

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
HOUSE BILL 2079**

1 On page 1 of the printed bill, line 3, delete “830.545,” and insert “830.325,
2 830.505, 830.515, 830.520, 830.525, 830.545, 830.550, 830.815,”.

3 On page 2, line 23, after the first “to” insert “physically” and after
4 “breath” insert “or urine” and before “field” insert “nontestimonial”.

5 In line 26, after the first “to” insert “physically”.

6 In line 36, after the first “to” insert “physically” and after “breath” in-
7 sert “or urine”.

8 In line 37, after “a” insert “nontestimonial”.

9 Delete lines 38 through 45.

10 On page 3, delete lines 1 through 23 and insert:

11 **“SECTION 6.** ORS 830.545 is amended to read:

12 “830.545. This section establishes the requirements for information about
13 rights and consequences for purposes of ORS 830.505. The following apply to
14 the information about rights and consequences:

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

18 “(2) **Except as provided in subsection (3) of this section,** the infor-
19 mation about rights and consequences shall be substantially as follows:

20 “(a) Operating a boat **while** under the influence of intoxicants is a crime
21 in Oregon and the person is subject to criminal penalties if the test shows

1 that the person is under the influence of intoxicants. If the person [*refuses*
2 *the test or*] fails a **test**, evidence of the [*refusal or*] failure may also be offered
3 against the person.

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

6 “(c) If the person is convicted of operating a boat while under the influ-
7 ence of intoxicants, the person may not operate a boat for a period of time
8 following the conviction.

9 “(d) If the person is convicted of operating a boat while under the influ-
10 ence of intoxicants, **the following apply for one year:**

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

16 “(B) **The person’s boating safety education card is suspended.**

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

21 “(3) **A person who refuses to submit to a chemical test after being**
22 **informed of the rights and consequences in subsection (2) of this sec-**
23 **tion shall be provided additional information, substantially as follows:**

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

29 “(b) **If the person refuses to physically submit to the test, the fol-**
30 **lowing apply for three years:**

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

3 “(B) The person’s boating safety education card is suspended.

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

10 “[(3)] (5) Nothing in this section prohibits the board from providing ad-
11 ditional information concerning rights and consequences that the board
12 considers appropriate or convenient.”.

13 On page 4, delete lines 38 through 40 and insert:

14 “**SECTION 13.** ORS 830.325 is amended to read:

15 “830.325. (1) [No] A person under the influence of an intoxicating liquor,
16 cannabis, **an inhalant** or a controlled substance [*shall*] **may not** operate,
17 propel or be in actual physical control of any boat on any waters of this
18 state.

19 “(2) [No] **An** owner of a boat or person in charge or in control of a boat
20 [*shall*] **may not** authorize or knowingly permit the boat to be propelled or
21 operated on any waters of this state by any person who is under the influ-
22 ence of an intoxicating liquor, cannabis, **an inhalant** or a controlled sub-
23 stance.

24 “**SECTION 14.** ORS 830.505 is amended to read:

25 “830.505. (1) Any person who operates a boat on any waters of this state
26 shall be deemed to have given consent to submit to chemical tests of the
27 person’s breath for the purpose of determining the alcoholic content of the
28 person’s blood if the person is arrested for operating a boat while under the
29 influence of intoxicants while in violation of ORS 830.325 or of a municipal
30 ordinance. Tests shall be administered upon the request of a peace officer

1 having reasonable grounds to believe that the person arrested was operating
2 a boat while under the influence of intoxicants while in violation of ORS
3 830.325 or of a municipal ordinance. Before the test is administered, the
4 person requested to take the test shall be informed of rights and conse-
5 quences as described in ORS 830.545.

6 *“(2) No chemical test of the person’s breath shall be given under subsection
7 (1) of this section, to a person under arrest for operating a boat while under
8 the influence of intoxicants in violation of ORS 830.325 or of a municipal or-
9 dinance, if the person refuses the request of a peace officer to submit to the
10 chemical test after the person has been informed of rights and consequences
11 as described in ORS 830.545.]*

12 **“(2) Any person who operates a boat on any waters of this state
13 shall be deemed to have given consent to submit to chemical tests of
14 the person’s urine for the purpose of determining the presence of
15 cannabis, a controlled substance or an inhalant in the person’s body
16 if the person is arrested for operating a boat while under the influence
17 of intoxicants while in violation of ORS 830.325 or of a municipal or-
18 dinance. Tests shall be administered upon the request of a peace offi-
19 cer having reasonable grounds to believe that the person arrested was
20 operating a boat while under the influence of intoxicants while in vi-
21 olation of ORS 830.325 or of a municipal ordinance. Before the test is
22 administered, the person requested to take the test shall be informed
23 of rights and consequences as described in ORS 830.545.**

24 **“(3) A person asked to give a urine sample shall be given privacy
25 and may not be observed by a peace officer when producing the sam-
26 ple.**

27 **“(4)(a) At the trial of any civil or criminal action, suit or proceeding
28 arising out of the acts committed by a person operating a boat while
29 under the influence of intoxicants, a valid chemical analysis of a
30 person’s urine is admissible as evidence and may be used with other**

1 **evidence, if any, to determine whether the person was operating a boat**
2 **while under the influence of intoxicants.**

3 **“(b) A chemical analysis of a person’s urine is valid if analysis is**
4 **performed in an accredited or licensed toxicology laboratory.**

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

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

8 “(b) Whether the person was informed of rights and consequences as de-
9 scribed under ORS 830.545.

10 “[4] (6) A report required by this section may be made on one or more
11 forms provided by the board.

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

16 **“SECTION 15.** ORS 830.515 is amended to read:

17 “830.515. If a person refuses or fails to **physically** submit to chemical
18 tests of the breath[, *blood*] or urine as required by ORS 830.505 [*and*
19 *830.520*], evidence of the person’s refusal or failure to **physically** submit is
20 admissible in any criminal or civil action or proceeding arising out of acts
21 alleged to have been committed while the person was operating a boat while
22 under the influence of **an** intoxicating liquor, cannabis, **an inhalant** or a
23 controlled [*substances*] **substance.**

24 **“SECTION 16.** ORS 830.520 is amended to read:

25 “830.520. Nothing in ORS 830.505 is intended to preclude the adminis-
26 tration of chemical tests described in this section. A peace officer may obtain
27 a chemical test of the blood to determine the amount of alcohol in any
28 person’s blood or a test of the person’s blood or a test of the person’s blood
29 or urine, or both, to determine the presence of cannabis, **an inhalant** or a
30 controlled substance in the person as provided in the following:

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

3 “(2) Notwithstanding subsection (1) of this section, from a person without
4 the person’s consent if:

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

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

11 **“SECTION 17.** ORS 830.525 is amended to read:

12 “830.525. In addition to chemical tests of the breath, blood or urine ad-
13 ministered under ORS 830.505 and 830.520, upon the request of a peace offi-
14 cer, a person shall be permitted upon request, at the person’s own expense,
15 reasonable opportunity to have any licensed physician, licensed professional
16 nurse or qualified technician, chemist or other qualified person of the
17 person’s own choosing administer a chemical test or tests of the person’s
18 breath or blood for the purpose of determining the alcoholic content of the
19 person’s blood or a chemical test or tests of the person’s blood or urine, or
20 both, for the purpose of determining the presence of cannabis, **an inhalant**
21 or a controlled substance in the person. The failure or inability to obtain
22 such a test or tests by a person shall not preclude the admission of evidence
23 relating to a test or tests taken upon the request of a peace officer.

24 **“SECTION 18.** ORS 830.550 is amended to read:

25 “830.550. (1) Any person who operates a boat on any waters of this state
26 shall be deemed to have given consent to submit to field sobriety tests upon
27 the request of a peace officer for the purpose of determining if the person is
28 under the influence of intoxicants if the peace officer reasonably suspects
29 that the person has committed the offense of operating a boat while under
30 the influence of intoxicants in violation of ORS 830.325 or a municipal or-

1 dinance. [*Before the tests are administered, the person requested to take the*
2 *test shall be informed of the consequences of refusing to take or failing to*
3 *submit to the tests under ORS 830.545.*] **If the person refuses to consent**
4 **to field sobriety tests, the person shall be asked to provide only phys-**
5 **ical cooperation to submit to nontestimonial field sobriety tests and**
6 **the person shall be informed of the consequences of failing to phys-**
7 **ically submit to those tests under subsection (2) of this section.**

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

15 “(3) Within the time required by the State Marine Board by rule, the ar-
16 resting officer shall report the following information to the board:

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

18 “(b) Whether the person was informed of rights and consequences as de-
19 scribed under ORS 830.545.

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

22 **“SECTION 19.** ORS 830.815 is amended to read:

23 “830.815. (1) The State Marine Board may refuse to issue a certificate of
24 title or a certificate of number or registration if the board determines at any
25 time that an applicant for the certificate has:

26 “(a) Given a false statement or false information in applying for the cer-
27 tificate;

28 “(b) Otherwise failed to comply with the applicable provisions under ORS
29 830.060 to 830.140 and 830.700 to 830.870 pertaining to application for certif-
30 icates; or

1 “(c) Been convicted of operating a boat while under the influence of an
2 intoxicating liquor, cannabis, **an inhalant** or a controlled substance within
3 one year of the date of application or within three years of the date of ap-
4 plication if the record of conviction shows that the person willfully refused
5 the request of a peace officer to **physically** submit to chemical testing of the
6 breath **or urine** or a **nontestimonial** field sobriety test pursuant to ORS
7 830.505 and 830.550.

8 “(2) After a hearing upon 10 days’ notice, the board may cancel a certifi-
9 cate of title or certificate of number or registration if the board determines
10 at any time that an owner, boat manufacturer or dealer named in the cer-
11 tificate:

12 “(a) Gave a false statement or false information in applying for the cer-
13 tificate; or

14 “(b) Otherwise failed to comply with the applicable provisions under ORS
15 830.060 to 830.140, 830.700 to 830.715, 830.725, 830.730, 830.770, 830.780, 830.785,
16 830.795 to 830.820 and 830.830 to 830.870 pertaining to applications for cer-
17 tificates.

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

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

30 “(a) Notify, by certified mail, the registered owner of the boat involved

1 in the offense of the owner's failure to appear or comply with the judgment
2 of the court. The notification shall include a copy of the citation issued to
3 the owner and will inform the owner that the board will suspend the certif-
4 icate of number for the boat 45 days from the date of the mailing of the no-
5 tice by the board. The notice shall include a statement that a hearing may
6 be requested in writing within 10 days of the notice. Any hearing requested
7 under this subsection shall be limited to the issue of whether the person is
8 the person who failed to appear or comply with the judgment of the sen-
9 tencing court.

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

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

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

30 “(a) Upon receipt of a record of conviction for a violation of ORS 830.325,

1 the board shall notify the convicted person that all certificates of number
2 or registration issued in the person's name are suspended. The notice shall
3 include a statement that a hearing may be requested in writing within 10
4 days of the notice. Any hearing requested under this subsection shall be
5 limited to the issue of whether the person is the person convicted.

6 “(b) The suspension shall be for three years from the date of conviction
7 if the record of conviction shows that the person willfully refused the request
8 of a peace officer to **physically** submit to chemical testing of the breath **or**
9 **urine** or a **nontestimonial** field sobriety test under ORS 830.505 and
10 830.550. Otherwise the period of suspension shall be for one year from the
11 date of conviction.

12 **“SECTION 20. Section 5 of this 2019 Act and the amendments to**
13 **ORS 830.315, 830.325, 830.505, 830.515, 830.520, 830.525, 830.545, 830.550,**
14 **830.815, 830.990 and 830.994 by sections 1 to 3, 6 and 13 to 19 of this 2019**
15 **Act apply to conduct occurring on or after the effective date of this**
16 **2019 Act.”**

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