

CHAPTER 401—S.F.No. 31

An act relating to motorboat safety; strengthening prohibitions and penalties regarding operation of motorboat while under the influence of alcohol or a controlled substance; providing a penalty; amending Minnesota Statutes 1984, sections 361.02, subdivision 9; and 361.12; proposing coding for new law in Minnesota Statutes, chapter 361.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1984, section 361.02, subdivision 9, is amended to read:

Subd. 9. "Underway or in use" means any watercraft in operation or use ~~when not~~ unless it is securely fastened to a dock or other permanent mooring. As used in section 361.12 and section 3, "underway or in use" means any motorboat in operation unless it is fastened to a dock or other mooring, anchored, or beached.

Sec. 2. Minnesota Statutes 1984, section 361.12, is amended to read:

361.12 ALCOHOL, DRUGS, PHYSICAL OR MENTAL DISABILITY.

Subdivision 1. **ACTS PROHIBITED.** (a) No person shall operate or be in ~~actual~~ physical control of any ~~watercraft~~ motorboat while underway or in use on the waters of this state while under the influence of:

- (1) alcohol, as provided in section 169.121, subdivision 1 ~~or~~, clauses (a) and (d);
- (2) a controlled substance, as defined in section 152.01, subdivision 4; or
- (3) a combination of any two or more of the elements named in clauses (1) and (2).

(b) No owner or other person having charge or control of any ~~watercraft~~ motorboat shall ~~knowingly~~ authorize or permit any ~~person who~~ individual the person knows or has reason to believe is under the influence of alcohol, or a controlled substance, as provided under paragraph (a), to operate such watercraft the motorboat while underway or in use on the waters of this state.

~~Subd. 2.~~ (c) No owner or other person having charge or control of any ~~watercraft~~ motorboat shall knowingly authorize or permit any person, who by reason of any physical or mental disability is incapable of operating such watercraft the motorboat, to operate such watercraft the motorboat while underway or in use on the waters of this state.

Subd. 2. **ARREST.** Conservation officers of the department of natural resources, sheriffs, sheriff's deputies, and other peace officers may arrest a person for a violation under subdivision 1 without a warrant upon probable cause, if the violation was committed in the officer's presence. If the violation did not

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occur in the officer's presence, the officer may arrest the person if the person was involved in a motorboat accident resulting in death, personal injury, or property damage.

Subd. 3. PRELIMINARY SCREENING TEST. When an officer authorized under subdivision 2 to make arrests has reason to believe from the manner in which a person is operating, controlling, or acting upon departure from a motorboat, or has operated or been in control of a motorboat, that the operator may be violating or has violated subdivision 1, paragraph (a), the officer may require the operator to provide a breath sample for a preliminary screening test using a device approved by the commissioner of public safety for this purpose. The results of the preliminary screening test shall be used for the purpose of deciding whether any arrest should be made under this section and whether to require the chemical tests authorized in section 3, but may not be used in any court action except to prove that a test was properly required of an operator pursuant to section 3. Following the preliminary screening test, additional tests may be required of the operator as provided under section 3. Any operator who refuses a breath sample is subject to the provisions of section 3 unless, in compliance with that section, the operator submits to a blood, breath, or urine test to determine the presence of alcohol or a controlled substance.

Subd. 4. EVIDENCE. (a) Upon the trial of any prosecution arising out of acts alleged to have been committed by any person arrested for operating or being in physical control of any motorboat in violation of subdivision 1, paragraph (a), the court may admit evidence of the amount of alcohol or a controlled substance in the person's blood, breath, or urine as shown by an analysis of those items.

(b) For the purposes of this subdivision:

(1) evidence that there was at the time an alcohol concentration of 0.05 or less is prima facie evidence that the person was not under the influence of alcohol;

(2) evidence that there was at the time an alcohol concentration of more than 0.05 and less than 0.10 is relevant evidence in indicating whether or not the person was under the influence of alcohol.

(c) Evidence of the refusal to take a preliminary screening test required under subdivision 3 or a chemical test required under section 3 is admissible into evidence in a prosecution under this section.

(d) This subdivision does not limit the introduction of any other competent evidence bearing upon the question whether or not the person was under the influence of alcohol or a controlled substance, including results obtained from partial tests on an infrared breath-testing instrument. A result from a partial test is the measurement obtained by analyzing one adequate breath sample. A sample is adequate if the instrument analyzes the sample and does not indicate the sample is deficient.

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Subd. 5. PENALTIES. (a) A person who violates any prohibition contained in subdivision 1 is guilty of a misdemeanor; except that a person who violates any prohibition contained in subdivision 1 within five years of a prior conviction under that subdivision or civil liability under section 3, subdivision 2, or within ten years of two or more prior convictions under that subdivision or civil liability under section 3, subdivision 2, is guilty of a gross misdemeanor.

(b) A person who operates a motorboat on the waters of this state during the period the person is prohibited from operating any motorboat or after the person's motorboat operator's permit has been revoked, as provided under subdivision 6, is guilty of a misdemeanor.

Subd. 6. OPERATING PRIVILEGES SUSPENDED; REVOKED. (a) Upon conviction, and in addition to any penalty imposed under subdivision 5, the person is prohibited from operating any motorboat on the waters of this state for a period of 90 days between May 1 and October 31, extending over two consecutive years if necessary.

(b) A person 13 years of age or older but less than 18 years of age who violates any prohibition contained in subdivision 1 shall have his motorboat operator's permit revoked by the commissioner as required by section 361.22, subdivision 2, in addition to any other penalty imposed by the court.

Subd. 7. DUTIES OF COMMISSIONER. The court shall promptly forward copies of all convictions and criminal and civil penalties imposed under subdivision 5 and section 3, subdivision 2, to the commissioner. The commissioner shall notify the convicted person of the period during which the person is prohibited from operating a motorboat as provided under subdivision 6 or section 3, subdivision 2. The commissioner shall also periodically circulate to appropriate law enforcement agencies a list of all persons who are prohibited from operating any motorboat or have had their motorboat operator's permits revoked pursuant to subdivision 6 or section 3, subdivision 2.

Subd. 8. IMMUNITY FROM LIABILITY. The state or political subdivision which is the employer of an officer authorized under subdivision 2 to make an arrest for violations of subdivision 1 is immune from any liability, civil or criminal, for the care or custody of the motorboat being operated by or in the physical control of the person arrested if the officer acts in good faith and exercises due care.

Sec. 3. [361.121] MANDATORY TESTING.

Subdivision 1. CHEMICAL TESTING. A person who operates or is in physical control of a motorboat while underway or in use on the waters of this state is required, subject to the provisions of this section, to take or submit to a test of the person's blood, breath, or urine for the purpose of determining the presence and amount of alcohol or a controlled substance. The test shall be administered at the direction of an officer authorized to make arrests under section 361.12, subdivision 2. Taking or submitting to the test is mandatory when requested by an officer who has probable cause to believe the person was operating or in physical control of a motorboat in violation of section 361.12, subdivision 1, paragraph (a), and one of the following conditions exist:

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(1) the person has been lawfully placed under arrest for violating section 361.12, subdivision 1, paragraph (a);

(2) the person has been involved in a motorboat accident resulting in property damage, personal injury, or death;

(3) the person has refused to take the preliminary screening test provided for in section 361.12, subdivision 3; or

(4) the screening test was administered and recorded an alcohol concentration of 0.10 or more.

Subd. 2. PENALTIES. (a) A person who refuses to take a test required under subdivision 1 is subject to a civil penalty not to exceed \$700 and, in addition, the person is prohibited from operating any motorboat on the waters of this state for a period of one year.

(b) A person who operates a motorboat on the waters of this state during the period the person is prohibited from operating any motorboat as provided under paragraph (a) is guilty of a misdemeanor.

Subd. 3. RIGHTS AND OBLIGATIONS. At the time a test is requested, the person must be informed:

(1) that Minnesota law requires a person to take a test to determine if the person is under the influence of alcohol or a controlled substance;

(2) that a person is subject to a civil penalty not to exceed \$700 for refusing to take the test and, in addition, the person is prohibited from operating any motorboat, as provided under subdivision 2, for refusing to take the test;

(3) that if testing is refused it will not affect the person's motor vehicle driver's license;

(4) that if the test is taken and the results indicate that the person is under the influence of alcohol or a controlled substance, the person will be subject to criminal penalties and in addition to any other penalties the court may impose, the person's operating privileges will be suspended as provided under section 361.12, subdivision 6, paragraph (a);

(5) that, after submitting to testing, the person has the right to have additional tests made by a person of his own choosing; and

(6) that, if he refused to take a test, the refusal will be offered into evidence against him at trial.

Subd. 4. REQUIREMENT OF URINE TEST. Notwithstanding subdivision 1, if there are reasonable and probable grounds to believe there is impairment by a controlled substance which is not subject to testing by a blood or breath test, a urine test may be required even after a blood or breath test has been administered.

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Subd. 5. BREATH TEST USING AN INFRARED BREATH-TESTING INSTRUMENT. In the case of a breath test administered using an infrared breath-testing instrument, the test shall consist of analyses in the following sequence: one adequate breath sample analysis, one calibration standard analysis, and a second, adequate breath sample analysis. In the case of a test administered using an infrared breath-testing instrument, a sample is adequate if the instrument analyzes the sample and does not indicate the sample is deficient. For purposes of this section, when a test is administered using an infrared breath-testing instrument, failure of a person to provide two separate adequate breath samples in the proper sequence constitutes a refusal to take the test.

Subd. 6. CONSENT OF PERSON INCAPABLE OF REFUSAL NOT WITHDRAWN. A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is deemed not to have withdrawn the consent provided by subdivision 1 and the test may be given.

Subd. 7. MANNER OF MAKING TEST; ADDITIONAL TESTS. Only a physician, medical technician, physician's trained mobile intensive care paramedic, registered nurse, medical technologist, or laboratory assistant acting at the request of a peace officer authorized to make arrests under section 361.12, subdivision 2, may withdraw blood for the purpose of determining the presence of alcohol or controlled substance. This limitation does not apply to the taking of a breath or urine sample. The person tested has the right to have a person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a peace officer; provided, that the additional test sample on behalf of the person is obtained at the place where the person is in custody, after the test administered at the direction of a peace officer, and at no expense to the state. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission in evidence of the test taken at the direction of a peace officer unless the additional test was prevented or denied by the peace officer. The physician, medical technician, physician's trained mobile intensive care paramedic, medical technologist, laboratory assistant, or registered nurse drawing blood at the request of a peace officer for the purpose of determining alcohol concentration shall in no manner be liable in any civil or criminal action except for negligence in drawing the blood. The person administering a breath test shall be fully trained in the administration of breath tests pursuant to training given by the commissioner of public safety.

Sec. 4. EFFECTIVE DATE.

Sections 1 to 3 are effective May 15, 1986, and apply to offenses committed on or after that date.

Approved March 24, 1986

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