

Summary of NM Boating Statues as of 2/2016

66-12-3. Definitions.

As used in the Boat Act:

- A. "vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water;
- B. "motorboat" means any vessel propelled by machinery, whether or not machinery is the principal source of propulsion, but does not include a vessel that has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto; "motorboat" includes any vessel propelled or designed to be propelled by sail and that does not have a valid document issued by a federal agency, but does not include a sailboard or windsurf board;
- C. "owner" means a person, other than a lienholder, having the property in or title to a motorboat; "owner" includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but excludes a lessee under a lease not intended as security;
- D. "waters of this state" means waters within the territorial limits of this state;
- E. "person" means an individual, partnership, firm, corporation, association or other entity;
- F. "operate" means to navigate or otherwise use a motorboat or a vessel;
- G. "state agency" means any department, institution, board, bureau, commission, district or committee of the government of this state and means every office or officer of any state agency;
- H. "subdivision of the state" means every county, county institution, board, bureau or commission, incorporated city, town or village, drainage, conservancy, irrigation or other district and every office or officer of any subdivision of this state;
- I. "division" means the state parks division of the energy, minerals and natural resources department;
- J. "boat" means a motorboat that is ten feet in length or longer;
- K. "dealer" means any person who engages in whole or in part in the business of buying, selling or exchanging new and unused motorboats or used motorboats, or both, either outright or on conditional sale, bailment, lease, chattel mortgage or otherwise and who has an established place of business for sale, trade and display of motorboats; "dealer" includes a yacht broker;
- L. "lien" means every chattel mortgage, conditional sales contract, lease, purchase lease, sales lease, contract, security interest under the Uniform Commercial Code [\[55-1-101 NMSA 1978\]](#) or other instrument in writing having the effect of a mortgage or lien or encumbrance upon, or intended to hold the title to any boat in the former owner, possessor or grantor;
- M. "manufacturer" means any person engaged in the business of manufacturing or importing new and unused motorboats for the purpose of sale or trade;

N. "demonstration" means:

(1) the operation of a motorboat on the waters of this state for the purpose of selling, transferring, bartering, trading, negotiating or attempting to negotiate the sale or exchange of an interest in a motor boat; or

(2) the operation of a motorboat by a manufacturer for the purpose of testing the motorboat; and

O. "established place of business" means a salesroom in an enclosed building or structure that the dealer owns or leases, where the business of bartering, trading and selling of motorboats is conducted and where the books, records and files necessary to conduct the business are maintained.

History: 1953 Comp., § 75-35-3, enacted by Laws 1959, ch. 338, § 3; 1965, ch. 16, § 1; 1977, ch. 254, § 96; 1985, ch. 117, § 1; 1987, ch. 234, § 43; 1987, ch. 245, § 1; 1987, ch. 247, § 5; 1991, ch. 240, § 1; 2003, ch. 410, § 2.

66-12-4. Operation of unnumbered motorboats prohibited.

A. Every motorboat which is propelled by sail or machinery operating on the waters of this state shall be numbered. No person shall operate or give permission for the operation of any motorboat on the waters of this state unless the motorboat is numbered in accordance with the Boat Act or in accordance with applicable federal law or in accordance with a federally approved numbering system of another state and unless the certificate of number awarded to the motorboat is in force and the identifying number set forth in the certificate of number is displayed on each side of the bow of the motorboat.

B. Every boat operating on the waters of this state and owned by a person who is domiciled in this state shall be titled. No person shall operate or give permission for the operation of any boat on the waters of this state unless the boat is titled as provided in the Boat Act.

C. A person who is not domiciled in this state but who operates a boat on the waters of this state may, pursuant to the provisions of the Boat Act, elect to register the boat in this state.

History: 1953 Comp., § 75-35-4, enacted by Laws 1959, ch. 338, § 4; 1963, ch. 45, § 1; 1965, ch. 16, § 2; 1987, ch. 247, § 6; 2000, ch. 34, § 1.

66-12-5. Identification number.

A. The owner of each motorboat requiring numbering and inspection by this state shall file an application for number with the division on forms approved by it. The application shall be signed by the owner of the motorboat and shall be accompanied by a three year registration fee as required in [Section 66-12-5.1](#) NMSA 1978. Upon receipt of the application in approved form, the division shall file it and issue to the applicant a certificate of number stating the number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in the manner prescribed by regulations of the division in order that it is clearly visible but in no case less than three inches in height and of a contrasting color to the boat color. The number shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat for which it is issued whenever the motorboat is in operation.

B. Should the ownership of a motorboat change, prior to operating it on the waters of this state the new owner shall file with the division an application for a new certificate of number in the same manner required for the award of a number under Subsection A of this section.

C. If an agency of the United States has in force an overall system of identification numbering for motorboats within the United States, the numbering system employed by the division pursuant to the Boat Act shall be in conformity with that system.

D. The division may award any certificate of number directly or may authorize any person to act as agent for the awarding. If a person accepts such authorization, he may be assigned a block of numbers and certificates which, upon award in conformity with the Boat Act and with any regulations of the division, are valid as if awarded directly by the division.

E. Every certificate of number awarded pursuant to the Boat Act shall continue in force through December 31 of the third calendar year of registration unless sooner terminated in accordance with the provisions of the Boat Act. A certificate of number may be renewed in the same manner provided for in the initial securing of the certificate and upon payment of the three year registration fee. Each application for renewal of a certificate of number shall be made by the owner on an application form which must be received by the division within sixty days after the expiration date of the certificate.

F. The owner shall notify the division of transfer, destruction or abandonment of the motorboat within fifteen days thereof. The transfer, destruction or abandonment terminates the certificate of number for the motorboat except in the case of a transfer of a part interest which does not affect the owner's right to operate the motorboat. Whenever the certificate of number is terminated, the owner shall return it to the division within fifteen days and state the reason for termination.

G. If there is a change of address, the holder of a certificate of number shall provide to the division the new address, existing certificate of number and a reasonable administrative fee. Upon receipt, the division will issue a new certificate of number.

H. Only the assigned registration number shall be painted, attached or otherwise displayed on either side of the bow of a motorboat.

I. The registration number assigned to the motorboat shall remain the assigned number for the life of the boat, except when a boat is transferred out of state, destroyed or abandoned.

History: 1953 Comp., § 75-35-5, enacted by Laws 1959, ch. 338, § 5; 1963, ch. 45, § 2; 1969, ch. 44, § 1; 1977, ch. 254, § 97; 1983, ch. 41, § 1; 1987, ch. 245, § 2.

66-12-5.2. Owner's certificate of title; fees; duplicates.

A. Except as provided in Subsection C of this section, every owner of a boat subject to titling under the provisions of the Boat Act shall apply to the division for issuance of a certificate of title for the boat within thirty days after acquisition. The application shall be on forms the division prescribes and accompanied by the required fee. The application shall be signed and sworn to before a notary public or other person who administers oaths, or a certification signed in writing containing substantially the representation that statements made are true and correct to the best of the applicant's knowledge, information and belief, under penalty of perjury. The application shall contain the date of sale and gross price of the boat or the fair market value if no sale immediately preceded the transfer and any

additional information the division requires. If the application is made for a boat last previously registered or titled in another state or foreign country, it shall contain this information and any other information the division requires.

B. The division shall not issue or renew a certificate of number to any boat required to be registered and numbered in the state unless the division has issued a certificate of title to the owner, if the boat is required to be titled.

C. Any person who, on July 1, 1987, is the owner of a boat with a valid certificate of number issued by the state is not required to file an application for a certificate of title for the boat until he transfers any part of his interest in the boat or he renews the certificate of number for the boat.

D. If a dealer buys or acquires a used boat for resale, he shall report the acquisition to the division on forms the division provides, or he may apply for and obtain a certificate of title as provided in this section. If a dealer buys or acquires a used unnumbered boat, he shall apply for a certificate of title in his name within thirty days. If a dealer buys or acquires a new boat for resale, he may apply for a certificate of title in his name.

E. Every dealer transferring a boat requiring titling under this section shall assign the title to the new owner or, in the case of a new boat, assign the certificate of origin. Within thirty days, the dealer or purchaser, as applicable, shall file with the division the necessary application and fee required under this section.

F. The division shall maintain a record of any certificate of title it issues.

G. No person shall sell, assign or transfer a boat titled by the state without delivering to the purchaser or transferee a certificate of title with an assignment on it showing title in the purchaser or transferee and with a statement of all liens upon the title. No person may purchase or otherwise acquire a boat required to be titled by the state without obtaining a certificate of title for it in his name.

H. The division shall charge a ten dollar (\$10.00) fee to issue a certificate of title, a transfer of title, a duplicate or corrected certificate of title.

I. If a certificate of title is lost, stolen, mutilated, destroyed or becomes illegible, the first lienholder or, if there is none, the owner named in the certificate, as shown by the division's records, shall within thirty days obtain a duplicate by applying to the division. The applicant shall furnish information concerning the original certificate and the circumstances of its loss, mutilation or destruction as the division requires. Mutilated or illegible certificates shall be returned to the division with the application for a duplicate. Issuance of a duplicate certificate of title is not subject to the excise tax imposed under [Section 66-12-6.1](#) NMSA 1978.

J. The duplicate certificate of title shall be plainly marked "duplicate" across its face and mailed or delivered to the applicant.

K. If a lost or stolen original certificate of title for which a duplicate has been issued is recovered, the original shall be surrendered promptly to the division for cancellation.

History: Laws 1987, ch. 247, § 7.

66-12-5.2. Owner's certificate of title; fees; duplicates.

A. Except as provided in Subsection C of this section, every owner of a boat subject to titling under the provisions of the Boat Act shall apply to the division for issuance of a certificate of title for the boat within thirty days after acquisition. The application shall be on forms the division prescribes and accompanied by the required fee. The application shall be signed and sworn to before a notary public or other person who administers oaths, or a certification signed in writing containing substantially the representation that statements made are true and correct to the best of the applicant's knowledge, information and belief, under penalty of perjury. The application shall contain the date of sale and gross price of the boat or the fair market value if no sale immediately preceded the transfer and any additional information the division requires. If the application is made for a boat last previously registered or titled in another state or foreign country, it shall contain this information and any other information the division requires.

B. The division shall not issue or renew a certificate of number to any boat required to be registered and numbered in the state unless the division has issued a certificate of title to the owner, if the boat is required to be titled.

C. Any person who, on July 1, 1987, is the owner of a boat with a valid certificate of number issued by the state is not required to file an application for a certificate of title for the boat until he transfers any part of his interest in the boat or he renews the certificate of number for the boat.

D. If a dealer buys or acquires a used boat for resale, he shall report the acquisition to the division on forms the division provides, or he may apply for and obtain a certificate of title as provided in this section. If a dealer buys or acquires a used unnumbered boat, he shall apply for a certificate of title in his name within thirty days. If a dealer buys or acquires a new boat for resale, he may apply for a certificate of title in his name.

E. Every dealer transferring a boat requiring titling under this section shall assign the title to the new owner or, in the case of a new boat, assign the certificate of origin. Within thirty days, the dealer or purchaser, as applicable, shall file with the division the necessary application and fee required under this section.

F. The division shall maintain a record of any certificate of title it issues.

G. No person shall sell, assign or transfer a boat titled by the state without delivering to the purchaser or transferee a certificate of title with an assignment on it showing title in the purchaser or transferee and with a statement of all liens upon the title. No person may purchase or otherwise acquire a boat required to be titled by the state without obtaining a certificate of title for it in his name.

H. The division shall charge a ten dollar (\$10.00) fee to issue a certificate of title, a transfer of title, a duplicate or corrected certificate of title.

I. If a certificate of title is lost, stolen, mutilated, destroyed or becomes illegible, the first lienholder or, if there is none, the owner named in the certificate, as shown by the division's records, shall within thirty days obtain a duplicate by applying to the division. The applicant shall furnish information concerning the original certificate and the circumstances of its loss, mutilation or destruction as the division requires. Mutilated or illegible certificates shall be returned to the division with the application for a duplicate. Issuance of a duplicate certificate of title is not subject to the excise tax imposed under [Section 66-12-6.1](#) NMSA 1978.

J. The duplicate certificate of title shall be plainly marked "duplicate" across its face and mailed or delivered to the applicant.

K. If a lost or stolen original certificate of title for which a duplicate has been issued is recovered, the original shall be surrendered promptly to the division for cancellation.

History: Laws 1987, ch. 247, § 7.

66-12-5.3. Prohibited acts.

A. It is unlawful for any person to take, receive or transfer a vessel without the consent of the owner.

B. It is unlawful for any person to damage, tamper with, alter or change hull identification numbers or serial numbers.

History: Laws 1987, ch. 245, § 4.

66-12-6. Dealer and manufacturer numbers; fee; certificates of origin; records.

A. A dealer or manufacturer that demonstrates motorboats on the public waters of this state shall file an application for a dealer or manufacturer number. The number shall be in lieu of a certificate of number for each motorboat intended or offered for sale.

B. Application for a dealer or manufacturer number shall be in the form prescribed by the division. The application shall state that the applicant is a motorboat dealer or manufacturer and that the applicant will operate a motorboat upon the waters of this state only for test or demonstration purposes. The statement shall be verified before a state officer who is authorized to administer an oath. The fee for a dealer or manufacturer number is ten dollars (\$10.00) annually as prescribed by the division.

C. The division shall issue a certificate of a dealer or manufacturer number to an applicant who submits a complete application and full payment of the dealer or manufacturer number fee to the division. The certificate shall be issued after the applicant obtains a dealer license from the motor vehicle division of the taxation and revenue department and shall contain the following:

(1) a dealer or manufacturer number that contains two state identification letters, followed by four numbers and two additional letters that are unique to dealers or manufacturers;

(2) the expiration date of the certificate;

(3) the name and business address of the applicant;

(4) the address of the principal place of business of the applicant; and

(5) a conspicuous statement that the division has certified the applicant as a dealer or manufacturer.

D. The dealer or manufacturer number shall be painted on or attached to plates that are firmly attached to each side of the front of a motorboat of the dealer or manufacturer while it is afloat upon the waters of this state.

E. A dealer or manufacturer who operates more than one motorboat for test or demonstration purposes on the waters of this state at the same time shall obtain and display a separate dealer or manufacturer number for each motorboat tested or demonstrated.

F. A manufacturer or dealer shall not transfer ownership of a new boat without supplying the transferee with the manufacturer's certificate of origin signed by the manufacturer's authorized agent. The certificate shall contain information the division requires.

G. Every dealer shall maintain for three years a record of any boat he bought, sold, exchanged or received for sale or exchange. This record shall be open to inspection by division representatives during reasonable business hours.

History: 1953 Comp., § 75-35-5.1, enacted by Laws 1965, ch. 48, § 1; 1977, ch. 254, § 98; 1987, ch. 247, § 8; 2003, ch. 410, § 3.

66-12-6.1. Excise tax on issuance of certificates of title; appropriation.

A. An excise tax is imposed upon the sale of every boat required to be registered in the state. To prevent evasion of the excise tax imposed by this section and the duty to collect it, it is presumed that the issuance of every original and subsequent certificate of title, other than a duplicate, for boats of a type required to be registered under the provisions of the Boat Act constitutes a sale for tax purposes unless specifically exempted by this section or unless there is shown satisfactory proof that the boat for which the certificate of title is sought came into the possession of the applicant as a voluntary transfer without consideration or as a transfer by operation of law. The division shall collect the tax at the time application is made for issuance of a certificate of title at the rate of five percent of the sale price of the boat. If the sale price does not represent the value of the boat in the condition that existed at the time it was acquired, the excise tax shall then be imposed at the rate of five percent of the reasonable value of the boat in such condition at such time. However, allowances granted for trade-ins may be deducted from the sale price or the reasonable value of the boat purchased. The tax shall be paid by the applicant, and the division may require all information which it deems necessary to establish the amount of the tax.

B. A penalty of fifty percent of the tax due on the issuance of a certificate of title is imposed on any person who, domiciled in this state and accepting transfer in this state, fails to apply for a certificate within ninety days of the date on which ownership was transferred to him or who is domiciled in this state but accepts transfer outside this state and who fails to apply for a certificate within ninety days of the date on which the boat is brought into this state.

C. If a boat has been acquired through an out-of-state transaction upon which a gross receipts, sales, compensating or similar tax was levied by another state or political subdivision thereof, the amount of the tax paid may be credited against the excise tax due this state on the same boat.

D. Persons domiciled outside this state and on active duty in the military service of the United States or on active duty as officers of the public health service detailed for duty with any branch of the military service are exempt from the tax imposed by this section.

E. Persons who acquire a boat out of state thirty or more days before establishing a domicile in this state are exempt from the tax imposed by this section if the boat was acquired for personal use.

F. Persons applying for a certificate of title for a boat registered in another state are exempt from the tax imposed by this section if they have previously registered and titled the boat in New Mexico and have owned the boat continuously since that time.

G. Certificates of title for all boats owned by this state or any political subdivision are exempt from the tax imposed by this section.

H. All taxes collected under the provisions of this section shall be paid to the state treasurer for credit to the "boat suspense fund", hereby created. At the end of each month, the state treasurer shall transfer fifty percent of the excise tax collections in the boat suspense fund to the division, and the balance to the general fund. The amounts transferred to the division are appropriated for use by the division for improvements and maintenance of lakes and boating facilities owned or leased by the state and for administration and enforcement of the Boat Act.

I. The director shall prescribe forms he deems necessary to account properly for the taxes collected under this section.

History: Laws 1987, ch. 247, § 9.

66-12-6.2. Security interest in boats; filing; perfection.

A. A security interest in a boat required to be titled and registered in New Mexico is not valid against attaching creditors, subsequent transferees or lienholders unless perfected as provided by this section. This provision does not apply to liens dependent upon possession.

B. All title applications shall be accompanied by the certificate of title last issued for the boat and shall contain the name and address of any lienholder, the date the security agreement was executed and the maturity date of the agreement.

C. Upon receipt of a title application, the division shall enter upon the application the date it was received. When satisfied as to the genuineness of the application, the division shall file it and issue a new certificate of title showing the owner's name and all liens existing against the boat.

D. No security interest filed in any state which does not show all liens on the certificate of title shall be valid against any person in this state other than the parties to the security agreement or those persons who take with actual notice of the agreement.

History: Laws 1987, ch. 247, § 10.

66-12-6.3. Security interest in boats; filing effective to give notice.

A. The filing of an application with the division and the issuance of a new certificate of title by the division as provided in [Section 66-12-5.2](#) NMSA 1978 constitutes constructive notice of all security interests in the boat described in the application. If the application is received by the division within ten days after the date the security agreement was executed, constructive notice dates from the time of the execution of the security agreement. Otherwise, constructive notice dates from the time of receipt noted on the title application.

B. The method provided in this article for perfecting a security interest shall be exclusive except as to liens dependent upon possession.

C. The constructive notice provided for in this section terminates twelve months after the maturity date of the debt. Unless refiled in a manner prescribed by the division within twelve months after the

maturity date, the division may ignore the security interest in the issuance of all subsequent certificates of title.

History: Laws 1987, ch. 247, § 11.

66-12-6.6. Dealer license.

A. A person shall not engage in business as a dealer or manufacturer without obtaining a valid dealer license from the motor vehicle division of the taxation and revenue department, unless the person has a valid motor vehicle dealer license. A dealer or manufacturer shall annually file an application with the motor vehicle division for a dealer license for each established place of business of the dealer or manufacturer.

B. A person shall file an application for a dealer license with the motor vehicle division of the taxation and revenue department on a form prescribed by the motor vehicle division. The application shall contain the name, address and telephone number of the applicant, the signature of the applicant or the signatures of all of the officers of a corporate applicant, the address of the established place of business, the federal taxpayer identification number of the applicant and other information that the motor vehicle division may require. The application shall state that the applicant will engage in business as a dealer. The statement shall be verified before a state officer authorized to administer an oath. The fee for a dealer license shall be prescribed by the motor vehicle division but shall not exceed fifty dollars (\$50.00) annually.

C. The motor vehicle division of the taxation and revenue department shall issue a dealer license to an applicant who submits a complete application and full payment of the dealer license fee to the motor vehicle division. The license shall contain the following:

- (1) the license number;
- (2) the expiration date of the license;
- (3) the name and business address of the licensee;
- (4) the address of the location for which the license was issued; and
- (5) a statement requiring that the license be conspicuously displayed at the location for which the license was issued.

D. A dealer license shall specify the location of each place of business in which the licensee engages in business as a dealer. The dealer shall notify the motor vehicle division of the taxation and revenue department of a change of ownership, location or name of the place of business within ten days of the change.

E. A dealer license shall authorize the licensed activity at only one business establishment. A dealer shall obtain a supplemental license from the motor vehicle division of the taxation and revenue department for each additional establishment owned or operated by the dealer. The application for a supplemental license shall be in a form prescribed by the motor vehicle division. The motor vehicle division shall issue a supplemental license to an applicant who possesses a valid dealer license, submits a complete application and meets all other requirements of the motor vehicle division.

F. A dealer license or supplemental license shall be conspicuously displayed at the location of the established place of business for which it was issued.

History: Laws 2003, ch. 410, § 5.

66-12-7. Equipment.

A. Every vessel shall have aboard:

(1) one life preserver, buoyant vest, ring buoy or buoyant cushion bearing the mark of approval of the United States coast guard and in serviceable condition for each person on board;

(2) one oar or paddle;

(3) one bailing bucket with a capacity of at least one gallon, or hand-operated bilge pump; and

(4) a length of stout rope at least equal to the length of the vessel.

B. Every motorboat, during the hours of darkness, shall carry:

(1) a bright white light aft to show around the horizon; and

(2) a combined light on the fore part of the vessel and lower than the white light and showing green to the starboard and red to the port, and so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides. No other light shall be shown except as specifically prescribed by the United States coast guard for the particular class of boats.

C. If carrying or using any inflammable or toxic fluid in any enclosure for any purpose, and if not entirely open, every vessel shall have an efficient natural or mechanical ventilation system capable of removing resulting gases prior to, and during, the time the vessel is occupied by any person.

D. No privately owned vessel shall carry a siren unless specifically authorized in writing by the director of the division.

E. No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section.

History: 1953 Comp., § 75-35-6, enacted by Laws 1959, ch. 338, § 6; 1963, ch. 45, § 3; 1977, ch. 254, § 99.

66-12-7.1. Personal flotation devices required.

The operator of a vessel being used for recreational purposes shall require a child age twelve or under who is aboard the vessel to wear a personal flotation device approved by the United States coast guard while the vessel is underway, unless the child is below deck or in an enclosed cabin.

History: Laws 2006, ch. 46, § 2.

66-12-8. Exemptions from numbering provisions of the Boat Act.

A motorboat shall not be required to be numbered under the Boat Act if it is:

- A. already covered by a number in force which has been awarded to it pursuant to federal law or a federally approved numbering system of another state; provided that the boat shall not have been within this state for a period in excess of ninety consecutive days;
- B. a motorboat from a country other than the United States temporarily using the waters of this state;
- C. a motorboat whose owner is the United States, a state or a subdivision thereof;
- D. a ship's lifeboat; or
- E. a motorboat belonging to a class of boats which has been exempted from numbering by the division after it has found that the numbering of motorboats of that class will not materially aid in their identification; and, if an agency of the federal government has a numbering system applicable to the class of motorboats to which the motorboat in question belongs, after the division has further found that the motorboat would also be exempt from numbering if it were subject to the federal law.

History: 1953 Comp., § 75-35-7, enacted by Laws 1959, ch. 338, § 7; 1977, ch. 254, § 100.

66-12-9. Boat liveries.

- A. The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel which is designed or permitted by him to be operated as a motorboat, the identification number thereof, and the departure date and time, and the expected time of return. The record shall be preserved for at least six months.
- B. Neither the owner of a boat livery, nor his agent or employee shall permit any motorboat or any vessel designed or permitted by him to be operated as a motorboat to depart from his premises unless it shall have been provided with the equipment required pursuant to [Section 66-12-7](#) NMSA 1978, and any rules and regulations made pursuant thereto by the division.

History: 1953 Comp., § 75-35-8, enacted by Laws 1959, ch. 338, § 8; 1977, ch. 254, § 101.

66-12-10. Muffling devices.

The exhaust of every internal combustion engine used on any motorboat shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner. This may include but is not limited to such devices as mufflers, exhaust restricters and water-injected exhaust headers. The use of cut-outs or non-muffled headers is prohibited except for motorboats competing in a regatta or boat race approved as provided in [Section 66-2-15](#) NMSA 1978 and for such motorboats while on trial runs during a period not to exceed forty-eight hours immediately preceding the regatta or race and for such motorboats while competing in official trials for speed records during a period not to exceed forty-eight hours immediately following the regatta or race.

History: 1953 Comp., § 75-35-9, enacted by Laws 1959, ch. 338, § 9; 1991, ch. 240, § 2.

66-12-11. Prohibited operation.

- A. A person shall not operate any motorboat or vessel or manipulate any water skis, surfboard or similar device in a reckless or negligent manner so as to endanger the life or property of any person.

B. A person shall not operate any vessel, not defined as a motorboat pursuant to the provisions of the Boating While Intoxicated Act [[66-13-1](#) NMSA 1978], or manipulate any water skis, surfboard or similar device while intoxicated or under the influence of any narcotic drug, barbiturate or marijuana.

History: 1953 Comp., § 75-35-10, enacted by Laws 1959, ch. 338, § 10; 1987, ch. 245, § 5; 1991, ch. 240, § 3; 2003, ch. 241, § 15.

66-12-12. Collisions; assistance and reports.

A. The operator of a vessel involved in a collision, accident or other casualty, so far as he can do so without serious danger to his own vessel, crew and passengers, shall:

(1) render to other persons affected by the collision, accident or other casualty such assistance as practicable and necessary in order to save them from, or minimize, any danger caused by the collision, accident or other casualty; and

(2) give his name, address and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident or other casualty.

B. In case of collision, accident or other casualty involving a vessel, and resulting in death or injury to a person or damage to property in excess of one hundred dollars (\$100), the operator of the vessel or his legal representative shall, within forty-eight hours, file with the division a full description of the collision, accident or other casualty, including all information that the division may require by regulation.

C. All collision, accident or other casualty reports filed as required by this section shall be without prejudice to the individual making the report, and are solely for the confidential use of the division except that the division may disclose the identity of a person involved in an accident when the identity is not otherwise known or when the person denies his presence at the accident. The report is inadmissible as evidence in any trial, civil or criminal, arising out of an accident, except that the division may furnish, upon request, a certificate showing that a specified accident report has or has not been made as required by this section.

History: 1953 Comp., § 75-35-11, enacted by Laws 1959, ch. 338, § 11; 1963, ch. 45, § 4; 1977, ch. 254, § 102.

66-12-14. Water skis and surfboards.

A. No person shall operate a vessel on any waters of this state for towing a person on water skis, a surfboard or similar device unless there is in the vessel a person in addition to the operator or a device capable of letting the operator [operator] have an unobstructed view of the person or object being towed. All skiers must wear ski belts or jackets.

B. No person shall operate a vessel on any waters of this state, towing a person on water skis, a surfboard or similar device, nor shall any person engage in water skiing, surfboarding or similar activity, at any time between the hours from one hour after sunset to one hour before sunrise.

C. The provisions of Subsections A and B of this section do not apply to a performer engaged in a professional exhibition or to a person engaged in an activity authorized under [Section 66-12-15](#) NMSA 1978.

D. No person shall negligently operate or manipulate any vessel, tow rope or other device by which the direction or location of water skis, a surfboard or similar device may be affected or controlled, in such a way as to cause the water skis, surfboard or similar device, or any person thereon, to strike any object or person.

History: 1953 Comp., § 75-35-13, enacted by Laws 1959, ch. 338, § 13; 1963, ch. 45, § 5.

66-12-15. Regattas; races; marine parades; tournaments or exhibitions.

A. The division may authorize the holding of regattas, motorboat or other boat races, marine parades, tournaments or exhibitions on any waters of this state. It shall adopt and may, from time to time, amend regulations concerning the safety of motorboats and other vessels and persons thereon, either observers or participants. Whenever a regatta, motorboat or other boat race, marine parade, tournament or exhibition is proposed to be held, the person in charge thereof shall, at least thirty days prior thereto, file an application with the division to hold the regatta, motorboat or other boat race, marine parade, tournament or exhibition. The application shall set forth the date, time and location where it is proposed to hold the regatta, motorboat or other boat race, marine parade, tournament or exhibition, and it shall not be conducted without authorization of the division in writing.

B. The provisions of this section shall not exempt any person from compliance with applicable federal law or regulation, but nothing contained herein shall be construed to require the securing of a state permit pursuant to this section if a permit therefor has been obtained from an authorized agency of the United States.

History: 1953 Comp., § 75-35-14, enacted by Laws 1959, ch. 338, § 14; 1977, ch. 254, § 104.

66-12-16. Local regulations; restrictions; special rules and regulations.

A. The provisions of the Boat Act 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 the Boat Act shall take place thereon, but nothing in the Boat Act shall be construed to prevent the adoption of any ordinance or local law relating to the operation and equipment of vessels where the provisions of the ordinance or local law are identical to the provisions of the Boat Act, amendments thereto, or regulations issued thereunder; provided that the ordinance or local law shall be operative only so long as, and to the extent that, they continue to be identical to the provisions of the Boat Act, amendments thereto, or regulations issued thereunder.

B. Any subdivision of this state may, at any time, but only after public notice, make formal application to the division for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make the special rules or regulations necessary or appropriate.

C. The division is authorized to make special rules and regulations with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this state.

History: 1953 Comp., § 75-35-15, enacted by Laws 1959, ch. 338, § 15; 1977, ch. 254, § 105.

66-12-17. Owner's civil liability.

The owner of a vessel shall be liable for any injury or damage occasioned by the negligent operation of the vessel, whether the negligence consists of a violation of the provisions of the statutes of this state, or neglecting to observe the ordinary care and operation that the rules of the common law require. The owner shall not be liable unless the vessel is being used with his express or implied consent. It shall be presumed that the vessel is being operated with the knowledge and consent of the owner, if at any time of the injury or damage, it is under the control of the spouse, father, mother, brother, sister, son, daughter, or other immediate member of the owner's family. Nothing contained herein shall be construed to relieve any other person from any liability which he would otherwise have, but nothing contained herein shall be construed to authorize or permit any recovery in excess of injury or damage actually incurred.

History: 1953 Comp., § 75-35-16, enacted by Laws 1959, ch. 338, § 16.

66-12-22. Enforcement.

The director, park custodians and other employees of the division designated in writing by the director, every sheriff in his respective county and every member of the state police has [have] full authority of a peace officer to enforce the provisions of the Boat Act and the regulations issued pursuant thereto, and in its exercise may stop and board any vessel subject to the Boat Act.

History: 1953 Comp., § 75-35-21, enacted by Laws 1959, ch. 338, § 21; 1963, ch. 45, § 8; 1977, ch. 254, § 109.

66-12-23. Penalties.

- A. Except for penalty provisions provided in Subsections B through M of this section, a person who violates a provision of the Boat Act or a rule of the state parks division of the energy, minerals and natural resources department promulgated pursuant to that act is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section [31-19-1](#) NMSA 1978.
- B. As used in Chapter [66](#), Article [12](#) NMSA 1978, "penalty assessment misdemeanor" means a violation of Section [66-12-7](#), [66-12-7.1](#), [66-12-10](#) or [66-12-14](#) NMSA 1978 or a rule of the division promulgated pursuant to those sections.
- C. The term "penalty assessment misdemeanor" does not include a violation that has caused or contributed to the cause of an accident resulting in injury or death to a person or disappearance of a person.
- D. Whenever a person is arrested for violation of a penalty assessment misdemeanor, the arresting officer shall advise the person of the option either to accept the penalty assessment and pay it to the court or to appear in court. The arresting officer, using a uniform non-traffic citation, shall complete the information section, prepare the penalty assessment and prepare a notice to appear in court specifying the time and place to appear. The arresting officer shall have the person sign the citation as a promise either to pay the penalty assessment as prescribed or to appear in court as specified, give a copy of the citation to the person and release the person from custody. An officer shall not accept custody of payment of any penalty assessment.
- E. The arresting officer may issue a warning notice, but shall fill in the information section of the citation and give a copy to the arrested person after requiring a signature on the warning notice as an

acknowledgment of receipt. No warning notice issued under this section shall be used as evidence of conviction for purposes of Subsection M of this section.

F. In order to secure release, the arrested person must give a written promise to appear in court or to pay the penalty assessment prescribed or to acknowledge receipt of a warning notice.

G. The magistrate court or metropolitan court in the county where the alleged violation occurred has jurisdiction for any case arising from a penalty assessment misdemeanor issued for violation of Section [66-12-7](#), [66-12-7.1](#), [66-12-10](#) or [66-12-14](#) NMSA 1978 or a rule of the division promulgated pursuant to those sections.

H. A penalty assessment citation issued by a law enforcement officer shall be submitted to the appropriate magistrate or metropolitan court within three business days of issuance. If the citation is not submitted within three business days, it may be dismissed with prejudice.

I. It is a misdemeanor for any person to violate a written promise to pay the penalty assessment or to appear in court given to an officer upon issuance of a citation regardless of the disposition of the charge for which the citation was issued.

J. A citation with a written promise to appear in court or to pay the penalty assessment is a summons. If a person fails to appear or to pay the penalty assessment by the appearance date, a warrant for failure to appear may be issued.

K. A written promise to appear in court may be complied with by appearance of counsel.

L. When an alleged violator of a penalty assessment misdemeanor elects to appear in court rather than to pay the penalty assessment to the court, no fine imposed upon later conviction shall exceed the penalty assessment established for the particular penalty assessment misdemeanor.

M. The penalty assessment for a first violation of Section [66-12-7](#), [66-12-7.1](#), [66-12-10](#) or [66-12-14](#) NMSA 1978 or any rule of the division promulgated pursuant to those sections is thirty dollars (\$30.00). This penalty assessment is in addition to any magistrate or metropolitan court costs as provided in Subsection B of Section [35-6-4](#) NMSA 1978. Upon a second conviction or acceptance of a notice of penalty assessment for violation of Section [66-12-7](#), [66-12-7.1](#), [66-12-10](#) or [66-12-14](#) NMSA 1978 or any rule of the division promulgated pursuant to those sections, the penalty assessment shall be fifty dollars (\$50.00). Upon a third or subsequent conviction or acceptance of a notice of penalty assessment, the penalty assessment shall be one hundred fifty dollars (\$150).

History: 1953 Comp., § 75-35-22, enacted by Laws 1963, ch. 45, § 9; 1983, ch. 41, § 4; 1987, ch. 234, § 44; 2004, ch. 76, § 1; 2013, ch. 136, § 3.

66-13-2. Definitions.

As used in the Boating While Intoxicated Act:

A. "bodily injury" means an injury to a person that is not likely to cause death or great bodily harm to the person, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the person's body;

B. "conviction" means an adjudication of guilt and does not include imposition of a sentence;

C. "motorboat" means any boat, personal watercraft or other type of vessel propelled by machinery, whether or not machinery is the principle source of propulsion. "Motorboat" includes a vessel propelled or designed to be propelled by a sail, but does not include a sailboard or a windsurf board. "Motorboat" does not include a houseboat or any other vessel that is moored on the water, but not moving on the water; and

D. "operate" means to physically handle the controls of a motorboat that is moving on the water.

History: Laws 2003, ch. 241, § 2.

66-13-3. Operating a motorboat while under the influence of intoxicating liquor or drugs.

A. It is unlawful for a person who is under the influence of intoxicating liquor to operate a motorboat.

B. It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of safely operating a motorboat to operate a motorboat.

C. It is unlawful for a person who has an alcohol concentration of eight one hundredths or more in his blood or breath to operate a motorboat.

D. Aggravated boating while under the influence of intoxicating liquor or drugs consists of a person who:

(1) has an alcohol concentration of sixteen one hundredths or more in his blood or breath while operating a motorboat;

(2) has caused bodily injury to a human being as a result of the unlawful operation of a motorboat while under the influence of intoxicating liquor or drugs; or

(3) refused to submit to chemical testing, as provided for in the Boating While Intoxicated Act, and in the judgment of the court, based upon evidence of intoxication presented to the court, was under the influence of intoxicating liquor or drugs.

E. Every person under first conviction pursuant to this section shall be punished, notwithstanding the provisions of [Section 31-18-13](#) NMSA 1978, by imprisonment for not more than ninety days or by a fine of not more than five hundred dollars (\$500), or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond ninety days but shall not exceed one year. The offender shall be ordered by the court to attend a boating safety course approved by the national association of state boating law administrators. An offender ordered by the court to attend a boating safety course shall provide the court with proof that the offender successfully completed the course within seven months of his conviction or prior to completion of his probation, whichever period of time is less. In addition to those penalties, when an offender commits aggravated boating while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail and may be fined not more than seven hundred fifty dollars (\$750). On a first conviction under this section, any time spent in jail for the offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred sentence pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

F. A second or subsequent conviction pursuant to this section shall be punished, notwithstanding the provisions of [Section 31-18-13](#) NMSA 1978, by imprisonment for not more than three hundred sixty-four days or by a fine of not more than seven hundred fifty dollars (\$750), or both; provided that if the sentence is suspended in whole or in part, the period of probation shall not exceed one year. In addition to those penalties, when an offender commits aggravated boating while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than forty-eight consecutive hours in jail and may be fined not more than one thousand dollars (\$1,000).

History: Laws 2003, ch. 241, § 3.

66-13-4. Guilty pleas; limitations.

When a complaint or information alleges a violation of Section 3 [[66-13-3](#) NMSA 1978] of the Boating While Intoxicated Act, any plea of guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to the violation of one of the subsections of Section 3 of that act, and no other disposition by plea of guilty to any other charge in satisfaction of the charge shall be authorized if the results of a test performed pursuant to that act disclose that the blood or breath of the person charged contains an alcohol concentration of eight one hundredths or more.

History: Laws 2003, ch. 241, § 4.

66-13-6. Blood-alcohol tests; persons qualified to perform tests; relief from civil and criminal liability.

Only a physician, licensed professional or practical nurse or laboratory technician or technologist employed by a hospital or physician shall withdraw blood from a person in the performance of a blood-alcohol or drug test. A physician, nurse, technician or technologist who withdraws blood from a person in the performance of a blood-alcohol or drug test that has been directed by a law enforcement officer, or by a judicial or probation officer, shall not be held liable in a civil or criminal action for assault, battery, false imprisonment or any conduct of a law enforcement officer, except for negligence, nor shall a person assisting in the performance of the test, or a hospital wherein blood is withdrawn in the performance of the test, be subject to civil or criminal liability for assault, battery, false imprisonment or any conduct of a law enforcement officer, except for negligence.

History: Laws 2003, ch. 241, § 6.

66-13-7. Blood-alcohol test; law enforcement, judicial or probation officer unauthorized to make arrest or direct test except in performance of official duties authorized by law.

Nothing in the Boating While Intoxicated Act is intended to authorize a law enforcement officer, or a judicial or probation officer, to make an arrest or direct the performance of a blood-alcohol or drug test, except in the performance of his official duties or as otherwise authorized by law.

History: Laws 2003, ch. 241, § 7.

66-13-8. Implied consent to submit to chemical test.

A. A person who operates a motorboat within this state shall be deemed to have given consent, subject to the provisions of the Boating While Intoxicated Act, to chemical tests of his blood or breath or both, approved by the scientific laboratory division of the department of health pursuant to the provisions of [Section 24-1-22](#) NMSA 1978 as determined by a law enforcement officer, or for the purposes of

determining the drug or alcohol content of his blood if arrested for any offense arising out of acts alleged to have been committed while the person was operating a motorboat while under the influence of an intoxicating liquor or drug.

B. The arrested person shall be advised by a law enforcement officer that failure to submit to a chemical test may be introduced into evidence in court and that the court, upon conviction, may impose increased penalties for the person's failure to submit to a chemical test.

C. A test of blood or breath or both, approved by the scientific laboratory division of the department of health pursuant to the provisions of [Section 24-1-22](#) NMSA 1978, shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been operating a motorboat while under the influence of an intoxicating liquor or drug.

D. A person who operates a motorboat in this state and who is involved in a fatal boating incident shall be deemed to have given consent, subject to the provisions of the Boating While Intoxicated Act, to mandatory chemical tests of his blood or breath or both, as determined by a law enforcement officer and approved by the scientific laboratory division of the department of health pursuant to the provisions of [Section 24-1-22](#) NMSA 1978.

History: Laws 2003, ch. 241, § 8.

66-13-9. Consent of person incapable of refusal not withdrawn.

A person who is dead, unconscious or otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by the Boating While Intoxicated Act, and the test designated by the law enforcement officer may be administered.

History: Laws 2003, ch. 241, § 9.

66-13-10. Administration of chemical test; payment of costs; additional tests.

A. Only the persons authorized by the Boating While Intoxicated Act shall withdraw blood from a person for the purpose of determining its alcohol or drug content. This limitation does not apply to the taking of samples of breath.

B. The person tested shall be advised by the law enforcement officer of the person's right to be given an opportunity to arrange for a physician, licensed professional or practical nurse or laboratory technician or technologist who is employed by a hospital or physician of his own choosing to perform a chemical test in addition to a test performed at the direction of a law enforcement officer.

C. Upon the request of the person tested, full information concerning the test performed at the direction of the law enforcement officer shall be made available to him as soon as it is available from the person performing the test.

D. The agency represented by the law enforcement officer at whose direction the chemical test is performed shall pay for the chemical test.

E. If a person exercises his right under Subsection B of this section to have a chemical test performed upon him by a person of his own choosing, the cost of that test shall be paid by the agency represented

by the law enforcement officer at whose direction a chemical test was administered pursuant to Section 8 [66-13-8 NMSA 1978] of the Boating While Intoxicated Act .

History: Laws 2003, ch. 241, § 10.

66-13-11. Use of tests in criminal or civil actions; levels of intoxication; mandatory charging.

A. The results of a test performed pursuant to the Boating While Intoxicated Act may be introduced into evidence in a civil action or criminal action arising out of the acts alleged to have been committed by the person tested for operating a motorboat while under the influence of intoxicating liquor or drugs.

B. When the blood or breath of the person tested contains:

(1) an alcohol concentration of five one hundredths or less, it shall be presumed that the person was not under the influence of intoxicating liquor; or

(2) an alcohol concentration of more than five one hundredths but less than eight one hundredths, no presumption shall be made that the person either was or was not under the influence of intoxicating liquor. However, the amount of alcohol in the person's blood or breath may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

C. When the blood or breath of the person tested contains an alcohol concentration of eight one hundredths or more, the arresting officer shall charge him with a violation of Section 3 [66-13-3 NMSA 1978] of the Boating While Intoxicated Act.

D. The determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.

E. The alcohol concentration in a person's blood or breath shall be determined by a chemical test administered to the person within three hours of the alleged boating while under the influence of intoxicating liquor. In a prosecution pursuant to the provisions of the Boating While Intoxicated Act, it is a rebuttable presumption that a person is in violation of the provisions of that act if he has an alcohol concentration of eight one hundredths or more in his blood or breath as determined by a chemical test administered to the person within three hours of the alleged boating while under the influence of intoxicating liquor. If the chemical test is administered more than three hours after the alleged boating while under the influence of intoxicating liquor, the test result is admissible as evidence of the alcohol concentration in the person's blood or breath at the time of the alleged boating and the trier of fact shall determine what weight to give the test result.

F. The presumptions in Subsection B of this section do not limit the introduction of other competent evidence concerning whether the person was under the influence of intoxicating liquor.

G. If a person is convicted of operating a motorboat while under the influence of intoxicating liquor or drugs, the trial judge shall be required to inquire into past convictions of the person for operating a motorboat while under the influence of intoxicating liquor or drugs before sentence is entered in the matter.

History: Laws 2003, ch. 241, § 11.

66-13-12. Motorboats; influence of intoxicating liquor or drugs; fee upon conviction.

A. A person convicted of a violation of the Boating While Intoxicated Act shall be assessed by the court, in addition to any other fee or fine, a fee of sixty-five dollars (\$65.00) to defray the costs of chemical and other tests used to determine the influence of intoxicating liquor or drugs.

B. All fees collected pursuant to the provisions of this section shall be transmitted monthly to the crime laboratory fund. All balances in the crime laboratory fund collected pursuant to this section are appropriated to the administrative office of the courts for payment upon invoice to the scientific laboratory division of the department of health for the costs of chemical and other tests used to determine the influence of intoxicating liquor or drugs.

C. Payment of funds out of the crime laboratory fund of fees collected pursuant to this section shall be made upon vouchers issued and signed by the director of the administrative office of the courts upon warrants drawn by the department of finance and administration.

History: Laws 2003, ch. 241, § 12.

66-13-13. Educational program.

The state parks division of the energy, minerals and natural resources department shall develop and implement a program to advertise and further educate the boating public about the dangers of boating while under the influence of alcohol or drugs and the penalties associated with a conviction pursuant to the provisions of the Boating While Intoxicated Act.

History: Laws 2003, ch. 241, § 13.