

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 AMENDED ON SECOND CONSIDERATION, NOVEMBER 30, 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, 923(A) AND (C) AND 928 and ~~5123(a)~~ <—
10 of Title 30 of the Pennsylvania Consolidated Statutes are
11 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
19 violations of this title.

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

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

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

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

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

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

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

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

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

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

17 (13) ~~Administer~~ ARRANGE FOR THE ADMINISTRATION OF <—
18 chemical tests of breath, blood or urine to persons operating
19 or in actual physical control of watercraft for the purpose
20 of determining the alcoholic content of blood or the presence
21 of a controlled substance under section 5125 (relating to
22 chemical testing to determine amount of alcohol or controlled
23 substance), BY QUALIFIED PERSONNEL OF A STATE OR LOCAL POLICE <—
24 DEPARTMENT OR QUALIFIED PERSONNEL OF A CLINICAL LABORATORY
25 LICENSED AND APPROVED BY THE DEPARTMENT OF HEALTH.

26 (b) Deputy waterways patrolmen.--Except for the power
27 conferred by subsection (a)(12) ~~or (13)~~, deputy waterways <—
28 patrolmen may exercise all the powers and perform all the duties
29 conferred by this section on waterways patrolmen.

30 § 923. CLASSIFICATION OF OFFENSES AND PENALTIES. <—

(A) GENERAL RULE.--THE FOLLOWING PENALTIES SHALL BE IMPOSED FOR VIOLATIONS OF THIS TITLE:

(1) FOR A SUMMARY OFFENSE OF THE FIRST DEGREE, A FINE OF \$100 OR IMPRISONMENT NOT EXCEEDING 90 DAYS.

(2) FOR A SUMMARY OFFENSE OF THE SECOND DEGREE, A FINE OF \$25 OR IMPRISONMENT NOT EXCEEDING 20 DAYS.

(3) FOR A SUMMARY OFFENSE OF THE THIRD DEGREE, A FINE OF \$10.

(4) FOR A MISDEMEANOR OF THE THIRD DEGREE, A FINE OF NOT LESS THAN \$250 NOR MORE THAN \$2,500, OR IMPRISONMENT NOT EXCEEDING 90 DAYS, OR BOTH.

(5) FOR A FELONY OF THE THIRD DEGREE, A FINE NOT EXCEEDING \$15,000 OR IMPRISONMENT NOT EXCEEDING 7 YEARS, OR BOTH.

* * *

(C) TITLE 18 INAPPLICABLE.--TITLE 18 (RELATING TO CRIMES AND OFFENSES) IS INAPPLICABLE TO THIS TITLE INsofar AS IT RELATES TO FINES AND IMPRISONMENT FOR CONVICTIONS OF SUMMARY OFFENSES [AND], MISDEMEANORS AND FELONIES.

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

(a) [General rule] Revocation or denial.--Any fishing license, special license or permit or boat registration granted under the authority of this title may be revoked by the commission, in its discretion, when the holder of the license, permit or registration is convicted of an offense under this title. Further, the commission, in its discretion, may refuse to grant to that person any new fishing license, special license or permit or boat registration for a period not exceeding two years.

1 **(b) Suspension.--The commission shall for a period of one**
2 **year suspend any fishing license, special license or permit or** <—
3 **boat registration AND THE PRIVILEGE OF OPERATING A WATERCRAFT ON** <—
4 **THE WATERS OF THIS COMMONWEALTH of any individual who is**
5 **convicted of a violation of section 5502 (relating to operating**
6 **watercraft under influence of alcohol or controlled substance)**
7 **or 5502.1 (relating to homicide by watercraft while operating**
8 **under influence) or an adjudication of delinquency based on**
9 **section 5502 or 5502.1. The commission shall refuse to grant to**
10 **that person any new fishing license, special license or permit** <—
11 **or boat registration for a period of one year from the date of**
12 **the offense.**

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

17 **(D) PENALTY.--A PERSON COMMITS A SUMMARY OFFENSE OF THE** <—
18 **FIRST DEGREE IF HE PERFORMS AN ACT FOR WHICH A FISHING LICENSE,**
19 **SPECIAL LICENSE, PERMIT OR BOAT REGISTRATION IS REQUIRED OR**
20 **EXERCISES A PRIVILEGE, INCLUDING THE PRIVILEGE TO OPERATE A**
21 **WATERCRAFT ON THE WATERS OF THIS COMMONWEALTH, WHILE THE**
22 **LICENSE, PERMIT REGISTRATION OR PRIVILEGE IS SUSPENDED OR**
23 **REVOKED. A PERSON COMMITS A MISDEMEANOR OF THE THIRD DEGREE IF**
24 **HE COMMITS A SECOND OR SUBSEQUENT VIOLATION OF A SUSPENSION OR**
25 **REVOCATION DURING ITS TERM.**

26 ~~§ 5123. General boating regulations.~~ <—

27 ~~(a) General rule. The commission may promulgate such rules~~
28 ~~and regulations as it deems appropriate to provide for the~~
29 ~~operation and navigation of boats, including the rules of the~~
30 ~~road for boating, the ways, manner, methods and means of~~

1 ~~boating, the management of boats and the use thereof and the~~
2 ~~protection of waters for boating purposes. The rules and~~
3 ~~regulations may relate to:~~

4 ~~(1) Protection of the health and safety of persons on~~
5 ~~boats, towed by boats, or on, in or along the waters of this~~
6 ~~Commonwealth.~~

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

10 ~~(3) Boat noise and sound levels.~~

11 ~~(4) Capacity and loading of boats.~~

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

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

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

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

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

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

28 ~~* * *~~

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

30 § 5125. Chemical testing to determine amount of alcohol or

1 controlled substance.

2 (a) General rule.--Any person who operates or is in actual
3 physical control of the movement of a watercraft, upon, in or
4 through the waters of this Commonwealth, shall be deemed to have
5 given consent to one or more chemical tests of breath, blood or
6 urine for the purpose of determining the alcoholic content of
7 blood or the presence of a controlled substance if a waterways
8 patrolman has reasonable grounds to believe the person has been
9 operating or in actual physical control of the movement of a
10 watercraft:

11 (1) while under the influence of alcohol or a controlled
12 substance or both; or

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

16 (b) Suspension for refusal.--

17 (1) If any person placed under arrest for a violation of
18 section 5502 (relating to operating watercraft under
19 influence of alcohol or controlled substance) is requested to
20 submit to chemical testing and refuses to do so, the testing
21 shall not be conducted but, upon notice by the waterways
22 patrolman, the commission shall suspend the fishing and
23 boating privileges AND BOAT REGISTRATION of the person for a <—
24 period of 12 months.

25 (2) It is the duty of the waterways patrolman to inform
26 the person that the person's ~~fishing and~~ boating privileges <—
27 AND BOAT REGISTRATION will be suspended upon refusal to <—
28 submit to chemical testing.

29 (3) Any person whose ~~fishing and~~ boating privileges AND <—
30 BOAT REGISTRATION are suspended under this section shall have

1 the same right of appeal as provided for in cases of
2 suspension for other reasons.

3 (c) Test results admissible in evidence.--In any summary
4 proceeding or criminal proceeding in which the defendant is
5 charged with a violation of section 5502 or any other violation
6 of this title arising out of the same action, the amount of
7 alcohol or controlled substance in the defendant's blood, as
8 shown by chemical testing of the person's breath, blood or urine
9 by tests conducted by qualified persons using approved
10 equipment, shall be admissible in evidence:

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

25 (2) Chemical tests of blood or urine shall be performed
26 by a clinical laboratory licensed and approved by the
27 Department of Health for this purpose using procedures and
28 equipment prescribed by the Department of Health. For
29 purposes of blood and urine testing, a qualified person means
30 an individual who is authorized to perform those chemical

1 tests under the act of September 26, 1951 (P.L.1539, No.389),
2 known as The Clinical Laboratory Act.

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

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

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

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

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

1 presumptions shall arise from this evidence but it may be
2 considered along with other factors concerning the charge.

3 (f) Other evidence admissible.--Subsections (a) through (i)
4 shall not be construed as limiting the introduction of any other
5 competent evidence bearing upon the question of whether or not
6 the defendant was under the influence of alcohol OR A CONTROLLED <—
7 SUBSTANCE OR BOTH.

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

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

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

23 (j) Immunity from civil liability and reports.--No
24 physician, nurse or technician or hospital employing the
25 physician, nurse or technician and no other employer of the
26 physician, nurse or technician shall be civilly liable for
27 properly withdrawing blood or obtaining a urine sample and
28 reporting test results to the waterways patrolman at the request
29 of a waterways patrolman under this section. No physician, nurse
30 or technician or hospital employing the physician, nurse or

1 technician may administratively refuse to perform the tests and
2 provide the results to the waterways patrolman except as may be
3 reasonably expected from unusual circumstances that pertain at
4 the time the request is made.

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

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

19 § 5502. Operating watercraft under influence of alcohol or
20 controlled substance.

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

24 (1) under the influence of alcohol to a degree which
25 renders the person incapable of safe operation of the
26 watercraft;

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

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

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

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

9 (c) Penalty.--A person violating any of the provisions of
10 this section commits a [summary offense of the first degree]
11 misdemeanor of the second degree.

12 Section 4. Title 30 is amended by adding a section to read:
13 § 5502.1. Homicide by watercraft while operating under
14 influence.

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

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

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