

SENATE BILL NO. 143
 INTRODUCED BY J. SHOCKLEY
 BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO ENFORCEMENT AUTHORITY OF FISH, WILDLIFE, AND PARKS WARDENS AND PARK RANGERS; REVISING FISH, WILDLIFE, AND PARKS LAWS PERTAINING TO THE ILLEGAL USE OF ALCOHOL AND DRUGS WHILE BOATING OR SAILING; ESTABLISHING PENALTIES FOR BOATING UNDER THE INFLUENCE, REFUSING TESTING, AND VIOLATING ORDERS; CLARIFYING THE STANDARDS FOR ALCOHOL CONCENTRATION AND TESTING; AUTHORIZING FISH, WILDLIFE, AND PARKS WARDENS AND PARK RANGERS TO ENFORCE LAWS RELATED TO BOATING UNDER THE INFLUENCE; AMENDING SECTIONS 23-1-106, 23-2-502, 23-2-506, 23-2-523, 61-8-407, AND 87-1-502, MCA; REPEALING SECTION 23-2-535, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 23-1-106, MCA, is amended to read:

"23-1-106. Rules -- penalties -- enforcement. (1) The department may make rules governing the use, occupancy, and protection of the lands and property under its control.

(2) ~~Any A~~ person who purposely or knowingly injures or damages any land or property under control of the department or private property ~~thereon or therein~~ on or within land or property controlled by the department or who violates any of the rules made by the department relating to these areas is guilty of a misdemeanor and shall be fined not more than \$500 or be imprisoned in the county jail for not more than 6 months.

(3) It is ~~unlawful and~~ a misdemeanor punishable as provided in subsection (2) to refuse to exhibit for inspection any park permit, proof of age, or proof of residency upon request by a fish and game warden, park ranger, or peace officer.

(4) The department shall enforce the provisions of this chapter and rules implementing this chapter. The director of the department shall employ all necessary and qualified personnel for enforcement purposes.

(5) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

- (a) of search, seizure, and arrest;
- (b) to investigate activities in this state regulated by this chapter and rules of the department and the fish, wildlife, and parks commission; ~~and~~
- (c) to report violations to the county attorney of the county in which they occur; and
- (d) to enforce [sections 3 through 7]."

Section 2. Section 23-2-502, MCA, is amended to read:

"23-2-502. Definitions. As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(2) "Certificate of number" means the certificate issued by the county treasurer to the owner of a motorboat or sailboat or by the department of justice to dealers or manufacturers, assigning the motorboat or sailboat an identifying number and containing other information as required by the department of justice.

~~(2)~~(3) "Dangerous drug" means a drug described in 50-32-101.

(4) "Dealer" means a person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

~~(3)~~(5) "Department" means the department of fish, wildlife, and parks of the state of Montana.

~~(4)~~(6) "Documented vessel" means a vessel that has and is required to have a valid marine document as a vessel of the United States.

~~(5)~~(7) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat or sailboat.

~~(6)~~(8) "Lienholder" means a person holding a security interest.

~~(7)~~(9) "Manufacturer" means a person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

~~(8)~~(10) (a) "Motorboat" means a vessel, including a personal watercraft or pontoon, propelled by any machinery, motor, or engine of any description, whether or not the machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines.

(b) The term does not include a vessel that has a valid marine document issued by the U.S. coast guard

or any successor federal agency.

~~(9)~~(11) "Operate" means to navigate or otherwise use a motorboat or a vessel.

~~(10)~~(12) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

~~(11)~~(13) (a) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation.

(b) The term does not include a lessee under a lease not intended as security.

~~(12)~~(14) "Passenger" means each person carried on board a vessel other than:

(a) the owner or the owner's representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have not contributed any consideration for their carriage and who are paid for their services; or

(d) a guest on board a vessel that is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

~~(13)~~(15) "Person" means an individual, partnership, firm, corporation, association, or other entity.

~~(14)~~(16) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

~~(15)~~(17) "Registration decal" means an adhesive sticker produced by the department of justice and issued by the department of justice, an authorized agent as defined in 61-1-101, or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft as proof of payment of fees in lieu of tax imposed on the motorboat, sailboat, or personal watercraft for the registration period indicated on the decal as recorded by the department of justice under 61-3-101.

~~(16)~~(18) (a) "Sailboat" means a vessel that uses a sail and wind as its primary source of propulsion.

(b) The term does not include a canoe or kayak propelled by wind.

(c) For [sections 3 through 7] the term applies only to a vessel that uses a sail and wind as its primary source of propulsion and is 12 feet or longer in length.

~~(17)~~(19) "Security interest" means an interest that is reserved or created by an agreement that secures

payment or performance of an obligation and is valid against third parties generally.

(20) "Under the influence" means that as a result of taking into the body alcohol, dangerous drugs, other drugs, or any combination of alcohol and dangerous drugs or other drugs, a person's ability to safely operate a motorboat or sailboat has been diminished.

~~(18)~~(21) "Uniform state waterway marking system" means one of two categories:

- (a) a system of aids to navigation to supplement the federal system of marking in state waters;
- (b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

~~(19)~~(22) "Validation decal" means an adhesive sticker produced by the department and issued by the department or a county treasurer to the owner of a motorboat, sailboat, or personal watercraft verifying the identifying number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner to meet requirements of the federal standard numbering system.

~~(20)~~(23) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

~~(21)~~(24) "Waters of this state" means any waters within the territorial limits of this state."

NEW SECTION. Section 3. Operation of motorboat or sailboat while intoxicated -- penalties. (1)

(a) A person commits the offense of operating a motorboat or a sailboat while intoxicated if the person operates or is in actual physical control of a motorboat or sailboat UNDERWAY on the waters of this state open to the public while:

- (i) under the influence;
- (ii) having an alcohol concentration, as shown by analysis of the person's blood or breath, of 0.08 or more; or
- (iii) having in one's body any amount of a dangerous drug, as shown by analysis of the person's blood.

(b) Absolute liability, as provided for in 45-2-104, is imposed for a violation of this subsection (1).

(2) A person who is convicted of the offense of operating a motorboat or a sailboat while intoxicated is subject to the following penalties:

(a) for a first offense, the person shall be:

- (i) imprisoned for not more than 10 days;
- (ii) fined an amount not less than \$300 or more than \$1,000;
- (iii) prohibited from operating a motorboat or sailboat for 1 year; and

(iv) ordered to comply with the chemical dependency education course and chemical dependency treatment provisions of 61-8-732;

(b) for a second offense, the person shall be:

(i) imprisoned for not less than 5 days or more than 30 days;

(ii) fined an amount not less than \$600 or more than \$1,000;

(iii) prohibited from operating a motorboat or sailboat for 1 year; and

(iv) ordered to comply with the chemical dependency education course and chemical dependency treatment provisions of 61-8-732; and

(c) for a third or subsequent offense, the person shall be:

(i) imprisoned in the county jail for not less than 30 days or more than 1 year;

(ii) fined an amount not less than \$1,000 or more than \$5,000;

(iii) prohibited from operating a motorboat or sailboat for 2 years; and

(iv) ordered to comply with the chemical dependency education course and chemical dependency treatment provisions of 61-8-732.

(3) A court may not defer judgment or sentencing or suspend execution of any mandatory minimum sentence of incarceration imposed under subsection (2).

NEW SECTION. Section 4. Implied consent to test -- test procedures -- independent testing. (1)

A person who operates or is in actual physical control of a motorboat or sailboat on the waters of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for purposes of determining any measured amount or detected presence of alcohol or dangerous drugs in the person's body.

(2) The test or tests must be administered at the direction of a peace officer when:

(a) the officer has reasonable grounds to believe that the person has been operating or has been in actual physical control of a motorboat or sailboat while under the influence and the person has been placed under arrest for a violation of [section 3];

(b) the officer has probable cause to believe that the person was operating or was in actual physical control of a motorboat or sailboat in violation of [section 3] and the person has been involved in a boating accident or collision that resulted in property damage, serious bodily injury as defined in 45-2-101, or death.

(3) The arresting or investigating peace officer may designate which blood or breath test or tests are administered.

(4) A person who is unconscious or who is otherwise in a condition rendering the person incapable of

consent or refusal is considered to have not withdrawn the implied consent provided for in subsection (1). In that case, the test or tests may be given if a licensed physician certifies in advance of the test that the person is in a condition rendering the person incapable of consent or refusal.

(5) If an arrested person refuses to submit to a test or tests requested and designated by the peace officer, the act is considered a refusal to submit, and the officer shall inform the person that the refusal will result in the penalties prescribed in [section 6].

(6) Refusal to submit to a test under this section does not prohibit the withdrawal of a specimen for chemical testing when a motorboat or sailboat has been involved in an accident resulting in serious bodily injury or death if the peace officer has reasonable grounds to believe that the operator of the motorboat or sailboat was violating [section 3] and the officer has obtained a search warrant permitting the withdrawal of the specimen for chemical testing.

(7) Only a licensed physician, registered nurse, or other qualified person acting under the supervision and direction of a licensed physician or registered nurse may, at the request of a peace officer, withdraw a blood specimen for purposes of determining alcohol concentration or the presence of dangerous drugs. This limitation does not apply to the sampling of breath.

(8) In addition to any test or tests administered at the direction of a peace officer pursuant to this section, a person may have an independent chemical test or tests administered at the person's own expense. The failure or inability of a person to obtain an independent chemical test or tests does not preclude the admission of evidence of the results of the test or tests administered at the direction of the officer. Upon request of the person who is tested, the results of the test or tests administered at the direction of the officer must be made available to the tested person.

(9) The department, in cooperation with any appropriate agency, shall adopt uniform rules for administering tests and may require certification of training to administer the tests as considered necessary.

NEW SECTION. Section 5. Admissibility of evidence of boating under the influence. (1) In any prosecution under [section 3], evidence of the results of the analysis of a specimen of a defendant's blood or breath is admissible upon proof of a proper foundation. The alcohol concentration established by the results of the analysis of a specimen drawn within a reasonable time after a defendant was operating or was in physical control of a motorboat or sailboat is presumed to be the alcohol concentration at the time of the defendant's operation or physical control. The presumption is rebuttable.

(2) If a person refuses to submit to a blood or breath test, proof of the refusal is admissible in any civil

or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating a motorboat or sailboat in violation of [section 3]. The trier of fact may infer from the refusal that the person was under the influence. The inference is rebuttable.

(3) This section does not limit the introduction of any competent evidence bearing on the question of whether a person was under the influence of alcohol or a dangerous drug or other drug, ~~including the results of chemical tests of specimens of blood or breath obtained more than a reasonable time after the person was operating or was in physical control of a motorboat or sailboat.~~

NEW SECTION. Section 6. Refusal to submit to test -- resisting or obstructing withdrawal of specimen -- penalties. (1) If a person refuses to submit to a test requested and designated by a peace officer pursuant to [section 4], a test may not be administered unless a search warrant is obtained. However, refusal of a test is punishable as provided in subsection (2).

(2) The department, upon finding that a peace officer had reasonable grounds to believe that a person was operating a motorboat or sailboat in violation of [section 3], that the specified conditions existed for testing pursuant to [section 4], and that the person refused to submit to a test, shall order that the person not operate a motorboat or sailboat for 1 year.

(3) The order imposed under subsection (2) applies in addition to any penalties imposed under [section 3], except that the 1-year period under an order not to operate a motorboat or sailboat in subsection (2) of this section must be imposed and must run concurrently with any period of time that a defendant is ordered not to operate a motorboat or sailboat pursuant to [section 3].

(4) A person who knowingly resists or obstructs the withdrawal of a specimen pursuant to a search warrant under [section 4] is guilty of a misdemeanor punishable by a fine of not more than \$1,000 or imprisonment in the county jail for not more than 1 year, or both. If the person also is convicted of operating a motorboat or sailboat while intoxicated under [section 3], the penalties imposed under [section 3] are in addition to the penalties in this subsection.

NEW SECTION. Section 7. Violation of order prohibiting operation of motorboat or sailboat. (1) A person who operates a motorboat or sailboat in violation of an order made under [section 3 or 6] is guilty of a misdemeanor punishable by a mandatory fine of \$500 or imprisonment in the county jail for not more than 6 months, or both.

(2) In addition to the penalties imposed under subsection (1), the court shall extend the period of

prohibition on operating a motorboat or sailboat for an additional length of time equal to the time set out in the order that the person violated.

Section 8. Section 23-2-506, MCA, is amended to read:

"23-2-506. Enforcement. (1) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

- (a) of search, seizure, and arrest;
- (b) to investigate activities in this state regulated by this part and rules of the department and the fish, wildlife, and parks commission; ~~and~~
- (c) to report violations to the county attorney of the county in which they occur; and
- (d) to enforce [sections 3 through 7].

(2) All sheriffs and peace officers of the state of Montana and all United States coast guard law enforcement officers ~~shall have authority~~ are authorized to enforce provisions of this part, as amended."

Section 9. Section 23-2-523, MCA, is amended to read:

"23-2-523. Prohibited operation and mooring -- enforcement. (1) A person may not operate or knowingly permit a person to operate a motorboat or vessel or manipulate waterskis, a surfboard, or a similar device or other contrivance in a reckless or negligent manner so as to endanger the life, limb, or property of a person by:

- (a) engaging in maneuvers that unreasonably or unnecessarily endanger life, limb, or property, including but not limited to:
 - (i) weaving through congested vessel traffic;
 - (ii) ~~or operating unreasonably or unnecessarily close to another vessel; jumping the wake of another vessel unreasonably or unnecessarily close to the other vessel or~~
 - (iii) ~~maneuvering around another vessel when visibility around the other vessel is obstructed; and including swerving at the last possible moment to avoid collision;~~
 - (iv)(iii) following directly behind a waterskier;;
 - (v)(IV) speeding in confined or restricted areas; ~~and; or~~
 - (vi)(V) buzzing or wetting down others; ~~which constitute reckless operation of a vessel; or~~
- (b) crossing or jumping the wake of another vessel when within 100 yards of the vessel or within 100

yards of a waterskier being towed by the vessel, except when directly entering or leaving a public or private marina, waterski facility, or other watercraft docking or loading area.

(2) A person may not ~~operate a motorboat, including a sailboat propelled by a motor of any kind, or~~ manipulate waterskis, a surfboard, or a similar device attached to a motorboat while under the influence of alcohol, drugs, or a combination of the two.

(3) ~~It is unlawful for the~~ The owner of a motorboat or vessel or a person having the motorboat or vessel in charge or in control ~~to~~ may not authorize or knowingly permit the motorboat or vessel to be operated by a person who by reason of physical or mental disability is incapable of operating the watercraft under the prevailing circumstances.

(4) A person may not operate or knowingly permit a person to operate a motorboat or vessel at a rate of speed greater than will permit the person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. However, nothing in this part is intended to prevent the operator of a vessel actually competing in a regatta that is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(5) A person may not make a reckless approach to, departure from, or passage by a dock, ramp, diving board, or float.

(6) Skiers being pulled by ~~motorboats~~ a motorboat must have on their person a United States coast guard approved personal flotation device in good and serviceable condition.

(7) A person may not moor a vessel to buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States, or the department or in any manner hang on with a vessel to a buoy or beacon, except in the act of maintenance work on the buoy or beacon, nor may any person deface, remove, or destroy a buoy, beacon, or other authorized navigational marker maintained in the waters of this state.

(8) If an officer whose duty it is to enforce this law observes a vessel being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in the officer's judgment the use creates an especially hazardous condition, the officer may direct the operator to take ~~whatever~~ immediate and reasonable steps ~~would be~~ necessary for the safety of those aboard the vessel, including directing the operator to return to a mooring or launching site and to remain there until the situation creating the hazard is corrected or ended.

(9) The population density and heavy recreational use of certain lakes require a noise standard more restrictive than the standard set in 23-2-526 in order to protect the public health and safety. Unless operated on

a river or stream in compliance with a rule adopted under 23-2-521, a person may not operate a motorboat or personal watercraft on Flathead Lake, situated in Lake and Flathead Counties, Echo Lake, situated in Flathead County, or Swan Lake, situated in Lake County, in proximity to the shoreline if the noise emitted is greater than 75 dbA measured at the shoreline in accordance with the shoreline sound level measurement procedure (SAE J1970).

(10) Unless accompanied by a person 18 years of age or older, a person 12 years of age or younger may not operate a motorboat or a personal watercraft that is powered by a motor rated at more than 10 horsepower. A person 13 or 14 years of age may not operate a vessel or personal watercraft powered by a motor rated at more than 10 horsepower without possessing a valid Montana motorboat operator's safety certificate or evidence of completion of a Montana-approved water safety course or unless accompanied by a person 18 years of age or older.

(11) A person who owns or has charge or control of a motorboat or personal watercraft powered by a motor rated at more than 10 horsepower may not authorize or knowingly permit the motorboat or personal watercraft to be operated:

(a) by a person 12 years of age or younger unless accompanied by a person 18 years of age or older;
or

(b) by a person 13 or 14 years of age unless the person possesses a valid Montana motorboat operator's safety certificate or evidence of completion of a Montana-approved water safety course or is accompanied by a person 18 years of age or older.

(12) A person may not rent a motorboat or a personal watercraft powered by a motor rated at more than 10 horsepower to a person under 18 years of age."

Section 10. Section 61-8-407, MCA, is amended to read:

"61-8-407. Definition of alcohol concentration. For purposes of 16-6-305, ~~23-2-535~~, 67-1-211, and this title, "alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath."

Section 11. Section 87-1-502, MCA, is amended to read:

"87-1-502. Qualifications, powers, and duties. (1) Wardens must be qualified by their experience, training, and skill in protection, conservation, and propagation of wildlife, game, fur-bearing animals, fish, and game birds and must be interested in this work. ~~They~~ Wardens shall devote all of their time for which they are

appointed to their official duties.

(2) ~~They~~ Wardens shall enforce the laws of this state and the rules of the department with reference to the protection, preservation, and propagation of game and fur-bearing animals, fish, and game birds.

(3) ~~They~~ Wardens shall see that persons who hunt, fish, or take game or fur-bearing animals, game birds, or fish and that those persons who make recreational use of state lands, as defined in 77-1-101, for hunting and fishing; have the necessary licenses.

(4) ~~They~~ Wardens shall assist in the protection, conservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds and assist in the planting, distributing, feeding, and care of fish, game, fur-bearing animals, and game and nongame birds. ~~They~~ Wardens shall, when ordered by the department, assist in the destruction of predatory animals, birds, and rodents. ~~They~~ Wardens shall perform all other duties prescribed by the department and make a monthly report to the department correctly informing the department of their activities on each day of the preceding month with regard to the enforcement of the fish and game laws, showing where their duties called them and what they did. The reports must contain any pertinent recommendations the wardens may see fit to make.

(5) A warden may not compromise or settle violations of fish and game laws out of court.

(6) A warden ~~has the authority~~ is authorized to inspect any ~~and all~~ fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals at reasonable times and at any location other than a residence or dwelling. Upon request ~~therefor~~ by a warden, all persons having in their possession any fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals shall exhibit the ~~same and all thereof~~ animals in their possession to the warden for ~~such~~ inspection.

(7) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(a) of search, seizure, and arrest;

(b) to investigate activities in this state regulated by this title and rules of the department and the commission; ~~and~~

(c) to report violations to the county attorney of the county in which they occur; and

(d) to enforce [sections 3 through 7]."

NEW SECTION. **Section 12. Repealer.** Section 23-2-535, MCA, is repealed.

NEW SECTION. **Section 13. Codification instruction.** [Sections 3 through 7] are intended to be codified as an integral part of Title 23, chapter 2, part 5, and the provisions of Title 23, chapter 2, part 5, apply to [sections 3 through 7].

NEW SECTION. **Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 15. Effective date.** [This act] is effective on passage and approval.

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