

CHAPTER 361

WATERS AND WATERCRAFT SAFETY

361.12 Alcohol, drugs, physical or mental disability.
361.121 Testing.

361.26 Application of state law; local regulations; surface use rules of the commissioner.

361.12 ALCOHOL, DRUGS, PHYSICAL OR MENTAL DISABILITY.

[For text of subs 1 to 4, see M.S.1986]

Subd. 5. **Penalties.** (a) A person who violates any prohibition contained in subdivision 1 is guilty of a misdemeanor; except that 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 361.121, subdivision 2, or within ten years of two or more prior convictions under that subdivision or civil liability under section 361.121, subdivision 2, is guilty of a gross misdemeanor. The attorney in the jurisdiction in which the violation occurred who is responsible for prosecution of misdemeanor violations of this section is also responsible for prosecution of gross misdemeanor violations of this section.

(b) A person who operates a motorboat on the waters of this state during the period the person is prohibited from operating any motorboat or after the person's motorboat operator's permit has been revoked, as provided under subdivision 6, is guilty of a misdemeanor.

[For text of subs 6 to 8, see M.S.1986]

History: 1987 c. 59 s 1

361.121 TESTING.

[For text of subd 1, see M.S.1986]

Subd. 2. **Penalties; refusal; revocation of motorboat 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 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 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.

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.

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.

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.

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.

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 a person is subject to a civil penalty 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.

[For text of subs 4 to 7, see M.S.1986]

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.

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.

History: 1987 c 368 s 7-13

361.26 APPLICATION OF STATE LAW; LOCAL REGULATIONS; SURFACE USE RULES OF THE COMMISSIONER.

[For text of subs 1 and 1a, see M.S.1986]

Subd. 2. (a) Upon request of a county, city or town, the commissioner may, on determining it to be in the public interest, establish rules relating to the use of watercraft on waters of this state which border upon or are within, in whole or in part, the territorial boundaries of the governmental unit.

(b) Such rules shall be established in the manner provided by sections 14.02 to 14.62, but shall not be submitted to the attorney general nor filed with the secretary of state until first approved by resolutions of the county boards of a majority of the counties affected by the proposed rules.

(c) Such rules may restrict any or all of the following: (1) the type and size of watercraft and size of motor which may use the waters affected by the rule, (2) the areas of water which may be used by watercraft, (3) speed of watercraft, (4) times permitted for use of watercraft, or (5) minimum distance between watercraft. When establishing rules the commissioner shall consider the physical characteristics of the waters affected, their historical uses, shoreland uses and classification, and any other features unique to the waters affected by the rules.

(d) The commissioner shall inform the users of the waters of the rules affecting them at least two weeks before the effective date of the rules by distributing copies of the rules and by posting of the public accesses of the waters. However, the failure of the commissioner to comply with this paragraph shall not affect the validity of the rules or any conviction for violation of the rules.

(e) The cost of publishing rules and of marking and posting waters pursuant to this subdivision shall be paid by the counties affected by the rules, as apportioned by the commissioner.

(f) Regulations or ordinances relating to the use of waters of this state enacted by a local governmental unit before January 1, 1972, shall continue in effect until repealed by the local governmental unit or superseded by a rule of the commissioner promulgated pursuant to this subdivision.

History: 1987 c 384 art 2 s 84