

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 994

Session of  
1983

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

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SENATOR SNYDER, JUDICIARY, AS AMENDED, OCTOBER 24, 1983

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## 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) OR AN ADJUDICATION OF DELINQUENCY BASED ON SECTION <—  
14 5502 OR 5502.1. The commission shall refuse to grant to that  
15 person any new fishing license, special license or permit or  
16 boat registration for a period of one year from the date of the  
17 offense.

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

22 § 5123. General boating regulations.

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

30 (1) Protection of the health and safety of persons on

1 boats, towed by boats, or on, in or along the waters of this  
2 Commonwealth.

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

6 (3) Boat noise and sound levels.

7 (4) Capacity and loading of boats.

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

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

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

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

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

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

24 \* \* \*

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 involved required  
11 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 fishing and  
19 boating privileges of the person for a period of 12 months.

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

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

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

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

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

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

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

29 (1) That the amount of alcohol by weight in the blood of  
30 the person tested is 0.05% or less, it shall be presumed that

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 charge of violating this section.

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

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

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

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

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