

# HOUSE BILL No. 4474

March 20, 1989, Introduced by Reps. London, Porreca, Martin, Gilmer, Law, Randall, Fitzgerald, Weeks, Ouwinga, Strand, Bender, Krause, DeLange, Van Regenmorter, Trim, Ostling and Stopczynski and referred to the Committee on Marine Affairs and Port Development.

A bill to amend sections 73a and 73c 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 281.1073a and 281.1073c of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 73a and 73c 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 281.1073a and 281.1073c of the Michigan  
4 Compiled Laws, are amended to read as follows:

5       Sec. 73a. (1) In a criminal prosecution for operating a  
6 vessel while under the influence of intoxicating liquor, for  
7 operating a vessel while visibly impaired, or in a criminal  
8 prosecution pertaining to manslaughter OR OTHER OFFENSE WHICH  
9 RESULTS IN A SERIOUS OR AGGRAVATED INJURY TO A PERSON OR THE

1 DEATH OF A PERSON, resulting from the operation of a vessel,  
2 while the operator is alleged to have been under the influence of  
3 intoxicating liquor, the amount of alcohol in the operator's  
4 blood at the time alleged as shown by chemical analysis of the  
5 person's blood, urine, or breath shall be admissible into  
6 evidence. If a test is given, the results of the test shall be  
7 made available to the person charged or the person's attorney  
8 upon written request to the prosecution, with a copy of the  
9 request filed with the court. The prosecution shall furnish the  
10 report at least 2 days before the day of the trial and the  
11 results shall be offered as evidence by the prosecution in a  
12 criminal proceeding. Failure to fully comply with the request  
13 shall bar the admission of the results into evidence by the  
14 prosecution. The amount of alcohol in the operator's blood at  
15 the time alleged as shown by chemical analysis of the person's  
16 blood, urine, or breath shall give rise to the following  
17 presumptions:

18 (a) If there was at the time 0.07% or less by weight of  
19 alcohol in the defendant's blood, it shall be presumed that the  
20 defendant was not under the influence of intoxicating liquor.

21 (b) If there was at the time in excess of 0.07% but less  
22 than 0.10% by weight of alcohol in the defendant's blood, it  
23 shall be presumed that the defendant's ability to operate a  
24 vessel was impaired within the provisions of section 73b due to  
25 the consumption of intoxicating liquor.

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

4 (2) A sample or specimen of urine or breath shall be taken  
5 and collected in a reasonable manner. Only a licensed physician,  
6 or a licensed nurse or medical technician under the direction of  
7 a licensed physician and qualified to withdraw blood acting in a  
8 medical environment, at the request of a peace officer, may with-  
9 draw blood for the purpose of determining the alcoholic content  
10 of the blood under this act. Liability for a crime or civil dam-  
11 ages predicated on the act of withdrawing blood and related pro-  
12 cedures shall not attach to a qualified person who withdraws  
13 blood or assists in the withdrawal in accordance with this act  
14 unless the withdrawal is performed in a negligent manner.

15 (3) A person charged with a crime enumerated in subsection  
16 (1) who takes a chemical test administered at the request of a  
17 peace officer, as provided in subsections (1) and (2), shall be  
18 informed that the person will be given a reasonable opportunity  
19 to have a person of his or her own choosing administer 1 of the  
20 chemical tests, as provided in this section, within a reasonable  
21 time after his or her detention, and the results of the test  
22 shall be admissible and shall be considered with other competent  
23 evidence in determining the innocence or guilt of the defendant.  
24 A person charged with a crime enumerated in subsection (1) who is  
25 requested by the peace officer to take a chemical test as pro-  
26 vided in subsections (1) and (2) shall be informed that he or she  
27 has the right to demand that 1 of the tests provided for in

1 subsection (1) shall be given him or her, and the results of the  
2 test shall be admissible and shall be considered with other com-  
3 petent evidence in determining the innocence or guilt of the  
4 defendant.

5 (4) The person charged shall be advised that the person may  
6 refuse to take a test as provided in this section and, except as  
7 provided in section 73c(2), that the refusal is admissible in  
8 evidence as provided in subsection (7).

9 (5) This section shall not be construed as limiting the  
10 introduction of any other competent evidence bearing upon the  
11 question of whether or not the defendant was under the influence  
12 of intoxicating liquor.

13 (6) Notwithstanding any other provision of this act, a  
14 person requested to take a test shall be advised that he or she  
15 has the option to demand that only a breath test shall be given,  
16 in which case his or her refusal to submit to another test shall  
17 not constitute a refusal.

18 (7) If a jury instruction regarding a defendant's refusal to  
19 submit to a chemical test under this section is requested by the  
20 prosecution or the defendant, the jury instruction shall be given  
21 as follows:

22 "Evidence was admitted in this case which, if believed by  
23 the jury, could prove that the defendant had exercised his or her  
24 right to refuse a chemical test. You are instructed that such a  
25 refusal is within the statutory rights of the defendant and is  
26 not evidence of the defendant's guilt. You are not to consider

1 such a refusal in determining the guilt or innocence of the  
2 defendant."

3       Sec. 73c. (1) A person who operates a vessel upon the  
4 waters of this state may be requested by a peace officer to  
5 submit to chemical tests of his or her blood, breath, or urine  
6 for the purpose of determining the alcoholic content of his or  
7 her blood if:

8       (a) The person is arrested for a violation of section 73 or  
9 73b or a local ordinance substantially corresponding to section  
10 73 or 73b.

11       (b) The person is arrested for manslaughter OR ANOTHER  
12 OFFENSE WHICH RESULTS IN A SERIOUS OR AGGRAVATED INJURY TO A  
13 PERSON OR THE DEATH OF A PERSON, resulting from the operation of  
14 a vessel and the peace officer had reasonable grounds to believe  
15 that the person was operating the vessel while under the influ-  
16 ence of intoxicating liquor, or while his or her ability to oper-  
17 ate the vessel was impaired due to the consumption of intoxicat-  
18 ing liquor.

19       (2) A person who is afflicted with hemophilia, diabetes, or  
20 a condition requiring the use of an anticoagulant under the  
21 direction of a physician and who refuses a chemical test shall  
22 not be considered to have refused a chemical test if the test  
23 requires the withdrawal of blood. This refusal is not admissible  
24 in evidence under section 73a.

25       (3) If after an accident the operator of a vessel involved  
26 in the accident is deceased, a sample of the decedent's blood  
27 shall be withdrawn in a manner directed by the medical examiner

1 for the purpose of determining blood alcohol content. The  
2 results of an examination of the blood of a deceased operator  
3 shall be used for statistical purposes only.