

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5145

59th Legislature
2005 Regular Session

Passed by the Senate April 16, 2005
YEAS 28 NAYS 13

President of the Senate

Passed by the House April 12, 2005
YEAS 68 NAYS 30

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5145** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5145

AS AMENDED BY THE HOUSE

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By Senate Committee on Transportation (originally sponsored by Senators Jacobsen, Swecker, Oke, Fraser, Johnson, Spanel, Rockefeller, Kohl-Welles, Delvin, Keiser, Haugen, Kastama, Kline, Hargrove, Regala, Franklin, Thibaudeau, Rasmussen and Shin)

READ FIRST TIME 02/22/05.

1 AN ACT Relating to a boating safety education program; amending RCW
2 79A.60.010; adding new sections to chapter 79A.60 RCW; creating a new
3 section; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
6 establish a boating safety education program that contributes to the
7 reduction of accidents and increases the enjoyment of boating by all
8 operators of all recreational vessels on the waters of this state.
9 Based on the 2003 report to the legislature titled "Recreational
10 Boating Safety in Washington, A Report on Methods to Achieve Safer
11 Boating Practices," the legislature recognizes that boating accidents
12 also occur in nonmotorized vessels in this state, but, at this time
13 there is no national educational standard for nonmotorized vessels.
14 Therefore, the commission is hereby authorized and directed to work
15 with agencies and organizations representing nonmotorized vessel
16 activities and individuals operating nonmotorized vessels to decrease
17 accidents of operators in these vessels. It is also the intent of the
18 legislature to encourage boating safety education programs that use
19 volunteer and private sector efforts to enhance boating safety and

1 education for operators of nonmotorized vessels to work closely with
2 the state parks and recreation commission in its efforts to reduce all
3 boating accidents in this state.

4 **Sec. 2.** RCW 79A.60.010 and 2003 c 39 s 45 are each amended to read
5 as follows:

6 Unless the context clearly requires otherwise, the definitions in
7 this section apply throughout this chapter.

8 (1) "Accredited course" means a mandatory course of instruction on
9 boating safety education that has been approved by the commission.

10 (2) "Boat wastes" includes, but is not limited to, sewage, garbage,
11 marine debris, plastics, contaminated bilge water, cleaning solvents,
12 paint scrapings, or discarded petroleum products associated with the
13 use of vessels.

14 ((+2)) (3) "Boater" means any person on a vessel on waters of the
15 state of Washington.

16 ((+3)) (4) "Boater education card" means a card issued to a person
17 who has successfully completed a boating safety education test and has
18 paid the registration fee for a serial number record to be maintained
19 in the commission's data base.

20 (5) "Boating educator" means a person providing an accredited
21 course.

22 (6) "Carrying passengers for hire" means carrying passengers in a
23 vessel on waters of the state for valuable consideration, whether given
24 directly or indirectly or received by the owner, agent, operator, or
25 other person having an interest in the vessel. This shall not include
26 trips where expenses for food, transportation, or incidentals are
27 shared by participants on an even basis. Anyone receiving compensation
28 for skills or money for amortization of equipment and carrying
29 passengers shall be considered to be carrying passengers for hire on
30 waters of the state.

31 ((+4)) (7) "Certificate of accomplishment" means a form of
32 certificate approved by the commission and issued by a boating educator
33 to a person who has successfully completed an accredited course.

34 (8) "Commission" means the state parks and recreation commission.

35 ((+5)) (9) "Darkness" means that period between sunset and
36 sunrise.

1 ~~((6))~~ (10) "Environmentally sensitive area" means a restricted
2 body of water where discharge of untreated sewage from boats is
3 especially detrimental because of limited flushing, shallow water,
4 commercial or recreational shellfish, swimming areas, diversity of
5 species, the absence of other pollution sources, or other
6 characteristics.

7 ~~((7))~~ (11) "Guide" means any individual, including but not
8 limited to subcontractors and independent contractors, engaged for
9 compensation or other consideration by a whitewater river outfitter for
10 the purpose of operating vessels. A person licensed under RCW
11 77.65.480 or 77.65.440 and acting as a fishing guide is not considered
12 a guide for the purposes of this chapter.

13 ~~((8))~~ (12) "Marina" means a facility providing boat moorage
14 space, fuel, or commercial services. Commercial services include but
15 are not limited to overnight or live-aboard boating accommodations.

16 ~~((9))~~ (13) "Motor driven boats and vessels" means all boats and
17 vessels which are self propelled.

18 ~~((10))~~ (14) "Motor vessel safety operating and equipment
19 checklist" means a printed list of the safety requirements for a vessel
20 with a motor installed or attached to the vessel being rented,
21 chartered, or leased and meeting minimum requirements adopted by the
22 commission in accordance with section 3 of this act.

23 (15) "Muffler" or "muffler system" means a sound suppression device
24 or system, including an underwater exhaust system, designed and
25 installed to abate the sound of exhaust gases emitted from an internal
26 combustion engine and that prevents excessive or unusual noise.

27 ~~((11))~~ (16) "Operate" means to steer, direct, or otherwise have
28 physical control of a vessel that is underway.

29 ~~((12))~~ (17) "Operator" means an individual who steers, directs,
30 or otherwise has physical control of a vessel that is underway or
31 exercises actual authority to control the person at the helm.

32 ~~((13))~~ (18) "Observer" means the individual riding in a vessel
33 who is responsible for observing a water skier at all times.

34 ~~((14))~~ (19) "Owner" means a person who has a lawful right to
35 possession of a vessel by purchase, exchange, gift, lease, inheritance,
36 or legal action whether or not the vessel is subject to a security
37 interest.

1 ~~((15))~~ (20) "Person" means any individual, sole proprietorship,
2 partnership, corporation, nonprofit corporation or organization,
3 limited liability company, firm, association, or other legal entity
4 located within or outside this state.

5 ~~((16))~~ (21) "Personal flotation device" means a buoyancy device,
6 life preserver, buoyant vest, ring buoy, or buoy cushion that is
7 designed to float a person in the water and that is approved by the
8 commission.

9 ~~((17))~~ (22) "Personal watercraft" means a vessel of less than
10 sixteen feet that uses a motor powering a water jet pump, as its
11 primary source of motive power and that is designed to be operated by
12 a person sitting, standing, or kneeling on, or being towed behind the
13 vessel, rather than in the conventional manner of sitting or standing
14 inside the vessel.

15 ~~((18))~~ (23) "Polluted area" means a body of water used by boaters
16 that is contaminated by boat wastes at unacceptable levels, based on
17 applicable water quality and shellfish standards.

18 ~~((19))~~ (24) "Public entities" means all elected or appointed
19 bodies, including tribal governments, responsible for collecting and
20 spending public funds.

21 ~~((20))~~ (25) "Reckless" or "recklessly" means acting carelessly
22 and heedlessly in a willful and wanton disregard of the rights, safety,
23 or property of another.

24 ~~((21))~~ (26) "Rental motor vessel" means a motor vessel that is
25 legally owned by a person that is registered as a rental and leasing
26 agency for recreational motor vessels, and for which there is a written
27 and signed rental, charter, or lease agreement between the owner, or
28 owner's agent, of the vessel and the operator of the vessel.

29 (27) "Sewage pumpout or dump unit" means:

30 (a) A receiving chamber or tank designed to receive vessel sewage
31 from a "porta-potty" or a portable container; and

32 (b) A stationary or portable mechanical device on land, a dock,
33 pier, float, barge, vessel, or other location convenient to boaters,
34 designed to remove sewage waste from holding tanks on vessels.

35 ~~((22))~~ (28) "Underway" means that a vessel is not at anchor, or
36 made fast to the shore, or aground.

37 ~~((23))~~ (29) "Vessel" includes every description of watercraft on
38 the water, other than a seaplane, used or capable of being used as a

1 means of transportation on the water. However, it does not include
2 inner tubes, air mattresses, sailboards, and small rafts or flotation
3 devices or toys customarily used by swimmers.

4 ~~((+24))~~ (30) "Water skiing" means the physical act of being towed
5 behind a vessel on, but not limited to, any skis, aquaplane, kneeboard,
6 tube, or any other similar device.

7 ~~((+25))~~ (31) "Waters of the state" means any waters within the
8 territorial limits of Washington state.

9 ~~((+26))~~ (32) "Whitewater river outfitter" means any person who is
10 advertising to carry or carries passengers for hire on any whitewater
11 river of the state, but does not include any person whose only service
12 on a given trip is providing instruction in canoeing or kayaking
13 skills.

14 ~~((+27))~~ (33) "Whitewater rivers of the state" means those rivers
15 and streams, or parts thereof, within the boundaries of the state as
16 listed in RCW 79A.60.470 or as designated by the commission under RCW
17 79A.60.495.

18 NEW SECTION. **Sec. 3.** A new section is added to chapter 79A.60 RCW
19 to read as follows:

20 (1) The commission shall establish and implement by rule a program
21 to provide required boating safety education. The boating safety
22 education program shall include training on preventing the spread of
23 aquatic invasive species. The program shall be phased in so that all
24 boaters not exempted under section 4(3) of this act are required to
25 obtain a boater education card by January 1, 2016. To obtain a boater
26 education card, a boater shall provide a certificate of accomplishment
27 issued by a boating educator for taking and passing an accredited
28 boating safety education course, or pass an equivalency exam, or
29 provide proof of completion of a course that meets the standard adopted
30 by the commission.

31 (2) As part of the boating safety education program, the commission
32 shall:

33 (a) Establish a program to be phased over eleven years starting
34 July 1, 2005, with full implementation by January 1, 2016. The period
35 July 1, 2005, through December 31, 2007, will be program development,
36 boater notification of the new requirements for mandatory education,

1 and processing cards to be issued to individuals having taken an
2 accredited course prior to January 1, 2008. The schedule for phase-in
3 of the mandatory education requirement by age group is as follows:
4 January 1, 2008 - All boat operators twenty years old and younger;
5 January 1, 2009 - All boat operators twenty-five years old and younger;
6 January 1, 2010 - All boat operators thirty years old and younger;
7 January 1, 2011 - All boat operators thirty-five years old and younger;
8 January 1, 2012 - All boat operators forty years old and younger;
9 January 1, 2013 - All boat operators fifty years old and younger;
10 January 1, 2014 - All boat operators sixty years old and younger;
11 January 1, 2015 - All boat operators seventy years old and younger;
12 January 1, 2016 - All boat operators;

13 (b) Establish a minimum standard of boating safety education
14 accomplishment. The standard must be consistent with the applicable
15 standard established by the national association of state boating law
16 administrators;

17 (c) Adopt minimum standards for boating safety education course of
18 instruction and examination that ensures compliance with the national
19 association of state boating law administrators minimum standards;

20 (d) Approve and provide accreditation to boating safety education
21 courses operated by volunteers, or commercial or nonprofit
22 organizations, including, but not limited to, courses given by the
23 United States coast guard auxiliary and the United States power
24 squadrons;

25 (e) Develop an equivalency examination that may be taken as an
26 alternative to the boating safety education course;

27 (f) Establish a fee of ten dollars for the boater education card to
28 fund all commission activities related to the boating safety education
29 program created by this act, including the initial costs of developing
30 the program. Any surplus funds resulting from the fees received shall
31 be distributed by the commission as grants to local marine law
32 enforcement programs approved by the commission as provided in RCW
33 88.02.040;

34 (g) Establish a fee for the replacement of the boater education
35 card that covers the cost of replacement;

36 (h) Consider and evaluate public agency and commercial
37 opportunities to assist in program administration with the intent to
38 keep administrative costs to a minimum;

1 (i) Approve and provide accreditation to boating safety education
2 courses offered online; and

3 (j) Provide a report to the legislature by January 1, 2008, on its
4 progress of implementation of the mandatory education program.

5 NEW SECTION. **Sec. 4.** A new section is added to chapter 79A.60 RCW
6 to read as follows:

7 (1) No person shall operate or permit the operation of motor driven
8 boats and vessels with a mechanical power of fifteen horsepower or
9 greater unless the person:

10 (a) Is at least twelve years of age, except that an operator of a
11 personal watercraft shall comply with the age requirements under RCW
12 79A.60.190; and

13 (b)(i) Has in his or her possession a boater education card, unless
14 exempted under subsection (3) of this section; or

15 (ii) Is accompanied by and is under the direct supervision of a
16 person sixteen years of age or older who is in possession of a boater
17 education card, or who is not yet required to possess the card as
18 provided in the program phase in section 3(2)(a) of this act.

19 (2) Any person who can demonstrate they have successfully
20 completed, prior to the effective date of this act, a boating safety
21 education course substantially equivalent to the standards adopted by
22 the commission shall be eligible for a boater education card upon
23 application to the commission and payment of the fee, without having to
24 take a course or equivalency exam as provided in section 3(1) of this
25 act. Successful completion of a boating safety education course could
26 include an original or copy of an original certificate issued by the
27 commission, the United States coast guard auxiliary, or the United
28 States power squadrons, or official certification by these
29 organizations that the individual successfully completed a course
30 substantially equivalent to the standards adopted by the commission.

31 (3) The following persons are not required to carry a boater
32 education card:

33 (a) The operator of a vessel engaged in a lawful commercial fishery
34 operation as licensed by the department of fish and wildlife under
35 Title 77 RCW. However, the person when operating a vessel for
36 recreational purposes must carry either a valid commercial fishing

1 license issued by the department of fish and wildlife or a boater
2 education card;

3 (b) Any person who possesses a valid marine operator license issued
4 by the United States coast guard when operating a vessel authorized by
5 such coast guard license. However, the person when operating a vessel
6 for recreational purposes must carry either a valid marine operator
7 license issued by the United States coast guard or a boater education
8 card;

9 (c) Any person who is legally engaged in the operation of a vessel
10 that is exempt from vessel registration requirements under chapter
11 88.02 RCW and applicable rules and is used for purposes of law
12 enforcement or official government work. However, the person when
13 operating a vessel for recreational purposes must carry a boater
14 education card;

15 (d) Any person at least twelve years old renting, chartering, or
16 leasing a motor driven boat or vessel with an engine power of fifteen
17 horsepower or greater who completes a commission-approved motor vessel
18 safety operating and equipment checklist each time before operating the
19 motor driven boat or vessel, except that an operator of a personal
20 watercraft shall comply with the age requirements under RCW 79A.60.190;

21 (e) Any person who is not a resident of Washington state and who
22 does not operate a motor driven boat or vessel with an engine power of
23 fifteen horsepower or greater in waters of the state for more than
24 sixty consecutive days;

25 (f) Any person who is not a resident of Washington state and who
26 holds a current out-of-state or out-of-country certificate or card that
27 is equivalent to the rules adopted by the commission;

28 (g) Any person who has purchased the boat or vessel within the last
29 sixty days, and has a bill of sale in his or her possession to document
30 the date of purchase;

31 (h) Any person, including those less than twelve years of age, who
32 is involved in practicing for, or engaging in, a permitted racing event
33 where a valid document has been issued by the appropriate local, state,
34 or federal government agency for the event, and is available for
35 inspection on-site during the racing event;

36 (i) Any person who is not yet required to have a boater education
37 card under the phased schedule in section 3(2)(a) of this act; and

38 (j) Any person born before January 1, 1955.

1 (4) Except as provided in subsection (3)(a) through (i) of this
2 section, a boater must carry a boater education card while operating a
3 vessel and is required to present the boater education card, or
4 alternative license as provided in subsection (3)(a) and (b) of this
5 section, to a law enforcement officer upon request.

6 (5) Failure to possess a boater education card required by this
7 section is an infraction under chapter 7.84 RCW. The penalty shall be
8 waived if the boater provides proof to the court within sixty days that
9 he or she has received a boater education card.

10 (6) No person shall permit the rental, charter, or lease of a motor
11 driven boat or vessel with an engine power of fifteen horsepower or
12 greater to a person without first reviewing with that person, and all
13 other persons who may be permitted by the person to operate the vessel,
14 all the information contained in the motor vessel safety operating and
15 equipment checklist.

16 NEW SECTION. **Sec. 5.** A new section is added to chapter 79A.60 RCW
17 to read as follows:

18 The boating safety education certification account is created in
19 the custody of the state treasurer. All receipts from fees collected
20 for the issuance of a boater education card shall be deposited in the
21 account and shall be used only for the administration of sections 3 and
22 4 of this act. Only the state parks and recreation commission may
23 authorize expenditures from the account. The account is subject to
24 allotment procedures under chapter 43.88 RCW, but an appropriation is
25 not required for expenditures.

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