

# HOUSE BILL REPORT

## HB 2623

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### As Reported By House Committee On:

Law & Justice

**Title:** An act relating to operating or having actual physical control of a vessel while under the influence of intoxicating liquor or any drug.

**Brief Description:** Changing provisions relating to operating a vessel while under the influence of intoxicating liquor or any drug.

**Sponsors:** Representatives Sterk and McDonald.

### Brief History:

#### Committee Activity:

Law & Justice: 2/3/98, 2/5/98 [DPS].

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Carrell; Lambert and Robertson.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Constantine, Assistant Ranking Minority Member; Cody; Kenney; Lantz; Mulliken and Sherstad.

**Staff:** Bill Perry (786-7123).

**Background:** The state has a fairly elaborate system of criminal and administrative sanctions and procedures relating to drunk driving (DUI). There is also a law making it illegal to operate a boat while under the influence of alcohol or drugs. The drunk boating law contains the same basic elements as the DUI law. For instance, it is a per se violation to operate a boat with a blood or breath alcohol concentration (BAC) of 0.10 or more. However, drunk boating is a misdemeanor instead of a gross misdemeanor, and the drunk boating law does not have many of the features of the DUI law. Among the features of the DUI law not present in the drunk boating law are:

- o A schedule of escalating mandatory minimum penalties for repeat and serious offenders;
- o An implied consent provision requiring persons to submit to a BAC test;

- o A separate "0.02" BAC provision for minors;
- o A separate prohibition against "being in physical control" of a boat while drunk; and
- o Evidentiary and procedural provisions relating to breath or blood alcohol samples.

Some features of the DUI law are dependent on the fact that driving requires a driver's license. There is no equivalent requirement for an operator's license in boating.

**Summary of Substitute Bill:** A drunk boating law similar to the DUI law is created. Many of the features of the DUI law are applied to the drunk boating law.

It is a gross misdemeanor to operate, or to be in physical control of a boat, with a BAC of 0.10 or more, or while under the influence of alcohol or drugs. An exception is provided to the physical control offense in the case of a person who is in physical control of a vessel moored at a place of moorage that is owned or paid for by the vessel owner.

A persons who operates a boat is deemed to have given consent for a BAC test if arrested by an officer having reasonable grounds to believe the person is under the influence of alcohol. Refusal to submit to the BAC test under those circumstances is a class 1 civil infraction subject to a fine of \$125.

A system of escalating penalties is provided. The system is the same as for DUI except that there is no provision for loss of a driver's license. A \$125 fee, similar to one imposed for DUI, is assessed on each offender. The money from this fee is split between local jurisdictions and the state. Ten percent of the money goes to the death investigations account for the use of the State Toxicologist.

**Substitute Bill Compared to Original Bill:** The substitute bill broadens the exception to the "being in physical control" offense by removing a requirement that moorage be "permanent." The substitute bill alters the distribution of the \$125 fee and eliminates the share that would have gone to the Parks and Recreation Commission.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** The bill takes effect July 1, 1998.

**Testimony For:** The current law is difficult to enforce and lacks real teeth. Drunk boating is a serious problem. Having the implied consent provision will greatly aid in enforcement.

**Testimony Against:** Operating a boat is different from driving a car. Statistics show no real problem. Emergencies may require operation of a vessel while using seasickness medication.

**Testified:** Representative Sterk, prime sponsor; Annette Sandberg, Washington State Patrol (pro, with amendments); Tim Schellberg, Washington Association of Sheriffs and Police Chiefs (pro); Kathy Gerke, Association of Washington Cities (pro); Mark Sidran, Seattle City Attorney (pro); Russ Hauge, Washington Association of Prosecuting Attorneys (pro); Rex Derr, Washington State Parks Commission (pro); Ken Carlson, Washington Boating Safety Officers Association (pro); and Bill Fritz, citizen (concerns).