

## CHAPTER 361

## WATERS AND WATERCRAFT SAFETY

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**361.01** MS 1957 [Repealed, 1959 c 592 s 29]

### 361.01 POLICY OF STATE.

It is the policy of this state, which is blessed with an abundance of water, to promote its full use and enjoyment by all of the people, now and in the future, to promote safety for persons and property in connection with the use of the waters of the state, to promote uniformity of laws relating to such use and to conform with any requirements of the United States relating thereto.

*History: 1959 c 592 s 1*

**361.02** MS 1957 [Repealed, 1959 c 592 s 29]

### 361.02 DEFINITIONS.

Subdivision 1. For the purposes of sections 361.01 to 361.28, the terms defined in this section shall have the meanings ascribed to them.

Subd. 2. "Person" includes an individual, partnership, corporation, the state and its agencies and subdivisions, and any body of persons, whether incorporated or not.

Subd. 3. "Owner" means a person, other than a lien holder, having the property in or title to a watercraft. The term includes a person entitled to the use or possession of such craft, subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

Subd. 4. "Dealer" means any person engaged in the business of manufacturing or selling new and unused watercraft or used watercraft, or both, having an established place of business for the sale, trade and display of such watercraft, and having in possession watercraft for the purpose of sale or trade.

Subd. 5. "Operate" means to navigate or otherwise use a watercraft.

Subd. 6. "Operator" means the person who operates or has charge of the navigation or use of a watercraft.

Subd. 7. "Watercraft" means any contrivance used or designed for navigation on water other than (a) duck boat during the duck hunting season, (b) rice boat during the harvest season, or (c) seaplane.

Subd. 8. "Motorboat" means any watercraft propelled in any respect by machinery, including watercraft temporarily equipped with detachable motors.

Subd. 9. "Underway or in use" means any watercraft in operation or use unless it is securely fastened to a dock or other permanent mooring. As used in sections 361.12 and 361.121, "underway or in use" means any motorboat in operation unless it is fastened to a dock or other mooring, anchored, or beached.

Subd. 10. "Commissioner" means the commissioner of natural resources acting directly or through authorized agents.

Subd. 11. "License" means the authentic document used to designate the numbers assigned a watercraft and to renew same.

Subd. 12. "Waters of this state" means any waters capable of substantial beneficial public use, and any waters to which the public has access, which are within the territorial limits of this state, including boundary waters.

Subd. 13. "Horsepower" means the power rating established for a motor by the manufacturer thereof, or, if no rating is so established, then the rating established by the commissioner.

Subd. 14. "Length" of a watercraft means the straight-line distance from the foremost part of the craft to the aftermost part of the craft, measured parallel to the centerline, excluding sheer. Bowsprits, outboard motor brackets, rudders or other attachments are not included in the measurement.

Subd. 15. "Rent" when used in conjunction with watercraft means to make available to others in connection with a business.

Subd. 16. "Sailboard" means a single passenger, nonmotorized watercraft using a surfboard type hull and a free sail system which, without capsizing, allows the sail to lie flat in the water when not being supported by the operator.

Subd. 17. "Paddle boat" means a nonmotorized watercraft 19 feet in length or less which is propelled solely by a paddle wheel peddled by the operator or passenger or both.

**History:** 1959 c 592 s 2; 1969 c 1129 art 3 s 1; 1971 c 636 s 1,2; 1980 c 568 s 1; 1982 c 565 s 1; 1986 c 401 s 1; 1986 c 444

**361.03** MS 1957 [Repealed, 1959 c 592 s 29]

### **361.03 WATERCRAFT LICENSES.**

**Subdivision 1. General requirements.** Except as hereinafter provided, no person shall after July 1, 1959, operate, or give permission for the operation of, any watercraft for which a license fee is prescribed in subdivision 3 on the waters of this state unless a license for such watercraft has been issued and is in effect in accordance with sections 361.01 to 361.28. The license number assigned a watercraft shall remain the same if continually renewed, and the licensee of each watercraft shall purchase the watercraft license numbers assigned and affix same as may be prescribed by the commissioner.

**Subd. 2. Application, issuance, reports.** Application for registration or reregistration shall be made to the commissioner of natural resources, the commissioner of public safety or an authorized deputy registrar of motor vehicles in such form as the commissioner of public safety shall prescribe, and shall state the name and address of every owner of the watercraft and be signed by at least one owner. Upon receipt of the application and the appropriate fee as hereinafter provided, such watercraft shall be registered and a registration number assigned which shall be affixed to the watercraft in such manner as the commissioner of natural resources shall prescribe. Each deputy registrar of motor vehicles acting pursuant to section 168.33, shall also be a deputy registrar of watercraft. The commissioner of natural resources in agreement with the commissioner of public safety may prescribe the accounting and procedural requirements necessary to assure efficient handling of registrations and registration fees. Deputy registrars shall strictly comply with these accounting and procedural requirements. A fee of 50 cents in addition to that otherwise prescribed by law shall be charged

for each watercraft registered by the registrar or a deputy registrar. The additional fee shall be disposed of in the manner provided in section 168.33, subdivision 2.

**Subd. 3. Fees for license.** The fee for each watercraft license issued after December 31, 1982 for a period of three calendar years, or a portion thereof, shall be as follows:

(a) Any watercraft 19 feet in length or less which is rented or leased or offered for rent or lease, \$6 each;

(b) Canoes, kayaks, sailboats, sailboards, paddle boats and rowing shells 19 feet in length or less, \$7 each;

(c) All other watercraft 19 feet in length or less, not covered in clauses (a), (b), (g), and (i), \$12 each;

(d) Watercraft more than 19 feet but less than 26 feet in length, \$20 each;

(e) Watercraft 26 feet but less than 40 feet in length, \$30 each;

(f) Watercraft 40 feet in length and over, \$40 each;

(g) Dealer's license, regardless of the number of watercraft owned by the dealer, \$30 per dealer;

(h) Any watercraft more than 19 feet in length for hire with an operator, \$50 each;

(i) Any watercraft used by a nonprofit organization for teaching boat and water safety, \$3 each; and

(j) Transfer or duplicate, \$3 each.

**Subd. 4. [Repealed, 1971 c 636 s 29]**

**Subd. 5. Disposition of receipts.** All money received by the commissioner shall be deposited in the state treasury and shall be credited to the water recreation account.

**Subd. 6. Expiration, renewal: new licenses.** Licenses issued hereunder shall expire on December 31 of the year of expiration and may be renewed in the manner provided for original issuance. No new license shall be issued for any watercraft which has previously been licensed under this chapter except in accordance with this section, unless notice of abandonment of such watercraft shall have been given as hereinafter required at least one year prior to the date of application for such new license or unless the application is accompanied by satisfactory proof that the watercraft has been continually outside this state at least one year prior to such date. Any holder of a license shall notify the commissioner in writing within 30 days if the holder's address no longer conforms to the address appearing on the holder's license, upon such form as the commissioner shall prescribe.

**Subd. 7. Loss or destruction, duplicate license.** Upon receipt of affidavit of loss or destruction of a license issued hereunder, together with the duplicate license fee, the commissioner shall issue a duplicate license.

**Subd. 8. Transfer of ownership, destruction or abandonment of watercraft.** Within 15 days after the transfer of ownership, or any part thereof, other than a security interest, or the destruction or abandonment of any watercraft, written notice thereof shall be given to the commissioner in such form as the commissioner shall prescribe. Every owner or part owner of a watercraft to whom ownership is transferred shall, upon failure to give such notice, be subject to the penalties imposed by this chapter. Failure to give such notice of transfer of ownership shall terminate the license without further action. Every notice of transfer of ownership shall also be accompanied by the duplicate license fee and, upon receipt thereof, the commissioner shall issue a duplicate license.

**Subd. 9. Dealer's license.** Distinguishable licenses shall be issued to any dealer, upon application and payment of the appropriate fees as provided in subdivisions 2 and 3, and any watercraft owned by the dealer, may, subject to all of the provisions of sections 361.01 to 361.28, be operated thereunder on the waters of this state for demonstration purposes or any other purpose incident to the usual and customary conduct of the business of manufacturing, selling or trading of watercraft.

**Subd. 10. Watercraft owned by state or political subdivision.** Distinguishable

licenses shall be issued without the payment of a fee for watercraft owned by the state of Minnesota or a political subdivision thereof upon application therefor.

Subd. 11. **Suspension or revocation of license.** The commissioner may suspend or revoke the license of any watercraft rented, leased, or hired, or offered for rent, lease, or hire which does not comply with the standards of safety for such watercraft which the commissioner shall prescribe, or for which the owner thereof fails to keep a record of the name and address of the person renting, leasing, or hiring such watercraft, the identification number thereof, the date and time the person takes possession, and the expected time of return thereof. Such record shall be preserved for at least six months.

Subd. 12. **Exemptions.** No license hereunder shall be required for the following described watercraft:

(a) Watercraft which is covered by a license or number in full force and effect pursuant to federal law or a federally approved licensing or numbering system of another state, and which has not been within this state for more than 90 consecutive days, the aforesaid 90 consecutive days shall not include days in which a watercraft is laid up at dock over winter or for repairs at any Lake Superior port, or any other Minnesota port.

(b) Watercraft from a country other than the United States which have not been within this state for more than 90 consecutive days, the aforesaid 90 consecutive days shall not include days in which a watercraft is laid up at dock over winter or for repairs at any Lake Superior port, or any other Minnesota port.

(c) Watercraft owned by the United States, a state, or a political subdivision thereof except watercraft used for recreational purposes.

(d) Ship's lifeboat.

(e) Watercraft which has a valid marine document issued by the United States government.

(f) Nonmotorized watercraft nine feet in length or less.

Subd. 13. **Licensing by political subdivisions.** No political subdivision of this state shall require licensing of watercraft covered by sections 361.01 to 361.28.

Subd. 14. **Temporary certificate.** A person who applies for a watercraft license may be issued a temporary license certificate valid for the period of time specified by the commissioner.

**History:** 1959 c 592 s 3; 1969 c 1044 s 1-3; 1971 c 636 s 3-9; 1973 c 202 s 2; 1980 c 568 s 2-4; 1982 c 565 s 2,3; 1Sp1985 c 13 s 318; 1986 c 444

**361.04** MS 1957 [Repealed, 1959 c 592 s 29]

**361.04** MS 1969 [Repealed, 1971 c 636 s 29]

### **361.041 WATERCRAFT SAFETY PROGRAM; OPERATORS.**

Subdivision 1. **Safety program.** The commissioner shall continue and expand the comprehensive boat safety and education program and, in connection with the program, shall issue operators permits as required by this section. The commissioner shall cooperate with boaters, governmental subdivisions, state agencies, other states, and the federal government in the operation of the program. The commissioner shall issue a watercraft operator's permit to a person who successfully qualifies for a permit under the boat safety education program.

Subd. 2. **Operator's permit.** Except as provided in this subdivision, no person 13 years of age or over but less than 18 years of age may operate a motorboat powered by a motor over 24 horsepower without possessing a valid watercraft operator's permit from Minnesota or from the operator's state of residence, unless there is a person 18 years of age or over in the motorboat. The commissioner shall establish an educational course and a testing program for watercraft operators and for persons 13 years of age or over but less than 18 years of age required to take the watercraft safety course. The commissioner shall issue a watercraft operator's permit to a person 13 years of age or

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over but less than 18 years of age who successfully completes the educational program and the written test which the commissioner shall prescribe.

**Subd. 3. Unlawful for owners to permit certain uses of watercraft.** It is unlawful for the owner of a watercraft to permit the watercraft to be operated contrary to the provisions of this section.

**History:** 1973 c 310 s 1; 1975 c 322 s 1; 1986 c 444

**361.05 MS 1953 [Repealed, 1955 c 706 s 12]**

## **361.05 OPERATION GENERALLY.**

It is unlawful to operate or permit the operation of a watercraft or to use any device relating to the use of the watercraft in the following ways:

- (1) In a careless or heedless manner in disregard of the rights or safety of others;
- (2) In a reckless or grossly negligent manner, so as to cause personal injury to another or damage to the property of another;
- (3) Upon the waters of this state without the equipment required by sections 361.01 to 361.29, and the rules promulgated pursuant thereto;
- (4) A watercraft which is loaded with passengers or cargo beyond its safe carrying capacity, or which is equipped with any motor or other propulsion machinery beyond its safe power capacity.

**History:** 1959 c 592 s 5; 1971 c 23 s 27; 1971 c 636 s 10; 1985 c 248 s 70

## **361.055 AGE OF OPERATOR.**

Except in case of an emergency no person under the age of 13 years shall operate or be permitted to operate any watercraft propelled by a motor with a factory rating of more than 24 horsepower unless there is present in the watercraft in addition to the operator, the operator's parent or legal guardian, or at least one person of the age of 18 years or over.

**History:** 1971 c 636 s 11; 1973 c 310 s 2; 1986 c 444

**361.06 MS 1957 [Repealed, 1959 c 592 s 29]**

**361.06 MS 1961 [Repealed, 1963 c 753 art 2 s 17]**

**361.07 MS 1957 [Repealed, 1959 c 592 s 29]**

## **361.07 OBSTRUCTION OF NAVIGATION; ADVERTISING; BUOYS.**

No person shall operate any watercraft in a manner which shall obstruct or tend to obstruct the normal and ordinary navigation of the waters of this state. No person shall use any fixed or anchored structure on the waters of this state, not a part of a dock or pier which extends from the shore, for advertising purposes. No person shall moor, attach or hold in any manner a watercraft to any buoy, other than a mooring buoy, or any other marking device or guide placed in the waters of this state pursuant to lawful authority.

**History:** 1959 c 592 s 7

**361.08 MS 1957 [Repealed, 1959 c 592 s 29]**

## **361.08 SWIMMING OR BATHING AREAS.**

No person shall operate a watercraft within a water area which has been marked off or set aside as a swimming or bathing area as prescribed by the commissioner's rules.

**History:** 1959 c 592 s 8; 1985 c 248 s 70

## **361.085 SCUBA DIVING; FLAGS REQUIRED.**

**Subdivision 1.** All persons who swim in any waters of the state, except in legally

designated swimming areas, pursuant to Minnesota Statutes 1974, section 361.08, while wearing or carrying any apparatus, except a snorkel not attached to any artificial container of oxygen, permitting the swimmer to breathe while under water, shall display a diver's flag above the surface of the water and:

(a) No more than four divers shall dive under one flag.

(b) Every person who places a diver's flag shall remain within 50 feet of the flag, measured on the surface of the water.

(c) No person shall place a diver's flag where it will obstruct navigation.

(d) If a group of divers is operating in a contained area, the perimeter shall be marked and shall be outside of the normal area of navigation. The markings shall consist of the official diver's flag and shall be placed on the perimeter of the diving area at intervals not exceeding 150 feet.

(e) A diver's flag shall measure at least 15 inches horizontally and 12 inches vertically, and both sides shall have a red-colored background bisected diagonally by a three inch wide white stripe having its upper end adjacent to the flagstaff.

(f) A diver's flag shall be displayed in a vertical plane extended from a rigid flagstaff equipped to maintain the upper edge of the flag at least 30 inches above the water surface.

(g) A diver's flag may be reflectorized or fluorescent provided the entire surface is uniformly reflectorized or fluorescent.

(h) A diver's flag may be anchored or secured to the bottom when a safety hazard would result from towing the flag.

(i) If at the discretion of the diver it would be safer and more visible, the flag may be displayed on a watercraft. When the flag is displayed on the watercraft, the craft must be at anchor or, if not at anchor, attended by a diver or a person appointed by the diver to tend the craft. Only watercraft displaying an official diver's flag are authorized in the diving area.

Subd. 2. No person shall scuba or skin dive in any waters of this state at any time from one hour after sunset to sunrise on the day following unless the diver has in possession a diver's light visible when above water from a distance of at least 150 feet, except that no diver's light shall be required in any emergency, salvage, repair, or construction operation. Scuba or skin diving while in possession of a spear is prohibited from sunset to sunrise.

**History:** 1975 c 58 s 1; 1980 c 363 s 1; 1986 c 444

**361.09 MS 1957 [Repealed, 1959 c 592 s 29]**

### **361.09 TOWING PERSON ON WATER SKIS OR OTHER DEVICE.**

Subdivision 1. No person may operate a watercraft on any waters of this state, towing a person on water skis, aquaplane, surfboard, saucer, or similar device, unless there is in the watercraft either another person in addition to the operator in a position to continually observe the person being towed or the boat is equipped with a mirror providing the operator a wide field of vision to the rear.

Subd. 2. No person shall be towed, or shall operate a watercraft towing a person on water skis, aquaplane, surfboard, saucer or other device on any waters of this state at any time from one hour after sunset to sunrise of the day following.

**History:** 1959 c 592 s 9; 1971 c 636 s 12; 1975 c 322 s 2; 1983 c 181 s 1

**361.10 MS 1957 [Repealed, 1959 c 592 s 29]**

### **361.10 CAPACITY OF WATERCRAFT.**

Subdivision 1. **Capacity plate required.** Every watercraft manufactured for sale in Minnesota after December 31, 1980, except canoes, kayaks, sailboats, sailboards, inflatable boats and those exceeding 20 feet in length shall have affixed permanently

thereto by the manufacturer a capacity plate which shall contain such information relating to maximum safe carrying and power capacity specifications as shall be prescribed by the commissioner. The information contained on the capacity plate shall, at a minimum, comply with the established standards and regulations of the United States Coast Guard. For purposes of this section "manufacture" means to construct or assemble a watercraft or alter a watercraft in such a manner as to change its weight and carrying capacity.

**Subd. 2. Certification.** The information appearing on a capacity plate shall be deemed to certify that the manufacturer has correctly and faithfully specified the maximum safe carrying and horsepower capacity and that the information is not a deliberate or negligent misrepresentation.

**Subd. 3. Violation.** Failure to comply with the provisions of this section shall constitute a separate violation for each watercraft with respect to which such failure occurs.

**History:** 1959 c 592 s 10; 1971 c 636 s 13; 1980 c 568 s 5

**361.11 MS 1957 [Repealed, 1959 c 592 s 29]**

### **361.11 RIDING ON GUNWALES OR DECKING.**

No person shall ride or sit on the starboard or port gunwales, the decking over the bow, or transom of any motorboat while underway, unless such boat is provided with adequate guards or railing to prevent passengers from falling overboard, and no person shall operate such a motorboat while any person is so riding or sitting.

**History:** 1959 c 592 s 11; 1971 c 636 s 14

**361.12 MS 1957 [Repealed, 1959 c 592 s 29]**

### **361.12 ALCOHOL, DRUGS, PHYSICAL OR MENTAL DISABILITY.**

**Subdivision 1. Acts prohibited.** (a) No person shall operate or be in physical control of any motorboat while underway or in use on the waters 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 or other substance, as provided in section 169.121, subdivision 1;

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 motorboat shall authorize or permit any individual the person knows or has reason to believe is under the influence of alcohol or a controlled or other substance, as provided under paragraph (a), to operate the motorboat while underway or in use on the waters of this state.

(c) No owner or other person having charge or control of any motorboat shall knowingly authorize or permit any person, who by reason of any physical or mental disability is incapable of operating the motorboat, to operate the motorboat while underway or in use on the waters 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 motorboat accident resulting in death, personal injury, or property damage.

**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 motorboat, or has operated or been in control of a motorboat, 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 any arrest should be made under this section and whether to require the chemical tests authorized in section 361.121, but may not be used in any court action except to prove that a test was properly required of an operator pursuant to section 361.121. Following the preliminary screening test, additional tests may be required of the operator as provided under section 361.121. Any operator who refuses a breath sample is subject to the provisions of section 361.121 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.** (a) Upon the trial of any prosecution arising out of acts alleged to have been committed by any person arrested for operating or being in physical control of any motorboat in violation of subdivision 1, paragraph (a), the court may admit evidence of the amount of alcohol or a controlled substance in the person's blood, breath, or urine as shown by an analysis of those items.

(b) For the purposes of this subdivision:

(1) evidence that there was at the time an alcohol concentration of 0.05 or less is prima facie evidence that the person was not under the influence of alcohol;

(2) evidence that there was at the time an alcohol concentration of more than 0.05 and less than 0.10 is relevant evidence in indicating whether or not the person was under the influence of alcohol.

(c) Evidence of the refusal to take a preliminary screening test required under subdivision 3 or a chemical test required under section 361.121 is admissible into evidence in a prosecution under this section.

(d) This subdivision does not limit the introduction of any other competent evidence bearing upon the question whether or not the person violated this section, including results obtained from partial tests on an infrared breath-testing instrument. A result from a partial test is the measurement obtained by analyzing one adequate breath sample. A sample is adequate if the instrument analyzes the sample and does not indicate the sample is deficient.

**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.

**Subd. 6. Operating privileges suspended; revoked.** (a) Upon conviction, and in addition to any penalty imposed under subdivision 5, the person is prohibited from operating any motorboat on the waters of this state for a period of 90 days between May 1 and October 31, extending over two consecutive years if necessary.

(b) A person with a motorboat operator's permit 13 years of age or older but less than 18 years of age and who violates any prohibition contained in subdivision 1 shall have the permit revoked by the commissioner as required by section 361.22, subdivision 2, in addition to any other penalty imposed by the court.

**Subd. 7. Duties of commissioner.** The court shall promptly forward copies of all convictions and criminal and civil penalties imposed under subdivision 5 and section 361.121, subdivision 2, to the commissioner. The commissioner shall notify the



convicted person of the period during which the person is prohibited from operating a motorboat as provided under subdivision 6 or section 361.121, subdivision 2. The commissioner shall also periodically circulate to appropriate law enforcement agencies a list of all persons who are prohibited from operating any motorboat or have had their motorboat operator's permits revoked pursuant to subdivision 6 or section 361.121, subdivision 2.

**Subd. 8. Immunity from liability.** The state or political subdivision which is the employer of an officer 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 motorboat being operated by or in the physical control of the person arrested if the officer acts in good faith and exercises due care.

**History:** 1959 c 592 s 12; 1971 c 636 s 15; 1980 c 568 s 6; 1986 c 401 s 2; 1986 c 444; 1987 c 59 s 1; 1988 c 650 s 3,4

### 361.121 TESTING.

**Subdivision 1. Chemical testing.** A person who operates or is in physical control of a motorboat while underway or in use on the waters 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 361.12, 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 motorboat in violation of section 361.12, subdivision 1, paragraph (a), and one of the following conditions exist:

- (1) the person has been lawfully placed under arrest for violating section 361.12, subdivision 1, paragraph (a);
- (2) the person has been involved in a motorboat accident resulting in property damage, personal injury, or death;
- (3) the person has refused to take the preliminary screening test provided for in section 361.12, 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 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.

**Subd. 4. Requirement of urine test.** Notwithstanding subdivision 1, if there are reasonable and probable grounds to believe there is impairment by a controlled substance which is not subject to testing by a blood or breath test, a urine test may be required even after a blood or breath test has been administered.

**Subd. 5. Breath test using an infrared breath-testing instrument.** In the case of a breath test administered using an infrared breath-testing instrument, the test shall consist of analyses in the following sequence: one adequate breath sample analysis, one calibration standard analysis, and a second, adequate breath sample analysis. In the case of a test administered using an infrared breath-testing instrument, a sample is adequate if the instrument analyzes the sample and does not indicate the sample is deficient. For purposes of this section, when a test is administered using an infrared breath-testing instrument, failure of a person to provide two separate adequate breath samples in the proper sequence constitutes a refusal to take the test.

**Subd. 6. Consent of person incapable of refusal not withdrawn.** A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is deemed not to have withdrawn the consent provided by subdivision 1 and the test may be given.

**Subd. 7. Manner of making test; additional tests.** Only a physician, medical technician, physician's trained mobile intensive care paramedic, registered nurse, medical technologist, or laboratory assistant acting at the request of a peace officer authorized to make arrests under section 361.12, subdivision 2, may withdraw blood for the purpose of determining the presence of alcohol or controlled substance. This limitation does not apply to the taking of a breath or urine sample. The person tested has the right to have someone of the person's own choosing administer a chemical test or tests in addition to any administered at the direction of a peace officer; provided, that the additional test sample on behalf of the person is obtained at the place where the person is in custody, after the test administered at the direction of a peace officer, and at no expense to the state. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission in evidence of the test taken at the direction of a peace officer unless the additional test was prevented or denied by the peace officer. The physician, medical technician, physician's trained mobile intensive

care paramedic, medical technologist, laboratory assistant, or registered nurse drawing blood at the request of a peace officer for the purpose of determining alcohol concentration shall in no manner be liable in any civil or criminal action except for negligence in drawing the blood. The person administering a breath test shall be fully trained in the administration of breath tests pursuant to training given by the commissioner of public safety.

**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:** 1986 c 401 s 3; 1986 c 444; 1987 c 368 s 7-13

**361.13 MS 1957 [Repealed, 1959 c 592 s 29]**

### **361.13 STOPPING AT SCENE OF ACCIDENT OR INCIDENT; REPORTS; LIABILITY.**

**Subdivision 1.** The operator of any watercraft involved in an accident or incident resulting in injury or death to any person or in damage to property shall, if possible without serious danger to the watercraft or the persons aboard, immediately stop at the scene of the accident or incident and render such assistance as may be practicable and necessary and shall give the operator's name, address and license number of the watercraft and the name and address of the owner thereof to the person injured or the operator or occupants of the other watercraft or owner or occupant of the property involved, and shall promptly report the accident or incident to the sheriff of the county in which the accident or incident occurred. Sheriffs are required to report all accidents and incidents to the commissioner of natural resources, who shall transmit statistics on boating accidents and incidents to the United States Coast Guard.

**Subd. 2.** The owner and operator of any watercraft shall be jointly and severally liable for any injury or damage occasioned by the negligent operation of such watercraft whether such negligence consists of a violation of the provisions of the statutes of this state, or neglecting to observe such ordinary care in such operation as the rules of common law require. The owner shall not be liable if such watercraft is being operated without the owner's express or implied consent. It is presumed that such operation is with the knowledge and consent of the owner if at the time of the injury or damage it is under the control of the owner's spouse, father, mother, brother, sister, son, daughter or other member of the owner's immediate family. Nothing contained in this subdivision shall be construed to relieve any other person from any liability which the person would otherwise have, nor shall anything contained in this subdivision be construed to authorize or permit any recovery in excess of the injury or damage actually incurred.

**History:** 1959 c 592 s 13; 1969 c 1129 art 3 s 1; 1971 c 636 s 16; 1980 c 568 s 7; 1986 c 444

**361.14 MS 1957 [Repealed, 1959 c 592 s 29]**

**361.14 [Repealed, 1971 c 636 s 29]**

**361.141 SAFETY EQUIPMENT.**

Subdivision 1. **Personal flotation or lifesaving devices.** Watercraft and duck boats using the waters of this state shall be equipped with the number and type of personal flotation or lifesaving devices prescribed by the commissioner. The commissioner shall not require sailboards to be equipped with personal flotation or lifesaving devices. Nor shall the commissioner require persons on sailboards to wear those devices or have them readily available.

Subd. 2. **Responsibility for required equipment.** The owner of a business which rents, leases, or hires out watercraft shall provide a lifesaving device required by this section for each person on board the watercraft.

**History:** 1971 c 636 s 17; 1980 c 568 s 8; 1982 c 466 s 1; 1988 c 677 s 3

**361.15 MS 1957 [Repealed, 1959 c 592 s 29]**

**361.15 LIGHTS.**

Subdivision 1. Each watercraft using the waters of this state, when underway or in use at any time between sunset and sunrise, shall carry and display the lights specified by the commissioner for such watercraft.

Subd. 2. [Repealed, 1980 c 568 s 18]

Subd. 3. [Repealed, 1971 c 636 s 29]

Subd. 4. [Repealed, 1971 c 636 s 29]

Subd. 5. [Repealed, 1971 c 636 s 29]

**History:** 1959 c 592 s 15; 1971 c 636 s 18,19; 1980 c 568 s 9

**361.16 MS 1957 [Repealed, 1959 c 592 s 29]**

**361.16 SOUND-PRODUCING DEVICES; SIREN.**

Subdivision 1. Motorboats 16 feet or more in overall length using the waters of this state shall carry such sound-producing devices as prescribed by the commissioner. The operator of a motorboat shall sound these devices only when reasonably necessary to insure safe operation.

Subd. 2. No siren shall be carried or used on any watercraft other than patrol watercraft. Any siren carried or used in violation of this subdivision may be removed and seized by the sheriff and shall thereupon become the property of the county in which seized and may be used or disposed of as the county board may determine.

**History:** 1959 c 592 s 16; 1971 c 636 s 20; 1980 c 568 s 10

**361.17 MS 1957 [Repealed, 1959 c 592 s 29]**

**361.17 MOTORBOAT NOISE CONTROL.**

Subdivision 1. No motor shall be used on any motorboat unless it is equipped with an efficient muffler, underwater exhaust or other device which at all times adequately muffles or suppresses the sound of the exhaust of the motor so as to prevent excessive or unusual noise, and no motor shall be equipped with any cut-out.

Subd. 2. No person shall operate a motorboat at any time or under any condition of load, acceleration, or deceleration in such a manner as to exceed the noise limits contained in subdivision 6.

Subd. 3. No person shall sell or offer for sale a new marine engine or motorboat which when maintained according to the manufacturer's specifications would exceed the noise limits contained in subdivision 6 when tested with a measurement procedure approved by the commissioner.

Subd. 4. No person shall modify a marine engine or motorboat in a manner which will amplify or increase the noise emitted by the marine engine or motorboat above the noise limits contained in subdivision 6 when tested with a measurement procedure approved by the commissioner. No person shall operate a motorboat so modified.

Subd. 5. No person shall sell or offer for sale replacement or additional parts for a marine engine or motorboat which when installed in the marine engine or motorboat will amplify or increase the noise emitted by the marine engine or motorboat above the noise limits contained in subdivision 6 when tested with a measurement procedure approved by the commissioner. No person shall operate a motorboat incorporating such parts.

Subd. 6. The following limits apply to the total noise from the marine engine or motorboat and shall not be construed as limiting or precluding the enforcement of any other provision of law relating to motorboat noise:

(a) For marine engines or motorboats manufactured before January 1, 1982, a noise level of 84 decibels on the A scale measured at a distance of 50 feet from the motorboat or equivalent noise levels at other distances as specified by the commissioner.

(b) For marine engines or motorboats manufactured on or after January 1, 1982, a noise level of 82 decibels on the A scale measured at a distance of 50 feet from the motorboat or equivalent noise levels at other distances as specified by the commissioner.

Subd. 7. The provisions of this section shall not apply to motorboats operating under a permit pursuant to section 361.20 or a United States coast guard marine event permit in a regatta, or race, while on trial runs, or while on official trials for speed records during the time and in the designated area authorized by the permit.

**History:** 1959 c 592 s 17; 1980 c 530 s 1

**361.18** MS 1957 [Repealed, 1959 c 592 s 29]

### **361.18 DEVICE FOR ARRESTING BACKFIRE.**

No motor other than a detachable outboard motor shall be used on any watercraft unless each carburetor is fitted with a device for arresting or safely deflecting backfire which is approved or prescribed by the U.S. Coast Guard. All such devices must be maintained in serviceable condition.

**History:** 1959 c 592 s 18; 1971 c 636 s 21; 1980 c 568 s 11

**361.19** MS 1957 [Repealed, 1959 c 592 s 29]

### **361.19 FIRE EXTINGUISHER AND VENTILATION.**

Subdivision 1. Inboard motorboats, houseboats, and other motorboats carrying or using fuel or other inflammable or toxic fluid in any enclosure of the boat shall be provided with such number, size, and type of fire extinguishers as may be approved by the commissioner. Fire extinguishers approved by the commissioner shall comply with requirements of the United States Coast Guard. Such extinguisher shall be at all times kept in condition for immediate and effective use and shall be so placed as to be readily accessible.

Subd. 2. Each watercraft described in subdivision 1 shall be provided with such means for properly and efficiently ventilating the bilges of the engine and fuel tank compartments as prescribed by the commissioner so as to remove any explosive or flammable gases.

**History:** 1959 c 592 s 19; 1971 c 636 s 22

**361.20** MS 1957 [Repealed, 1959 c 592 s 29]

### **361.20 RACE OR OTHER COMPETITION OR EXHIBITION.**

No person shall hold or sponsor any scheduled or public race, regatta, tournament or other competition or exhibition, or any trial therefor, on water or ice thereon, whether or not involving watercraft, without first having obtained a written permit therefor from the sheriff of the county in which such event is to originate. The sheriff,

in the permit, may exempt watercraft from any of the provisions of this chapter relating to the licensing, operation and equipment of watercraft while participating in the event authorized. If the sheriff refuses the permit, the person applying therefor may appeal the refusal to the commissioner.

**History:** 1959 c 592 s 20; 1971 c 636 s 23; 1980 c 568 s 12

**361.21** MS 1957 [Repealed, 1959 c 592 s 29]

### **361.21 HAZARDS TO NAVIGATION; REMOVAL OF BUOYS OR STRUCTURES.**

Subdivision 1. The commissioner may require that a written permit be obtained for the placement of any structure or device which, in the commissioner's opinion, constitutes a hazard to navigation.

Subd. 2. Except as authorized by the commissioner, no person shall obstruct, remove, damage or destroy any buoy or structure placed in the waters of this state in accordance with sections 361.01 to 361.29 or by authority of the United States.

Subd. 3. No person shall place buoys or other waterway markers unless the markers conform with the uniform marking system established by the commissioner.

Subd. 4. The marking of certain hazards to navigation on, in or adjacent to the waters of this state by a governmental agency shall not incur upon that agency or any other agency a duty for the marking of all navigational hazards.

**History:** 1959 c 592 s 21; 1971 c 636 s 24; 1980 c 568 s 13,14; 1986 c 444

### **361.215 ENFORCEMENT AUTHORITY.**

Any sheriff or conservation officer may stop, inspect and detain for a reasonable time any watercraft observed in violation of Minnesota Statutes or rules, and is empowered to issue a summons and complaint for violations of this chapter in the same manner as for violations of game and fish laws. All watercraft used primarily in the enforcement of this section shall be duly marked so as to be visible from both sides of the craft. The markings shall at a minimum identify the operating agency and be of a contrasting color to the background. Lettering used for identification, other than that used in an agency symbol, shall be of block character and not less than three inches in height. Watercraft which are used primarily for enforcement of fish and wildlife laws, when coincidentally enforcing this section, shall either be duly marked through the flying of a pennant of such size and marking as shall be prescribed by the commissioner, or through marking of the craft itself pursuant to this section. As used in this section "inspect" shall not mean the authority to board a watercraft.

**History:** 1971 c 636 s 25; 1980 c 568 s 15

**361.22** MS 1953 [Repealed, 1955 c 706 s 12]

### **361.22 PENALTIES FOR VIOLATIONS.**

Subdivision 1. Any person who shall violate any provision of sections 361.01 to 361.28, or any rule of the commissioner promulgated pursuant to sections 361.01 to 361.28, or who shall operate any watercraft which does not conform to the provisions of sections 361.01 to 361.28, shall unless a different penalty is specifically prescribed, be guilty of a misdemeanor.

Subd. 2. An operator 13 years of age or older but less than 18 years of age, adjudicated by a juvenile court as having violated section 361.05, or 361.12, or 361.13 shall have the operator's permit revoked by the commissioner. The commissioner shall issue a new permit to the operator one year after the revocation upon successful completion by the operator of a watercraft safety course. The judge of a juvenile court, which adjudicates an operator of violating any of the laws or rules listed above, shall require the surrender of the person's watercraft operator's permit and shall forward the operator's permit to the commissioner, together with a record of the adjudication.

Subd. 3. Any operator who shall operate a watercraft when such operation is prohibited pursuant to subdivision 2, shall be guilty of a misdemeanor.

**History:** 1959 c 592 s 22; 1971 c 23 s 28,29; 1973 c 310 s 3; 1985 c 248 s 70; 1986 c 444

**361.23** MS 1953 [Repealed, 1955 c 706 s 12]

**361.23 VIOLATION AS EVIDENCE.**

In all civil actions a violation of any of the provisions of sections 361.05 to 361.20, by any of the parties thereto shall not be negligence per se but shall be prima facie evidence of negligence. No record of the conviction of any person for any violation of sections 361.01 to 361.28 shall be admissible as evidence in any court in any civil action.

**History:** 1959 c 592 s 23; 1973 c 35 s 64

**361.24** MS 1953 [Repealed, 1955 c 706 s 12]

**361.24 DUTIES OF SHERIFFS, CONSERVATION OFFICERS, AND COUNTY BOARDS.**

Subdivision 1. It shall be the duty of the sheriff of each county and conservation officers of the department of natural resources to enforce the provisions of this chapter. It shall be the duty of the sheriff of each county to maintain a program of search, rescue, buoying or marking, patrol, removal of hazards to navigation, and inspection of watercraft for rent, lease, or hire. The sheriff shall prohibit the use of any watercraft or safety equipment for rent, lease, or hire which does not comply with the standards of safety for such watercraft or equipment which the commissioner shall prescribe. The sheriff shall investigate all watercraft accidents and drownings and report findings to the commissioner in such form as the commissioner shall prescribe. The county board may authorize the employment of such additional personnel as it deems necessary to carry out the provisions of this section.

Subd. 2. On or before September 1 of each even-numbered year, the county board of each county shall submit to the commissioner its proposed budget to carry out the provisions of sections 361.01 to 361.29, during the biennium beginning on the following July 1. The commissioner shall review such proposed budgets and incorporate into the budget for department of natural resources such parts thereof as the commissioner deems necessary and equitable for each county. The amount allocated for each county shall be paid to such county and a separate accounting kept thereof. The commissioner may require each county to make such reports as to the expenditure of such funds as the commissioner deems necessary. The commissioner shall publish a report annually showing these expenditures, copies of which shall be distributed to all participating counties.

Subd. 3. The commissioner shall require a county to submit a budget containing proposed activities that would adequately carry out the provisions of this chapter. If the county fails to submit a budget or fails to carry out the proposed activities after submitting a budget, the commissioner may allocate all or a portion of the county's share back to the department of natural resources or to political subdivisions within the county, including lake conservation districts in part or in whole within the county, that the commissioner determines will provide watercraft safety enforcement, supervision, marking, regulation, search and rescue, and information on waters wholly or partially within their boundaries. The commissioner may require such budgets or reports on the expenditure of the funds as the commissioner deems necessary. If at any time, the county sheriff determines that additional outside assistance is necessary on a temporary, nonrecurring basis for the purposes of boat and water safety, the sheriff may request such assistance from the commissioner. The commissioner may then allocate emergency funding to the county, provide materials or equipment on a temporary loan basis, or hire temporary personnel as the commissioner deems necessary.



Subd. 4. The amount of funds to be allocated pursuant to subdivisions 2 and 3 shall be determined by the commissioner on the basis of the following criteria:

(a) The number of watercraft using the waters wholly or partially within the county.

(b) The number of watercraft using particular bodies of water, wholly or partially within the county in relation to the size of the body of water and the type, speed and size of the watercraft utilizing the water body.

(c) The amount of water acreage wholly or partially within the county.

(d) The overall performance of the county in the area of boat and water safety.

(e) Special considerations, such as volume of transient or nonresident watercraft use, number of rental watercraft, extremely large bodies of water wholly or partially in the county or any other factor as determined by the commissioner.

The commissioner may require reports from the counties, make appropriate surveys or studies or utilize local surveys or studies to determine the criteria required in allocation funds.

**History:** 1959 c 592 s 24; 1969 c 1044 s 4; 1969 c 1129 art 3 s 1; 1971 c 636 s 26; 1971 c 861 s 2; 1980 c 568 s 16; 1986 c 444

**361.25** MS 1953 [Repealed, 1955 c 706 s 12]

### **361.25 RULES.**

The commissioner shall adopt, in the manner provided in sections 14.02, 14.04 to 14.36, 14.38, 14.44 to 14.45, and 14.57 to 14.62, and shall publish in the manner prescribed in section 97A.051, subdivision 3, rules relating to the application for, and form and numbering of watercraft licenses and the size, form, reflectorize material and display of watercraft license numbers which shall comply with the requirements of the federal watercraft numbering system, placement and regulation of docks, piers, buoys, mooring or marking devices and other structures in the waters of this state, rules of the road for watercraft navigation and standards for equipment used in the towing of persons on water skis, aquaplanes, surfboards, saucers, and other devices, standards for lights, signals, fire extinguishers, bilge ventilation, and lifesaving equipment, standards of safe load and power capacity, accounting, procedural and reporting requirements for county sheriff, designation of and swimming or bathing areas, standards of safety for watercraft offered for rent, lease, or hire; and in accordance with section 361.26, subdivision 2, clause (c), the commissioner shall by no later than January 1, 1975, adopt rules relating to the use of surface waters of this state by watercraft including but not limited to (1) standards and criteria for resolving conflicts in the use of water surfaces by watercraft, (2) procedures for dealing with problems involving more than one local governmental unit, (3) procedures for local enforcement and (4) procedures for carrying out the provisions of section 361.26, subdivision 2; and such other rules as the commissioner deems necessary to carry out the provisions of this chapter.

**History:** 1959 c 592 s 25; 1971 c 636 s 27; 1973 c 702 s 1; 1982 c 424 s 130; 1985 c 248 s 70; 1986 c 386 art 4 s 27; 1986 c 444

**361.26** MS 1953 [Repealed, 1955 c 706 s 12]

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

Subdivision 1. The provisions of this chapter, and of other applicable laws of this state shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this state, or when any activity regulated by this chapter shall take place thereon. Nothing in this chapter shall be construed as limiting the authority of any political subdivision of this state to adopt regulations, not inconsistent with this chapter and the rules of the commissioner, relating to the use of waters of this state which are wholly or partly within the territorial

boundaries of a county, or entirely within the boundaries of a city. A city of the first class of over 200,000 or the park board thereof, may forbid the use of motorboats or boats with motors attached thereto on its lakes.

Subd. 1a. On or before January 1, 1975, the commissioner shall develop and publish guidelines to assist counties when adopting water surface use ordinances for waters within their jurisdiction.

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:** 1959 c 592 s 26; 1971 c 636 s 28; 1973 c 123 art 5 s 7; 1973 c 702 s 2,3; 1974 c 39 s 1; 1985 c 248 s 70; 1986 c 444; 1987 c 384 art 2 s 84

**361.27** MS 1953 [Repealed, 1955 c 706 s 12]

### **361.27 BOAT AND WATER SAFETY; FINES AND FORFEITED BAIL MONEY.**

Subdivision 1. **Boat and water safety.** A portion of the money in the water recreation account shall be utilized by the department of natural resources to carry out the provisions of sections 361.01 to 361.29 and a portion shall be paid to counties and in an amount the commissioner shall determine and be used to defray the expenses of enforcement of the provisions of sections 361.01 to 361.29 and the expenses of a county sponsored or administered watercraft and swimming safety instructional program. The commissioner may withhold up to \$25,000 per biennium of the allocation for the purpose of payments to counties and other political subdivisions for specific boat and water safety projects beyond the capability of previously allocated funds. Counties and other political subdivisions shall make application for payment of these funds on such forms and for such purposes as the commissioner shall prescribe.

Subd. 2. **Fines, bail money.** All fines, installment payments, and forfeited bail money collected from persons convicted of violations of sections 361.01 to 361.28 shall be paid to the county treasurer of the county where the violation occurred by the court administrator of court or other person collecting the money within 15 days after the last day of the month in which they were collected. One-half of the receipts shall be

credited to the general revenue fund of the county. The other one-half of the receipts shall be transmitted by the county treasurer to the commissioner of natural resources to be deposited in the water recreation account in the state treasury for the purpose of boat and water safety.

Subd. 3. [Repealed, 1969 c 399 s 51]

**History:** 1959 c 592 s 27; 1969 c 399 s 47,48; 1969 c 1044 s 5; 1975 c 322 s 3; 1980 c 568 s 17; 1983 c 359 s 48; 1Sp1985 c 13 s 319; 1Sp1986 c 3 art 1 s 82

**361.28** MS 1957 [Repealed, 1959 c 592 s 29]

## **361.28 PERSONAL PROPERTY TAXES.**

The license fee on watercraft as imposed herein is not to be considered in lieu of personal property taxes thereon.

**History:** 1959 c 592 s 28

**361.29** MS 1957 [Repealed, 1959 c 592 s 29]

## **361.29 MARINE TOILETS.**

Subdivision 1. (a) For the purposes of this section the term "watercraft" has the meaning given to it by section 361.02, subdivision 7, and acts amendatory thereof. (b) No person owning or operating a watercraft or other marine conveyance upon the waters of the state of Minnesota shall use, operate or permit the use or operation of any marine toilet or similar device for the disposition of sewage or other wastes, unless the toilet wastes are retained for disposition on land by means of facilities constructed and operated in accordance with rules adopted by the state commissioner of health and approved by the pollution control agency of the state of Minnesota. No person shall discharge into the waters of this state, directly or indirectly from a watercraft or other marine conveyance, any sewage or other wastes, nor shall any container of sewage or other wastes be placed, left, discharged, or caused to be placed, left or discharged into any waters of this state by any person or persons at any time whether or not the owner, operator, guest or occupant of a watercraft or other marine conveyance. All toilets must be sealed or otherwise rendered inoperative so that no human or other waste can be discharged from such toilet into state waters.

Subd. 2. The Minnesota pollution control agency shall upon request furnish a list of the types of retention devices currently available and considered acceptable for the purposes of this section for use with such marine toilets. The commissioner of natural resources shall furnish the sheriff of each county in the state of Minnesota with a list of such retention facilities acceptable to the pollution control agency of the state of Minnesota.

Subd. 3. No watercraft or other marine conveyance upon the waters of the state of Minnesota shall be equipped with any marine toilet unless also equipped with a retention device acceptable to the pollution control agency of the state of Minnesota.

Subd. 4. The installation or presence of a marine toilet in a watercraft shall be indicated by the owner upon application for licensing of the watercraft or marine conveyance, and no license for any such watercraft bearing a marine toilet shall be issued except upon certification by the owner of the installation of an acceptable retention device for use with such marine toilet.

Subd. 5. The provisions of subdivisions 1, 2, 3 and 4 shall not apply until December 31, 1975 to watercraft that were equipped with treatment devices approved by the pollution control agency prior to June 8, 1971, so long as such equipment continues to operate in accordance with its design capability. Notwithstanding this provision, the agency shall by administrative order require such watercraft to commence use of retention facilities pursuant to Laws 1971, chapter 861, where it determines that conditions necessitate such action.

Subd. 6. A person who violates any provision of this section is guilty of a misdemeanor.

# MINNESOTA STATUTES 1988

## 361.29 WATERS AND WATERCRAFT SAFETY

7792

The requirement of retention facilities imposed by Laws 1971, chapter 861, is effective on the Minnesota-Wisconsin boundary waters of the Mississippi and St. Croix Rivers on January 1, 1972, and on other waters of the state of Minnesota on January 1, 1973. Until those dates this section is satisfied by meeting either the requirement of retention facilities imposed by Laws 1971, chapter 861, or the requirement of treatment facilities under Minnesota Statutes 1969, section 361.29.

**History:** 1961 c 333 s 1,2; 1963 c 313 s 1; 1965 c 273 s 1; 1969 c 9 s 21; 1969 c 831 s 1; 1969 c 1129 art 3 s 1; 1971 c 861 s 1; Ex1971 c 17 s 1; 1977 c 305 s 45; 1Sp1986 c 3 art 1 s 82

**361.30-361.35** [Repealed, 1959 c 592 s 29]

**361.41-361.50** [Repealed, 1959 c 592 s 29]