

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1369

By: Weaver of the House

and

Rozell of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public health and safety; amending 63 O.S. 1991, Section 4030, as last amended by Section 2, Chapter 152, O.S.L. 1994 (63 O.S. Supp. 1996, Section 4030), which relates to vessel number display; excluding sailboards; authorizing operators of emergency vessels to exercise certain privileges; amending 63 O.S. 1991, Sections 4206 and 4207, as amended by Sections 32 and 33, Chapter 284, O.S.L. 1992 (63 O.S. Supp. 1996, Sections 4206 and 4207), which relate to boating safety regulation; requiring passengers on personal watercraft to wear personal flotation device; modifying types of lights to be displayed on certain vessels; defining term; providing exception; amending Sections 47, 50, and 52, Chapter 284, O.S.L. 1992 (63 O.S. Supp. 1996, Sections 4210.4, 4210.7, and 4211.1), which relate to boating safety regulations; modifying certain distance; prohibiting parking vessel within designated swimming area; eliminating restriction regarding structure above main deck of a vessel; providing that flotation devices similar to inner tubes shall not be more than a certain distance from shore when used by a swimmer; amending Section 3, Chapter 337, O.S.L. 1996 (63 O.S. Supp. 1996, Section 4210A), which relates to operating a vessel while under the influence of alcohol; eliminating certain evidence requirements; amending Section 4, Chapter 327, O.S.L. 1996 (63 O.S. Supp. 1996, Section 4219), which relates to nighttime speed limits for vessels; restricting locations where speed limit shall be enforced; amending Section 72, Chapter 352, O.S.L. 1995, as last amended by Section 7, Chapter 247, O.S.L. 1996 (10 O.S. Supp. 1996, Section 7301-1.3), which relates to the definitions used in the juvenile code; providing that child may be considered delinquent for a violation of the boating laws; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 1991, Section 4030, as last amended by Section 2, Chapter 152, O.S.L. 1994 (63 O.S. Supp. 1996, Section 4030), is amended to read as follows:

Section 4030. A. Except as otherwise provided by this section, every vessel on the waters of this state shall display the permanent number assigned to it by the Oklahoma Tax Commission which number shall not be obliterated, erased, mutilated, removed or missing.

B. The vessels authorized to display a number other than that required by the provisions of the Oklahoma Vessel and Motor Registration Act are:

1. A documented vessel, provided that such vessel is currently registered, is displaying a current registration decal, and the name, hailing port and official federal documentation number assigned to it are displayed on the vessel according to federal law or federal rules and regulations;

2. A vessel from a country other than the United States temporarily using the waters of this state;

3. A vessel from another state owned by an out-of-state resident using the waters of this state;

4. A vessel whose owner is the United States, a state or a subdivision thereof; provided, however, if such vessel is used for recreational or rental purposes on the public waters of this state, said vessel shall display the permanent number assigned to it by the Commission;

5. A vessel that is used exclusively and solely for racing purposes;

6. A vessel that is used exclusively and solely as a lifeboat; and

7. A commercial flotation device which is assigned a permit by the Oklahoma Scenic Rivers Commission pursuant to the provisions of Sections 1461 et seq. of Title 82 of the Oklahoma Statutes.

C. The owner of any vessel issued a permanent number pursuant to the provisions of the Oklahoma Vessel and Motor Registration Act, Section 4002 et seq. of this title, shall place on or attach

to the vessel said permanent number in such manner as may be prescribed by the rules of the Commission, in order that it may be clearly visible. The number shall be maintained in legible condition.

D. The provisions of this section shall not apply to sailboards.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4202.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The operator of an emergency vessel, when responding to an emergency call ~~or~~, when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a response to an emergency situation, may exercise the privilege set forth in this section, subject to the conditions set forth in subsection B of this section.

B. The operator of an emergency vessel may:

1. Park, moor or beach the vessel irrespective of the provisions of this title;
2. Proceed past a restrictive buoy, but only after slowing down as may be necessary for safe operation;
3. Exceed the maximum speed or wake limits so long as that action does not endanger life or property; and
4. Disregard rules governing direction of movement or turning in specified directions.

C. The exemptions granted in this section shall apply only when an emergency vessel is making use of audible and visual signals meeting the requirements of Section 4207 of this title.

D. The provisions of this section shall not relieve the operator of an emergency vessel from the duty to drive with due regard for the safety of all persons or protect the driver from the consequences of reckless disregard for the safety of others.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 4206, as amended by Section 32, Chapter 284, O.S.L. 1992 (63 O.S. Supp. 1996, Section 4206), is amended to read as follows:

Section 4206. A. 1. The operator of a vessel less than twenty-six (26) feet in length, while under way, shall require

each passenger who is twelve (12) years of age or younger to wear a personal flotation device.

2. Any person operating or manipulating, or who is a passenger on a personal watercraft, water skis, a sailboard or a similar device shall wear a personal flotation device approved and designed for the activity in which the person is engaged.

B. Each personal flotation device shall be in good and serviceable condition, of the type prescribed by the United States Coast Guard and of a size suitable to the person who is or will be wearing it. A ski belt is not a United States Coast Guard approved personal flotation device.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 4207, as amended by Section 33, Chapter 284, O.S.L. 1992 (63 O.S. Supp. 1996, Section 4207), is amended to read as follows:

Section 4207. A. Vessels subject to the provisions of the Oklahoma Boating Safety Regulation Act shall be divided into four classes as follows:

Class A. Less than sixteen (16) feet in length.

Class 1. Sixteen (16) feet or over and less than twenty-six (26) feet in length.

Class 2. Twenty-six (26) feet or over and less than forty (40) feet in length.

Class 3. Forty (40) feet or over.

B. Every vessel in all weathers between the hours from sunset to sunrise and during periods of restricted visibility shall carry and exhibit the lights prescribed by the United States Coast Guard when under way, including, but not limited to, the following:

~~1. Every vessel of Classes A and 1 shall carry:~~

~~a. a bright white light aft to show all around the horizon, and~~

~~b. a combined lantern in the forepart of the vessel and lower than the white light aft, showing green to starboard and red to port;~~

~~2. Every vessel of Classes 2 and 3 shall carry:~~

~~a. a bright white light in the forepart of the vessel as near the stem as practicable, and~~

- ~~b. a bright white light aft to show all around the horizon and higher than the white light forward, and~~
- ~~c. on the starboard side, a green light and on the port side, a red light;~~

~~3. Vessels of all classes when propelled by sail alone shall carry, ready at hand, a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision; and~~

~~4. When propelled by sail and motor, any vessel shall carry the lights required by this section for a vessel propelled by motor only~~

Every power-driven vessel shall carry and exhibit:

- a. a masthead light forward. A vessel less than twenty (20) meters, or less than sixty-five (65) feet seven and one-half (7 1/2) inches in length need not exhibit this light forward of amidships but shall exhibit it as far forward as practicable, and
- b. side lights, and
- c. a stern light;

2. Any power-driven vessel of less than twelve (12) meters, or less than thirty-nine (39) feet four and one-half (4 1/2) inches in length may carry and exhibit, in lieu of the lights prescribed in paragraph 1 of this subsection, an all-around white light and side lights;

3. Every sailing vessel shall carry and exhibit:

- a. side lights, and
- b. a stern light;

4. Any sailing vessel of less than twenty (20) meters, or less than sixty-five (65) feet seven and one-half (7 1/2) inches, in length may combine the lights prescribed in paragraph 3 of this subsection within one lantern carried at or near the top of the mast where it can be seen as nearly all-around as possible;

5. Any sailing vessel may carry and exhibit, in addition to the lights prescribed in paragraph 3 of this subsection but not in conjunction with any combination lantern as provided in paragraph 4 of this subsection, two all-around lights in vertical line, the

upper being red and the lower being green, at or near the top of the mast where they can be seen as nearly all-around as possible;

6. Every sailing vessel of less than seven (7) meters, or less than twenty-three (23) feet eleven and one-half (11 1/2) inches shall carry and exhibit if practicable, the lights prescribed in paragraph 3 or 4 of this subsection. If such exhibition is not practicable, there shall be carried ready at hand on the vessel a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision;

7. Every sailing vessel propelled by a combination of sail and motor shall carry and exhibit the lights of a power-driven vessel prescribed in paragraph 1 or 2 of this subsection;

8. Every manually powered vessel may carry and exhibit the lights prescribed in this subsection for sailing vessels. If such lights are not carried and exhibited, there shall be carried ready at hand on the vessel a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision; and

9. Every vessel at anchor shall carry and exhibit an all-around white light in such a position where it may best be seen. The deck of an anchored vessel may be illuminated by available auxiliary lights, provided the auxiliary lights do not interfere with the visibility of required lights or impair the safe navigation of other vessels.

For purposes of this section, "restricted visibility" shall mean any condition which restricts visibility including but not limited to fog, mist, falling snow, heavy rain or sandstorm.

C. Every vessel shall be provided with an efficient whistle or other sound-producing mechanical appliance; provided, however, no vessel, except for emergency and law enforcement vessels, shall be equipped with a siren.

D. Every vessel of Class 2 and 3 shall be equipped with an efficient bell.

E. Every vessel shall be required to carry:

1. At least one wearable personal flotation device for each person on board so placed as to be readily accessible and of a size suitable to the person who is or will be wearing it; and

2. At least one type IV (throwable) personal flotation device on board, so placed as to be readily accessible. This paragraph shall not apply to any vessel under sixteen (16) feet in length.

All lifesaving devices shall be in good and serviceable condition.

F. Every vessel using flammable liquid as fuel shall be equipped with such number, size, and type of United States Coast Guard approved fire extinguisher as prescribed in the rules of the Department of Public Safety. Such extinguisher shall be capable of promptly and effectively extinguishing burning fuel. Fire extinguishers shall be at all times kept in condition for immediate and effective use and shall be so placed and secured to the vessel as to be readily accessible.

G. The provisions of subsections C, D, and F of this section shall not apply to vessels while competing in any race conducted pursuant to Section 4205 of this title, or, if such vessels are designed and intended solely for racing, while engaged in such navigation as is incidental to the tuning up of vessels and motors for the race.

H. Every vessel shall have the carburetor or carburetors of every motor therein, except outboard motors, using any liquid as fuel, equipped with a United States Coast Guard or U.L. or S.A.E. approved backfire flame arrestor or other appropriate attachment, as prescribed by the rules of the Department of Public Safety.

I. Every vessel, except open vessels, using any liquid as fuel shall be provided with such means as may be prescribed by the United States Coast Guard for properly and efficiently ventilating the bilges of the motor and fuel tank compartments so as to remove any explosive or inflammable gases.

J. No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof and as prescribed in the rules of the Department of Public Safety.

SECTION 5. AMENDATORY Section 47, Chapter 284, O.S.L. 1992 (63 O.S. Supp. 1996, Section 4210.4), is amended to read as follows:

Section 4210.4 A. Any person who operates or gives permission to operate a vessel on any waters of this state shall operate the same at a careful and prudent speed not greater than nor less than is reasonable or proper, having due regard to other vessels, water skiers, swimmers, sanctioned events, restrictive and informational markers or buoys, existing wind conditions, waves, wakes or other weather conditions then existing.

B. No person shall operate or give permission to operate a vessel in a wake zone at a speed which is other than reasonable and prudent and which shows due regard for the existence of actual or potential hazards and obstacles, or in such a manner as to endanger the life, limb or property of any other person, or in such a manner as to create a wake. For the purpose of this title, "no wake zone" means any area posted with buoys or within one hundred fifty (150) feet of any boat ramp, dock, pier, or anchored or moored vessel.

C. No person shall park, moor, or beach a vessel at the perimeter of or within a swimming area marked with buoys and cable.

D. Any violation of the provisions of this section shall constitute a careless act in the operation of the vessel.

SECTION 6. AMENDATORY Section 50, Chapter 284, O.S.L. 1992 (63 O.S. Supp. 1996, Section 4210.7), is amended to read as follows:

Section 4210.7 No operator shall allow any person to occupy the front or back deck of any vessel while under way at any speed greater than idle or trolling speed, ~~nor any structure above the main deck without adequate safety rails or lines so constructed as to prevent such person from slipping or falling overboard.~~

SECTION 7. AMENDATORY Section 52, Chapter 284, O.S.L. 1992 (63 O.S. Supp. 1996, Section 4211.1), is amended to read as follows:

Section 4211.1 Inner tubes, air mattresses, ~~or~~ floating chairs or similar devices shall not be more than fifty (50) feet from shore when being used by a swimmer.

SECTION 8. AMENDATORY Section 3, Chapter 337, O.S.L. 1996 (63 O.S. Supp. 1996, Section 4210A), is amended to read as follows:

Section 4210A. A. It shall be unlawful for any person to operate or be in actual physical control of a vessel upon the waters of this state, except privately owned waters, who:

1. Has a blood or breath alcohol concentration of ten-hundredths (0.10) or more at the time of a test of the person's blood or breath;

2. Is under the influence of any other intoxicating substance to a degree which renders such person incapable of safely operating a vessel upon the waters of this state, ~~as evidenced by any detectable amount above a therapeutic level when tested;~~ or

3. Is under the influence of alcohol and any other intoxicating substance to a degree which renders such person incapable of safely operating a vessel upon the waters of this state, ~~as evidenced by any detectable amount above a therapeutic level when tested.~~

As used in this section, the term "other intoxicating substance" shall mean any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act or any other substance, other than alcohol, which is capable of being ingested, inhaled, injected or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions.

B. 1. Any person operating a vessel upon the waters of this state, except privately owned waters, shall be deemed to have given consent to a test or tests of such person's blood, breath, saliva or urine for the purpose of determining the presence and concentration of alcohol or any other intoxicating substance. Such tests shall be performed within two (2) hours of an arrest and in the same manner as provided for in Section 752 of Title 47 of the Oklahoma Statutes.

2. Evidence that the person has refused to submit to a test or tests as required by this section shall be admissible upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed in violation of the provisions of this section.

3. Any person refusing to submit to such test or tests shall be in violation of this section and subject to the fines provided for herein.

C. 1. Any person convicted of a violation of this section shall be guilty of a misdemeanor and fined in an amount not to exceed One Thousand Dollars (\$1,000.00). Any second or subsequent conviction shall be punishable by a fine in an amount of not less than One Thousand Dollars (\$1,000.00), nor more than Two Thousand Five Hundred Dollars (\$2,500.00).

2. A person arrested by a law enforcement officer for a violation of this section may be allowed to post a cash bail in an amount set by the arresting law enforcement officer not to exceed the maximum fine provided by this section, or deposit a valid license to operate a motor vehicle in exchange for an official receipt issued by the arresting officer as provided for in Section 1111 et seq. of Title 22 of the Oklahoma Statutes.

SECTION 9. AMENDATORY Section 4, Chapter 337, O.S.L. 1996 (63 O.S. Supp. 1996, Section 4219), is amended to read as follows:

Section 4219. It shall be unlawful for any person to operate any vessel upon the waters of this state which are under the jurisdiction of the Grand River Dam Authority (GRDA), between the hours of one-half hour after sunset and one-half hour before sunrise at any speed in excess of thirty-five (35) miles per hour. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punishable by a fine of not less than Fifty Dollars (\$50.00) nor more than Two Hundred Fifty Dollars (\$250.00).

SECTION 10. AMENDATORY Section 72, Chapter 352, O.S.L. 1995, as last amended by Section 7, Chapter 247, O.S.L. 1996 (10 O.S. Supp. 1996, Section 7301-1.3), is amended to read as follows:

Section 7301-1.3 When used in the Oklahoma Juvenile Code, unless the context otherwise requires:

1. "Adjudicatory hearing" means a hearing to determine whether the allegations of a petition filed pursuant to the provisions of Article III of the Oklahoma Juvenile Code are supported by the evidence and whether a juvenile should be adjudged to be a ward of the court;

2. "Alternatives to secure detention" means those services and facilities which are included in the State Plan for the Establishment of Juvenile Detention Services adopted by the Board of Juvenile Affairs and which are used for the temporary detention of juveniles in lieu of secure detention in a juvenile detention facility;

3. "Board" means the Board of Juvenile Affairs;

4. "Child" or "juvenile" means any person under eighteen (18) years of age, except for any person sixteen (16) or seventeen (17) years of age who is charged with any crime specified in subsection A of Section 7306-1.1 of this title, or any person thirteen (13), fourteen (14) or fifteen (15) years of age who is charged with murder in the first degree pursuant to subsection B of Section 7306-1.1 of this title, or any individual who has been certified as an adult pursuant to Section 7303-4.3 of this title, or any individual against whom the imposition of judgment and sentence has been deferred for any crime specified in subsection A or B of Section 7306-1.1 of this title, any individual against whom the imposition of judgment and sentence has been deferred after certification as an adult pursuant to Section 7303-4.3 of this title; provided that any person under eighteen (18) years of age who is not convicted after being charged with a crime pursuant to Section 7306-1.1 of this title, or any individual who is not convicted after certification as an adult pursuant to Section 7303-4.3 of this title, shall continue to be subject to the jurisdiction of the juvenile court;

5. "Child or juvenile in need of mental health treatment" means a juvenile in need of mental health treatment as defined by the Inpatient Mental Health Treatment of Children Act;

6. "Child or juvenile in need of supervision" means a juvenile who:

- a. has repeatedly disobeyed reasonable and lawful commands or directives of the parent, legal guardian, or other custodian,
- b. is willfully and voluntarily absent from his home without the consent of the parent, legal guardian, or other custodian for a substantial length of time or without intent to return,
- c. is willfully and voluntarily absent from school, as specified in Section 10-106 of Title 70 of the Oklahoma Statutes, if the juvenile is subject to compulsory school attendance, or
- d. has been served with an ex parte or final protective order pursuant to the Protection from Domestic Abuse Act;

7. "Community-based" means a facility, program or service, or open group home or other suitable place located near the home or family of the juvenile, and programs of community supervision and service which maintain community participation in their planning, operation, and evaluation. These programs may include but are not limited to medical, educational, vocational, social, and psychological guidance, training, counseling, alcoholism treatment, drug treatment, diversion programs for first-time offenders, transitional living, independent living and other rehabilitative services;

8. "Community intervention center" means a facility which serves as a receiving center for children who are taken into custody and which performs at least one of the functions provided for in subsection D of Section 7302-3.3 of this title;

9. "Community residential center" means a residential facility for no more than twenty juveniles which offers a range of services including personal and social services, and emphasizes normal group living, school attendance, securing employment, and general participation in the community;

10. "Day treatment" means a program which provides intensive services to juveniles who reside in their own home, the home of a relative, or a foster home. Day treatment programs include educational services and may be operated as a part of a residential facility;

11. "Delinquent child or juvenile" means a juvenile who:

- a. has violated any federal or state law or municipal ordinance except a traffic statute or traffic ordinance or any provision of the Oklahoma Wildlife Conservation Code, the Oklahoma Vessel and Motor Regulation Act or the Oklahoma Boating Safety Regulation Act, or has violated any lawful order of the court made pursuant to the provisions of the Oklahoma Juvenile Code, or
- b. has habitually violated traffic laws ~~or~~, traffic ordinances or boating safety laws or rules;

12. "Department" means the Department of Juvenile Justice;

13. "Deputy Director" means the Deputy Director of the Department of Juvenile Justice;

14. "Dispositional hearing" means a hearing to determine the order of disposition which should be made with respect to a juvenile adjudged to be a ward of the court;

15. "Executive Director" means the Executive Director of the Office of Juvenile Affairs;

16. "Facility" means a place, an institution, a building or part thereof, a set of buildings, or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles;

17. "Group home" means a residential facility housing no more than twelve juveniles with a program which emphasizes family-style living in a homelike environment. Said group home may also offer a program within the community to meet the specialized treatment needs of its residents;

18. "Independent living program" means a program designed to assist a juvenile to enhance skills and abilities necessary for successful adult living and may include but shall not be limited

to minimal direct staff supervision and supportive services in making the arrangements necessary for an appropriate place of residence, completing an education, vocational training, obtaining employment or other similar services;

19. "Institution" means a residential facility offering care and treatment for more than twenty residents. Said institution may:

- a. have a program which includes community participation and community-based services, or
- b. be a secure facility with a program exclusively designed for a particular category of resident;

20. "Juvenile detention facility" means a secure facility which meets the certification standards of the Department and which is entirely separate from any prison, jail, adult lockup, or other adult facility, for the temporary care of children;

21. "Mental health facility" means a mental health facility as defined by the Inpatient Mental Health Treatment of Children Act;

22. "Office" means the Office of Juvenile Affairs;

23. "Person responsible for a juvenile's health or welfare" includes a parent, a legal guardian, custodian, a foster parent, a person eighteen (18) years of age or older with whom the juvenile's parent cohabitates or any other adult residing in the home of the child, an agent or employee of a public or private residential home, institution or facility, or an owner, operator, or employee of a child care facility as defined by Section 402 of this title;

24. "Preliminary inquiry" or "intake" means a mandatory, preadjudicatory interview of the juvenile and, if available, the parents, legal guardian, or other custodian of the juvenile, which is performed by a duly authorized individual to determine whether a juvenile comes within the purview of the Oklahoma Juvenile Code, whether nonadjudicatory alternatives are available and appropriate, and if the filing of a petition is necessary;

25. "Probation" means a legal status created by court order whereby a delinquent juvenile is permitted to remain outside a

Department of Juvenile Justice facility directly or by contract under prescribed conditions and under supervision by the Department, subject to return to the court for violation of any of the conditions prescribed;

26. "Rehabilitative facility" means a facility maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of juveniles in need of supervision;

27. "Secure detention" means the temporary care of juveniles who require secure custody in physically restricting facilities:

- a. while under the continuing jurisdiction of the court pending court disposition, or
- b. pending placement by the Department of Juvenile Justice after adjudication;

28. "Training school" or "secure facility" means a facility, maintained by the state exclusively for the care, education, training, treatment, and rehabilitation of delinquent juveniles or youthful offenders which is designed and operated to ensure that all entrances and exits from the facility are subject to the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeter of the facility, or a facility which relies on locked rooms and buildings, fences, or physical restraint in order to control behavior of its residents; and

29. "Transitional living program" means a residential program that may be attached to an existing facility or operated solely for the purpose of assisting juveniles to develop the skills and abilities necessary for successful adult living. Said program may include but shall not be limited to reduced staff supervision, vocational training, educational services, employment and employment training, and other appropriate independent living skills training as a part of the transitional living program.

SECTION 11. This act shall become effective November 1, 1997.

46-1-7628

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