

SENATE BILL No. 327

May 22, 1991, Introduced by Senator VAN REGENMORTER and referred to the Committee on Judiciary.

A bill to amend sections 73 and 73a of Act No. 303 of the Public Acts of 1967, entitled as amended

"Marine safety act,"

section 73 as amended and section 73a as added by Act No. 231 of the Public Acts of 1982, being sections 281.1073 and 281.1073a of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

6 Sec. 73. (1) A person who is under the influence of
7 intoxicating liquor or a controlled substance, ~~as defined by~~
8 ~~section 7104 of the public health code, Act No. 368 of the Public~~

1 ~~Acts of 1978, as amended, being section 333.7104 of the Michigan~~
2 ~~Compiled Laws,~~ or a combination of intoxicating liquor and a
3 controlled substance, shall not operate, propel, or be in actual
4 physical control of a vessel upon the waters of ~~this~~ THE
5 state.

6 (2) A PERSON WHOSE BLOOD CONTAINS 0.10% OR MORE ALCOHOL BY
7 WEIGHT OF THE ALCOHOL SHALL NOT OPERATE, PROPEL, OR BE IN ACTUAL
8 PHYSICAL CONTROL OF A VESSEL UPON THE WATERS OF THE STATE.

9 (3) The owner of a vessel, or a person having charge of or
10 in control of a vessel, shall not knowingly authorize or know-
11 ingly permit the vessel to be ~~propelled or~~ operated by, PRO-
12 PELLERED BY, OR BE IN THE ACTUAL PHYSICAL CONTROL OF a person who
13 is under the influence of an intoxicating liquor or a controlled
14 substance, or a combination of an intoxicating liquor and a con-
15 trolled substance OR BY A PERSON WHOSE BLOOD CONTAINS 0.10% OR
16 MORE ALCOHOL BY WEIGHT OF THE ALCOHOL. ~~A violation of this sub-~~
17 ~~section is punishable as provided in subsections (3) and (4).~~

18 (4) ~~-(2)-~~ A peace officer may arrest a person without a war-
19 rant when the peace officer has reasonable cause to believe that
20 the person was ~~—~~ at the time of an accident ~~—~~ the driver of a
21 vessel involved in the accident and was operating, PROPELLING, OR
22 IN ACTUAL PHYSICAL CONTROL OF the vessel upon the waters of
23 ~~this~~ THE state while under the influence of intoxicating liquor
24 or a controlled substance, or a combination of an intoxicating
25 liquor and a controlled substance, OR WAS OPERATING, PROPELLING,
26 OR IN ACTUAL PHYSICAL CONTROL OF A VESSEL UPON THE WATERS OF THE
27 STATE WHILE THE PERSON'S BLOOD CONTAINED 0.10% OR MORE ALCOHOL BY

1 WEIGHT OF THE ALCOHOL, or was operating, PROPELLING, OR IN ACTUAL
2 PHYSICAL CONTROL OF a vessel on the waters of ~~this~~ THE state
3 while the person's ability to operate a vessel was visibly
4 impaired due to the consumption of intoxicating liquor or a con-
5 trolled substance or a combination of intoxicating liquor and a
6 controlled substance.

7 (5) ~~(3)~~ A person who is convicted of a violation of sub-
8 section (1), (2), OR (3) is guilty of a misdemeanor, punishable
9 by imprisonment for not more than ~~90~~ 93 days, or a fine of not
10 less than \$100.00 ~~nor~~ OR more than \$500.00, or both, together
11 with costs of the prosecution. AS PART OF THE SENTENCE, THE
12 COURT SHALL ORDER THAT THE PERSON NOT OPERATE A VESSEL UPON THE
13 WATERS OF THE STATE FOR A PERIOD OF NOT LESS THAN 1 YEAR. A sub-
14 sequent offense is punishable as follows:

15 (a) ~~On~~ UPON a second conviction under ~~this section~~
16 SUBSECTION (1), (2), OR (3) or a local ordinance substantially
17 corresponding to ~~this section,~~ a SUBSECTION (1), (2), OR (3),
18 THE person is guilty of a misdemeanor, punishable by imprisonment
19 for not more than 1 year, or a fine of not LESS THAN \$250.00 OR
20 more than \$1,000.00, or both. AS PART OF THE SENTENCE, THE COURT
21 SHALL ORDER THAT THE PERSON NOT OPERATE A VESSEL UPON THE WATERS
22 OF THE STATE FOR A PERIOD OF NOT LESS THAN 2 YEARS.

23 (b) ~~On~~ UPON a third or subsequent conviction within a
24 period of 10 years under ~~this section,~~ SUBSECTION (1), (2), OR
25 (3) or a local ordinance substantially corresponding to ~~this~~
26 ~~section,~~ a SUBSECTION (1), (2), OR (3), THE person is guilty of
27 a felony, PUNISHABLE BY IMPRISONMENT FOR NOT LESS THAN 1 YEAR OR

1 MORE THAN 5 YEARS, OR A FINE OF NOT LESS THAN \$500.00 OR MORE
2 THAN \$5,000.00, OR BOTH. AS PART OF THE SENTENCE, THE COURT
3 SHALL ORDER THAT THE PERSON NOT OPERATE A VESSEL UPON THE WATERS
4 OF THE STATE FOR A PERIOD OF NOT LESS THAN 2 YEARS.

5 (6) UPON CONVICTION OF A PERSON UNDER THIS SECTION OR A
6 LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO THIS SECTION, THE
7 COURT SHALL FORWARD AN ABSTRACT OF CONVICTION TO THE SECRETARY OF
8 STATE. UPON RECEIPT OF THE ABSTRACT OF CONVICTION, THE SECRETARY
9 OF STATE SHALL RECORD THE INFORMATION.

10 (7) ~~-(4)-~~ Upon conviction of a person under this section or
11 a local ordinance substantially corresponding to this section,
12 the court ~~-, in addition to the penalty imposed under subsection~~
13 ~~(3) and as part of the sentence, may order that the person not~~
14 ~~operate a vessel upon the waters of this state for a period of~~
15 ~~not more than 2 years. The court may also order~~ AS PART OF
16 THE SENTENCE THAT the person ~~to~~ participate in an alcohol
17 training program.

18 (8) AS USED IN THIS SECTION, "CONTROLLED SUBSTANCE" MEANS
19 THAT TERM AS DEFINED IN SECTION 7104 OF THE PUBLIC HEALTH CODE,
20 ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTION 333.7104 OF
21 THE MICHIGAN COMPILED LAWS.

22 Sec. 73a. (1) In a criminal prosecution for ~~operating a~~
23 ~~vessel while under the influence of intoxicating liquor, for~~
24 ~~operating a vessel while visibly impaired~~ A VIOLATION OF
25 SECTION 73(1), (2), OR (3), SECTION 73B, OR A LOCAL ORDINANCE
26 SUBSTANTIALLY CORRESPONDING TO SECTION 73(1), (2), OR (3), OR
27 SECTION 73B, or in a criminal prosecution pertaining to

1 manslaughter OR MURDER resulting from ~~the operation~~ OPERATING,
2 PROPELLING, OR BEING IN ACTUAL PHYSICAL CONTROL of a vessel ~~—~~,
3 while ~~the operator is alleged to have been~~ under the influence
4 of intoxicating liquor, the amount of alcohol in the operator's
5 blood at the time alleged as shown by chemical analysis of the
6 person's blood, urine, or breath ~~shall be~~ IS admissible into
7 evidence. If a test is given, the results of the test shall be
8 made available to the person charged or the person's attorney
9 upon written request to the prosecution, with a copy of the
10 request filed with the court. The prosecution shall furnish the
11 report at least 2 days before the day of the trial and the
12 results shall be offered as evidence by the prosecution in a
13 criminal proceeding. Failure to fully comply with the request
14 shall bar the admission of the results into evidence by the
15 prosecution. ~~The~~ EXCEPT IN A PROSECUTION RELATING SOLELY TO A
16 VIOLATION OF SECTION 73(2) OR A LOCAL ORDINANCE SUBSTANTIALLY
17 CORRESPONDING TO SECTION 73(2), THE amount of alcohol in the
18 operator's blood at the time alleged as shown by chemical analy-
19 sis of the person's blood, urine, or breath ~~shall give rise to~~
20 RAISES the following presumptions:

21 (a) If there was at the time ~~0.07%~~ 0.05% or less by weight
22 of alcohol in the defendant's blood, it ~~shall be~~ IS presumed
23 that the defendant was not under the influence of intoxicating
24 liquor.

25 (b) If there was at the time in excess of ~~0.07%~~ 0.05% but
26 less than 0.10% by weight of alcohol in the defendant's blood, it
27 ~~shall be~~ IS presumed that the defendant's ability to operate a

1 vessel was impaired within the provisions of section 73b due to
2 the consumption of intoxicating liquor.

3 (c) If there was at the time 0.10% or more by weight of
4 alcohol in the defendant's blood, it ~~shall be~~ IS presumed that
5 the defendant was under the influence of intoxicating liquor.

6 (2) A sample or specimen of urine or breath ~~shall~~ IS TO be
7 taken and collected in a reasonable manner. Only a licensed phy-
8 sician, or a licensed nurse or medical technician under the
9 direction of a licensed physician and qualified to withdraw blood
10 acting in a medical environment, at the request of a peace offi-
11 cer, may withdraw blood for the purpose of determining the alco-
12 holic content of the blood under this act. Liability for a crime
13 or civil damages predicated on the act of withdrawing blood and
14 related procedures ~~shall~~ DO not attach to a qualified person
15 who withdraws blood or assists in the withdrawal in accordance
16 with this act unless the withdrawal is performed in a negligent
17 manner.

18 (3) A PEACE OFFICER REQUESTING THAT A person WHO IS charged
19 with a crime enumerated in subsection (1) ~~who takes~~ TAKE a
20 chemical test ~~administered at the request of a peace officer,~~
21 as provided in subsections (1) and (2), shall ~~be informed that~~
22 INFORM the person THAT HE OR SHE will be given a reasonable
23 opportunity to have a person of his or her own choosing adminis-
24 ter 1 of the chemical tests ~~—~~ as provided in this section ~~—~~
25 within a reasonable time after his or her detention, and the
26 results of the ADDITIONAL test ~~shall be~~ ARE admissible and
27 ~~shall be~~ considered with other competent evidence in

1 determining the innocence or guilt of the defendant. A PEACE
2 OFFICER REQUESTING THAT A person WHO IS charged with a crime enu-
3 merated in subsection (1) ~~who is requested by the peace officer~~
4 ~~to~~ take a chemical test as provided in subsections (1) and (2)
5 shall ~~be informed~~ INFORM THE PERSON that he or she has the
6 right to demand that 1 of the tests provided for in subsection
7 (1) ~~shall~~ be given TO him or her, and the results of the
8 ADDITIONAL test ~~shall be~~ ARE admissible and ~~shall be~~ consid-
9 ered with other competent evidence in determining the innocence
10 or guilt of the defendant.

11 (4) ~~The~~ A PEACE OFFICER SHALL ADVISE A person charged
12 ~~shall be advised~~ that the person may refuse to take a CHEMICAL
13 test as provided in this section ~~and, except as provided in sec-~~
14 ~~tion 73c (2),~~ that the refusal is admissible ~~in evidence as~~
15 ~~provided in subsection (7)~~ IN A CRIMINAL PROSECUTION ONLY FOR
16 THE PURPOSE OF SHOWING THAT A TEST WAS OFFERED TO THE DEFENDANT,
17 BUT NOT AS EVIDENCE IN DETERMINING THE INNOCENCE OR GUILT OF THE
18 DEFENDANT.

19 (5) This section ~~shall~~ IS not TO be construed as limiting
20 the introduction of any other competent evidence bearing upon the
21 question of whether or not the defendant was under the influence
22 of intoxicating liquor.

23 ~~(6) Notwithstanding any other provision of this act, a~~
24 ~~person requested to take a test shall be advised that he or she~~
25 ~~has the option to demand that only a breath test shall be given,~~
26 ~~in which case his or her refusal to submit to another test shall~~
27 ~~not constitute a refusal.~~

1 ~~-(7) If a jury instruction regarding a defendant's refusal~~
2 ~~to submit to a chemical test under this section is requested by~~
3 ~~the prosecution or the defendant, the jury instruction shall be~~
4 ~~given as follows:~~

5 ~~"Evidence was admitted in this case which, if believed by~~
6 ~~the jury, could prove that the defendant had exercised his or her~~
7 ~~right to refuse a chemical test. You are instructed that such a~~
8 ~~refusal is within the statutory rights of the defendant and is~~
9 ~~not evidence of the defendant's guilt. You are not to consider~~
10 ~~such a refusal in determining the guilt or innocence of the~~
11 ~~defendant."~~