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**SENATE BILL 54**

**45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002**

**INTRODUCED BY**

**Cisco McSorley**

**FOR THE CORRECTIONS OVERSIGHT AND JUSTICE COMMITTEE**

**AN ACT**

**RELATING TO BOATING; ENACTING THE BOATING WHILE INTOXICATED  
ACT; PRESCRIBING PENALTIES FOR OPERATING A MOTORBOAT WHILE  
UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AUTHORIZING TESTING  
OF A PERSON'S BLOOD OR BREATH FOR ALCOHOL OR DRUGS; AMENDING  
AND ENACTING SECTIONS OF THE NMSA 1978.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1  
through 12 of this act may be cited as the "Boating While  
Intoxicated Act".**

**Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the  
Boating While Intoxicated Act:**

**A. "bodily injury" means an injury to a person  
that is not likely to cause death or great bodily harm to the  
person, but does cause painful temporary disfigurement or**

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1 temporary loss or impairment of the functions of any member or  
2 organ of the person's body;

3 B. "conviction" means an adjudication of guilt and  
4 does not include imposition of a sentence;

5 C. "motorboat" means any boat, personal watercraft  
6 or other type of vessel propelled by machinery, whether or not  
7 machinery is the principle source of propulsion. "Motorboat"  
8 includes a vessel propelled or designed to be propelled by a  
9 sail, but does not include a sailboard or a windsurf board.

10 "Motorboat" does not include a houseboat or any other vessel  
11 that is moored on the water, but not moving on the water; and

12 D. "operate" means to physically handle the  
13 controls of a motorboat that is moving on the water.

14 Section 3. [NEW MATERIAL] OPERATING A MOTORBOAT WHILE  
15 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS. --

16 A. It is unlawful for a person who is under the  
17 influence of intoxicating liquor to operate a motorboat.

18 B. It is unlawful for a person who is under the  
19 influence of any drug to a degree that renders him incapable  
20 of safely operating a motorboat to operate a motorboat.

21 C. It is unlawful for a person who has an alcohol  
22 concentration of eight hundredths or more in his blood or  
23 breath to operate a motorboat.

24 D. Aggravated boating while under the influence of  
25 intoxicating liquor or drugs consists of a person who:

. 139386. 2

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1 (1) has an alcohol concentration of sixteen  
2 hundredths or more in his blood or breath while operating a  
3 motorboat;

4 (2) has caused bodily injury to a human being  
5 as a result of the unlawful operation of a motorboat while  
6 under the influence of intoxicating liquor or drugs; or

7 (3) refused to submit to chemical testing, as  
8 provided for in the Boating While Intoxicated Act, and in the  
9 judgment of the court, based upon evidence of intoxication  
10 presented to the court, was under the influence of  
11 intoxicating liquor or drugs.

12 E. Every person under first conviction pursuant to  
13 this section shall be punished, notwithstanding the provisions  
14 of Section 31-18-13 NMSA 1978, by imprisonment for not more  
15 than ninety days or by a fine of not more than five hundred  
16 dollars (\$500), or both; provided that if the sentence is  
17 suspended in whole or in part or deferred, the period of  
18 probation may extend beyond ninety days but shall not exceed  
19 one year. The offender shall be ordered by the court to  
20 attend a boating safety course approved by the national  
21 association of state boating law administrators. An offender  
22 ordered by the court to attend a boating safety course shall  
23 provide the court with proof that the offender successfully  
24 completed the course within seven months of his conviction or  
25 prior to completion of his probation, whichever period of time

. 139386. 2

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1 is less. In addition to those penalties, when an offender  
2 commits aggravated boating while under the influence of  
3 intoxicating liquor or drugs, the offender shall be sentenced  
4 to not less than forty-eight consecutive hours in jail and may  
5 be fined not more than seven hundred fifty dollars (\$750). On  
6 a first conviction under this section, any time spent in jail  
7 for the offense prior to the conviction for that offense shall  
8 be credited to any term of imprisonment fixed by the court. A  
9 deferred sentence pursuant to this subsection shall be  
10 considered a first conviction for the purpose of determining  
11 subsequent convictions.

12 F. A second or subsequent conviction pursuant to  
13 this section shall be punished, notwithstanding the provisions  
14 of Section 31-18-13 NMSA 1978, by imprisonment for not more  
15 than three hundred sixty-four days or by a fine of not more  
16 than seven hundred fifty dollars (\$750), or both; provided  
17 that if the sentence is suspended in whole or in part, the  
18 period of probation shall not exceed one year. In addition to  
19 those penalties, when an offender commits aggravated boating  
20 while under the influence of intoxicating liquor or drugs, the  
21 offender shall be sentenced to not less than forty-eight  
22 consecutive hours in jail and may be fined not more than one  
23 thousand dollars (\$1,000).

24 Section 4. [NEW MATERIAL] GUILTY PLEAS--LIMITATIONS.--  
25 When a complaint or information alleges a violation of Section  
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1 3 of the Boating While Intoxicated Act, any plea of guilty  
2 thereafter entered in satisfaction of the charges shall  
3 include at least a plea of guilty to the violation of one of  
4 the subsections of Section 3 of that act, and no other  
5 disposition by plea of guilty to any other charge in  
6 satisfaction of the charge shall be authorized if the results  
7 of a test performed pursuant to that act disclose that the  
8 blood or breath of the person charged contains an alcohol  
9 concentration of eight hundredths or more.

10 Section 5. [NEW MATERIAL] MUNICIPAL AND COUNTY  
11 ORDINANCES--UNLAWFUL ALCOHOL CONCENTRATION LEVEL FOR BOATING  
12 WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--No  
13 municipal or county ordinance prohibiting the operation of a  
14 motorboat while under the influence of intoxicating liquor or  
15 drugs shall be enacted that provides for an unlawful alcohol  
16 concentration level that is different than the alcohol  
17 concentration levels provided in Section 3 of the Boating  
18 While Intoxicated Act.

19 Section 6. [NEW MATERIAL] BLOOD-ALCOHOL TESTS--PERSONS  
20 QUALIFIED TO PERFORM TESTS--RELIEF FROM CIVIL AND CRIMINAL  
21 LIABILITY.--Only a physician, licensed professional or  
22 practical nurse or laboratory technician or technologist  
23 employed by a hospital or physician shall withdraw blood from  
24 any person in the performance of a blood-alcohol or drug test.  
25 No such physician, nurse, technician or technologist who

. 139386. 2

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1 withdraws blood from any person in the performance of a  
2 blood-alcohol or drug test that has been directed by any law  
3 enforcement officer, or by any judicial or probation officer,  
4 shall be held liable in any civil or criminal action for  
5 assault, battery, false imprisonment or any conduct of a law  
6 enforcement officer, except for negligence, nor shall any  
7 person assisting in the performance of such a test, or any  
8 hospital wherein blood is withdrawn in the performance of such  
9 a test, be subject to civil or criminal liability for assault,  
10 battery, false imprisonment or any conduct of any law  
11 enforcement officer, except for negligence.

12 Section 7. [NEW MATERIAL] BLOOD-ALCOHOL TEST--LAW  
13 ENFORCEMENT, JUDICIAL OR PROBATION OFFICER UNAUTHORIZED TO  
14 MAKE ARREST OR DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL  
15 DUTIES AUTHORIZED BY LAW.--Nothing in the Boating While  
16 Intoxicated Act is intended to authorize any law enforcement  
17 officer, or any judicial or probation officer, to make any  
18 arrest or direct the performance of a blood-alcohol or drug  
19 test, except in the performance of his official duties or as  
20 otherwise authorized by law.

21 Section 8. [NEW MATERIAL] IMPLIED CONSENT TO SUBMIT TO  
22 CHEMICAL TEST.--

23 A. A person who operates a motorboat within this  
24 state shall be deemed to have given consent, subject to the  
25 provisions of the Boating While Intoxicated Act, to chemical

. 139386. 2

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1 tests of his breath or blood or both, approved by the  
2 scientific laboratory division of the department of health  
3 pursuant to the provisions of Section 24-1-22 NMSA 1978 as  
4 determined by a law enforcement officer, or for the purposes  
5 of determining the drug or alcohol content of his blood if  
6 arrested for any offense arising out of acts alleged to have  
7 been committed while the person was operating a motorboat  
8 while under the influence of an intoxicating liquor or drug.

9 B. The arrested person shall be advised by a law  
10 enforcement officer that failure to submit to a chemical test  
11 may be introduced into evidence in court and that the court,  
12 upon conviction, may impose an increased fine for the person's  
13 failure to submit to a chemical test.

14 C. A test of blood or breath or both, approved by  
15 the scientific laboratory division of the department of health  
16 pursuant to the provisions of Section 24-1-22 NMSA 1978, shall  
17 be administered at the direction of a law enforcement officer  
18 having reasonable grounds to believe the person to have been  
19 operating a motorboat while under the influence of an  
20 intoxicating liquor or drug.

21 D. A person who operates a motorboat in this state  
22 and who is involved in a fatal boating incident shall be  
23 deemed to have given consent, subject to the provisions of the  
24 Boating While Intoxicated Act, to mandatory chemical tests of  
25 his blood or breath or both, as determined by a law

1 enforcement officer and approved by the scientific laboratory  
2 division of the department of health pursuant to the  
3 provisions of Section 24-1-22 NMSA 1978.

4 Section 9. [NEW MATERIAL] CONSENT OF PERSON INCAPABLE OF  
5 REFUSAL NOT WITHDRAWN. --A person who is dead, unconscious or  
6 otherwise in a condition rendering him incapable of refusal  
7 shall be deemed not to have withdrawn the consent provided by  
8 the Boating While Intoxicated Act, and the test designated by  
9 the law enforcement officer may be administered.

10 Section 10. [NEW MATERIAL] ADMINISTRATION OF CHEMICAL  
11 TEST-- PAYMENT OF COSTS-- ADDITIONAL TESTS. --

12 A. Only the persons authorized by the Boating  
13 While Intoxicated Act shall withdraw blood from any person for  
14 the purpose of determining its alcohol or drug content. This  
15 limitation does not apply to the taking of samples of breath.

16 B. The person tested shall be advised by the law  
17 enforcement officer of the person's right to be given an  
18 opportunity to arrange for a physician, licensed professional  
19 or practical nurse or laboratory technician or technologist  
20 who is employed by a hospital or physician of his own choosing  
21 to perform a chemical test in addition to any test performed  
22 at the direction of a law enforcement officer.

23 C. Upon the request of the person tested, full  
24 information concerning the test performed at the direction of  
25 the law enforcement officer shall be made available to him as

. 139386. 2



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1 soon as it is available from the person performing the test.

2 D. The agency represented by the law enforcement  
3 officer at whose direction the chemical test is performed  
4 shall pay for the chemical test.

5 E. If a person exercises his right under  
6 Subsection B of this section to have a chemical test performed  
7 upon him by a person of his own choosing, the cost of that  
8 test shall be paid by the agency represented by the law  
9 enforcement officer at whose direction a chemical test was  
10 administered under Section 8 of the Boating While Intoxicated  
11 Act.

12 Section 11. [NEW MATERIAL] USE OF TESTS IN CRIMINAL OR  
13 CIVIL ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING. --

14 A. The results of a test performed pursuant to the  
15 Boating While Intoxicated Act may be introduced into evidence  
16 in any civil action or criminal action arising out of the acts  
17 alleged to have been committed by the person tested for  
18 operating a motorboat while under the influence of  
19 intoxicating liquor or drugs.

20 B. When the blood or breath of the person tested  
21 contains:

22 (1) an alcohol concentration of five  
23 hundredths or less, it shall be presumed that the person was  
24 not under the influence of intoxicating liquor; or

25 (2) an alcohol concentration of more than

1 five hundredths but less than eight hundredths, no presumption  
2 shall be made that the person either was or was not under the  
3 influence of intoxicating liquor. However, the amount of  
4 alcohol in the person's blood or breath may be considered with  
5 other competent evidence in determining whether the person was  
6 under the influence of intoxicating liquor.

7 C. When the blood or breath of the person tested  
8 contains an alcohol concentration of eight hundredths or more,  
9 the arresting officer shall charge him with a violation of  
10 Section 3 of the Boating While Intoxicated Act.

11 D. The determination of alcohol concentration  
12 shall be based on the grams of alcohol in one hundred  
13 milliliters of blood or the grams of alcohol in two hundred  
14 ten liters of breath.

15 E. The alcohol concentration in a person's blood  
16 or breath shall be determined by a chemical test administered  
17 to the person within three hours of the alleged boating while  
18 under the influence of intoxicating liquor. In a prosecution  
19 pursuant to the provisions of the Boating While Intoxicated  
20 Act, it is a rebuttable presumption that a person is in  
21 violation of the provisions of that act if he has an alcohol  
22 concentration of eight hundredths or more in his blood or  
23 breath as determined by a chemical test administered to the  
24 person within three hours of the alleged boating while under  
25 the influence of intoxicating liquor. If the chemical test is

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1 administered more than three hours after the alleged boating  
2 while under the influence of intoxicating liquor, the test  
3 result is admissible as evidence of the alcohol concentration  
4 in the person's blood or breath at the time of the alleged  
5 boating and the trier of fact shall determine what weight to  
6 give the test result.

7 F. The presumptions in Subsection B of this  
8 section do not limit the introduction of other competent  
9 evidence concerning whether the person was under the influence  
10 of intoxicating liquor.

11 G. If a person is convicted of operating a  
12 motorboat while under the influence of intoxicating liquor or  
13 drugs, the trial judge shall be required to inquire into past  
14 convictions of the person for operating a motorboat while  
15 under the influence of intoxicating liquor or drugs before  
16 sentence is entered in the matter.

17 Section 12. [NEW MATERIAL] MOTORBOATS--INFLUENCE OF  
18 INTOXICATING LIQUOR OR DRUGS--FEE UPON CONVICTION. --

19 A. A person convicted of a violation of the  
20 Boating While Intoxicated Act shall be assessed by the court,  
21 in addition to any other fee or fine, a fee of sixty-five  
22 dollars (\$65.00) to defray the costs of chemical and other  
23 tests used to determine the influence of intoxicating liquor  
24 or drugs.

25 B. All fees collected pursuant to the provisions

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1 of this section shall be transmitted monthly to the crime  
2 laboratory fund. All balances in the crime laboratory fund  
3 collected pursuant to this section are appropriated to the  
4 administrative office of the courts for payment upon invoice  
5 to the scientific laboratory division of the department of  
6 health for the costs of chemical and other tests used to  
7 determine the influence of intoxicating liquor or drugs.

8 C. Payment of funds out of the crime laboratory  
9 fund of fees collected pursuant to this section shall be made  
10 upon vouchers issued and signed by the director of the  
11 administrative office of the courts upon warrants drawn by the  
12 department of finance and administration.

13 Section 13. Section 24-1-22 NMSA 1978 (being Laws 1981,  
14 Chapter 165, Section 1) is amended to read:

15 "24-1-22. SCIENTIFIC LABORATORY DIVISION-- TESTING  
16 METHODS-- CERTIFICATION. --

17 A. The scientific laboratory division of the  
18 [~~health and environment~~] department of health is authorized to  
19 promulgate and approve satisfactory techniques or methods to  
20 test persons believed to be operating a motor vehicle or a  
21 motorboat while under the influence of drugs or alcohol and to  
22 issue certification for test operators and their instructors  
23 [~~which~~] that shall be subject to termination or revocation at  
24 the discretion of the scientific laboratory division. The  
25 scientific laboratory division is further authorized to

. 139386. 2

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1 establish or approve quality control measures for alcohol  
2 breath testing and to establish or approve standards of  
3 training necessary to assure the qualifications of individuals  
4 conducting these analyses or collections.

5 B. The scientific laboratory division ~~[will]~~ shall  
6 establish criteria and specifications for equipment, training,  
7 quality control, testing methodology, blood-breath  
8 relationships and the certification of operators, instructors  
9 and collectors of breath samples.

10 C. All laboratories analyzing breath, blood or  
11 urine samples pursuant to the provisions of the Implied  
12 Consent Act and the Boating while Intoxicated Act shall be  
13 certified by the scientific laboratory division. The  
14 certification shall be granted in accordance with the rules  
15 and regulations of the scientific laboratory division and  
16 shall be subject to termination or revocation for cause. "

17 Section 14. Section 66-12-11 NMSA 1978 (being Laws 1959,  
18 Chapter 338, Section 10, as amended) is amended to read:

19 "66-12-11. PROHIBITED OPERATION. --

20 A. No person shall operate any motorboat or vessel  
21 or manipulate any water skis, surfboard or similar device in a  
22 reckless or negligent manner so as to endanger the life or  
23 property of any person.

24 B. No person shall operate any ~~[motorboat or]~~  
25 vessel, not defined as a motorboat pursuant to the provisions

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1 of the Boating while Intoxicated Act, or manipulate any water  
2 skis, surfboard or similar device while intoxicated or under  
3 the influence of any narcotic drug, barbiturate or marijuana."

4 Section 15. EFFECTIVE DATE.--The effective date of the  
5 provisions of this act is July 1, 2002.

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