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§ 40. Equipment.

Equipment required herein shall be carried on every vessel except as otherwise provided, while underway, or at anchor with any person aboard, while on the navigable waters of the state and any tidewaters bordering on or lying within the boundaries of Nassau and Suffolk counties. Should the federal government adopt vessel equipment requirements different from those contained in this section, the commissioner shall be authorized to adopt rules and regulations superceding the vessel equipment requirements of this section to achieve consistency with federal standards, and shall submit such proposed rules and regulations to the secretary of state in accordance with the state administrative procedure act within thirty days of the adoption of federal equipment requirements or submit a statement as to why such conforming changes are not being proposed.

1. personal flotation devices.

(a) Every pleasure vessel and every rowboat and canoe shall have at least one wearable personal flotation device for each person on board, which shall be of a type approved by the United States coast guard and shall be in good condition.

(b) Pleasure vessels sixteen feet and greater in length shall carry at least one type IV throwable personal flotation device which shall be of a type approved by the United States coast guard and shall be in good condition.

(c) Every operator or person in charge or control of a pleasure vessel, rowboat or canoe, as described in paragraphs (a) and (b) of this subdivision, shall be responsible for compliance with the provisions of this subdivision.

(d) No person shall operate a vessel of Class A, one, two or three as classified and defined in subdivision one of section forty-three of this article or a rowboat or canoe, nor shall the owner of such vessel while on board such vessel knowingly permit its operation, unless each person on such vessel under the age of twelve is wearing a securely fastened United States Coast Guard approved wearable personal flotation device of an appropriate size when said vessel is underway. The provisions of this paragraph shall not apply to any person on such vessel under the age of twelve who is within a fully enclosed cabin.

* 2. Whistle.

Every mechanically propelled vessel shall be provided with an efficient whistle. The word "whistle" shall mean any sound producing mechanical appliance, except sirens, capable of producing a blast of two seconds or more in duration and of such strength as to be heard plainly for a distance of at least one-half mile in still weather.

A siren whistle may only be attached to a vessel operated by a police department, fire department or public utility company, and used only on emergency calls. On vessels less than thirty-nine feet in length, a mouth whistle capable of producing a blast of two seconds or more in duration, which can be heard for at least one-half a mile, may be used.

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* NB Effective April 1, 2003

3. Anchors. Every mechanically propelled vessel shall carry an anchor and cable of sufficient weight and strength to provide a safe anchorage for such vessel. It shall be the duty of the master of such vessel to exercise reasonable care and caution and maritime skill in everything relating to the safe anchorage of his vessel.

4. Carburetor backfire flame arresters. The carburetor of every gasoline engine installed in a mechanically propelled vessel after April twenty-five, nineteen hundred forty, except outboard motors, shall be fitted with a United States coast guard approved device for arresting backfire.

5. Classification of fire extinguishers. Hand portable fire extinguishers capable of extinguishing gasoline, oil or grease fires shall be classified as prescribed and approved by the commissioner.

6. Fire extinguishers required.

(a) Every mechanically propelled vessel as classified and defined by subdivision one of section forty-three of this article, except outboard motor boats less than twenty-six feet in length, of open construction, shall carry United States coast guard approved fire extinguishers in accordance with the following:

Class A motor boats shall carry one B-1 fire extinguisher.

Class 1 motor boats shall carry one B-1 fire extinguisher.

Class 2 motor boats shall carry two B-1 fire extinguishers.

Class 3 motor boats shall carry three B-1 fire extinguishers.

Class 4 motor boats shall carry fire extinguishers and other fire fighting equipment as required by the federal navigation law and rules and regulations made by the United States coast guard for uninspected vessels.

(b) One class B-2 fire extinguisher may be substituted for two class B-1 fire extinguishers.

(c) When the engine compartment of the motor boat is equipped with a fixed fire extinguishing system of a United States coast guard approved type, one less class B-1 fire extinguisher is required.

(d) No fire extinguishers of the toxic vaporizing liquid type, including those containing carbon tetrachloride and chlorobromomethane extinguishing agents shall be approved by the commissioner.

* 7. Distress flag and night flares. Every mechanically propelled vessel of eighteen feet or more, except racing hulls, while being operated on the navigable waters of the state shall carry a fluorescent-orange distress flag which shall be a minimum of one foot square and three hand held type red flares for use at night to be displayed and used whenever such vessel is in need of assistance. The provisions of this subdivision shall not apply to vessels engaged in commerce and having a valid marine document issued by the United States or a foreign government.

* NB Effective until April 1, 2003

* 7. Visual distress signals. Every vessel of sixteen feet or more, regardless of the distance of the vessel from shore, shall carry, to be displayed and used whenever such vessel is in need of assistance, the number and type of visual distress signals

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that are required by the United States coast guard for operation on waters under federal jurisdiction. Such devices shall be in serviceable condition and readily accessible on board the vessel and the service life, if marked upon the device, shall not have expired. The provisions of this subdivision shall not apply to open sailboats under twenty-six feet in length that are not equipped with mechanical power or vessels participating in an organized marine event for which a permit has been granted by the commissioner pursuant to section thirty-four of this chapter, or by the United States coast guard. All vessels shall carry visual distress signals suitable for night use between sunset and sunrise. At all times the provisions of this subdivision shall not apply to vessels engaged in commerce and having a valid marine document issued by the United States or a foreign government.

* NB Effective April 1, 2003

8. Ventilation. All mechanically propelled vessels, the construction or decking over of which is commenced after April twenty-fifth nineteen hundred forty, and which uses fuel having a flash point of one hundred ten degrees fahrenheit or less shall have at least two ventilators fitted with cowls or their equivalent for the purpose of properly and efficiently ventilating the bilges of every engine and fuel tank compartment in order to remove any inflammable or explosive gases. Such mechanically propelled vessels so constructed as to have the greater portion of the bilges under the engine and fuel tanks open and exposed to the natural atmosphere at all times need not be required to be fitted with such ventilators.

* 9. Motor boats of classes two, three and four as classified and defined by subdivision one of section forty-three of this article, shall carry a bell.

* NB Effective until April 1, 2003

* 9. Motor boats of greater than thirty-nine feet in length shall carry a bell.

* NB Effective April 1, 2003

10. Any violation of the provisions of this section, or of a rule or regulation adopted pursuant to this section, shall constitute a violation punishable by a fine of not less than twenty-five nor more than one hundred dollars.

11. The provisions of this section shall not apply to vessels competing in duly authorized regattas and trials preceding such regattas.

12. Any person or business which, in the regular course of business, sells, offers for sale, leases or offers for lease new or used vessels or outboard motors to the general public shall, upon the sale or lease of any vessel or outboard motor, provide the purchaser with a list of required equipment as set forth in this section and any rule or regulation promulgated pursuant to this section.

§ 43. Lights to be displayed.

1. Vessels classified. For the application of this section vessels shall be divided into classes as follows:

Class A. Less than sixteen feet in length.

Class 1. Sixteen feet or over and less than twenty-six feet in length.

Class 5. Rowboats and canoes.

2. Every vessel in all weathers from sunset to sunrise shall carry and exhibit and,

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if carried, shall also exhibit from sunrise to sunset in restricted visibility, and may exhibit in all other circumstances when it is deemed necessary, the following lights when under way, and during such times no other lights which may be mistaken for those prescribed shall be exhibited:

(a) Every vessel of classes A and one shall carry the following lights:

First. A bright white light aft to show all around the horizon.

Second. A combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

(d) Rowboats and canoes, whether under oars or sail, shall have ready at hand a lantern showing a white light which shall be temporarily exhibited in sufficient time to prevent collision.

(e) Vessels of classes A and one when propelled by sail alone shall carry the combined lantern, but not the white light aft, prescribed by this section. Vessels of all classes, when so propelled, shall carry, ready at hand, a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision.

(f) When propelled by sail and machinery any vessel shall carry the lights required by this section for a vessel propelled by machinery only.

(g) Any vessel may carry and exhibit the lights required by the federal regulations for preventing collisions at sea, nineteen hundred forty-eight, act of October eleventh, nineteen hundred fifty-one, as amended, in lieu of the lights required by this section.

(h) A mechanically propelled vessel when towing another vessel shall, in addition to her side lights, carry two bright white lights in a vertical line one over the other, not less than three feet apart.

(i) A vessel under one hundred fifty feet in length when at anchor shall carry forward, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light in a lantern so constructed as to show a clear, uniform, and unbroken light visible all around the horizon at a distance of at least one mile: provided that the commissioner may, after investigation, by rule, regulation, or order, designate such areas as he may deem proper as "special anchorage areas"; such special anchorage areas may from time to time be changed, or abolished, if after investigation the commissioner shall deem such change or abolishment in the interest of navigation: provided further that vessels not more than sixty-five feet in length when at anchor in any such special anchorage area shall not be required to carry or exhibit the white light required by this subdivision. A vessel of one hundred fifty feet or upward in length, when at anchor, shall carry in the forward part of the vessel, at a height of not less than twenty feet and not exceeding forty feet above the hull, one such light, and at or near the stern of the vessel, and at such a height that it shall be not less than fifteen feet lower than the forward light, another such light.

(j) Every white light prescribed by this section shall be of such character as to be visible at a distance of at least two miles except as otherwise

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provided. Every colored light prescribed by this section shall be of such character as to be visible at a distance of at least one mile except as otherwise provided. The word "visible" in this section when applied to lights, shall mean visible on a dark night with clear atmosphere.

(k) A revolving blue light may only be carried or exhibited on enforcement vessels owned or operated by the state of New York or a political subdivision thereof.

(l) For the purposes of this section, the term "restricted visibility" shall mean any condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorms, sandstorms, or any other similar causes;

3. Should the federal government adopt vessel light requirements different from those contained in this section, the commissioner shall be authorized to adopt rules and regulations superseding the vessel light requirements of this section to achieve consistency with federal standards, and shall submit such proposed rules and regulations to the secretary of state in accordance with the state administrative procedure act within thirty days of the adoption of federal equipment requirements or submit a statement as to why such conforming changes are not being proposed.

4. A violation of any provision of this section, or of a rule or regulation adopted pursuant to subdivision three of this section, shall constitute a violation punishable by a fine of not less than twenty-five nor more than one hundred dollars.

§ 44. Noise levels on pleasure vessels.

1. The provisions of this section shall apply to the navigable waters of the state including all tidewaters bordering on and lying within the boundaries of Nassau and Suffolk counties.

2.

(a) No person shall operate or give permission for the operation of any pleasure vessel in or upon the waters of this state in such a manner as to exceed a noise level of 90dB(A) when subjected to a stationary sound level test as prescribed by SAE J2005.

(b) No person shall operate a pleasure vessel on the waters of this state in such a manner as to exceed a noise level of 75dB(A) measured as specified in SAE J1970. Provided, that such measurement shall not preclude a stationary sound level test as prescribed by SAE J2005.

3. Sale or manufacture. No person shall manufacture or offer for sale any pleasure vessel or engine for use in a pleasure vessel for use on the waters of this state if such vessel or engine, at the time of manufacture or sale, cannot be operated in such a manner so as to comply with the sound level requirements provided in this section.

4. No person shall operate or give permission for the operation of any pleasure vessel in or upon the waters of this state that is equipped with an altered muffler or a muffler cutout, bypass or otherwise reduce or eliminate the effectiveness of any muffler or muffler system installed in accordance with this section.

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5. No person shall remove, alter or otherwise modify in any way a muffler or muffler system in a manner which will prevent it from being operated in accordance with this section.

6. Exceptions. The provisions of this section shall not apply to pleasure vessels designed, manufactured and sold for the sole purpose of competing in racing events and for no other purpose. Any such exemption or exception shall be so documented in any and every sale agreement and shall be formally acknowledged by signature on the part of both the buyer and the seller and copies of said agreement shall be maintained by both parties. A copy shall be kept on board whenever the pleasure vessel is operated. Any pleasure vessel sold under this exemption may only be operated on the waters of this state in accordance with this section.

The provisions of this section shall also not apply to:

(a) Pleasure vessels which are competing in or participating for a definite race over a given course held under the auspices of any bona fide club or racing association between the hours of nine o'clock in the morning and sunset, which has been approved pursuant to the provisions of section thirty-four of this chapter, and all provisions of such section have been complied with or pursuant to authorization by the commandant of the United States Coast Guard.

(b) An authorized agent of the federal, state or municipal government when operating a pleasure vessel necessary to carry out his or her official duty of enforcement, search and rescue, firefighting or research programs.

(c) A pleasure vessel being operated by a boat or marine engine manufacturer for the purposes of testing and/or development.

(d) A pleasure vessel manufactured prior to nineteen hundred sixty-five.

7. Any officer authorized to enforce the provisions of this section who has reason to believe that a pleasure vessel is not in compliance with the noise levels established in this section may direct the operator of such pleasure vessel to submit the pleasure vessel to an on-site test to measure noise level, with the officer on board if such officer chooses, and the operator shall comply with such request. If such pleasure vessel exceeds the decibel levels established in this section, the officer may direct the operator to take immediate and reasonable measures to correct the violation, including returning the pleasure vessel to a mooring and keeping the pleasure vessel at such mooring until the violation is corrected or ceases.

8. Any officer who conducts pleasure vessel sound level tests as provided in this section shall be qualified in pleasure vessel noise testing by the department of parks, recreation and historic preservation. Such qualifications shall include but may not be limited to the selection of the measurement site, and the calibration and use of noise testing equipment.

9. Penalties.

(a) Any person who fails to comply with the provisions of this section shall be guilty of a violation punishable by a fine not to exceed fifty dollars for the first offense and not exceeding two hundred fifty dollars for a second or subsequent offense. However, the court shall waive any fine

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for which a person who violates the provisions of this section would be liable if such person supplies the court with proof within thirty days of the issuance of the summons that he purchased his pleasure vessel prior to the effective date of this section, that the pleasure vessel's muffler was not altered or made inoperable so as to result in a violation of the provisions of this section, and that the pleasure vessel has been repaired, altered or modified so as to be in compliance with the provisions of this section. Provided, however, that such waiver of fine shall not apply to a second or subsequent conviction under this section.

(b) Any person who alters or makes inoperable an effective muffler system so that such system is no longer in compliance with this section shall be guilty of a violation punishable by a fine of not less than fifty dollars nor more than two hundred fifty dollars.

(c) All fines and forfeitures collected pursuant to the provisions of this section by any court, judge, magistrate or other officer referred to in subdivision one of section thirty-nine of the judiciary law, establishing a unified court budget, shall be paid to the state commissioner of taxation and finance, within the first ten days of the month following collection to be deposited in a fund known as the boating noise level enforcement fund established pursuant to section ninety-one-b of the state finance law. The office of parks, recreation and historic preservation shall distribute the fines to local law enforcement officials according to the provisions of section seventy-nine-b of this chapter for the purpose of enforcing the provisions of this section.

10. All fines and forfeitures collected by any other court, judge or magistrate or other officer shall be paid to the state comptroller within the first ten days of the month following collection to be deposited in a fund known as the boating noise level enforcement fund established pursuant to section ninety-one-b of the state finance law. The office of parks, recreation and historic preservation shall distribute the fines to local law enforcement officials according to the provisions of section seventy-nine-b of this chapter for the purpose of enforcing the provisions of this section.

§ 45. Reckless operation of a vessel; speed.

1.

(a) Every master or operator of a vessel shall at all times navigate the same in a careful and prudent manner in such a way as not to unreasonably interfere with the free and proper use of the navigable waters of the state and all tidewaters bordering on or lying within the boundaries of Nassau and Suffolk counties or unreasonably endanger any vessel or person. **Reckless operation is prohibited. Any person operating a vessel in violation of this subdivision shall be guilty of a misdemeanor punishable as set forth in section seventy-three-b of this article.**

(b) No person shall operate a vessel at a speed greater than is reasonable and

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prudent under the conditions and having regard to the actual and potential hazards then existing.

1-a. No vessel other than the tending vessel shall be operated within one hundred feet of a red flag with a diagonal white bar which, when displayed on the water or from a boat, indicates underwater diving, or a designated course for racing shells but no such flag shall be placed so as to deny access or use of any boathouse, wharf, harbor, bay, channel or navigable waterway.

2. No vessel shall be operated within one hundred feet of the shore, a dock, pier, raft, float or an anchored or moored vessel at a speed exceeding five miles per hour, **unless such vessel is being operated near such shore, dock, float, pier, raft, or anchored vessel for the purpose of enabling a person engaged in water skiing to take off or land or such vessel is required to run at full throttle through an established course to measure the vessel's decibel level pursuant to section forty-four-d of this chapter.**

3. The provisions of this section shall not apply to a vessel while actually competing in a regatta or boat race authorized under section thirty-four of this chapter.

4. The provisions of subdivision two above shall not apply to commercial vessels having a valid marine document issued by the United States or a foreign government.

5. The violation of any of the provisions of this section other than paragraph (a) of subdivision one of this section shall constitute a violation punishable as set forth in section seventy-three-c of this article.

7.

(a) The court may suspend a person's privilege to operate a vessel for a period of three months upon conviction for reckless operation of a vessel pursuant to any applicable provision of this article.

(b) The court shall suspend a person's privilege to operate and may suspend a vessel registration:

(1) for a period of six months where a person is convicted of reckless operation of a vessel pursuant to any applicable provision of this article after having been convicted of any such offense within the preceding eighteen months;

(2) for a period of six months upon a third or subsequent conviction for any violation of any law, ordinance or regulation limiting the speed of a vessel or any provision constituted a misdemeanor by this article except for the commission of a third or subsequent misdemeanor as set forth in subparagraph three of this paragraph;

(3) for a period of twelve months where a person is convicted of reckless operation of a vessel pursuant to any applicable provision of this article after having been twice convicted of any such offense within the preceding eighteen months.

(c) When a person is convicted pursuant to this article the court may, in any case before the court, and shall when the convicted person is subject to a suspension pursuant to this subdivision, in

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addition to any other penalties invoked under this article, require the convicted person, as a condition of the sentence, to complete a boating safety course of the state, U.S. Power Squadrons, or U.S. Coast Guard Auxiliary and show proof of successful completion of such course to the court or its designee.

§ 46-a. Regulations of vessels.

(1) The local legislative body of a city or the board of trustees of a village may adopt, amend and enforce local laws, rules and regulations not inconsistent with the laws of this state or the United States, with respect to:

- a. Regulating the speed and regulating and restricting the operation of vessels while being operated or driven upon any waters within or bounding the appropriate city or village, including any waters within or bordering a village in the county of Nassau or Suffolk, to a distance of fifteen hundred feet from the shore.
- b. Restricting and regulating the anchoring or mooring of vessels in any waters within or bounding the appropriate city or village to a distance of fifteen hundred feet from the shore.
- c. Restricting and regulating the anchoring or mooring of vessels in such waters when used or occupied as living or sleeping quarters and; providing time limits on duration of the stay of such vessels in such waters and requiring inspection and registration of such vessels when so used.
- d. Restricting and regulating garbage removal from said vessels.
- e. Designating public anchorage area or areas and regulating the use thereof.

(2) The local legislative body of the village of Sodus Point and the town of Huron in the county of Wayne, the villages of Croton-on-Hudson and Mamaroneck and the town of Cortlandt in the county of Westchester, the town of Stony Point in the county of Rockland, the town of Grand Island in the county of Erie, the towns of Conesus, Geneseo, Groveland and Livonia in the county of Livingston, the towns of Irondequoit, Webster, and Penfield in the county of Monroe, the village of Greenwood Lake and the town of Warwick in the county of Orange, the town of Carlton in the county of Orleans, the village of Sackets Harbor in the county of Jefferson, and the villages of Union Springs, Aurora and Cayuga and the towns of Genoa and Ledyard in the county of Cayuga, and the village of Saugerties in the county of Ulster and the town of Porter in the county of Niagara may adopt, amend and enforce local laws, rules and regulations not inconsistent with the laws of this state or the United States, with respect to the restriction and regulation of the manner of construction and location of boathouses, moorings and docks in any waters within or bounding the respective municipality to a distance of fifteen hundred feet from the shoreline.

(4)

- a. The local legislative body of the city of Canandaigua and the towns of Canandaigua, Gorham, South Bristol, Canadice and Richmond in the

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county of Ontario and the towns of Middlesex and Italy in the county of Yates may adopt, amend and enforce local laws, rules and regulations not inconsistent with the laws of the United States, with respect to the restriction and regulation of the manner of construction and location of boathouses, moorings and docks in any waters within or bounding the aforementioned cities and towns to a distance of 1500 feet from the shoreline.

b. No such local law, rule or regulation shall take effect in the town of Canandaigua, Gorham, South Bristol, Middlesex or Italy or in the city of Canandaigua with regard to Canandaigua Lake, or in the town of Canadice or Richmond with regard to Honeoye Lake until all respective lakeshore municipalities unanimously agree by resolution to a set of uniform standards that include at a minimum the length and density of docks, the number of boats or boat slips allowed per lineal foot of lakeshore for various land uses, the number of moorings and boathouses allowed for various land uses, and the allowable dimensions and locations for docks, and provided further that no such local law shall take effect until it shall have been submitted to and approved in writing by the commissioner of parks, recreation and historic preservation and provided further that no future amendments to the uniform standards shall take effect until all respective lakeshore municipalities unanimously agree by resolution to the revised set of uniform standards and such revised standards have similarly been submitted to and approved in writing by the commissioner.

(5) The local legislative body of any city, town or village which is a participating community as defined in subdivision ten of section 44-0103 of the environmental conservation law may adopt, amend and enforce local laws, rules and regulations not inconsistent with the laws of this state or the United States or with the Hudson river valley greenway compact, with respect to the restriction and regulation of the manner of construction and location of boathouses, moorings and docks in any waters within or bounding the respective municipality to a distance of fifteen hundred feet from the shoreline. Nothing in this subdivision or in article forty-four of the environmental conservation law or in the Hudson river valley greenway compact produced pursuant to such article, shall be deemed to affect, impair or supersede the provisions of any charter, local law, rule or other local requirements and procedures heretofore or hereafter adopted by such participating community, including, but not limited to, any such provisions relating to the zoning and use of land or any waters within or bounding such participating community to a distance of fifteen hundred feet from the shoreline.

The provisions of this section shall be controlling notwithstanding any contrary provisions of law.

§ 46-aaaa. Special provisions relating to speed on Cuba lake.

1. Notwithstanding any other provisions of this chapter or any inconsistent local laws, every pleasure vessel operated on Cuba lake, located in the towns of Cuba,

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Allegany county and Ischua, Cattaraugus county, shall be operated in a careful and prudent manner, in such a way as to not unreasonably interfere with or endanger any vessel or person, and no vessel shall be operated at a speed exceeding forty-five miles per hour. No pleasure vessel operated on Cuba lake shall be operated at a speed exceeding twenty-five miles per hour between one-half hour after sunset and one-half hour before sunrise.

2. No person shall ride on water skis, surfboard, motorized jet ski or motorized personal watercraft or similar device on the waters of Cuba lake, without wearing a life preserver, life belt, or similar device; provided, however, that the provisions of this subdivision shall not apply to a paid performer engaged in a professional exhibition.

3. The provisions of this section shall not apply to any vessel competing in or practicing for a regatta or boat race over a specified course held by a bona fide club or racing association, provided that due written notice of the date of the race has been given to the appropriate law enforcement agencies at least fifteen days prior to such race, pursuant to the provisions of section thirty-four of this chapter, and all provisions of this section have been complied with. The provisions of this section shall not apply to any Federal Aviation Agency licensed aircraft.

4. Any person who fails to comply with any of the provisions of this section shall be guilty of a violation punishable by a fine of not less than twenty-five dollars nor more than one hundred dollars for the first offense; by a fine of not less than fifty dollars nor more than two hundred dollars for conviction of the second offense committed within a period of twenty-four months; by a fine of not less than one hundred dollars nor more than two hundred dollars for conviction of the third offense or any subsequent offense committed within a period of twenty-four months.

5. The Cuba lake district shall have all of the rights, duties and obligations as provided for in section forty-six of this chapter as afforded to the governing body of a city or incorporated village relative to the creation of a vessel regulation zone.

§ 57. Identification number of vessel.

Every public vessel subject to the provisions of this chapter shall be registered and display the identification number assigned as set forth in section twenty-two hundred fifty-one of the vehicle and traffic law. In addition to the number assigned, each public vessel shall display the letters "PV" not more than six inches above or below the identification number. The letters "PV" shall be not less than five inches in height and maintained in a legible condition so that the letters, "PV", are readily discernible during daylight hours at a distance of two hundred feet. It shall be the duty of every owner to register and display numbers as herein indicated. **Violation of this section shall be a violation punishable by a fine of not less than twenty-five nor more than one hundred dollars.**

§ 73. Towing of persons.

1. No person shall operate a vessel for towing a person unless there is upon such vessel a person, other than the operator, of at least ten years of age, in a position to observe the progress of the person being towed.
2. No person shall be towed or use or operate a vessel to tow a person during the period from sunset to sunrise provided, however, that the provisions of this subdivision shall not apply to a paid performer engaged in a professional exhibition.
3. No person shall be towed by a vessel without wearing a securely fastened United States Coast Guard approved personal flotation device and no person shall use or operate a vessel to tow a person not in compliance with this subdivision; provided, however, that the provisions of this subdivision shall not apply to a paid performer engaged in a professional exhibition.
4. The provisions of subdivision one of this section shall not apply to a vessel operated or controlled by the person being towed by such vessel, the design of which makes no provision for carrying an operator or observer on board. Such a vessel may not, however, be operated unless
 - (a) it is registered and an assigned number permanently displayed thereon in accordance with sections twenty-two hundred fifty-one and twenty-two hundred fifty-four of the vehicle and traffic law;
 - (b) it is equipped with an automatic shut-off mechanism activated whenever the operator is separated from the towing device;
 - (c) it is equipped with a fire extinguisher and flame arrester attached to the motor;
 - (d) the motor compartment is properly ventilated;
 - (e) all persons being towed are wearing a securely fastened United States Coast Guard approved personal flotation device at all times of operation; and
 - (f) other safety provisions required by section forty of this article, except the requirements of subdivisions two and three thereof relating to the use of whistles and anchors.
- 4-a. No person shall operate or manipulate any vessel or device for towing a person in such a way as to cause such device or any person utilizing such device to collide with or strike any object or person.

The provisions of this section do not apply to collisions of two or more persons or devices being towed behind the same boat nor to collisions with ski jumps, buoys and similar objects normally used in competitive or recreational water skiing.
5. No person shall operate or manipulate a device for towing a person or be towed in a reckless or negligent manner so as to endanger the life, limb, or property of any person.
6. Any person violating any provision of this section shall be guilty of a violation punishable as set forth in section seventy-three-c of this article.
7. For the purposes of this section:
 - (a) to tow a person shall mean the towing of a person, including utilizing a device, on the navigable waters of the state or any tidewaters bordering on

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or lying within the boundaries of Nassau and Suffolk counties, but shall not include the towing of persons in a vessel to which assistance is being rendered; and

(b) a device shall include, but not be limited to, water skis, a tube, a surfboard, a tow rope, an aquaplane, a parasail, or a related device.

§ 73-a. Regulations of personal watercraft and specialty prop-craft.

1. Personal watercraft and specialty prop-craft.

a. No person shall operate a personal watercraft or a specialty prop-craft unless each person riding on such vessel is wearing a securely fastened United States Coast Guard approved personal flotation device.

b. No person shall operate a personal watercraft or a specialty prop-craft unless such vessel is equipped and fitted with a United States Coast Guard approved device for arresting carburetor backfire.

c. No person shall operate a personal watercraft or a specialty prop-craft unless such vessel is equipped with:

(i) at least two ventilators fitted with cowls or their equivalent for the purpose of properly and efficiently ventilating the bilges of every engine and fuel tank compartment in order to remove any inflammable or explosive gases provided, however, if the vessel is so constructed as to have the greater portion of the bilges under the engine and fuel tanks open and exposed to the natural atmosphere at all times such vessel need not be required to be fitted with such ventilators; and

(ii) an efficient sound producing mechanical appliance, except sirens, capable of producing a blast of two seconds or more in duration and of such strength as to be heard plainly for a distance of at least one-half mile in still weather; and

(iii) a fluorescent-orange distress flag which shall be a minimum of one foot square or other appropriate United States Coast Guard approved visual distress signal.

d. Any person operating a personal watercraft or a specialty prop-craft equipped by the manufacturer with a lanyard type engine cut-off switch shall attach such lanyard to his or her person, clothing, or personal flotation device as is appropriate for the specific vessel.

e. No person shall operate a personal watercraft or a specialty prop-craft at any time from sunset to sunrise.

f. No person shall operate a personal watercraft or a specialty prop-craft within five hundred feet of any designated bathing area, except in bodies of water where the opposing shoreline is less than five hundred feet from such designated area and in accordance with speed regulations and restrictions as provided by local law or ordinance but in no event at a speed in excess of ten miles per hour, provided, however, that nothing contained in this subdivision shall be construed to prohibit the launching of such vessel from designated launching areas or sites.

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g. Every personal watercraft and specialty prop-craft shall at all times be operated in a reasonable and prudent manner. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property, including, but not limited to,

- (i) weaving through congested vessel traffic, or
- (ii) jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed, or
- (iii) swerving at the last possible moment to avoid collision shall constitute reckless operation of a vessel, as provided in section forty-five of this article.

h. The provisions of this section shall not apply to any performer engaged in a professional exhibition or any person preparing to participate or participating in a regatta, race, marine parade, tournament, or exhibition authorized under section thirty-four of this chapter.

i. The provisions of this section shall apply to the operation of a personal watercraft and a specialty prop-craft on any waterway or body of water located within New York state and not privately owned and any part of any body of water adjacent to New York state over which the state has territorial jurisdiction, including all tidewaters bordering on and lying within the boundaries of Nassau and Suffolk counties.

j. The provisions of section forty of this chapter shall not apply to personal watercraft or specialty prop-craft.

3. Penalties for violation.

(a) Every person convicted of a violation of this section, other than a conviction for a violation of subdivision two of this section, shall for a **first conviction thereof be punished by a fine of not less than fifty dollars nor more than two hundred dollars; for a conviction of a second violation**, both of which were committed within a period of twenty-four months, such person shall be punished by a fine of not less than one hundred dollars nor more than four hundred dollars; upon a conviction of a third or subsequent violation, all of which were committed within a period of twenty-four months, **such person shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars and the revocation of the registration of the personal watercraft.**

Bill Summary - A07875

Sections 6 and 7 amend sections 73-b and 73-c of the Navigation Law to increase the fines and terms of imprisonment that may be imposed as punishment for violations of the Navigation Law.

Latest Actions:

06/22/2007 passed assembly
06/22/2007 returned to senate
07/06/2007 DELIVERED TO GOVERNOR
07/18/2007 SIGNED CHAP. 320

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07/18/2007 APPROVAL MEMO.12

Existing Law:

Section 73-b of the Navigation Law specifies the penalties that may be imposed for violations of chapter are specified as "misdemeanors."

Section 73-c of the Navigation Law specifies the penalties that may be imposed (or violations of Article 4 of the Navigation Law which are specified as "violations".

Bill Summary Commentary:

The penalties specified in Navigation Law SS 73-b and 73-c for misdemeanors and violations have remained the same since enactment of these provisions fifteen years ago. The bill makes reasonable increases to the amounts of the fines and terms of imprisonment that may be imposed for violations of the Navigation Law. These changes enhance the Navigation Law's deterrent effect, thereby increasing public safety.

Bills Text: [Note items in {} reflect current law.]

Section 73-b of the navigation law, as added by chapter 805 of the laws of 1992, is amended to read as follows:

S 73-b. Misdemeanors. Every person convicted of a misdemeanor pursuant to any of the provisions of this chapter for which another penalty is not provided shall for a first conviction thereof be punished by a fine of not less than {one hundred nor more than two hundred fifty} TWO HUNDRED FIFTY NOR MORE THAN FIVE HUNDRED dollars or by a period of imprisonment of not more than {fifteen} THIRTY days or by both such fine and imprisonment; for a conviction of a second violation, both of which were committed within a period of twenty-four months, such person shall be punished by a fine of not less than {two hundred nor more than three hundred fifty} FIVE HUNDRED NOR MORE THAN ONE THOUSAND FIVE HUNDRED dollars or by a period of imprisonment of not more than {forty-five} SIXTY days or by both such fine and imprisonment; upon a conviction of a third or subsequent violation, all of which were committed within a period of twenty-four months, such person shall be punished by a fine of not less than {five hundred nor more than seven hundred fifty} ONE THOUSAND FIVE HUNDRED NOR MORE THAN TWO THOUSAND FIVE HUNDRED dollars or by a period of imprisonment of not more than {ninety} ONE HUNDRED TWENTY days or by both such fine and imprisonment.

S 7. Subdivision 2 of section 73-c of the navigation law, as added by chapter 805 of the laws of 1992, is amended to read as follows:

2. Every person convicted of a violation for a violation of any of the provisions of this article or of any ordinance, order, rule or regulation adopted pursuant to this article for which another penalty is not provided shall for a first conviction thereof be punished by a fine of not less than {twenty-five nor more than one hundred} ONE HUNDRED NOR MORE THAN TWO HUNDRED FIFTY dollars or by imprisonment for not more than seven days or by both such fine and imprisonment; for a conviction of a second violation, both of which were committed within a period of twenty-four months, such person shall be punished by a fine of not less than {one hundred nor more than two hundred fifty} TWO HUNDRED FIFTY NOR MORE THAN FIVE HUNDRED dollars or by imprisonment of not more than fifteen days or by both such fine and imprisonment; upon a conviction for a third or subsequent violation,

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all of which were committed within a period of twenty-four months, such person shall be punished by a fine of not less than {two hundred dollars nor more than five hundred} FIVE HUNDRED NOR MORE THAN ONE THOUSAND dollars or by imprisonment for not more than thirty days or by both such fine and imprisonment.

Open Container Law – (For Reference)

It is a traffic infraction for a driver or passenger in a motor vehicle on a public highway, street or road, to drink an alcoholic beverage, or to possess an alcoholic beverage with the intent of drinking it. The penalty for a first conviction is two points assess against the driver's license record, a fine up to \$150, a mandatory surcharge, a crime victim assistance fee, and potential imprisonment up to 15 days. Additional offenses within 18-months bring higher penalties. The law exempts passengers in vehicle such as stretch limousines, and other vehicles, that display a commerce certificate or permit issued by the U.S. Department Of Transportation or the NYS Department Of Transportation.

§ 49-a. Operation of a vessel while under the influence of alcohol or drugs.

1. Definitions. As used in this section, unless the context clearly indicates otherwise:

(a) The term "vessel" shall be every description of watercraft or other artificial contrivance propelled in whole or in part by mechanical power and, which is used or capable of being used as a means of transportation over water, and which is underway and not at anchor or made fast to the shore or ground. The term "vessel" shall include a "public vessel" as defined herein unless otherwise specified.

(b) The term "public vessel" shall mean and include every vessel which is propelled in whole or in part by mechanical power and is used or operated for commercial purposes on the navigable waters of the state; that is either carrying passengers, carrying freight, towing, or for any other use, for which a compensation is received, either directly or where provided as an accommodation, advantage, facility or privilege at any place of public accommodation, resort or amusement.

(c) The term "waters of the state" means all of the waterways or bodies of water located within New York state or that part of any body of water which is adjacent to New York state over which the state has territorial jurisdiction, on which a vessel or public vessel may be used or operated, including Nassau and Suffolk counties.

2. Offenses: criminal penalties.

(a) No person shall operate a vessel upon the waters of the state while his ability to operate such vessel is impaired by the consumption of alcohol. A violation of this subdivision shall be an offense and shall be punishable by a fine of not less than two hundred fifty dollars nor more than three hundred fifty dollars, or by imprisonment in a

penitentiary or county jail for not more than fifteen days, or by both such fine and imprisonment. A person who operates a vessel in violation of this subdivision after being convicted of a violation of any subdivision of this section within the preceding five years shall be punished by a fine of not less than five hundred dollars nor more than fifteen hundred dollars, or by imprisonment of not more than thirty days in a penitentiary or county jail or by both such fine and imprisonment.

(b) No such person shall operate a vessel other than a public vessel while he has .10 of one per centum or more by weight of alcohol in his blood, breath, urine, or saliva, as determined by the chemical test made pursuant to the provisions of subdivision seven of this section.

(c) No such person shall operate a public vessel while he has .04 of one per centum or more by weight of alcohol in his blood, breath, urine, or saliva, as determined by the chemical test made pursuant to the provisions of subdivision seven of this section.

(d) No person shall operate a vessel while he is in an intoxicated condition.

(e) No person shall operate a vessel while his ability to operate such vessel is impaired by the use of a drug as defined by section one hundred fourteen-a of the vehicle and traffic law.

(f) A violation of paragraph (b), (c), (d) or (e) of this subdivision shall be a misdemeanor and shall be punishable by imprisonment in a penitentiary or county jail for not more than ninety days, or by a fine of not less than three hundred fifty dollars nor more than five hundred dollars, or by both such fine and imprisonment. A person who operates a vessel in violation of paragraph (b), (c), (d) or (e) of this subdivision after having been convicted of a violation of paragraph (b), (c), (d) or (e) of this subdivision, or of operating a vessel or public vessel while intoxicated or while under the influence of drugs, within the preceding ten years, shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than one year, or by a fine of not less than five hundred nor more than fifteen hundred dollars, or by both such fine and imprisonment. A person who operates a vessel in violation of paragraph (b), (c), (d) or (e) of this subdivision after having been twice convicted of a violation of any of such paragraph (b), (c), (d) or (e) of this subdivision or of operating a vessel or public vessel while intoxicated or under the influence of drugs, within the preceding ten years, shall be guilty of a class E felony and shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

3. Privilege to operate a vessel; suspensions.

(a) The court shall suspend a person's privilege to operate a vessel and may suspend a vessel registration for:

(1) a period of six months where an operator is convicted of a violation of paragraph (a) of subdivision two of this section;

(2) a period of twelve months where an operator is convicted of a

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violation of paragraph (b), (c), (d) or (e) of subdivision two of this section;

(3) a period of twenty-four months where a person is convicted of a violation of paragraph (b), (c), (d) or (e) of subdivision two of this section after having been convicted of a violation of paragraph (b), (c), (d) or (e) of subdivision two of this section or of operating a vessel or public vessel while intoxicated or under the influence of drugs within the preceding ten years.

(b) The court shall report each conviction recorded pursuant to this section to the commissioner of motor vehicles and the commissioner of parks, recreation and historic preservation on forms provided by the department of motor vehicles. Such reports shall include the length of any suspension imposed on the privilege to operate a vessel and any suspension imposed against a vessel registration. The department of motor vehicles shall maintain a record of all convictions and suspensions in order to effectuate the provisions of this section.

4.

(a) Operation of vessel while operating privileges have been suspended. No person shall operate a vessel upon the waters of the state while operating privileges have been suspended pursuant to this section or section forty-nine-b of this article. A violation of the provisions of this paragraph shall be a violation and shall be punishable by a fine of not less than three hundred fifty dollars nor more than seven hundred fifty dollars or by imprisonment for a period of not more than ninety days, or by both such fine and imprisonment.

(b) A person who is in violation of the provisions of paragraph (a) of this subdivision, and in addition is in violation of the provisions of any paragraph of subdivision two of this section arising out of the same incident, shall be guilty of a misdemeanor punishable by a fine of not less than five hundred dollars nor more than five thousand dollars or by a period of imprisonment for a period of not more than one year or by both such fine and imprisonment.

5. Sentencing limitations. Notwithstanding any provision of the penal law, no judge or magistrate shall impose a sentence of unconditional discharge for a violation of paragraph (b), (c), (d) or (e) of subdivision two of this section nor shall he or she impose a sentence of conditional discharge unless such conditional discharge is accompanied by a sentence of a fine as provided in this section.

6. Arrest and testing.

(a) Notwithstanding the provisions of section 140.10 of the criminal procedure law, a police officer may, without a warrant, arrest a person, in case of a violation of any paragraph of subdivision two of this section, if such violation is coupled with an accident or collision in which such person is involved, which in fact had been committed, though not in the police officer's presence, when he has reasonable cause to believe that the violation was committed by such person. For the purposes of this subdivision police officer shall also include a peace officer authorized to

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enforce this chapter when the alleged violation constitutes a crime.

(b) Breath test for operators of vessel. Every person operating a vessel on the waters of the state which has been involved in an accident or which is operated in violation of any of the provisions of this section which regulate the manner in which a vessel is to be properly operated while underway shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If such test indicates that such operator has consumed alcohol, the police officer may request such operator to submit to a chemical test in the manner set forth in subdivision seven of this section. For the purposes of this section, a vessel is being "operated" only when such vessel is underway and is being propelled in whole or in part by mechanical power.

7. Chemical tests.

(a) Any person who operates a vessel on the waters of the state shall be requested to consent to a chemical test of one or more of the following: breath, blood, urine, or saliva for the purpose of determining the alcoholic or drug content of his blood, provided that such test is administered at the direction of a police officer:

(1) having reasonable cause to believe such person to have been operating in violation of this subdivision or paragraph (a), (b), (c), (d) or (e) of subdivision two of this section and within two hours after such person has been placed under arrest for any such violation or

(2) within two hours after a breath test as provided in paragraph (b) of subdivision six of this section indicates that alcohol has been consumed by such person and in accordance with the rules and regulations established by the police force of which the officer is a member.

(b) If such person having been placed under arrest or after a breath test indicates the presence of alcohol in the person's system and having thereafter been requested to submit to such chemical test and having been informed that the person's privilege to operate a vessel shall be immediately suspended for refusal to submit to such chemical test or any portion thereof, whether or not the person is found guilty of the charge for which such person is arrested, refuses to submit to such chemical test or any portion thereof, unless a court order has been granted pursuant to subdivision eight of this section, the test shall not be given and a written report of such refusal shall be immediately made by the police officer before whom such refusal was made. Such report may be verified by having the report sworn to, or by affixing to such report a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law and such form notice together with the subscription of the deponent shall constitute a verification of the report. The report of the police officer shall set forth reasonable grounds to believe such arrested person to have been operating a vessel in violation of any paragraph of subdivision two of this section, that said person had

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refused to submit to such chemical test, and that no chemical test was administered pursuant to the requirements of subdivision eight of this section. The report shall be presented to the court upon the arraignment of the arrested person. The privilege to operate a vessel shall, upon the basis of such written report, be temporarily suspended by the court without notice pending the determination of a hearing as provided herein. Copies of such report must be transmitted by the court to the commissioner of parks, recreation and historic preservation and the commissioner of motor vehicles and such transmittal may not be waived even with the consent of all the parties. Such report shall be forwarded to each commissioner within forty-eight hours of such arraignment. The court shall provide such person with a hearing date schedule, a waiver form, and such other information as may be required by the commissioner of motor vehicles. If a hearing, as provided for in paragraph (c) of this subdivision, is waived by such person, the commissioner of motor vehicles shall immediately suspend the privilege to operate a vessel, as of the date of receipt of such waiver in accordance with the provisions of paragraph (d) of this subdivision.

(c) Any person whose privilege to operate a vessel has been suspended pursuant to paragraph (b) of this subdivision is entitled to a hearing in accordance with a hearing schedule to be promulgated by the commissioner of motor vehicles. If the department fails to provide for such hearing fifteen days after the date of the arraignment of the arrested person, the privilege to operate a vessel of such person shall be reinstated pending a hearing pursuant to this section. The hearing shall be limited to the following issues:

- (1) did the police officer have reasonable cause to believe that such person had been operating a vessel in violation of any paragraph of subdivision two of this section;
- (2) did the police officer make a lawful arrest of such person;
- (3) was such person given sufficient warning, in clear or unequivocal language, prior to such refusal that such refusal to submit to such chemical test or any portion thereof, would result in the immediate suspension of such person's privilege to operate a vessel whether or not such person is found guilty of the charge for which the arrest was made; and
- (4) did such person refuse to submit to such chemical test or any portion thereof. If, after such hearing, the hearing officer, acting on behalf of the commissioner of motor vehicles, finds on any one of said issues in the negative, the hearing officer shall immediately terminate any suspension arising from such refusal. If, after such hearing, the hearing officer, acting on behalf of the commissioner of motor vehicles finds all of the issues in the affirmative, such officer shall immediately suspend the privilege to operate a vessel in accordance with the provisions of paragraph (d) of this subdivision. A person who has had the privilege to operate a vessel suspended pursuant to this subdivision may appeal the findings of

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the hearing officer in accordance with the provisions of article three-A of the vehicle and traffic law. Any person may waive the right to a hearing under this section. Failure by such person to appear for the scheduled hearing shall constitute a waiver of such hearing, provided, however, that such person may petition the commissioner of motor vehicles for a new hearing which shall be held as soon as practicable.

(d)

(1) Any privilege to operate a vessel which has been suspended pursuant to paragraph (c) of this subdivision shall not be restored for six months after such suspension. However, no such privilege shall be restored for at least one year after such suspension in any case where the person was under the age of twenty-one at the time of the offense, has had a prior suspension resulting from refusal to submit to a chemical test pursuant to this subdivision or subdivision six of section forty-nine-b of this article, or has been convicted of a violation of any paragraph of subdivision two of this section not arising out of the same incident, within the five years immediately preceding the date of such suspension; provided, however, a prior finding that a person under the age of twenty-one has refused to submit to a chemical test pursuant to such subdivision six of section forty-nine-b of this article shall have the same effect as a prior finding of a refusal pursuant to this subdivision solely for the purpose of determining the length of any suspension required to be imposed under any provision of this article, provided that the subsequent offense or refusal is committed or occurred prior to the expiration of the retention period for such prior refusal as set forth in paragraph (k) of subdivision one of section two hundred one of the vehicle and traffic law. Notwithstanding any provision of this paragraph to the contrary, any privilege to operate a vessel which has been suspended pursuant to paragraph (c) of this subdivision, where the person was under the age of twenty-one at the time of the refusal, and such person under the age of twenty-one has a prior finding, conviction or youthful offender adjudication resulting from a violation of this section or section forty-nine-b of this article, not arising from the same incident, shall not be restored for at least one year or until such person reaches the age of twenty-one years, whichever is the greater period of time.

(2) Any person whose privilege to operate a vessel is suspended pursuant to the provisions of this subdivision shall also be liable for a civil penalty in the amount of two hundred dollars except that if such suspension is a second or subsequent suspension pursuant to this subdivision issued within a five year period, or such person has been convicted of a violation of any paragraph of subdivision two of this section within the past five years not arising out of the

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same incident, the civil penalty shall be in the amount of five hundred dollars. The privilege to operate a vessel shall not be restored to such person unless such penalty has been paid. The first one hundred dollars of each penalty collected by the department of motor vehicles pursuant to the provisions of this subdivision shall be paid to the commissioner of motor vehicles for deposit to the general fund and the remainder of all such penalties shall be paid to the commissioner of parks, recreation and historic preservation for deposit in the "I Love NY Waterways" boating safety fund established pursuant to section ninety-seven-nn of the state finance law.

(e) The commissioner of motor vehicles in consultation with the commissioner of parks, recreation and historic preservation shall promulgate such rules and regulations as may be necessary to effectuate the provisions of this subdivision.

(f) Evidence of a refusal to submit to such chemical test shall be admissible in any trial, proceeding or hearing based upon a violation of the provisions of this section, but only upon a showing that the person was given sufficient warning, in clear and unequivocal language, of the effect of such refusal and that the person persisted in his or her refusal.

(g) Upon the request of the person tested, the results of such test shall be made available to him or her.

8. Compulsory chemical tests.

(a) Notwithstanding the provisions of subdivision seven of this section, no person who operates a vessel in the waters of this state may refuse to submit to a chemical test of one or more of the following: breath, blood, urine or saliva, for the purpose of determining the alcoholic and/or drug content of the blood when a court order for such chemical test has been issued in accordance with the provisions of this subdivision.

(b) Upon refusal by any person to submit to a chemical test or any portion thereof as described in paragraph (a) of this subdivision, the test shall not be given unless a police officer or a district attorney, as defined in subdivision thirty-two of section 1.20 of the criminal procedure law, requests and obtains a court order to compel a person to submit to a chemical test to determine the alcoholic or drug content of the person's blood upon a finding of reasonable cause to believe that:

(1) such person was the operator of a vessel and in the course of such operation a person other than the operator was killed or suffered serious physical injury as defined in section 10.00 of the penal law; and

(2)

(i) either such person operated the vessel in violation of any paragraph of subdivision two of this section, or

(ii) a breath test administered by a police officer in accordance with subdivision six of this section indicates that alcohol has been consumed by such person; and

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- (3) such person has been placed under lawful arrest; and
- (4) such person has refused to submit to a chemical test or any portion thereof, requested in accordance with the provisions of subdivision seven of this section or is unable to give consent to such a test.

(c) For the purpose of this subdivision "reasonable cause" shall be determined by viewing the totality of circumstances surrounding the incident which, when taken together, indicate that the operator was operating a vessel in violation of any paragraph of subdivision two of this section. Such circumstances may include, but are not limited to: evidence that the operator was operating a vessel in violation of any provision of this chapter which regulates the manner in which a vessel is to be properly operated while underway at the time of the incident; any visible indication of alcohol or drug consumption or impairment by the operator; any other evidence surrounding the circumstances of the incident which indicates that the operator has been operating a vessel while impaired by the consumption of alcohol or drugs or was intoxicated at the time of the incident.

(d)

(1) An application for a court order to compel submission to a chemical test or any portion thereof, may be made to any supreme court justice, county court judge or district court judge in the judicial district in which the incident occurred, or if the incident occurred in the city of New York before any supreme court justice or judge of the criminal court of the city of New York. Such application may be communicated by telephone, radio or other means of electronic communication, or in person.

(2) The applicant must provide identification by name and title and must state the purpose of the communication. Upon being advised that an application for a court order to compel submission to a chemical test is being made, the court shall place under oath the applicant and any other person providing information in support of the application as provided in subparagraph three of this paragraph. After being sworn the applicant must state that the person from whom the chemical test was requested was the operator of a vessel and in the course of such operation a person, other than the operator, has been killed or seriously injured and, based upon the totality of circumstances, there is reasonable cause to believe that such person was operating a vessel in violation of any paragraph of subdivision two of this section and, after being placed under lawful arrest such person refused to submit to a chemical test or any portion thereof, in accordance with the provisions of this section or is unable to give consent to such a test or any portion thereof. The applicant must make specific allegations of fact to support such statement. Any other person properly identified, may present sworn allegations of fact in support of the applicant's statement.

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(3) Upon being advised that an oral application for a court order to compel a person to submit to a chemical test is being made, a judge or justice shall place under oath the applicant and any other person providing information in support of the application. Such oath or oaths and all of the remaining communication must be recorded, either by means of a voice recording device or verbatim stenographic or verbatim longhand notes. If a voice recording device is used or a stenographic record made, the judge must have the record transcribed, certify to the accuracy of the transcription and file the original record and transcription with the court within seventy-two hours of the issuance of the court order. If the longhand notes are taken, the judge shall subscribe a copy and file it with the court within twenty-four hours of the issuance of the order.

(4) If the court is satisfied that the requirements for the issuance of a court order pursuant to the provisions of paragraph (b) of this subdivision have been met, it may grant the application and issue an order requiring the accused to submit to a chemical test to determine the alcoholic and/or drug content of his blood and ordering the withdrawal of a blood sample in accordance with the provisions of subdivision nine of this section. When a judge or justice determines to issue an order to compel submission to a chemical test based on an oral application, the applicant therefor shall prepare the order in accordance with the instructions of the judge or justice. In all cases the order shall include the name of the issuing judge or justice, the name of the applicant, and the date and time it was issued. It must be signed by the judge or justice if issued in person, or by the applicant if issued orally.

(5) Any false statement by an applicant or any other person in support of an application for a court order shall subject such person to the offenses for perjury set forth in article two hundred ten of the penal law.

(e) An order issued pursuant to the provisions of this subdivision shall require that a chemical test to determine the alcoholic and/or drug content of the operator's blood must be administered. The provisions of paragraphs (a), (b) and (c) of subdivision nine of this section shall be applicable to any chemical test administered pursuant to this section.

(f) A defendant who has been compelled to submit to a chemical test pursuant to the provisions of this subdivision may move for the suppression of such evidence in accordance with article seven hundred ten of the criminal procedure law on the grounds that the order was obtained and the test administered in violation of the provisions of this subdivision or any other applicable law.

9. Testing procedures.

(a) At the request of a police officer, the following persons may withdraw blood for the purpose of determining the alcohol or drug content therein:

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- (1) a physician, a registered professional nurse or a registered physician's assistant; or
 - (2) under the supervision and at the direction of a physician: a medical laboratory technician or medical technologist as classified by civil service; a phlebotomist; an advanced emergency medical technician as certified by the department of health, or a medical laboratory technician or medical technologist employed by a clinical laboratory approved under title five of article five of the public health law. This limitation shall not apply to the taking of a urine, saliva or breath specimen.
- (b) No person entitled to withdraw blood pursuant to paragraph (a) of this subdivision or hospital employing such person and no other employer of such person shall be sued or held liable for any act done or omitted in the course of withdrawing blood at the request of a police officer or peace officer acting pursuant to his special duties pursuant to this subdivision.
- (c) Any person who may have a cause of action arising from the withdrawal of blood as aforesaid, for which no personal liability exists under paragraph (b) of this subdivision, may maintain such action against the state if the person entitled to withdraw blood pursuant to paragraph (a) of this subdivision acted at the request of a police officer or peace officer acting pursuant to his special duties, employed by the state, or against the appropriate political subdivision of the state if the person acted at the request of a police officer or peace officer acting pursuant to his special duties, employed by a political subdivision of the state. No action shall be maintained pursuant to this paragraph unless notice of claim is duly filed or served in compliance with law.
- (d) Notwithstanding the foregoing provisions of this subdivision, an action may be maintained by the state or a political subdivision thereof against a person entitled to withdraw blood pursuant to paragraph (a) of this subdivision or hospital employing such person for whose act or omission the state or the political subdivision has been held liable under this subdivision to recover damages, not exceeding the amount awarded to the claimant, that may have been sustained by the state or the political subdivision by reason of gross negligence on the part of such person entitled to withdraw blood.
- (e) The testimony of any person, other than a physician, entitled to draw blood pursuant to paragraph (a) of this subdivision in respect to any such withdrawal of blood made by him may be received in evidence with the same weight, force and effect as if such withdrawal of blood were made by a physician.
- (f) The provisions of paragraphs (b), (c) and (d) of this subdivision shall also apply with regard to any person employed by a hospital as security personnel for any act done or omitted in the course of withdrawing blood at the request of a police officer pursuant to a court order in accordance with this subdivision.
- (g) The person tested shall be permitted to choose a physician to

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administer a chemical test in addition to the one administered at the direction of the police officer.

10. Chemical test evidence.

(a) Upon the trial of any such action or proceeding arising out of actions alleged to have been committed by any person arrested for a violation of any paragraph of subdivision two of this section, the court shall admit evidence of the amount of alcohol or drugs in the defendant's blood as shown by a test administered pursuant to the provisions of subdivision seven or eight of this section.

(b) The following effect shall be given to evidence of blood alcohol content, as determined by such tests, of a person arrested for a violation of any paragraph of subdivision two of this section and who was operating a vessel other than a public vessel:

(1) evidence that there was .05 of one per centum or less by weight of alcohol in such person's blood shall be prima facie evidence that the ability of such person to operate a vessel was not impaired by the consumption of alcohol, and that such person was not in an intoxicated condition.

(2) evidence that there was more than .05 of one per centum but not more than .07 of one per centum of weight in such person's blood shall be prima facie evidence that such person was not in an intoxicated condition, but such evidence shall be relevant evidence but not be given prima facie effect, in determining whether the ability of such person to operate a vessel was impaired by the consumption of alcohol.

(3) evidence that there was more than .07 of one per centum but less than .10 of one per centum by weight of alcohol in his blood shall be prima facie evidence that such person was not in an intoxicated condition, but such evidence shall be given prima facie effect in determining whether the ability of such person to operate a vessel was impaired by the consumption of alcohol.

(c) Evidence of a refusal to submit to a chemical test or any portion thereof shall be admissible in any trial or hearing provided the request to submit to such a test was made in accordance with the provisions of subdivision seven of this section.

11. Limitations.

(a) A vessel operator may be convicted of a violation of paragraphs (a), (b), (d) and (e) of subdivision two of this section, notwithstanding that the charge laid before the court alleged a violation of paragraph (b), (d) or (e) of subdivision two of this section, and regardless of whether or not such condition is based on a plea of guilty.

(b) In any case wherein the charge laid before the court alleges a violation of paragraph (b), (c), (d) or (e) of subdivision two of this section, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of the provisions of one of the paragraphs of such subdivision two and no other disposition by plea of

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guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, if the district attorney upon reviewing the available evidence determines that the charge of a violation of subdivision two of this section is not warranted, he may consent, and the court may allow a disposition by plea of guilty to another charge in satisfaction of such charge.

12. Suspension pending prosecution.

(a) Without notice, pending any prosecution, the court may suspend the right to operate a vessel where the vessel operator has been charged with vehicular assault in the second degree or vehicular manslaughter in the second degree as defined, respectively, in sections 120.03 and 125.12 of the penal law.

(b) A suspension under this subdivision shall occur no later than twenty days after the vessel operator's first appearance before the court on the charges or at the conclusion of all proceedings required for the arraignment, whichever comes first. In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of section 100.40 of the criminal procedure law and there exists reasonable cause to believe that the accused operated a vessel in violation of section 120.03 or 125.12 of the penal law. At such time the operator shall be entitled to an opportunity to make a statement regarding the enumerated issues and to present evidence tending to rebut the court's findings. Where such suspension is imposed upon such pending charge and the operator has requested a hearing pursuant to article one hundred eighty of the criminal procedure law, the court shall conduct such hearing. If upon completion of the hearing, the court fails to find that there is reasonable cause to believe that the operator committed a felony under section 120.03 or 125.12 of the penal law the court shall promptly direct restoration of such operating privileges to the operator unless such operating privileges are suspended or revoked pursuant to any other provision of this chapter.

13. Boating safety course. Upon the conviction of any subdivision of this section, the court shall, in addition to any other penalties invoked under this section, require the convicted person, as a condition of the sentence, to complete a boating safety course of the state, U.S. Power Squadrons or U.S. Coast Guard Auxiliary and show proof of successful completion of such course to the court or its designee.

§ 49-b. Operating a vessel after having consumed alcohol; under the age of twenty-one; per se.

1. Prohibition. No person under the age of twenty-one shall operate a vessel upon the waters of this state after having consumed alcohol as defined in this section. For purposes of this section, a person under the age of twenty-one is deemed to have consumed alcohol only if such person has .02 of one per centum or more but not more than .07 of one per centum by weight of alcohol in the person's blood, as

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shown by chemical analysis of such person's blood, breath, urine or saliva, made in accordance with the provisions of subdivision four of section eleven hundred ninety-four of the vehicle and traffic law. Any person who operates a vessel in violation of this section, and who is not charged with a violation of subdivision two of section forty-nine-a of this article arising out of the same incident shall be referred to the department of motor vehicles for action in accordance with the provisions of this section. Notwithstanding any provision of law to the contrary, a finding that a person under the age of twenty-one operated a vessel after having consumed alcohol in violation of this section is not a judgment of conviction for a crime or any other offense.

2. Breath test for operators of vessel. Every person under the age of twenty-one operating a vessel on the waters of the state which has been involved in an accident or which is operated in violation of any of the provisions of this section or section forty-nine-a of this article which regulate the manner in which a vessel is to be properly operated while underway shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If such test indicates that such operator has consumed alcohol, the police officer may request such operator to submit to a chemical test in the manner set forth in this section. For the purposes of this section, a vessel is being "operated" only when such vessel is underway and is being propelled in whole or in part by mechanical power.

3. Chemical tests.

(a) Any person under the age of twenty-one who operates a vessel on the waters of the state shall be requested to consent to a chemical test of one or more of the following: breath, blood, urine, or saliva for the purpose of determining the alcoholic or drug content of his blood, provided that such test is administered at the direction of a police officer:

(1) having reasonable grounds to believe such person to have been operating in violation of this section or paragraph (a), (b), (c), (d) or (e) of subdivision two of section forty-nine-a of this article and within two hours after such person has been placed under arrest, or detained pursuant to paragraph (c) of this subdivision, for any such violation or

(2) within two hours after a breath test as provided in subdivision two of this section indicates that alcohol has been consumed by such person and in accordance with the rules and regulations established by the police force of which the officer is a member.

(a-1) If such person having been detained pursuant to paragraph (c) of this subdivision, and having thereafter been requested to submit to such chemical test and having been informed that the person's privilege to operate a vessel and any non-resident operating privilege shall be suspended for refusal to submit to such chemical test or any portion thereof, whether or not there is a finding of operating a vessel after having consumed alcohol, refuses to submit to such chemical test or any portion thereof, unless a court order has been granted pursuant to subdivision eight of section forty-nine-a of this article, the test shall not be given and a

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written report of such refusal shall be immediately made by the police officer before whom such refusal was made. Such report may be verified by having the report sworn to, or by affixing to such report a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law and such form notice together with the subscription of the deponent shall constitute a verification of the report. The report of the police officer shall set forth reasonable grounds to believe such person to have been operating a vessel in violation of this section, and that said person had refused to submit to such chemical test. The report shall be forwarded to the commissioner of motor vehicles within forty-eight hours in a manner to be prescribed by such commissioner of motor vehicles, and all subsequent proceedings with regard to refusal to submit to such chemical test by such person shall be as set forth in subdivision six of this section. The police officer shall provide such person with a hearing date schedule, a waiver form, and such other information as may be required by the commissioner of motor vehicles.

(b) For the purposes of this subdivision, "reasonable grounds" to believe that a person has been operating a vessel after having consumed alcohol in violation of this section shall be determined by viewing the totality of circumstances surrounding the incident which, when taken together, indicate that the operator was operating a vessel in violation of this section. **Such circumstances may include any visible or behavioral indication of alcohol consumption by the operator, the existence of an open container containing or having contained an alcoholic beverage in or around the vessel being operated, or any other evidence surrounding the circumstances of the incident which indicates that the operator has been operating a vessel after having consumed alcohol at the time of the incident.**

(c) Notwithstanding any other provision of law to the contrary, no person under the age of twenty-one shall be arrested for an alleged violation of this section. However, a person under the age of twenty-one for whom a chemical test is authorized pursuant to this subdivision may be temporarily detained by the police solely for the purpose of requesting or administering such chemical test whenever arrest without a warrant for a petty offense would be authorized in accordance with the provisions of section 140.10 of the criminal procedure law.

4. Chemical test report and hearing.

(a) Whenever a chemical test of the breath, blood, urine or saliva of an operator who is under the age of twenty-one indicates that such person has operated a vessel in violation of this section, and such person is not charged with violating any subdivision of section forty-nine-a of this article arising out of the same incident, the police officer who administered the test shall forward a report of the results of such test to the department of motor vehicles within twenty-four hours of the time when such results are available in a manner prescribed by the commissioner of motor vehicles, and the operator shall be given a hearing notice as

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provided in subdivision five of this section, to appear before a hearing officer in the county where the chemical test was administered, or in an adjoining county under such circumstances as prescribed by the commissioner of motor vehicles, on a date to be established in accordance with a schedule promulgated by the commissioner of motor vehicles. Such hearing shall occur within thirty days of, but not less than forty-eight hours from, the date that the chemical test was administered, provided, however, where the commissioner of motor vehicles determines, based upon the availability of hearing officers and the anticipated volume of hearings at a particular location, that the scheduling of such hearing within thirty days would impair the timely scheduling or conducting of other hearings, such hearing shall be scheduled at the next hearing date for such particular location. When providing the operator with such hearing notice, the police officer shall also give to the operator, and shall, prior to the commencement of the hearing, provide to the department of motor vehicles, copies of the following reports, documents and materials: any written report or document, or portion thereof, concerning a physical examination, a scientific test or experiment, including the most recent record of inspection, or calibration or repair of machines or instruments utilized to perform such scientific tests or experiments and the certification certificate, if any, held by the operator of the machine or instrument, which tests or examinations were made by or at the request or direction of a public servant engaged in law enforcement activity. The report of the police officer shall be verified by having the report sworn to, or by affixing to such report a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law and such form notice together with the subscription of the deponent shall constitute verification of the report.

(b) Every person under the age of twenty-one who is alleged to have operated a vessel after having consumed alcohol as set forth in this section, and who is not charged with violating any subdivision of section forty-nine-a of this article arising out of the same incident, is entitled to a hearing before a hearing officer in accordance with the provisions of this section. Unless otherwise provided by law, the privilege to operate a vessel or any non-resident operating privilege of such person shall not be suspended or revoked prior to the scheduled date for such hearing.

(i) The hearing shall be limited to the following issues:

- (1) did such person operate the vessel;
- (2) was a valid request to submit to a chemical test made by the police officer in accordance with the provisions of this section;
- (3) was such person less than twenty-one years of age at the time of operation of the vessel;
- (4) was the chemical test properly administered in accordance with the provisions of this section;
- (5) did the test find that such person had operated a vessel

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after having consumed alcohol as defined in this section;
and

(6) did the police officer make a lawful stop of such person.

The burden of proof shall be on the police officer to prove each of these issues by clear and convincing evidence.

(ii) Every person who is entitled to a hearing pursuant to this subdivision has the right to be present at the hearing; the right to be represented by attorney, or in the hearing officer's discretion, by any other person the operator chooses; the right to receive and review discovery materials as provided in this subdivision; the right not to testify; the right to present evidence and witnesses in his own behalf, the right to cross examine adverse witnesses, and the right to appeal from an adverse determination in accordance with article three-A of the vehicle and traffic law. Any person representing the operator must conform to the standards of conduct required of attorneys appearing before state courts, and failure to conform to these standards will be grounds for declining to permit his continued appearance in the hearing.

(iii) Hearings conducted pursuant to this subdivision shall be in accordance with this subdivision and with the provisions applicable to the adjudication of traffic infractions pursuant to the following provisions of part 124 of title fifteen of the codes, rules and regulations of the state of New York: paragraph (b) of section 124.1 regarding the opening statement; paragraph (b) of section 124.2 regarding the right to representation and to remain silent and paragraphs (a) through (e) of section 124.4 regarding the conduct of the hearing, procedure and refusal; provided, however, that nothing contained in this subparagraph shall be deemed to preclude a hearing officer from changing the order of a hearing conducted pursuant to this subdivision as justice may require and for good cause shown.

(iv) The rules governing receipt of evidence in a court of law shall not apply in a hearing conducted pursuant to this subdivision except as follows:

(1) on the merits of the charge, and whether or not a party objects, the hearing officer shall exclude from consideration the following: a privileged communication; evidence which, for constitutional reasons, would not be admissible in a court of law; evidence of prior misconduct, incompetency or illness, except where such evidence would be admissible in a court of law; evidence which is irrelevant or immaterial;

(2) no negative inference shall be drawn from the operator's exercising the right not to testify.

(v) If, after such hearing, the hearing officer, acting on behalf of the commissioner of motor vehicles, finds all of the issues set forth

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in this subdivision in the affirmative, the hearing officer shall suspend the operating privilege or non-resident operating privilege of such person in accordance with the time periods set forth in this section. If, after such hearing, the hearing officer, acting on behalf of the commissioner of motor vehicles, finds any of said issues in the negative, the hearing officer must find that the operator did not operate a vessel after having consumed alcohol.

(vi) A person who has had a privilege to operate a vessel or non-resident operating privilege suspended pursuant to the provisions of this section may appeal the finding of the hearing officer in accordance with the provisions of article three-A of the vehicle and traffic law.

(c) Unless an adjournment of the hearing date has been granted, upon the operator's failure to appear for a scheduled hearing, the commissioner shall suspend the privilege to operate a vessel or non-resident operating privilege until the operator petitions the commissioner of motor vehicles and a rescheduled hearing is conducted, provided, however, the commissioner shall restore such person's operating privilege or non-resident operating privilege if such rescheduled hearing is adjourned at the request of a person other than the operator. Requests for adjournments shall be made and determined in accordance with regulations promulgated by the commissioner of motor vehicles. If such a request by the operator for an adjournment is granted, the commissioner of motor vehicles shall notify the operator of the rescheduled hearing, which shall be scheduled for the next hearing date. If a second or subsequent request by the operator for an adjournment is granted, the operator's privilege to operate a vessel or, non-resident operating privilege, may be suspended pending the hearing at the time such adjournment is granted; provided, however, that the records of the department or the evidence already admitted furnishes reasonable grounds to believe such suspension is necessary to prevent continuing violations or a substantial safety hazard; and provided further, that such hearing shall be scheduled for the next hearing date.

If a police officer does not appear for a hearing, the hearing officer shall have the authority to dismiss the charge. Any person may waive the right to a hearing under this subdivision, in a form and manner prescribed by the commissioner of motor vehicles, and may enter an admission of guilt, in person or by mail, to the charge of operating a vessel in violation of this section. Such admission of guilt shall have the same force and effect as a finding of guilt entered following a hearing conducted pursuant to this subdivision.

5. Hearing notice. The hearing notice issued to an operator pursuant to subdivision four of this section shall be in a form as prescribed by the commissioner. In addition to containing information concerning the time, date and location of the hearing, and such other information as the commissioner deems appropriate, such hearing notice shall also contain the following information: the date, time and place of the offense charged; the procedures for requesting an

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adjournment of a scheduled hearing as provided in this section, the operator's right to a hearing conducted pursuant to this section and the right to waive such hearing and plead guilty, either in person or by mail, to the offense charged.

6. Refusal report and hearing.

(a) Any person under the age of twenty-one who is suspected of operating a vessel after having consumed alcohol in violation of this section, and who is not charged with violating any subdivision of section forty-nine-a of this article arising out of the same incident, and who has been requested to submit to a chemical test pursuant to subdivision three of this section and after having been informed that his privilege to operate a vessel and any non-resident operating privilege shall be suspended for refusal to submit to such chemical test or any portion thereof, whether or not there is a finding of operating a vessel after having consumed alcohol, and such person refuses to submit to such chemical test or any portion thereof, shall be entitled to a hearing in accordance with a schedule promulgated by the commissioner of motor vehicles, and such hearing shall occur within thirty days of, but not less than forty-eight hours from, the date of such refusal, provided, however, where the commissioner of motor vehicles determines, based upon the availability of hearing officers and the anticipated volume of hearings at a particular location, that the scheduling of such hearing within thirty days would impair the timely scheduling or conducting of other hearings, such hearing shall be scheduled at the next hearing date for such particular location.

(b) Unless an adjournment of the hearing date has been granted, upon the operator's failure to appear for a scheduled hearing, the commissioner of motor vehicles shall suspend the operating privilege or non-resident operating privilege until the operator petitions the commissioner of motor vehicles and a rescheduled hearing is conducted, provided, however, the commissioner shall restore such person's operator's privilege or non-resident operating privilege if such rescheduled hearing is adjourned at the request of a person other than the operator. Requests for adjournments shall be made and determined in accordance with regulations promulgated by the commissioner of motor vehicles. If such a request by the operator for an adjournment is granted, the commissioner of motor vehicles shall notify the operator of the rescheduled hearing, which shall be scheduled for the next hearing date. If a second or subsequent request by the operator for an adjournment is granted, the operator's privilege to operate a vessel or non-resident operating privilege may be suspended pending the hearing at the time such adjournment is granted; provided, however, that the records of the department of motor vehicles or the evidence already admitted furnishes reasonable grounds to believe such suspension is necessary to prevent continuing violations or a substantial safety hazard; and provided further, that such hearing shall be scheduled for the next hearing date.

If a police officer does not appear for a hearing, the hearing officer shall have the authority to dismiss the charge. Any person may waive the right

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to a hearing under this subdivision.

(c) The hearing on the refusal to submit to a chemical test pursuant to this subdivision shall be limited to the following issues:

- (1) was a valid request to submit to a chemical test made by the police officer in accordance with the provisions of subdivision three of this section;
- (2) was such person given sufficient warning, in clear or unequivocal language, prior to such refusal that such refusal to submit to such chemical test or any portion thereof, would result in the suspension of such person's privilege to operate a vessel or nonresident operating privilege, whether or not such person is found to have operated a vessel after having consumed alcohol;
- (3) did such person refuse to submit to such chemical test or any portion thereof;
- (4) did such person operate the vessel;
- (5) was such person less than twenty-one years of age at the time of operation of the vessel;
- (6) did the police officer make a lawful stop of such person. If, after such hearing, the hearing officer, acting on behalf of the commissioner of motor vehicles, finds on any one said issue in the negative, the hearing officer shall not suspend the operator's privilege to operate a vessel or non-resident operating privilege and shall immediately terminate any outstanding suspension of the operator's privilege to operate a vessel or non-resident operating privilege arising from such refusal. If, after such hearing, the hearing officer, acting on behalf of the commissioner of motor vehicles, finds all of the issues in the affirmative, such hearing officer shall immediately suspend the privilege to operate a vessel or any non-resident operating privilege in accordance with the provisions of this section. A person who has had a privilege to operate a vessel or non-resident operating privilege suspended pursuant to the provisions of this section may appeal the findings of the hearing officer in accordance with the provisions of article three-A of the vehicle and traffic law.

(d) Any privilege which has been suspended pursuant to paragraph (c) of this subdivision shall not be restored for one year after such suspension. Where such person under the age of twenty-one years has a prior finding, conviction or youthful offender adjudication resulting from a violation of this section or section forty-nine-a of this article, not arising from the same incident, such privilege shall not be restored for at least one year or until such person reaches the age of twenty-one years, whichever is the greater period of time.

7. Effect of prior finding of having consumed alcohol. A prior finding that a person under the age of twenty-one has operated a vessel after having consumed alcohol pursuant to this section shall have the same effect as a prior conviction of a violation of paragraph (a) of subdivision two of section forty-nine-a of this

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article solely for the purpose of determining the length of any suspension required to be imposed under any provision of this article, provided that the subsequent offense is committed prior to the expiration of the retention period for such prior offense or offenses set forth in paragraph (k) of subdivision one of section two hundred one of the vehicle and traffic law.

8. Plea bargain limitations.

(a) In any case wherein the charge laid before a court alleges a violation of paragraph (a) of subdivision two of section forty-nine-a of this article and the operator was under the age of twenty-one at the time of such violation, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of such subdivision; provided, however, such charge may instead be satisfied as provided in paragraph (b) of this subdivision, and, provided further that, if the district attorney, upon reviewing the available evidence, determines that the charge of a violation of paragraph (a) of subdivision two of section forty-nine-a of this article is not warranted, such district attorney may consent, and the court may allow a disposition by plea of guilty to another charge in satisfaction of such charge; provided, however, in all such cases, the court shall set forth upon the record the basis for such disposition.

(b) In any case wherein the charge laid before a court alleges a violation of paragraph (a) of subdivision two of section forty-nine-a of this article by a person who was under the age of twenty-one at the time of commission of the offense, the court, with the consent of both parties, may allow the satisfaction of such charge by the defendant's agreement to be subject to action by the commissioner of motor vehicles pursuant to this section. In any such case, the defendant shall waive the right to a hearing under this section and such waiver shall have the same force and effect as a finding of a violation of this section entered after a hearing conducted pursuant to this section. The defendant shall execute such waiver in open court, and, if represented by counsel, in the presence of his attorney, on a form to be provided by the commissioner of motor vehicles, which shall be forwarded by the court to the commissioner of motor vehicles within ninety-six hours. To be valid, such form shall, at a minimum, contain clear and conspicuous language advising the defendant that a duly executed waiver:

- (i) has the same force and effect as a guilty finding following a hearing pursuant to this section;
- (ii) shall subject the defendant to the imposition of sanctions pursuant to this section; and
- (iii) may subject the defendant to increased sanctions upon a subsequent violation of this section or section forty-nine-a of this article. Upon receipt of a duly executed waiver pursuant to this paragraph, the commissioner of motor vehicles shall take such administrative action and impose such sanctions as may be required by this section.

9. Sanctions.

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(a) Except as otherwise provided in this subdivision, a person's privilege to operate a vessel upon the waters of the state shall be suspended for six months, where such person has been found to have operated a vessel after having consumed alcohol in violation of this section.

(b) The suspension of operating privileges pursuant to this subdivision shall be for one year or until such person reaches the age of twenty-one, whichever is the greater period of time, where such person has been found to have operated a vessel after having consumed alcohol in violation of this section, and has previously been found to have operated a vessel after having consumed alcohol in violation of this section or has previously been convicted of, or adjudicated a youthful offender for any violation of section forty-nine-a of this article not arising out of the same incident.

(c) Where the commissioner of motor vehicles determines that the period of suspension imposed pursuant to this section would extend beyond the current boating season, such commissioner may direct that any portion of such suspension period take effect during the following boating season.

10. Civil penalty.

(a) Unless otherwise provided, any person whose privilege to operate a vessel has been suspended pursuant to the provisions of this section shall also be liable for a civil penalty in the amount of one hundred twenty-five dollars.

(b) The first one hundred dollars of each civil penalty collected pursuant to the provisions of this section shall be paid to the commissioner of motor vehicles for deposit into the general fund and the remainder of all such civil penalties shall be paid to the commissioner of parks, recreation, and historic preservation for deposit into the "I Love NY Waterways" boating safety fund established pursuant to section ninety-seven-nn of state finance law.

11. Nothing contained in this section shall be deemed to exempt persons under the age of twenty-one from arrest and prosecution under section forty-nine-a of this article for an alleged violation of such section.

§ 49-c. Termination of unsafe operation.

A police officer or peace officer, acting pursuant to his or her special duties, who has reasonable cause to believe that a vessel, including a rowboat or canoe, is being operated, in his or her presence, upon the navigable waters of the state, or any tidewaters bordering on or lying within the boundaries of the county of Nassau or Suffolk, in violation of any section of this article, and that it would be so imminently hazardous to continue to operate such vessel as to be likely to cause an accident or physical injury, may direct the master or operator of such vessel to cease operating upon such waters, and to proceed immediately to dock the vessel at the nearest available safe anchorage, dock or mooring until the violation charged by such officer is finally adjudicated or until such hazardous condition is remediated or otherwise corrected.