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HOUSE BILL 483

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Marsha Atkin

AN ACT

**RELATING TO BOATING; ENACTING THE BOATING WHILE INTOXICATED
ACT; PRESCRIBING PENALTIES FOR BOATING 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 15 of this act may be cited as the "Boating While
Intoxicated Act".**

**Section 2. [NEW MATERIAL] OPERATING A MOTORBOAT OR
VESSEL WHILE UNDER THE INFLUENCE. --**

**A. It is unlawful for any person to operate a
motorboat or vessel or manipulate any water skis, surfboard or
similar device while:**

1 (1) under the influence of intoxicating
2 liquor or any narcotic drug, barbiturate or marijuana;

3 (2) the alcohol concentration in the person's
4 blood or breath is eight hundredths or more if he is twenty-
5 one years of age or older; or

6 (3) the alcohol concentration in the person's
7 blood or breath is two hundredths or more if he is less than
8 twenty-one years of age.

9 B. It is unlawful for the owner of a motorboat or
10 vessel to permit the motorboat or vessel to be operated by any
11 other person if the person is under the influence of
12 intoxicating liquor or drugs.

13 C. Aggravated boating under the influence of
14 intoxicating liquor or drugs consists of a person who:

15 (1) has an alcohol concentration of sixteen
16 hundredths or more in his blood or breath while operating a
17 motorboat or vessel or manipulating any water skis, surfboard
18 or similar device;

19 (2) has caused bodily injury to a human being
20 as a result of the unlawful operation of a motorboat or vessel
21 or manipulation of any water skis, surfboard or similar device
22 while under the influence of intoxicating liquor or drugs; or

23 (3) refused to submit to chemical testing, as
24 provided for in Sections 8 through 14 of the Boating While
25 Intoxicated Act, and in the judgment of the court, based upon

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1 evidence of intoxication presented to the court, was under the
2 influence of intoxicating liquor or drugs.

3 D. Every person under first conviction under this
4 section shall be punished, notwithstanding the provisions of
5 Sections 31-18-13 and 66-12-23 NMSA 1978, by imprisonment for
6 not more than ninety days or by a fine of not more than five
7 hundred dollars (\$500), or both; provided that if the sentence
8 is suspended in whole or in part or deferred, the period of
9 probation may extend beyond ninety days but shall not exceed
10 one year. Upon a first conviction under this section, an
11 offender may be sentenced to not less than forty-eight hours
12 of community service or a fine of three hundred dollars
13 (\$300). The offender shall be ordered by the court to
14 participate in and complete, within a time specified by the
15 court, an alcohol and drug abuse screening program and, if
16 necessary, a treatment program approved by the court. The
17 offender shall be ordered by the court to attend a boating
18 safety course approved by the national association of state
19 boating law administrators. The court shall not suspend,
20 defer or take under advisement participation in or completion
21 of a drug abuse screening program or the boating safety
22 course. In addition to those penalties, when an offender
23 commits aggravated boating under the influence of intoxicating
24 liquor or drugs, the offender shall be sentenced to not less
25 than forty-eight consecutive hours in jail. Any jail sentence

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1 imposed under this subsection for failure to complete, within
2 a time specified by the court, any community service,
3 screening program, treatment program or boating safety course
4 ordered by the court or for aggravated boating under the
5 influence of intoxicating liquor or drugs shall not be
6 suspended, deferred or taken under advisement. On a first
7 conviction under this section, any time spent in jail for the
8 offense prior to the conviction for that offense shall be
9 credited to any term of imprisonment fixed by the court. A
10 deferred sentence under this subsection shall be considered a
11 first conviction for the purpose of determining subsequent
12 convictions.

13 E. Upon a conviction for a first offense, in
14 addition to any other penalties, fines, fees or costs imposed
15 for a violation of this section, the court shall order the
16 person to not operate a motorboat or vessel or manipulate any
17 water skis, surfboard or similar device for ninety days if the
18 person is twenty-one years of age or older and for one hundred
19 eighty days if the person is under twenty-one years of age.

20 F. A second or third conviction under this section
21 shall be punished, notwithstanding the provisions of Sections
22 31-18-13 and 66-12-23 NMSA 1978, by imprisonment for not more
23 than three hundred sixty-four days or by a fine of not more
24 than one thousand dollars (\$1,000), or both; provided that if
25 the sentence is suspended in whole or in part, the period of

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1 probation may extend beyond one year but shall not exceed five
2 years. Notwithstanding any provision of law to the contrary
3 for suspension or deferment of execution of a sentence:

4 (1) upon a second conviction, each offender
5 shall be sentenced to a jail term of not less than seventy-two
6 consecutive hours, forty-eight hours of community service and
7 a fine of five hundred dollars (\$500). In addition to those
8 penalties, when an offender commits aggravated boating under
9 the influence of intoxicating liquor or drugs, the offender
10 shall be sentenced to a jail term of not less than ninety-six
11 hours. If an offender fails to complete, within a time
12 specified by the court, any community service, screening
13 program or treatment program ordered by the court, the
14 offender shall be sentenced to not less than an additional
15 seven consecutive days in jail. A penalty imposed pursuant to
16 this paragraph shall not be suspended, deferred or taken under
17 advisement; and

18 (2) upon a third conviction, an offender
19 shall be sentenced to a jail term of not less than thirty
20 consecutive days and a fine of seven hundred fifty dollars
21 (\$750). In addition to those penalties, when an offender
22 commits aggravated boating while under the influence of
23 intoxicating liquor or drugs, the offender shall be sentenced
24 to a jail term of not less than sixty consecutive days. If an
25 offender fails to complete, within a time specified by the

1 court, any screening program or treatment program ordered by
2 the court, the offender shall be sentenced to not less than an
3 additional sixty days in jail. A penalty imposed pursuant to
4 this paragraph shall not be suspended, deferred or taken under
5 advisement.

6 G. Upon a fourth or subsequent conviction under
7 this section, notwithstanding Section 66-12-23 NMSA 1978, an
8 offender is guilty of a fourth degree felony, as provided in
9 Section 31-18-15 NMSA 1978, and shall be sentenced to a jail
10 term of not less than six months, which shall not be
11 suspended, deferred or taken under advisement.

12 H. Upon a conviction for a second or subsequent
13 offense, in addition to any other penalties, fines, fees or
14 costs imposed for a violation of this section, the court shall
15 order the person to not operate a motorboat or vessel or
16 manipulate any water skis, surfboard or similar device for a
17 one-year period.

18 I. In the case of a first, second or third offense
19 under this section, the magistrate court has concurrent
20 jurisdiction with district courts to try the offender.

21 J. A conviction under a municipal or county
22 ordinance in New Mexico or a law of any other jurisdiction,
23 territory or possession of the United States that is
24 equivalent to New Mexico law for boating under the influence
25 of intoxicating liquor or drugs and that prescribes penalties

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1 for operating a motorboat or vessel or manipulating any water
2 skis, surfboard or similar device under the influence of
3 intoxicating liquor or drugs shall be deemed to be a
4 conviction under this section for purposes of determining
5 whether a conviction is a second or subsequent conviction.

6 K. In addition to any other fine or fee that may
7 be imposed pursuant to the conviction or other disposition of
8 the offense under this section, the court may order the
9 offender to pay the costs of any court-ordered screening and
10 treatment programs.

11 L. As used in this section:

12 (1) "bodily injury" means any injury to a
13 person that is not likely to cause death or great bodily harm
14 to the person, but does cause painful temporary disfigurement
15 or temporary loss or impairment of the functions of any member
16 or organ of the person's body; and

17 (2) "conviction" means an adjudication of
18 guilt and does not include imposition of a sentence.

19 Section 3. [NEW MATERIAL] OPERATING A MOTORBOAT OR
20 VESSEL WHILE THE PRIVILEGE TO OPERATE IS SUSPENDED. -- Any
21 person who operates a motorboat or vessel or manipulates any
22 water skis, surfboard or similar device in this state during
23 the time when he has been ordered by the court to not operate
24 a motorboat or vessel or manipulate any water skis, surfboard
25 or similar device is guilty of a misdemeanor and upon

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1 conviction shall be sentenced to a jail term of not less than
2 three days nor more than one hundred eighty days and a fine of
3 not less than three hundred dollars (\$300) nor more than one
4 thousand dollars (\$1,000). Upon a second or subsequent
5 conviction, the person shall be sentenced to a jail term of
6 not less than ninety days nor more than three hundred sixty-
7 four days and a fine of not less than five hundred dollars
8 (\$500) nor more than three thousand dollars (\$3,000). The
9 minimum jail term imposed by this section shall be mandatory
10 and may not be suspended, deferred or taken under advisement.
11 Upon a second or subsequent conviction under this section
12 within five years after the first conviction, in addition to
13 the penalty prescribed, the court shall order the offender to
14 not operate a motorboat or vessel or manipulate any water
15 skis, surfboard or similar device in this state for a period
16 of two years after the second or subsequent conviction.

17 Section 4. [NEW MATERIAL] GUILTY PLEAS--LIMITATIONS.--

18 When a complaint or information alleges a violation of Section
19 2 of the Boating While Intoxicated Act, any plea of guilty
20 thereafter entered in satisfaction of the charges shall
21 include at least a plea of guilty to the violation of one of
22 the subsections of Section 2 of that act, and no other
23 disposition by plea of guilty to any other charge in
24 satisfaction of the charge shall be authorized if the results
25 of a test performed pursuant to Sections 8 through 14 of that

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1 act disclose that the blood or breath of the person charged
2 contains an alcohol concentration of eight hundredths or more.

3 Section 5. [NEW MATERIAL] MUNICIPAL AND COUNTY
4 ORDINANCES--UNLAWFUL ALCOHOL CONCENTRATION LEVEL FOR BOATING
5 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--No
6 municipal or county ordinance prohibiting the operation of a
7 motorboat or vessel or manipulation of water skis, surfboard
8 or similar device while under the influence of intoxicating
9 liquor or drugs shall be enacted that provides for an unlawful
10 alcohol concentration level that is different than the alcohol
11 concentration levels provided in Section 2 of the Boating
12 While Intoxicated Act.

13 Section 6. [NEW MATERIAL] BLOOD ALCOHOL TESTS--PERSONS
14 QUALIFIED TO PERFORM TESTS--RELIEF FROM CIVIL AND CRIMINAL
15 LIABILITY.--Only a physician, licensed professional or
16 practical nurse or laboratory technician or technologist
17 employed by a hospital or physician shall withdraw blood from
18 any person in the performance of a blood-alcohol or drug test.
19 No such physician, nurse, technician or technologist who
20 withdraws blood from any person in the performance of a blood-
21 alcohol or drug test that has been directed by any law
22 enforcement officer, or by any judicial or probation officer,
23 shall be held liable in any civil or criminal action for
24 assault, battery, false imprisonment or any conduct of a law
25 enforcement officer, except for negligence, nor shall any

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1 person assisting in the performance of such a test, or any
2 hospital wherein blood is withdrawn in the performance of such
3 a test, be subject to civil or criminal liability for assault,
4 battery, false imprisonment or any conduct of any law
5 enforcement officer, except for negligence.

6 Section 7. [NEW MATERIAL] BLOOD-ALCOHOL TEST--LAW
7 ENFORCEMENT, JUDICIAL OR PROBATION OFFICER UNAUTHORIZED TO
8 MAKE ARREST OR DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL
9 DUTIES AUTHORIZED BY LAW.--Nothing in Sections 6 and 7 of the
10 Boating While Intoxicated Act is intended to authorize any law
11 enforcement officer, or any judicial or probation officer, to
12 make any arrest or direct the performance of a blood-alcohol
13 or drug test, except in the performance of his official duties
14 and as otherwise authorized by law.

15 Section 8. [NEW MATERIAL] IMPLIED CONSENT TO SUBMIT TO
16 CHEMICAL TEST.--

17 A. Any person who operates a motorboat or vessel
18 or manipulates any water skis, surfboard or similar device
19 within this state shall be deemed to have given consent,
20 subject to Sections 8 through 14 of the Boating While
21 Intoxicated Act, to chemical tests of his breath or blood or
22 both, approved by the scientific laboratory division of the
23 department of health pursuant to the provisions of Section
24 24-1-22 NMSA 1978 as determined by a law enforcement officer,
25 or for the purposes of determining the drug or alcohol content

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1 of his blood if arrested for any offense arising out of acts
2 alleged to have been committed while the person was operating
3 a motorboat or vessel or manipulating any water skis,
4 surfboard or similar device while under the influence of an
5 intoxicating liquor or drug.

6 B. A test of blood or breath or both, approved by
7 the scientific laboratory division of the department of health
8 pursuant to the provisions of Section 24-1-22 NMSA 1978, shall
9 be administered at the direction of a law enforcement officer
10 having reasonable grounds to believe the person to have been
11 operating a motorboat or vessel or manipulating any water
12 skis, surfboard or similar device within this state while
13 under the influence of an intoxicating liquor or drug.

14 Section 9. [NEW MATERIAL] CONSENT OF PERSON INCAPABLE OF
15 REFUSAL NOT WITHDRAWN. --Any person who is dead, unconscious or
16 otherwise in a condition rendering him incapable of refusal,
17 shall be deemed not to have withdrawn the consent provided by
18 Section 8 of the Boating While Intoxicated Act, and the test
19 or tests designated by the law enforcement officer may be
20 administered.

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

23 A. Only the persons authorized by Section 6 of the
24 Boating While Intoxicated Act shall withdraw blood from any
25 person for the purpose of determining its alcohol or drug

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1 content. This limitation does not apply to the taking of
2 samples of breath.

3 B. The person tested shall be advised by the law
4 enforcement officer of the person's right to be given an
5 opportunity to arrange for a physician, licensed professional
6 or practical nurse or laboratory technician or technologist
7 who is employed by a hospital or physician of his own choosing
8 to perform a chemical test in addition to any test performed
9 at the direction of a law enforcement officer.

10 C. Upon the request of the person tested, full
11 information concerning the test performed at the direction of
12 the law enforcement officer shall be made available to him as
13 soon as it is available from the person performing the test.

14 D. The agency represented by the law enforcement
15 officer at whose direction the chemical test is performed
16 shall pay for the chemical test.

17 E. If a person exercises his right under
18 Subsection B of this section to have a chemical test performed
19 upon him by a person of his own choosing, the cost of that
20 test shall be paid by the agency represented by the law
21 enforcement officer at whose direction a chemical test was
22 administered under Section 8 of the Boating While Intoxicated
23 Act.

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

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1 A. The results of a test performed pursuant to
2 Sections 8 through 14 of the Boating While Intoxicated Act
3 may be introduced into evidence in any civil action or
4 criminal action arising out of the acts alleged to have been
5 committed by the person tested for operating a motorboat or
6 vessel or manipulating any water skis, surfboard or similar
7 device while under the influence of intoxicating liquor or
8 drugs.

9 B. When the blood or breath of the person tested
10 contains:

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

14 (2) an alcohol concentration of more than
15 five hundredths but less than eight hundredths, no presumption
16 shall be made that the person either was or was not under the
17 influence of intoxicating liquor. However, the amount of
18 alcohol in the person's blood may be considered with other
19 competent evidence in determining whether the person was under
20 the influence of intoxicating liquor.

21 C. When the blood or breath of the person tested
22 contains an alcohol concentration of eight hundredths or more,
23 the arresting officer shall charge him with a violation of
24 Section 2 of the Boating While Intoxicated Act.

25 D. The determination of alcohol concentration

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1 shall be based on the grams of alcohol in one hundred
2 milliliters of blood or the grams of alcohol in two hundred
3 ten liters of breath.

4 E. The presumptions in Subsection B of this
5 section do not limit the introduction of other competent
6 evidence concerning whether the person was under the influence
7 of intoxicating liquor.

8 F. If a person is convicted of operating a
9 motorboat or vessel or manipulating any water skis, surfboard
10 or similar device under the influence of intoxicating liquor
11 or drugs, the trial judge shall be required to inquire into
12 past convictions of the person for operating a motorboat or
13 vessel or manipulating any water skis, surfboard or similar
14 device while under the influence of intoxicating alcohol or
15 drugs before sentence is entered in the matter.

16 Section 12. [NEW MATERIAL] REFUSAL TO SUBMIT TO CHEMICAL
17 TESTS--GROUNDS FOR SUSPENSION OF THE CERTIFICATE OF NUMBER OF
18 A MOTORBOAT OR VESSEL. --

19 A. If a person under arrest for violation of an
20 offense enumerated in Section 2 of the Boating While
21 Intoxicated Act refuses upon request of a law enforcement
22 officer to submit to chemical tests designated by the agency
23 as provided in Section 8 of that act, none shall be
24 administered except when a municipal judge, magistrate or
25 district judge issues a search warrant authorizing chemical

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1 tests as provided in Section 8 of that act upon his finding in
2 a law enforcement officer's written affidavit that there is
3 probable cause to believe that the person has operated a
4 motorboat or vessel or manipulated any water skis, surfboard
5 or similar device while under the influence of intoxicating
6 liquor or drugs, thereby causing the death or great bodily
7 injury of another person, or there is probable cause to
8 believe that the person has committed a felony while under the
9 influence of intoxicating liquor or drugs and that chemical
10 tests as provided in Section 8 of that act will produce
11 material evidence in a felony prosecution.

12 B. The taxation and revenue department, upon
13 receipt of a statement signed under penalty of perjury from a
14 law enforcement officer stating the officer's reasonable
15 grounds to believe the arrested person is the owner of the
16 motorboat or vessel and had been operating a motorboat or
17 vessel under the influence of intoxicating liquor or drugs or
18 that the owner of the motorboat or vessel knowingly authorized
19 or permitted the arrested person to operate the motorboat or
20 vessel while under the influence of intoxicating liquor or
21 drugs, and that, upon his request, the person refused to
22 submit to a chemical test after being advised that failure to
23 submit could result in suspension of the motorboat or vessel's
24 certificate of number, shall suspend the certificate of number
25 of the motorboat or vessel the person was operating for a

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1 period of one year or until all conditions for reinstatement
2 of the certificate of number are met, whichever is later.

3 C. The taxation and revenue department, upon
4 receipt of a statement signed under the penalty of perjury
5 from a law enforcement officer stating the officer's
6 reasonable grounds to believe the arrested person is the owner
7 of the motorboat or vessel and had been operating a motorboat
8 or vessel within this state while under the influence of
9 intoxicating liquor or drugs or that the owner of the
10 motorboat knowingly authorized the arrested person to operate
11 the motorboat or vessel while under the influence of
12 intoxicating liquor or drugs, and that the person submitted to
13 chemical testing pursuant to Section 8 of the Boating While
14 Intoxicated Act and the test results indicated the presence of
15 drugs in the arrested person's blood or an alcohol
16 concentration of eight hundredths or more in the person's
17 blood or breath if the person is twenty-one years of age or
18 older or an alcohol concentration of two hundredths or more in
19 the person's blood or breath if the person is less than
20 twenty-one years of age, shall suspend the certificate of
21 number of the motorboat or vessel that the person was
22 operating for a period of:

23 (1) ninety days or until all conditions for
24 reinstatement of the certificate of number are met, whichever
25 is later, if the person is twenty-one years of age or older;

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1 (2) six months or until all conditions for
2 reinstatement of the certificate of number are met, whichever
3 is later, if the person is less than twenty-one years of age
4 and the certificate of number of a motorboat or vessel he was
5 operating was not previously suspended pursuant to the
6 provisions of this section, notwithstanding any provision of
7 the Children's Code; or

8 (3) one year or until all conditions for
9 reinstatement of the certificate of number are met, whichever
10 is later, if the certificate of number of the motorboat or
11 vessel he was operating was previously suspended pursuant to
12 the provisions of this section, notwithstanding the provisions
13 of Paragraph (1) and (2) of this subsection or any provision
14 of the Children's Code.

15 D. The determination of alcohol concentration
16 shall be based on the grams of alcohol in one hundred
17 milliliters of blood or the grams of alcohol in two hundred
18 ten liters of breath.

19 E. If the person subject to the suspension
20 provisions of this section is a resident or will become a
21 resident within one year and has not obtained a certificate of
22 number for the motorboat or vessel in this state, the taxation
23 and revenue department shall deny the certificate of number to
24 him for the appropriate period of time as provided in
25 Subsections B and C of this section.

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1 F. A statement signed by a law enforcement
2 officer, pursuant to the provisions of Subsection B or C of
3 this section, shall be sworn to by the officer or shall
4 contain a declaration substantially to the effect: "I hereby
5 declare under the penalty of perjury that the information
6 given in this statement is true and correct to the best of my
7 knowledge." A law enforcement officer who signs a statement,
8 knowing that the statement is untrue in any material issue or
9 matter, is guilty of perjury as provided in Section 66-5-38
10 NMSA 1978.

11 Section 13. [NEW MATERIAL] LAW ENFORCEMENT OFFICER AGENT
12 FOR DEPARTMENT--WRITTEN NOTICE OF SUSPENSION OF CERTIFICATE OF
13 NUMBER.--On behalf of the taxation and revenue department, a
14 law enforcement officer requesting a chemical test or
15 directing the administration of a chemical test pursuant to
16 Section 8 of the Boating While Intoxicated Act shall serve
17 immediate written notice of suspension of the certificate of
18 number and of the right to a hearing on the owner of the
19 motorboat or vessel if the owner or a person the owner
20 knowingly authorized or permitted to operate the motorboat or
21 vessel under the influence of intoxicating liquor or drugs
22 refuses to permit chemical testing or the results of a
23 chemical test indicate the presence of drugs in the blood of
24 the person operating the motorboat or vessel or an alcohol
25 concentration of eight hundredths or more in the person's

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1 blood or breath if the person is twenty-one years of age or
2 older or an alcohol concentration of two hundredths or more in
3 the person's blood or breath if the person is less than
4 twenty-one years of age. Upon serving notice of suspension,
5 the law enforcement officer shall take the certificate of
6 number of the motorboat or vessel, if any, and issue a
7 temporary certificate of number valid for twenty days or, if
8 the operator requests a hearing pursuant to Section 12 of the
9 Boating While Intoxicated Act, valid until the date the
10 taxation and revenue department issues the order following the
11 hearing; provided that no temporary certificate of number
12 shall be issued to an owner without a valid certificate of
13 number. The law enforcement officer shall send the motorboat
14 or vessel's certificate of number to the taxation and revenue
15 department along with the signed statement required pursuant
16 to Section 12 of the Boating While Intoxicated Act.

17 Section 14. [NEW MATERIAL] SUSPENSION OF MOTORBOAT OR
18 VESSEL'S CERTIFICATE OF NUMBER-- NOTICE-- EFFECTIVE DATE--
19 HEARING-- HEARING COSTS-- REVIEW. --

20 A. The effective date of suspension pursuant to
21 Section 12 of the Boating While Intoxicated Act is twenty days
22 after notice of suspension or, if the person whose motorboat
23 or vessel's certificate of number is being suspended or denied
24 requests a hearing pursuant to this section, the date that the
25 taxation and revenue department issues the order following

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1 that hearing. The date of notice of suspension is:

2 (1) the date the law enforcement office
3 serves written notice of suspension and of right to a hearing
4 pursuant to Section 12 of the Boating While Intoxicated Act;
5 or

6 (2) in the event the results of a chemical
7 test cannot be obtained immediately, the date notice of
8 suspension is served by mail to the owner of the motorboat or
9 vessel by the taxation and revenue department. This notice of
10 suspension and of right to a hearing shall be sent by
11 certified mail and shall be deemed to have been served on the
12 date borne by the return receipt showing delivery, refusal of
13 the addressee to accept delivery or attempted delivery of the
14 notice at the address obtained by the arresting law
15 enforcement officer or on file with the taxation and revenue
16 department.

17 B. Within ten days after receipt of notice of
18 suspension pursuant to Subsection A of this section, a person
19 whose motorboat or vessel's certificate of number is suspended
20 or denied or the person's agent may request a hearing. The
21 hearing request shall be made in writing and shall be
22 accompanied by a payment of fifty dollars (\$50.00) or a sworn
23 statement of indigency on a form provided by the taxation and
24 revenue department. A standard for indigency shall be
25 established pursuant to regulations adopted by the taxation

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1 and revenue department. Failure to request a hearing within
2 ten days shall result in forfeiture of the person's right to a
3 hearing. Any person less than eighteen years of age who fails
4 to request a hearing within ten days shall have notice of
5 suspension sent to his parent, guardian or custodian by the
6 department. A date for the hearing shall be set by the
7 department, if practical, within thirty days after receipt of
8 notice of suspension. The hearing shall be held in the county
9 in which the offense for which the person was arrested took
10 place.

11 C. The taxation and revenue department may
12 postpone or continue any hearing on its own motion or upon
13 application from the person and for good cause shown for a
14 period not to exceed ninety days from the date of notice of
15 suspension and provided that the department extends the
16 validity of the temporary certificate of number for the period
17 of the postponement or continuation.

18 D. At the hearing, the taxation and revenue
19 department or its agent may administer oaths and may issue
20 subpoenas for the attendance of witnesses and the production
21 of relevant books and papers.

22 E. The hearing shall be limited to the issues:

23 (1) whether the law enforcement officer had
24 reasonable grounds to believe that the person was the owner of
25 the motor boat or vessel and had been operating the motorboat

1 or vessel within this state while under the influence of
2 intoxicating liquor or drugs or that the owner of the motor
3 boat or vessel had knowingly authorized or permitted the
4 motorboat or vessel to be operated by a person under the
5 influence of intoxicating liquor or drugs;

6 (2) whether the person who was operating the
7 motorboat or vessel was arrested;

8 (3) whether this hearing is held no later
9 than ninety days after notice of suspension; and either

10 (4) whether:

11 (a) the person operating the motorboat
12 or vessel refused to submit to a test upon request of the law
13 enforcement officer; and

14 (b) whether the law enforcement officer
15 advised the person operating the motorboat or vessel that the
16 failure to submit to a test could result in suspension of the
17 motorboat or vessel's certificate of number; or

18 (5) whether:

19 (a) the chemical test was administered
20 pursuant to the provisions of Sections 8 through 14 of Boating
21 While Intoxicated Act; and

22 (b) the test results indicated the
23 presence of drugs in the blood of the person operating the
24 motorboat or vessel or an alcohol concentration of eight
25 hundredths or more in the person's blood or breath if the

1 person is twenty-one years of age or older or an alcohol
2 concentration of two hundredths or more in the person's blood
3 or breath if the person is less than twenty-one years of age.

4 F. The taxation and revenue department shall enter
5 an order sustaining the suspension or denial of the motorboat
6 or vessel's certificate of number if the department finds
7 that:

8 (1) the law enforcement officer had
9 reasonable grounds to believe the person was the owner of the
10 motorboat or vessel and was operating a motorboat or vessel
11 while under the influence of intoxicating liquor or drugs or
12 that the owner of the motorboat or vessel had knowingly
13 authorized or permitted the motorboat or vessel to be operated
14 by a person under the influence of intoxicating liquor or
15 drugs;

16 (2) the person operating the motorboat or
17 vessel was arrested;

18 (3) this hearing is held no later than ninety
19 days after notice of suspension; and

20 (4) the person operating the motorboat or
21 vessel either refused to submit to the test upon request of
22 the law enforcement officer after the law enforcement officer
23 advised him that his failure to submit to the test could
24 result in the suspension of the certificate of number of the
25 motorboat or vessel he was operating or that a chemical test

underscored material = new
[bracketed material] = delete

1 was administered pursuant to the provisions of Sections 8
2 through 14 of the Boating While Intoxicated Act and the test
3 results indicated the presence of drugs in the person's blood
4 or an alcohol concentration of eight hundredths or more if the
5 person is twenty-one years of age or older or an alcohol
6 concentration of two hundredths or more if the person is less
7 than twenty-one years of age.

8 If one or more of the elements set forth in Paragraphs
9 (1) through (4) of this subsection are not found by the
10 taxation and revenue department, the certificate of number of
11 the motorboat or vessel the person was operating shall not be
12 suspended.

13 G. A person adversely affected by an order of the
14 taxation and revenue department may seek review within thirty
15 days in the district court in the county in which the offense
16 for which the person was arrested took place. The district
17 court, upon thirty days' written notice to the department,
18 shall hear the case. On review, it is for the court to
19 determine only whether reasonable grounds exist for suspension
20 or denial of the certificate of number of the motorboat or
21 vessel the person was operating based on the record of the
22 administrative proceeding.

23 H. Any person less than eighteen years of age
24 shall have results of his hearing forwarded by the taxation
25 and revenue department to his parent, guardian or custodian.

underscored material = new
[bracketed material] = delete

1 Section 15. ~~[NEW MATERIAL]~~ REINSTATEMENT OF MOTORBOAT OR
2 VESSEL' S CERTIFICATE OF NUMBER--FEE. -- Whenever a certificate
3 of number for a motorboat or vessel has been revoked for
4 operating a motorboat or vessel while under the influence of
5 intoxicating liquor or drugs or for the owner of the motorboat
6 or vessel knowingly authorizing or permitting a person to
7 operate the motorboat or vessel under the influence of
8 intoxicating liquor or drugs, for aggravated boating while
9 under the influence of intoxicating liquor or drugs or
10 pursuant to Section 12 of the Boating While Intoxicated Act, a
11 fee of one hundred dollars (\$100) paid to the taxation and
12 revenue department is a prerequisite to the reinstatement of
13 the certificate of number.

14 Section 16. Section 24-1-22 NMSA 1978 (being Laws 1981,
15 Chapter 165, Section 1) is amended to read:

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

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

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[bracketed material] = delete

1 revocation at the discretion of the scientific laboratory
2 division. The scientific laboratory division is further
3 authorized to establish or approve quality control measures
4 for alcohol breath testing and to establish or approve
5 standards of training necessary to assure the qualifications
6 of individuals conducting these analyses or collections.

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

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

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

21 "66-12-11. PROHIBITED OPERATION. -- ~~[A-]~~ No person shall
22 operate any motorboat or vessel or manipulate any water skis,
23 surfboard or similar device in a reckless or negligent manner
24 so as to endanger the life or property of any person.

25 ~~[B. No person shall operate any motorboat or~~

underscored material = new
[bracketed material] = delete

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

4 Section 18. EFFECTIVE DATE. -- The effective date of the
5 provisions of this act is July 1, 2001.

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