

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5437

Chapter 278, Laws of 2013

63rd Legislature
2013 Regular Session

BOATING SAFETY

EFFECTIVE DATE: 07/28/13

Passed by the Senate April 22, 2013
YEAS 46 NAYS 2

BRAD OWEN

President of the Senate

Passed by the House April 17, 2013
YEAS 84 NAYS 13

FRANK CHOPP

Speaker of the House of Representatives

Approved May 16, 2013, 2:31 p.m.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5437** as passed by the Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

May 17, 2013

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5437

AS AMENDED BY THE HOUSE

Passed Legislature - 2013 Regular Session

State of Washington 63rd Legislature 2013 Regular Session

By Senate Law & Justice (originally sponsored by Senators Padden, Hargrove, Roach, Kline, Sheldon, Pearson, and Chase)

READ FIRST TIME 02/22/13.

1 AN ACT Relating to boating safety; amending RCW 79A.60.040,
2 10.31.100, and 79A.60.150; reenacting and amending RCW 7.80.120; adding
3 new sections to chapter 79A.60 RCW; and prescribing penalties.

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

5 **Sec. 1.** RCW 79A.60.040 and 1998 c 213 s 7 are each amended to read
6 as follows:

7 (1) It (~~shall be~~) is unlawful for any person to operate a vessel
8 in a reckless manner.

9 (2) It (~~shall be a violation~~) is unlawful for a person to operate
10 a vessel while under the influence of intoxicating liquor, marijuana,
11 or any drug. A person is considered to be under the influence of
12 intoxicating liquor, marijuana, or any drug if, within two hours of
13 operating a vessel:

14 (a) The person has an alcohol concentration of 0.08 (~~grams~~) or
15 (~~more of alcohol per two hundred ten liters of breath,~~) higher as
16 shown by analysis of the person's breath or blood made under RCW
17 46.61.506; or

18 (b) The person has (~~0.08 percent or more by weight of alcohol in~~

1 ~~the person's blood, as shown by analysis of the person's blood made~~
2 ~~under RCW 46.61.506)) a THC concentration of 5.00 or higher as shown by~~
3 ~~analysis of the person's blood made under RCW 46.61.506; or~~

4 (c) The person is under the influence of or affected by
5 intoxicating liquor, marijuana, or any drug; or

6 (d) The person is under the combined influence of or affected by
7 intoxicating liquor, marijuana, and any drug.

8 (3) The fact that any person charged with a violation of this
9 section is or has been entitled to use such drug under the laws of this
10 state shall not constitute a defense against any charge of violating
11 this section. ~~((A person cited under this subsection may upon request~~
12 ~~be given a breath test for breath alcohol or may request to have a~~
13 ~~blood sample taken for blood alcohol analysis. An arresting officer~~
14 ~~shall administer field sobriety tests when circumstances permit.~~

15 ~~(3))~~ (4) Any person who operates a vessel within this state is
16 deemed to have given consent, subject to the provisions of RCW
17 46.61.506, to a test or tests of the person's breath or blood for the
18 purpose of determining the alcohol concentration, THC concentration, or
19 presence of any drug in the person's breath or blood if arrested for
20 any offense where, at the time of the arrest, the arresting officer has
21 reasonable grounds to believe the person was operating a vessel while
22 under the influence of intoxicating liquor, marijuana, or any drug.
23 Neither consent nor this section precludes a police officer from
24 obtaining a search warrant for a person's breath or blood. An
25 arresting officer may administer field sobriety tests when
26 circumstances permit.

27 (5) The test or tests of breath must be administered pursuant to
28 RCW 46.20.308. Where the officer has reasonable grounds to believe
29 that the person is under the influence of a drug, or where the person
30 is incapable due to physical injury, physical incapacity, or other
31 physical limitation, of providing a breath sample, or where the person
32 is being treated in a hospital, clinic, doctor's office, emergency
33 medical vehicle, ambulance, or other similar facility, a blood test
34 must be administered by a qualified person as provided in RCW
35 46.61.506(5). The officer shall warn the person that if the person
36 refuses to take the test, the person will be issued a class 1 civil
37 infraction under RCW 7.80.120.

1 (6) A violation of subsection (1) of this section is a
2 misdemeanor (~~(7) punishable as provided under RCW 9.92.030~~). A
3 violation of subsection (2) of this section is a gross misdemeanor. In
4 addition to the statutory penalties imposed, the court may order the
5 defendant to pay restitution for any damages or injuries resulting from
6 the offense.

7 **NEW SECTION. Sec. 2.** A new section is added to chapter 79A.60 RCW
8 to read as follows:

9 (1) The refusal of a person to submit to a test of the alcohol
10 concentration, THC concentration, or presence of any drug in the
11 person's blood or breath is not admissible into evidence at a
12 subsequent criminal trial.

13 (2) A person's refusal to submit to a test or tests pursuant to RCW
14 79A.60.040 constitutes a class 1 civil infraction under RCW 7.80.120.

15 **Sec. 3.** RCW 7.80.120 and 2003 c 365 s 3 and 2003 c 337 s 4 are
16 each reenacted and amended to read as follows:

17 (1) A person found to have committed a civil infraction shall be
18 assessed a monetary penalty.

19 (a) The maximum penalty and the default amount for a class 1 civil
20 infraction shall be two hundred fifty dollars, not including statutory
21 assessments, except for an infraction of state law involving (i)
22 potentially dangerous litter as specified in RCW 70.93.060(4) (~~and an~~
23 infraction of state law involving) or violent video or computer games
24 under RCW 9.91.180, in which case the maximum penalty and default
25 amount is five hundred dollars; or (ii) a person's refusal to submit to
26 a test or tests pursuant to RCW 79A.60.040 and section 2 of this act,
27 in which case the maximum penalty and default amount is one thousand
28 dollars;

29 (b) The maximum penalty and the default amount for a class 2 civil
30 infraction shall be one hundred twenty-five dollars, not including
31 statutory assessments;

32 (c) The maximum penalty and the default amount for a class 3 civil
33 infraction shall be fifty dollars, not including statutory assessments;
34 and

35 (d) The maximum penalty and the default amount for a class 4 civil

1 infraction shall be twenty-five dollars, not including statutory
2 assessments.

3 (2) The supreme court shall prescribe by rule the conditions under
4 which local courts may exercise discretion in assessing fines for civil
5 infractions.

6 (3) Whenever a monetary penalty is imposed by a court under this
7 chapter it is immediately payable. If the person is unable to pay at
8 that time the court may grant an extension of the period in which the
9 penalty may be paid. If the penalty is not paid on or before the time
10 established for payment, the court may proceed to collect the penalty
11 in the same manner as other civil judgments and may notify the
12 prosecuting authority of the failure to pay.

13 (4) The court may also order a person found to have committed a
14 civil infraction to make restitution.

15 **Sec. 4.** RCW 10.31.100 and 2010 c 274 s 201 are each amended to
16 read as follows:

17 A police officer having probable cause to believe that a person has
18 committed or is committing a felony shall have the authority to arrest
19 the person without a warrant. A police officer may arrest a person
20 without a warrant for committing a misdemeanor or gross misdemeanor
21 only when the offense is committed in the presence of the officer,
22 except as provided in subsections (1) through (~~(+10+)~~) (11) of this
23 section.

24 (1) Any police officer having probable cause to believe that a
25 person has committed or is committing a misdemeanor or gross
26 misdemeanor, involving physical harm or threats of harm to any person
27 or property or the unlawful taking of property or involving the use or
28 possession of cannabis, or involving the acquisition, possession, or
29 consumption of alcohol by a person under the age of twenty-one years
30 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070
31 or 9A.52.080, shall have the authority to arrest the person.

32 (2) A police officer shall arrest and take into custody, pending
33 release on bail, personal recognizance, or court order, a person
34 without a warrant when the officer has probable cause to believe that:

35 (a) An order has been issued of which the person has knowledge
36 under RCW 26.44.063, or chapter 7.90, 10.99, 26.09, 26.10, 26.26,
37 26.50, or 74.34 RCW restraining the person and the person has violated

1 the terms of the order restraining the person from acts or threats of
2 violence, or restraining the person from going onto the grounds of or
3 entering a residence, workplace, school, or day care, or prohibiting
4 the person from knowingly coming within, or knowingly remaining within,
5 a specified distance of a location or, in the case of an order issued
6 under RCW 26.44.063, imposing any other restrictions or conditions upon
7 the person; or

8 (b) A foreign protection order, as defined in RCW 26.52.010, has
9 been issued of which the person under restraint has knowledge and the
10 person under restraint has violated a provision of the foreign
11 protection order prohibiting the person under restraint from contacting
12 or communicating with another person, or excluding the person under
13 restraint from a residence, workplace, school, or day care, or
14 prohibiting the person from knowingly coming within, or knowingly
15 remaining within, a specified distance of a location, or a violation of
16 any provision for which the foreign protection order specifically
17 indicates that a violation will be a crime; or

18 (c) The person is sixteen years or older and within the preceding
19 four hours has assaulted a family or household member as defined in RCW
20 10.99.020 and the officer believes: (i) A felonious assault has
21 occurred; (ii) an assault has occurred which has resulted in bodily
22 injury to the victim, whether the injury is observable by the
23 responding officer or not; or (iii) that any physical action has
24 occurred which was intended to cause another person reasonably to fear
25 imminent serious bodily injury or death. Bodily injury means physical
26 pain, illness, or an impairment of physical condition. When the
27 officer has probable cause to believe that family or household members
28 have assaulted each other, the officer is not required to arrest both
29 persons. The officer shall arrest the person whom the officer believes
30 to be the primary physical aggressor. In making this determination,
31 the officer shall make every reasonable effort to consider: (i) The
32 intent to protect victims of domestic violence under RCW 10.99.010;
33 (ii) the comparative extent of injuries inflicted or serious threats
34 creating fear of physical injury; and (iii) the history of domestic
35 violence of each person involved, including whether the conduct was
36 part of an ongoing pattern of abuse.

37 (3) Any police officer having probable cause to believe that a

1 person has committed or is committing a violation of any of the
2 following traffic laws shall have the authority to arrest the person:

3 (a) RCW 46.52.010, relating to duty on striking an unattended car
4 or other property;

5 (b) RCW 46.52.020, relating to duty in case of injury to or death
6 of a person or damage to an attended vehicle;

7 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or
8 racing of vehicles;

9 (d) RCW 46.61.502 or 46.61.504, relating to persons under the
10 influence of intoxicating liquor or drugs;

11 (e) RCW 46.20.342, relating to driving a motor vehicle while
12 operator's license is suspended or revoked;

13 (f) RCW 46.61.5249, relating to operating a motor vehicle in a
14 negligent manner.

15 (4) A law enforcement officer investigating at the scene of a motor
16 vehicle accident may arrest the driver of a motor vehicle involved in
17 the accident if the officer has probable cause to believe that the
18 driver has committed in connection with the accident a violation of any
19 traffic law or regulation.

20 (5)(a) A law enforcement officer investigating at the scene of a
21 motor vessel accident may arrest the operator of a motor vessel
22 involved in the accident if the officer has probable cause to believe
23 that the operator has committed, in connection with the accident, a
24 criminal violation of chapter 79A.60 RCW.

25 (b) A law enforcement officer investigating at the scene of a motor
26 vessel accident may issue a citation for an infraction to the operator
27 of a motor vessel involved in the accident if the officer has probable
28 cause to believe that the operator has committed, in connection with
29 the accident, a violation of any boating safety law of chapter 79A.60
30 RCW.

31 (6) Any police officer having probable cause to believe that a
32 person has committed or is committing a violation of RCW 79A.60.040
33 shall have the authority to arrest the person.

34 ~~((+6+))~~ (7) An officer may act upon the request of a law
35 enforcement officer in whose presence a traffic infraction was
36 committed, to stop, detain, arrest, or issue a notice of traffic
37 infraction to the driver who is believed to have committed the

1 infraction. The request by the witnessing officer shall give an
2 officer the authority to take appropriate action under the laws of the
3 state of Washington.

4 ~~((+7))~~ (8) Any police officer having probable cause to believe
5 that a person has committed or is committing any act of indecent
6 exposure, as defined in RCW 9A.88.010, may arrest the person.

7 ~~((+8))~~ (9) A police officer may arrest and take into custody,
8 pending release on bail, personal recognizance, or court order, a
9 person without a warrant when the officer has probable cause to believe
10 that an order has been issued of which the person has knowledge under
11 chapter 10.14 RCW and the person has violated the terms of that order.

12 ~~((+9))~~ (10) Any police officer having probable cause to believe
13 that a person has, within twenty-four hours of the alleged violation,
14 committed a violation of RCW 9A.50.020 may arrest such person.

15 ~~((+10))~~ (11) A police officer having probable cause to believe
16 that a person illegally possesses or illegally has possessed a firearm
17 or other dangerous weapon on private or public elementary or secondary
18 school premises shall have the authority to arrest the person.

19 For purposes of this subsection, the term "firearm" has the meaning
20 defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning
21 defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

22 ~~((+11))~~ (12) Except as specifically provided in subsections (2),
23 (3), (4), and ~~((+6))~~ (7) of this section, nothing in this section
24 extends or otherwise affects the powers of arrest prescribed in Title
25 46 RCW.

26 ~~((+12))~~ (13) No police officer may be held criminally or civilly
27 liable for making an arrest pursuant to subsection (2) or ~~((+8))~~ (9)
28 of this section if the police officer acts in good faith and without
29 malice.

30 NEW SECTION. Sec. 5. A new section is added to chapter 79A.60 RCW
31 to read as follows:

32 (1) No person who has vessels for hire, or the agent or employee
33 thereof, shall rent, lease, charter, or otherwise permit the use of a
34 vessel, unless the person:

35 (a) Displays the vessel registration numbers and a valid decal on
36 the vessel hull as required by RCW 88.02.550(1);

1 (b) Keeps a copy of the vessel registration certificate aboard the
2 vessel, in compliance with RCW 88.02.340;

3 (c) Displays a carbon monoxide decal on the vessel as required by
4 RCW 88.02.390(2) if the vessel is motor-driven and is not a personal
5 watercraft;

6 (d) Provides a copy of the rental agreement to be kept aboard
7 during the rental, lease, charter, or use period for vessels required
8 under chapter 88.02 RCW to be registered;

9 (e) Ensures that the vessel, if motor-propelled, meets the muffler
10 or underwater exhaust system requirement in RCW 79A.60.130;

11 (f) Outfits the vessel with the quantity and type of personal
12 floatation devices required by RCW 79A.60.140 and 79A.60.160 for the
13 number and ages of the people who will use the vessel;

14 (g) Explains the personal floatation device requirements to the
15 person renting, leasing, chartering, or otherwise using the vessel;

16 (h) Equips the vessel with a skier-down flag, and explains observer
17 and personal floatation requirements of RCW 79A.60.170, if the persons
18 renting, leasing, chartering, or otherwise using the vessel will be
19 waterskiing;

20 (i) If the vessel is a personal watercraft, provides a personal
21 floatation device and a lanyard attached to an engine cutoff switch for
22 the operator to wear at all times when operating the personal
23 watercraft, as required by RCW 79A.60.190;

24 (j) Reviews with the person operating the vessel, and all other
25 persons who the operator may permit to operate the vessel, all the
26 information contained in the motor vessel safety operating and
27 equipment checklist prescribed by the Washington state parks and
28 recreation commission and required under RCW 79A.60.640(6); and

29 (k) Provides all other safety equipment required by RCW 79A.60.110
30 and referenced in the motor vessel safety operating and equipment
31 checklist prescribed by the Washington state parks and recreation
32 commission and required under RCW 79A.60.640(6).

33 (2) This section does not apply to fishing guides and charter boat
34 operators who have a United States coast guard operator's license and
35 are operating on navigable waters, and people who act in the capacity
36 of a paid whitewater river outfitter or guide, or who operate a vessel
37 carrying passengers for hire on whitewater rivers in this state.

1 (3) As provided in RCW 79A.60.020, a violation of this section is
2 a civil infraction punishable under chapter 7.84 RCW, unless:

3 (a) The violation is a violation of RCW 88.02.550, which is
4 punished as a class 2 civil infraction; or

5 (b) The current violation is the person's third violation of the
6 same provision of this chapter during the past three hundred sixty-five
7 days. If it is the person's third violation, then it must be punished
8 as a misdemeanor under RCW 9.92.030.

9 **Sec. 6.** RCW 79A.60.150 and 1993 c 244 s 13 are each amended to
10 read as follows:

11 ~~If ((an infraction is issued under this chapter because a vessel~~
12 ~~does not contain the required equipment and if the operator is not the~~
13 ~~owner of the vessel, but is operating the vessel with the express or~~
14 ~~implied permission of the owner, then either or both operator or owner~~
15 ~~may be cited for the infraction))~~ a vessel does not contain the safety
16 equipment required under this chapter and the rules of the commission,
17 and the operator is not the owner of the vessel but is operating the
18 vessel with the express or implied permission of the owner, then either
19 the owner or the operator, or both, may be cited for the applicable
20 infraction or charged with the applicable crime.

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