

# SENATE BILL REPORT

## SSB 5437

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As Amended by House, April 17, 2013

**Title:** An act relating to boating safety.

**Brief Description:** Regarding boating safety.

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

**Brief History:**

**Committee Activity:** Law & Justice: 2/08/13, 2/21/13 [DPS].

Passed Senate: 3/07/13, 47-0.

Passed House: 4/17/13, 84-13.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5437 be substituted therefor, and the substitute bill do pass.

Signed by Senators Padden, Chair; Carrell, Vice Chair; Kline, Ranking Member; Darneille, Kohl-Welles, Pearson and Roach.

**Staff:** Aldo Melchiori (786-7439)

**Background:** Operating a vessel in a reckless manner or while under the influence of intoxicating liquor or any drug are misdemeanors. A person is considered to be under the influence of intoxicating liquor or any drug if the person has 0.08 grams or more of alcohol per 210 liters of breath, as shown by analysis of the person's breath or the person has 0.08 percent or more by weight of alcohol in the person's blood, as shown by analysis of the person's blood.

Any police officer having probable cause to believe that a person is operating a vessel in a reckless manner or while under the influence of intoxicating liquor or any drug has the authority to arrest the person. An arresting officer must administer field sobriety tests 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 may upon request be given a breath test or may request to have a blood sample taken for analysis.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Any person who provides a motor vessel for rent in Washington must require that the person who rents the motor vessel 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 the person a motor vessel. Alternatively, when the person who rents the motor vessel and all operators of the rented motor vessel do not possess a commission-issued boater education card, the rental agent must ensure that the person who rents the motor vessel and all operators of the craft review, initial, and sign the motor vessel safety operating and equipment checklist in the presence of the rental agent before they may operate the rental motor vessel; and retain the issued copy of the motor vessel safety operating and equipment checklist on board when operating the motor vessel.

**Summary of Substitute Bill:** It is a gross misdemeanor to operate a vessel under the influence of alcohol or marijuana. A person is considered under the influence if, within two hours of operating a vessel the person has a blood-alcohol concentration of 0.08 percent or a THC concentration of 5.00 nanograms per milliliter or higher; the person is under the influence of or affected by intoxicating liquor, marijuana, or any drug; or 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 persons that if they refuse to take the test, they 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. 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 boating safety law 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 safety law violation. 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.

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 Washington State Parks and Recreation Commission (State Parks); and
- provides all other required safety equipment.

A violation is a civil infraction 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.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: Alcohol abuse is the leading contributor to boating accidents in Washington. There is no simple fix to the problem of boating under the influence, but this will help. Washington is one of the few states that do not have implied consent for alcohol and drug testing for boating. This bill aligns Washington boating law with motor vehicle law in regard to driving while under the influence. Only certified marine safety law enforcement officials will enforce these laws. Over 200 interested parties provided input into this bill and narrowed its scope to only those things determined to be essential for increased boating safety.

**Persons Testifying:** PRO: Senator Padden, prime sponsor; Elizabeth Bennett, Seattle Children's Hospital; Wade Alonzo, State Parks; Bruce Bjork, WA Dept. of Fish and Wildlife; Bill Benedict, Clallam County Sheriff's Office; Don Pierce, WA Assn. of Sheriffs and Police Chiefs.

**House Amendment(s):** A boat operator's refusal to take a breath or blood test is not admissible into evidence in a criminal trial. The penalty for a boater's refusal to submit to a breath or blood test is raised from a maximum of \$500 to a maximum and default amount of \$1,000.