

## CHAPTER 86B

## WATER SAFETY, WATERCRAFT, AND WATERCRAFT TITLING

86B.331	Operation while using alcohol or drugs or with a physical or mental disability.	86B.337	Forfeiture of motorboats.
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**86B.331 OPERATION WHILE USING ALCOHOL OR DRUGS OR WITH A PHYSICAL OR MENTAL DISABILITY.**

*[For text of subs 1 to 4, see M.S.1994]*

**Subd. 5. Penalties.** (a) A person who violates a prohibition contained in subdivision 1, or an ordinance in conformity with it, is guilty of a misdemeanor.

(b) A person is guilty of a gross misdemeanor who violates a prohibition contained in subdivision 1:

(1) within five years of a prior:

(i) impaired driving conviction, as defined in section 169.121, subdivision 3, paragraph (a), clause (1);

(ii) civil liability under section 84.911, subdivision 2, or 86B.335, subdivision 2; or

(iii) conviction under an ordinance of this state or a statute or ordinance from another state in conformity with any of them; or

(2) within ten years of the first of two or more prior:

(i) impaired driving convictions, as defined in section 169.121, subdivision 3, paragraph (a), clause (1);

(ii) civil liabilities under section 84.911, subdivision 2, or 86B.335, subdivision 2;

(iii) convictions of ordinances in conformity with any of them; or

(iv) convictions or liabilities under any combination of items (i) to (iii).

(c) The attorney in the jurisdiction where the violation occurred who is responsible for prosecution of misdemeanor violations of this section is also responsible for prosecution of gross misdemeanor violations of this section. When an attorney responsible for prosecuting gross misdemeanors under this section requests criminal history information relating to prior convictions from a court, the court must furnish the information without charge.

(d) 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the period the person is prohibited from operating any motorboat or after the person's watercraft operator's permit has been revoked, as provided under subdivision 6, is guilty of a misdemeanor.

*[For text of subs 5a to 8, see M.S.1994]*

**History:** 1995 c 230 s 6

**86B.335 TESTING FOR ALCOHOL AND CONTROLLED SUBSTANCES.**

*[For text of subs 1 to 12, see M.S.1994]*

**Subd. 13. Coroner to report death.** Every coroner or medical examiner shall report in writing to the department of natural resources the death of any person within the jurisdiction of the coroner or medical examiner as the result of an accident involving any watercraft or drowning and the circumstances of the accident. The report shall be made within 15 days after the death or recovery.

In the case of operators killed in watercraft accidents, or the death of passengers or drowning victims 14 years of age or older, who die within four hours after accident, the coroner or medical examiner shall examine the body and shall make tests as are necessary to de-

termine the presence and percentage concentration of alcohol, and drugs if feasible, in the blood of the victim. This information shall be included in each report submitted pursuant to the provisions of this subdivision and shall be tabulated by the department of natural resources. Periodically, the commissioner of natural resources must transmit a summary of the reports to the commissioner of public safety.

**History:** 1995 c 185 s 2

### 86B.337 FORFEITURE OF MOTORBOATS.

Subdivision 1. **Definitions.** As used in this section, the following terms have the meanings given them:

(a) "Appropriate agency" means a law enforcement agency that has the authority to make an arrest for a violation of a designated offense.

(b) "Designated offense" means a violation of section 86B.331 or an ordinance in conformity with it:

(1) occurring within five years of the first of three prior impaired driving convictions or the first of three prior license revocations based on separate impaired driving incidents;

(2) occurring within 15 years of the first of four or more prior impaired driving convictions or the first of four or more prior license revocations based on separate impaired driving incidents;

(3) by a person whose driver's license or driving privileges have been canceled under section 171.04, subdivision 1, clause (8); or

(4) by a person who is subject to a restriction on the person's driver's license under section 171.09 that provides that the person may not use or consume any amount of alcohol or a controlled substance.

(c) "Motorboat" has the meaning given in section 86B.005, subdivision 9.

(d) "Owner" means the registered owner of the motorboat according to records of the department of natural resources and includes a lessee of a motorboat if the lease agreement has a term of 180 days or more.

(e) "Prior impaired driving conviction" has the meaning given in section 169.121, subdivision 3.

(f) "Prior license revocation" has the meaning given in section 169.121, subdivision 3.

(g) "Prosecuting authority" means the attorney in the jurisdiction in which the designated offense occurred who is responsible for prosecuting violations of a designated offense.

Subd. 2. **Seizure.** (a) A motorboat subject to forfeiture under this section may be seized by the appropriate agency upon process issued by any court having jurisdiction over the motorboat.

(b) Property may be seized without process if:

(1) the seizure is incident to a lawful arrest or a lawful search;

(2) the motorboat subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this section; or

(3) the appropriate agency has probable cause to believe that the delay occasioned by the necessity to obtain process would result in the removal or destruction of the motorboat.

(c) If property is seized without process under paragraph (b), clause (3), the prosecuting authority must institute a forfeiture action under this section as soon as is reasonably possible.

Subd. 3. **Right to possession; custody.** All right, title, and interest in a motorboat subject to forfeiture under this section vests in the appropriate agency upon commission of the designated offense giving rise to the forfeiture. A motorboat seized under this section is not subject to replevin, but is deemed to be in the custody of the appropriate agency subject to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When the motorboat is seized, the appropriate agency may:

(1) place the motorboat under seal;

(2) remove the motorboat to a place designated by it;

(3) place a disabling device on the motorboat; and

(4) take other steps reasonable and necessary to secure the motorboat and prevent waste.

**Subd. 4. Bond by owner for possession.** If the owner of a motorboat that has been seized under this section seeks possession of the motorboat before the forfeiture action is determined, the owner may, subject to the approval of the appropriate agency, give security or post bond payable to the appropriate agency in an amount equal to the retail value of the seized motorboat. On posting the security or bond, the seized motorboat may be returned to the owner only if a disabling device is attached to the motorboat. The forfeiture action shall proceed against the security as if it were the seized motorboat.

**Subd. 5. Evidence.** Certified copies of driver's license records concerning prior license revocations are admissible as substantive evidence when necessary to prove the commission of a designated offense.

**Subd. 6. Forfeiture for committing designated offense.** A motorboat is subject to forfeiture under this section if it was used in the commission of a designated offense.

**Subd. 7. Limitations on forfeiture.** (a) A motorboat is subject to forfeiture under this section only if the driver is convicted of the designated offense upon which the forfeiture is based.

(b) A motorboat encumbered by a bona fide security interest, or subject to a lease that has a term of 180 days or more, is subject to the interest of the secured party or lessor unless the party or lessor had knowledge of or consented to the act upon which the forfeiture is based.

(c) Notwithstanding paragraph (b), the secured party's or lessor's interest in a motorboat is not subject to forfeiture based solely on the secured party's or lessor's knowledge of the act or omission upon which the forfeiture is based if the secured party or lessor took reasonable steps to terminate use of the motorboat by the offender.

(d) A motorboat is subject to forfeiture under this section only if the owner was privy to the act or omission upon which the forfeiture is based, or the act or omission occurred with the owner's knowledge or consent.

(e) A motorboat subject to a security interest, based upon a loan or other financing arranged by a financial institution, is subject to the interest of the financial institution.

**Subd. 8. Forfeiture procedure.** (a) A motorboat used to commit a designated offense is subject to forfeiture under this subdivision.

(b) A separate complaint must be filed against the motorboat, describing it, and specifying that it was used in the commission of a designated offense and specifying the time and place of its unlawful use. If the person charged with a designated offense is not convicted of the offense, the court shall dismiss the complaint against the motorboat and order the property returned to the person legally entitled to it. If the lawful ownership of the motorboat used in the commission of a designated offense can be determined and it is found the owner was not privy to commission of a designated offense, the motorboat must be returned immediately.

**Subd. 9. Disposition of forfeited motorboats; proceeds allocated.** (a) On finding under subdivision 8 that the motorboat is subject to forfeiture, the court shall order the appropriate agency to:

- (1) sell the motorboat and distribute the proceeds under paragraph (b); or
- (2) keep the motorboat for official use.

(b) The proceeds from the sale of forfeited motorboats, after payment of seizure, storage, forfeiture, and sale expenses, and satisfaction of valid liens against the property, must be forwarded to the treasury of the political subdivision that employs the appropriate agency responsible for the forfeiture for use in DWI-related enforcement, training, and education. If the appropriate agency making the arrest leading to the forfeiture is an agency of state government, the net proceeds must be deposited in the state treasury and credited to the water recreation account in the natural resources fund.

**Subd. 10. Reporting requirement.** The appropriate agency shall provide to the state auditor, on an annual basis and in a manner prescribed by the state auditor, a written record of each forfeiture incident. The record must include a brief description of the vehicle forfeited, its estimated market value, the actual or estimated amount of net proceeds from the sale of the vehicle, the dates of the incident and the forfeiture, and a brief description of the circum-

stances of the impaired driving incident giving rise to the forfeiture. The state auditor shall report annually to the legislature on the nature and extent of forfeitures pursuant to this section.

**History:** 1995 c 230 s 7

#### 86B.401 WATERCRAFT LICENSES.

*[For text of subs 1 to 10, see M.S.1994]*

**Subd. 11. Suspension for not removing water milfoil or other undesirable exotic species.** (a) The commissioner, after notice and an opportunity for hearing, may suspend for a period of not more than one year the license of a watercraft if the owner or person in control of the watercraft or its trailer refuses to comply with an inspection order of a conservation officer or other licensed peace officer or an order to remove water milfoil, zebra mussels, or undesirable exotic species from the watercraft or its trailer as provided in section 18.317, subdivision 3.

(b) For the purposes of this subdivision, "undesirable exotic species," "water milfoil," and "zebra mussels" have the meanings given in section 18.317.

*[For text of subd 12, see M.S.1994]*

**History:** 1Sp1995 c 1 s 14

#### 86B.415 LICENSE FEES.

*[For text of subs 1 to 6, see M.S.1994]*

**Subd. 7. Watercraft surcharge.** A \$5 surcharge is placed on each watercraft licensed under subdivisions 1 to 5 for control, public awareness, law enforcement, monitoring, and research of nuisance aquatic exotic species such as zebra mussel, purple loosestrife, and Eurasian water milfoil in public waters and public wetlands.

**Subd. 8. Registrar's fee.** In addition to the license fee, a fee of \$2 shall be charged for a watercraft license:

(1) issued through the registrar or a deputy registrar of motor vehicles and the additional fee shall be disposed of in the manner provided in section 168.33, subdivision 2; or

(2) issued through the commissioner and the additional fee shall be deposited in the state treasury and credited to the water recreation account.

*[For text of subs 9 and 10, see M.S.1994]*

**History:** 1995 c 220 s 73,74

#### 86B.825 CERTIFICATE OF TITLE REQUIRED.

*[For text of subd 1, see M.S.1994]*

**Subd. 2. Exempt watercraft.** A watercraft is not required to have a certificate of title if the watercraft is:

- (1) owned by a manufacturer or dealer and held for sale;
- (2) used by a manufacturer solely for testing;
- (3) from a jurisdiction other than this state, temporarily using the waters of this state;
- (4) owned by the United States, a state, this state, or a political subdivision;
- (5) a duck boat used only during duck hunting season;
- (6) a rice boat used only during the wild rice harvesting season;
- (7) owned by a person, firm, or corporation operating a resort as defined in section 157.15 or a recreational camping area as defined in section 327.14, subdivision 8, except with respect to a previously titled watercraft; or
- (8) watercraft manufactured prior to August 1, 1979.

*[For text of subs 3 to 6, see M.S.1994]*

**History:** 1995 c 207 art 9 s 60

**86B.870 TITLE FEES.**

Subdivision 1. **Fees.** (a) The fee to be paid to the commissioner:

(1) for issuing an original certificate of title, including the concurrent notation of an assignment of the security interest and its subsequent release or satisfaction, is \$15;

(2) for each security interest when first noted upon a certificate of title, including the concurrent notation of an assignment of the security interest and its subsequent release or satisfaction, is \$10;

(3) for transferring the interest of an owner and issuing a new certificate of title, is \$10;

(4) for each assignment of a security interest when first noted on a certificate of title, unless noted concurrently with the security interest, is \$1; and

(5) for issuing a duplicate certificate of title, is \$4.

(b) In addition to other statutory fees and taxes, a filing fee of \$3.50 is imposed on every application. The filing fee must be shown as a separate item on title renewal notices sent by the commissioner.

*[For text of subs 2 to 4, see M.S.1994]*

**History:** 1995 c 220 s 75