

HOUSE BILL REPORT

SSB 5437

As Reported by House Committee On:
Public Safety
Appropriations Subcommittee on General Government

Title: An act relating to boating safety.

Brief Description: Regarding boating safety.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Padden, Hargrove, Roach, Kline, Sheldon, Pearson and Chase).

Brief History:

Committee Activity:

Public Safety: 3/21/13, 4/3/13 [DPA];

Appropriations Subcommittee on General Government: 4/4/13 [DPA(APPG w/o PS)].

**Brief Summary of Substitute Bill
(As Amended by Committee)**

- Makes it a gross misdemeanor offense (instead of a misdemeanor) to operate a vessel under the influence of alcohol, marijuana, or any drug.
- Provides that any person who operates a vessel is deemed to have given consent to a breath or blood test when an arresting officer has reasonable grounds to believe the person was operating the vessel while under the influence of alcohol, marijuana, or any drug.
- Provides that a person, believed to have committed certain boating violations, could be issued an infraction if he or she refuses to take the breath or blood test upon the request of a police officer.
- Establishes specific boating safety criteria for any person who has vessels for rent, lease, charter, or use and makes a violation of such criteria a civil infraction unless it is the person's third violation, in which case it is a misdemeanor offense.

HOUSE COMMITTEE ON PUBLIC SAFETY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass as amended. Signed by 11 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Holy, Hope, Moscoso, Pettigrew, Ross and Takko.

Staff: Yvonne Walker (786-7841).

Background:

Boating Under the Influence.

A person can commit Operating a Vessel under the Influence of intoxicating liquor or any drug (often called boating under the influence (BUI)) if the person operates a vessel with a blood or breath alcohol concentration of .08 or higher or is under the influence of or affected by liquor or any drug. A BUI offense is punishable as a misdemeanor offense. A misdemeanor offense is punishable by a sentence of up to 90 days in jail or a maximum fine of \$1,000, or both imprisonment and a fine. The court may also order the defendant to pay restitution for any damages or injuries resulting from the offense.

A police officer has the authority to arrest a person when he or she has probable cause to believe such person is operating a vessel in a reckless manner or while under the influence of intoxicating liquor or any drug. An arresting officer must administer a field sobriety test when circumstances permit. The fact that any person is or has been entitled to use a drug under the laws of this state does not constitute a defense. A person cited for a BUI offense may upon request be given a breath test for breath alcohol or such person may request to have a blood test taken for analysis.

Boating Safety.

Generally, any Washington resident operating a boat in Washington must take a boating safety course. Upon completion of the course, the Parks and Recreation Commission (Commission) will issue the person a boater education card.

Under the Public Recreational Lands statute, any person who provides a motor vessel for rent in Washington must require that the renter and all operators of the rental motor vessel, who are required to have the Commission-issued boater education card, show proof of possession of the card before renting a motor vessel. Alternatively, when the person who rents the motor vessel and all operators of the rented motor vessel do not possess the Commission-issued boater education card (such as boaters visiting from out-of-state), the rental agent must ensure that the person who rents the motor vessel and all operators of the craft: (1) review, initial, and sign a motor vessel safety operating and equipment checklist in the presence of the rental agent before they may operate the rental motor vessel; and (2) retain the issued copy of the motor vessel safety operating and equipment checklist on board while operating the motor vessel.

A "vessel" includes every description of watercraft on the water, other than a seaplane, used or capable of being used as a means of transportation on the water. However, it does not include inner tubes, air mattresses, sailboards, and small rafts, flotation devices, or toys customarily used by swimmers.

Summary of Amended Bill:

Boating Under the Influence.

A BUI offense (operating a vessel while under the influence of alcohol, marijuana or any drug) is a gross misdemeanor offense. A person is considered under the influence if, within two hours of operating a vessel, the person has: (1) a blood or breath alcohol concentration of 0.08 percent or higher; (2) a tetrahydrocannabinol (THC) concentration of 5.0 nanograms per milliliter or higher; (3) the person is under the influence of or affected by intoxicating liquor, marijuana, or any drug; or (4) the person is under the combined influence of or affected by intoxicating liquor, marijuana, and any drug.

Any person who operates a vessel is deemed to have given consent to a test of the person's breath or blood to determine the alcohol concentration, THC concentration, or presence of any drug in the person's breath or blood when arrested for any offense, if the arresting officer has reasonable grounds to believe the person was operating a vessel while under the influence of alcohol, marijuana, or any drug. The officer must warn such person that upon refusal to take the test, he or she will be issued a Class 1 civil infraction with a maximum penalty and default amount of \$1,000. The refusal is not admissible into evidence at any subsequent criminal proceeding.

A police officer may obtain a search warrant for a person's breath or blood for a BUI violation. A blood test must be administered if the officer has reasonable grounds to believe that the person is under the influence of a drug, or if the person is incapable of providing a breath sample due to physical injury, physical incapacity, or other physical limitation, or if the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility.

A law enforcement officer investigating the scene of a motor vessel accident may arrest the operator of the involved motor vessel if there is probable cause to believe that the operator has committed, in connection with the accident, a criminal boating safety violation. A law enforcement officer investigating the scene of a motor vessel accident may issue a citation to the operator of the involved motor vessel if there is probable cause to believe that the operator has committed, in connection with the accident, a boating infraction. If a vessel does not contain the required safety equipment, the owner or the operator, or both, may be cited for an infraction or charged with an appropriate crime.

Boating Safety.

No person, other than fishing guides, charter boat operators, or paid whitewater river outfitters or guides, who has vessels for hire may rent, lease, charter, or permit the use of a vessel, unless the person:

- displays the vessel registration numbers and a valid decal on the vessel hull;
- keeps a copy of the vessel registration certificate aboard the vessel;
- displays a carbon monoxide decal on the vessel, if the vessel is motor-driven and is not a personal watercraft;
- provides a copy of the rental agreement to be kept aboard during the rental, lease, charter, or use period for vessels required to be registered;
- ensures that the vessel, if motor-propelled, meets the muffler or underwater exhaust system requirement;

- outfits the vessel with the quantity and type of personal floatation devices required for the number and ages of the people who will use the vessel;
- explains the personal floatation device requirements to the person renting, leasing, chartering, or otherwise using the vessel;
- equips the vessel with a skier-down flag, and explains observer and personal floatation requirements, if the persons renting, leasing, chartering, or using the vessel will be waterskiing;
- if the vessel is a personal watercraft, provides a personal floatation device and a lanyard attached to an engine cutoff switch for the operator to wear at all times when operating the personal watercraft;
- reviews with the person operating the vessel, and all other persons who the operator may permit to operate the vessel, all the information contained in the motor vessel safety operating and equipment checklist prescribed by the Commission; and
- provides all other required safety equipment.

A violation is a civil infraction (punishable by a maximum monetary penalty of \$500) unless the current violation is the person's third violation of the same provision during the past 365 days, in which case it is a misdemeanor.

Boating Under the Influence Study Group.

A study group is established to assess the effectiveness of current BUI legislation, including reducing the incidence of BUI. The study group must consist of the following members:

- one member from each of the two largest caucuses of the Senate, appointed by the President of the Senate;
- one member from each of the two largest caucuses of the House of Representatives, appointed by the Speaker of the House of Representatives;
- the Director of the Department of Fish and Wildlife (DFW) or the Director's designee;
- the Director of the Commission or the Director's designee;
- one representative from the Washington Association of Sheriffs and Police Chiefs;
- one representative from the Washington Association of Prosecuting Attorneys; and
- one representative from the Washington Defenders' Association or the Washington Association of Criminal Defense Lawyers.

The Director of the DFW must convene the initial meeting of the study group and serve as chair of the study group. At a minimum, the study group must research, review, and make recommendations on the following:

- regional and national approaches to boating regulation and implied consent to breath and blood testing;
- the potential benefits, costs, and complications of creating a regulatory or licensing system governing boating in Washington, including ways the current vessel registration system and boater education card requirement can be utilized to improve boater awareness of and compliance with laws prohibiting BUI offenses; and
- obstacles to successful prosecutions of BUI in Washington.

The study group must submit its findings and recommendations to the Legislature and the Governor by December 1, 2013. The study group expires January 1, 2014.

The study group must function within existing resources and no specific budget may be provided to complete the study. The participants of the study group are encouraged to donate their time to offset any costs. Staff support for the study group must be provided by the DFW.

Amended Bill Compared to Substitute Bill:

The amendment provides that if a boat operator refuses to take a breath or blood test he or she will be subject to a civil infraction with a penalty of \$1,000 (an increase from \$500). In addition, a person's refusal to take such test is not admissible into evidence in a criminal trial.

A study group is also created to review and make recommendations on reducing BUI in Washington.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Alcohol plays a huge role in motor vehicle deaths and statistics have shown that if alcohol is involved in a boating accident there is a greater chance of death occurring due to that accident. In 2009 across the United States, alcohol was the contributing factor in over half of the boating accidents that took place. All 50 states in the country have BUI laws. However, out of the 11 western states, the State of Washington has the weakest laws. Four of the states tie their BUI penalties to driver's licenses and five states incarcerate individuals for BUI violations.

This boating safety bill was developed by a diverse group of 200 taskforce members after hundreds of hours of discussion and consensus. The bill has three major sections. First, although an open container on a boat is not illegal, in regards to the concept of BUI, officers need to have the tools necessary when making a BUI arrest. This bill allows for implied consent for BUI and it aligns the Washington boating laws with the motor vehicle laws in regards to driving under the influence. Without implied consent, it makes officers' jobs more difficult. If a person does not consent, it is not a crime but a civil infraction for refusing to consent to a breathalyzer test. Second, this bill will give the officers that patrol the water the tools they need when investigating boating collisions which mirror vehicle traffic collisions. The bill as drafted allows officers to issue citations at the scene of a vessel collision which is the same as what happens for vehicles.

The third portion of the bill relates to renting boating equipment. This bill enhances consumer protection by requiring all rental companies to provide all the necessary safety equipment required for that vessel. The reason the boating rental criteria in this bill is

important is because it will help to ensure all people visiting Washington and those boaters renting vessels in the state will be given all the necessary criteria needed to have a safe boating experience.

Enforcing boating safety laws is essential in helping to ensure boating accidents, injuries, deaths, and general mishaps are reduced. This proposed bill fixes a significant number of problems in the boating laws and will act as a good deterrent for BUI offenses.

(Information only) The minimum age to operate a boat is 16 years old. There is zero tolerance for a youth found in possession of alcohol and such violations will be penalized as a Minor in Possession of alcohol offenses.

(Opposed) None.

Persons Testifying: (In support) Senator Padden, prime sponsor; Bruce Bjork and Erik Olson, Washington Department of Fish & Wildlife; Wade Alonzo, Washington State Parks; Don Pierce, Washington Association of Sheriffs and Police Chiefs; Brad Trout, Mason County Sheriff's Office; Raymond Williams, Northwest Boating Council; Doug Levy, Recreational Boating Association of Washington; and Linda Quan, Seattle Children's Hospital.

(Information only) John Snaza, Thurston County Sheriff's Office.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT

Majority Report: Do pass as amended by Committee on Appropriations Subcommittee on General Government and without amendment by Committee on Public Safety. Signed by 9 members: Representatives Hudgins, Chair; Parker, Ranking Minority Member; Buys, Chandler, Dunshee, Hunt, Pedersen, Springer and Taylor.

Staff: Michael Bennion (786-7118).

Summary of Recommendation of Committee On Appropriations Subcommittee on General Government Compared to Recommendation of Committee On Public Safety:

The Appropriations Subcommittee on General Government recommended the removal of a study group convened to assess the effectiveness of current legislation, including this act, in reducing incidences of boating under the influence (BUI) and submitting a report of the group's findings and recommendations related to boating regulations and obstacles to successful prosecutions of BUI.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Legislature created the Boating Safety Program in 1984 as a way to make boating safer in the state. A BUI is preventable and stricter enforcement leads to better compliance. This bill is a product of many months of work and stakeholder consensus, and will not impact the state budget or the state funds to the Parks and Recreation Commission because the program is supported by federal funding sources. The most common type of accident in the state is boat-to-boat collisions, most often caused when a boat operator is not following rules of the water, and the bill allows officers to issue a citation for those violations. When a citizen gets their driver's license they are deemed to have given consent to take a breath test, however there is currently no such requirement for boaters. The bill has been narrowed down to provisions the public recognizes as problems and it strikes the right balance between enhancing safety on the water without negatively impacting the ability to have fun while boating. There is also consumer protection in the bill by requiring safety equipment be included with boating rentals. Right now if you rent a boat it is not clear where the safety equipment comes from and this bill makes it a requirement that the equipment comes with the rental without additional costs to the person renting the vessel.

(In support with amendments) The bill was drafted without directive from the Legislature, but with stakeholders coming together to draft a good piece of legislation.

(Opposed) None.

Persons Testifying: (In support) Bruce Bjork, Department of Fish and Wildlife; Don Pierce, Washington Association of Sheriffs and Police Chiefs; and Wade Alonzo, Washington State Parks and Recreation Commission.

(In support with amendments) Doug Levy, Recreational Boating Association of Washington; and Cliff Webster, Northwest Marine Trade Association.

Persons Signed In To Testify But Not Testifying: None.