
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

AS REPORTED FROM COMMITTEE ON GAME AND FISHERIES, HOUSE OF
REPRESENTATIVES, AS AMENDED, APRIL 24, 1984

AN ACT

1 Amending Title 30 (Fish) of the Pennsylvania Consolidated
2 Statutes, CHANGING PROVISIONS RELATING TO THE REVOCATION OF <—
3 BOAT REGISTRATIONS; further providing for the operation of
4 watercraft while under the influence of alcohol or a
5 controlled substance; providing for testing apparatus,
6 procedures and personnel; and providing for the crime of
7 homicide by watercraft.

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

10 Section 1. Sections 901, 923(a) and (c) and 928 of Title 30
11 of the Pennsylvania Consolidated Statutes are amended to read:

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

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

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

18 (2) Execute all warrants and search warrants for

1 violations of this title.

2 (3) Serve subpoenas issued for the examination,
3 investigation and trial of all offenses under this title.

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

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

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

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

23 (8) Demand and secure proper assistance in case of
24 emergency.

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

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

1 owner or a search warrant.

2 (11) When making an arrest or apprehension or when found
3 in the execution of a search warrant, seize all rods, reels,
4 nets or other fishing devices of any description, fishing or
5 boating paraphernalia, bait, boats or any unlawful device,
6 implement or appliance used in violation of this title.

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

18 (13) Arrange for the administration of chemical tests of
19 breath, blood or urine to persons operating or in actual
20 physical control of watercraft for the purpose of determining
21 the alcoholic content of blood or the presence of a
22 controlled substance under section 5125 (relating to chemical
23 testing to determine amount of alcohol or controlled
24 substance), by qualified personnel of a State or local police
25 department or qualified personnel of a clinical laboratory
26 licensed and approved by the Department of Health.

27 (b) Deputy waterways patrolmen.--Except for the power
28 conferred by subsection (a)(12), deputy waterways patrolmen may
29 exercise all the powers and perform all the duties conferred by
30 this section on waterways patrolmen.

1 § 923. Classification of offenses and penalties.

2 (a) General rule.--The following penalties shall be imposed
3 for violations of this title:

4 (1) For a summary offense of the first degree, a fine of
5 \$100 or imprisonment not exceeding 90 days.

6 (2) For a summary offense of the second degree, a fine
7 of \$25 or imprisonment not exceeding 20 days.

8 (3) For a summary offense of the third degree, a fine of
9 \$10.

10 (4) For a misdemeanor of the third degree, a fine of not
11 less than \$250 nor more than \$2,500, or imprisonment not
12 exceeding 90 days, or both.

13 (5) For a felony of the third degree, a fine ~~not~~ OF NOT <—
14 LESS THAN \$2,500 NOR exceeding \$15,000 or imprisonment not
15 exceeding 7 years, or both.

16 * * *

17 (c) Title 18 inapplicable.--Title 18 (relating to crimes and
18 offenses) is inapplicable to this title insofar as it relates to
19 fines and imprisonment for convictions of summary offenses
20 [and], misdemeanors and felonies.

21 § 928. Revocation, suspension or denial of license,
22 permit or registration.

23 (a) [General rule] Revocation or denial.--Any fishing
24 license, special license or permit or [boat registration]
25 PRIVILEGE granted under the authority of this title may be <—
26 revoked by the commission, in its discretion, when the holder of
27 the license, permit or [registration] PRIVILEGE is convicted of <—
28 an offense under this title. Further, the commission, in its
29 discretion, may refuse to grant to that person any new fishing
30 license, special license or permit or [boat registration]

1 PRIVILEGE for a period not exceeding two years. <—

2 (b) Suspension.--The commission shall for a period of one
3 year suspend any boat registration and the privilege of <—
4 operating a watercraft on the waters of this Commonwealth of any
5 individual who is convicted of a violation of section 5502
6 (relating to operating watercraft under influence of alcohol or
7 controlled substance) or 5502.1 (relating to homicide by
8 watercraft while operating under influence) or an adjudication
9 of delinquency based on section 5502 or 5502.1. The commission <—
10 shall refuse to grant to that person any new boat registration
11 for a period of one year from the date of the offense.

12 [(b)] (c) Rules and regulations.--The commission may
13 promulgate regulations specifying the procedures to be followed
14 in revoking or suspending fishing licenses, special licenses and
15 permits and [boat registrations] PRIVILEGES under this section. <—

16 (d) Penalty.--A person commits a summary offense of the
17 first degree if he performs an act for which a fishing license,
18 special license, permit or boat registration is required or
19 exercises a privilege, including the privilege to operate a
20 watercraft on the waters of this Commonwealth, while the
21 license, permit registration or privilege is suspended or <—
22 revoked. A person commits a misdemeanor of the third degree if
23 he commits a second or subsequent violation of a suspension or
24 revocation during its term.

25 Section 2. Title 30 is amended by adding a section to read:
26 § 5125. Chemical testing to determine amount of alcohol or
27 controlled substance.

28 (a) General rule.--Any person who operates or is in actual
29 physical control of the movement of a watercraft, upon, in or
30 through the waters of this Commonwealth, shall be deemed to have

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

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

9 (2) which was involved in an accident in which the
10 operator or ~~passenger of any watercraft~~ ANY PERSON involved <—
11 required treatment at a medical facility or was killed.

12 (b) Suspension for refusal.--

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

21 (2) It is the duty of the waterways patrolman to inform
22 the person that the person's boating privileges and ~~boat~~ <—
23 ~~registration~~ will be suspended upon refusal to submit to
24 chemical testing.

25 (3) Any person whose boating privileges and ~~boat~~ <—
26 ~~registration~~ are suspended under this section shall have the
27 same right of appeal as provided for in cases of suspension
28 for other reasons.

29 (c) Test results admissible in evidence.--In any summary
30 proceeding or criminal proceeding in which the defendant is

1 charged with a violation of section 5502 or any other violation
2 of this title arising out of the same action, the amount of
3 alcohol or controlled substance in the defendant's blood, as
4 shown by chemical testing of the person's breath, blood or urine
5 by tests conducted by qualified persons using approved
6 equipment, shall be admissible in evidence:

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

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

30 (d) Presumptions from amount of alcohol.--If chemical

1 testing of a person's breath, blood or urine shows:

2 (1) That the amount of alcohol by weight in the blood of
3 the person tested is 0.05% or less, it shall be presumed that
4 the person tested was not under influence of alcohol and the
5 person shall not be charged with any violation under section
6 5502(a)(1) or (4) or, if the person was so charged prior to
7 the test, the charge shall be void ab initio. This fact shall
8 not give rise to any presumption concerning a violation of
9 section 5502(a)(2) or (3).

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

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

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

30 (f) Other evidence admissible.--Subsections (a) through (i)

1 shall not be construed as limiting the introduction of any other
2 competent evidence bearing upon the question of whether or not
3 the defendant was under the influence of alcohol or a controlled
4 substance or both.

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

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

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

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

1 the time the request is made.

2 (k) Prearrest breath test authorized.--A waterways
3 patrolman, having reasonable suspicion to believe a person is
4 operating or in actual physical control of the movement of a
5 watercraft while under the influence of alcohol, may require
6 that person prior to arrest to submit to a preliminary breath
7 test on a device approved by the Department of Health for this
8 purpose. The sole purpose of this preliminary breath test is to
9 assist the waterways patrolman in determining whether or not the
10 person should be placed under arrest. The preliminary breath
11 test shall be in addition to any other requirements of this
12 title. No person has any right to expect or demand a preliminary
13 breath test. Refusal to submit to the test shall not be
14 considered for purposes of subsections (b) and (e).

15 Section 3. Section 5502 of Title 30 is amended to read:
16 § 5502. Operating watercraft under influence of alcohol or
17 controlled substance.

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

21 (1) under the influence of alcohol to a degree which
22 renders the person incapable of safe operation of the
23 watercraft;

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

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

30 (4) the amount of alcohol by weight in the blood of the

1 person is 0.10% or greater.

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

6 (c) Penalty.--A person violating any of the provisions of
7 this section commits a [summary offense of the first degree]
8 misdemeanor of the ~~second~~ THIRD degree. <—

9 Section 4. Title 30 is amended by adding a section to read:

10 § 5502.1. Homicide by watercraft while operating under
11 influence.

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

20 (b) Applicability of sentencing guidelines.--The sentencing
21 guidelines promulgated by the Pennsylvania Commission on
22 Sentencing shall not supersede the mandatory penalty of this
23 section.

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