

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 994

Session of
1983

INTRODUCED BY ROMANELLI, O'PAKE, O'CONNELL, REIBMAN, ANDREZESKI,
HELFRICK, STOUT, MUSTO AND PECORA, SEPTEMBER 23, 1983

REFERRED TO JUDICIARY, SEPTEMBER 23, 1983

AN ACT

1 Amending Title 30 (Fish) of the Pennsylvania Consolidated
2 Statutes, further providing for the operation of watercraft
3 while under the influence of alcohol or a controlled
4 substance; providing for testing apparatus, procedures and
5 personnel; and providing for the crime of homicide by
6 watercraft.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Sections 901, 928 and 5123(a) of Title 30 of the
10 Pennsylvania Consolidated Statutes are amended to read:

11 § 901. Powers and duties of waterways patrolmen and deputies.

12 (a) Waterways patrolmen.--Every waterways patrolman shall
13 have the power and duty to:

14 (1) Enforce all laws of this Commonwealth relating to
15 fish and watercraft and arrest with or without warrant any
16 person violating this title.

17 (2) Execute all warrants and search warrants for
18 violations of this title.

19 (3) Serve subpoenas issued for the examination,

1 investigation and trial of all offenses under this title.

2 (4) Carry firearms or other weapons in the performance
3 of their duties.

4 (5) Stop vehicles or boats and search or inspect, where
5 probable cause exists that a violation of this title has
6 occurred, any boat, basket, conveyance, vehicle, fish-box,
7 bag, coat, boot or other receptacle, when enforcing this
8 title. The waterways patrolman shall display his badge or
9 other insignia of identification and shall state to the
10 person in charge of the vehicle, conveyance or otherwise the
11 purpose of the search.

12 (6) Seize and take possession of any and all fish which
13 may have been caught, taken or killed at any time, in any
14 manner or for any purpose, or had in possession or under
15 control, or have been shipped or about to be shipped contrary
16 to the laws of this Commonwealth and the fish so seized shall
17 be disposed of in any manner as the executive director may
18 direct.

19 (7) Enter upon any land or water in the performance of
20 their duties.

21 (8) Demand and secure proper assistance in case of
22 emergency.

23 (9) Purchase fish for the purpose of securing evidence.

24 (10) Stop and board any boat subject to this title for
25 the purpose of inspection for compliance with Part III
26 (relating to boats and boating) and the rules and regulations
27 promulgated thereunder. Any boat lying at its regular mooring
28 or berth shall not be boarded without the consent of the
29 owner or a search warrant.

30 (11) When making an arrest or apprehension or when found

1 in the execution of a search warrant, seize all rods, reels,
2 nets or other fishing devices of any description, fishing or
3 boating paraphernalia, bait, boats or any unlawful device,
4 implement or appliance used in violation of this title.

5 (12) When acting within the scope of their employment,
6 to pursue, apprehend or arrest any individual suspected of
7 violating any provision of Title 18 (relating to crimes and
8 offenses) or any other offense classified as a misdemeanor or
9 felony. They shall also have the power to serve and execute
10 warrants issued by the proper authorities for offenses
11 referred to in this paragraph and to serve subpoenas issued
12 for examination. All powers as provided for in this paragraph
13 will be limited by such administrative procedure as the
14 executive director, with the approval of the commission,
15 shall prescribe.

16 (13) Administer chemical tests of breath, blood or urine
17 to persons operating or in actual physical control of
18 watercraft for the purpose of determining the alcoholic
19 content of blood or the presence of a controlled substance
20 under section 5125 (relating to chemical testing to determine
21 amount of alcohol or controlled substance).

22 (b) Deputy waterways patrolmen.--Except for the power
23 conferred by subsection (a)(12) or (13), deputy waterways
24 patrolmen may exercise all the powers and perform all the duties
25 conferred by this section on waterways patrolmen.

26 § 928. Revocation, suspension or denial of license,
27 permit or registration.

28 (a) [General rule] Revocation or denial.--Any fishing
29 license, special license or permit or boat registration granted
30 under the authority of this title may be revoked by the

1 commission, in its discretion, when the holder of the license,
2 permit or registration is convicted of an offense under this
3 title. Further, the commission, in its discretion, may refuse to
4 grant to that person any new fishing license, special license or
5 permit or boat registration for a period not exceeding two
6 years.

7 (b) Suspension.--The commission shall for a period of one
8 year suspend any fishing license, special license or permit or
9 boat registration of any individual who is convicted of a
10 violation of section 5502 (relating to operating watercraft
11 under influence of alcohol or controlled substance) or 5502.1
12 (relating to homicide by watercraft while operating under
13 influence). The commission shall refuse to grant to that person
14 any new fishing license, special license or permit or boat
15 registration for a period of one year from the date of the
16 offense.

17 ~~[(b)]~~ (c) Rules and regulations.--The commission may
18 promulgate regulations specifying the procedures to be followed
19 in revoking or suspending fishing licenses, special licenses and
20 permits and boat registrations under this section.

21 § 5123. General boating regulations.

22 (a) General rule.--The commission may promulgate such rules
23 and regulations as it deems appropriate to provide for the
24 operation and navigation of boats, including the rules of the
25 road for boating, the ways, manner, methods and means of
26 boating, the management of boats and the use thereof and the
27 protection of waters for boating purposes. The rules and
28 regulations may relate to:

29 (1) Protection of the health and safety of persons on
30 boats, towed by boats, or on, in or along the waters of this

Commonwealth.

(2) Protection of property on, in or along the waters of this Commonwealth and of fish and other aquatic life in such waters.

(3) Boat noise and sound levels.

(4) Capacity and loading of boats.

(5) Equipment requirements for boats, operators of boats, passengers on boats and persons towed or pulled by boats.

(6) Lights, signals, courses, channels, rights-of-way and hazards to navigation.

(7) The placing and lighting of aids, markers, floats, ramps or other devices or structures of any description in the waters of this Commonwealth.

(8) Disposal of oil, gas, gasoline, trash, rubbish, debris, wastes and other things and substances of any description from boats.

(9) Procedures to be followed and information to be supplied by owners and operators of boats in reporting boating accidents.

(10) The use and consumption of alcoholic beverages by passengers on watercraft.

* * *

Section 2. Title 30 is amended by adding a section to read:

§ 5125. Chemical testing to determine amount of alcohol or controlled substance.

(a) General rule.--Any person who operates or is in actual physical control of the movement of a watercraft, upon, in or through the waters of this Commonwealth, shall be deemed to have given consent to one or more chemical tests of breath, blood or

1 urine for the purpose of determining the alcoholic content of
2 blood or the presence of a controlled substance if a waterways
3 patrolman has reasonable grounds to believe the person has been
4 operating or in actual physical control of the movement of a
5 watercraft:

6 (1) while under the influence of alcohol or a controlled
7 substance or both; or

8 (2) which was involved in an accident in which the
9 operator or passenger of any watercraft involved required
10 treatment at a medical facility or was killed.

11 (b) Suspension for refusal.--

12 (1) If any person placed under arrest for a violation of
13 section 5502 (relating to operating watercraft under
14 influence of alcohol or controlled substance) is requested to
15 submit to chemical testing and refuses to do so, the testing
16 shall not be conducted but, upon notice by the waterways
17 patrolman, the commission shall suspend the fishing and
18 boating privileges of the person for a period of 12 months.

19 (2) It is the duty of the waterways patrolman to inform
20 the person that the person's fishing and boating privileges
21 will be suspended upon refusal to submit to chemical testing.

22 (3) Any person whose fishing and boating privileges are
23 suspended under this section shall have the same right of
24 appeal as provided for in cases of suspension for other
25 reasons.

26 (c) Test results admissible in evidence.--In any summary
27 proceeding or criminal proceeding in which the defendant is
28 charged with a violation of section 5502 or any other violation
29 of this title arising out of the same action, the amount of
30 alcohol or controlled substance in the defendant's blood, as

1 shown by chemical testing of the person's breath, blood or urine
2 by tests conducted by qualified persons using approved
3 equipment, shall be admissible in evidence:

4 (1) Chemical tests of breath shall be performed on
5 devices approved by the Department of Health using procedures
6 prescribed jointly by regulations of the Department of Health
7 and the commission. Devices shall been calibrated and tested
8 for accuracy within a period of time and in a manner
9 specified by regulations of the Department of Health and the
10 commission. For purposes of breath testing, a qualified
11 person means a person who has fulfilled the training
12 requirement in the use of the equipment in a training program
13 approved by the Department of Health and the commission. A
14 certificate or log showing that a device was calibrated and
15 tested for accuracy and that the device was accurate shall be
16 presumptive evidence of those facts in every proceeding in
17 which a violation of this title is charged.

18 (2) Chemical tests of blood or urine shall be performed
19 by a clinical laboratory licensed and approved by the
20 Department of Health for this purpose using procedures and
21 equipment prescribed by the Department of Health. For
22 purposes of blood and urine testing, a qualified person means
23 an individual who is authorized to perform those chemical
24 tests under the act of September 26, 1951 (P.L.1539, No.389),
25 known as The Clinical Laboratory Act.

26 (d) Presumptions from amount of alcohol.--If chemical
27 testing of a person's breath, blood or urine shows:

28 (1) That the amount of alcohol by weight in the blood of
29 the person tested is 0.05% or less, it shall be presumed that
30 the person tested was not under influence of alcohol and the

1 person shall not be charged with any violation under section
2 5502(a)(1) or (4) or, if the person was so charged prior to
3 the test, the charge shall be void ab initio. This fact shall
4 not give rise to any presumption concerning a violation of
5 section 5502(a)(2) or (3).

6 (2) That the amount of alcohol by weight in the blood of
7 the person tested is in excess of 0.05% but less than 0.10%,
8 this fact shall not give rise to any presumption that the
9 person tested was or was not under the influence of alcohol,
10 but this fact may be considered with other competent evidence
11 in determining whether the person was or was not under the
12 influence of alcohol.

13 (3) That the amount of alcohol by weight in the blood of
14 the person tested is 0.10% or more, this fact may be
15 introduced into evidence if the person is charged with
16 violating section 5502.

17 (e) Refusal admissible in evidence.--In any summary
18 proceeding or criminal proceeding in which the defendant is
19 charged with a violation of section 5502 or any other violation
20 of this title arising out of the same action, the fact that the
21 defendant refused to submit to chemical testing as required by
22 subsection (a) may be introduced in evidence, along with other
23 testimony concerning the circumstances of the refusal. No
24 presumptions shall arise from this evidence but it may be
25 considered along with other factors concerning the charge.

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

30 (g) Test results available to defendant.--Upon the request

1 of the person tested, the results of any chemical test shall be
2 made available to him or his attorney.

3 (h) Test by personal physician.--The person tested shall be
4 permitted to have a physician of his own choosing administer an
5 additional breath, blood or urine chemical test and the results
6 of the test shall also be admissible in evidence. The chemical
7 testing given at the direction of the waterways patrolman shall
8 not be delayed by a person's attempt to obtain an additional
9 test.

10 (i) Request by operator for test.--Any person involved in an
11 accident or placed under arrest for a violation of section 5502
12 may request a chemical test of his breath, blood or urine. These
13 requests shall be honored when it is reasonably practicable to
14 do so.

15 (j) Immunity from civil liability and reports.--No
16 physician, nurse or technician or hospital employing the
17 physician, nurse or technician and no other employer of the
18 physician, nurse or technician shall be civilly liable for
19 properly withdrawing blood or obtaining a urine sample and
20 reporting test results to the waterways patrolman at the request
21 of a waterways patrolman under this section. No physician, nurse
22 or technician or hospital employing the physician, nurse or
23 technician may administratively refuse to perform the tests and
24 provide the results to the waterways patrolman except as may be
25 reasonably expected from unusual circumstances that pertain at
26 the time the request is made.

27 (k) Prearrest breath test authorized.--A waterways
28 patrolman, having reasonable suspicion to believe a person is
29 operating or in actual physical control of the movement of a
30 watercraft while under the influence of alcohol, may require

1 that person prior to arrest to submit to a preliminary breath
2 test on a device approved by the Department of Health for this
3 purpose. The sole purpose of this preliminary breath test is to
4 assist the waterways patrolman in determining whether or not the
5 person should be placed under arrest. The preliminary breath
6 test shall be in addition to any other requirements of this
7 title. No person has any right to expect or demand a preliminary
8 breath test. Refusal to submit to the test shall not be
9 considered for purposes of subsections (b) and (e).

10 Section 3. Section 5502 of Title 30 is amended to read:

11 § 5502. Operating watercraft under influence of alcohol or
12 controlled substance.

13 (a) General rule.--No person shall operate or be in actual
14 physical control of the movement of a watercraft upon, in or
15 through the waters of this Commonwealth while:

16 (1) under the influence of alcohol to a degree which
17 renders the person incapable of safe operation of the
18 watercraft;

19 (2) under the influence of any controlled substance, as
20 defined by the laws of this Commonwealth and rules and
21 regulations promulgated thereunder, to a degree which renders
22 the person incapable of safe operation of a watercraft; [or]

23 (3) under the combined influence of alcohol and a
24 controlled substance[.]; or

25 (4) the amount of alcohol by weight in the blood of the
26 person is 0.10% or greater.

27 (b) Legal use no defense.--The fact that any person charged
28 with violating this section is or has been legally entitled to
29 use alcohol or controlled substances is not a defense to a
30 charge of violating this section.

1 (c) Penalty.--A person violating any of the provisions of
2 this section commits a [summary offense of the first degree]
3 misdemeanor of the third degree.

4 Section 4. Title 30 is amended by adding a section to read:
5 § 5502.1. Homicide by watercraft while operating under
6 influence.

7 (a) Offense defined.--Any person who unintentionally causes
8 the death of another person as the direct result of a violation
9 of section 5502 (relating to operating watercraft under
10 influence of alcohol or controlled substance) and who is
11 convicted of violating section 5502 commits a felony of the
12 third degree when the violation is the cause of death and the
13 sentencing court shall order the person to serve a minimum term
14 of imprisonment of not less than three years.

15 (b) Applicability of sentencing guidelines.--The sentencing
16 guidelines promulgated by the Pennsylvania Commission on
17 Sentencing shall not supersede the mandatory penalty of this
18 section.

19 Section 5. This act shall take effect in 60 days.