), the Pennsylvania Department of Transportation, Bureau of Driver Licensing properly subjected the licensee to installing an Ignition Interlock System before the restoration of the licensee's license. *Martz v. DOT, Bureau of Driver Licensing, 924 A.2d 745, 2007 Pa. Commw. LEXIS 251 (Pa. Commw. Ct. 2007)*.

Court order was not required for the Pennsylvania Department of Transportation, Bureau of Driver Licensing, to impose an Ignition Interlock System requirement on a licensee because the licensee's violation and conviction, on April 24 and November 1, 2004, respectively, were based on 75 Pa.C.S. § 3802 and occurred after the effective date of 75 Pa.C.S. § 3805. 75 Pa.C.S. § 3805(g) contemplated a court order when the triggering offense arose from former 75 Pa.C.S. § 3731 occurring prior to October 1, 2003, and the licensee's triggering offense arose from 75 Pa.C.S. § 3802 and occurred after October 1, 2003. *Martz v. DOT, Bureau of Driver Licensing, 924 A.2d 745, 2007 Pa. Commw. LEXIS 251 (Pa. Commw. Ct. 2007)*.

Order that the licensee install an ignition interlock was proper because it was based on a violation and conviction under 75 Pa.C.S. § 3802(a) that both occurred after the enactment of 75 Pa.C.S. §

3805. *Stair v. DOT, Bureau of Driver Licensing*, 911 A.2d 1014, 2006 Pa. Commw. LEXIS 674 (Pa. Commw. Ct. 2006).

🔗 Criminal Law & Procedure: Sentencing: Alternatives: General Overview

Pursuant to the Ignition Interlock Law, acceptance into the Accelerated Rehabilitative Disposition program following an arrest for driving under the influence, in violation of former 75 Pa.C.S. § 3731 (now Pa.C.S. § 3802), is a "conviction." *Alexander v. DOT, Bureau of Driver Licensing*, 822 A.2d 92, 2003 Pa. Commw. LEXIS 158 (Pa. Commw. Ct. 2003), *rev'd*, 583 Pa. 592, 880 A.2d 552, 2005 Pa. LEXIS 1722 (Pa. 2005), *abrogated as stated in Commonwealth v. McLaughlin*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 90 (Pa. County Ct. Mar. 6, 2007).

🔗 Criminal Law & Procedure: Sentencing: Alternatives: Substance Abuse Programs

As a driver's acceptance into an accelerated rehabilitative disposition program pursuant to 75 Pa.C.S. § 3807 following a second charge of driving under the influence of alcohol constituted a DUI violation under 75 Pa.C.S. § 3802, the requirement for installation of an ignition interlock system as a condition of license restoration was triggered under 75 Pa.C.S. § 3805. *Whalen v. DOT, Bureau of Driver Licensing*, 613 Pa. 64, 32 A.3d 677, 2011 Pa. LEXIS 2829 (Pa. 2011).

🔗 Criminal Law & Procedure: Sentencing: Guidelines: Adjustments & Enhancements:

Criminal History: Prior Felonies

Language of 2000 Pa. Laws 63, codified at former 42 Pa.C.S. § 7001 et seq. (now 75 Pa.C.S. § 3805), imposes, among other things, an obligation upon the sentencing court to order installation of ignition interlock devices on all motor vehicles owned by the serial driving under the influence offender. Since compliance with the ignition interlock requirement is a prerequisite to even a conditional restoration of driving privileges under 2000 Pa. Laws 63, apprising an offender of the requirement in the sentencing order provides essential notice of the condition. *Commonwealth v. Mockaitis*, 575 Pa. 5, 834 A.2d 488, 2003 Pa. LEXIS 1908 (Pa. 2003).

Delegation to the judiciary by 2000 Pa. Laws 63, codified at former 42 Pa.C.S. § 7001 et seq. (now 75 Pa.C.S. § 3805), of the executive functions necessary to effectuate issuance of an ignition interlock restricted license, such as, ordering installation of the interlock system(s) as a condition to applying to the department of transportation for a restricted license, verifying compliance, and apprising the department of a court's determinations, impermissibly violates the separation of powers doctrine. *Commonwealth v. Mockaitis*, 575 Pa. 5, 834 A.2d 488, 2003 Pa. LEXIS 1908 (Pa. 2003).

🔗 Criminal Law & Procedure: Sentencing: Imposition

Sentencing court was without statutory authority to order defendant to install an ignition interlock system on each motor vehicle he owned or over which he had lawful control. Former 42 Pa.C.S. § 7002 (now 75 Pa.C.S. § 3805). *Commonwealth v. Williams*, 2005 PA Super 105, 871 A.2d 254, 2005 Pa. Super. LEXIS 405 (Pa. Super. Ct. 2005).

🔗 Criminal Law & Procedure: Appeals: Right to Appeal: Government

Former 42 Pa.C.S. § 7002 (now 75 Pa.C.S. § 3805), gives a trial court the sole authority to impose the installation of an ignition interlock system upon a repeat DUI offender convicted of a second or subsequent violation of former 75 Pa.C.S. § 3731 (now 75 Pa.C.S. § 3802), and the Pennsylvania Department of Transportation has no unilateral authority to impose ignition interlock device requirements if the trial court fails to do so. If the trial court fails to impose this requirement in a criminal proceeding, the district attorney can appeal the trial court's failure to do so as it would if the trial court failed to impose any other mandatory sentence, but the Department of Transportation is not permitted to override the trial court's order and require the installation of the ignition interlock device. *Turner v. DOT, Bureau of Driver Licensing*, 805 A.2d 671, 2002 Pa. Commw. LEXIS 675 (Pa. Commw. Ct. 2002), *rev'd*, 592 Pa. 17, 922 A.2d 878, 2007 Pa. LEXIS 991 (Pa. 2007).

🔗 Governments: Legislation: Effect & Operation: Prospective Operation

Consideration of a driver's two prior DUI convictions as predicate offenses for purposes of determining his status as a recidivist offender under the Interlock Law was proper on the part of the Department and, therefore, a trial court erred—and the reviewing court also erred in affirming the trial court's order—that held that the Interlock Law was unlawfully applied retroactively to the driver. It was the driver's third conviction for DUI, which occurred after the enactment of the

Interlock Law, that put him within the purview of the statute and, therefore, it was not error for the Department to require compliance or have the driver's license suspended for an additional year. *Alexander v. DOT, Bureau of Driver Licensing*, 583 Pa. 592, 880 A.2d 552, 2005 Pa. LEXIS 1722 (Pa. 2005).

Driver's convictions for driving under the influence, in violation of former 75 Pa.C.S. § 3731 (now Pa.C.S. § 3802), which occurred prior to the effective date of the Ignition Interlock Law, could not be considered in imposing the ignition interlock requirement; the provisions of the Ignition Interlock Law did not apply retroactively. *Alexander v. DOT, Bureau of Driver Licensing*, 822 A.2d 92, 2003 Pa. Commw. LEXIS 158 (Pa. Commw. Ct. 2003), rev'd, 583 Pa. 592, 880 A.2d 552, 2005 Pa. LEXIS 1722 (Pa. 2005), abrogated as stated in *Commonwealth v. McLaughlin*, 2007 Pa. Dist. & Cnty. Dec. LEXIS 90 (Pa. County Ct. Mar. 6, 2007).

📌 Transportation Law: Private Vehicles: General Overview

Order that the licensee install an ignition interlock was proper because it was based on a violation and conviction under 75 Pa.C.S. § 3802(a) that both occurred after the enactment of 75 Pa.C.S. § 3805. *Stair v. DOT, Bureau of Driver Licensing*, 911 A.2d 1014, 2006 Pa. Commw. LEXIS 674 (Pa. Commw. Ct. 2006).

📌 Transportation Law: Private Vehicles: Operator Licenses: General Overview

Because a licensee was convicted of violating 75 Pa.C.S. § 3802 after the effective date of 75 Pa.C.S. § 3805, and because a prior conviction qualified as a prior offense under 75 Pa.C.S. §§ 3805, 3806(a), the Pennsylvania Department of Transportation, Bureau of Driver Licensing properly subjected the licensee to installing an Ignition Interlock System before the restoration of the licensee's license. *Martz v. DOT, Bureau of Driver Licensing*, 924 A.2d 745, 2007 Pa. Commw. LEXIS 251 (Pa. Commw. Ct. 2007).

Court order was not required for the Pennsylvania Department of Transportation, Bureau of Driver Licensing, to impose an Ignition Interlock System requirement on a licensee because the licensee's violation and conviction, on April 24 and November 1, 2004, respectively, were based on 75 Pa.C.S. § 3802 and occurred after the effective date of 75 Pa.C.S. § 3805. 75 Pa.C.S. § 3805(g) contemplated a court order when the triggering offense arose from former 75 Pa.C.S. § 3731 occurring prior to October 1, 2003, and the licensee's triggering offense arose from 75 Pa.C.S. § 3802 and occurred after October 1, 2003. *Martz v. DOT, Bureau of Driver Licensing*, 924 A.2d 745, 2007 Pa. Commw. LEXIS 251 (Pa. Commw. Ct. 2007).

Pennsylvania Department of Transportation (PennDOT) properly required a driver, who had nine convictions for driving under the influence, to install ignition interlock devices in his vehicles before his license could be restored. Under former 42 Pa.C.S. § 7003 (now 75 Pa.C.S. § 3805) of the prior Pennsylvania Ignition Interlock Law, PennDOT had the independent authority to enforce the interlock requirement if the trial court failed to do so. *McGrory v. DOT, Bureau of Driver Licensing*, 591 Pa. 56, 915 A.2d 1155, 2007 Pa. LEXIS 358 (Pa. 2007).

Requirement that a repeat driving under the influence of alcohol offender install an interlock device as a condition of license restoration pursuant to 75 Pa.C.S. § 3805 did not offend the prohibition against ex post facto legislation because the ability to operate a motor vehicle was a privilege, not a property right; thus, the trial court erred in upholding the licensee's appeal of the directive of the Pennsylvania Department of Transportation, Bureau of Driver Licensing, that the licensee install an interlock device on all vehicles registered in the licensee's name. *Nicholas v. Commonwealth*, 2005 Pa. Commw. LEXIS 512 (Pa. Commw. Ct. Sept. 13, 2005), different results reached on reh'g, 895 A.2d 99, 2006 Pa. Commw. LEXIS 119 (Pa. Commw. Ct. 2006).

Pennsylvania Department of Transportation, Bureau of Driver Licensing (DOT), improperly imposed a former 42 Pa.C.S. § 7002 and former 42 Pa.C.S. § 7003(2) (now 75 Pa.C.S. § 3805(b)), ignition interlock device restriction on a licensee's ability to have his driving privileges restored after his license was suspended based on a driving under the influence (DUI) conviction in New Jersey; although the licensee had a prior DUI conviction, he had completed the Accelerated Rehabilitative Disposition program on that DUI and thus, the New Jersey conviction counted as only the licensee's first DUI conviction, not the "second or subsequent" conviction required for the ignition interlock device restriction. *Beck v. DOT, Bureau of Driver Licensing*, 868 A.2d 1286, 2005 Pa. Commw. LEXIS 72 (Pa. Commw. Ct. 2005), rev'd, 584 Pa. 702, 882 A.2d 1007, 2005 Pa. LEXIS 2040 (Pa. 2005).

Where a trial court did not require a driver to install an ignition interlock system pursuant to former 42 Pa.C.S. § 7002(b) (see now 75 Pa.C.S. 3805) after the driver pled guilty to a third offense of driving under the influence, the licensing agency could not impose such a requirement, because its authority to issue interlock-restricted licenses does not include the independent authority to require

installation of interlock devices. *Finnegan v. DOT, Bureau of Driver Licensing*, 844 A.2d 645, 2004 Pa. Commw. LEXIS 213 (Pa. Commw. Ct. 2004).

Pennsylvania Department of Transportation (PDOT), Bureau of Driver Licensing, did not have the independent authority to order installation of ignition interlock devices without a court order, based on the language of the Ignition Interlock Device Act, former 42 Pa.C.S. § 7001 (now 75 Pa.C.S. § 3805) to former 42 Pa.C.S. § 7003 (now 75 Pa.C.S. § 3805), where PDOT only had authority to issue interlock restricted licenses. *Cinquina v. DOT, Bureau of Driver Licensing*, 840 A.2d 525, 2004 Pa. Commw. LEXIS 23 (Pa. Commw. Ct. 2004).

Where a person has been convicted of a second or subsequent violation of former 75 Pa.C.S. § 3731 (now 75 Pa.C.S. § 3802), the court shall order the installation of an approved ignition interlock device on each motor vehicle owned by the person; the Ignition Interlock Device Act, former 42 Pa.C.S. § 7001 (now 75 Pa.C.S. § 3805) to former 42 Pa.C.S. § 7003 (now 75 Pa.C.S. § 3805), requires recidivist driving under the influence offenders seeking restoration of driving privileges to apply to the Pennsylvania Department of Transportation, Bureau of Driver Licensing, for an ignition interlock restricted license. *Cinquina v. DOT, Bureau of Driver Licensing*, 840 A.2d 525, 2004 Pa. Commw. LEXIS 23 (Pa. Commw. Ct. 2004).

Trial court did not err in rescinding an ignition interlock device requirement from restoration of licensee's operating privilege following his conviction for driving under the influence in New Jersey because the authority and responsibility to impose the ignition interlock requirement was vested solely in trial court. *Sloan v. DOT, Bureau of Driver Licensing*, 822 A.2d 105, 2003 Pa. Commw. LEXIS 242 (Pa. Commw. Ct. 2003), *rev'd*, 591 Pa. 652, 921 A.2d 1181, 2007 Pa. LEXIS 977 (Pa. 2007).

Department of Transportation's imposition of an ignition interlock system pursuant to former 42 Pa.C.S. § 7002 (now 75 Pa.C.S. § 3805), of the Judicial Code, after a trial court convicted a repeat DUI offender of a second or subsequent violation of former 75 Pa.C.S. § 3731 (now 75 Pa.C.S. § 3802), was reviewable by the trial court in an appeal brought under 75 Pa.C.S. § 1550(a) of the Vehicle Code. The Commonwealth Court of Pennsylvania rejected the Department of Transportation's argument that the imposition of an ignition interlock system was not a continuation of a suspension of driving privileges that was subject to review under Section 1550(a) and the argument that it was really a condition for restoration of driving privileges that was not subject to review. *Turner v. DOT, Bureau of Driver Licensing*, 805 A.2d 671, 2002 Pa. Commw. LEXIS 675 (Pa. Commw. Ct. 2002), *rev'd*, 592 Pa. 17, 922 A.2d 878, 2007 Pa. LEXIS 991 (Pa. 2007).

Former 42 Pa.C.S. § 7002 (now 75 Pa.C.S. § 3805), gives a trial court the sole authority to impose the installation of an ignition interlock system upon a repeat DUI offender convicted of a second or subsequent violation of former 75 Pa.C.S. § 3731 (now 75 Pa.C.S. § 3802), and the Pennsylvania Department of Transportation has no unilateral authority to impose ignition interlock device requirements if the trial court fails to do so. If the trial court fails to impose this requirement in a criminal proceeding, the district attorney can appeal the trial court's failure to do so as it would if the trial court failed to impose any other mandatory sentence, but the Department of Transportation is not permitted to override the trial court's order and require the installation of the ignition interlock device. *Turner v. DOT, Bureau of Driver Licensing*, 805 A.2d 671, 2002 Pa. Commw. LEXIS 675 (Pa. Commw. Ct. 2002), *rev'd*, 592 Pa. 17, 922 A.2d 878, 2007 Pa. LEXIS 991 (Pa. 2007).

Imposition of an ignition interlock system pursuant to former 42 Pa.C.S. § 7002 (now 75 Pa.C.S. § 3805), when a repeat DUI offender is convicted of a second or subsequent violation of former 75 Pa.C.S. § 3731 (now 75 Pa.C.S. § 3802), of the Vehicle Code, does not violate the constitutional guarantee of equal protection because it passes the rational basis test by promoting a legitimate state interest or public value with a classification that is reasonably related to accomplishing that articulated state interest or interest. The statute requiring the installation of ignition interlock systems for persons convicted of DUI clearly seeks to promote the compelling interest of protecting the citizens of Pennsylvania, and the citizens of its sister states, from the dangers posed by Pennsylvania-licensed intoxicated drivers and requiring this classification of DUI offenders to install ignition interlock devices into cars they own is undoubtedly reasonably related to accomplishing the objective, which is to promote public safety by keeping intoxicated drivers off of the roads. *Turner v. DOT, Bureau of Driver Licensing*, 805 A.2d 671, 2002 Pa. Commw. LEXIS 675 (Pa. Commw. Ct. 2002), *rev'd*, 592 Pa. 17, 922 A.2d 878, 2007 Pa. LEXIS 991 (Pa. 2007).

Imposition of an ignition interlock system pursuant to former 42 Pa.C.S. § 7002 (now 75 Pa.C.S. § 3805), when a repeat DUI offender is convicted of a second or subsequent violation of former 75 Pa.C.S. § 3731 (now 75 Pa.C.S. § 3802), of the Vehicle Code, does not violate the separation of powers doctrine by requiring that a court certify to the Department of Transportation a DUI offender's compliance with the ignition interlock requirement in former Section 7002(b). The separation of powers doctrine is based upon the recognition that the powers of the judicial, legislative, and executive branches of government are coequal and distinct from one another and as such should be kept separate, distinct, and independent of one another, and a trial court's action of certifying an offender's compliance with a mandatory condition of restoration of his operating

privilege is connected with the functions of the trial court that does not cross over into the distinct and independent powers of another branch of government. *Turner v. DOT, Bureau of Driver Licensing*, 805 A.2d 671, 2002 Pa. Commw. LEXIS 675 (Pa. Commw. Ct. 2002), rev'd, 592 Pa. 17, 922 A.2d 878, 2007 Pa. LEXIS 991 (Pa. 2007).

The driver's driving privileges for his second conviction of driving under the influence was properly superceded where the use of an ignition interlock system for repeat DUI offenders under former 42 Pa.C.S. § 7002 (now 75 Pa.C.S. § 3805), did not violate the prohibition against ex post facto laws of USCS Const. Art. 1 § 10, Cl 1. *Frederick v. DOT, Bureau of Driver Licensing*, 802 A.2d 701, 2002 Pa. Commw. LEXIS 581 (Pa. Commw. Ct. 2002).

Transportation Law: Private Vehicles: Operator Licenses: Restricted Licenses

Trial court erred by allowing a licensee's appeal challenging the installation of an ignition interlock system under the Vehicle Code, 75 Pa.C.S. § 3805(a), because although she was convicted on the same date for two separate Driving Under the Influence (DUI) offenses, she was sentenced for each offense on two separate dates and had, thus, been sentenced already for the first DUI offense, which constituted a prior offense under the Vehicle Code, 75 Pa.C.S. § 3806(a). *Smith v. DOT, Bureau of Driver Licensing*, 41 A.3d 924, 2012 Pa. Commw. LEXIS 95 (Pa. Commw. Ct. 2012).

Judicial determination of a violation of 75 Pa.C.S. § 3802 for driving under the influence is necessary to require a licensee to be subject to the ignition interlock law and if a licensee is accepted into the Accepted Rehabilitative Disposition program, he is not convicted under § 3802 and, therefore, is not subject to the interlock law. *Whalen v. Commonwealth*, 990 A.2d 826, 2010 Pa. Commw. LEXIS 72 (Pa. Commw. Ct. 2010), rev'd, 613 Pa. 64, 32 A.3d 677, 2011 Pa. LEXIS 2829 (Pa. 2011).

In an appeal brought by the Pennsylvania, Department of Transportation, Bureau of Driver Licensing, challenging a trial court's determination that the Department failed to prove that a licensee violated 75 Pa.C.S. § 3802, regarding driving under the influence, for purposes of being subjected to the ignition interlock law, the trial court's determination was upheld since the licensee was accepted into the Accepted Rehabilitative Disposition program, thus, he was not convicted under § 3802. A judicial determination of a violation of § 3802 was necessary to subject a licensee to the interlock law, thus, the trial court's determination was proper. *Whalen v. Commonwealth*, 990 A.2d 826, 2010 Pa. Commw. LEXIS 72 (Pa. Commw. Ct. 2010), rev'd, 613 Pa. 64, 32 A.3d 677, 2011 Pa. LEXIS 2829 (Pa. 2011).

Transportation Law: Private Vehicles: Safety Standards: General Overview

Order of the trial court was reversed, to the extent that the order sustained a driver's appeal from a notice from the Department of Transportation (DOT) that he was required to obtain an ignition interlock restricted license if he sought reinstatement of his operating privilege after the expiration of his suspension, following multiple DUI convictions, because the DOT has the authority to issue interlock restricted licenses; however, the order was affirmed to the extent that it sustained the driver's appeal from the DOT's notice of a requirement that he install ignition interlock systems, because only the trial court that suspended the driver's license has the authority to order installation of an approved ignition interlock device, and the DOT may not independently do so when the trial court fails to issue such an order. *McDonald v. Commonwealth*, 845 A.2d 221, 2004 Pa. Commw. LEXIS 211 (Pa. Commw. Ct. 2004).

Transportation Law: Private Vehicles: Vehicle Registration: General Overview

Consideration of a driver's two prior DUI convictions as predicate offenses for purposes of determining his status as a recidivist offender under the Interlock Law was proper on the part of the Department and, therefore, a trial court erred—and the reviewing court also erred in affirming the trial court's order—that held that the Interlock Law was unlawfully applied retroactively to the driver. It was the driver's third conviction for DUI, which occurred after the enactment of the Interlock Law, that put him within the purview of the statute and, therefore, it was not error for the Department to require compliance or have the driver's license suspended for an additional year. *Alexander v. DOT, Bureau of Driver Licensing*, 583 Pa. 592, 880 A.2d 552, 2005 Pa. LEXIS 1722 (Pa. 2005).

Where the driver was twice convicted of drunk driving under former 75 Pa. Cons. Stat. § 3731(a) (now 75 Pa. Cons. Stat. § 3802), where a one-year license suspension was imposed pursuant to 75 Pa. Cons. Stat. § 1532(b)(3) by the Pennsylvania Bureau of Driver Licensing, and where the driver was required by the Bureau to install an ignition interlock device pursuant to the Pennsylvania Ignition Interlock Law, former 42 Pa. Cons. Stat. § 7001 et seq., (now 75 Pa. Cons. Stat. § 3805) on all of the driver's vehicles before the driver could resume driving after the suspension, the Bureau improperly required the driver to install the device on all vehicles; the driver was restricted

to an ignition interlock restricted license instead. *Conrad v. Commonwealth*, 856 A.2d 199, 2004 Pa. Commw. LEXIS 637 (Pa. Commw. Ct. 2004).

Where the driver's drunk driving plea bargain contained a provision stating that the driver was not to be subject to the Pennsylvania Ignition Interlock Law, former 42 Pa. Cons. Stat. § 7001 et seq. (now 75 Pa. Cons. Stat. § 3805), the provision was unenforceable; the trial court in the criminal case had no authority under 75 Pa. Cons. Stat. § 1550 or any other statute to adjudicate the driver's claim for credit against operating privilege suspensions or revocations by the Pennsylvania Bureau of Driver Licensing, and neither did the prosecuting attorney. *Conrad v. Commonwealth*, 856 A.2d 199, 2004 Pa. Commw. LEXIS 637 (Pa. Commw. Ct. 2004).

Where the driver argued that the Pennsylvania Bureau of Driver Licensing was prohibited from considering the driver's acceptance of accelerated rehabilitative disposition as a conviction for the purposes of the Pennsylvania Ignition Interlock Law, former 42 Pa. Cons. Stat. § 7001 et seq. (now 75 Pa. Cons. Stat. § 3805), the issue was unpreserved pursuant to Pa. R. App. P. 302(a) and was not considered on appeal, as the trial court did not address whether the Bureau's imposition of the Law was impermissibly retroactive. *Conrad v. Commonwealth*, 856 A.2d 199, 2004 Pa. Commw. LEXIS 637 (Pa. Commw. Ct. 2004).

Research References & Practice Aids

LexisNexis® Notes

PENNSYLVANIA ADMINISTRATIVE CODE REFERENCES.

67 Pa. Code § 88.102 (2014), PART DEPARTMENT OF TRANSPORTATION.

67 Pa. Code § 88.104 (2014), PART DEPARTMENT OF TRANSPORTATION.

67 Pa. Code § 88.108 (2014), PART DEPARTMENT OF TRANSPORTATION.

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4 P.L.E. AUTOMOBILES AND MOTOR VEHICLES § 146, Pennsylvania Law Encyclopedia, — — Driving Under the Influence of Alcohol or a Controlled Substance; Driver's License Compact, Copyright 2013, Matthew Bender & Company, Inc., a member of the LexisNexis Group.

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