

SENATE BILL No. 328

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

A bill to amend sections 73c and 73d of Act No. 303 of the Public Acts of 1967, entitled as amended "Marine safety act," as added by Act No. 231 of the Public Acts of 1982, being sections 281.1073c and 281.1073d of the Michigan Compiled Laws; and to add section 73e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

6 Sec. 73c. (1) A person who operates a vessel upon the
7 waters of this state may be requested by a peace officer to
8 submit to chemical tests of his or her blood, breath, or urine

1 for the purpose of determining the ~~alcoholic content~~ AMOUNT of
2 ALCOHOL OR PRESENCE OF A CONTROLLED SUBSTANCE, OR BOTH, IN his or
3 her blood ~~if~~ UNDER 1 OR MORE OF THE FOLLOWING CIRCUMSTANCES:

4 (a) The person is arrested for a violation of section 73 or
5 73b, or a local ordinance substantially corresponding to section
6 73 or 73b.

7 (b) The person is arrested for manslaughter OR MURDER
8 resulting from the operation of a vessel and the peace officer
9 had reasonable grounds to believe that the person was operating
10 the vessel while under the influence of intoxicating liquor OR A
11 CONTROLLED SUBSTANCE, OR A COMBINATION OF AN INTOXICATING LIQUOR
12 AND A CONTROLLED SUBSTANCE, OR WHILE HIS OR HER BLOOD CONTAINED
13 0.10% OR MORE ALCOHOL BY WEIGHT OF THE ALCOHOL, or while his or
14 her ability to operate the vessel was impaired due to the con-
15 sumption of intoxicating liquor OR A CONTROLLED SUBSTANCE, OR A
16 COMBINATION OF INTOXICATING LIQUOR AND A CONTROLLED SUBSTANCE.

17 (2) IF A PERSON REFUSES TO TAKE A CHEMICAL TEST PURSUANT TO
18 SUBSECTION (1) UPON A LAWFUL REQUEST BY A PEACE OFFICER, THE
19 PERSON IS RESPONSIBLE FOR A CIVIL INFRACTION AND THE CIVIL SANC-
20 TION OF NOT OPERATING A VESSEL UPON THE WATERS OF THE STATE FOR A
21 PERIOD OF 1 YEAR.

22 (3) ~~-(2)-~~ A person who is afflicted with hemophilia, diabe-
23 tes, or a condition requiring the use of an anticoagulant under
24 the direction of a physician and who refuses a chemical test
25 ~~shall~~ PURSUANT TO SUBSECTION (1) IS not ~~be~~ considered to have
26 refused a chemical test if the test requires the withdrawal of

1 blood. ~~This~~ A refusal UNDER THIS SUBSECTION is not admissible
2 in evidence under section 73a.

3 (4) IF AFTER AN ACCIDENT THE OPERATOR OF A VESSEL INVOLVED
4 IN THE ACCIDENT IS TRANSPORTED TO A MEDICAL FACILITY AND A SAMPLE
5 OF THE OPERATOR'S BLOOD IS WITHDRAWN AT THAT TIME FOR THE PURPOSE
6 OF MEDICAL TREATMENT, THE RESULTS OF A CHEMICAL ANALYSIS OF THAT
7 SAMPLE ARE ADMISSIBLE IN A CRIMINAL PROSECUTION TO SHOW THE
8 AMOUNT OF ALCOHOL OR PRESENCE OF A CONTROLLED SUBSTANCE, OR BOTH,
9 IN THE PERSON'S BLOOD AT THE TIME ALLEGED, REGARDLESS OF WHETHER
10 THE PERSON HAD BEEN OFFERED OR HAD REFUSED A CHEMICAL TEST. THE
11 MEDICAL FACILITY OR PERSON PERFORMING THE CHEMICAL ANALYSIS SHALL
12 DISCLOSE THE RESULTS OF THE ANALYSIS TO A PROSECUTING ATTORNEY
13 WHO REQUESTS THE RESULTS FOR USE IN A CRIMINAL PROSECUTION AS
14 PROVIDED IN THIS SUBSECTION. A MEDICAL FACILITY OR PERSON DIS-
15 CLOSING INFORMATION IN COMPLIANCE WITH THIS SUBSECTION IS NOT
16 CIVILLY OR CRIMINALLY LIABLE FOR MAKING THE DISCLOSURE.

17 (5) ~~(3)~~ If after an accident the operator of a vessel
18 involved in the accident ~~is deceased~~ DIES, a sample of the
19 decedent's blood shall be withdrawn in a manner directed by the
20 medical examiner for the purpose of determining blood alcohol
21 content OR PRESENCE OF A CONTROLLED SUBSTANCE, OR BOTH. ~~The~~
22 ~~results of an examination of the blood of a deceased operator~~
23 ~~shall be used for statistical purposes only.~~

24 Sec. 73d. A person who is requested pursuant to section
25 73c(1) to take a chemical test shall be advised of BOTH OF the
26 FOLLOWING:

1 (A) THE right OF THE PERSON to refuse to ~~submit to~~ TAKE
2 THE chemical ~~tests, and if~~ TEST.

3 (B) A REFUSAL TO TAKE THE CHEMICAL TEST IS A CIVIL INFRAC-
4 TION AND THE CIVIL SANCTION IMPOSED IS NOT OPERATING A VESSEL
5 UPON THE WATERS OF THE STATE FOR A PERIOD OF 1 YEAR. IF the
6 person refuses the request of a peace officer to submit to A
7 chemical ~~tests~~ TEST, ~~a~~ THE test shall not be given without a
8 court order.

9 SEC. 73E. (1) A PEACE OFFICER WHO HAS REASONABLE CAUSE TO
10 BELIEVE THAT A PERSON WAS OPERATING, PROPELLING, OR IN ACTUAL
11 PHYSICAL CONTROL OF A VEHICLE UPON THE WATERS OF THE STATE WHILE
12 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR A CONTROLLED SUB-
13 STANCE, OR A COMBINATION OF AN INTOXICATING LIQUOR AND A CON-
14 TROLLED SUBSTANCE, MAY REQUEST THE PERSON TO TAKE A PRELIMINARY
15 CHEMICAL BREATH ANALYSIS.

16 (2) A PEACE OFFICER MAY ARREST A PERSON BASED IN WHOLE OR IN
17 PART UPON THE RESULTS OF A PRELIMINARY CHEMICAL BREATH ANALYSIS.

18 (3) THE RESULTS OF A PRELIMINARY CHEMICAL BREATH ANALYSIS
19 ARE ADMISSIBLE IN EVIDENCE SOLELY TO ASSIST THE COURT IN DETER-
20 MINING A CHALLENGE TO THE VALIDITY OF AN ARREST. THIS SUBSECTION
21 DOES NOT LIMIT THE INTRODUCTION OF OTHER COMPETENT EVIDENCE
22 OFFERED TO ESTABLISH THE VALIDITY OF AN ARREST.

23 (4) A PERSON WHO REFUSES TO TAKE A PRELIMINARY CHEMICAL
24 BREATH ANALYSIS UPON A LAWFUL REQUEST BY A PEACE OFFICER IS
25 RESPONSIBLE FOR A CIVIL INFRACTION AND A CIVIL FINE OF \$100.00.

26 (5) A PERSON WHO SUBMITS TO A PRELIMINARY CHEMICAL BREATH
27 ANALYSIS SHALL REMAIN SUBJECT TO THE REQUIREMENTS OF

1 SECTIONS 73A, 73C, AND 73D FOR THE PURPOSES OF CHEMICAL TESTS
2 DESCRIBED IN THOSE SECTIONS.