

HOUSE BILL No. 5065

August 1, 1991, Introduced by Rep. Profit and referred to the Committee on Judiciary.

A bill to amend sections 73, 73a, 73b, 73c, and 73d of Act No. 303 of the Public Acts of 1967, entitled as amended "Marine safety act,"

section 73 as amended and sections 73a, 73b, 73c, and 73d as added by Act No. 231 of the Public Acts of 1982, being sections 281.1073, 281.1073a, 281.1073b, 281.1073c, and 281.1073d of the Michigan Compiled Laws; and to add sections 73e and 73f.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 73, 73a, 73b, 73c, and 73d of Act
2 No. 303 of the Public Acts of 1967, section 73 as amended and
3 sections 73a, 73b, 73c, and 73d as added by Act No. 231 of the
4 Public Acts of 1982, being sections 281.1073, 281.1073a,
5 281.1073b, 281.1073c, and 281.1073d of the Michigan Compiled
6 Laws, are amended and sections 73e and 73f are added to read as
7 follows:

1 Sec. 73. (1) A person ~~who~~ SHALL NOT OPERATE, PROPEL, OR
 2 BE IN ACTUAL PHYSICAL CONTROL OF A VESSEL UPON THE WATERS OF THIS
 3 STATE IF THAT PERSON is under the influence of ANY OF THE
 4 FOLLOWING:

5 (A) AN intoxicating liquor. ~~or a~~

6 (B) A controlled substance. ~~, as defined by section 7104~~
 7 ~~of the public health code, Act No. 368 of the Public Acts of~~
 8 ~~1978, as amended, being section 333.7104 of the Michigan Compiled~~
 9 ~~Laws, or a~~

10 (C) A combination of intoxicating liquor and a controlled
 11 substance. ~~, shall not operate, propel, or be in actual physi-~~
 12 ~~cal control of a vessel upon the waters of this state.~~

13 (2) The owner of a vessel, or a person having charge of or
 14 in control of a vessel, shall not knowingly authorize or know-
 15 ingly permit the vessel to be propelled or operated by a person
 16 who is under the influence of ~~an~~ ANY OF THE FOLLOWING:

17 (A) AN intoxicating liquor. ~~or a~~

18 (B) A controlled substance. ~~, or a~~

19 (C) A combination of an intoxicating liquor and a controlled
 20 substance. ~~A violation of this subsection is punishable as pro-~~
 21 ~~vided in subsections (3) and (4).~~

22 (3) ~~(2)~~ A peace officer may arrest a person without a war-
 23 rant when the peace officer has reasonable cause to believe that
 24 the person was, at the time of an accident, the ~~driver~~ OPERATOR
 25 of a vessel involved in the accident and was operating the vessel
 26 upon the waters of this state while ~~under~~ THAT PERSON WAS ANY
 27 OF THE FOLLOWING:

1 (A) UNDER the influence of intoxicating liquor or a
2 controlled substance. ~~, or~~

3 (B) UNDER THE INFLUENCE OF a combination of an intoxicating
4 liquor and a controlled substance. ~~or was operating a~~

5 (C) OPERATING THE vessel ~~on the waters of this state~~ while
6 ~~the~~ THAT person's ability to operate ~~a vessel~~ was visibly
7 impaired due to the consumption of intoxicating liquor or a con-
8 trolled substance, or a combination of intoxicating liquor and a
9 controlled substance.

10 (4) ~~(3)~~ A person who is convicted of a violation of
11 ~~subsection (1)~~ THIS SECTION OR A LOCAL ORDINANCE SUBSTANTIALLY
12 CORRESPONDING TO THIS SECTION is guilty of a misdemeanor, punish-
13 able by imprisonment for not more than 90 days, or a fine of not
14 less than \$100.00 ~~nor~~ OR more than \$500.00, or both, together
15 with costs of the prosecution. A subsequent offense is punish-
16 able as follows:

17 (a) On a second conviction under this section or a local
18 ordinance substantially corresponding to this section, a person
19 is guilty of a misdemeanor, punishable by imprisonment for not
20 more than 1 year, or a fine of not more than \$1,000.00, or both.

21 (b) On a third or subsequent conviction within a period of
22 10 years under this section, or a local ordinance substantially
23 corresponding to this section, a person is guilty of a felony.

24 (5) ~~(4)~~ Upon conviction of a person under this section or
25 a local ordinance substantially corresponding to this section,
26 the court ~~, in addition to the penalty imposed under subsection~~
27 ~~(3) and as part of the sentence, may order that the person not~~

1 ~~operate a vessel upon the waters of this state for a period of~~
2 ~~not more than 2 years~~ SHALL FORWARD AN ABSTRACT OF THAT CONVIC-
3 TION TO THE SECRETARY OF STATE. UPON RECEIPT OF THE ABSTRACT OF
4 CONVICTION, THE SECRETARY OF STATE SHALL RECORD THE INFORMATION
5 CONTAINED IN THE ABSTRACT.

6 (6) The court may also order the person to participate in an
7 alcohol OR CONTROLLED SUBSTANCE training program.

8 Sec. 73a. (1) In a criminal prosecution for operating a
9 vessel while under the influence of intoxicating liquor ~~for~~
10 ~~operating a vessel~~ OR while visibly impaired, or in a criminal
11 prosecution pertaining to manslaughter resulting from the opera-
12 tion of a vessel ~~while~~ while the operator is alleged to have been
13 under the influence of intoxicating liquor, the amount of alcohol
14 in the operator's blood at the time alleged as shown by chemical
15 TEST AND analysis of the person's blood, urine, or breath ~~shall~~
16 ~~be~~ IS admissible into evidence. If a CHEMICAL test is given,
17 ~~the results of the test shall be made~~ AND THE PERSON TESTED OR
18 THAT PERSON'S ATTORNEY MAKES A WRITTEN REQUEST TO THE PROSECUTION
19 FOR THE RESULTS OF THE TEST AND FILES WITH THE COURT A COPY OF
20 THE REQUEST, THE PROSECUTOR SHALL MAKE THE TEST RESULTS available
21 to ~~the person charged or the person's attorney upon written~~
22 ~~request to the prosecution, with a copy of the request filed with~~
23 ~~the court. The prosecution shall furnish the report~~ THAT PERSON
24 at least 2 days before the day of the trial IF THE RESULTS ARE
25 REQUESTED AT LEAST 2 DAYS BEFORE TRIAL, and OFFER the results
26 ~~shall be offered~~ as evidence ~~by the prosecution~~ in a criminal
27 proceeding. ~~Failure~~ A PROSECUTOR'S FAILURE to fully comply

1 with the request shall bar the ~~admission of~~ PROSECUTION FROM
2 ADMITTING the results into evidence. ~~by the prosecution.~~ The
3 amount of alcohol in the operator's blood at the time alleged as
4 shown by chemical analysis of the person's blood, urine, or
5 breath ~~shall give~~ GIVES rise to the following presumptions:

6 (a) If there was at the time 0.07% or less by weight of
7 alcohol in the defendant's blood, ~~it shall be presumed that~~ the
8 defendant ~~was~~ IS PRESUMED not TO HAVE BEEN under the influence
9 of intoxicating liquor.

10 (b) If there was at the time in excess of 0.07% but less
11 than 0.10% by weight of alcohol in the defendant's blood, ~~it~~
12 ~~shall be presumed that~~ the defendant's ability to operate a
13 vessel ~~was~~ IS PRESUMED TO HAVE BEEN impaired within the provi-
14 sions of section 73b due to the consumption of intoxicating
15 liquor.

16 (c) If there was at the time 0.10% or more by weight of
17 alcohol in the defendant's blood, ~~it shall be presumed that~~ the
18 defendant ~~was~~ IS PRESUMED TO HAVE BEEN under the influence of
19 intoxicating liquor.

20 (2) ~~A~~ IF A PEACE OFFICER REQUESTS AND A PERSON CONSENTS TO
21 PROVIDE A sample or specimen of urine or breath, THE SPECIMEN
22 shall be taken and collected in a reasonable manner. Only a
23 licensed physician, or a licensed nurse or medical technician
24 under the direction of a licensed physician and qualified to
25 withdraw blood acting in a medical environment, at the request of
26 a peace officer, may withdraw blood for the purpose of
27 determining the alcoholic content of ~~the~~ THAT blood under this

1 act. ~~Liability for a crime or civil damages predicated on the~~
2 ~~act of withdrawing blood and related procedures shall not attach~~
3 ~~to~~ IF a qualified person who withdraws blood or assists in ~~the~~
4 BLOOD withdrawal in accordance with this act ~~unless the with-~~
5 ~~drawal is performed~~ DOES NOT ACT in a negligent manner, HE OR
6 SHE IS IMMUNE FROM CIVIL OR CRIMINAL LIABILITY FOR THE BLOOD
7 WITHDRAWAL OR RELATED PROCEDURES.

8 (3) A person charged with a crime enumerated in subsection
9 (1) who takes a chemical test administered at the request of a
10 peace officer, as provided in subsections (1) and (2), shall be
11 informed that the person will be given a reasonable opportunity
12 to have a person of his or her own ~~choosing~~ CHOICE administer 1
13 of the chemical tests, as provided in this section, within a rea-
14 sonable time after his or her detention, and the results of the
15 test ~~shall be~~ ARE admissible and ~~shall be considered~~ THE
16 TRIER OF FACT SHALL CONSIDER THEM with other competent evidence
17 in determining the innocence or guilt of the defendant. A PEACE
18 OFFICER WHO REQUESTS THAT A person charged with a crime enumer-
19 ated in subsection (1) ~~who is requested by the peace officer to~~
20 take a chemical test as provided in ~~subsections (1) and (2)~~
21 ~~shall be informed~~ SUBSECTION (2) SHALL INFORM THE PERSON that he
22 or she has the right to demand that 1 of the tests provided for
23 in subsection (1) ~~shall~~ be given him or her, and the results of
24 the test ~~shall be~~ ARE admissible and ~~shall be considered~~ THE
25 TRIER OF FACT SHALL CONSIDER THOSE TEST RESULTS with other compe-
26 tent evidence in determining the innocence or guilt of the
27 defendant.

1 (4) ~~The~~ A PEACE OFFICER SHALL ADVISE A person charged
2 ~~shall be advised that~~ WITH A CRIME ENUMERATED IN SUBSECTION (1)
3 OF THE FOLLOWING:

4 (A) THAT the person may refuse to take a test as provided in
5 this section. ~~and, except~~

6 (B) THAT THE REFUSAL MAY RESULT IN THE ISSUANCE OF A COURT
7 ORDER ENJOINING THAT PERSON FROM OPERATING A VESSEL ON THE WATERS
8 OF THIS STATE FOR A PERIOD OF NOT LESS THAN 60 DAYS.

9 (C) EXCEPT as provided in section 73c(2), that the refusal
10 is admissible in evidence as provided in subsection (7).

11 (5) This section ~~shall not be construed as limiting~~ DOES
12 NOT LIMIT the introduction of any other competent evidence bear-
13 ing upon the question of whether ~~or not the defendant~~ A PERSON
14 was under the influence of intoxicating liquor.

15 (6) Notwithstanding any other provision of this act, A PEACE
16 OFFICER SHALL ADVISE a person requested to take a test ~~shall be~~
17 ~~advised that he or she has the option to~~ THAT THE PERSON MAY
18 demand that only a breath test ~~shall~~ be given, ~~in which case~~
19 ~~his or her~~ AND THAT THE PERSON'S refusal to submit to another
20 test ~~shall~~ DOES not constitute a refusal.

21 (7) If a jury instruction regarding a defendant's refusal to
22 submit to a chemical test under this section is requested by the
23 prosecution or the defendant, the ~~jury instruction shall be~~
24 ~~given as follows~~ COURT SHALL PROVIDE THE JURY WITH THE FOLLOWING
25 INSTRUCTION:

26 "Evidence was admitted in this case which, if believed by
27 the jury, could prove that the defendant had exercised his or her

1 right to refuse a chemical test. You are instructed that such a
2 refusal is within the statutory rights of the defendant and is
3 not evidence of the defendant's guilt. You are not to consider
4 such a refusal in determining the guilt or innocence of the
5 defendant."

6 Sec. 73b. (1) A person shall not operate a vessel upon the
7 waters of this state when, due to the consumption of an intoxi-
8 cating liquor, a controlled substance, or a combination of an
9 intoxicating liquor and a controlled substance, the person has
10 visibly impaired his or her ability to operate the vessel. If a
11 person is ~~charged with~~ CONVICTED OF violating section 73, ~~a~~
12 ~~finding of guilty is permissible under~~ THAT PERSON MAY BE FOUND
13 GUILTY OF A VIOLATION OF this section.

14 (2) A person convicted of a violation of this section is
15 guilty of a misdemeanor, punishable by imprisonment for not more
16 than 90 days, or a fine of not more than \$300.00, or both,
17 together with costs of the prosecution.

18 (3) On a second and subsequent conviction under this sec-
19 tion, or a local ordinance substantially corresponding to this
20 section, the person is guilty of a misdemeanor, punishable by
21 imprisonment for not more than 1 year, or a fine of not more than
22 \$1,000.00, or both.

23 Sec. 73c. (1) A person who operates a vessel upon the
24 waters of this state ~~may be requested by a peace officer to~~
25 ~~submit~~ IS CONSIDERED TO HAVE GIVEN CONSENT to chemical tests of
26 ~~his or her~~ THAT PERSON'S blood, breath, or urine for the
27 purpose of determining the alcoholic content ~~of his or her~~ OR

1 PRESENCE OF A CONTROLLED SUBSTANCE, OR BOTH, IN THAT PERSON'S
2 blood ~~if~~ UNDER THE FOLLOWING CIRCUMSTANCES:

3 (a) The person is arrested for a violation of section 73 or
4 73b or a local ordinance substantially corresponding to section
5 73 or 73b.

6 (b) The person is arrested for manslaughter resulting from
7 the operation of a vessel and the peace officer ~~had~~ HAS reason-
8 able grounds to believe that the person was operating the vessel
9 while under the influence of intoxicating liquor, or while ~~his~~
10 ~~or her~~ THE PERSON'S ability to operate the vessel was impaired
11 due to the consumption of intoxicating liquor.

12 (2) A person who is afflicted with hemophilia, diabetes, or
13 a condition requiring the use of an anticoagulant ~~under~~ the
14 direction of a physician and who refuses a chemical test shall
15 not be considered to have refused a chemical test if the test
16 requires the withdrawal of blood. This refusal is not admissible
17 ~~in~~ evidence under section 73a.

18 (3) If after an accident the operator of a vessel involved
19 in the accident is deceased, a sample of the decedent's blood
20 shall be withdrawn in a manner directed by the medical examiner
21 for the purpose of determining blood alcohol content. The
22 results of an examination of the blood of a deceased operator
23 shall be used for statistical purposes only.

24 Sec. 73d. (1) A PEACE OFFICER SHALL ADVISE A person who is
25 requested pursuant to section 73c(1) to take a chemical test
26 ~~shall be advised of~~ THAT THE PERSON HAS the right to refuse to
27 submit to chemical tests, ~~, and if~~ AND THAT A REFUSAL TO

1 CONSENT TO A CHEMICAL TEST MAY RESULT IN A COURT ORDER ENJOINING
2 THAT PERSON FROM OPERATING A VESSEL ON THE WATERS OF THIS STATE
3 FOR A PERIOD OF NOT LESS THAN 60 DAYS.

4 (2) IF the person refuses ~~the request of~~ a peace ~~officer~~
5 OFFICER'S REQUEST PURSUANT TO SECTION 73C(1) to submit to chemi-
6 cal tests, a test shall not be given without a court order. THE
7 PEACE OFFICER SHALL SUBMIT A WRITTEN REPORT TO THE COURT HAVING
8 JURISDICTION THAT STATES THAT THE PEACE OFFICER HAD REASONABLE
9 GROUNDS TO BELIEVE THE PERSON HAD VIOLATED SECTION 73 AND THAT
10 THE PERSON HAD REFUSED TO SUBMIT TO THE TEST UPON THE REQUEST OF
11 THE PEACE OFFICER AND HAD BEEN ADVISED OF THE CONSEQUENCES OF THE
12 REFUSAL. THE DEPARTMENT SHALL PRESCRIBE AND FURNISH THE FORM OF
13 THE REPORT.

14 SEC. 73E. UPON RECEIPT OF A REPORT MADE PURSUANT TO SECTION
15 73D, THE COURT SHALL IMMEDIATELY SCHEDULE A HEARING AND MAIL TO
16 THE PERSON WHO REFUSED A CHEMICAL TEST UNDER THAT SECTION, AT
17 THAT PERSON'S LAST KNOWN ADDRESS, A NOTICE STATING EACH OF THE
18 FOLLOWING:

19 (A) THE REPORT CREATED PURSUANT TO SECTION 73D HAS BEEN
20 RECEIVED.

21 (B) THE TIME, DATE, AND SITE OF THE SCHEDULED HEARING.

22 (C) THE PERSON MAY, BUT IS NOT REQUIRED TO, RETAIN COUNSEL
23 FOR THE HEARING.

24 SEC. 73F. THE HEARING HELD PURSUANT TO SECTION 73E SHALL
25 ADDRESS ONLY THE FOLLOWING ISSUES:

1 (A) WHETHER THE PEACE OFFICER HAD REASONABLE GROUNDS TO
2 BELIEVE THE PERSON COMMITTED A VIOLATION ENUMERATED IN SECTION
3 73C.

4 (B) WHETHER THE PERSON WAS PLACED UNDER ARREST FOR A VIOLA-
5 TION ENUMERATED IN SECTION 73C.

6 (C) WHETHER, UPON THE REQUEST OF A PEACE OFFICER, THE PERSON
7 REASONABLY REFUSED TO SUBMIT TO A TEST AUTHORIZED UNDER SECTION
8 73D.

9 (D) WHETHER THE PERSON WAS ADVISED OF HIS OR HER RIGHTS
10 UNDER SECTIONS 73A AND 73C.