

No. 1984-68

AN ACT

SB 994

Amending Title 30 (Fish) of the Pennsylvania Consolidated Statutes, changing provisions relating to the revocation of boat registrations; further providing for the operation of watercraft while under the influence of alcohol or a controlled substance; providing for testing apparatus, procedures and personnel; and providing for the crime of homicide by watercraft.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) When making an arrest or apprehension or when found in the execution of a search warrant, seize all rods, reels, nets or other fishing

devices of any description, fishing or boating paraphernalia, bait, boats or any unlawful device, implement or appliance used in violation of this title.

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

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

(b) Deputy waterways patrolmen.—Except for the power conferred by subsection (a)(12), deputy waterways patrolmen may exercise all the powers and perform all the duties conferred by this section on waterways patrolmen. § 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 of not less than \$2,500 nor exceeding \$15,000, or imprisonment not exceeding seven 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] *privilege* 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] *privilege* 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] *privilege* for a period not exceeding two years.

(b) *Suspension*.—*The commission shall for a period of one year suspend the privilege of operating a watercraft on the waters of this Commonwealth*

of any individual who is convicted of a violation of section 5502 (relating to operating watercraft under influence of alcohol or controlled substance) or 5502.1 (relating to homicide by watercraft while operating under influence) or an adjudication of delinquency based on section 5502 or 5502.1.

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

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

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

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

(2) which was involved in an accident in which the operator or any person involved required treatment at a medical facility or was killed.

(b) Suspension for refusal.—

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

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

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

(c) Test results admissible in evidence.—*In any summary proceeding or criminal proceeding in which the defendant is charged with a violation of section 5502 or any other violation of this title arising out of the same action, the amount of alcohol or controlled substance in the defendant's blood, as shown by chemical testing of the person's breath, blood or urine by tests con-*

ducted by qualified persons using approved equipment, shall be admissible in evidence.

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

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

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

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

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

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

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

(f) *Other evidence admissible.—Subsections (a) through (i) shall not be construed as limiting the introduction of any other competent evidence*

bearing upon the question of whether or not the defendant was under the influence of alcohol or a controlled substance or both.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 5502.1. Homicide by watercraft while operating under influence.

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

(b) Applicability of sentencing guidelines.—The sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory penalty of this section.

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

APPROVED—The 30th day of May, A. D. 1984.

DICK THORNBURGH