

CS FOR HOUSE BILL NO. 108(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/12/99
Referred: Finance

Sponsor(s): REPRESENTATIVES HUDSON, Halcro, Phillips, Kerttula

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the use, operation, and regulation of boats; establishing a
2 uniform state waterway marking system; and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** INTENT. It is the intent of the legislature that at least 75 percent of any
5 federal funds generated as a result of this Act be used to fund a statewide boating safety and
6 education program, and that the state program operate in conjunction with the United States
7 Coast Guard Auxiliary boating safety program and other marine education organizations.

8 * **Sec. 2.** AS 05.25.010 is repealed and reenacted to read:

9 **Sec. 05.25.010. Safety requirements.** (a) Except as otherwise provided by
10 law, a boat placed on the water of the state

11 (1) must be equipped with and use the sound producing devices and
12 visual distress signals of the same number, type, and specifications as required by the
13 United States Coast Guard;

14 (2) that is equipped with a gasoline engine for electrical generation,

1 mechanical power, or mechanical propulsion must also be equipped with the
2 ventilation systems and backfire flame control devices of the same type and
3 specifications as required by the United States Coast Guard; and

4 (3) that is equipped with an engine for electrical generation, mechanical
5 power, or mechanical propulsion must also be equipped with the fire extinguishers of
6 the same number, type, and specifications as required by the United States Coast
7 Guard.

8 (b) The provisions of (a) of this section apply regardless of whether the boat
9 is placed or operated on water of the state subject to federal jurisdiction.

10 (c) During the period of time extending from sunset to sunrise and during
11 periods of restricted visibility, a boat placed on water of the state must display lights
12 of the same number, type, and specifications as required by the United States Coast
13 Guard under 33 U.S.C. 1602 and 33 U.S.C. 2002.

14 (d) A boat on water of the state must carry one United States Coast Guard
15 approved Type I, Type II, or Type III personal flotation device in serviceable condition
16 for each person on board the boat. A Type V personal flotation device may be carried
17 in lieu of a personal flotation device required in this subsection if the Type V personal
18 flotation device is in serviceable condition and

19 (1) if the approval label on the Type V personal flotation device
20 indicates that the device is approved for the activity in which the boat is being used,
21 or that the device is approved as a substitute for a personal flotation device of the type
22 required on the boat; and

23 (2) for a device that contains a reference to an owner's manual, if the
24 Type V personal flotation device is used in accordance with the requirements in the
25 owner's manual.

26 (e) In addition to the requirements in (d) of this section, a boat that is 16 feet
27 or longer, other than a kayak or canoe, must carry one Type IV personal flotation
28 device that can be thrown and that is approved by the United States Coast Guard.

29 (f) A person may not use a flashing or revolving red or blue emergency light
30 on a boat unless the boat is operated by a peace officer or emergency professional in
31 the performance of official duties.

1 (g) The operator of a boat on water of the state may not transport a person
 2 under 13 years of age on the deck of a boat or in an open boat unless the person is
 3 wearing a United States Coast Guard approved Type I, Type II, or Type III personal
 4 flotation device. A Type V personal flotation device may be worn in lieu of a
 5 personal flotation device required in this subsection if the Type V personal flotation
 6 device is in serviceable condition and

7 (1) if the approval label on the Type V personal flotation device
 8 indicates that the device is approved for the activity in which the boat is being used,
 9 or that the device is approved as a substitute for a personal flotation device of the type
 10 required on the boat; and

11 (2) for a device that contains a reference to an owner's manual, if the
 12 Type V personal flotation device is used in accordance with the requirements in the
 13 owner's manual.

14 (h) The department may require, by regulation, that a boat or class of boats
 15 carry additional equipment that is necessary for the safety of persons and property.

16 * **Sec. 3.** AS 05.25.020 is amended to read:

17 **Sec. 05.25.020. Use of boat with water [WATER] skis and surfboards.** (a)

18 A person may not operate a **boat** [WATERCRAFT] on **water** [THE INLAND
 19 WATERS] of **the** [THIS] state for towing a person on water skis, [OR] a surfboard,
 20 or **a** similar **device** [DEVICES] unless

21 (1) the **boat** [WATERCRAFT] is equipped with a rearview mirror in
 22 which the person being towed can be viewed; [,] or

23 (2) there is, in the **boat**, [WATERCRAFT] a person of 12 years of age
 24 or older in addition to the operator [,] in a position to observe the progress of the
 25 person being towed.

26 (b) A person may not operate a **boat** [WATERCRAFT] on [THE] water of the
 27 state to tow a person under 13 years of age on water skis, a surfboard, or **a** similar
 28 device unless the person being towed is wearing a United States Coast Guard approved

29 **(1) Type I, Type II, or Type III personal flotation device; or**

30 **(2) Type V personal flotation device if the Type V personal**
 31 **flotation device is in serviceable condition and**

1 **(A) if the approval label on the Type V personal flotation**
 2 **device indicates that the device is approved for the activity;**

3 **(B) for a device that contains a reference to an owner's**
 4 **manual, if the Type V personal flotation device is used in accordance with**
 5 **the requirements in the owner's manual** [. IN THIS SUBSECTION,
 6 "PERSONAL FLOTATION DEVICE" DOES NOT INCLUDE A LIFE BELT
 7 OR LIFE RING].

8 * **Sec. 4.** AS 05.25.030 is repealed and reenacted to read:

9 **Sec. 05.25.030. Boat collisions, accidents, and casualties.** (a) The operator
 10 of a boat involved in a collision, accident, or casualty shall

11 (1) render assistance as is practicable and necessary to save other
 12 persons from danger or to minimize the danger to other persons to the extent that the
 13 operator can do so without serious danger to the operator's boat, crew, and passengers;
 14 and

15 (2) give the operator's name, address, and identification number of the
 16 operator's boat in writing to each person injured in the collision, accident, or casualty
 17 and to the owner of property damaged in the collision, accident, or casualty.

18 (b) For the purpose of gathering boating accident statistics, the operator of a
 19 boat involved in a collision, accident, or casualty that results in death or injury to a
 20 person, or damage to property in excess of \$500 for each incident, shall file a report
 21 with the department on or before the 20th day after the incident. The department shall
 22 prepare a form for the report and make the form available to other agencies and to the
 23 public.

24 (c) In response to a request from an authorized official or agency of the United
 25 States, a law enforcement agency, or in compliance with United States Coast Guard
 26 regulations, the department shall provide statistical information compiled or otherwise
 27 available to the department from the reports required under (b) of this section.

28 * **Sec. 5.** AS 05.25.040 is amended to read:

29 **Sec. 05.25.040. Owner's civil liability.** The owner of a **boat**
 30 [WATERCRAFT] is liable for injury or damage caused by the negligent operation of
 31 the owner's **boat** [WATERCRAFT] whether the negligence consists of a violation of

1 a state statute [,] or **the failure** [NEGLECTING] to **exercise** [OBSERVE] ordinary
 2 care in the operation of the **boat** [WATERCRAFT] as the rules of the common law
 3 require. The owner is not liable, however, unless the **boat** [WATERCRAFT] is used
 4 with the owner's express or implied consent. It is presumed that the **boat**
 5 [WATERCRAFT] is being operated with the knowledge and consent of the owner [,]
 6 if, at the time of the injury or damage, it is under the control of the owner's spouse,
 7 father, mother, brother, sister, son, daughter, or other member of the owner's immediate
 8 family. This chapter does not relieve any other person from a liability that the person
 9 would otherwise incur [,] and does not authorize or permit recovery in excess of injury
 10 or damage actually incurred.

11 * **Sec. 6.** AS 05.25.050 is amended to read:

12 **Sec. 05.25.050. Declaration of policy.** It is the policy of **the** [THIS] state to
 13 promote safety for persons and property in and connected with the use, operation, and
 14 equipment of **boats on water of the state** [VESSELS IN RECREATIONAL
 15 PURSUITS IN INLAND WATERS] and to promote uniformity of laws relating **to**
 16 **boat safety** [THERE TO].

17 * **Sec. 7.** AS 05.25 is amended by adding new sections to read:

18 **Sec. 05.25.052. Uniform state waterway marking system.** The department
 19 shall develop and adopt regulations establishing a uniform state waterway marking
 20 system for the placement of regulatory markers. The regulations must be compatible
 21 with the system of aids to navigation prescribed by the United States Coast Guard.

22 **Sec. 05.25.053. Boating safety program.** (a) The department shall administer
 23 a statewide boating safety program. The program must, to the extent consistent with
 24 state law,

25 (1) secure the full benefits available to the state under 46 U.S.C. 13101
 26 - 13110 (Federal Boat Safety Act of 1971); and

27 (2) take additional actions necessary to gain initial and ongoing federal
 28 acceptance of the boating safety program and to qualify and apply for federal money
 29 under 46 U.S.C. 13102.

30 (b) The department shall cooperate with local, state, and federal agencies,
 31 private and public organizations, and individuals to provide for

- 1 (1) education on boating safety;
- 2 (2) a boat registration and numbering system through the Department
3 of Administration;
- 4 (3) a boating collisions, accidents, and casualties reporting system;
- 5 (4) boating access;
- 6 (5) boating safety patrol and law enforcement activity;
- 7 (6) a uniform state waterway marking system; and
- 8 (7) a boating safety advisory council as described in AS 05.25.057.

9 **Sec. 05.25.055. Registration and numbering of boats.** (a) An
10 undocumented boat placed on water of the state must be registered and numbered as
11 required by this chapter. The Department of Administration shall adopt by regulation
12 a boat registration and numbering system that is consistent with the national standard
13 for state numbering systems established by the United States Coast Guard.

14 (b) In adopting a boat registration system under (a) of this section, the
15 Department of Administration shall authorize agents, including boat dealers, to register
16 boats.

17 (c) A boat dealer shall require a purchaser of a new or used boat sold at retail
18 to complete a registration application and pay the registration fee before the boat
19 leaves the dealer's premises unless the boat is exempt from registration and numbering
20 under this chapter or regulations adopted under this chapter.

21 (d) A person may not operate a boat on water of the state unless a valid
22 certificate of number has been awarded by the Department of Administration to the
23 boat and the identification number and any required validation decals are properly
24 displayed on the boat.

25 (e) The Department of Administration shall authorize agents to accept an
26 application and registration fee for registration, to issue a registration, and to forward
27 the application and registration fee to the Department of Administration.

28 (f) Unless otherwise provided by this chapter, or unless the owner has been
29 awarded a current, valid Alaska certificate of number from the United States Coast
30 Guard, the owner of a boat for which a current certificate of number has been awarded
31 under federal law or a federally approved numbering system of another state shall

1 apply for a certificate of number in this state as required by this chapter if the boat is
2 operated on water of the state for more than 90 consecutive days. If a boat has an
3 existing number, the owner may request that the department issue the same number for
4 purposes of this section, and the department shall comply with the request unless
5 compliance would result in a duplication of numbers.

6 (g) A certificate of number issued under this chapter is valid for three years
7 unless terminated or discontinued earlier as required by this chapter and regulations
8 adopted under this chapter. The certificate expires on the last day of the month at the
9 end of the three-year period. The expiration date shall be indicated on the certificate.

10 (h) All records of ownership of boats that are kept by the Department of
11 Administration under this section are public records. The Department of
12 Administration shall provide records of ownership to the Department of Natural
13 Resources for the purposes of meeting the federal requirements for state programs and
14 implementing this chapter.

15 (i) The following boats are exempt from the numbering and registration
16 provisions of this section:

17 (1) a boat that is operated in this state for a period not exceeding 90
18 consecutive days and that has a current, valid certificate of number issued by another
19 state having a federally approved numbering system;

20 (2) a foreign boat operated in water of the state for a period not
21 exceeding 90 consecutive days;

22 (3) a boat owned by the United States or an entity or political
23 subdivision of the United States, or a boat owned by a state or an entity or political
24 subdivision of a state;

25 (4) a boat that is not equipped with mechanical propulsion, that is
26 exclusively paddled, poled, rowed, or powered by wind, and that is under 10 feet in
27 length;

28 (5) a boat with a valid document to operate the boat that is issued by
29 the United States or a foreign government.

30 **Sec. 05.25.057. Alaska Boating Safety Council established.** (a) The Alaska
31 Boating Safety Council is established in the department.

1 (b) The council consists of seven members appointed by the governor. The
 2 governor shall appoint each member on the basis of interest in public affairs,
 3 knowledge of boating issues as they relate to both safety and water of the state, and
 4 good judgment and ability concerning boating safety. At least four members of the
 5 council shall represent powerboat interests. The appointed members shall be residents
 6 of the state and shall be appointed without regard to political affiliation or geographical
 7 location of residence. The commissioner is not a member of the council, but shall be
 8 ex officio secretary.

9 (c) The council may not meet more than two times in each calendar year.
 10 Members of the council receive no compensation for services on the council, but are
 11 entitled to per diem and travel expenses authorized for boards under AS 39.20.180.

12 (d) In this section, "council" means the Alaska Boating Safety Council.

13 * **Sec. 8.** AS 05.25.060 is repealed and reenacted to read:

14 **Sec. 05.25.060. Prohibited operation.** A person may not operate a boat on
 15 water of the state

16 (1) for a recreational purpose or another purpose, or tow water skis, a
 17 surfboard, or a similar device, in a reckless or negligent manner so as to endanger the
 18 life or property of another person;

19 (2) that is not equipped as required under this chapter and regulations
 20 adopted under this chapter; or

21 (3) in a manner that is inconsistent with a regulatory marker authorized
 22 under regulations adopted by the department under this chapter.

23 * **Sec. 9.** AS 05.25.070 is amended to read:

24 **Sec. 05.25.070. Exemptions. Boats** [WATERCRAFT] and persons operating
 25 **boats** [WATERCRAFT] are exempt from this chapter [, EXCEPT AS 05.25.060(b),]
 26 when participating in the area set aside for a public regatta, race, marine parade,
 27 tournament, or exhibition on inland **water; for purposes of this section, "inland**
 28 **water"** means **water of the state that is not offshore water** [WATERS].

29 * **Sec. 10.** AS 05.25.080 is repealed and reenacted to read:

30 **Sec. 05.25.080. Enforcement.** A peace officer may enforce this chapter and
 31 regulations adopted under this chapter and in the exercise of enforcement may stop and

1 board a boat subject to this chapter. A peace officer may issue a citation as provided
2 in AS 12.25.180 to a person who violates a provision of this chapter.

3 * **Sec. 11.** AS 05.25.090 is repealed and reenacted to read:

4 **Sec. 05.25.090. Penalties.** (a) Except as provided in (b) of this section, a
5 person who violates a provision of this chapter or regulations adopted under this
6 chapter is guilty of a class A misdemeanor.

7 (b) A person who violates AS 05.25.010, 05.25.020, 05.25.030(b), 05.25.055,
8 05.25.060(2) or (3), or a regulation adopted under this chapter relating to AS 05.25.010
9 or 05.25.020 is guilty of a violation as defined in AS 11.81.900 and may be fined up
10 to \$500. The supreme court shall establish by order or rule a schedule of bail amounts
11 for violations under this subsection that allow the disposition of a citation without a
12 court appearance.

13 * **Sec. 12.** AS 05.25 is amended by adding a new section to read:

14 **Sec. 05.25.095. Regulations.** (a) Except as provided in (c) - (e) of this
15 section, the department may adopt regulations to implement this chapter, including
16 regulations regarding

17 (1) boat and associated safety equipment requirements, including
18 additional equipment as described in AS 05.25.010;

19 (2) uniform waterway markers;

20 (3) boat operation and safety requirements; and

21 (4) requirements for certification of programs on boating safety
22 education.

23 (b) In consultation with the department, the Department of Administration may
24 adopt regulations to implement this chapter with respect to the numbering, marking,
25 and titling of undocumented boats.

26 (c) Regulations adopted under this chapter may not be less stringent than
27 applicable minimum requirements of regulations governing recreational boat safety of
28 the United States Coast Guard.

29 (d) The department may not adopt a regulation under this section regarding
30 boating safety if, before or during the period for public comment on the proposed
31 regulation provided by AS 44.62.190, the Alaska Boating Safety Council provides the

1 department with a written objection regarding the regulation, unless the department
 2 modifies the proposed regulation to satisfy the objection. The prohibition of this
 3 subsection does not apply if modification of the proposed regulation to satisfy the
 4 council's objection would result in

5 (1) failure to meet a federal stringency requirement described under (c)
 6 of this section; or

7 (2) a regulation that is not consistent with another provision of law.

8 (e) Nothing in this section authorizes the department to prohibit a use of or
 9 access to the water of the state by a person or user group.

10 * **Sec. 13.** AS 05.25 is amended by adding a new section to read:

11 **Sec. 05.25.096. Fees.** (a) The Department of Administration shall assess the
 12 following fees:

13 (1) motorized boat registration, registration renewal, and transfer of
 14 registration, \$24 for a three-year period;

15 (2) nonmotorized boat registration, registration renewal, and transfer of
 16 registration, \$10 for a three-year period;

17 (3) replacement of lost registration, \$5;

18 (4) replacement of lost registration validation decals, \$5.

19 (b) The Department of Administration shall separately account for fees
 20 collected under (a) of this section for boat registration that are deposited in the general
 21 fund. The annual estimated balance in that account may be used by the legislature to
 22 make appropriations to the department and the Department of Administration to carry
 23 out the purposes of this chapter.

24 * **Sec. 14.** AS 05.25.100 is repealed and reenacted to read:

25 **Sec. 05.25.100. Definitions.** In this chapter, unless the context requires
 26 otherwise,

27 (1) "aids to navigation" means buoys, beacons, or other fixed objects
 28 in the water that are used to mark obstructions to navigation or to direct navigation
 29 through safe channels;

30 (2) "boat" means watercraft used or capable of being used as a means
 31 of transportation on water, except for

- 1 (A) a ship's lifeboat;
- 2 (B) a seaplane;
- 3 (C) an inspected passenger vessel; and
- 4 (D) a single air mattress, single inner tube, or other water toy;
- 5 (3) "boat dealer" means a person engaged wholly or in part in the
- 6 business of selling or offering for sale, buying or taking in trade for the purpose of
- 7 resale, or exchanging, displaying, demonstrating, or offering for sale three or more
- 8 boats within 12 consecutive months and who receives or expects to receive money,
- 9 profit, or any other thing of value;
- 10 (4) "certificate of number" means the document bearing the
- 11 identification number issued to a boat by the Department of Administration under this
- 12 chapter, by a federal agency, or by the state of principal use under a federally
- 13 approved numbering system;
- 14 (5) "commissioner" means the commissioner of natural resources;
- 15 (6) "department" means the Department of Natural Resources;
- 16 (7) "operate" means to navigate or to be in actual physical control of
- 17 a boat used or capable of being used as a means of transportation on water of the state;
- 18 (8) "owner" means a person who has a property interest other than a
- 19 security interest in a boat and the right of use or possession of the boat; "owner" does
- 20 not include a lessee unless the lease is intended as security;
- 21 (9) "ownership" means a property interest other than a security interest;
- 22 (10) "passenger" means a person on board a boat who is not the master,
- 23 operator, crew member, or other person engaged in a capacity in the business of the
- 24 boat;
- 25 (11) "regulatory marker" means an anchored or fixed marker in or on
- 26 the water, or sign on the shore or on a bridge over the water, other than aids to
- 27 navigation; "regulatory marker" includes swimming markers, bathing markers, speed
- 28 zone markers, identification markers, danger zone markers, boat keep out areas, special
- 29 anchorage areas, and mooring buoys;
- 30 (12) "serviceable condition" as applied to personal flotation devices
- 31 means

1 (A) metal or plastic hardware is not broken, deformed, or
2 weakened by corrosion;

3 (B) webbings or straps are not ripped, torn, or separated from
4 an attachment point;

5 (C) there are no rotted or deteriorated structural components that
6 fail when tugged;

7 (D) there are no rips, tears, or open seams in fabric or coatings
8 that are large enough to allow the loss of buoyant material;

9 (E) buoyant material has not become hardened, nonresilient,
10 permanently compressed, waterlogged, or oil-soaked, and does not show
11 evidence of fungus or mildew;

12 (F) there is no loss of buoyant material or evidence of buoyant
13 material that is not securely held in position;

14 (G) there is a properly armed inflation mechanism, complete
15 with a full inflation medium cartridge and all status indicators showing that the
16 inflation mechanism is properly armed, unless the PFD is worn inflated;

17 (H) inflatable chambers are all capable of holding air;

18 (I) oral inflation tubes are not blocked, detached, or broken;

19 (J) the manual inflation lanyard or lever is not inaccessible,
20 broken, or missing;

21 (K) inflator status indicators are not broken or otherwise non-
22 functional;

23 (13) "undocumented boat" means a boat that does not possess a valid
24 certificate of documentation issued by the United States Coast Guard under 46 U.S.C.
25 12101 - 12123;

26 (14) "validation decal" means a decal that has the state of registration
27 and registration expiration year clearly marked;

28 (15) "water of the state" has the meaning given in the term "navigable
29 water" in AS 38.05.965; "water of the state" also includes the marginal sea adjacent
30 to the state and the high seas within the territorial limits of the state, irrespective of
31 the ownership of the land underlying those waters.

1 * **Sec. 15.** AS 09.25.120(a) is amended by adding a new paragraph to read:

2 (9) reports submitted under AS 05.25.030 concerning certain collisions,
3 accidents, or other casualties involving boats.

4 * **Sec. 16.** AS 12.25.190(c) is amended to read:

5 (c) The person cited for the crime shall give a written promise to appear in
6 court by signing at least one copy of the written citation prepared by the peace officer,
7 and the officer shall deliver a copy of the citation to the person. The written promise
8 requirement of this subsection does not apply to **boating citations for which a bail**
9 **schedule has been established under AS 05.25.090(b)**, motor vehicle and traffic
10 citations for which a bail or fine schedule has been established under AS 28.05.151,
11 fish and game citations for which a bail schedule has been established under
12 AS 16.05.165, citations issued under AS 04.21.065, citations issued under
13 AS 18.35.341, citations issued in state park and recreational facilities under
14 AS 41.21.960, or littering citations issued under AS 46.06.080.

15 * **Sec. 17.** TRANSITION: REGULATIONS. The Department of Natural Resources and
16 Department of Administration may immediately proceed to adopt regulations to implement
17 their respective provisions of this Act. The regulations take effect under AS 44.62
18 (Administrative Procedure Act), but not before the effective date of secs. 1 - 16 of this Act.

19 * **Sec. 18.** Section 17 of this Act takes effect immediately under AS 01.10.070(c).