

S B

2 0

Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: SB 20

Sponsor: RAY

Date referred to committee: 1/19/85

Synopsis completed: 1/21

Fiscal note:

Further referrals: Judiciary, Finance

CONTACTS:

Paula Scavara - Sen. Ray 4451

Maud Gordon - DPS- 4322

Gail Houtson

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HES 4-4-85 1:48pm

Sando

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3535

Senate Committee on Health, Education and Social Services

MEMORANDUM

TO: Members, Senate Committee on Health, Education and Social Services

FROM: Committee Staff

RE: Committee Meeting, April 4, 1985

DATE: April 3, 1985

On Thursday, April 4, at 1:30 pm in the Beltz Room, the Senate Committee on Health, Education and Social Services will hear the following bills:

SB 3, Relating to hearsay evidence in prosecutions for certain sexual offenses; and amending Rule 6(r), Alaska Rules of Criminal Procedure.

SB 3 is scheduled for committee action. It would allow hearsay evidence to be admitted at grand jury in prosecutions for sexual assault, sexual abuse, and unlawful exploitation of a minor. The child must be under the age of 10, and the child must either testify before the grand jury or be unavailable as defined in the bill. The draft committee substitute would delete "a lack of memory on the subject matter" as a definition of unavailable.

SB 20, Relating to implied consent to preliminary breath test by aircraft and watercraft operators.

Under Title 28, all drunk driving laws which apply to motor vehicles apply to aircraft and watercraft as well. Operators of motor vehicles, aircraft and watercraft are required to submit to a breath test for alcohol. However, only motor vehicle operators are required to submit to preliminary breath tests in the field. SB 20 would made watercraft and aircraft operators subject to the administration of a preliminary

breath test by a law enforcement officer at the scene of an incident.

SB 51, Relating to state aid for school construction.

SB 51 received a preliminary hearing by the Senate HESS Committee on March 21, 1985. A draft committee substitute, which would base eligibility for state funding on project need, has been prepared. In addition, the existing grant program would be amended to require a 10% local contribution; the existing debt retirement program would be amended to allow 80% state reimbursement. Expenditure of state funds would be prohibited for specific single purpose facilities.

A summary and sectional analysis are attached.

SCR 3, Background checks on school district employees who come into contact with children.

SCR 3, which urges local school districts to implement background checks on employees who come into contact with children, has been scheduled for committee action. A committee substitute, which clarifies that "employees" includes those under contract with school districts (such as bus drivers), has been prepared.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER _ SB 20

Support

February 1, 1985

SB 20 - "An Act relating to implied consent to preliminary breath test by aircraft and watercraft operators."

The purpose of this legislation is to include aircraft and watercraft operators in the implied consent statute for breath tests.

Passage of this legislation will allow law enforcement officers to administer the preliminary breath test which can provide probable cause to administer an additional test of sufficient validity to stand as court evidence of operating a vehicle, watercraft, or aircraft while intoxicated.

During the past few years numerous instances have taken place where lives have been lost due to watercraft operators and pilots being under the influence of alcohol.


Robert J. Sundberg
Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 20
 Title: An Act relating to implied consent to preliminary breath test...
 Sponsor: Sen. Ray
 Requestor: Sen. HESS
 Date of Request: 2-6-85

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS & CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Paul Conger

Division: Administrative Services

Phone: 465-4338

Date: 2-6-85

Approved by Commissioner: Michael J. Kleen

Agency: Public Safety

Date: 2-6-85

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

7/1/84

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM


December 17, 1984

SUBJECT: Operating watercraft while intoxicated
(Work Order No. 14-0225)

TO: Senator Bill Ray

FROM: George W. Edwards *GWE*
Legislative Counsel

In response to your request concerning legislation in the area of watercraft operation, I researched existing law and made copies of relevant statutes for your review. Existing law addresses the intoxicated watercraft operator situation in Title 5, Amusements and Sports, at AS 5.25.060 and in Title 28, Motor Vehicles. Under Title 28 all of the drunk-driving laws which apply to motor vehicles apply to aircraft and watercraft as well. Thus it would appear that our existing prohibition against intoxicated watercraft operators is at least as strong as that of other states.

There is however a distinction among vehicle operators made in AS 28.35.031 which may warrant elimination. The operators of motor vehicles, aircraft and watercraft are all required by the implied consent law to submit to a breath test for alcohol. Only motor vehicle operators, however, are required to submit to preliminary breath tests in the field under subsection (b). These preliminary test devices are handheld portable units and I can't think of any practical reason they could not be used on aircraft and watercraft operators under essentially the same circumstances as they are now used on drivers of motor vehicles. These circumstances must include either an accident or a moving violation of law before the preliminary test can be required. 

If there is any other help I can give you with regard to this inquiry please let me know.

GWE:ojb
J10/034

Sec. 28.35.030. Operating a vehicle, aircraft or watercraft while intoxicated. (a) A person commits the crime of driving while intoxicated if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

(1) while under the influence of intoxicating liquor, or any controlled substance listed in AS 11.71.140 — 11.71.190;

(2) when, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.10 percent or more by weight of alcohol in the person's blood or 100 milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.10 grams or more of alcohol per 210 liters of the person's breath; or

(3) while the person is under the combined influence of intoxicating liquor and another substance.

(b) Driving while intoxicated is a class A misdemeanor.

(c) Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than \$250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than \$500 if, within the preceding 10 years, the person has been previously convicted once in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 30 consecutive days and a fine of not less than \$1,000 if, within the preceding 10 years, the person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses: (1) driving while intoxicated under this or another law or ordinance with substantially similar elements; (2) refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. The execution of sentence may not be suspended nor may probation be granted except on condition that the minimum imprisonment provided in this section is served. Imposition of sentence may not be suspended. In addition, if the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked in accordance with AS 28.15.181 and the vehicle used in commission of the offense may be forfeited under AS 28.35.036. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of

alcohol education or rehabilitation that the court, after consideration of any information compiled under (d) of this section, finds appropriate.

(d) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under (c) of this section shall supply the Alaska court system with the information regarding the condition and treatment of those persons as the supreme court may require by rule. Information compiled under this subsection is confidential and may only be used by a court in sentencing a person convicted under (c) of this section, or by an officer of the court in preparing a presentence report for the use of the court in sentencing a person convicted under (c) of this section.

(e) A person who is sentenced to imprisonment for 72 consecutive hours upon a first conviction under (c) of this section and who is not released from imprisonment after 72 hours may not bring an action against the state or a municipality or its agents, officers, or employees for damages resulting from the additional period of confinement if

(1) the employee or employees who released the person exercised due care and, in releasing the person, followed the standard release procedures of the prison facility; and

(2) the additional period of confinement did not exceed 12 hours.

(f) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction.

(g) In this section,

(1) "operate an aircraft" means to use, navigate, pilot, or taxi an aircraft in the airspace over this state, or upon the land or water inside this state;

(2) "operate a watercraft" means to navigate or use a vessel used or capable of being used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial limits or under the jurisdiction of the state. (§ 50-5-3 ACLA 1949; am § 1 ch 107 SLA 1955; am § 1 ch 121 SLA 1967; am § 45 ch 32 SLA 1971; am § 4 ch 74 SLA 1974; am §§ 2, 3 ch 152 SLA 1978; am § 28 ch 94 SLA 1980; am § 10 ch 129 SLA 1980; am § 21 ch 45 SLA 1982; am §§ 13 — 15 ch 117 SLA 1982; am §§ 13 — 15 ch 77 SLA 1983)

Revisor's notes. — In 1984, former subsection (f) was redesignated as present subsection (g) and former subsection (g) was redesignated as present subsection (f).

Cross references. — For sentences for class A misdemeanors, see AS 12.55.035(b)(3) and 12.55.135(a).

Effect of amendments. — The first 1990 amendment, in subsection (a) as it existed prior to the second 1980 amendment, deleted "under AS 11.05.150" from

the end of the third sentence and substituted "AS 28.15.181" for "AS 28.15.210(c)" in the fourth sentence.

The second 1980 amendment rewrote the section.

The first 1982 amendment substituted "or any controlled substance listed in AS 11.71.140 — 11.71.190" for "depressant, hallucinogenic, stimulant or narcotic drug as defined in AS 17.10.230(13) and AS 17.12.150(3)" in subsection (a)(1).

purposes of statute or ordinance making it a criminal offense to operate an automobile while in that condition, 142 ALR 555.

What is a "motor vehicle" within statutes making it an offense to drive while intoxicated, 66 ALR2d 1146.

Right to trial by jury in criminal prosecution for driving while intoxicated or similar offense, 16 ALR3d 1373.

Driving under the influence, or when addicted to the use, of drugs as criminal offense, 17 ALR3d 815.

Applicability, to operation of motor vehicle on private property, of legislation making drunken driving a criminal offense, 29 ALR3d 938.

What amounts to violation of drunken driving statute in officer's "presence" or "view" so as to permit warrantless arrest, 74 ALR3d 1138.

What constitutes driving, operating, or being in control of motor vehicle for purposes of driving while intoxicated statute or ordinance, 93 ALR3d 7.

Reckless driving as lesser included offense of driving while intoxicated or similar charge, 10 ALR4th 1252.

Denial of accused's request for initial contact with attorney — drunk driving cases, 18 ALR4th 705.

Sec. 28.35.031. Implied consent. (a) A person who operates or drives a motor vehicle in this state or who operates an aircraft as defined in AS 28.35.030(g)(1) or who operates a watercraft as defined by AS 28.35.030 (g)(2) shall be considered to have given consent to a chemical test or tests of the person's breath for the purpose of determining the alcoholic content of the person's blood or breath if lawfully arrested for an offense arising out of acts alleged to have been committed while the person was operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated. The test or tests shall be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person was operating or driving a motor vehicle or operating an aircraft or a watercraft in this state while intoxicated.

(b) A person who operates or drives a motor vehicle in this state shall be considered to have given consent to a preliminary breath test for the purpose of determining the alcoholic content of the person's blood or breath. A law enforcement officer may administer a preliminary breath test at the scene of the incident if the officer has reasonable grounds to believe that a person's ability to operate a motor vehicle is impaired by the ingestion of alcoholic beverages and that the person

(1) was driving a motor vehicle that is involved in an accident; or
 (2) committed a moving traffic violation.

(c) Before administering a preliminary breath test under (b) of this section, the officer shall advise the person that refusal may be used against the person in a civil or criminal action arising out of the incident and that refusal is an infraction. If the person refuses to submit to the test, the test shall not be administered.

(d) The result of the test under (b) of this section may be used by the law enforcement officer to determine whether the driver should be arrested.

(e) Refusal to submit to a preliminary breath test at the request of a law enforcement officer is an infraction.

FLORIDA

1984 REGULAR SESSION

Ch. 84-188

BOATING SAFETY

Tentative classification changes not available at time of publication

CHAPTER 84-188

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 100

A bill to be entitled

An act relating to boating safety; creating ss. 327.351-327.354, F.S.; prohibiting the operation of a vessel while intoxicated; providing punishment; providing tests to determine intoxication or impairment; providing legislative intent; providing for right to refuse; authorizing use of blood tests in cases of death or serious bodily injury; providing for certain presumptions of impairment; amending s. 327.32, F.S.; providing civil liability for reckless or careless operation of a vessel; amending s. 327.33, F.S.; providing criminal penalties for reckless or careless operation of a vessel; amending s. 327.35, F.S.; providing for fines, imprisonment, and community work projects for persons guilty of operating a vessel while under the influence of alcoholic beverages, chemical or controlled substances; amending s. 327.37, F.S.; prescribing certain safety rules for operating a vessel towing persons on water skis, aquaplanes, innertubes, and sleds; amending s. 327.50, F.S.; prohibiting use of sirens and

Additions in text are indicated by underline; deletions by ~~strikeouts~~

emergency lights on all vessels other than law enforcement, fire, and emergency vessels; amending s. 327.54, F.S.; prohibiting liveries from renting a vessel not containing the safety equipment required by s. 327.50, F.S.; amending s. 327.56, F.S.; authorizing searches of vessels by law enforcement officers to ascertain compliance with safety regulations; amending s. 327.70, F.S.; providing that any authorized law enforcement officer shall enforce ch. 327 and ch. 328, F.S.; amending s. 327.72, F.S.; providing a \$25 fine for the careless operation of a vessel; repealing s. 327.51, F.S., relating to ventilator ducts; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 327.351, Florida Statutes, is created to read:

327.351 Operation of a vessel while intoxicated; punishment.--

(1) It is unlawful for any person, while in an intoxicated condition or under the influence of alcoholic beverages; any chemical substance set forth in s. 877.111; or any substance controlled under chapter 593 to such extent as to deprive him of full possession of his normal faculties, to operate on the waters of this state any vessel. Any person convicted of a violation of this section shall be punished as

Additions in text are indicated by underlines; deletions by ~~strikeouts~~

provided in s. 327.35. For the purposes of this subsection, a previous conviction under s. 327.35 shall also be considered a previous conviction for violation of this subsection.

(2) If, however, damage to the property or person of another, other than damage resulting in the death of any person, is done by such intoxicated person under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893, to such extent as to deprive him of full possession of his normal faculties, by reason of the operation of any vessel mentioned herein, he is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, but the penalty imposed for a violation of this subsection shall be not less than the penalty provided under s. 327.35, and if the death of any human being is caused by the operation of a vessel by any person while so intoxicated, such person shall be deemed guilty of manslaughter and on conviction shall be punished as provided by existing law relating to manslaughter.

(3) A conviction under the provisions of this section shall not be a bar to any civil suit for damages against the person so convicted.

Section 2. Section 327.352, Florida Statutes, is created to read:

327.352 Tests for impairment or intoxication; right to refuse.--

(1)(a) The Legislature declares that operation of a vessel is a privilege that must be exercised in a reasonable manner. In order to protect the public health and safety, it is essential that a lawful and effective means of reducing the

Additions in text are indicated by underline; deletions by ~~strikeouts~~

incidence of boating while impaired or intoxicated be established.

(b) Any person who operates a vessel within this state shall submit to an approved chemical breath test to determine the alcoholic content of the blood, and to a urine test to detect the presence of controlled substances, if that person is lawfully arrested for any offense allegedly committed while operating a vessel while under the influence of alcoholic beverages or controlled substances. The breath test shall be incidental to a lawful arrest and administered at the request of a law enforcement officer who has probable cause to believe such person was operating the vessel within this state while under the influence of alcoholic beverages. The urine test shall be incidental to a lawful arrest and administered at a detention facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has probable cause to believe such person was operating a vessel within this state while under the influence of controlled substances. The urine test shall be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests in a reasonable manner that will ensure the accuracy of the specimens and maintain the privacy of the individual involved. The administration of either test shall not preclude the administration of the other test. The refusal to submit to a chemical breath or urine test upon the request of a law enforcement officer as provided in this section shall be admissible into evidence in any criminal proceeding.

Additions in text are indicated by underline; deletions by ~~strikeouts~~

(c) If the arresting officer does not request a chemical test of the person arrested for any offense allegedly committed while the person was operating a vessel while under the influence of alcoholic beverages or controlled substances, such person may request the arresting officer to have a chemical test made of the arrested person's breath, urine, or blood for the purpose of determining the alcoholic content of the person's blood or the presence of controlled substances, and, if so requested, the arresting officer shall have the test performed.

(d) The provisions of s. 316.1932(1)(f), relating to administration of tests for determining the weight of alcohol in the defendant's blood, additional tests at the defendant's expense, availability of test information to the defendant or the defendant's attorney, and liability of medical institutions and persons administering such tests are incorporated into this act.

(2) The results of any test administered pursuant to this section for the purpose of detecting the presence of any controlled substance shall not be admissible as evidence in a criminal prosecution for the possession of a controlled substance.

(3) Notwithstanding any provisions of law pertaining to the confidentiality of hospital records or other medical records, information obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of s. 327.35 or s. 327.351 upon request therefor.

Additions in text are indicated by underline; deletions by ~~strikeouts~~

Section 3. Section 327.353, Florida Statutes, is created to read:

327.353 Blood test for impairment or intoxication in cases of death or serious bodily injury; right to use reasonable force.--

(1) Notwithstanding any recognized ability to refuse to submit to the tests provided in s. 327.352, if a law enforcement officer has probable cause to believe that a vessel operated by a person under the influence of alcoholic beverages or controlled substances has caused the death or serious bodily injury of a human being, such person shall submit, upon the request of a law enforcement officer, to a test of his blood for the purpose of determining the alcoholic content thereof or the presence of controlled substances therein. The law enforcement officer may use reasonable force if necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. "Serious bodily injury" means a physical condition which creates a substantial risk of death; serious, personal disfigurement; or protracted loss or impairment of the function of any bodily member or organ.

(2) The provision of s. 316.1933(2), relating to blood tests for impairment or intoxication are incorporated into this act.

(3)(a) Any criminal charge resulting from the incident giving rise to the officer's demand for testing should be tried concurrently with a charge of any violation arising out of the court. If such charges are tried separately, the fact that such person refused, resisted, obstructed, or opposed

Additions in text are indicated by underline; deletions by ~~strikethroughs~~

testing shall be admissible at the trial of the criminal offense which gave rise to the demand for testing.

(b) The results of any test administered pursuant to this section for the purpose of detecting the presence of any controlled substance shall not be admissible as evidence in a criminal prosecution for the possession of a controlled substance.

(4) Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, information obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of s. 327.35 or s. 327.351 upon request therefor.

Section 4. Section 327.354, Florida Statutes, is created to read:

327.354 Presumption of impairment; testing methods.--

(1) It is unlawful and punishable as provided in s. 327.35 for any person who is under the influence of alcoholic beverages or controlled substances, when affected to the extent that his normal faculties are impaired, to operate a vessel on the waters of this state.

(2) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while operating a vessel while under the influence of alcoholic beverages or controlled substances, when affected to the extent that his normal faculties were impaired or to the extent that he was deprived of full possession of his normal faculties, the results of any test

Additions in text are indicated by underline; deletions by ~~strikeouts~~

administered in accordance with s. 327.352 or s. 327.353 and this section shall be admissible into evidence when otherwise admissible, and the amount of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood or breath, shall give rise to the following presumptions:

(a) If there was at that time 0.05 percent or less by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of alcoholic beverages to the extent that his normal faculties were impaired.

(b) If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of alcoholic beverages to the extent that his normal faculties were impaired, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcoholic beverages to the extent that his normal faculties were impaired.

(c) If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, that fact shall be prima facie evidence that the person was under the influence of alcoholic beverages to the extent that his normal faculties were impaired.

The percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 milliliters of blood. The foregoing provisions of this subsection shall not be construed

Additions in text are indicated by underline; deletions by ~~strikeouts~~

as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of alcoholic beverages to the extent that his normal faculties were impaired.

(3) A chemical analysis of a person's blood to determine alcoholic content or a chemical analysis of a person's breath, in order to be considered valid under the provisions of this section, must have been performed substantially in accordance with methods approved by the Department of Health and Rehabilitative Services and by an individual possessing a valid permit issued by the department for this purpose. Any insubstantial differences between approved techniques and actual testing procedures in any individual case shall not render the test or test results invalid. The Department of Health and Rehabilitative Services may approve satisfactory techniques or methods, ascertain the qualification and competence of individuals to conduct such analyses, and issue permits which shall be subject to termination or revocation in accordance with rules adopted by the department.

(4) Any person charged with operating a vessel while under the influence of alcoholic beverages or controlled substances to the extent that his normal faculties were impaired, whether in a municipality or not, shall be entitled to trial by jury according to the Florida Rules of Criminal Procedure.

Section 5. Section 327.32, Florida Statutes, is amended to read:

Additions in text are indicated by underlining; deletions by ~~strikethroughs~~

327.32 Vessel Boat declared dangerous instrumentality; civil liability.--All vessels boats, of whatever classification, shall be considered dangerous instrumentalities in this state and any operator of such vessels boats shall, during any utilization of said vessels boats, exercise the highest degree of care in order to prevent injuries to others. Liability for reckless or careless negligent operation of a vessel boat shall be confined to the operator person in immediate charge of or operating the vessel boat and not the owner of the vessel boat, unless the owner he is the operator or is present in the vessel boat when any injury or damage is occasioned by the reckless or careless negligent operation of such vessel, whether such recklessness or carelessness negligence consists of a violation of the provisions of the statutes of this state, or disregard negligence in observing such care and such operation as the rules of the common law require.

Section 6. Section 327.33, Florida Statutes, is amended to read:

327.33 Reckless or careless negligent operation of vessel.--

(1) It is unlawful to operate a vessel in a reckless manner. A person is guilty of reckless operation of a vessel who operates any vessel, or manipulates any water skis, aquaplane, or similar device, in willful or wanton disregard for the safety of persons or property; or without due regard, caution, and circumspection; or at a speed or in a manner as to endanger, or likely to endanger, life or limb, or damage the property of, or injure any person. Any person who

Additions in text are indicated by underline; deletions by ~~strikeouts~~

violates a provision of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person operating a vessel upon the waters of this state shall operate the vessel in a reasonable and prudent manner, having regard for other waterborne traffic, vessel wake, and all other attendant circumstances so as not to endanger the life, limb, or property of any person. Failure to operate a vessel in such a manner shall constitute careless operation. However, vessel wake and shoreline wash resulting from the reasonable and prudent operation of a vessel shall absent negligence not constitute damage or endangerment to property. Any person who violates the provisions of this subsection is guilty of a noncriminal violation as defined in s. 775.08.

(3) ~~(2)~~ Unless otherwise provided in this chapter, the ascertainment of fault in vessel boat operations and marine accidents shall be determined according to the United States Coast Guard Navigation Rules in effect on October 1, 1981, and as thereafter amended.

Section 7. Section 327.35, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 327.35, F.S., for present text.)

327.35 Operating motorboat while under the influence of alcoholic beverages, chemical substances, or controlled substances; penalties.--

(1) It is unlawful and punishable as provided in subsection (2) for:

Additions in text are indicated by underline; deletions by ~~strikeouts~~

(a) Any person who is under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111 or any substance controlled under chapter 893, when affected to the extent that his normal faculties are impaired, to operate a vessel on the waters of this state; or

(b) Any person with a blood alcohol level of 0.10 percent or above to operate a vessel within this state.

(2) Any person who is convicted of a violation of subsection (1) shall be punished:

(a) By a fine of:

1. Not less than \$250 nor more than \$500 for a first conviction;

2. Not less than \$500 nor more than \$1,000 for a second conviction;

3. Not less than \$1,000 nor more than \$2,500 for a third or subsequent conviction; and

(b) By imprisonment for:

1. Not more than 6 months for a first conviction.

2. Not more than 9 months for a second conviction.

3. Not more than 12 months for a third or subsequent conviction.

(3) The court shall require any person convicted of violating this section or s. 327.351 to attend a substance abuse course specified by the court; and the agency conducting the course may refer the person to an authorized agency for substance abuse evaluation and treatment, in addition to any sentence or fine imposed under this section. Such person shall assume reasonable costs for such education, evaluation, and treatment. "Substance abuse" means the abuse of alcohol

or any substance named or described in Schedules I through V of s. 893.03.

(4) With respect to any person convicted of a violation of subsection (1), regardless of any penalty imposed pursuant to subsection (2):

(a) For the first conviction thereof, the court shall order the defendant to participate in public service or a community work project for a minimum of 50 hours.

(b) For the second conviction within a period of 3 years from the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 10 days.

(c) For the third conviction within a period of 5 years from the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 30 days.

Section 8. Section 327.37, Florida Statutes, is amended to read:

327.37 Water skis and aquaplanes regulated.--

(1) No person shall operate a vessel on any waters of this state towing a person on water skis, or an aquaplane, or similar device unless there is in such vessel a person in addition to the operator, in a position to observe the progress of the person being towed, or the vessel is equipped with a wide-angle rear view mirror mounted in such manner as to permit the operator of the vessel to observe the progress of the person being towed.

(2) No person shall engage in water skiing, aquaplaning, or similar activity at any time between the hours

Additions in text are indicated by underline; deletions by ~~strikeouts~~

from one-half hour after sunset to one-half hour before sunrise.

(3) The provisions of subsections (1) and (2) do not apply to a performer engaged in a professional exhibition or a person preparing to participate in an official regatta, boat race, marine parade, tournament, or exhibition.

(4) No person shall operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, aquaplane, innertube, sled, or similar device may be affected or controlled, in such a way as to cause the water skis, aquaplane, innertube, sled, or similar device or any person thereon to collide or strike against any vessel, bridge, wharf, pier, dock, buoy, platform, piling, channel marker, or any other object, except slalom buoys, ski jumps, or like objects used normally in competitive or recreational skiing.

Section 9. Section 327.50, Florida Statutes, is amended to read:

327.50 Vessel safety regulations; equipment and lighting requirements.--

(1) Every vessel on the waters of this state shall carry safety equipment and conform to uniform lighting requirements in accordance with current United States Coast Guard safety and lighting requirements, as set forth in Titles 33 and 46, Code of Federal Regulations, unless expressly exempt by state law.

(2) The use of sirens or flashing red or blue emergency lights on any vessel is prohibited except on a vessel operated by a law enforcement officer or fire

Additions in text are indicated by underline; deletions by ~~strikeouts~~

protection officer in the performance of his official duties or on a vessel used for emergency rescue activity.

Section 10. Section 327.54, Florida Statutes, is amended to read:

327.54 Boat Liveries; safety regulations; penalty.--

(1) No boat livery shall knowingly lease, hire, or rent a vessel boat to any person:

(a) When the number of persons intending to use the vessel boat shall exceed the number deemed to constitute a maximum safety load for the vessel pursuant to the vessel's authorized person's capacity plate boat.

(b) When the horsepower of the motor exceeds the capacity of the vessel boat, making the vessel boat unsafe to operate.

(c) When the vessel boat does not contain the required safety equipment pursuant to s. 327.50 a Coast Guard-approved lifesaving device for each person occupying the boat and other equipment as required for the class of vessel as set forth in s. 327.57.

~~(d)~~ When the boat does not contain a suitable anchor and anchor line of appropriate size and length.

~~(e)~~ When the boat does not contain an appropriate paddle or oar.

~~(d)(f)~~ When the vessel boat is not seaworthy.

(2) No boat livery shall close until the last boat has returned. If a vessel boat is unnecessarily overdue, the livery shall notify the proper authorities.

(3) Any person convicted of violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

Additions in text are indicated by underline; deletions by ~~strikeouts~~

(4) Where the boat livery has complied with subsections (1) and (2), his liability shall cease and a person leasing the vessel boat from the livery shall be liable for any violations of this chapter and shall be personally liable for any accident or injury occurring while in charge of such vessel boat.

Section 11. Section 327.56, Florida Statutes, is amended to read:

327.56 Safety inspections; qualified.--No officer shall board any vessel to make a safety inspection if the owner or operator is not aboard. When the owner or operator is aboard, an officer may board a vessel with consent or when he has probable cause or knowledge to believe that a violation of a provision of this chapter has occurred or is occurring. An officer may board a vessel when the operator refuses to display the safety equipment required by law, when requested to do so by a law enforcement officer.

Section 12. Section 327.70, Florida Statutes, is amended to read:

327.70 Enforcement.--

(1) This chapter and chapter 328 shall be enforced by the Division of Law Enforcement of the department and its officers, the Game and Fresh Water Fish Commission and its officers, the sheriffs of the various counties and their deputies, and any other authorized law enforcement officer, all of whom may order the removal of vessels deemed to be an interference or a hazard to public safety, enforce the provisions of this chapter and chapter 328, or cause any

Additions in text are indicated by underline; deletions by ~~strikeouts~~

inspections to be made of all vessels boats in accordance with this chapter and chapter 328, in the water of this state.

(2) Such officers shall have the power and duty to issue such orders and to make such investigations, reports, and arrests in connection with any violation of the provisions of this chapter and chapter 328 as are necessary to effectuate the intent and purpose of this chapter and chapter 328.

Section 13. Section 327.72, Florida Statutes, is amended to read:

327.72 Penalties.--

(1) Any violation of the provisions of s. 327.33(2) is ~~s. 371.57(1)(a)1, and 2~~ shall be deemed a noncriminal violation, as defined in s. 775.08(3), punishable by a fine of \$25.

(2) Any person failing to comply with the provisions of this chapter or chapter 328 not specified in subsection (1) or not paying the fine specified in subsection (1) within 10 days, except as otherwise provided in this chapter or chapter 328, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 14. Section 327.51, Florida Statutes, is hereby repealed.

Section 15. This act shall take effect October 1, 1984.

Approved by the Governor June 13, 1984.

Filed in Office Secretary of State June 14, 1984.

Additions in text are indicated by underline; deletions by ~~strikeouts~~

1983 SUPPLEMENT

§ 8-738

Effect of amendment. — The 1983 amendment, effective July 1, 1983, deleted "or issue a new certificate preceding "and mail" in the first sentence in subsection (b).

As the remainder of the section was not affected by the amendment, it is not set forth above.

Editor's note. — Section 2, ch. 8, Acts 1983.

provides that "the provisions of this act are intended solely to correct technical errors in the law and that there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this act."

§ 8-736. Same — Forms; investigations.

(a) The Department shall prescribe and provide suitable forms of applications, certificates of title, notices of security interests, and all other notices and forms necessary to carry out §§ 8-729 through 8-736.

(1983, ch. 8.)

Effect of amendment. — The 1983 amendment, effective July 1, 1983, substituted "certificates" for "certificate" in subsection (a).

As the remainder of the section was not affected by the amendment, it is not set forth above.

Editor's note. — Section 2, ch. 8, Acts 1983.

provides that "the provisions of this act are intended solely to correct technical errors in the law and that there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this act."

§ 8-738. Operating vessel while intoxicated or while under influence of alcohol and/or drugs.

(a) *Prohibitions enumerated.* — A person may not operate or attempt to operate a vessel while the person:

- (1) Is intoxicated;
- (2) Is under the influence of alcohol;
- (3) Is so far under the influence of any drug, combination of drugs, or combination of drugs and alcohol that the person cannot operate a vessel safely; or
- (4) Is under the influence of any controlled dangerous substance, as defined in Article 27, § 277 of the Code, unless the person is entitled to use the controlled dangerous substance under the laws of this State.

(b) *Evidentiary requirements applicable.* — The evidentiary requirements of §§ 10-302 through 10-307 of the Courts Article are applicable to any violation of this section.

(c) *Defense.* — Unless the person charged with any violation of this section was unaware that the alcohol, drug, combination of drugs, or combination of drugs and alcohol would make the person incapable of safely operating a vessel, it is not a defense to any charge of violating this section that the person is or was entitled to use the alcohol, drug, combination of drugs, or combination of drugs and alcohol under the laws of this State. (1983, ch. 575.)

Editor's note. — Section 2, ch. 575, Acts 1983, provides that the act shall take effect July 1, 1983.

§ 10-204. Public records — Admissibility generally.

Effect of section. — This section simply makes records competent evidence; it does not address their relevance or judicial effect. Carr v. State, 50 Md. App. 209, 437 A.2d 238 (1981). Birth certificate is a public record and no

witness is needed to introduce it. Scott v. State, 43 Md. App. 323, 405 A.2d 920 (1979), modified, 289 Md. 647, 426 A.2d 923 (1981). Cited in Temoney v. State, 290 Md. 251, 429 A.2d 1018 (1981).

§ 10-205. Same — Exceptions.

(a) Confidential records. — Records, reports, statements, notes, or information assembled or obtained by the State Department of Health and Mental Hygiene, the Maryland Commission to Study Problems of Drug Addiction, the Medical and Chirurgical Faculty or its allied medical societies, an in-hospital staff committee, or a national organized medical society or research group that are declared confidential by § 4-102 of the Health-General Article or § 14-602 of the Health Occupations Article, are not admissible in evidence in any proceeding.

(1981, ch. 9, § 1; 1982, ch. 770, § 4.)

Effect of amendments. — The 1981 amendment substituted "§ 1-1 of Article 43 of the Code or § 14-602 of the Health Occupations Article" for "§ 1-1 or § 134 of Article 43 of the Code" near the end of subsection (a). Section 3 of the act provides that it shall take effect July 1, 1981, contingent upon the taking effect of the Health Occupations Article (ch. 8, Acts 1981).

The 1982 amendment, effective July 1, 1982, substituted "that are declared confidential by § 4-102 of the Health-General Article" for "which are declared confidential by § 1-1 of Article 43 of the Code" in subsection (a). As subsection (b) was not affected by the amendments, it is not set forth above.

Subtitle 3. Motor Vehicle Laws.

§ 10-301. Use of radio-micro waves to prove speed of vehicles.

The speed of a motor vehicle may be proved by evidence of a test made upon it with a device designed to measure and indicate the speed of a moving object by means of radio-micro waves. (An. Code 1957, art. 35, § 91; 1973, 1st Sp. Sess., ch. 2, § 1; 1983, ch. 307.)

Effect of amendment. — The 1983 amendment, effective July 1, 1983, substituted "measure and indicate" for "measure, indicate, and record".

§ 10-302. Chemical test for intoxication — Admissibility by analysis.

In a prosecution for a violation of a law concerning a person who is driving or attempting to drive a vehicle in violation of § 21-902 of the Transportation Article, a chemical test of his breath or blood may be administered to the person for the purpose of determining the alcohol content of his blood. (An. Code 1957, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1; 1977, ch. 14, § 6; ch. 164, § 3; 1980, ch. 41.)

Et
men
hol"
U:
For:
Over
Le
inter
appl
law
whil
Lasc
Pe
cern
than
Mea
Eft

§ 1

Un
For n
Over
Leg
inter
apply
law
whil
Lasc

§ 10

(a)
indic
(
with
(
use o
the I
police

(b)
quali
Postr
office

(c)
using
iners
blood
toxic
appro
(e)
test w

Effect of amendment. — The 1980 amendment, effective July 1, 1980, substituted "alcohol" for "alcoholic" near the end of the section.

University of Baltimore Law Review. — For note, "Maryland's Drunk Driving Laws: An Overview," see 11 U. Balt. L. Rev. 357 (1982).

Legislative intent. — The legislature intended the requirements of this section to apply in prosecutions for the violation of any law concerning a person accused of driving while intoxicated or impaired. State v. Loscomb, 291 Md. 424, 435 A.2d 764 (1981).

Purpose of section. — This section is concerned with the protection of the public, rather than the protection of an accused. State v. Moon, 291 Md. 463, 436 A.2d 420 (1981).

Effect of section is to permit a chemical test

of one's breath or blood whenever there is a violation of any law that involves driving while intoxicated or impaired. Loscomb v. State, 45 Md. App. 598, 416 A.2d 1276 (1980), modified, 291 Md. 424, 435 A.2d 764 (1981).

This section and TR § 16-205.1 (c) are in pari materia; they must be construed harmoniously in order to give full effect to each enactment. State v. Loscomb, 291 Md. 424, 435 A.2d 764 (1981).

Schmerber doctrine applied. — For application of Schmerber v. California, 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 908 (1966), holding that the privilege against self-incrimination does not extend to involuntarily obtained blood samples, see State v. Moon, 291 Md. 463, 436 A.2d 420 (1981).

§ 10-303. Same — Time limitation.

University of Baltimore Law Review. — For note, "Maryland's Drunk Driving Laws: An Overview," see 11 U. Balt. L. Rev. 357 (1982).

Legislative intent. — The legislature intended the requirement of this section to apply in prosecutions for the violation of any law concerning a person accused of driving while intoxicated or impaired. State v. Loscomb, 291 Md. 424, 435 A.2d 764 (1981).

Purpose of section. — This section is concerned with the protection of the public, rather than the protection of an accused. State v. Moon, 291 Md. 463, 436 A.2d 420 (1981).

This section and TR § 16-205.1 (c) are in pari materia; they must be construed harmoniously in order to give full effect to each enactment. State v. Loscomb, 291 Md. 424, 435 A.2d 764 (1981).

See last page for § 303

§ 10-304. Same — Qualifications of person administering test; equipment.

(a) Definitions. — (1) In this section the following words have the meanings indicated.

(2) "Qualified medical person" means any person permitted by law to withdraw blood from humans.

(3) "Qualified person" means a person who has received training in the use of the equipment in a training program approved by the toxicologist under the Postmortem Examiners Commission and who is either a police officer, a police employee, or an employee of the office of the Chief Medical Examiner.

(b) Breath test. — The chemical test of breath shall be administered by a qualified person with equipment approved by the toxicologist under the Postmortem Examiners Commission at the direction of a police officer. The officer arresting the individual may not administer the chemical test of breath.

(c) Blood test. — The blood shall be obtained by a qualified medical person using equipment approved by the toxicologist under the Postmortem Examiners Commission acting at the request of a police officer. The chemical test of blood shall be conducted by a qualified person using equipment approved by the toxicologist under the Postmortem Examiners Commission in a laboratory approved by that toxicologist.

(e) Proof of approved equipment. — For the purpose of establishing that the test was administered with equipment approved by the toxicologist under the

Postmortem Examiners Commission, a statement signed by the toxicologist certifying that the equipment used in the test has been approved by him shall be prima facie evidence of the approval, and the statement is admissible in evidence without the necessity of the toxicologist personally appearing in court.

(1980, ch. 41; 1982, ch. 770, § 4; 1983, ch. 289.)

Effect of amendments. — The 1980 amendment, effective July 1, 1980, rewrote subsection (a), eliminated "making the charge that the person was driving while intoxicated or while his driving ability was impaired by the consumption of alcohol" at the end of subsection (b) and rewrote subsection (c).

The 1982 amendment, effective July 1, 1982, substituted "under the Postmortem Examiners Commission" for "of the office of the Chief Medical Examiner of the Department of Postmortem Examiners" in paragraph (3) of subsection (a), in subsection (b), in both sentences in subsection (c) and in subsection (e) and substituted "approved by that toxicologist" for "approved by the toxicologist of the office of the Chief Medical Examiner of the Department of Postmortem Examiners" in the second sentence of subsection (c).

The 1983 amendment, effective July 1, 1983, added the second sentence in subsection (b).

As the remainder of the section was not affected by the amendments, it is not set forth above.

University of Baltimore Law Review. — For note, "Maryland's Drunk Driving Laws: An Overview," see 11 U. Balt. L. Rev. 357 (1982).

Legislative intent. — The legislature intended the requirements of this section to apply in prosecutions for the violation of any law concerning a person accused of driving while intoxicated or impaired. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

Purpose of section. — This section is concerned with the protection of the public, rather than the protection of an accused. *State v. Moon*, 291 Md. 463, 436 A.2d 420 (1981).

This section and TR § 16-205.1 (c) are in *pari materia*; they must be construed harmoniously in order to give full effect to each enactment. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

§ 10-305. Same — Type of test administered.

(a) *Type of test administered.* — The type of test administered to the defendant shall be the chemical test of breath except that the chemical test of blood shall be the type of test administered if:

- (1) The defendant is unconscious or otherwise incapable of refusing to take a chemical test for alcohol;
- (2) Injuries to the defendant require removal of the defendant to a medical facility; or
- (3) The equipment for administering the chemical test of breath is not available.

(b) *Person incapable of test refusal.* — Any person who is dead, unconscious, or otherwise in a condition rendering him incapable of test refusal shall be deemed not to have withdrawn consent. (An. Code 1-57, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1; 1981, ch. 240; 1983, ch. 289.)

Effect of amendments. — The 1981 amendment, effective July 1, 1981, designated the former provisions of the section as subsection (a), divided the former first sentence into the present first and second sentences, added "to be" in the present first sentence, substituted "the defendant's" for "either his" in the present second sentence in subsection (a), added "due to facilities or equipment not being available" at the end of that sentence, substituted "this

inability" for "his inability" in the last sentence in the subsection, substituted "the trial" for "his trial" therein and added subsections (b) and (c).

The 1983 amendment, effective July 1, 1983, substituted present subsection (a) for former subsections (a) and (b) and redesignated former subsection (c) as present subsection (b).

University of Baltimore Law Review. — For note, "Maryland's Drunk Driving Laws: An

Overview," see 11 U. Balt. L. Rev. 357 (1982).

Legislative intent. — The legislature intended the requirements of this section to apply in prosecutions for the violation of any law concerning a person accused of driving while intoxicated or impaired. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

Purpose of section. — This section is concerned with the protection of the public, rather than the protection of an accused. *State v.*

Moon, 291 Md. 463, 436 A.2d 420 (1981).

This section and TR § 16-205.1 (c) are in *pari materia*; they must be construed harmoniously in order to give full effect to each enactment. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

Applied in *Loscomb v. State*, 45 Md. App. 598, 416 A.2d 1276 (1980), modified, 291 Md. 424, 435 A.2d 764 (1981).

§ 10-306. Same — Admissibility of test results without presence or testimony of technician.

(a) Subject to the provisions of subsection (b), in any criminal trial in which intoxication due to the consumption of alcohol, or being under the influence of alcohol, is an issue, an official copy of the results of a chemical test of breath or blood administered by a person authorized to administer the test, is admissible as substantive evidence without the presence or testimony of the technician who administered the test.

(1982, ch. 95.)

Effect of amendment.

The 1982 amendment, effective July 1, 1982, deleted "or impairment" following "intoxication" and inserted "or being under the influence of alcohol" in subsection (a).

As subsection (b) was not affected by the amendment, it is not set forth above.

University of Baltimore Law Review. — For note, "Maryland's Drunk Driving Laws: An Overview," see 11 U. Balt. L. Rev. 357 (1982).

Legislative intent. — The legislature intended the requirements of this section to apply in prosecutions for the violation of any

law concerning a person accused of driving while intoxicated or impaired. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

Purpose of section. — This section is concerned with the protection of the public, rather than the protection of an accused. *State v. Moon*, 291 Md. 463, 436 A.2d 420 (1981).

This section and TR § 16-205.1 (c) are in *pari materia*; they must be construed harmoniously in order to give full effect to each enactment. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

§ 10-307. Same — Results of analysis and presumptions.

(a) *In general.* — In a proceeding in which a person is charged with a violation of § 388A of Article 27 or with driving or attempting to drive a vehicle in violation of § 21-902 of the Transportation Article, the amount of alcohol in the person's breath or blood shown in chemical analysis as provided in this subtitle is admissible in evidence and has the effect set forth in subsections (b) through (e) of this section.

(b) *No intoxication presumed.* — If there was in the person's blood at the time of testing 0.05 percent or less by weight of alcohol, as determined by an analysis of the person's blood or breath, it shall be presumed that the defendant was not intoxicated and that the defendant was not driving while under the influence of alcohol.

(c) *No presumption.* — If at the time of testing there was in the person's blood more than 0.05 percent but less than 0.08 percent by weight of alcohol, as determined by an analysis of the person's blood or breath, this fact may not give rise to any presumption that the defendant was or was not intoxicated or

that the defendant was or was not driving while under the influence of alcohol, but this fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(d) *Prima facie evidence of impairment.* — If at the time of testing there was in the person's blood 0.08 percent or more by weight of alcohol, as determined by an analysis of the person's blood or breath, it shall be prima facie evidence that the defendant was driving while under the influence of alcohol.

(e) *Prima facie evidence of intoxication.* — If at the time of testing there was in the person's blood 0.13 percent or more by weight of alcohol, as determined by an analysis of the person's blood or breath, it shall be prima facie evidence that the defendant was intoxicated. (An. Code 1957, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 691, § 8; ch. 864, § 2; 1975, ch. 9; 1977, ch. 14, § 6; 1978, chs. 423, 454; 1981, ch. 242.)

Effect of amendments.

The 1981 amendment, effective July 1, 1981, substituted "the defendant was not driving while under the influence of alcohol" for "his driving ability was not impaired by the consumption of alcohol" at the end of subsection (b), substituted "the defendant was or was not driving while under the influence of alcohol" for "his driving ability was or was not impaired by the consumption of alcohol" in subsection (b), substituted "0.08 percent" for "0.10 percent" in subsections (c) and (d), substituted "defendant was driving while under the influence of alcohol" for "defendant's driving ability was impaired by the consumption of alcohol" at the end of subsection (d), substituted "0.13 percent" for "0.15 percent" in subsection (e) and clarified language in subsections (b), (c), (d) and (e).

University of Baltimore Law Review. — For note, "Maryland's Drunk Driving Laws: An Overview," see 11 U. Balt. L. Rev. 357 (1982).

Legislative intent. — The legislature intended the requirements of this section to apply in prosecutions for the violation of any law concerning a person accused of driving while intoxicated or impaired. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

Purpose of section. — This section is concerned with the protection of the public, rather than the protection of an accused. *State v. Moon*, 291 Md. 463, 436 A.2d 420 (1981).

This section and TR § 16-205.1 (c) are in

pari materia; they must be construed harmoniously in order to give full effect to each enactment *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

Applicability of section in criminal prosecutions. — The statutory presumptions set forth in this section apply in criminal prosecutions specified in subsection (a) and only when the prerequisites of §§ 10-302 through 10-309 of this article are met. *Fouche v. Masters*, 47 Md. App. 11, 420 A.2d 1279 (1980).

Section not applicable in civil cases. — The jury in a civil case may not apply the presumptions relating to intoxication and impairment set forth in this section. *Fouche v. Masters*, 47 Md. App. 11, 420 A.2d 1279 (1980).

Compliance with section required. — Whenever a person is charged under article 27, § 388, and the basis of the charge is the alleged intoxication of the accused while operating a motor vehicle, no evidence derived from any chemical analysis administered or caused to be administered by the police is admissible in evidence unless there has been compliance with this section. *Loscomb v. State*, 45 Md. App. 595, 416 A.2d 1276 (1980), modified, 291 Md. 424, 435 A.2d 764 (1981).

Proof of unsafe operation is not a necessary element of the offenses of driving while intoxicated or driving while under the influence of alcohol. 68 Op. Att'y Gen. (May 2, 1983).

§ 10-308. Same — Other evidence.

The evidence of the chemical analysis does not limit the introduction of other evidence bearing upon whether the defendant was intoxicated or whether the defendant was driving while under the influence of alcohol. (An. Code 1957, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1; 1977, ch. 14, § 6; 1981, ch. 242.)

§ 10-301

ANNOTATED CODE OF MARYLAND

Subtitle 3. Motor Vehicle Laws.

§ 10-301. Use of radio-micro waves to prove speed of vehicles.

The speed of a motor vehicle may be proved by evidence of a test made upon it with a device designed to measure, indicate, and record the speed of a moving object by means of radio-micro waves. (An. Code 1957, art. 35, § 91; 1973, 1st Sp. Sess., ch. 2, § 1.)

REVISOR'S NOTE

This section is new language derived from Article 35, § 91. This section was enacted in 1953. Maryland Laws 1973, ch. 786 removed the requirement of notifying the motorist by

highway markings of the presence of radio-micro wave devices used to record speed. Language and style are changed.

Sufficiency of evidence. - The use of radar apparatus, like the use of speedometers, cameras, and X-rays, has now reached such general acceptance by state legislatures, executive departments of state and federal governments, the courts and the public that it is no longer necessary for the prosecutor to offer expert testimony to explain the theory

and operation of the radar equipment. It is sufficient to show that the equipment has been properly tested and checked, that it was managed by a competent operator, that proper operative procedures were followed, and that proper records were kept. United States v. Drees, 156 F. Supp. 200 (D. Md. 1957).

§ 10-302. Chemical test for intoxication - Admissibility by analysis.

In a prosecution for a violation of a law concerning a person who is driving or attempting to drive a vehicle in violation of § 11-902 of Article 66^{1/2} of the Code a chemical test of his breath, blood, urine, or other bodily substance may be administered to the person for the purpose of determining the alcoholic content in his body. (An. Code 1957, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1.)

REVISOR'S NOTE

This section is new language derived from Article 35, § 100 (a). This is the first sentence in

that section. Style is changed, and the language subtyped.

Maryland Law Review. - For article on chemical tests for alcoholic intoxication, see 17 Md. L. Rev. 193 (1957).

For symposium on comparative use of chemical tests for alcoholic intoxication, see 11 Md. L. Rev. 111 (1954).

For case note on official denial of a blood test as constituting a violation of due process of law, see 23 Md. L. Rev. 282 (1963).

§ 10-303. Same - Time limitation.

The specimen of breath, blood, or urine shall be taken within two hours after the person accused is apprehended. (An. Code 1957, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1.)

REVISOR'S NOTE

This section is new language derived from Article 35, § 100 (a). Style and language are changed in subdividing this long subsection.

INDIANA

HOUSE BILL 1131

.30

INTRODUCED BY
 Repr. [Signature]
[Signature]
 _____ read first time and
 referred:

~~_____~~
~~_____~~
~~_____~~
~~_____~~
~~_____~~

DIGEST

Adds IC 14-1-4 to specify that it is a Class C misdemeanor to operate watercraft while intoxicated; to increase the penalty for subsequent offenses (Class D felony), offenses that result in serious bodily injury (Class D felony), and offenses that result in death (Class C felony); to require the convicted person to refrain from operating a watercraft for a specified period of time; to prescribe penalties for refusal to submit to a chemical test and for operating a watercraft after being ordered not to do so; and to establish a procedure for the use of chemical tests in enforcement of this offense. Adds IC 9-11-1-9 to remove watercraft from the scope of the general drunk driving statute. Repeals IC 14-1-1-21, which is superseded. Effective September 1, 1984.

A BILL FOR AN ACT to amend the Indiana Code concerning drunk driving.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 14-1-4 is added to the Indiana Code as a NEW chapter to read as
 2 follows:

3 Chapter 4. Operating a Watercraft While Intoxicated.

4 Sec. 1. As used in this chapter:

5 "Chemical test" means an analysis of a person's blood, breath, urine, or other
 6 bodily substance for the determination of the presence of alcohol or a controlled
 7 substance.

8 "Controlled substance" has the meaning set out in IC 35-48-1.

9 "Intoxicated" means under the influence of:

- 10 (1) alcohol;
- 11 (2) a controlled substance;
- 12 (3) any drug other than alcohol or a controlled substance; or
- 13 (4) any combination of alcohol, controlled substances, or drugs;

14 such that there is an impaired condition of thought and action and the loss of
 15 normal control of a person's faculties to such an extent as to endanger any person.

16 "Law enforcement officer" has the meaning set out in IC 35-41-1 and includes
 17 conservation officers employed by the department of natural resources.

18 "Prima facie evidence of intoxication" includes evidence that at the time of an
 19 alleged violation there was ten hundredths percent (.10%), or more, by weight of
 20 alcohol in the person's blood.

21 "Relevant evidence" includes evidence that at the time of the alleged violation
 22 there was at least five hundredths percent (.05%), but less than ten hundredths
 23 percent (.10%), by weight of alcohol in the person's blood.

24 "Serious bodily injury" has the meaning set out in IC 35-48-1.

25 "Watercraft" means a device for transportation by water.

3 blood; or
4 (2) while intoxicated;
5 commits a Class C misdemeanor.

6 Sec. 3. A person who violates section 2 of this chapter commits a Class D
7 felony if:

- 8 (1) he has a previous conviction under this chapter; or
9 (2) the offense results in serious bodily injury to another person.

10 Sec. 4. A person who violates section 1 of this chapter commits a Class C
11 felony if the crime results in the death of another person.

12 Sec. 5. A person who operates a watercraft after he has been ordered not to
13 operate a watercraft under this chapter commits a Class A misdemeanor.

14 Sec. 6. (a) In addition to any criminal penalties imposed for a misdemeanor
15 under this chapter, the court shall order the person to not operate a watercraft
16 for at least one (1) year.

17 (b) In addition to any criminal penalty imposed for a felony under this
18 chapter, the court shall order the person to not operate a watercraft for at least
19 two (2) years.

20 Sec. 7. A person who operates a watercraft in waters over which Indiana has
21 jurisdiction impliedly consents to submit to the chemical test provisions of this
22 chapter as a condition of operating a watercraft in Indiana. If a person refuses
23 to submit to a chemical test under this chapter, the court shall order the person
24 to not operate a watercraft for at least one (1) year.

25 Sec. 8. A law enforcement officer who has probable cause to believe that a
26 person has committed an offense under this chapter shall offer the person the
27 opportunity to submit to a chemical test. It is not necessary for the law
28 enforcement officer to offer a chemical test to an unconscious person. A law
29 enforcement officer may offer a person more than one (1) chemical test under this
30 chapter. However, all tests must be administered within three (3) hours after the
31 officer had probable cause to believe the person violated this chapter. A person
32 must submit to each chemical test offered by a law enforcement officer in order to
33 comply with the implied consent provisions of this chapter.

34 Sec. 9. (a) If the chemical test results in relevant evidence that the person
35 is intoxicated, he may be arrested for an offense under this chapter. If the
36 chemical test results in prima facie evidence that the person is intoxicated, he
37 shall be arrested for an offense under this chapter.

38 (b) A person who refuses to submit to a chemical test may be arrested for an
39 offense under this chapter.

40 (c) At any proceeding under this chapter, a person's refusal to submit to a
41 chemical test is admissible into evidence.

42 Sec. 10. (a) The provisions of IC 9-11-4-5 concerning the certification and
43 use of chemical breath tests apply to the use of such tests in a prosecution under
44 this chapter.

45 (b) The provisions of IC 9-11-4-6 apply to chemical tests performed under this
46 chapter.

47 Sec. 11. If a person refuses to submit to a chemical test under this chapter,
48 the law enforcement officer shall inform the person that his refusal will result in

3 of this chapter occurs shall represent the state in any proceeding under this
4 chapter.

5 • Sec. 13. At any proceeding concerning an offense under this chapter, evidence
6 of the amount by weight of alcohol that was in the blood of the person charged with
7 the offense at the time of the alleged violation, as shown by an analysis of his
8 breath, blood, urine, or other bodily substance, is admissible.

9 SECTION 2. IC 9-11-1-9 is added to the Indiana Code as a NEW section to read
10 as follows: Sec. 9. "Vehicle" means a device for transportation by land or air.

11 SECTION 3. IC 14-1-1-21 is repealed.

Hess Comm. Sub.

SB 20 - RELATING TO IMPLIED CONSENT TO PRELIMINARY BREATH TEST BY AIRCRAFT AND WATERCRAFT OPERATORS.

**UNDER CURRENT STATUTE, ONLY MOTOR VEHICLE OPERATORS ARE REQUIRED TO SUBMIT TO PRELIMINARY BREATH TESTS IN THE FIELD.

** SB 20 WOULD REQUIRE OPERATORS OF AIRCRAFT & WATERCRAFT TO SUBMIT TO PRELIMINARY BREATH TESTS BECAUSE ALL OTHER DRUNK DRIVING LAWS PERTAIN TO THEM. THE ONLY DIFFERENCE IN TREATMENT BETWEEN THE MOTOR VEHICLE OPERATOR AND THE AIR OR WATER CRAFT OPERATOR IS THE PRELIMINARY FIELD TEST.

** THE HESS CS PROVIDES A DEFINITION FOR UNLAWFUL TO MEAN A VIOLATION OF ANY FEDERAL, STATE, OR MUNICIPAL STATUTE, REGULATION, OR ORDINANCE.

NO FISCAL NOTE

DEPARTMENT OF LAW
PROPOSED CS FOR SECTION 4
OF CSSB 20 (HESS)

am #1

pg 3 line

delete & insert Sec. 4

Sec. 4. AS 28.35.031 is amended by adding a new subsection to read:

(g) For purposes of (b) of this section, "unlawfully" means in violation of any federal, state, or municipal statute, regulation or ordinance, except for violations which do not provide reason to believe that the operator's ability to operate the aircraft or watercraft was impaired by the ingestion of alcoholic beverages.

~~Adopted~~

Adopted

2

COMMITTEE REPORT
SENATE

FURTHER: JUDICIARY
FINANCE

1/14/85

Date 4-4-85

Mr. President

The Committee on HESS considered SB 20

relating to implied consent to preliminary breath test by aircraft and watercraft operators.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 20
- new title
- same title and recommends Do Pass
- and attached a "LETTER OF INTENT" [] NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

John De Vries

Joe J. ...

William Stuzulski

Paul ...

Scott ...

Chairman

Do Pass

Chairman recommendation