

1 HB238  
2 208558-2  
3 By Representatives Shaver, Holmes and Oliver  
4 RFD: Judiciary  
5 First Read: 02-FEB-21  
6 PFD: 02/01/2021

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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, except under  
12 certain conditions.

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

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

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

22 Amendment 621 of the Constitution of Alabama  
23 of 1901, as amended by Amendment 890, now appearing  
24 as Section 111.05 of the Official Recompilation of  
25 the Constitution of Alabama of 1901, as amended,  
26 prohibits a general law whose purpose or effect  
27 would be to require a new or increased expenditure

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

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

15  
16 A BILL  
17 TO BE ENTITLED  
18 AN ACT  
19

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

1 the operation of a vessel on the waters of this state; to  
2 require a person to operate a vessel at idle speeds under  
3 certain conditions; to provide boater safety certification  
4 requirements; to apply the emergency engine or motor shut-off  
5 switch requirement to certain vessels; to make nonsubstantive,  
6 technical revisions to update the existing code language to  
7 current style; and in connection therewith would have as its  
8 purpose or effect the requirement of a new or increased  
9 expenditure of local funds within the meaning of Amendment 621  
10 of the Constitution of Alabama of 1901, as amended by  
11 Amendment 890, now appearing as Section 111.05 of the Official  
12 Recompilation of the Constitution of Alabama of 1901, as  
13 amended.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Section 32-5A-191.3, Code of Alabama  
16 1975, is amended to read as follows:

17 "§32-5A-191.3.

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

26 "(b) In the case of a vessel or other marine device  
27 described in subsection (a), where a law enforcement officer

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

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

16 "(d) (1) Upon a ~~first or subsequent~~ conviction, a  
17 person violating this section shall be punished in the same  
18 manner and under the same conditions as a person convicted of  
19 driving under the influence ~~of alcohol or drugs~~ pursuant to  
20 Section 32-5A-191, or any successor section or sections  
21 providing for the offense of driving under the influence ~~of~~  
22 ~~alcohol or 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           Section 2. Sections 33-5-51, 33-5-52, and 33-5-72,  
7 Code of Alabama 1975, are amended to read as follows:

8           "§33-5-51.

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

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

23           "(c) A person operating a personal watercraft on the  
24 waters of this state that does not have ~~self-circling~~  
25 self-circling capability, shall have a lanyard type engine  
26 cutoff switch and ~~must~~ shall attach the lanyard to the person,

1 his or her clothing, or a personal flotation device, as is  
2 appropriate.

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

22 "(e) (1) It is unlawful for a person to operate a  
23 vessel or personal watercraft in the waters of this state  
24 greater than 300 feet wide at greater than idle speed within  
25 100 feet of any of the following:

26 "a. A moored or anchored boat or any boat that is  
27 adrift.

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

2           "c. A person in the water.

3           "d. The shoreline.

4           "e. A public park or beach.

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

6           "g. A vessel designated for use by a law enforcement  
7 officer while making use of visual signals while alongside  
8 another vessel.

9           "(2) It is unlawful for a person to operate a vessel  
10 or personal watercraft in the waters of this state equal to or  
11 less than 300 feet wide greater than idle speed within 50 feet  
12 of any of the following:

13           "a. A moored or anchored boat or any boat that is  
14 adrift.

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

16           "c. A person in the water.

17           "d. The shoreline.

18           "e. A public park or beach.

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

20           "g. A vessel designated for use by a law enforcement  
21 officer while making use of visual signals while alongside  
22 another vessel.

23           "(3) As used in this subsection, idle speed means  
24 the lowest speed a boat may be operated while maintaining  
25 steering control.

26           "(4) This subsection does not apply to any  
27 commercial vessel operating on federally maintained navigable

1 waterways in the state which operates under the jurisdiction  
2 of the Coast Guard.

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

9 ~~"(f) (g)~~ It is unlawful for the owner of any vessel  
10 or personal watercraft or any person having charge over or  
11 control of a vessel or personal watercraft to authorize or  
12 knowingly permit ~~these~~ the vessel or personal watercraft to be  
13 operated on the waters of this state by a person in violation  
14 of this section.

15 ~~"(g) (h)~~ No person shall tow any person by personal  
16 watercraft unless the personal watercraft is equipped with a  
17 rearview mirror meeting the specifications established by  
18 ~~regulation~~ rule of the ~~Commissioner of the Department of~~  
19 ~~Conservation and Natural Resources~~ Secretary of the Alabama  
20 State Law Enforcement Agency.

21 ~~"(h) (i)~~ Any person who violates this section,  
22 except as otherwise provided in subsection (d), shall be  
23 guilty of a Class B misdemeanor, punishable upon conviction as  
24 provided in Sections 13A-5-7 and 13A-5-12. All persons so  
25 convicted shall be fined not less than twenty-five dollars  
26 (\$25). All fines collected for a violation of this section

1 shall be paid into the ~~State Water Safety Fund~~ State Treasury  
2 to the credit of the Public Safety Fund.

3 "~~(i)~~ (j) This section does not apply to a person  
4 operating a vessel to conduct commercial aquatic herbicide  
5 applications or a performer engaged in a professional  
6 exhibition or a person participating in a regatta, race,  
7 marine parade, tournament, or exhibition held in compliance  
8 with Section 33-5-27, and any rules ~~and regulations issued~~  
9 adopted by the ~~Commissioner of Conservation and Natural~~  
10 ~~Resources~~ Secretary of the Alabama State Law Enforcement  
11 Agency.

12 "§33-5-52.

13 "(a) (1) ~~Every~~ A person, ~~except those specifically~~  
14 ~~exempted by statutory enactment, within five years from April~~  
15 ~~28, 1994,~~ shall procure a boater safety certification before  
16 operating a motorized vessel upon the waters of this state, as  
17 defined in Section 33-5-3. This section ~~shall~~ does not apply  
18 to the operation of any sailboat, rowboat, or canoe.

19 "(2)a. Notwithstanding ~~anything~~ any law to the  
20 contrary ~~herein~~, an Alabama resident 16 years of age ~~and~~ or  
21 ~~older,~~ who purchases a vessel and who has not been previously  
22 issued a boater safety certification, ~~may~~ for a period of  
23 ~~thirty (30)~~ 30 days following the date of sale of the vessel  
24 to the person, may operate the vessel upon the waters,  
25 provided the following conditions are met:

26 "~~(1)~~ 1. The vessel has been registered in the name of  
27 the person, and

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

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

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

20           "(c) ~~Every~~ Upon application, a boater safety  
21 certification issued under this article may be renewed at the  
22 end of the certification period without examination ~~upon~~  
23 ~~application.~~ For the purpose of renewal of a boater safety  
24 certification, the ~~Department of Public Safety~~ Alabama State  
25 Law Enforcement Agency shall mail renewal notices to each  
26 certification holder 30 days after the expiration date if the  
27 certification has not been renewed. A grace period of 60 days

1 after the expiration date of certification shall exist for the  
2 purpose of certification renewal and the certification shall  
3 be valid for this time period. The applicant shall apply for  
4 renewal of certification any time during a period beginning 30  
5 days before the expiration date of the then current  
6 certification until three years after the expiration date of  
7 certification. Failure to make application for renewal within  
8 the specified time shall result in the applicant being  
9 required to take, and successfully pass, a written or oral  
10 examination as administered by the ~~Department of Public Safety~~  
11 Alabama State Law Enforcement Agency. ~~If any person's birthday~~  
12 ~~is February 29, the first day of March following shall be~~  
13 ~~regarded as the birthday for the purposes of this section.~~

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

22 "~~(e) Nonresidents at least 12 years of age whose~~  
23 ~~home state or country does not require boater safety~~  
24 ~~certification or the licensing of vessel operators shall also~~  
25 ~~be exempt from the requirements of this section for a~~  
26 ~~cumulative operation period of not more than 45 days in any~~  
27 ~~calendar year. Otherwise, any nonresidents shall be examined~~

1 ~~and certified~~ Except as provided in subsections (f) and (g), a  
2 nonresident may operate a vessel upon the waters of this state  
3 only after obtaining a valid boater safety certification or  
4 vessel operator's certification issued in his or her home  
5 state or country or, upon examination and certification under  
6 the same terms and conditions as Alabama residents, after  
7 obtaining a Nonresident Alabama Boater Safety Certification.  
8 ~~Nonresidents may be examined and obtain certification in any~~  
9 ~~county and the certification shall be entitled "Nonresident~~  
10 ~~Alabama Boater Safety Certification," but under no~~  
11 ~~circumstances shall a person be granted any privileges of~~  
12 ~~operation beyond those granted to an Alabama resident~~  
13 ~~certification holder of the same age.~~

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

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

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

25 "~~a.~~ (2) The rental contract specifies that the  
26 lessee has been instructed in the proper and safe operation of



1 the vessel by the lessor or the authorized agent of the  
2 lessor, ~~and.~~

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

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

10 "§33-5-72.

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

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

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

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

6           Section 3. In addition to any other penalties for  
7 driving under the influence as provided in Section 32-5A-191,  
8 Code of Alabama 1975, upon conviction of an offense under  
9 Section 32-5A-191, Code of Alabama 1975, the Alabama State Law  
10 Enforcement Agency shall suspend an individual's vessel  
11 operating privilege or boater safety certification under the  
12 same conditions and in the same manner as provided in Section  
13 32-5A-191, Code of Alabama 1975, excluding any ignition  
14 interlock requirements.

15           Section 4. Although this bill would have as its  
16 purpose or effect the requirement of a new or increased  
17 expenditure of local funds, the bill is excluded from further  
18 requirements and application under Amendment 621, as amended  
19 by Amendment 890, now appearing as Section 111.05 of the  
20 Official Recompilation of the Constitution of Alabama of 1901,  
21 as amended, because the bill defines a new crime or amends the  
22 definition of an existing crime.

23           Section 5. This act shall become effective on the  
24 first day of the third month following its passage and  
25 approval by the Governor, or its otherwise becoming law,  
26 except Section 1 shall become effective May 1, 2022, following

1 its passage and approval by the Governor, or its otherwise  
2 becoming law.