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## Public Safety Committee

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### SSB 5437

**Brief Description:** Regarding boating safety.

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

#### Brief Summary of Substitute Bill

- 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.

**Hearing Date:** 3/21/13

**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

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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 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 \$500. The refusal is also 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.

**Appropriation:** None.

**Fiscal Note:** Available.

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