

LEGISLATIVE BILL 195

Approved by the Governor February 21, 1989

Introduced by Conway, 17; Hefner, 19

AN ACT relating to the State Boat Act; to amend sections 37-1202, 37-1254, and 37-1274, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to operating a motorboat while under the influence of alcohol or of any controlled substance; to provide for certain testing procedures as prescribed; to provide a fee; to provide penalties; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 37-1202, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

37-1202. For the purposes of sections 37-1201 to 37-1274 the State Boat Act, unless the context otherwise requires, the definitions found in sections 37-1203 to 37-1210 shall be used.

Sec. 2. That section 37-1254, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

37-1254. (1) No person shall operate any motorboat or vessel; or manipulate any water skis, surfboard, or similar device in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(2) No person shall operate any motorboat or vessel; or manipulate any water skis; surfboard; or similar device while intoxicated or under the influence of any narcotic drug; barbiturate or marijuana.

(3) Intoxication under subsection (2) of this section may be proved by the means and standards set forth in sections 39-669-08 to 39-669-16.

Sec. 3. (1) No person shall be in the actual physical control of any motorboat under propulsion upon the waters of this state:

(a) While under the influence of alcohol or of any controlled substance as defined in section 28-401;

(b) When such person has a concentration of ten-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood;

(c) When such person has a concentration of ten-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath; or

(d) When such person has a concentration of ten-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her urine.

(2) Any person who is in the actual physical control of any motorboat under propulsion upon the waters of this state while in a condition described in subsection (1) of this section shall be guilty of a Class II misdemeanor. Upon conviction the court shall, as part of the judgment of conviction, order such person not to be in the physical control of a motorboat under propulsion upon the waters of this state for any purpose for a period of six months from the date of such conviction, except that if the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to be in the physical control of any motorboat under propulsion upon the waters of this state for any purpose for a period of sixty days from the date of the order.

(3) Any city or village may enact ordinances in conformance with this section and section 4 of this act.

(4) At the discretion of the court, any person convicted of violating this section or violating any city or village ordinance adopted in conformance with this section may be required to attend, at the convicted person's expense, an alcoholism treatment program as a term of probation.

Sec. 4. (1) Any person who has in his or her actual physical control a motorboat under propulsion upon the waters of this state shall be deemed to have given his or her consent to submit to a chemical test of his or her blood, breath, or urine for the purpose of determining the amount of alcohol content in such blood, breath, or urine.

(2) Any law enforcement officer who has been duly authorized to make arrests for violations of laws of this state or ordinances of any city or village may require any person arrested for any offense arising out of acts alleged to have been committed while the person was in the actual physical control of a motorboat under propulsion upon the waters of this state under the influence of alcohol to submit to a chemical test of his or her blood, breath, or urine for the purpose of determining the alcohol content of such blood, breath, or urine when the officer has reasonable grounds to

believe that the person was in the actual physical control of a motorboat under propulsion upon the waters of this state while under the influence of alcohol.

(3) Any law enforcement officer who has been duly authorized to make arrests for violations of laws of this state or ordinances of any city or village may require any person who has in his or her actual physical control a motorboat under propulsion upon the waters of this state to submit to a preliminary test of his or her breath for alcohol content if the officer has reasonable grounds to believe that such person has alcohol in his or her body or has committed any violation of this section and section 3 of this act. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol content of ten-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of a Class V misdemeanor.

(4) Any person arrested pursuant to this section may, upon the direction of a law enforcement officer, be required to submit to a chemical test of his or her blood, breath, or urine for a determination of the alcohol content. Any person who refuses to submit to a chemical blood, breath, or urine test required pursuant to this section shall be guilty of a Class II misdemeanor, and the court shall, as part of the judgment of conviction, order such person not to be in the actual physical control of any motorboat under propulsion upon the waters of this state for any purpose for a period of six months from the date of such conviction. If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order such person not to be in the actual physical control of any motorboat under propulsion upon the waters of this state for any purpose for a period of sixty days from the date of the order.

(5) Any person who is required to submit to a preliminary breath test or to a chemical blood, breath, or urine test pursuant to this section shall be advised of the consequences of refusing to submit to such test.

Sec. 5. The law enforcement officer who requires a chemical blood, breath, or urine test pursuant to section 4 of this act may direct whether the test shall be of blood, breath, or urine. When the officer directs that the test shall be of a person's blood or urine, such person may choose whether the test

shall be of blood or urine. The person tested shall be permitted to have a physician of his or her choice evaluate his or her condition and perform or have performed whatever laboratory tests such person tested deems appropriate in addition to and following the test administered at the direction of the law enforcement officer. If the officer refuses to permit such additional test to be taken, then the original test shall not be competent as evidence. Upon request the results of the test taken at the direction of the law enforcement officer shall be made available to the person being tested.

Sec. 6. Any person who is unconscious or who is otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn the consent provided by section 4 of this act, and the test may be given.

Sec. 7. Except as provided in section 5 of this act, any test made pursuant to section 4 of this act, if made in conformance with the requirements of this section, shall be competent evidence in any prosecution under a state law or city or village ordinance regarding the actual physical control of any motorboat under propulsion upon the waters of this state while under the influence of alcohol or regarding the actual physical control of any motorboat under propulsion upon the waters of this state when the concentration of alcohol in the blood, breath, or urine is in excess of allowable levels in violation of section 3 of this act or a city or village ordinance. To be considered valid, tests shall have been performed according to methods approved by the Department of Health and by an individual possessing a valid permit issued by the department for such purpose. The department may approve satisfactory techniques or methods and ascertain the qualifications and competence of individuals to perform such tests and may issue permits which shall be subject to termination or revocation at the discretion of the department.

The permit fee may be established by rules and regulations adopted and promulgated by the department, which fee shall not exceed the actual cost of processing the initial permit. Such fee shall be charged annually to each permit holder. The fees shall be used to defray the cost of processing and issuing the permits and other expenses incurred by the department in carrying out this section. The fee shall be deposited in the state treasury and credited to the Department of Health Cash Fund as a laboratory service fee.

Sec. 8. Any physician, registered nurse, qualified technician, or hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a law enforcement officer pursuant to section 4 of this act, and the state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing such act. The physician, registered nurse, qualified technician, or hospital shall not be individually liable for damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a law enforcement officer pursuant to section 4 of this act except for acts of gross negligence of the agent or of persons employed by such agent.

Sec. 9. Upon the conviction of any person for violation of section 3 of this act or for being in actual physical control of a motorboat under propulsion upon the waters of this state while under the influence of alcohol or of any controlled substance as defined in section 28-401 in violation of any city or village ordinance, there shall be assessed as part of the court costs the fee charged by any physician or any agency administering tests, pursuant to a permit issued in accordance with section 7 of this act, for the test administered and the analysis thereof pursuant to section 4 of this act if such test was actually made.

Sec. 10. Any person arrested for any offense involving the actual physical control of a motorboat under propulsion upon the waters of this state while under the influence of alcohol shall be required to submit to a chemical test of his or her blood, breath, or urine as provided in section 4 of this act without the preliminary breath test if the arresting officer does not have available the necessary equipment for administering a breath test or if the person is unconscious or is otherwise in a condition rendering him or her incapable of testing by a preliminary breath test. Only a physician, registered nurse, or qualified technician acting at the request of a law enforcement officer may withdraw blood for the purpose of determining its alcohol content, but such limitation shall not apply to the taking of a urine or breath specimen.

Sec. 11. That section 37-1274, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

37-1274. Sections 37-1201 to 37-1274 and sections 3 to 10 of this act shall be known and may be cited as the State Boat Act.

Sec. 12. That original sections 37-1202, 37-1254, and 37-1274, Reissue Revised Statutes of Nebraska, 1943, are repealed.