Chapter No. 370
10/SS01/R283CS
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SENATE BILL NO. 2383

Originated in Senate Secretary

SENATE BILL NO. 2383

AN ACT TO AMEND SECTIONS 59-23-3, 59-23-5 AND 59-23-7, MISSISSIPPI CODE OF 1972, TO CONFORM THE STANDARD FOR INTOXICATION UNDER THE ALCOHOL BOATING SAFETY ACT TO THE STANDARD FOR DRIVING UNDER THE INFLUENCE UNDER TRAFFIC LAWS AND TO EXPAND POTENTIAL ENFORCEMENT OF THE ACT TO INCLUDE THE DEPARTMENT OF MARINE RESOURCES; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 59-23-3, Mississippi Code of 1972, is amended as follows:

59-23-3. For the purposes of this chapter, the following terms shall have the following meanings unless the context shall prescribe otherwise:

(a) "Chemical test" means an analysis of a person's blood, breath, urine or other bodily substance for the determination of the presence of alcohol or any other substance which may impair a person's mental or physical ability.

* * *

(b) "Intoxicated" means under the influence of alcohol or any combination of alcohol, controlled substance or drugs, so that there is impaired thought and action and loss of normal control of a person's faculties to such an extent as to endanger any person.

(c) "Law enforcement officer" means any officer described in Section 63-11-19 and includes a conservation officer employed by the Mississippi Department of Wildlife, Fisheries and Parks and a marine law enforcement officer employed by the Department of Marine Resources.

(d) "Prima facie evidence of intoxication" includes evidence that at the time of an alleged violation there was eight one-hundredths percent (.08%) or more by weight of alcohol in the person's blood.

(e) "Public waters" means all public waters over which the state has jurisdiction.

(f) "Watercraft" means a motorized vessel with a motor of twenty-five (25) horsepower or greater used for transportation on public waters and personal watercraft (jet skis).

(g) "Operates a watercraft" or "operation of a watercraft" shall mean a watercraft that is underway in the water.

SECTION 2. Section 59-23-5, Mississippi Code of 1972, is amended as follows:

59-23-5. (1) A person who operates a watercraft in waters over which this state has jurisdiction shall be deemed to have given consent to submit to a chemical test or test of his breath for the purpose of determining the alcohol content of his blood, as a condition of operating the watercraft in this state.

(2) A law enforcement officer who has probable cause to believe that a person has committed an offense under this chapter shall offer the person the opportunity to submit to a chemical test. It is not necessary for the law enforcement officer to offer a chemical test to an unconscious person. A law enforcement officer may offer a person more than one (1) chemical test under this section. However, all tests must be administered within three (3) hours after the officer has probable cause to believe the person violated this chapter. If a person refuses to submit to a chemical test under this chapter, the person shall be informed by the law enforcement officer that the refusal to submit to the test shall subject him to arrest and punishment consistent with the penalties prescribed in Section 59-23-7 for persons submitting to the test, and that the court shall order the person not to operate a watercraft for at least one (1) year.

(3) If the chemical test results in prima facie evidence that the person is intoxicated, he shall immediately be arrested.

(4) (a) The law enforcement officer arresting a person pursuant to the provisions of this chapter shall inform the person arrested that:

(i) The person arrested has the right to be represented by legal counsel;

(ii) The person arrested may waive the right to be represented by legal counsel; and

(iii) The charge for which the person is being arrested may be used against him, upon conviction, for purposes of receiving an enhanced penalty as provided in Section 59-23-7.

(b) The citation or affidavit which is issued to the person arrested shall be uniform throughout all jurisdictions in the State of Mississippi and shall contain a place for the arresting official to sign, stating that he has advised the person arrested of the information contained in paragraph (a) of this subsection. The judge hearing the case or accepting the guilty plea, as the case may be, shall sign in a place provided on the citation or affidavit stating that the person arrested either employed an attorney or waived his right to an attorney after having been advised pursuant to paragraph (a) of this subsection. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be written on the citation or affidavit.

(c) The Mississippi Department of Wildlife, Fisheries and Parks shall prepare and furnish, no later than July 1, 1995, to all jurisdictions in the State of Mississippi a uniform citation form consistent with this chapter, which shall be used in all jurisdictions in the State of Mississippi.

(d) The Mississippi Department of Wildlife, Fisheries and Parks shall notify, by whatever means it deems appropriate, all law enforcement officers who are authorized to enforce the

provisions of this chapter of their obligation to provide the information and execute the citation or affidavit, as described in paragraphs (a) and (b) of this subsection.

SECTION 3. Section 59-23-7, Mississippi Code of 1972, is amended as follows:

59-23-7. (1) It is unlawful for any person to operate a watercraft on the public waters of this state who:

(a) Is under the influence of intoxicating liquor;

(b) Is under the influence of any other substance which has impaired such person's ability to operate a watercraft; or

(c) Has eight one-hundredths percent (.08%) or more by weight volume of alcohol in the person's blood based upon milligrams of alcohol per one hundred (100) cubic centimeters of blood as shown by a chemical analysis of such person's breath, blood or urine administered as authorized by this chapter.

(2) (a) Upon conviction of any person for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 59-23-5 were given, or where chemical test results are not available, such person shall be fined not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00), or imprisoned for not more than twenty-four (24) hours in jail, or both; and the court shall order such person to attend and complete a boating safety education course developed by the Department of Wildlife, Fisheries and Parks.

(b) Upon any second conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the person shall be fined not less than Six Hundred Dollars ($600.00) nor more than One Thousand Dollars ($1,000.00) and shall be imprisoned not less than forty-eight (48) consecutive hours nor more than one (1) year or sentenced to community service work for not less than ten (10)

days nor more than one (1) year. The court shall order the person not to operate a watercraft for one (1) year.

(c) For any third conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the person shall be fined not less than Eight Hundred Dollars ($800.00) nor more than One Thousand Dollars ($1,000.00) and shall be imprisoned not less than thirty (30) days nor more than one (1) year. The court shall order the person not to operate a watercraft for two (2) years.

(d) Any fourth or subsequent violation of subsection (1) of this section shall be a felony offense and, upon conviction, the offenses being committed within a period of five (5) years, the person shall be fined not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00) and shall be imprisoned not less than ninety (90) days nor more than five (5) years in the custody of the Department of Corrections. The court shall order the person not to operate a watercraft for three (3) years.

(3) Any person convicted of operating any watercraft in violation of subsection (1) of this section where the person (a) refused a law enforcement officer's request to submit to a chemical test, or (b) was unconscious at the time of a chemical test and refused to consent to the introduction of the results of such test in any prosecution, shall be punished consistent with the penalties prescribed herein for persons submitting to the test and the court shall order the person not to operate a watercraft for the time periods specified in subsection (2) of this section.

(4) Any person who operates any watercraft in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other member or limb of another shall, upon conviction, be guilty of a felony and shall be committed to the

custody of the * * * Department of Corrections for a period of time not to exceed ten (10) years.

(5) Upon conviction of any violation of subsection (1) of this section, the judge shall cause a copy of the citation and any other pertinent documents concerning the conviction to be sent immediately to the Mississippi Department of Wildlife, Fisheries and Parks and the Department of Marine Resources. A copy of the citation or other pertinent documents, having been attested as true and correct by the Director of the Mississippi Department of Wildlife, Fisheries and Parks, or his designee, or the Director of the Department of Marine Resources, or his designee, shall be sufficient proof of the conviction for purposes of determining the enhanced penalty for any subsequent convictions of violations of subsection (1) of this section.

SECTION 4. This act shall take effect and be in force from and after July 1, 2010.

PASSED BY THE SENATE
February 3, 2010

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 4, 2010

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

GOVERNOR

3/12/10 12:15 pm