

memberships to be offered at a planned facility or a facility under construction shall:

(1) register under subdivision 1 before conducting sales activities; and

(2) maintain a surety bond, irrevocable letter of credit, or cash deposit filed with the attorney general, in an amount not less than \$25,000 until the value of obligations to consumers exceeds that amount.

(b) Until the time a person opens a club facility, the amount of the surety shall be increased as necessary to take into account increases in the person's outstanding liabilities to the members with a final adjustment to be made at the time of opening.

(c) Upon opening the facility, the person is subject to subdivisions 1 to 3.

Sec. 5. APPROPRIATION.

\$36,000 is appropriated from the general fund to the attorney general for the purposes of sections 1 to 4. \$18,500 is for fiscal year 1988 and \$17,500 is for fiscal year 1989. The approved complement of the attorney general is increased by one position.

Approved June 2, 1987

CHAPTER 368—H.F.No. 1015

An act relating to motorboat and motor vehicle safety; providing for enforcement of sanctions for operation of snowmobiles, all-terrain vehicles, and motorboats while under the influence of alcohol or a controlled substance; providing for revocation of privilege to operate snowmobile or all-terrain vehicle as sanction for implied consent violation; amending Minnesota Statutes 1986, sections 84.87, subdivision 2, and by adding a subdivision; 84.928, subdivision 3; 169.121, by adding a subdivision; 361.121, subdivisions 2 and 3, and by adding subdivisions; proposing coding for new law in Minnesota Statutes, chapter 84.

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

Section 1. Minnesota Statutes 1986, section 84.87, subdivision 2, is amended to read:

Subd. 2. **OPERATION GENERALLY.** It shall be unlawful for any person to drive or operate any snowmobile in the following unsafe or harassing ways:

(a) At a rate of speed greater than reasonable or proper under all the surrounding circumstances;

(b) In a careless, reckless or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto;

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(c) While under the influence of an alcoholic beverage or a controlled substance;

(d) Without a lighted head and tail light when required for safety;

(e) (d) In any tree nursery or planting in a manner which damages or destroys growing stock.

Sec. 2. Minnesota Statutes 1986, section 84.87, is amended by adding a subdivision to read:

Subd. 2b. OPERATING UNDER INFLUENCE OF ALCOHOL OR CONTROLLED SUBSTANCE. A person in control of or operating a snowmobile under the influence of alcohol or a controlled substance is governed by the prohibitions and chemical testing requirements of sections 3 and 4 and is punishable in accordance with those sections.

Sec. 3. **[84.91] OPERATION OF SNOWMOBILES AND ALL-TERRAIN VEHICLES UNDER THE INFLUENCE OF ALCOHOL OR CONTROLLED SUBSTANCES.**

Subdivision 1. ACTS PROHIBITED. (a) No person shall operate or be in physical control of any snowmobile or all-terrain vehicle anywhere in this state or on the ice of any boundary water of this state while under the influence of:

(1) alcohol, as provided in section 169.121, subdivision 1, clauses (a) and (d);

(2) a controlled substance, as defined in section 152.01, subdivision 4; or

(3) a combination of any two or more of the elements named in clauses (1) and (2).

(b) No owner or other person having charge or control of any snowmobile or all-terrain vehicle shall authorize or permit any individual the person knows or has reason to believe is under the influence of alcohol or a controlled substance, as provided under paragraph (a), to operate the snowmobile or all-terrain vehicle anywhere in this state or on the ice of any boundary water of this state.

(c) No owner or other person having charge or control of any snowmobile or all-terrain vehicle shall knowingly authorize or permit any person, who by reason of any physical or mental disability is incapable of operating the vehicle, to operate the snowmobile or all-terrain vehicle anywhere in this state or on the ice of any boundary water of this state.

Subd. 2. ARREST. Conservation officers of the department of natural resources, sheriffs, sheriff's deputies, and other peace officers may arrest a person for a violation under subdivision 1 without a warrant upon probable cause, if the violation was committed in the officer's presence. If the violation did not occur in the officer's presence, the officer may arrest the person if the person was involved in a snowmobile or all-terrain vehicle accident resulting in death, personal injury, or property damage.

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Subd. 3. PRELIMINARY SCREENING TEST. When an officer authorized under subdivision 2 to make arrests has reason to believe from the manner in which a person is operating, controlling, or acting upon departure from a snowmobile or all-terrain vehicle, or has operated or been in control of the vehicle, that the operator may be violating or has violated subdivision 1, paragraph (a), the officer may require the operator to provide a breath sample for a preliminary screening test using a device approved by the commissioner of public safety for this purpose. The results of the preliminary screening test shall be used for the purpose of deciding whether an arrest should be made under this section and whether to require the chemical tests authorized in section 4, but may not be used in any court action except to prove that a test was properly required of an operator under section 4. Following the preliminary screening test, additional tests may be required of the operator as provided under section 4. An operator who refuses a breath sample is subject to the provisions of section 4 unless, in compliance with that section, the operator submits to a blood, breath, or urine test to determine the presence of alcohol or a controlled substance.

Subd. 4. EVIDENCE. In a prosecution for a violation of subdivision 1, paragraph (a), the admission of evidence of the amount of alcohol or a controlled substance in the person's blood, breath, or urine, is governed by section 361.12, subdivision 4.

Subd. 5. PENALTIES. (a) A person who violates any prohibition contained in subdivision 1 is guilty of a misdemeanor. A person who violates any prohibition contained in subdivision 1 within five years of a prior conviction under that subdivision or civil liability under section 4, subdivision 2, or within ten years of two or more prior convictions under that subdivision or civil liability under section 4, subdivision 2, is guilty of a gross misdemeanor.

(b) A person who operates a snowmobile or all-terrain vehicle during the period the person is prohibited from operating the vehicle under subdivision 6 is guilty of a misdemeanor.

Subd. 6. OPERATING PRIVILEGES SUSPENDED. Upon conviction, and in addition to any penalty imposed under subdivision 5, the person is prohibited for one year from operating a snowmobile or all-terrain vehicle, whichever was involved in the violation.

Subd. 7. DUTIES OF COMMISSIONER. The court shall promptly forward to the commissioner copies of all convictions and criminal and civil penalties imposed under subdivision 5 and section 4, subdivision 2. The commissioner shall notify the convicted person of the period during which the person is prohibited from operating a snowmobile or all-terrain vehicle under subdivision 6 or section 4, subdivision 2. The commissioner shall also periodically circulate to appropriate law enforcement agencies a list of all persons who are prohibited from operating a snowmobile or all-terrain vehicle under subdivision 6 or section 4, subdivision 2.

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Subd. 8. IMMUNITY FROM LIABILITY. The state or political subdivision that employs an officer who is authorized under subdivision 2 to make an arrest for violations of subdivision 1 is immune from any liability, civil or criminal, for the care or custody of the snowmobile or all-terrain vehicle being operated by or in the physical control of the person arrested if the officer acts in good faith and exercises due care.

Sec. 4. [84.911] CHEMICAL TESTING.

Subdivision 1. MANDATORY CHEMICAL TESTING. A person who operates or is in physical control of a snowmobile or all-terrain vehicle anywhere in this state or on the ice of any boundary water of this state is required, subject to the provisions of this section, to take or submit to a test of the person's blood, breath, or urine for the purpose of determining the presence and amount of alcohol or a controlled substance. The test shall be administered at the direction of an officer authorized to make arrests under section 3, subdivision 2. Taking or submitting to the test is mandatory when requested by an officer who has probable cause to believe the person was operating or in physical control of a snowmobile or all-terrain vehicle in violation of section 3, subdivision 1, paragraph (a), and one of the following conditions exists:

(1) the person has been lawfully placed under arrest for violating section 3, subdivision 1, paragraph (a);

(2) the person has been involved while operating a snowmobile or all-terrain vehicle in an accident resulting in property damage, personal injury, or death;

(3) the person has refused to take the preliminary screening test provided for in section 3, subdivision 3; or

(4) the screening test was administered and recorded an alcohol concentration of 0.10 or more.

Subd. 2. PENALTIES; REFUSAL; REVOCATION OF SNOWMOBILE OR ALL-TERRAIN VEHICLE OPERATING PRIVILEGE. (a) If a person refuses to take a test required under subdivision 1, none must be given, but the officer authorized to make arrests under section 3, subdivision 2, shall report the refusal to the commissioner of natural resources and to the authority having responsibility for prosecution of misdemeanor offenses for the jurisdiction in which the incident occurred that gave rise to the test demand and refusal.

On certification by the officer that probable cause existed to believe the person had been operating or in physical control of a snowmobile or all-terrain vehicle while under the influence of alcohol or a controlled substance, and that the person refused to submit to testing, the commissioner shall impose a civil penalty of \$500 and shall prohibit the person from operating a snowmobile or all-terrain vehicle, whichever was involved in the violation, for a period of one year.

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On behalf of the commissioner, an officer requiring a test or directing the administration of a test shall serve on a person who refused to permit a test immediate notice of intention to prohibit the operation of a snowmobile or all-terrain vehicle, and to impose the civil penalty set forth in this subdivision. If the officer fails to serve a notice of intent to suspend operating privileges, the commissioner may notify the person by mail, and the notice is deemed received three days after mailing. The notice must advise the person of the right to obtain administrative and judicial review as provided in this section. The prohibition imposed by the commissioner takes effect ten days after receipt of the notice. The civil penalty is imposed on receipt of the notice and must be paid within 30 days of imposition.

(b) A person who operates a snowmobile or all-terrain vehicle during the period the person is prohibited from operating the vehicle as provided under paragraph (a) is guilty of a misdemeanor.

Subd. 3. RIGHTS AND OBLIGATIONS. At the time a test is requested, the person must be informed:

(1) that Minnesota law requires a person to take a test to determine if the person is under the influence of alcohol or a controlled substance;

(2) that if the person refuses to take the test, the person is subject to a civil penalty of \$500 and is prohibited for a one-year period from operating a snowmobile or an all-terrain vehicle, as provided under subdivision 2;

(3) that if testing is refused it will not affect the person's motor vehicle driver's license;

(4) that if the test is taken and the results indicate that the person is under the influence of alcohol or a controlled substance, the person will be subject to criminal penalties and in addition to any other penalties the court may impose, the person's operating privileges will be suspended as provided under section 3, subdivision 6;

(5) that, after submitting to testing, the person has the right to have additional tests made by someone of the person's own choosing; and

(6) that a refusal to take a test will be offered into evidence against the person at trial.

Subd. 4. REQUIREMENT OF URINE TEST. Notwithstanding subdivision 1, if there is probable cause to believe there is impairment by a controlled substance that is not subject to testing by a breath test, a blood or urine test may be required even after a breath test has been administered.

Subd. 5. CHEMICAL TESTS. Chemical tests administered under this section are governed by section 361.121, subdivisions 5, 6, and 7.

Subd. 6. JUDICIAL AND ADMINISTRATIVE REVIEW; ENFORCEMENT. Judicial and administrative review of sanctions imposed under this section is governed by sections 8, 9, and 10. Payment and enforcement of the civil penalty imposed under this section is governed by sections 12 and 13.

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Sec. 5. Minnesota Statutes 1986, section 84.928, subdivision 3, is amended to read:

Subd. 3. **OPERATING UNDER INFLUENCE OF ALCOHOL OR CONTROLLED SUBSTANCE.** A person may not operate or be in control of an all-terrain vehicle anywhere in this state or on the ice of any boundary water of this state while under the influence of alcohol or a controlled substance, as provided in section 169.121, subdivision 1, or a controlled substance defined in section 152.01, subdivision 4. A person violating this subdivision is guilty of a crime and is punishable in accordance with the provisions of section 169.121, subdivisions 3 and is subject to section 4.

Sec. 6. Minnesota Statutes 1986, section 169.121, is amended by adding a subdivision to read:

Subd. 11. **APPLICABILITY.** For purposes of this section and section 169.123, "motor vehicle" does not include a snowmobile as defined in section 84.81, or an all-terrain vehicle as defined in section 84.92.

Sec. 7. Minnesota Statutes 1986, section 361.121, subdivision 2, is amended to read:

Subd. 2. **PENALTIES; REFUSAL; REVOCATION OF MOTORBOAT OPERATING PRIVILEGE.** (a) If a person who refuses to take a test required under subdivision 1 is subject to a civil penalty not to exceed \$700 and, in addition, the person is prohibited from operating any motorboat on the waters of this state for a period of one year, none must be given, but the officer authorized to make arrests under section 361.12, subdivision 2, shall report the refusal to the commissioner of natural resources and to the authority having responsibility for prosecution of misdemeanor offenses for the jurisdiction in which the incident occurred that gave rise to the test demand and refusal.

On certification by the officer that probable cause existed to believe the person had been operating or in physical control of a motorboat while under the influence of alcohol or a controlled substance, and that the person refused to submit to testing, the commissioner shall impose a civil penalty of \$500 and shall prohibit the person from operating any motorboat on the waters of this state for a period of one year. If the person refusing to submit to testing is under the age of 18 years at the time of the refusal, the person's watercraft operator's permit shall be revoked by the commissioner as set forth in this subdivision and a new permit after the revocation must be issued only after the person successfully completes a watercraft safety course.

On behalf of the commissioner, an officer requiring a test or directing the administration of a test shall serve on a person who refused to permit a test immediate notice of intention to impose the civil penalty set forth in this subdivision, to prohibit the operation of motorboats, and to revoke a watercraft operator's permit. The officer shall take any watercraft operator's permit held by the person, and shall send the permit to the commissioner along with the

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certification provided for in this subdivision. If the officer fails to serve a notice of intent to revoke, the commissioner may notify the person by mail, and the notice is deemed received three days after mailing. The notice must advise the person of the right to obtain administrative and judicial review as provided in this section. The prohibition and revocation, if any, shall take effect ten days after receipt of the notice. The civil penalty is imposed on receipt of the notice, and shall be paid within 30 days of imposition.

(b) A person who operates a motorboat on the waters of this state during the period the person is prohibited from operating any motorboat as provided under paragraph (a) is guilty of a misdemeanor.

Sec. 8. Minnesota Statutes 1986, section 361.121, is amended by adding a subdivision to read:

Subd. 2a. ADMINISTRATIVE REVIEW. At any time during the period of prohibition or revocation imposed under this section, the person may request in writing a review of the order imposing sanctions under this section. If the person makes a request for administrative review within 30 days following receipt of a notice and order imposing sanctions, the request shall stay imposition of the civil penalty. Upon receiving the request for review, the commissioner or the commissioner's designee shall review the order, the evidence upon which the order was based, and any other material information brought to the attention of the commissioner, and determine whether sufficient cause exists to sustain the order. Within 15 days after receiving the request, the commissioner shall issue a written report ordering that the prohibition, revocation, or civil penalty be either sustained or rescinded. The review provided in this subdivision is not subject to the contested case provisions of the administrative procedure act in sections 14.01 to 14.70. The availability of administrative review has no effect upon the availability of judicial review under this section.

Sec. 9. Minnesota Statutes 1986, section 361.121, is amended by adding a subdivision to read:

Subd. 2b. JUDICIAL REVIEW. Within 30 days following receipt of a notice and order imposing sanctions under this section, a person may petition the court for review. The petition must be filed with the court administrator of the county, municipal, or unified trial court in the county where the incident occurred which gave rise to the test demand and refusal, together with proof of service of a copy on the commissioner and the prosecuting authority for misdemeanor offenses for the jurisdiction in which the incident occurred. A responsive pleading is not required of the commissioner of natural resources, and court fees may not be charged for the appearance of the representative of the commissioner in the matter.

The petition must be captioned in the name of the person making the petition as petitioner and the commissioner as respondent. The petition must state specifically the grounds upon which the petitioner seeks rescission of the order imposing sanctions.

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The filing of the petition does not stay the revocation or prohibition against operation of a motorboat. However, the filing of a petition stays imposition of the civil penalty. The judicial review shall be conducted according to the rules of civil procedure.

Sec. 10. Minnesota Statutes 1986, section 361.121, is amended by adding a subdivision to read:

Subd. 2c. HEARING. A hearing under this section must be before a municipal, county, or unified trial court judge in the county where the incident occurred which gave rise to the test demand and refusal. The hearing must be to the court, and may be conducted at the same time as hearings upon pretrial motions in the criminal prosecution under section 361.12. The hearing must be recorded. The commissioner must be represented by the prosecuting authority for misdemeanor offenses for the jurisdiction in which the incident occurred which gave rise to the test demand and refusal.

The hearing must be held at the earliest practicable date and in any event no later than 60 days following the filing of the petition for review. The reviewing court may order a temporary stay of the balance of the prohibition or revocation if the hearing has not been conducted within 60 days after filing of the petition, upon the application of the petitioner and upon terms the court deems proper.

The scope of the hearing must be limited to the issues of:

- (1) whether the officer had probable cause to believe that the person was operating or in physical control of a motorboat in violation of section 361.12;
- (2) whether one of the conditions in subdivision 1 existed;
- (3) whether the person was informed as prescribed in subdivision 3; and
- (4) whether the person refused to submit to testing.

It is an affirmative defense for the petitioner to prove that, at the time of the refusal, the petitioner's refusal to permit the test was based upon reasonable grounds.

The court shall order that the prohibition or revocation be either sustained or rescinded, and shall either sustain or rescind the civil penalty. The court shall forward a copy of the order to the commissioner.

Sec. 11. Minnesota Statutes 1986, section 361.121, subdivision 3, is amended to read:

Subd. 3. **RIGHTS AND OBLIGATIONS.** At the time a test is requested, the person must be informed:

- (1) that Minnesota law requires a person to take a test to determine if the person is under the influence of alcohol or a controlled substance;

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(2) that a person is subject to a civil penalty ~~not to exceed \$700~~ of \$500 for refusing to take the test and, in addition, the person is prohibited from operating any motorboat, as provided under subdivision 2, for refusing to take the test;

(3) that if testing is refused it will not affect the person's motor vehicle driver's license;

(4) that if the test is taken and the results indicate that the person is under the influence of alcohol or a controlled substance, the person will be subject to criminal penalties and in addition to any other penalties the court may impose, the person's operating privileges will be suspended as provided under section 361.12, subdivision 6, paragraph (a);

(5) that, after submitting to testing, the person has the right to have additional tests made by someone of the person's own choosing; and

(6) that a refusal to take a test will be offered into evidence against the person at trial.

Sec. 12. Minnesota Statutes 1986, section 361.121, is amended by adding a subdivision to read:

Subd. 8. CIVIL PENALTY; PAYMENT. The civil penalty imposed under subdivision 2 must be paid to the political subdivision that represents the commissioner on the petition for judicial review or, in the event that no petition is filed, to the political subdivision that would have represented the commissioner had a petition been filed. If a person does not pay the civil penalty, the prohibition against operating motorboats is automatically extended until the political subdivision reports in writing to the commissioner that the penalty has been paid.

Sec. 13. Minnesota Statutes 1986, section 361.121, is amended by adding a subdivision to read:

Subd. 9. CIVIL PENALTY; ENFORCEMENT. If a person does not pay the civil penalty imposed under subdivision 2 within 30 days of the time the penalty was imposed, the prosecuting authority representing the commissioner may petition the municipal, county, or unified court in the jurisdiction where the incident occurred to file the order imposing the civil penalty as an order of the court. Once entered, the order may be enforced in the same manner as a final judgment of the court. In addition to the penalty, attorney's fees, costs, and interest may be assessed against any person who fails to pay the civil penalty.

Sec. 14. EFFECTIVE DATE.

Sections 1 to 6 are effective August 1, 1987. Sections 7 to 13 are effective the day following final enactment, and apply to all proceedings begun on or after that date.

Approved June 2, 1987

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