

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 483

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

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 11 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

1 person, but does cause painful temporary disfigurement or
2 temporary loss or impairment of the functions of any member or
3 organ of the person's body;

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

6 C. "motorboat" means any boat, personal watercraft
7 or other type of vessel that is powered by a motor.

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

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

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

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

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

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

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

12 E. Every person under first conviction under this
13 section shall be punished, notwithstanding the provisions of
14 Section 31-18-13 NMSA 1978, by imprisonment for not more than
15 ninety days or by a fine of not more than five hundred dollars
16 (\$500), or both; provided that if the sentence is suspended in
17 whole or in part or deferred, the period of probation may
18 extend beyond ninety days but shall not exceed one year. The
19 offender shall be ordered by the court to attend a boating
20 safety course approved by the national association of state
21 boating law administrators. In addition to those penalties,
22 when an offender commits aggravated boating while under the
23 influence of intoxicating liquor or drugs, the offender shall
24 be sentenced to not less than forty-eight consecutive hours in
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1 jail. On a first conviction under this section, any time spent
2 in jail for the offense prior to the conviction for that
3 offense shall be credited to any term of imprisonment fixed by
4 the court. A deferred sentence under this subsection shall be
5 considered a first conviction for the purpose of determining
6 subsequent convictions.

7 F. A second or subsequent conviction under this
8 section shall be punished, notwithstanding the provisions of
9 Section 31-18-13 NMSA 1978, by imprisonment for not more than
10 three hundred sixty-four days or by a fine of not more than
11 five hundred dollars (\$500), or both; provided that if the
12 sentence is suspended in whole or in part, the period of
13 probation may extend beyond one year but shall not exceed five
14 years. The offender shall be ordered by the court to attend a
15 boating safety course approved by the national association of
16 state boating law administrators. In addition to those
17 penalties, when an offender commits aggravated boating while
18 under the influence of intoxicating liquor or drugs, the
19 offender shall be sentenced to not less than forty-eight
20 consecutive hours in jail.

21 Section 4. [NEW MATERIAL] GUILTY PLEAS--LIMITATIONS. --
22 When a complaint or information alleges a violation of Section
23 3 of the Boating While Intoxicated Act, any plea of guilty
24 thereafter entered in satisfaction of the charges shall include
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1 at least a plea of guilty to the violation of one of the
 2 subsections of Section 3 of that act, and no other disposition
 3 by plea of guilty to any other charge in satisfaction of the
 4 charge shall be authorized if the results of a test performed
 5 pursuant to that act disclose that the blood or breath of the
 6 person charged contains an alcohol concentration of eight
 7 hundredths or more.

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

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

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

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

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

22 A. Any person who operates a motorboat within this
23 state shall be deemed to have given consent, subject to the
24 provisions of the Boating While Intoxicated Act, to chemical
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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 of
 5 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 while
 8 under the influence of an intoxicating liquor or drug.

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

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

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

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

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

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

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

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

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

2 A. The results of a test performed pursuant to the
3 Boating While Intoxicated Act may be introduced into evidence
4 in any civil action or criminal action arising out of the acts
5 alleged to have been committed by the person tested for
6 operating a motorboat while under the influence of intoxicating
7 liquor or drugs.

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

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

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

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

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

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

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

14 Section 12. 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 device while under the influence of drugs or alcohol
24 and to issue certification for operators and their instructors
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1 ~~which~~ that shall be subject to termination or revocation at
 2 the discretion of the scientific laboratory division. The
 3 scientific laboratory division is further authorized to
 4 establish or approve quality control measures for alcohol
 5 breath testing and to establish or approve standards of
 6 training necessary to assure the qualifications of individuals
 7 conducting these analyses or collections.

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

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

20 Section 13. Section 66-12-11 NMSA 1978 (being Laws 1959,
 21 Chapter 338, Section 10, as amended) is amended to read:

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

2 [B. ~~No person shall operate any motorboat or vessel~~
3 ~~or manipulate any water skis, surfboard or similar device while~~
4 ~~intoxicated or under the influence of any narcotic drug,~~
5 ~~barbiturate or marijuana.] "~~

6 Section 14. EFFECTIVE DATE. --The effective date of the
7 provisions of this act is July 1, 2001.