WEST VIRGINIA CODE CHAPTER 20 ARTICLE 7

WV Legislature

§20-7-1. Chief natural resources police officer; natural resources police officers; special and emergency natural resources police officers; subsistence allowance; expenses.

(a) The division's law-enforcement policies, practices and programs are under the immediate supervision and direction of the division law-enforcement officer selected by the director and designated as chief natural resources police officer as provided in section thirteen, article one of this chapter.

(b) Under the supervision of the director, the chief natural resources police officer shall organize, develop and maintain law-enforcement practices, means and methods geared, timed and adjustable to seasonal, emergency and other needs and requirements of the division's comprehensive natural resources program. All division personnel detailed and assigned to law-enforcement duties and services under this section shall be known and designated as natural resources police officers and are under the immediate supervision and direction of the chief natural resources police officer except as otherwise provided. All natural resources police officers shall be trained, equipped and conditioned for duty and services wherever and whenever required by division law-enforcement needs. The chief natural resources police officer may also assign natural resources police officers to perform law-enforcement duties on any trail, grounds, appurtenant facility or other areas accessible to the public within the Hatfield-McCoy Recreation Area, under agreement that the Hatfield-McCoy Regional Recreation Authority, created pursuant to article fourteen of this chapter, shall reimburse the division for salaries paid to the officers and shall either pay directly or reimburse the division for all other expenses of the officers in accordance with actual or estimated costs determined by the chief natural resources police officer.

(c) The chief natural resources police officer, acting under supervision of the director, is authorized to select and appoint emergency natural resources police officers for a limited period for effective enforcement of the provisions of this chapter when considered necessary because of emergency or other unusual circumstances. The emergency natural resources police officers shall be selected from qualified civil service personnel of the division, except in emergency situations and circumstances when the director may designate officers, without regard to civil service requirements and qualifications, to meet law-enforcement needs. Emergency natural resources police officers shall exercise all powers and duties prescribed in section four of this article for full-time salaried natural resources police officers except the provisions of subdivision (8), subsection (b) of said section.

(d) The chief natural resources police officer, acting under supervision of the director, is also authorized to select and appoint as special natural resources police officers any full-time civil service employee who is assigned to, and has direct responsibility for management of, an area owned, leased or under the control of the division and who has satisfactorily completed a course of training established and administered by the chief natural resources police officer, when the action is considered necessary because of law-enforcement needs. The powers and duties of a special natural resources police officer, appointed under this provision, is the same within his or her assigned area as prescribed for full-time salaried

WV Legislature

natural resources police officers. The jurisdiction of the person appointed as a special natural resources police officer, under this provision, shall be limited to the division area or areas to which he or she is assigned and directly manages.

(e) The Director of the Division of Forestry is authorized to appoint and revoke Division of Forestry special natural resources police officers who are full-time civil service personnel who have satisfactorily completed a course of training as required by the Director of the Division of Forestry. The jurisdiction, powers and duties of Division of Forestry special natural resources police officers are set forth by the Director of the Division of Forestry pursuant to article three of this chapter and articles one-a and one-b, chapter nineteen of this code.

(f) The chief natural resources police officer, with the approval of the director, has the power and authority to revoke any appointment of an emergency natural resources police officer or of a special natural resources police officer at any time.

(g) Natural resources police officers are subject to seasonal or other assignment and detail to duty whenever and wherever required by the functions, services and needs of the division.

(h) The chief natural resources police officer shall designate the area of primary residence of each natural resources police officer, including himself or herself. Since the area of business activity of the division is actually anywhere within the territorial confines of the State of West Virginia, actual expenses incurred shall be paid whenever the duties are performed outside the area of primary assignment and still within the state.

(i) Natural resources police officers shall receive, in addition to their base pay salary, a minimum biweekly subsistence allowance for their required telephone service, dry cleaning or required uniforms, and meal expenses while performing their regular duties in their area of primary assignment in the amount of $60 per biweekly pay. This subsistence allowance does not apply to special or emergency natural resources police officers appointed under this section.

(j) After June 30, 2010, all those full-time law-enforcement officers employed by the Division of Natural Resources as conservation officers shall be titled and known as natural resources police officers. Wherever used in this code the term “conservation officer”, or its plural, means “natural resources police officer”, or its plural, respectively.

(k) Notwithstanding any provision of this code to the contrary, the provisions of subdivision (6), subsection c, section twelve, article twenty-one, chapter eleven of this code are inapplicable to pensions of natural resources police officers paid through the Public Employees Retirement System.

WV Legislature

§20-7-1a. Natural resources police officer salary increase based on length of service.

(a) Effective July 1, 2002, each natural resources police officer shall receive and be entitled to an increase in salary based on length of service, including that heretofore and hereafter served as a natural resources police officer as follows: For five years of service with the division, a natural resources police officer shall receive a salary increase of $600 per year payable during his or her next three years of service and a like increase at three-year intervals thereafter, with these increases to be cumulative. A salary increase shall be based upon years of service as of July 1 of each year and may not be recalculated until July 1 of the following year.

Conservation officers in service at the time the amendment to this section becomes effective shall be given credit for prior service and shall be paid salaries as the same length of service will entitle them to receive under the provisions hereof.

(b) This section does not apply to special or emergency natural resources police officers appointed under the authority of section one of this article.

WV Legislature

§20-7-1b. Designation of certain federal law-enforcement officers as special natural resources police officers.

The Legislature finds that it is in the mutual interest of the department and certain land management agencies of the United States to cooperate in the enforcement of state statutes and regulations within and adjacent to units of the National Park System, National Forests and U.S. Army Corps of Engineers projects located within the State of West Virginia.

Accordingly, the director of the department of natural resources may enter into a written agreement with a federal agency providing for the appointment of employees of the federal agency as special natural resources police officers and setting forth the terms and conditions within which the federal employees may exercise the powers and duties of special natural resources police officers. The terms and conditions in the agreement shall grant a special natural resources police officer appointed pursuant to the agreement the same powers and duties as prescribed for a full-time salaried natural resources police officer of the department, but shall limit a special natural resources police officer in the exercise of his or her powers and duties to areas within the boundaries of the federal units to which the officer is assigned in his or her federal employment and to situations outside the boundaries of the federal units where the exercise is for the mutual aid of natural resources police officers as set forth in the agreement.

Any federal employee whose duties involve the enforcement of the criminal laws of the United States and who possesses a valid law-enforcement certification issued by a federal land management agency which certifies the meeting of requirements at least equivalent to the law-enforcement officer training requirements promulgated pursuant to article twenty-nine, chapter thirty of this code, may be certified under the provisions of said article twenty-nine and appointed as a special natural resources police officer under the provisions of this section. Any special natural resources police officer so appointed may not receive compensation or benefits from the state or any political subdivisions thereof for the performance of his or her duties as a special natural resources police officer.

WV Legislature

§20-7-1c. Natural resources police officer, ranks, salary schedule, base pay, exceptions.

(a) Notwithstanding any provision of this code to the contrary, the ranks within the law-enforcement section of the Division of Natural Resources are colonel, lieutenant colonel, major, captain, lieutenant, sergeant, corporal, natural resources police officer first class, senior natural resources police officer, natural resources police officer and natural resources police officer-in-training. Each officer while in uniform shall wear the insignia of rank as provided by the chief natural resources police officer.

(b) Beginning on July 1, 2002, through June 30, 2011, Natural Resources Police Officers shall be paid the minimum annual salaries based on the following schedule:

ANNUAL SALARY SCHEDULE (BASE PAY)

SUPERVISORY AND NONSUPERVISORY RANKS

Natural Resources Police Officer In Training (first year until end of probation) $26,337

Natural Resources Police Officer (second year) $29,768

Natural Resources Police Officer (third year) $30,140

Senior Natural Resources Police Officer (fourth and

fifth year) $30,440

Senior Natural Resources Police Officer First Class

(after fifth year) $32,528

Senior Natural Resources Police Officer (after

tenth year) $33,104

Senior Natural Resources Police Officer (after

fifteenth year) $33,528

Corporal (after sixteenth year) $36,704

Sergeant $40,880

First Sergeant $42,968

Lieutenant $47,144

WV Legislature

Captain $49,232

Major $51,320

Lieutenant Colonel $53,408

Colonel

Beginning July 1, 2011, and continuing thereafter, Natural Resources Police Officers shall be paid the minimum annual salaries based on the following schedule:

ANNUAL SALARY SCHEDULE (BASE PAY)

SUPERVISORY AND NONSUPERVISORY RANKS

Natural Resources Police Officer in Training (first

year until end of probation) $31,222

Natural Resources Police Officer (second year) $34,881

Natural Resources Police Officer (third year) $35,277

Senior Natural Resources Police Officer (fourth and

fifth year) $35,601

Senior Natural Resources Police Officer First Class

(after fifth year) $37,797

Senior Natural Resources Police Officer (after tenth

year) $38,397

Senior Natural Resources Police Officer (after

fifteenth year) $38,833

Corporal (after sixteenth year) $42,105

Sergeant $46,401

First Sergeant $48,549

Lieutenant $52,857

Captain $55,005

WV Legislature

Major $57,153

Lieutenant Colonel $59,301

Colonel $66,000

Beginning July 1, 2017, the director may set additional annual compensation for Natural Resources Police Officers based on rank and length of service in addition to the minimum annual salaries provided in this section in an amount payable solely from the Law Enforcement Program Fund and the Special Revenue License Fund. Each Natural Resources Police Officer whose minimum salary is fixed and specified in the Annual Salary Schedule in this section is entitled to the length of service increases set forth in section one-a of this article.

In applying the salary schedules set forth in this section where salary increases are provided for length of service, Natural Resources Police Officers in service at the time the schedules become effective shall be given credit for prior service and shall be paid salaries the same length of service entitles them to receive under the provisions of this section.

(c) This section does not apply to special or emergency Natural Resources Police Officers appointed under the authority of section one of this article.

(d) Nothing in this section prohibits other pay increases as provided under section two, article five, chapter five of this code: Provided, That any across-the-board pay increase granted by the Legislature or the Governor, and any increase in the base pay for the ranks within the law-enforcement section authorized by the director, will be added to, and reflected in, the minimum salaries set forth in this section; and that any merit increases granted to an officer over and above the annual salary schedule listed in subsection (b) of this section are retained by an officer when he or she advances from one rank to another: Provided, however, That any Natural Resources Police Officer who receives an increase in compensation pursuant to the amendment and reenactment of this section in 2011 shall not receive any across-the-board pay increase granted by the Legislature or the Governor in 2011.

WV Legislature

§20-7-1d. Awarding service weapon upon retirement; disposal of service weapon when replaced due to routine wear; and furnishing uniform for burial.

(a) Upon the retirement of any full-time salaried natural resources police officer, the chief natural resources police officer shall award to the retiring natural resources police officer his or her service weapon, without charge, upon determining:

(1) That the natural resources police officer is retiring honorably with at least 25 years of recognized law-enforcement service as determined by the chief natural resources police officer; or

(2) That the natural resources police officer is retiring with less than 25 years of service based upon a determination that he or she is totally physically disabled as a result of service with the division.

(b) Notwithstanding the provisions of §20-7-1d(a) of this code, the chief natural resources police officer may not award a service weapon to any natural resources police officer who has been declared mentally incompetent by a licensed physician or any court of law, or who, in the opinion of the chief natural resources police officer, constitutes a danger to any person or the community.

(c) The disposal of law-enforcement service weapons, when replaced due to routine wear, does not fall under the jurisdiction of the agency for surplus property, within the Purchasing Division of the Department of Administration. The chief natural resources police officer may offer these surplus weapons for sale to any active or retired Division of Natural Resources law-enforcement officer, at fair market value, with the proceeds from any sales used to offset the cost of the new weapons.

(d) Upon the death of any current or honorably retired natural resources police officer, the chief natural resources police officer shall, upon request of the deceased officer’s family, furnish a full uniform for burial of the deceased officer.

(e) Notwithstanding the foregoing, this section does not apply to weapons obtained through the federal donation program operated by the West Virginia State Agency for Surplus Property.

WV Legislature

§20-7-1e. Natural resources police officers failure to perform duties; penalty; providing extraordinary law enforcement or security services by contract.

(a) Any natural resources police officer who demands or receives from any person, firm or corporation any money or other thing of value as a consideration for the performance of, or the failure to perform, his or her duties under the regulations of the chief natural resources police officer and the provisions of this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $200, or confined in jail for not more than four months, or both fined and confined.

(b) Notwithstanding any other provision of this section to the contrary, the chief natural resources police officer may contract with the public, quasi-public, military or private entities to provide extraordinary law enforcement or security services by the Division of Natural Resources when it is determined by the chief natural resources police officer to be in the public interest. The chief natural resources police officer may assign personnel, equipment or facilities, and the division shall be reimbursed for the wages, overtime wages, benefits and costs of providing the contract services as negotiated between the parties. The compensation paid to natural resources police officers by virtue of contracts provided in this section shall be paid from a special account and are excluded from any formulation used to calculate an employee's benefits. All requests for obtaining extraordinary law enforcement or security services shall be made to the chief natural resources police officer in writing and shall explain the funding source and the authority for making the request. No officer of the division is required to accept any assignment made pursuant to this subsection. Every officer assigned to duty hereunder shall be paid according to the hours and overtime hours actually worked notwithstanding that officer's status as exempt personnel under the "Federal Labor Standards Act" or applicable state statutes. Every contract entered into under this subsection shall contain the provision that in the event of public disaster or emergency where the reassignment to official duty of the officer is required, neither the division nor any of its officers or other personnel are liable for any damages incurred as the result of the reassignment. Further, any entity contracting with the Division of Natural Resources or a Natural Resources Police Officer under this section shall also agree as part of that contract to hold harmless and indemnify the state, Division of Natural Resources and its personnel from any liability arising out of employment under that contract.

The director is authorized to propose legislative rules, subject to approval by the Legislature, in accordance with chapter twenty-nine-a of this code relating to the implementation of contracts entered into pursuant to this subsection: *Provided*, That the rules expressly prohibit private employment of officers in circumstances involving labor disputes. Notwithstanding any provision to this article to the contrary, an officer or member may contract to work for a private person or entity during his or her off duty hours: *Provided, however*, That any such contract work may not be a type prohibited by this code or the rules of the agency on locations and nature of security services provided.

WV Legislature

§20-7-1f. Awarding service weapon to special natural resources police officers upon retirement; disposal of service weapon when replaced due to routine wear; furnishing uniform for burial.

(a) Upon the retirement of any special natural resources police officer selected and appointed pursuant to §20-7-1 of this code, the chief of the officer's section shall award to the retiring special natural resources police officer his or her service weapon, without charge, upon determining:

(1) That the special natural resources police officer is retiring honorably with at least 25 years of recognized special law enforcement service as determined by the chief natural resources police officer; or

(2) That the special natural resources police officer is retiring with less than 25 years of service based upon a determination that he or she is totally physically disabled as a result of service with the division.

(b) Notwithstanding the provisions of §20-7-1f(a) of this code, the section chief may not award a service weapon to any special natural resources police officer who has been declared mentally incompetent by a licensed physician or any court of law, or who, in the opinion of the chief natural resources police officer constitutes a danger to any person or the community.

(c) Upon the death of any current or honorably retired special natural resources police officer, the respective chief shall, upon request of the deceased officer's family, furnish a full uniform for burial of the deceased officer.

(d) The disposal of special natural resources police officer service weapons, when replaced due to routine wear, does not fall under the jurisdiction of the agency for surplus property, within the Division of Purchasing of the Department of Administration. The chief of the section of Parks and Recreation and the chief of the Wildlife Resources Section of the Division of Natural Resources may offer these surplus weapons for sale to any active or retired special natural resources police officer, at fair market value, with the proceeds from any sales used to offset the cost of the new weapon.

(e) Notwithstanding the foregoing, this section does not apply to weapons obtained through the federal donation program operated by the West Virginia State Agency for Surplus Property.

WV Legislature

§20-7-2. Qualifications of natural resources police officers; right of retired officer to receive complete standard uniform; right of retired officer to acquire uniform; and right of retired officer to acquire badge.

In addition to civil service qualifications and requirements, persons selected as natural resources police officers shall have reached their eighteenth birthday at the time of appointment, be in good physical condition and of good moral character, temperate in habits and may not have been convicted of a felony. Whenever possible and practicable, preference in selection of natural resources police officers shall be given honorably discharged United States Military personnel. Each natural resources police officer, before entering upon the discharge of his or her duties, shall take and subscribe to the oath of office prescribed in article IV, section 5 of the Constitution of West Virginia, which executed oath shall be filed with the director.

The director shall prescribe the kind, style and material of uniforms to be worn by natural resources police officers. Uniforms and other equipment furnished to the natural resources police officers are and remain the property of the state, except as hereinafter provided in this section.

A natural resources police officer, upon honorable retirement, is authorized to maintain at his or her own cost a complete standard uniform from the law-enforcement agency of which he or she was a member, and shall be issued an identification card indicating his or her honorable retirement from the law-enforcement agency. The uniform may be worn by the officer in retirement only on the following occasions: Police Officer's Memorial Day, Law Enforcement Appreciation Day, at the funeral of a law-enforcement officer or during any other police ceremony. The honorably retired officer is authorized to acquire a badge of the law-enforcement agency from which he or she is retired with the word "retired" placed on it.

WV Legislature

§20-7-3. Powers and duties of other law officers.

The sheriffs and constables of the several counties of the state, police officers of any city and members of the State Police are vested, within their respective jurisdictions, with all of the powers and authority of natural resources police officers without requirement of any additional oath or bond. Immediately upon making any arrest or executing any process under provisions of this chapter, each officer shall report thereon to the director.

WV Legislature

§20-7-4. Powers and duties of natural resources police officers.

(a) Natural resources police officers and other persons authorized to enforce the provisions of this chapter are under the supervision and direction of the director in the performance of their duties.

(b) Natural resources police officers have statewide jurisdiction and have authority to:

(1) Arrest on sight, without warrant or other court process, any person or persons committing a criminal offense in violation of the laws of this state, in the presence of the officer, but no arrest may be made where any form of administrative procedure is prescribed by this chapter for the enforcement of the provisions of this chapter;

(2) Carry arms and weapons as may be prescribed by the director in the course and performance of their duties, but no license or other authorization is required for this privilege;

(3) Search and examine, in the manner provided by law, any boat, vehicle, automobile, conveyance, express or railroad car, fish box, fish bucket or creel, game bag or game coat or other place in which hunting and fishing paraphernalia, wild animals, wild birds, fish, amphibians or other forms of aquatic life could be concealed, packed or conveyed whenever they have reason to believe that they would thereby secure or discover evidence of the violation of the provisions of this chapter;

(4) Execute and serve a search warrant, notice or other process of law issued under the authority of this chapter or other law relating to wildlife, forests, and all other natural resources, by a magistrate or court having jurisdiction in the same manner, with the same authority and with the same legal effect as a sheriff;

(5) Require the operator of any motor vehicle or other conveyance on or about the public highways or roadways, or in or near the fields and streams of this state, to stop for the purpose of allowing the natural resources police officers to conduct game-kill surveys;

(6) Summon aid in making arrests or seizures or in executing warrants, notices or processes, in the same manner as sheriffs;

(7) Enter private lands or waters within the state while engaged in the performance of their official duties;

(8) Arrest on sight, without warrant or other court process, subject to the limitations set forth in subdivision (1) of this section, any person or persons committing a criminal offense in violation of any law of this state in the presence of the officer on any state-owned lands and waters and lands and waters under lease by the Division of Natural Resources and all national forest lands, waters and parks and U.S. Corps of Army Engineers' properties within the boundaries of the State of West Virginia and, in addition to the authority conferred in other subdivisions of this section, execute all arrest warrants on these state and national

WV Legislature

lands, waters and parks and U.S. Corps of Army Engineers' properties, consistent with the provisions of article one, chapter sixty-two of this code;

(9) Arrest any person who enters upon the land or premises of another without written permission from the owner of the land or premises in order to cut, damage or carry away, or cause to be cut, damaged or carried away, any timber, trees, logs, posts, fruit, nuts, growing plants or products of any growing plant. Any person convicted of cutting, damaging or carrying away or causing to be cut, damaged or carried away any timber, trees, logs, posts, fruits, nuts, growing plants or products of growing plants is liable to the owner in the amount of three times the value of the timber, trees, logs, posts, fruit, nuts, growing plants or products of any growing plant, in addition to and notwithstanding any other penalties by law provided by section thirteen, article three, chapter sixty-one of this code;

(10) Make a complaint in writing before any court or officer having jurisdiction, and procure and execute the warrant, when the officer knows or has reason to believe that a person has violated a law of this state. The actions of the natural resources police officer have the same force and effect as if made by a sheriff;

(11) Serve and execute warrants for the arrest of any person and warrants for the search of any premises, buildings, properties or conveyances issued by a properly constituted authority in the same manner, with the same authority, and with the same legal effect, as a sheriff; and

(12) Do all things necessary to carry into effect the provisions of this chapter.

WV Legislature

§20-7-4a. Arrest procedure.

(a) Whenever a person is arrested for any violation of this chapter punishable as a misdemeanor and, such person is not immediately taken before a magistrate or court, the arresting officer shall prepare written notice to appear in court containing the name, address, date of birth, sex, hunting or fishing license number, if any, and social security number of such person, serial number or description of any property found in the possession of the person arrested and susceptible to use in committing the offense charged, if any, the offense charged and the time and place, when and where such person shall appear in court.

(b) The time specified in said notice to appear must be at least five days after such arrest unless the person arrested demands an earlier hearing.

(c) The place specified in said notice to appear must be before a magistrate or court within the county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense.

(d) The arrested person in order to secure release, as provided in this section, must accept a copy of the written notice prepared by the arresting officer. The officer shall deliver a copy of the notice to the person promising to appear. Thereupon, said officer shall forthwith release the person arrested from custody.

WV Legislature

§20-7-4b. Record of cases.

Every magistrate or judge of a court shall keep or cause to be kept a record of every complaint, or other legal form of charge, which alleges a violation of the provisions of this chapter or the rules and regulations promulgated thereunder, deposited with or presented to said court, and shall keep a record of every official action by said court in reference thereto, including, but not limited to, a record of every conviction, forfeiture of bail, judgment of acquittal and the amount of fine or forfeiture resulting from every said complaint or charge deposited with or presented to said court.

WV Legislature

§20-7-5. Enforcement of chapter.

The director shall be charged with the duty and responsibility of enforcing the provisions of this chapter and to this end may call upon the Attorney General, the prosecuting attorneys of the several counties, the department of public safety and all other law-enforcement officers of the state. He shall have authority to compel compliance with and to prevent violations and threatened violations of any provisions of this chapter, lawful rules and regulations promulgated hereunder, and cease and desist orders issued pursuant hereto. He may invoke the processes of any court for coercive, remedial or preventive relief by injunction, mandamus or other appropriate proceedings.

WV Legislature

§20-7-6. Prosecutions under chapter; attorney services; costs.

The director may cause complaints to be made and proceedings to be instituted and prosecuted against any violators of this chapter, without the sanction of the prosecuting attorney of the county wherein such proceedings are instituted, and in all such cases no security for costs shall be required of the director. In any unusual or emergency situation or case wherein a prosecuting attorney or the Attorney General may not be available to the director for legal services, the director may employ another attorney or other attorneys to represent the state in prosecutions and proceedings under provisions of this chapter and shall pay costs and fees for such services from department funds.

WV Legislature

§20-7-7. Conspiracy to violate chapter; withholding information; obstructing officers.

Any person who shields or conspires with another in the commission of a violation of any of the provisions of this chapter, or who, upon inquiry, withholds information from enforcement officers, or who hinders, obstructs, interferes with, or impersonates, or attempts to hinder, obstruct, interfere with or impersonate an officer in the performance of his duties shall be guilty of a misdemeanor.

WV Legislature

§20-7-8. Seizure and disposition of property used for illegal purpose.

(a) Any officer, when he or she arrests or otherwise takes a person into custody for violating any provision or provisions of this chapter, may take and impound any property found in the possession of the accused and susceptible of use in committing the offense of which the person is accused. The property includes firearms, fishing equipment, traps, boats, or any other device, appliance or conveyance, but does not include dogs. Reasonable care shall be provided in order to protect the condition of the item or items impounded.

(b) If the accused is acquitted the property seized shall be returned. If the accused is convicted and pays the fine, costs and other penalties, the property shall be returned, but if the accused fails to pay the fine and costs, the property shall be sold at public auction in a manner the director prescribes. The proceeds of the sale shall be applied toward the payment of the fine and costs. The remainder, if any, shall be paid to the owner of the seized property.

(c) Whenever a person is convicted of a violation of this chapter a second time, the property seized at the time of arrest shall in any case be declared forfeited to the state and shall be sold in the manner provided by this section.

(d) Property seized, the use of which is forbidden by this chapter, or which is unfit or unsafe for further use, shall be declared forfeited to the state and shall be disposed of by the director.

(e) Notwithstanding any provision of this section to the contrary, disposition of firearms not returned pursuant to subsection (b) above shall be solely in accordance with the provisions of article eight-a, chapter thirty-six of this code.

WV Legislature

§20-7-9. Violations of chapter generally; penalties.

Any person violating any of the provisions of this chapter or rules promulgated under the provisions of this chapter, the punishment for which is not prescribed, shall be guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than $20 nor more than $300, or confined in jail not less than 10 or more than 100 days, or be both fined and confined within the limitations aforesaid and, in the case of a violation by a corporation, every officer or agent thereof directing or engaging in such violation shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to the same penalties and punishment as herein provided: Provided, That any person violating §20-2-5(b), §20-2-7, §20-2-8, or §20-2-10 of this code shall be guilty of a misdemeanor and, upon conviction of a first offense thereof, shall be fined not less than $100 nor more than $500, or shall be confined for not less than 10 days nor more than 100 days, or both fined and confined. A person who is convicted of a second offense of violation of §20-2-5(b), §20-2-7, §20-2-8, or §20-2-10 of this code is guilty of a misdemeanor and shall be fined not less than $500 nor more than $1,000 or shall be confined for not less than 10 days nor more than 100 days, or both fined and confined. A person who is convicted of a third and subsequent offense of violation of §20-2-5(b), §20-2-7, §20-2-8, or §20-2-10 of this code is guilty of a misdemeanor, and shall be fined not less than $1,000 nor more than $1,500, or shall be confined for not less than 10 days nor more than 100 days, or both fined and confined: Provided, however, That any person who is in violation of §20-2-27 of this code as a result of their failure to have a valid Class E nonresident hunting and trapping license, as defined by §20-2-42d of this code, or a valid Class EE nonresident bear hunting license, as defined by §20-2-42e of this code, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $250 nor more than $500, or confined in jail not less than 10 nor more than 100 days, or both fined and confined: Provided further, That any person who is in violation of §20-2-27 of this code as a result of their failure to have a Class F nonresident fishing license, as defined by §20-2-42f of this code, shall be guilty of a misdemeanor and, upon conviction thereof, fined not less than $100 nor more than $300 or confined in jail not less than 10 nor more than 100 days, or both fined and confined: And provided further, That any person violating any parking or speeding regulations as promulgated by the director on any state parks, state forests, public hunting and fishing areas, and all other lands and waters owned, leased, or under the control of the Division of Natural Resources shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $2 nor more than $100 or confined in jail not more than 10 days, or both fined and confined.

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§20-7-10. Justice of peace jurisdiction under chapter.

Justices of the peace and all other courts established in lieu thereof or in supplementation thereto shall have jurisdiction of all misdemeanor offenses arising under the provisions of this chapter concurrent with the jurisdiction of circuit and other criminal courts.

WV Legislature

§20-7-11. Motorboats and other terms defined.

As used in this section and subsequent sections of this article, unless the context clearly requires a different meaning:

(1) "Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water;

(2) "Motorboat" means any vessel propelled by an electrical, steam, gas, diesel, or other fuel propelled or driven motor, whether or not the motor is the principal source of propulsion, but does not include a vessel which has a valid marine document issued by the Bureau of Customs of the United States government or any federal agency successor thereto;

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

(4) "Commissioner" means the Commissioner of the Division of Motor Vehicles;

(5) "Director" means the Director of the Division of Natural Resources;

(6) "Personal watercraft" means a small vessel of less than 16 feet in length which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel. For purposes of this article, the term "personal watercraft" also includes "specialty prop-crafts" which are vessels similar in appearance and operation to a personal watercraft but which are powered by an outboard motor or propeller driven motor; and

(7) "State of principal operation" means the state in whose waters a vessel is or will be used, operated, navigated, or employed more than on the waters of any other state during a calendar year.

wvlegislature

§20-7-12. Motorboat identification numbers required; application for numbers; fee; displaying; reciprocity; change of ownership; conformity with United States regulations; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.

Every motorboat, as defined in this section, operating upon public waters whose principal operation is within the territorial limits of this state shall be numbered as provided in this section:

(a) The owner of each motorboat requiring numbering by this state shall file an application for a number with the commissioner on forms approved by the Division of Motor Vehicles. The application shall be signed by the owner of the motorboat and shall be accompanied by the appropriate fee for a three-year registration period if the motorboat is propelled by a motor of three or more horsepower or 70 or more pounds of thrust. There is no fee for motorboats propelled by motors of less than three horsepower or less than 70 pounds of thrust. The fee schedule for a three-year registration period is as follows, and may be prorated by the commissioner for periods of less than three years:

(1) Class A motorboats less than 16 feet in length, $30;

(2) Class 1 motorboats 16 feet or over and less than 26 feet in length, $45;

(3) Class 2 motorboats 26 feet or over and less than 40 feet in length, $60; and

(4) Class 3 motorboats 40 feet in length or over, $75.

All fees, including those received under §20-7-12(b) of this code, shall be deposited in the State Treasury. All moneys deposited pursuant to this section and credited to the Division of Motor Vehicles and 50 percent of all fees collected thereafter shall be credited to the State Road Fund. The remaining 50 percent shall be credited to the Division of Natural Resources and shall be used and paid out upon order of the director solely for the enforcement and safety education of the state boating system.

Upon receipt of the application in approved form, the commissioner shall enter the application upon the records of the division and issue to the applicant a number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in the manner prescribed by rules of the commissioner in order that it is clearly visible. The owner shall maintain the number in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat for which it is issued, whenever the motorboat is in operation.

(b) To permit a motorboat sold to a purchaser by a dealer to be operated pending receipt of the certificate of number from the commissioner, the commissioner may deliver to dealers temporary certificates of number to in turn be issued to purchasers of motorboats, upon

WV Legislature

application by the dealer and payment of $1 for each temporary certificate. Every person who is issued a temporary certificate by a dealer shall, under the provisions of §20-7-12(a) of this code, apply for a certificate of number no later than 10 days from the date of issuance of the temporary certificate. A temporary certificate expires upon receipt of the certificate, upon rescission of the contract to buy the motorboat in question, or upon the expiration of 40 days from the date of issuance, whichever occurs first. It is unlawful for any dealer to issue any temporary certificate knowingly containing any misstatement of fact or knowingly to insert any false information on the face of the temporary certificate. The commissioner may by rule prescribe additional requirements upon the dealers and purchasers that are consistent with the effective administration of this section.

(c) The owner of any motorboat already covered by a number in full force and effect which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state shall record the number prior to operating the motorboat on the waters of this state in excess of the 60-day reciprocity period provided for in 33 C.F.R. § 173.17 et seq. once its state of principal operation changes to the State of West Virginia. The recordation shall be in the manner and pursuant to procedure required for the award of a number under §20-7-12(a) of this code, except that the commissioner shall not issue an additional or substitute number.

(d) If the ownership of a motorboat changes, the new owner shall file a new application form with the required fee with the commissioner who shall award a new certificate of number in the same manner as provided for in an original award of number.

(e) If an agency of the United States government has in force an overall system of identification numbering for motorboats within the United States, the numbering system employed pursuant to this article by the Division of Motor Vehicles shall be in conformity with the federal system.

(f) The license is valid for a maximum period of three years. If at the expiration of that period ownership has remained unchanged, the commissioner shall, upon application and payment of the proper fee, grant the owner a renewal of the certificate of number for an additional three-year period.

(g) The owner shall furnish the commissioner notice of the transfer of any part of an interest, other than the creation of a security interest, in a motorboat numbered in this state pursuant to §20-7-12(a) and §20-7-12(b) of this code or of the destruction or abandonment of the motorboat within 15 days of the transfer of interest, destruction, or abandonment. The transfer, destruction, or abandonment shall terminate the certificate of number for the motorboat, except that in the case of a transfer of a part interest which does not affect the owner’s right to operate the motorboat, the transfer shall not terminate the certificate of number.

(h) Any holder of a certificate of number shall notify the commissioner within 15 days if his or her address no longer conforms to the address appearing on the certificate and shall, as a

WV Legislature

part of the notification, furnish the commissioner with his or her new address. The commissioner may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.

(i) An owner shall not paint, attach or otherwise display a number other than the number awarded to a motorboat or granted reciprocity pursuant to this article on either side of the bow of the motorboat.

(j) The commissioner shall on or before August 30 of each year forward to the assessor of each county a list of the names and addresses of all persons, firms, and corporations owning vessels and operating the vessels or other boats registered with the commissioner under the provisions of this article. In furnishing this information to each county assessor, the commissioner shall include information on the make and model of the vessels and other equipment required to be registered for use by the owner or operator of the boats under the provisions of this article: Provided, That the commissioner is not required to furnish the information to the assessor if the true and actual value of the vessel does not exceed $500 or the cost of the motor does not exceed $250.

(k) No person may operate an unlicensed motorboat upon any waters of this state without first acquiring a certificate of number or license as required by law.

WV Legislature

§20-7-12a. Payment of personal property taxes prerequisite to application for certificate or renewal of number; duties of assessors; schedule of motorboat values.

Certificates of number and renewals therefor shall not be issued or furnished by the Division of Motor Vehicles, or any other officer charged with the duty, unless the applicant therefor furnishes the receipt hereinafter provided to show full payment of the personal property taxes for the current calendar year or the calendar year which immediately precedes the calendar year in which application is made on all motorboats which were listed with the Division of Motor Vehicles in the applicant's name on the tax day for the current or former calendar year or the division has received verification of full payment of personal property taxes by electronic means. If the applicant contends that any motorboat so listed was not subject to personal property taxation for that year, he or she shall furnish the information and evidence as the Commissioner of Motor Vehicles may require to substantiate his or her contention.

The assessor shall require any person having a duty to make a return of property for taxation to him or her to furnish information identifying each motorboat subject to the numbering provisions of this article. When the property taxes on the motorboat have been paid, the officer to whom the payment was made shall deliver to the person paying the taxes a written or printed receipt therefor and shall retain for his or her records a duplicate of the receipt. The assessor and sheriff, respectively, shall see that the assessment records and the receipts contain information adequately identifying the motorboat as registered under the provisions of this article. The officer receiving payment shall sign each receipt in his or her own handwriting.

The assessors shall commence their duties hereunder during the tax year 1989 and the Division of Motor Vehicles shall commence its duties hereunder as of January 1, 1990.

The State Tax Commissioner shall annually compile a schedule of motorboat values, based on the lowest values shown in a nationally accepted used motorboat guide, which schedule shall be furnished to each assessor and shall be used by him or her as a guide in placing the assessed values on all motorboats in his or her county.

WV Legislature

§20-7-12b. Boating safety education certificate.

(a) Except as otherwise provided in subsection (c) of this section, beginning on January 1, 2001, no person born on or after December 31, 1986, may operate a motorboat or personal watercraft on any waters of this state without first having obtained a certificate of boating safety education from this or any other state, which certificate was obtained by satisfactorily completing a course of instruction in boating safety education administered by the United States coast guard auxiliary; the United States power squadron; the West Virginia Division of Natural Resources; any person certified to teach the course administered by West Virginia natural resources boating safety education section personnel; or any person authorized to teach the course prescribed by the national association of state boating law administrators in this or any other state.

(b) Any person who is subject to subdivision (a) of this section shall possess the certificate of boating safety education when operating a motorboat or personal watercraft on the waters of this state and shall show the certificate on demand of any West Virginia natural resources police officers or other law-enforcement officer authorized to enforce the provisions of this chapter.

(c) The following persons are exempt from the requirements of subsection (a) of this section:

(1) A person who is a nonresident of this state and who is visiting the state for sixty days or less in a motorboat or personal watercraft from another state if that person:

(A) Is fifteen years of age or older; and

(B) Has been issued a boating safety education certificate by his or her state of residence in accordance with the criteria recommended by the national association of state boating law administration.

(2) A person who is visiting the state for ninety days or less in a motorboat or personal watercraft from a country other than the United States;

(3) A person who is operating a motorboat or personal watercraft in connection with commercial purposes; and

(4) A person who is operating a motorboat or personal watercraft which was purchased by the person within the previous forty-five-day period and who has not been previously charged with a violation of any provision of this chapter involving the use or registration of a motorboat or personal watercraft.

(d) The division shall issue a certificate of boating safety education to a person who:

(1) Passes any course prescribed in subsection (a) of this section; or

(2) Passes a boating safety equivalency examination administered by persons authorized to

WV Legislature

administer a boating safety education course as outlined in subsection (a) of this section. Upon request, the division shall provide, without charge, boating safety education materials to persons who plan to take the boating safety equivalency examination.

(e) No person who owns a motorboat or personal watercraft or who has charge over a motorboat or personal watercraft may authorize or knowingly permit it to be operated in violation of subsection (a) of this section.

(f) The provisions of subsection (a) of this section may only be enforced as a secondary action when the officer detains an operator of a motorboat or personal watercraft upon probable cause of a violation of another provision of this code or rules adopted in accordance with the code. A person may not be taken immediately to a court or detention facility solely for a violation of subsection (a) of this section.

WV Legislature

§20-7-13. Motorboat classification; required lights and equipment; rules and regulations; pilot rules.

(a) Vessels on the waters of this state are subject to lighting requirements, equipment requirements, and pilot and navigation rules, as contained in the federal navigation laws and rules promulgated by the United States Coast Guard pursuant to 33 C.F.R. Subchapter E et seq. Inland Navigation Rules, as authorized by 46 U.S.C. §4302.

(b) Vessels on the waters of this state are subject to ventilation requirements as contained in federal navigation laws and rules promulgated by the United States Coast Guard pursuant to 46 C.F.R. §25.40 et seq., as authorized by 6 U.S.C. §4302.

(c) The director may promulgate rules in accordance with the provisions of §29A-3-1 et seq. of this code modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation laws or with the navigation rules promulgated by the United States Coast Guard.

(d) The director may promulgate rules in accordance with the provisions of §29A-3-1 et seq. of this code, pilot rules in conformity with the pilot rules contained in the federal navigation laws, or the navigation rules promulgated by the United States Coast Guard for the operation of vessels on the waters of this state.

(e) No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

WV Legislature

§20-7-14. Motorboats exempt from numbering.

A motorboat shall not be required to be numbered under this article if it is:

(1) Already covered by a number in full force and effect which has been awarded to it pursuant to federal law or a federally approved numbering system of another state: Provided, That the boat shall be registered in the state of principal operation;

(2) A motorboat from a country other than the United States temporarily using the waters of this state; or

(3) A motorboat used exclusively for racing while participating in races, and the preparation therefor, which have been authorized pursuant to the provisions of §20-7-20 of this code.

WV Legislature

§20-7-15. Dealers' and manufacturers' certificate of number; applications and fees.

Dealers' and manufacturers' certificate of number, containing the word "manufacturer" or "dealer," as appropriate, may be used in connection with the operation of any motorboat in the possession of such dealer or manufacturer, when the boat is being used for demonstrative purposes. Application for a dealer's or manufacturer's certificate of number shall be made upon a form provided by the commissioner and shall contain such information as may be required by the commissioner. Upon receipt of the application and upon payment of a fee of $5 for the initial certificate of number, and $5 for each additional certificate of number, the commissioner shall issue to the applicant a manufacturer's or dealer's certificate of number which shall contain the word "manufacturer" or "dealer" in lieu of a description of the boat. The manufacturer or dealer may have the number awarded to him printed upon or attached to a removable sign or signs to be temporarily but firmly mounted upon or attached to the boat being demonstrated, so long as the display meets the requirements of the provisions of this article and regulations issued hereunder.

WV Legislature

§20-7-16. Boat liveries.

(a) The owner or operator of a boat livery or rental facility shall cause to be kept a record of the name and address of the person or persons hiring any vessel including personal watercrafts which is designed or permitted by him or her to be operated as a motorboat, identification number thereof, and the departure date and time, and the expected time of return. The record shall be preserved for at least six months.

(b) Neither the owner or operator of a boat livery or rental facility, nor his or her agent or employee, shall permit any motorboat, personal watercraft or any vessel designed or permitted by him or her to be operated as a motorboat or personal watercraft to depart from his or her premises unless it shall have been provided, either by owner or renter, with the equipment required pursuant to section thirteen of this article and any rules made pursuant thereto.

(c) The owner or operator of a boat livery or rental facility, or his or her agent or employee, shall provide boating safety orientation for all persons that rent any vessel, including personal watercrafts, unless that person holds a certificate as required by section twelve-b, article seven of this chapter. The owner of a boat livery or rental facility, or his or her agent or employee, shall also provide to the operator or operators in print, prior to rental, the operational characteristics of personal watercrafts.

(d) The owner or operator of a boat livery or rental facility, or his or her agent or employee, may not lease, hire or rent a personal watercraft to any person under eighteen years of age.

(e) The owner or operator of a boat livery or rental facility, or his or her agent or employee, shall provide to the operator or operators of rental vessels, boats or personal watercrafts, in print, all pertinent boating rules including, but not limited to, those rules that may be peculiar to the area of the rental, such as no-wake zones, restricted areas, channel markers, water hazard markers and swimming zones.

(f) The owner or operator of a boat livery or rental facility shall carry liability insurance of at least $300,000 and possess the license and surety bond as required by section twenty-three-d, article two of this chapter.

WV Legislature

§20-7-17. Motorboat muffling.

The exhaust of every internal combustion engine used on any motorboat shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner. The use of cutouts is prohibited, except for motorboats competing in a regatta or boat race approved as provided in section twenty of this article, and for such motorboats while on trial runs during a period not to exceed seventy-two hours immediately preceding such regatta or race, and for such motorboats while competing in official trials for speed records during a period not to exceed seventy-two hours immediately following such regatta or race.

WV Legislature

§20-7-18. Care in handling watercraft; duty to render aid after a collision, accident, or casualty; accident reports.

(a) No person shall operate a motorboat, jet ski, or other motorized vessel or manipulate any water skis, surfboard, or similar device in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(b) No person shall operate any motorboat, jet ski, or other motorized vessel, or manipulate any water skis, surfboard, or similar device while under the influence of alcohol or a controlled substance or drug, under the combined influence of alcohol and any controlled substance or any other drug, or while having an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight.

(c) The operator of a vessel involved in a collision, accident, or other casualty, so far as he or she can do so without serious danger to his or her own vessel, crew, and any passengers, to render to other persons affected by the collision, accident, or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty. The operator shall also give his or her name, address, and identification of his or her vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty.

(d) The operator of a vessel involved in a collision, accident, or other casualty shall file an accident report with the director if the incident results in a loss of life, in a personal injury that requires medical treatment beyond first aid or in excess of $2,000 damage to a vessel or other property. The report shall be made on such forms and contain information as prescribed by the director. Upon a request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the director pursuant to this subsection shall be transmitted to the official or agency.

WV Legislature

§20-7-18a. Homicide by operation of motorized watercraft; aggravated homicide by operation of motorized watercraft; penalties; suspension of privileges to operate a motorboat or other motorized vessel upon conviction.

(a) When the death of any person, including an embryo or fetus as defined in §61-2-30 of this code, other than the person operating the motorboat, jet ski, or other motorized vessel occurs within one year as a proximate result of injury caused by operating any motorboat, jet ski, or other motorized vessel anywhere in this state by any person in reckless disregard for the safety of others, the person operating the motorboat, jet ski, or other motorized vessel is guilty of homicide by operation of motorized watercraft.

(b) Any person convicted of homicide by operation of motorized watercraft is guilty of a misdemeanor and upon conviction, shall be fined not less than $1,000 nor more than $10,000, confined in jail for not more than one year, or both fined and confined.

(c) Notwithstanding the provisions of this section, when the death of a person, including an embryo or fetus as defined in §61-2-30 of this code, other than the person operating the motorboat, jet ski, or other motorized vessel occurs within one year as the proximate result of injury caused by the operation of any motorboat, jet ski or other motorized vessel in this state in deliberate disregard for the safety of others, the person so operating the motorboat, jet ski, or other motorized vessel is guilty of the felony offense of aggravated homicide by use of motorized watercraft and upon conviction he or she shall be fined not more than $20,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(d) For the purposes of this section, a person acts with deliberate disregard for the safety of others if he or she has knowledge of facts or intentionally disregards facts that create high probability of injury to the safety or others and:

(1) deliberately proceeds to act in conscious or intentional disregard of the high degree of probability of injury to the safety of others; or

(2) deliberately proceeds to act with indifference to the high probability of injury to or the safety of others;

(e) The director shall suspend the privilege to operate a motorboat or other motorized vessel in this state for a period of five years from the date of conviction.

WV Legislature

§20-7-18b. Operating under influence of alcohol, controlled substances or drugs; penalties.

(a) Any person who:

(1) Operates a motorboat, jet ski or other motorized vessel in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) When so operating does any act forbidden by law or fails to perform any duty imposed by law in the operating of the motorboat, jet ski or other motorized vessel, which act or failure proximately causes the death of any person within one year next following the act or failure; and

(3) Commits the act or failure in reckless disregard of the safety of others, and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death, is guilty of a felony and, upon conviction thereof, shall be imprisoned in the state correctional facility for not less than one nor more than ten years and shall be fined not less than $1,000 nor more than $3,000.

(b) Any person who:

(1) Operates a motorboat, jet ski or other motorized vessel in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) When so operating does any act forbidden by law or fails to perform any duty imposed by

WV Legislature

law in the operating of the motorboat, jet ski or other motorized vessel, which act or failure proximately causes the death of any person within one year next following the act or failure, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than ninety days nor more than one year and shall be fined not less than $500 nor more than $1,000.

(c) Any person who:

(1) Operates a motorboat, jet ski or other motorized vessel in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) When so operating does any act forbidden by law or fails to perform any duty imposed by law in the operating of the motorboat, jet ski or other motorized vessel, which act or failure proximately causes bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than $200 nor more than $1,000.

(d) Any person who:

(1) Operates a motorboat, jet ski or other motorized vessel in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county

WV Legislature

or regional jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than $100 nor more than $500.

(e) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, operates a motorboat, jet ski or other motorized vessel in this state, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than $100 nor more than $500.

(f) Any person who:

(1) Knowingly permits his or her motorboat, jet ski or other motorized vessel to be operated in this state by any other person who is:

(A) Under the influence of alcohol; or

(B) Under the influence of any controlled substance; or

(C) Under the influence of any other drug; or

(D) Under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not more than six months and shall be fined not less than $100 nor more than $500.

(g) Any person who knowingly permits his or her motorboat, jet ski or other motorized vessel to be operated in this state by any other person who is an habitual user of narcotic drugs or amphetamine or any derivative thereof, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not more than six months and shall be fined not less than $100 nor more than $500.

(h) Any person under the age of twenty-one years who operates a motorboat, jet ski or other motorized vessel in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, shall, for a first offense under this subsection, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $100. For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for twenty-four hours, and shall be fined not less than $100 nor more than $500.

WV Legislature

A person arrested and charged with an offense under the provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (i) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(i) Any person who:

(1) Operates a motorboat, jet ski or other motorized vessel in this state while:

(A) He or she is under the influence of alcohol; or

(B) He or she is under the influence of any controlled substance; or

(C) He or she is under the influence of any other drug; or

(D) He or she is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He or she has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) The person when so operating has on or within the motorboat, jet ski or other motorized vessel one or more other persons who are unemancipated minors who have not reached their sixteenth birthday, shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than two days nor more than twelve months, which jail term shall include actual confinement of not less than forty-eight hours, and shall be fined not less than $200 nor more than $1,000.

(j) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section, for the second offense under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for a period of not less than six months nor more than one year, and the court may, in its discretion, impose a fine of not less than $1,000 nor more than $3,000.

(k) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section shall, for the third or any subsequent offense under this section, be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than three years, and the court may, in its discretion, impose a fine of not less than $3,000 nor more than $5,000.

(l) For purposes of subsections (j) and (k) of this section relating to second, third and subsequent offenses, the following types of convictions shall be regarded as convictions under this section:

(1) Any conviction under the provisions of subsection (a), (b), (c), (d), (e) or (f) of this section for an offense which occurred on or after the effective date of this section;

WV Legislature

(2) Any conviction under the provisions of subsection (a) or (b) of this section for an offense which occurred within a period of five years immediately preceding the date of the offense; and

(3) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b), (c), (d), (e), (f) or (g) of this section, which offense occurred after the effective date of this section.

(m) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time periods for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. The warrant or indictment or information shall set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final.

(n) The fact that any person charged with a violation of subsection (a), (b), (c), (d) or (e) of this section, or any person permitted to operate as described under subsection (f) or (g) of this section, is or has been legally entitled to use alcohol, a controlled substance or a drug shall not constitute a defense against any charge of violating subsection (a), (b), (c), (d), (e), (f) or (g) of this section.

(o) For purposes of this section, the term "controlled substance" shall have the meaning ascribed to it in chapter sixty-a of this code.

(p) The sentences provided herein upon conviction for a violation of this article are mandatory and may not be subject to suspension or probation: Provided, That the court may apply the provisions of article eleven-a, chapter sixty-two of this code to a person sentenced or committed to a term of one year or less. An order for home detention by the court pursuant to the provisions of article eleven-b of said chapter may be used as an alternative sentence to any period of incarceration required by this section.

WVLegislature

§20-7-18c. Implied consent to test; administration at direction of law-enforcement officer.

Any person who operates a motorboat, jet ski or other motorized vessel in this state shall be deemed to have given his or her consent by the operation thereof, to a preliminary breath analysis and a secondary chemical test of either his or her blood, breath or urine for the purposes of determining the alcoholic content of his or her blood. A preliminary breath test and the secondary chemical test of blood, breath or urine and the results of the tests may be designated, administered, processed, interpreted and used in the same manner as tests designated and administered in accordance with the provisions of article five, chapter seventeen-c of this code.

WV Legislature

§20-7-18d. Operation of personal watercrafts.

(a) No person under the age of 15 may operate a personal watercraft on the waters of this state: Provided, That a person that has attained the age of 12 may operate a personal watercraft if a person 18 years of age or older is aboard the personal watercraft.

(b) A person may not operate a personal watercraft unless each person on board or being towed behind is wearing a personal flotation device defined and approved by the United States Coast Guard pursuant to 33 C.F.R. §175.13 2014 et seq. as authorized by 46 U.S.C. §4302. Inflatable personal flotation devices do not meet the requirements of this section.

(c) A person operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch must attach the lanyard to his or her person, clothing, or personal flotation device as appropriate for the specific vessel.

(d) A person may not operate a personal watercraft at any time between the hours of sunset and sunrise. However, an agent or employee of a fire rescue, emergency rescue unit, or law-enforcement division is exempt from this subsection while performing his or her official duties.

(e) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property constitute reckless operation of a vessel and include, but are not limited to:

(1) Weaving through congested traffic;

(2) Jumping the wake of another vessel unreasonably or unnecessarily close to the other vessel or when visibility around the other vessel is obstructed or restricted;

(3) Becoming airborne or completely leaving the water while crossing the wake of another vessel within 100 feet of the vessel creating the wake;

(4) Operating at a greater than slow or no-wake speed within 100 feet of an anchored or moored vessel, shoreline, dock, pier, swim float, marked swim areas, swimmers, surfers, persons engaged in angling, or any manually powered vessel;

(5) Operating contrary to navigation rules including following too closely to another vessel, including another personal watercraft. For the purpose of this subdivision, “following too closely” is construed as a proceeding in the same direction and operating at a speed in excess of 10 miles per hour within 100 feet to the rear or 50 feet to the side of another vessel which is underway, unless said vessels are operating in a narrow channel, in which case the personal watercraft may operate at the speed and flow of the other vessel traffic within the channel.

WV Legislature

§20-7-19. Water skiing and surfboarding.

(a) No person shall operate a vessel on any waters of this state towing a person or persons on water skis, surfboard, or similar device, nor shall any person engage in water skiing, surfboarding, or similar activity between sunset and sunrise.

(b) The provisions of §20-7-19(a) of this code do not apply to a performer engaged in a professional exhibition or a person or persons engaged in an activity authorized under §20-7-20 of this code.

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

WV Legislature

§20-7-19a. Towing water skiers and towables.

(a) No person may operate a personal watercraft towing another person on water skis or other towables unless the personal watercraft has, on board, in addition to the operator, a rear-facing observer, who monitors the progress of the person or persons being towed. This rear-facing observer must be at least twelve years of age.

(b) No person may operate a personal watercraft towing another person on water skis or other towables unless the total number of persons operating, observing and being towed does not exceed the specified number of passengers as identified by the manufacturer as the maximum safe load for the vessel.

WV Legislature

§20-7-20. Regattas, races and exhibitions; applications and permits.

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

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

WV Legislature

§20-7-20a. Personal watercraft operation and towing exemptions.

(a) The provisions of sections eighteen-d and nineteen-a do not apply to a performer engaged in a professional exhibition or a person engaging in an officially sanctioned regatta, race, marine parade, tournament, exhibition, or water safety demonstration.

(b) The provisions of sections eighteen-d and nineteen-a do not apply to a person who holds a valid master's, mate's, or operator's license issued by the United States Coast Guard while performing his or her official duties.

WV Legislature

§20-7-21. Responsibility of owner, etc., for incapable operators of motorboats.

No person who is the owner of any motorboat, or has such in his charge or control, shall act or permit the same to be operated by any person who, by reason of any physical or mental disability, is incapable of operating such motorboat under all the prevailing circumstances.

WV Legislature

§20-7-22. General rules and regulations for motorboating; special rules.

The director is hereby authorized and empowered to prescribe and to enforce:

(a) General rules and regulations to be observed in the operation or navigation of motorboats upon, over or through the waters of this state which he shall deem necessary for the public health or safety of persons or property on or in such waters, or for the preservation of all forms of useful aquatic life, particularly as to speed, running, lights, signals, courses, channels, rights-of-way, and the disposal of oil, gas, gasoline or other wastes from such boats;

(b) Special rules and regulations for such particular, artificial or natural areas of water, for further limiting, restricting or prohibiting the operation or navigation of motorboats thereon to protect the public health or to protect and preserve useful aquatic life.

WV Legislature

§20-7-22a. Agency rule making for personal watercrafts.

The director of the Division of Natural Resources shall propose rules, including the personal watercraft safety orientation requirements for livery owners and operators, for legislative approval in accordance with the provisions of subdivision thirty, section seven, article one of this chapter and section one, article one, chapter twenty-nine-a of this code which effectuate the contents of sections eleven, sixteen, eighteen-d, nineteen-a and twenty-a of this article.

WV Legislature

§20-7-23. Local rules.

(a) The provisions of this article, and of other applicable laws of this state, shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this state, or when any activity regulated by this article shall take place thereon, but nothing in this article shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of this article, amendments thereto or rules promulgated thereunder: Provided, That such ordinances or local laws shall be operative only so long as to the extent that they continue to be identical to provisions of this article, amendments thereto or rules promulgated thereunder.

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

(c) The director is hereby authorized to promulgate special rules with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this state.

(d) The director shall promulgate emergency legislative rules and legislative rules pursuant to §29A-3-1 *et seq*. of this code providing for the operation of motorboats with motors greater than 10 horsepower, only in a manner where no wake is created on the Upper Mud River Lake.

WV Legislature

§20-7-24.

Repealed.

Acts, 2005 Reg. Sess., Ch. 199.

WV Legislature

§20-7-25.

Repealed.

Acts, 2005 Reg. Sess., Ch. 199.

WV Legislature

§20-7-26.

Repealed.

Acts, 2005 Reg. Sess., Ch. 199.

WV Legislature

§20-7-27.

Repealed.

Acts, 2005 Reg. Sess., Ch. 199.

WV Legislature

§20-7-28.

Repealed.

Acts, 2001 Reg. Sess., Ch. 193.

WV Legislature

§20-7-29.

Repealed.

Acts, 2005 Reg. Sess., Ch. 199.

WV Legislature