

Enrolled House Bill 2079

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for State Marine Board)

CHAPTER

AN ACT

Relating to boating offenses; creating new provisions; and amending ORS 830.084, 830.086, 830.088, 830.090, 830.092, 830.094, 830.315, 830.325, 830.505, 830.515, 830.520, 830.525, 830.545, 830.550, 830.815, 830.990 and 830.994.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 830.315 is amended to read:

830.315. (1) A person commits the crime of reckless [*operation of a boat who*] **boating if the person recklessly** operates a boat [*carelessly and heedlessly in willful or wanton disregard of the rights, safety or property of others*] **in a manner that endangers the safety of persons or property. As used in this subsection, “recklessly” has the meaning given that term in ORS 161.085.**

(2) [*No person shall*] **A person may not** operate any boat at a rate of speed greater than will permit that person in the exercise of reasonable care to bring the boat to a stop within the assured clear distance ahead.

(3) Nothing in ORS 830.005, 830.015 to 830.050, 830.175, 830.210 to 830.420 and 830.475 to 830.490 is intended to prevent the operator of a boat actually competing in an event [*which*] **that** is authorized as provided in ORS 830.375 from attempting to attain high speeds on a marked racing course.

SECTION 2. ORS 830.990 is amended to read:

830.990. (1)(a) Violation of ORS 830.565 by a person operating a manually propelled boat is a Class D violation. Notwithstanding ORS 153.019, the presumptive fine for a violation of ORS 830.565 by a person operating a manually propelled boat is \$30.

(b) Violation of ORS 830.565 by a person operating a motorboat is a Class D violation. Notwithstanding ORS 153.019, the presumptive fine for a violation of ORS 830.565 by a person operating a motorboat is \$50.

(2) A person who violates ORS 830.050, 830.088, 830.090, 830.092, 830.094, **830.215**, 830.230, 830.415, 830.710, 830.720, 830.770, 830.780, 830.810, 830.850 or 830.855, or rules adopted to carry out the purposes of those statutes, commits a Class D violation.

(3) A person who violates ORS 830.220, 830.240, 830.245, 830.250, 830.375, 830.475 (4), 830.480, 830.785, 830.805 or 830.825, or rules adopted to carry out the purposes of those statutes, commits a Class C violation.

(4) A person who violates ORS 830.110, 830.175, 830.180, 830.185, 830.187, 830.195, 830.210, [830.215,] 830.225, 830.235, 830.260, 830.300, 830.315 (2) and (3), 830.335, 830.340, 830.345, 830.350,

830.355, 830.360, 830.362, 830.365, 830.370, 830.410, 830.420, 830.495, 830.560, 830.775, 830.795 or 830.830, or rules adopted to carry out the purposes of those statutes, commits a Class B violation.

(5) A person who violates ORS 830.305 or 830.390, or rules adopted to carry out the purposes of those statutes, commits a Class A violation.

(6) A person who violates ORS 830.383 commits a Class B misdemeanor.

(7) A person who violates ORS 830.035 (2), 830.053, 830.315 (1), 830.325, 830.475 (1), 830.730 or 830.955 (1) commits a Class A misdemeanor.

(8) A person who violates ORS 830.475 (2) commits a Class C felony.

(9) A person who violates ORS 830.944 commits a Class A violation.

SECTION 3. ORS 830.994 is amended to read:

830.994. (1) When a person is convicted of a violation of any provision of ORS **830.315** or 830.325, the court shall comply with the following in addition to any other penalty imposed upon the person under ORS 830.990:

(a) Order the person not to operate a boat for a period of one year;

(b) Order the person to complete a boating safety course **conducted in a classroom and** approved by the State Marine Board; and

(c) **Order the board to suspend the person's boating safety education card issued under ORS 830.086 for one year.**

[(c)] (2) When a person is convicted of a violation of any provision of ORS 830.325, the court shall, in addition to any other penalty imposed upon the person under ORS 830.990 or subsection (1) of this section, include in the record of conviction a finding whether the person willfully refused the request of a peace officer to **physically submit to chemical testing of the breath or urine or a nontestimonial field sobriety test [pursuant to] under ORS 830.505 and 830.550. For purposes of this subsection, a person shall be found to have willfully refused the request if the person was informed about rights and consequences concerning the test under ORS 830.505 and 830.545 and refused to **physically** submit to the test.**

[(2)] (3) The record of conviction of each person convicted of violating ORS 830.315 or 830.325 shall be sent by the court to the board within 14 days of the entry of the judgment of conviction in the court register.

[(3)] (4) A person who knowingly operates a boat in violation of a court order under subsection (1)(a) of this section commits a Class A misdemeanor.

SECTION 4. Section 5 of this 2019 Act is added to and made a part of ORS chapter 830.

SECTION 5. In addition to any other penalty, the State Marine Board shall suspend a person's boating safety education card issued under ORS 830.086 for three years from the date of conviction if the record of conviction under ORS 830.325 shows that the person willfully refused the request of a peace officer to physically submit to chemical testing of the breath or urine or a nontestimonial field sobriety test under ORS 830.505 and 830.550.

SECTION 6. ORS 830.545 is amended to read:

830.545. This section establishes the requirements for information about rights and consequences for purposes of ORS 830.505. The following apply to the information about rights and consequences:

(1) The information about rights and consequences shall be substantially in the form prepared by the State Marine Board. The board may establish any form it determines appropriate and convenient.

(2) **Except as provided in subsection (3) of this section,** the information about rights and consequences shall be substantially as follows:

(a) Operating a boat **while** under the influence of intoxicants is a crime in Oregon and the person is subject to criminal penalties if the test shows that the person is under the influence of intoxicants. If the person *[refuses the test or]* fails a **test**, evidence of the *[refusal or]* failure may also be offered against the person.

(b) The person fails the test if the test shows the person is under the influence of intoxicants under Oregon law.

(c) If the person is convicted of operating a boat while under the influence of intoxicants, the person may not operate a boat for a period of time following the conviction.

(d) If the person is convicted of operating a boat while under the influence of intoxicants, **the following apply for one year:**

(A) The person is not eligible to apply for any certificate of title, registration or numbering; and *[all certificates of title, registration and numbering necessary to lawfully operate a boat on Oregon waters shall be canceled for at least a year. The ineligibility to apply for certificates or the cancellation of the certificates shall be substantially longer if the person refuses the test.]*

(B) The person's boating safety education card is suspended.

(e) After taking the test, the person shall have a reasonable opportunity, upon request, for an additional chemical test for blood alcohol content to be performed at the person's own expense by a qualified individual of the person's choosing.

(3) A person who refuses to submit to a chemical test after being informed of the rights and consequences in subsection (2) of this section shall be provided additional information, substantially as follows:

(a) If the person refuses to provide consent to a breath or urine test, and is thereafter requested to provide only physical cooperation to submit to a breath or urine test and the person refuses to physically submit to a test, evidence of that refusal may be offered against the person.

(b) If the person refuses to physically submit to the test, the following apply for three years:

(A) The person is not eligible to apply for any certificate of title, registration or numbering; and

(B) The person's boating safety education card is suspended.

(4) Notwithstanding subsection (3) of this section, the board may not impose the penalties described in subsection (3)(b) of this section for refusal to provide a urine sample if the person provides documentation from a physician licensed by this state showing that the person has a medical condition that makes it impossible for the person to provide a sample.

[(3)] **(5) Nothing in this section prohibits the board from providing additional information concerning rights and consequences that the board considers appropriate or convenient.**

SECTION 7. ORS 830.084 is amended to read:

830.084. In establishing the mandatory boating safety education program pursuant to ORS 830.082, the State Marine Board shall:

(1) Set a minimum standard of boating safety education competency. The standard shall be consistent with the applicable standard established by the National Association of State Boating Law Administrators. The board may update the minimum standard of competency as necessary.

(2) Create a boating safety course of instruction and examination designed to educate and test for the minimum standard of safety established pursuant to subsection (1) of this section.

(3) Create an equivalency exam that may substitute for taking the boating safety course.

(4) Incorporate volunteer boating safety education programs to the maximum extent possible.

(5) Allow use of commercially provided boating safety courses, provided they meet the standard adopted by the board.

(6) Accept proof of prior completion of any approved boating safety course as meeting the requirement for a boating safety course.

(7) Establish a fee for the boating safety *[certificate]* **education card** issued under ORS 830.086 that may not exceed \$10.

(8) Establish a temporary boating safety *[certificate]* **education card** that is valid for 60 days and issued in conjunction with a temporary certificate of number for newly acquired boats.

(9) Promote the fact that insurance discounts of 10 percent to 15 percent are widely available for taking a boating safety course that meets the minimum standard established pursuant to subsection (1) of this section.

SECTION 7a. If House Bill 2078 becomes law, section 7 of this 2019 Act (amending ORS 830.084) is repealed.

SECTION 8. ORS 830.092 is amended to read:

830.092. A boating safety [*certificate*] **education card** is not required if a person:

- (1) Is at least 16 years of age and rents a motorboat with an engine greater than 10 horsepower and completes a required dockside safety checklist before operating the boat;
- (2) Possesses a current commercial fishing license as required by ORS 508.235;
- (3) Possesses a valid United States Coast Guard commercial motorboat operator's license;
- (4) Is not a resident of this state and does not operate a boat with an engine greater than 10 horsepower in Oregon waters for more than 60 consecutive days;
- (5) Is not a resident of this state, holds a current out-of-state boating safety [*certificate*] **education card** and has the [*out-of-state certificate*] **card** in the person's possession; **or**
- (6) Holds a temporary [*certificate*] **card** as described under ORS 830.084; *or*
- (7) *Is not yet required to have a certificate under the phase-in program developed by the State Marine Board pursuant to section 9, chapter 716, Oregon Laws 1999.*

SECTION 8a. If House Bill 2078 becomes law, section 8 of this 2019 Act (amending ORS 830.092) is repealed.

SECTION 9. ORS 830.086 is amended to read:

830.086. A person may obtain a boating safety [*certificate*] **education card** if the person:

- (1) Is at least 12 years of age;
- (2) Passes the boating safety course and examination, or the equivalency exam, as described in ORS 830.084, or submits proof to the satisfaction of the State Marine Board that the person has taken a course that is substantively equivalent to the course described in ORS 830.084; and
- (3) Pays the fee required by the board.

SECTION 10. ORS 830.088 is amended to read:

830.088. A person 12 to 15 years of age with a boating safety [*certificate*] **education card** may operate a motorboat with an engine of 10 horsepower or less. In addition, a person 12 to 15 years of age with a boating safety [*certificate*] **education card** may operate a motorboat with an engine greater than 10 horsepower if accompanied by and under the direct supervision of a parent, guardian or responsible person 16 years of age or older who possesses a boating safety [*certificate*] **education card**.

SECTION 11. ORS 830.090 is amended to read:

830.090. A person may operate a motorboat with an engine greater than 10 horsepower if the person:

- (1)(a) Is at least 16 years of age; and
- (b) Obtains a boating safety [*certificate*] **education card** pursuant to ORS 830.086; or
- (2) Is accompanied by and under the direct supervision of a person 16 years of age or older who has obtained a boating safety [*certificate*] **education card** pursuant to ORS 830.086.

SECTION 12. ORS 830.094 is amended to read:

830.094. A person shall carry a boating safety [*certificate*] **education card** on the boat while operating a motorboat, as required, and shall present the [*certificate*] **card** to a peace officer upon request by the peace officer.

SECTION 12a. If House Bill 2078 becomes law, section 12 of this 2019 Act (amending ORS 830.094) is repealed.

SECTION 13. ORS 830.325 is amended to read:

830.325. (1) [*No*] **A** person under the influence of an intoxicating liquor, cannabis, **an inhalant** or a controlled substance [*shall*] **may not** operate, propel or be in actual physical control of any boat on any waters of this state.

(2) [*No*] **An** owner of a boat or person in charge or in control of a boat [*shall*] **may not** authorize or knowingly permit the boat to be propelled or operated on any waters of this state by any person who is under the influence of an intoxicating liquor, cannabis, **an inhalant** or a controlled substance.

SECTION 14. ORS 830.505 is amended to read:

830.505. (1) Any person who operates a boat on any waters of this state shall be deemed to have given consent to submit to chemical tests of the person's breath for the purpose of determining the alcoholic content of the person's blood if the person is arrested for operating a boat while under the influence of intoxicants while in violation of ORS 830.325 or of a municipal ordinance. Tests shall be administered upon the request of a peace officer having reasonable grounds to believe that the person arrested was operating a boat while under the influence of intoxicants while in violation of ORS 830.325 or of a municipal ordinance. Before the test is administered, the person requested to take the test shall be informed of rights and consequences as described in ORS 830.545.

[(2) No chemical test of the person's breath shall be given under subsection (1) of this section, to a person under arrest for operating a boat while under the influence of intoxicants in violation of ORS 830.325 or of a municipal ordinance, if the person refuses the request of a peace officer to submit to the chemical test after the person has been informed of rights and consequences as described in ORS 830.545.]

(2) Any person who operates a boat on any waters of this state shall be deemed to have given consent to submit to chemical tests of the person's urine for the purpose of determining the presence of cannabis, a controlled substance or an inhalant in the person's body if the person is arrested for operating a boat while under the influence of intoxicants while in violation of ORS 830.325 or of a municipal ordinance. Tests shall be administered upon the request of a peace officer having reasonable grounds to believe that the person arrested was operating a boat while under the influence of intoxicants while in violation of ORS 830.325 or of a municipal ordinance. Before the test is administered, the person requested to take the test shall be informed of rights and consequences as described in ORS 830.545.

(3) A person asked to give a urine sample shall be given privacy and may not be observed by a peace officer when producing the sample.

(4)(a) At the trial of any civil or criminal action, suit or proceeding arising out of the acts committed by a person operating a boat while under the influence of intoxicants, a valid chemical analysis of a person's urine is admissible as evidence and may be used with other evidence, if any, to determine whether the person was operating a boat while under the influence of intoxicants.

(b) A chemical analysis of a person's urine is valid if analysis is performed in an accredited or licensed toxicology laboratory.

[(3)] **(5) Within the time required by the State Marine Board by rule, the arresting officer shall report the following information to the board:**

(a) Whether the person refused to physically submit to a test.

(b) Whether the person was informed of rights and consequences as described under ORS 830.545.

[(4)] **(6) A report required by this section may be made on one or more forms provided by the board.**

(7) Nothing in this section precludes a peace officer from obtaining a chemical test through any lawful means for use as evidence in a criminal or civil proceeding including, but not limited to, obtaining a search warrant.

SECTION 15. ORS 830.515 is amended to read:

830.515. If a person refuses or fails to **physically** submit to chemical tests of the breath[, blood] or urine as required by ORS 830.505 [and 830.520], evidence of the person's refusal or failure to **physically** submit is admissible in any criminal or civil action or proceeding arising out of acts alleged to have been committed while the person was operating a boat while under the influence of **an** intoxicating liquor, cannabis, **an inhalant** or **a** controlled [substances] **substance**.

SECTION 16. ORS 830.520 is amended to read:

830.520. Nothing in ORS 830.505 is intended to preclude the administration of chemical tests described in this section. A peace officer may obtain a chemical test of the blood to determine the amount of alcohol in any person's blood or a test of the person's blood or a test of the person's blood

or urine, or both, to determine the presence of cannabis, **an inhalant** or a controlled substance in the person as provided in the following:

(1) If, when requested by a peace officer, the person expressly consents to such a test.

(2) Notwithstanding subsection (1) of this section, from a person without the person's consent if:

(a) The peace officer has probable cause to believe that the person was operating a boat while under the influence of an intoxicating liquor, cannabis, **an inhalant** or a controlled substance and that evidence of the offense will be found in the person's blood or urine; and

(b) The person is unconscious or otherwise in a condition rendering the person incapable of expressly consenting to the test or tests requested.

SECTION 17. ORS 830.525 is amended to read:

830.525. In addition to chemical tests of the breath, blood or urine administered under ORS 830.505 and 830.520, upon the request of a peace officer, a person shall be permitted upon request, at the person's own expense, reasonable opportunity to have any licensed physician, licensed professional nurse or qualified technician, chemist or other qualified person of the person's own choosing administer a chemical test or tests of the person's breath or blood for the purpose of determining the alcoholic content of the person's blood or a chemical test or tests of the person's blood or urine, or both, for the purpose of determining the presence of cannabis, **an inhalant** or a controlled substance in the person. The failure or inability to obtain such a test or tests by a person shall not preclude the admission of evidence relating to a test or tests taken upon the request of a peace officer.

SECTION 18. ORS 830.550 is amended to read:

830.550. (1) Any person who operates a boat on any waters of this state shall be deemed to have given consent to submit to field sobriety tests upon the request of a peace officer for the purpose of determining if the person is under the influence of intoxicants if the peace officer reasonably suspects that the person has committed the offense of operating a boat while under the influence of intoxicants in violation of ORS 830.325 or a municipal ordinance. [*Before the tests are administered, the person requested to take the test shall be informed of the consequences of refusing to take or failing to submit to the tests under ORS 830.545.*] **If the person refuses to consent to field sobriety tests, the person shall be asked to provide only physical cooperation to submit to nontestimonial field sobriety tests and the person shall be informed of the consequences of failing to physically submit to those tests under subsection (2) of this section.**

(2) If a person refuses or fails to **physically** submit to **nontestimonial** field sobriety tests as required by subsection (1) of this section **and after the person has been informed of the consequences of refusing or failing to physically submit**, evidence of the person's refusal or failure to **physically** submit is admissible in any criminal or civil action or proceeding arising out of allegations that the person was operating a boat while under the influence of intoxicants.

(3) Within the time required by the State Marine Board by rule, the arresting officer shall report the following information to the board:

(a) Whether the person refused **or failed to physically** submit to a test.

(b) Whether the person was informed of rights and consequences as described under ORS 830.545.

(4) A report required by this section may be made on one or more forms provided by the board.

SECTION 19. ORS 830.815 is amended to read:

830.815. (1) The State Marine Board may refuse to issue a certificate of title or a certificate of number or registration if the board determines at any time that an applicant for the certificate has:

(a) Given a false statement or false information in applying for the certificate;

(b) Otherwise failed to comply with the applicable provisions under ORS 830.060 to 830.140 and 830.700 to 830.870 pertaining to application for certificates; or

(c) Been convicted of operating a boat while under the influence of an intoxicating liquor, cannabis, **an inhalant** or a controlled substance within one year of the date of application or within three years of the date of application if the record of conviction shows that the person willfully

refused the request of a peace officer to **physically** submit to chemical testing of the breath **or urine** or a **nontestimonial** field sobriety test pursuant to ORS 830.505 and 830.550.

(2) After a hearing upon 10 days' notice, the board may cancel a certificate of title or certificate of number or registration if the board determines at any time that an owner, boat manufacturer or dealer named in the certificate:

(a) Gave a false statement or false information in applying for the certificate; or

(b) Otherwise failed to comply with the applicable provisions under ORS 830.060 to 830.140, 830.700 to 830.715, 830.725, 830.730, 830.770, 830.780, 830.785, 830.795 to 830.820 and 830.830 to 830.870 pertaining to applications for certificates.

(3) The board shall automatically suspend the certificate of number for any boat if the board receives notification of a conviction for violation of ORS 830.260 under ORS 830.270. The suspension under this subsection is not subject to hearing. The board shall reinstate a certificate of number suspended under this subsection when the boat owner submits proof satisfactory to the board that the boat has been approved by a person designated by the board as meeting the standards for sound levels established by the board.

(4) If the board receives notification from any court in this state that any person who is charged with a boating offense and who is the registered owner of the boat has failed to appear as required by law or has failed to comply with the judgment of the sentencing court, the board shall take the following actions:

(a) Notify, by certified mail, the registered owner of the boat involved in the offense of the owner's failure to appear or comply with the judgment of the court. The notification shall include a copy of the citation issued to the owner and will inform the owner that the board will suspend the certificate of number for the boat 45 days from the date of the mailing of the notice by the board. The notice shall include a statement that a hearing may be requested in writing within 10 days of the notice. Any hearing requested under this subsection shall be limited to the issue of whether the person is the person who failed to appear or comply with the judgment of the sentencing court.

(b) The board shall suspend the certificate of number for the boat involved 45 days after mailing notice of intent to suspend to the owner of the boat unless a hearing has been requested or, within the 45-day notice period, the board receives notice from the court that the owner has appeared in court and is in compliance with any court order entered in the proceeding. Notice from the court may consist of a copy of any receipt or other document issued by the court indicating that the person has appeared and is in compliance with any court order.

(c) Upon suspending any certificate of number under this subsection, the board may charge the owner a reinstatement fee sufficient to cover the actual expenses of the board in processing the transactions described in this section. The board shall reinstate any certificate of number suspended under this subsection upon receiving payment of any reinstatement fee and notice from the court that the owner has appeared and fully satisfied the judgment of the court.

(5) Conviction of operating a boat while under the influence of an intoxicating liquor, cannabis, **an inhalant** or a controlled substance under ORS 830.325 constitutes grounds for suspension of a person's certificate of number or registration for all boats owned by the person. The following provisions apply to such suspension:

(a) Upon receipt of a record of conviction for a violation of ORS 830.325, the board shall notify the convicted person that all certificates of number or registration issued in the person's name are suspended. The notice shall include a statement that a hearing may be requested in writing within 10 days of the notice. Any hearing requested under this subsection shall be limited to the issue of whether the person is the person convicted.

(b) The suspension shall be for three years from the date of conviction if the record of conviction shows that the person willfully refused the request of a peace officer to **physically** submit to chemical testing of the breath **or urine** or a **nontestimonial** field sobriety test under ORS 830.505 and 830.550. Otherwise the period of suspension shall be for one year from the date of conviction.

SECTION 20. Section 5 of this 2019 Act and the amendments to ORS 830.315, 830.325, 830.505, 830.515, 830.520, 830.525, 830.545, 830.550, 830.815, 830.990 and 830.994 by sections 1 to 3, 6 and 13 to 19 of this 2019 Act apply to conduct occurring on or after the effective date of this 2019 Act.

Passed by House February 14, 2019

Repassed by House June 11, 2019

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 6, 2019

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2019

Approved:

.....M.,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2019

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Bev Clarno, Secretary of State