
Public Safety Committee

HB 2431

Brief Description: Concerning criminal offenses involving watercraft.

Sponsors: Representative Klippert.

Brief Summary of Bill

- Redefines "reckless" for purposes of certain criminal offenses involving watercraft.
- Modifies the provisions related to determining impairment in cases of operating a vessel while under the influence and other watercraft offenses.
- Makes several changes to the crime of Assault by Watercraft.

Hearing Date: 1/20/20

Staff: Omeara Harrington (786-7136).

Background:

Watercraft Offenses.

Homicide by Watercraft.

A person commits the crime of Homicide by Watercraft if the person operates a vessel: while under the influence of intoxicating liquor or any drug; in a reckless manner; or with disregard for the safety of others; and, as a proximate result of such operation, another person's death ensues within three years. Homicide by Watercraft is a class A felony.

Assault by Watercraft.

A person commits the crime of Assault by Watercraft if the person operates a vessel while under the influence of intoxicating liquor or any drug, or in a reckless manner, and, as the proximate result of such operation, causes serious bodily injury to another person. "Serious bodily injury" means bodily injury involving a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body. Assault by Watercraft is a class B felony.

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.

Operating a Vessel in a Reckless Manner or While Under the Influence.

It is a misdemeanor to operate a vessel in a reckless manner. It is a gross misdemeanor to operate a vessel while under the influence of intoxicating liquor, marijuana, or any drug.

Operating a Personal Watercraft in a Reckless Manner.

It is a misdemeanor to operate a personal watercraft in a reckless manner by recklessly weaving through congested vessel traffic, recklessly jumping the wake of another vessel unreasonably or unnecessarily close to the vessel or when visibility around the vessel is obstructed, or recklessly swerving at the last possible moment to avoid collision. Personal watercraft include vessels under 16 feet with primary motive power through a water jet pump, designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel.

Definition of Recklessness.

For purposes of the watercraft offenses, "reckless" or "recklessly" means acting carelessly and heedlessly in a willful and wanton disregard of the rights, safety, or property of another.

Different definitions of "reckless" apply in motor vehicle offenses. For purposes of the felony offenses of Vehicular Assault and Vehicular Homicide, "recklessness" is defined in case law as "operating a vehicle in a rash or heedless manner, indifferent to the consequences." For purposes of the nonfelony offense of Reckless Driving, any person who drives a vehicle in willful or wanton disregard for the safety of persons or property is guilty of the offense.

Determining Impairment.

For purposes of the offense of Operating a Vessel while Under the Influence of Intoxicating Liquor, Marijuana, or any Drug, a person is considered to be under the influence if, within two hours of operating a vessel, the person:

- has a blood alcohol concentration (BAC) of 0.08 or higher or a tetrahydrocannabinol (THC) concentration of 5.00 or higher; or
- is under the influence of or affected by liquor, marijuana, or any drug, or a combination of these substances.

Any person who operates a vessel within this state is deemed to have given consent to a breath alcohol concentration test when an officer has reasonable grounds to believe the person was operating the vessel while under the influence. In instances in which a person is arrested in conjunction with an accident, if the accident involved death or serious bodily injury of another person, or the arresting officer has reasonable grounds to believe the vessel operator was under the influence of THC or any other drug, a blood test may be administered upon the arrested person's consent and a valid waiver of the warrant requirement, or without consent pursuant to a search warrant or when exigent circumstances exist.

The impaired driving laws contain corresponding provisions to those found in the laws governing vessels. As with vessels, the impaired driving laws set "per se" impairment thresholds of 0.08 BAC and 5.00 THC. However, under the impaired driving laws, it is an affirmative defense if the defendant consumed a sufficient quantity of alcohol or marijuana after the time of driving and before the administration of the test to meet the threshold limit. Analyses obtained

more than two hours after the alleged driving may serve as evidence of intoxication at the threshold level within the two-hour timeframe.

The impaired driving laws also provide that if the arrested person exercises his or her right to refuse a breath test, no test may be given except as otherwise authorized by law; however, the officer is not precluded from obtaining a person's blood to test for intoxicants pursuant to a search warrant or a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law. A person's refusal to submit to a breath test is admissible as evidence at a subsequent criminal trial. Refusal to submit to a blood test may be used as evidence at a subsequent criminal trial when a search warrant, or an exception to the search warrant, authorized the seizure.

Summary of Bill:

The definitions of "reckless" are modified in the watercraft offenses to match corresponding motor vehicle offenses. Specifically, "reckless" for purposes of Homicide by Watercraft and Assault by Watercraft is changed to mean "operating a vessel in a rash or heedless manner, indifferent to the consequences." For purposes of Operating a Vessel in a Reckless Manner and Operating a Personal Watercraft in a Reckless Manner, "reckless" means "in willful or wanton disregard for the safety of persons or property."

The offense of Assault by Watercraft is further modified:

- In addition to existing grounds, a person may commit the offense by operating a vessel with disregard for the safety of others.
- The requisite level of harm is "substantial bodily harm" (rather than "serious bodily injury"). "Substantial bodily harm" means bodily injury: involving a temporary but substantial disfigurement; causing a temporary but substantial loss or impairment of the function of any bodily part or organ; or causing a fracture of any body part.
- The conduct need only be a proximate cause of the harm, rather than the proximate cause of the harm.

Provisions related to determining impairment for purposes of the watercraft offenses are aligned with the processes and procedures related to determining impairment for motor vehicle offenses. An affirmative defense is added to Operating a Vessel While Under the Influence of Intoxicating Liquor or Drugs for circumstances in which the defendant consumed a sufficient quantity of alcohol or marijuana after the time of operating the vessel and before the administration of the test to meet the threshold limit. Analyses obtained more than two hours after the alleged operation of the vessel may serve as evidence of intoxication at the threshold level within the two-hour timeframe.

The implied consent provisions in the watercraft offense statutes are replaced with provisions matching those for impaired driving. In particular, if a person is arrested on suspicion of impaired operation of a vessel, the person may exercise his or her right to refuse a breath test; however, the officer is not precluded from obtaining a person's blood to test for intoxicants pursuant to a search warrant or a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law. A person's refusal to submit to a breath test is admissible into evidence at a subsequent criminal trial. Refusal to submit to a blood test

may be used as evidence at a subsequent criminal trial when a search warrant, or an exception to the search warrant, authorized the seizure.

Appropriation: None.

Fiscal Note: Not requested.

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