

1 HB284
2 204063-3
3 By Representatives Shaver, Kitchens, Rowe, Pettus, Oliver,
4 Treadaway, Fincher, Marques, Sorrells, Brown (K), Easterbrook,
5 Meadows, Farley, Robertson, Faust, Reynolds, Sanderford,
6 Holmes, Rich, Shiver, Faulkner, Wingo, Weaver, Drake, Isbell
7 and Wood (D)
8 RFD: Judiciary
9 First Read: 20-FEB-20

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8 SYNOPSIS: Under existing law, if a person is convicted
9 of boating under the influence, the person's
10 boating license is suspended, and if a person is
11 convicted of operating a motor vehicle under the
12 influence, the person's driver's license is
13 suspended.

14 This bill would provide that if a person is
15 convicted of boating under the influence, the
16 person's boating license and driver's license will
17 be suspended, and that if a person is convicted of
18 operating a motor vehicle under the influence, the
19 person's driving license and boating license or
20 boater safety certification is suspended.

21 Existing law provides for the operation of
22 personal watercraft on the waters of this state and
23 provides criminal penalties for a violation.

24 This bill would provide criminal penalties
25 for a person who operates a vessel or personal
26 watercraft at greater than idle speed under certain
27 conditions.

1 Under existing law, a nonresident whose home
2 state or country does not require boater safety
3 certification or the licensing of vessel operators
4 may operate a vessel on the waters of this state
5 without a boater safety certification for a period
6 of not more than 45 days in any calendar year.

7 This bill would require all nonresidents to
8 procure a boater safety certification in their home
9 state or country or procure a Nonresident Alabama
10 Boater Safety Certification prior to operating a
11 vessel on the waters of this state.

12 Also under certain existing law, vessels
13 less than 24 feet are required to have an emergency
14 engine or motor shut-off switch.

15 This bill would apply the emergency engine
16 or motor shut-off switch requirement to those
17 certain vessels that are less than 26 feet.

18 This bill would also make nonsubstantive,
19 technical revisions to update the existing code
20 language to current style.

21 Amendment 621 of the Constitution of Alabama
22 of 1901, now appearing as Section 111.05 of the
23 Official Recompilation of the Constitution of
24 Alabama of 1901, as amended, prohibits a general
25 law whose purpose or effect would be to require a
26 new or increased expenditure of local funds from
27 becoming effective with regard to a local

1 governmental entity without enactment by a 2/3 vote
2 unless: it comes within one of a number of
3 specified exceptions; it is approved by the
4 affected entity; or the Legislature appropriates
5 funds, or provides a local source of revenue, to
6 the entity for the purpose.

7 The purpose or effect of this bill would be
8 to require a new or increased expenditure of local
9 funds within the meaning of the amendment. However,
10 the bill does not require approval of a local
11 governmental entity or enactment by a 2/3 vote to
12 become effective because it comes within one of the
13 specified exceptions contained in the amendment.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT
18

19 Relating to the operation of watercraft; to amend
20 Sections 32-5A-191.3, 33-5-51, 33-5-52, and 33-5-72, Code of
21 Alabama 1975, to provide that if a person is convicted of
22 boating under the influence, the person's boating license and
23 driver's license will be suspended; to provide that if a
24 person is convicted of operating a motor vehicle under the
25 influence, the person's driver's license and boating license
26 or boater safety certification is suspended; to provide for
27 the operation of a vessel on the waters of this state; to

1 require a person to operate a vessel at idle speeds under
2 certain conditions; to provide boater safety certification
3 requirements; to apply the emergency engine or motor shut-off
4 switch requirement to certain vessels; to make nonsubstantive,
5 technical revisions to update the existing code language to
6 current style; and in connection therewith would have as its
7 purpose or effect the requirement of a new or increased
8 expenditure of local funds within the meaning of Amendment 621
9 of the Constitution of Alabama of 1901, now appearing as
10 Section 111.05 of the Official ReCompilation of the
11 Constitution of Alabama of 1901, as amended.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Sections 32-5A-191.3, 33-5-51, 33-5-52,
14 and 33-5-72, Code of Alabama 1975, are amended to read as
15 follows:

16 "§32-5A-191.3.

17 "(a) A person shall not operate or be in actual
18 physical control of any vessel, or manipulate any water skis,
19 aquaplane, or any other marine transportation device on the
20 waters of this state, as the waters are defined in Section
21 33-5-3, under any condition in which a person would be guilty
22 of driving under the influence of alcohol or a controlled
23 substance ~~drugs pursuant to~~ under Section 32-5A-191 if the
24 person was ~~driving or controlling~~ operating a motor vehicle.

25 "(b) In the case of a vessel or other marine device
26 described in subsection (a), where a law enforcement officer
27 has probable cause to believe that the operator of the vessel

1 or other marine device is operating in violation of this
2 section, the law enforcement officer ~~is authorized to~~
3 ~~administer and~~ may test the operator, at the scene, by using a
4 field breathalyzer or other approved device, as a screening
5 device, to determine if the operator ~~may be~~ is operating ~~a~~ the
6 vessel or device in violation of subsection (a). Refusal to
7 submit to a field breathalyzer test or other approved testing
8 device shall result in the same punishment as provided in
9 subsection (c) of Section 32-5-192 for operators of motor
10 vehicles on the state highways.

11 "(c) The fact that any person charged with violating
12 this section is or has been legally entitled to use alcohol or
13 a controlled substance shall not constitute a defense against
14 any charge of violating this section.

15 "(d) (1) Upon a ~~first or subsequent~~ conviction, a
16 person violating this section shall be punished in the same
17 manner and under the same conditions as a person convicted of
18 driving under the influence of alcohol or ~~drugs~~ a controlled
19 substance pursuant to under Section 32-5A-191, or any
20 successor section or sections providing for the offense of
21 driving under the influence of alcohol or a controlled
22 substance ~~drugs, except that in any case where reference is~~
23 ~~made to the Director of Public Safety and the driving~~
24 ~~privilege or driver's license of the person, the reference~~
25 ~~shall be deemed to refer to the Commissioner of Conservation~~
26 ~~and Natural Resources and the vessel operating privilege or~~

1 ~~boater safety certification of the person convicted under this~~
2 ~~section.~~

3 "(2)a. In addition to the driver's license
4 suspension required under subdivision (1), the Secretary of
5 the Alabama State Law Enforcement Agency shall suspend a
6 person's vessel operating privilege or boater safety
7 certification as follows:

8 "1. Ninety days for a first conviction.

9 "2. One year for a second conviction, provided that
10 the prior conviction occurred within 10 years of the current
11 offense.

12 "3. Three years for a third conviction, provided
13 that the prior convictions occurred within 10 years of the
14 current offense.

15 "4. Five years for a fourth or subsequent
16 conviction, provided that the prior convictions occurred
17 within 10 years of the current offense.

18 "b. A prior conviction for boating under the
19 influence from this state, a municipality within this state,
20 another state or territory, or a municipality of another state
21 or territory shall be considered by a court for imposing a
22 sentence pursuant to this section if the prior conviction
23 occurred within 10 years of the date of the current offense.

24 "(e) Neither reckless or careless operation of a
25 vessel, nor any other boating or water safety infraction, is a
26 lesser included offense under a charge of operating a vessel
27 while under the influence of alcohol or controlled substances.

1 "(f) All fines collected for a violation of this
2 section as to vessels or other marine devices on the waters of
3 this state shall be paid into the ~~State Water Safety Fund~~
4 State Treasury to the credit of the Public Safety Fund.

5 "(g) A person who has been arrested for violating
6 this section shall not be released from jail under bond or
7 otherwise, until there is less than ~~the same~~ 0.08 percent by
8 weight of alcohol in the person's blood ~~as specified in~~
9 ~~subdivision (1) of subsection (a).~~

10 "(h) Upon verification that a defendant arrested
11 ~~pursuant to~~ under this section is currently on probation from
12 another court of this state as a result of a conviction for
13 any criminal offense, the prosecutor shall provide written or
14 oral notification of the defendant's subsequent arrest and
15 pending prosecution to the court in which the prior conviction
16 occurred.

17 "(i) When any person over the age of 21 years is
18 convicted ~~pursuant to~~ under this section and a child under the
19 age of 14 years was present on the vessel or other marine
20 device described in subsection (a) at the time of the offense,
21 the defendant shall be sentenced to double the minimum
22 punishment that the person would have received if the child
23 had not been present.

24 "(j) "Vessel," for the purposes of this section,
25 shall mean any vessel as defined in Section 33-5-3, operated
26 on the waters of this state, as defined in Section 33-5-3.

1 "(k) No provision of this section shall be construed
2 to assess points for DUI convictions under motor vehicle
3 convictions for driving under the influence nor shall a
4 conviction under this section be used as an enhancement of
5 punishment for a violation of 32-5A-191.

6 "§33-5-51.

7 "(a) As used in this section, "personal watercraft"
8 means a vessel ~~which~~ that uses an inboard motor powering a
9 water jet pump as its primary source of motive power and ~~which~~
10 is designed to be operated by a person sitting, standing, or
11 kneeling on the vessel, rather than the conventional manner of
12 sitting or standing inside the vessel.

13 "(b) A person may not operate a personal watercraft
14 on the waters of this state, as waters are defined in Section
15 33-5-3, unless each person operating, riding on, or being
16 ~~towed by the vessel~~ is wearing a personal flotation device
17 approved by the United States Coast Guard, in accordance with
18 ~~rules and regulations adopted by the Commissioner of the~~
19 ~~Department of Conservation and Natural Resources~~ Secretary of
20 the Alabama State Law Enforcement Agency.

21 "(c) A person operating a personal watercraft on the
22 waters of this state that does not have ~~self-circling~~
23 self-circling capability, shall have a lanyard type engine
24 cutoff switch and ~~must~~ shall attach the lanyard to the person,
25 his or her clothing, or a personal flotation device, as is
26 appropriate.

1 "(d) A vessel or personal watercraft ~~shall at all~~
2 ~~times be operated~~ on the waters of this state shall be
3 operated in a reasonable and prudent manner. Maneuvers which
4 endanger life, limb, or property, or create a public nuisance,
5 including, but not limited to ~~the following~~, weaving through
6 congested vessel traffic at high speed, following closely
7 behind within the wake of a vessel towing a person or persons
8 on water skis, surfboard, or other water sport device, jumping
9 the wake of another vessel travelling in the same direction in
10 close proximity to the vessel, cutting between a boat and the
11 person or persons being towed by that boat, or crossing at
12 right angles in close proximity to the stern of another vessel
13 or when visibility around the other vessel is obstructed, or
14 steering a vessel toward any object or person in the water and
15 turning sharply at close range so as to spray the object or
16 person, shall all constitute the reckless operation of a
17 vessel, as provided in subsection (a) of Section 33-5-70. Any
18 person violating this subsection shall be punished upon
19 conviction as provided in Section 33-5-70.

20 "(e) (1) It is unlawful for a person to operate a
21 vessel or personal watercraft at greater than idle speed
22 within 100 feet of any of the following:

23 "a. A moored or anchored boat or any boat that is
24 adrift.

25 "b. A dock, pier, or bridge.

26 "c. A person in the water.

27 "d. The shoreline adjacent to a residence.

1 "e. A public park or beach.

2 "f. A marina, restaurant, or other public use area.

3 "g. A vessel designated for use by a law enforcement
4 officer while making use of visual signals while alongside
5 another vessel.

6 "(2) As used in this subsection, idle speed means
7 the lowest speed a boat may be operated while maintaining
8 steering control.

9 ~~"(e) (f)~~ No person under the age of 12 14 years of
10 age may shall operate a personal watercraft on the waters of
11 this state, and persons who are at least 12 and over may only
12 operate personal watercraft on the waters of this state to the
13 extent otherwise permitted by law, except as provided under
14 Section 33-5-57 or as otherwise provided by law.

15 ~~"(f) (g)~~ It is unlawful for the owner of any vessel
16 or personal watercraft or any person having charge over or
17 control of a vessel or personal watercraft to authorize or
18 knowingly permit these the vessel or personal watercraft to be
19 operated on the waters of this state by a person in violation
20 of this section.

21 ~~"(g) (h)~~ No person shall tow any person by personal
22 watercraft unless the personal watercraft is equipped with a
23 rearview mirror meeting the specifications established by
24 regulation rule of the Commissioner of the Department of
25 Conservation and Natural Resources Secretary of the Alabama
26 State Law Enforcement Agency.

1 "~~(h)~~ (i) Any person who violates this section,
2 except as otherwise provided in subsection (d), shall be
3 guilty of a Class B misdemeanor, punishable upon conviction as
4 provided in Sections 13A-5-7 and 13A-5-12. All persons so
5 convicted shall be fined not less than twenty-five dollars
6 (\$25). All fines collected for a violation of this section
7 shall be paid into the ~~State Water Safety Fund~~ State Treasury
8 to the credit of the Public Safety Fund.

9 "~~(i)~~ (j) This section does not apply to a performer
10 engaged in a professional exhibition or a person participating
11 in a regatta, race, marine parade, tournament, or exhibition
12 held in compliance with Section 33-5-27, and any rules ~~and~~
13 ~~regulations issued~~ adopted by the ~~Commissioner of Conservation~~
14 ~~and Natural Resources~~ Secretary of the Alabama State Law
15 Enforcement Agency.

16 "§33-5-52.

17 "(a) (1) ~~Every A person, except those specifically~~
18 ~~exempted by statutory enactment, within five years from April~~
19 ~~28, 1994,~~ shall procure a boater safety certification before
20 operating a motorized vessel upon the waters of this state, as
21 defined in Section 33-5-3. This section ~~shall~~ does not apply
22 to the operation of any sailboat, rowboat, or canoe.

23 "(2) a. Notwithstanding ~~anything~~ any law to the
24 contrary ~~herein~~, an Alabama resident 16 years of age ~~and~~ or
25 ~~older,~~ who purchases a vessel and who has not been previously
26 issued a boater safety certification, ~~may~~ for a period of
27 ~~thirty (30)~~ 30 days following the date of sale of the vessel

1 to the person, may operate the vessel upon the waters,
2 provided the following conditions are met:

3 "~~(1)~~1. The vessel has been registered in the name of
4 the person.~~;~~ and

5 "~~(2)~~a 2. A bill of sale for the vessel, indicating
6 that the person is the purchaser and owner of the vessel, is
7 in the possession of the person at all times of operation.

8 "b. In addition, any person ~~while taking~~ who test
9 drives ~~of vessels~~ a vessel for sale ~~when~~ while accompanied by
10 a licensed vessel dealer~~;~~ shall be exempt during the drive
11 from the certification requirements under subdivision (1).
12 ~~Every new resident of the State of Alabama, before operating a~~
13 ~~motorized vessel, shall procure the certification within 30~~
14 ~~days after establishing residence in this state.~~

15 "(b) Each boater safety certification issued to a
16 person, if issued at the same time the person is issued a
17 valid Alabama motor vehicle driver or learner license, or
18 valid Alabama nondriver identification card, or if issued
19 prior to the expiration date of the driver or learner license
20 or card, shall expire on the expiration date of the person's
21 valid Alabama motor vehicle driver or learner license or card.
22 In all other cases, the expiration date of each boater safety
23 certification shall be four years from the date of issuance.

24 "(c) ~~Every~~ Upon application, a boater safety
25 certification issued under this article may be renewed at the
26 end of the certification period without examination ~~upon~~
27 ~~application.~~ For the purpose of renewal of a boater safety

1 certification, the ~~Department of Public Safety~~ Alabama State
2 Law Enforcement Agency shall mail renewal notices to each
3 certification holder 30 days after the expiration date if the
4 certification has not been renewed. A grace period of 60 days
5 after the expiration date of certification shall exist for the
6 purpose of certification renewal and the certification shall
7 be valid for this time period. The applicant shall apply for
8 renewal of certification any time during a period beginning 30
9 days before the expiration date of the then current
10 certification until three years after the expiration date of
11 certification. Failure to make application for renewal within
12 the specified time shall result in the applicant being
13 required to take, and successfully pass, a written or oral
14 examination as administered by the ~~Department of Public Safety~~
15 Alabama State Law Enforcement Agency. ~~If any person's birthday~~
16 ~~is February 29, the first day of March following shall be~~
17 ~~regarded as the birthday for the purposes of this section.~~

18 "(d) Nonresidents at least 12 years of age who have
19 in their immediate possession a valid boater safety
20 certification or vessel operator's certification issued in
21 their home state or country shall be exempt from the
22 requirements of this section, but under no circumstances shall
23 a ~~person~~ nonresident be granted any privileges of operation
24 beyond those granted to an Alabama resident certification
25 holder of the same age.

26 "~~(e) Nonresidents at least 12 years of age whose~~
27 ~~home state or country does not require boater safety~~

1 ~~certification or the licensing of vessel operators shall also~~
2 ~~be exempt from the requirements of this section for a~~
3 ~~cumulative operation period of not more than 45 days in any~~
4 ~~calendar year. Otherwise, any nonresidents shall be examined~~
5 ~~and certified~~ A nonresident may operate a vessel upon the
6 waters of this state only after obtaining a valid boater
7 safety certification or vessel operator's certification issued
8 in his or her home state or country or, upon examination and
9 certification under the same terms and conditions as Alabama
10 residents, after obtaining a Nonresident Alabama Boater Safety
11 Certification. ~~Nonresidents may be examined and obtain~~
12 ~~certification in any county and the certification shall be~~
13 ~~entitled "Nonresident Alabama Boater Safety Certification,"~~
14 ~~but under no circumstances shall a person be granted any~~
15 ~~privileges of operation beyond those granted to an Alabama~~
16 ~~resident certification holder of the same age.~~

17 "(f) A person operating a vessel pursuant to a valid
18 and legal commercial activity, ~~shall,~~ during the period of
19 time of that activity only, ~~be~~ is exempt from the requirement
20 of boater safety certification. ~~Otherwise, the person shall be~~
21 ~~subject to the requirement.~~

22 "(g) A person, while using a rental vessel, shall be
23 exempt from the certification requirements of this section if
24 all of the following conditions are met:

25 "(1) The person rents a vessel from a boat rental
26 business duly licensed by the municipality or the county ~~if~~
27 ~~the following three conditions are met:.~~

1 "~~a.~~ (2) The rental contract specifies that the
2 lessee has been instructed in the proper and safe operation of
3 the vessel by the lessor or the authorized agent of the
4 lessor, ~~and.~~

5 "~~b.~~ (3) The lessor in fact has complied with the
6 terms of rental contract and all parties sign the contract,
7 ~~and.~~

8 "~~c.~~ (4) The lessee signs a statement that the lessee
9 is not currently under suspension or revocation of any boater
10 safety certification or vessel operation privilege in this
11 state.

12 "§33-5-72.

13 "(a) It shall be unlawful on the waters of this
14 state for any person to operate, or give permission to another
15 person to operate, any vessel less than ~~24~~ 26 feet in length
16 having an open construction and having more than 50
17 horsepower, unless the vessel is equipped with an emergency
18 engine or motor shut-off switch.

19 "(b) The shut-off switch referred to in subsection
20 (a), shall be a lanyard-type engine cutoff switch and shall be
21 attached to the person, clothing, or personal flotation device
22 of the operator, as is appropriate, and shall be constructed
23 and installed in a manner so that when in use, any removal of
24 the operator from the normal operating station will result in
25 the immediate shut-off of the engine or motor.

1 "(c) For the purpose of this section, "open
2 construction" means any vessel described herein not having a
3 ~~permanently affixed top or~~ cabin.

4 "(d) Any person violating this section shall be
5 guilty of a Class B misdemeanor, and upon conviction shall be
6 punishable as provided by Sections 13A-5-7 and 13A-5-12. Any
7 person so convicted shall be fined not less than one hundred
8 dollars (\$100)."

9 Section 2. In addition to any other penalties for
10 driving under the influence as provided in Section 32-5A-191,
11 Code of Alabama 1975, upon conviction of an offense under
12 Section 32-5A-191, Code of Alabama 1975, the Alabama State Law
13 Enforcement Agency shall suspend an individual's vessel
14 operating privilege or boater safety certification under the
15 same conditions and in the same manner as provided in Section
16 32-5A-191, Code of Alabama 1975, excluding any ignition
17 interlock requirements.

18 Section 3. Although this bill would have as its
19 purpose or effect the requirement of a new or increased
20 expenditure of local funds, the bill is excluded from further
21 requirements and application under Amendment 621, now
22 appearing as Section 111.05 of the Official Recompilation of
23 the Constitution of Alabama of 1901, as amended, because the
24 bill defines a new crime or amends the definition of an
25 existing crime.

1 Section 4. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.