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## What will happen to my Pennsylvania Driver's License upon a conviction or deferred adjudication out-of-state?

### Short answer:

**\*\*Please see the below for definition of offense and conviction\*\***

If you are a Non-Commercial Driver's License holder:

1<sup>st</sup> offense out-of-state within 10 years and non-CDL=no sanctions

2<sup>nd</sup> or subsequent offense out-of-state within 10 years and non-CDL=12 m loss of license if reported to PennDOT (but see important notes below)

If you are a Commercial Driver's License holder (upon report of out-of-state offense): **\*\*Please see the below for definition of offense and conviction\*\***

1<sup>st</sup> offense within 10 years and CDL holder=1 year disqualification of CDL and they will have to surrender CDL, but they would be immediately eligible for a non-commercial driver's license (e.g., person holds valid PA CDL and receives a 2008 out-of-state conviction, no priors)

2<sup>nd</sup> or subsequent offense outside of 10 years with the priors in personal vehicle prior to September 2005 and CDL holder= PA follows 49 CFR 383.51(b), so, 1 year disqualification of CDL and they will have to surrender CDL, but they would be immediately eligible for a non-commercial driver's license from day one. (e.g., person holds valid PA CDL and had a 1992 conviction for events in a personal vehicle and receives a 2008 out-of-state conviction)

2<sup>nd</sup> or subsequent offense with the priors in personal vehicle prior to September 2005, but still within 10 years and CDL holder=1 year loss of non-commercial driver's license and a consecutive one year disqualification of CDL. (e.g., person holds a valid PA CDL and had a 2003 conviction for events in a personal vehicle and receives a 2008 out-of-state conviction)

2<sup>nd</sup> or subsequent offense within 10 years with the priors even if they are in personal vehicle after September 2005 and CDL holder=true lifetime CDL ban (PA does not follow the 10 year reinstatement) and loss of non-commercial driver's license for 1 year. (e.g., person holds a valid PA CDL and had a 2006 conviction regardless of the type of vehicle and receives a 2008 out-of-state conviction)

Here is the long answer:

Long answer with documentation...

The following is true for a non-commercial CDL license PA holder...

Not well publicized, but PennDOT should take the approach that is consistent with statutory authority for a Pennsylvania license holder with a true first offense lifetime foreign state conviction as reported by DLC/NDR, the Department notes it (as in it is on your 10 year certified driving record), but takes no action. So no suspension will result. Since 2004, Pennsylvania has a 10 year look back period for incremental sentencing for recidivists of DUI for PA convictions or substantial similar convictions out-of-state and as to interlock. 75 Pa.C.S. § 3804(e)(2)(iv)(B) states that for purposes of out-of-state convictions, all out-of-state 1st DUI's will be "presumed" as if the conviction was in Pennsylvania under 3802(a)(2) (i.e., BAC between 0.08% and 0.99% which carries no suspension). This was the legislature's way of stating no suspensions for first offenses that take place out-of-state for motorists with a clean DUI record.

Pennsylvania actions are based upon a conviction (which includes a pre-trial diversionary program-like Maryland's PBJ-B), but not so (as in no actionable suspension) with the functional equivalent of a Probation without verdict. No suspension results when a PWV. Check with me to see if your state has been adjudicated as substantially similar to a PWV or it counts as a conviction. As mentioned a Pre-trial diversionary program would count as a conviction per 75 PS 3804-3806 for purposes of the look back for incremental recidivist sentencing. There is no administrative suspension based upon simply being charged. The only type of suspension that is independent of conviction is a refusal to submit to demand for chemical testing.

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A special note as to Driving Under Suspension based upon an out-of-state conviction and if it is a true first lifetime offense in PA as defined by the statute:

A foreign state, meaning any state other than PA, can only at most suspend your driver's privileges in that one state. It does not have jurisdiction over your PA driver's license. Only PennDOT does. As there will be no action here in PA, there is no fear of Driving Under Suspension-DUI related because obviously your license will not be suspended here in PA because it is only noted with no action as described above.

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**NOTE AS TO INTERLOCK...** The second enactment was 2004, Nov. 30, P.L. 1667, No. 211, § 2, effective June 30, 2007. That act simplifies the definition to make it simply "within ten years" and establishes a look back period for the first time. That becomes effective in June 30, 2007. It reads:" (a) General rule.--If a

person violates section 3802 (relating to driving under influence of alcohol or controlled substance) and, **within the past ten years,** has a prior offense as defined in section 3806(a) (relating to prior offenses) or ~~if a person~~ has had their operating privileges suspended pursuant to section 1547(b.1) (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:" Therefore the look back until June 20, 2007 is lifetime look back period for interlock. **This is measured from offense date.**

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If it is a **second offense** as defined by 3806 of the Vehicle Code (meaning he/she has at least one other one within the 10 year look back period), then...

According to statute, it will be treated as a 3802(a)(2) and technically a one (1) year loss of license should result. It is a hard loss of license meaning there is no Occupational Limited License (aka, Bread-and-Butter license) or Probationary License or even a restricted license with interlock device (aka, Blow-and-Go).

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Appeal of notation on PennDOT certified driving record is possible [if taken within the strict 30 day mail date on the letter that will be generated noting the notation (which is sent to the motorist's last registered address with PennDOT on his/her driver's license using regular first class mail without return receipt), but no action], but such an appeal is not "winnable" as all PennDOT has to produce at appeal hearing is "reliable proof of conviction" in foreign state which is fairly easy to do (although I have personally seen some of them screw up the record and not be able to do it properly).

In a license suspension case, the only issues are whether the criminal court convicted the licensee, and whether PennDOT acted in accordance with applicable law. *Dep't of Transp., Bureau of Driver Licensing v. Tarnopolski*, 533 Pa. 549, 626 A.2d 138 (1993). PennDOT bears the initial burden to establish a prima facie case that a record of conviction supports a suspension. *Zawacki v. Dep't of Transp., Bureau of Driver Licensing*, 745 A.2d 701 (Pa.Cmwlth.2000). An essential part of satisfying this burden is the production of an official record of the conviction supporting the suspension. *Cotter v. Dep't of Transp., Bureau of Driver Licensing*, 703 A.2d 1092 (Pa.Cmwlth.1998). PennDOT must also establish it acted in accordance with applicable law. *Id.*

In order to overcome this presumption, licensee must show by clear and convincing evidence that the record was erroneous. *Mateskovich v. Dep't of Transp., Bureau of Driver Licensing*, 755 A.2d 100 (Pa.Cmwlth.2000). Clear and convincing evidence is "evidence that is so clear and direct as to permit the trier of fact to reach a clear conviction, without hesitancy, as to the truth of the facts at issue." *Id.* at 102 n. 6. *Id.* the licensee presents no rebuttal evidence before the trial court beyond his/her attorney's argument that the certification was legally erroneous, the licensee's appeal will fail as this type of evidence (rather argument) does not constitute clear and convincing evidence because an attorney's statements at trial are not evidence. *Id.* Thus, the un rebutted evidence will show Licensee was not sentenced under 75 Pa.C.S. § 3804(a)(1) (penalties for first-time offenders, general impairment), and therefore he does not qualify for the "no-suspension exception."

As one can see it is like swimming upstream, but in the instance of a CDL holder, we often take these hearings as Pennsylvania has draconian laws with an automatic one (1) year disqualification based upon conviction (including pre-trial diversionary programs) CONSECUTIVE to the loss of the CDL's personal loss of license. It matters not if the underlying offense was one in the person's personal non-commercial vehicle, the consecutive disqualification results. For a second offense (with a lifetime look-back period), then it becomes a true lifetime CDL disqualification. So, in these contexts it makes sense to gamble on PennDOT dropping the proverbial ball which they do as it is hard to get truly certified records from some states such as New York and in some cities such as New York City.

In Pennsylvania a licensee on appeal may not collaterally attack an underlying criminal conviction during a civil license suspension proceeding. *Commonwealth v. Duffey*, 536 Pa. 436, 639 A.2d 1174 (1994).

# FACT SHEET

## THE DRIVER LICENSE COMPACT (DLC)

**Q: What is the Driver License Compact (DLC)?**

**A:** The DLC is a compact among 46 member states to maximize law enforcement efforts nationwide.

The major provisions of the DLC, which member states are committed to uphold and enforce, are:

- The “one driver license” concept, which requires the surrender of an out-of-state driver’s license when application for a new license is made;
- The “one driver record” concept, which requires that a complete driver record be maintained in the driver’s state of residence to determine driving eligibility in the home state, as well as for his nonresidence operator’s privilege in other jurisdictions;
- Reporting of all traffic convictions and license suspension/revocations of out-of-state drivers to the home state licensing agency, as well as other appropriate information; and
- The assurance of uniform and predictable treatment of drivers by treating offenses committed in other states as though they have been committed in the home state.

**Q: When did Pennsylvania (PA) become a member of the DLC?**

**A:** PA joined the DLC on January 1, 1995 and was adopted into Pennsylvania law as Act 1996-No. 149 on December 10, 1996.

**Q: What violations committed in a member state will result in the suspension of my driving privilege in PA?**

**A:** The following offenses, if committed in a member state, would be treated as though the offense had occurred in Pennsylvania and the appropriate sanction would be imposed under the provisions of our Vehicle Code:

- Manslaughter or negligent homicide resulting from the operation of a motor vehicle (Section 3732);
- Driving a motor vehicle while under the influence of alcoholic beverages or a narcotic to a degree which renders the driver incapable of safely driving a motor vehicle (Section 3731);
- Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another (Section 3742);
- Any felony in the commission of which a motor vehicle is used (Crimes Code and Dangerous Drug Act Offenses).

Although reported to PennDOT, minor traffic offenses such as speeding, red light, stop sign, etc., will (**NOT**) appear on your driving record, unless you are a CDL holder. Points will not be assessed to your PA driving record when convicted of a point related offense in a DLC member state.

**Q: Do all member states impose the same suspension terms?**

**A:** No. Some states may impose a term of suspension which is less than or greater than that of PA. PennDOT will impose the suspension term according to the provisions of our Vehicle Code.

**Q: How long will my driving privilege be suspended if I am convicted of a DUI in a member state?**

**A:** If your violation occurred prior to 2/1/04, PennDOT will impose a 1 year suspension. If your violation occurred on or after 2/1/04 and it is your first DUI, PennDOT will take no suspension action. If it is your second or subsequent PennDOT will impose a 1 year.

**Q: How long will my driving privilege be suspended in PA if I am convicted of a serious traffic offense other than DUI in a member state?**

**A:** A minimum of one year, however, it could be five years if this is your third serious traffic offense under Section 1542 of the Vehicle Code.

**Q: When does my suspension begin in PA?**

**A:** If you are convicted of a serious traffic offense in a DLC member state, that state is required to report the conviction to PennDOT. Upon receipt of the conviction, we will mail you an official notice of suspension with a date the suspension will begin. Credit toward serving your suspension will begin once you have surrendered your valid driver's license, camera card and/or learner's permit to PennDOT.

**Q: Do my suspension terms begin and run at the same time in both states?**

**A:** It is unlikely. You will probably receive notice of your suspension in the other state prior to our receipt of your conviction. If you are not otherwise suspended in PA, you may continue to drive in PA until you are notified in writing by PennDOT of this suspension.

**Q: What effect does the DLC have on an out-of-state motorist convicted for an offense in PA?**

**A:** All PA convictions for out-of-state motorists will be forwarded to the motorist's home state. Additionally, their privilege to drive in PA will be suspended if convicted of certain serious traffic offenses such as driving under the influence, homicide by vehicle, reckless driving, fleeing or attempting to elude police officer, racing on highway and driving while operating privilege is suspended or revoked.

**Q: What States are a member of the DLC?**

- A:**
- |                         |                    |                    |
|-------------------------|--------------------|--------------------|
| 1. Alaska               | 17. Kentucky       | 32. North Dakota   |
| 2. Alabama              | 18. Louisiana      | 33. Ohio           |
| 3. Arizona              | 19. Maine          | 34. Oklahoma       |
| 4. Arkansas             | 20. Maryland       | 35. Oregon         |
| 5. California           | 21. Minnesota      | 36. Pennsylvania   |
| 6. Colorado             | 22. Mississippi    | 37. Rhode Island   |
| 7. Connecticut          | 23. Missouri       | 38. South Carolina |
| 8. Delaware             | 24. Montana        | 39. South Dakota   |
| 9. District of Columbia | 25. Nebraska       | 40. Texas          |
| 10. Florida             | 26. Nevada         | 41. Utah           |
| 11. Hawaii              | 27. New Hampshire  | 42. Vermont        |
| 12. Idaho               | 28. New Jersey     | 43. Virginia       |
| 13. Illinois            | 29. New Mexico     | 44. Washington     |
| 14. Indiana             | 30. New York       | 45. West Virginia  |
| 15. Iowa                | 31. North Carolina | 46. Wyoming        |
| 16. Kansas              |                    |                    |

**Q: Where do I write or call to get further information about the DLC, my driving record or the PA Point System?**

**A:** You may write to the following address:

PA Department of Transportation  
Bureau of Driver Licensing  
P.O. Box 68618  
Harrisburg, PA 17106-8618

OR CALL

In-State 1-800-932-4600  
Out-of-State (717) 412-5300  
TDD In-State 1-800-228-0676  
TDD Out-of-State (717) 412-5380