



# Senate

General Assembly

**File No. 319**

February Session, 2000

Substitute Senate Bill No. 33

*Senate, March 30, 2000*

The Committee on Environment reported through SEN. DAILY of the 33<sup>rd</sup> Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## ***An Act Concerning Boating Safety.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 15-140f of the general statutes is repealed and the  
2 following is substituted in lieu thereof:

3 (a) The Commissioner of Environmental Protection shall formulate  
4 courses in safe boating operation.

5 (b) The commissioner shall adopt regulations in accordance with the  
6 provisions of chapter 54 setting forth the content of safe boating  
7 operation courses. Such regulations may include provisions for  
8 examinations, issuance of safe boating certificates and establishment of  
9 reasonable fees for the course and examination and for issuing  
10 certificates, temporary certificates, and duplicate certificates. Any fees  
11 collected pursuant to such regulations shall be deposited in the boating  
12 account established pursuant to section 15-155.

13 [(c) The commissioner may enter into reciprocal agreements with  
14 other states having similar safe boating or certificate programs  
15 acceptable to the commissioner.]

16 (c) Any person who [successfully completes a safe boating course of  
17 instruction or] holds a certificate from another state [which] that has a  
18 reciprocal agreement with the commissioner may operate a vessel on  
19 the waters of this state.

20 Sec. 2. (NEW) No owner of a vessel with a Connecticut certificate of  
21 number or certificate of decal shall knowingly allow any person to  
22 operate such owner's vessel if such person (1) is a resident of or owns  
23 property in this state, and (2) does not possess a Connecticut safe  
24 boating certificate or certificate of personal watercraft operation,  
25 except that such person may operate a vessel under the direct  
26 supervision of an owner who is on board the vessel.

27 Sec. 3. Section 15-133 of the general statutes is repealed and the  
28 following is substituted in lieu thereof:

29 (a) The rules prescribed by this section shall apply on all state and  
30 federal waters.

31 (b) No person shall use a vessel in a manner which unreasonably or  
32 unnecessarily interferes with free and proper navigation. Anchoring  
33 under a bridge, in a narrow channel or in a congested water not  
34 designated as an anchorage area shall be deemed to be such  
35 interference, except in case of emergency.

36 (c) No person shall alter, deface or remove any capacity information  
37 label affixed to any vessel.

38 (d) No person shall operate a vessel [or engage in water skiing]  
39 while under the influence of intoxicating liquor or any drug [,] or both.  
40 [For the purposes of this subsection and sections 15-140l or 15-140n, a  
41 person shall be considered to be under the influence of intoxicating

42 liquor if the ratio of alcohol in the blood of such person at the time of  
43 the alleged offense, as determined by methods prescribed in  
44 subsection (a) of section 15-140r, is ten-hundredths of one per cent or  
45 more of alcohol, by weight. No person arrested for a violation of this  
46 subsection shall operate a vessel or engage in water-skiing upon the  
47 waters of this state for a twenty-four-hour period after such arrest.] A  
48 person commits the offense of operating a vessel while under the  
49 influence of intoxicating liquor or any drug or both if such person  
50 operates a vessel on the waters of this state (1) while under the  
51 influence of intoxicating liquor or any drug or both, or (2) while such  
52 person has an elevated blood alcohol content. For the purposes of this  
53 section and sections 15-140l and 15-140n, "elevated blood alcohol  
54 content" means (A) a ratio of alcohol in the blood of such person that is  
55 ten-hundredths of one per cent or more of alcohol, by weight, (B) if  
56 such person has been convicted of a violation of this subsection, a ratio  
57 of alcohol in the blood of such person that is seven-hundredths of one  
58 per cent or more of alcohol, by weight, or (C) if such person is under  
59 twenty-one years of age, a ratio of alcohol in the blood of such person  
60 that is two-hundredths of one per cent or more of alcohol, by weight.

61 (e) No person shall operate a vessel on the waters of this state while  
62 such person's ability to operate such vessel or engage in water skiing is  
63 impaired by the consumption of intoxicating liquor. A person shall be  
64 deemed impaired when, at the time of the alleged offense, the ratio of  
65 alcohol in the blood of such person was more than seven-hundredths  
66 of one per cent of alcohol, by weight, but less than ten-hundredths of  
67 one per cent of alcohol, by weight.

68 (f) In any prosecution for a violation of subdivision (1) of subsection  
69 (d) of this section, reliable evidence respecting the amount of alcohol in  
70 the defendant's blood or urine at the time of the alleged offense, as  
71 shown by a chemical analysis of the defendant's blood, breath or urine,  
72 otherwise admissible under section 15-140r, shall be admissible only at  
73 the request of the defendant.

74        ~~[(e)]~~ (g) No person shall operate a vessel or engage in any activity  
75 contrary to the regulations of the commissioner.

76        ~~[(f)]~~ (h) No person shall moor a vessel to, obstruct, remove, damage  
77 or destroy any navigation aid or any device used to mark a restricted  
78 area.

79        ~~[(g)]~~ (i) Any person who violates the provisions of subsection (d) of  
80 this section shall: ~~[be fined not less than one hundred dollars nor more~~  
81 ~~than five hundred dollars. Any person who violates any of the~~  
82 ~~provisions of subsection (b), (c) or (f) of this section shall be fined not~~  
83 ~~less than twenty-five dollars nor more than two hundred dollars.]~~ (1)  
84 For conviction of a first violation, (A) be fined not less than five  
85 hundred dollars nor more than one thousand dollars, and (B) be (i)  
86 imprisoned not more than six months, forty-eight consecutive hours of  
87 which may not be suspended or reduced in any manner, or (ii)  
88 imprisoned not more than six months, with the execution of such  
89 sentence of imprisonment suspended entirely and a period of  
90 probation imposed requiring as a condition of such probation that  
91 such person perform one hundred hours of community service, as  
92 defined in section 14-227e, and (C) have such person's vessel operating  
93 privilege suspended for one year; (2) for conviction of a second  
94 violation within ten years after a prior conviction for the same offense,  
95 (A) be fined not less than one thousand dollars nor more than four  
96 thousand dollars, (B) be imprisoned not more than two years, one  
97 hundred twenty consecutive days of which may not be suspended or  
98 reduced in any manner, and sentenced to a period of probation  
99 requiring as a condition of such probation that such person perform  
100 one hundred hours of community service, as defined in section 14-  
101 227e, and (C) have such person's vessel operating privilege suspended  
102 for three years or until the date of such person's twenty-first birthday,  
103 whichever is longer; and (3) for conviction of a third and subsequent  
104 violation within ten years after a prior conviction for the same offense,  
105 (A) be fined not less than two thousand dollars nor more than eight

106 thousand dollars, (B) be imprisoned not more than three years, one  
107 year of which may not be suspended or reduced in any manner, and  
108 sentenced to a period of probation requiring as a condition of such  
109 probation that such person perform one hundred hours of community  
110 service, as defined in section 14-227e, and (C) have such person's vessel  
111 operating privilege permanently revoked upon such third offense. Any  
112 person who violates the provisions of subsection (e) of this section  
113 shall be fined not less than one hundred dollars and not more than five  
114 hundred dollars. Any person who violates the provisions of subsection  
115 [(e)] (g) of this section shall have committed an infraction.

116 (j) The suspension of a vessel operating privilege imposed under  
117 subsection (i) of this section shall take effect immediately upon  
118 expiration of any period in which an appeal of any conviction under  
119 subsection (d) of this section may be taken, provided if an appeal is  
120 taken, the suspension shall be stayed during the pendency of such  
121 appeal. If the suspension takes effect, the defendant shall return, not  
122 later than the second business day after the suspension takes effect, by  
123 personal delivery or first class mail, the operating privilege  
124 documentation, or any certificate issued to the defendant by the  
125 commissioner as a condition of operating a vessel on the waters of the  
126 state, to the Commissioner of Environmental Protection.

127 (k) Any person who violates the provisions of subsection (b) of this  
128 section shall be fined not more than two hundred dollars.

129 (l) (1) A record shall be kept by each court of original jurisdiction of  
130 any violation of the laws relating to the operation of a vessel. A  
131 summary of such record, with a statement of the number of the  
132 operator's safe boating certificate or certificate of personal watercraft  
133 operation and the vessel's certificate of number or certificate of decal,  
134 shall, within five days after such conviction, forfeiture or any other  
135 disposition or nolle, be transmitted to the commissioner by such court.  
136 Each court shall report each conviction under subsection (d) of this

137 section to the Commissioner of Environmental Protection and the  
138 Commissioner of Public Safety. The Commissioner of Environmental  
139 Protection shall suspend the vessel operating privilege of the person  
140 reported as convicted for the period of time required by subsection (i)  
141 of this section.

142 (2) The operating privilege of a person found guilty under  
143 subsection (d) of this section who is under eighteen years of age shall  
144 be suspended by the commissioner for the period of time set forth in  
145 subsection (i) of this section, or until such person attains the age of  
146 eighteen years, whichever period is longer.

**ENV Committee Vote:** Yea 23 Nay 0 JFS

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:** Minimal Cost, Potential Minimal Revenue Gain

**Affected Agencies:** Department of Environmental Protection, Various Criminal Justice Agencies

**Municipal Impact:** Minimal Cost

**Explanation**

**State and Municipal Impact:**

It is anticipated that enforcement of violations due to lowering the threshold for operating a vessel while under the influence of alcohol or drugs and the impaired boating standards will be handled by the existing Department of Environmental Protection (DEP) and municipal law enforcement personnel. The bill will affect the procedures that are utilized and is not anticipated to impact the numbers of boaters that are stopped. Any increase in workload to DEP due to potential hearings is anticipated to be minimal.

Adoption of regulations by the DEP is anticipated to minimally increase their workload and require the diversion of staff away from current duties. However, it is anticipated that DEP will use the Department of Motor Vehicles regulations as a model, which will reduce the work associated.

In addition, the bill could result in minimal costs to various criminal justice agencies. It is anticipated that the number of criminal cases resulting from the bill will be minimal and can be absorbed within the caseload and budgetary structure of the criminal justice system. A minimal revenue gain to the state from expansion, new or increased fines is also anticipated to occur.

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**OLR Bill Analysis**

sSB 33

***AN ACT CONCERNING BOATING SAFETY.*****SUMMARY:**

This bill lowers the blood alcohol content (BAC) threshold for determining whether certain boaters have committed the crime of operating a vessel while under the influence of alcohol. It increases the penalty for this crime and establishes enhanced penalties for repeat offenders and offenders under the age of 21. It establishes a new offense of operating a vessel while impaired.

The bill allows a person arrested for boating while under the influence to operate a vessel during the 24 hours following the arrest. It eliminates fines for certain boating offenses. It imposes record keeping requirements for violations of boating laws.

The bill expands requirements regarding safe boating certificates.

EFFECTIVE DATE: October 1, 2000

**BOATING WHILE INTOXICATED*****Threshold***

The law prohibits operating a vessel while under the influence of alcohol or any drug. Under current law, a boater is considered under the influence of alcohol if his blood alcohol content BAC is .10% or more. The bill eliminates this definition, which is incorporated by reference in two related crimes (see COMMENT). The bill instead defines "under the influence" as having an "elevated BAC" which is (1) .02% if the person is under 21, (2) .07% if the person has previously been convicted of boating under the influence, and (3) .10% for anyone else.

Under the bill, a boater can be convicted if he is found to have operated a vessel while under the influence of alcohol or drugs, independent of his BAC. But the bill provides that in any prosecution under this provision, evidence regarding the BAC of the boater's blood or urine, shown by a chemical analysis of his blood, urine, or breath, is only admissible at his request.

### **Penalties**

Under current law, operating a vessel under the influence is subject to a fine of \$100 to \$500. The bill increases the penalty by increasing the fine, requiring imprisonment or community service, and requiring the suspension of the boater's "operating privilege" for a first offense (see COMMENT). It establishes enhanced penalties for second and subsequent offenses within ten years of a prior conviction. The penalties are described in Table 1.

**Table 1: Penalties for Operating a Vessel While Under the Influence**

<i>Offense</i>	<i>Fine</i>	<i>Prison/ Community Service (CS)</i>	<i>Suspension</i>
First	\$500-\$1,000	Six months, 48 consecutive hours non-suspendable OR probation and 100 hours CS	One year
Second	\$1,000-\$4,000	Two years, 120 consecutive days non-suspendable AND probation and 100 hours CS	Three years
Third	\$2,000-\$8,000	Three years, one year non-suspendable AND probation	Permanent revocation

		and 100 hours CS	
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The suspension for a boater who is under 18 is for the period specified above, or until he turns 18, whichever is longer.

A suspension goes into effect when the period for taking an appeal of the conviction ends. If an appeal is taken, the suspension is stayed during the appeal. Within two business days of a suspension taking effect, the defendant must mail or deliver the operating privilege document or any certificate issued by the Department of Environmental Protection (DEP) to him as a condition of operating a vessel in the state. These provisions do not appear to apply to revocations.

**BOATING WHILE IMPAIRED**

The bill prohibits operating a vessel in the waters of the state while impaired by the consumption of alcohol. A person is considered impaired if his BAC at the time of the offense is between .07% and .10%. A violation is subject to a fine of \$100 to \$500. It appears that a minor or repeat offender found to have a BAC in this range could be charged with this offense or boating while under the influence.

The bill eliminates the crime of water skiing while under the influence with a BAC of .10% or more. The current penalty for this offense is a fine of \$100 to \$500. The bill instead treats water skiing while impaired the same way as boating while impaired.

**FINES FOR BOATING OFFENSES**

The bill eliminates the \$25 to \$200 fine for:

1. altering, defacing, or removing the label that indicates a vessel’s capacity; and
2. obstructing, removing, damaging, or destroying a navigational aid or mooring a vessel to a navigational aid.

The bill eliminates the minimum \$25 fine for using a vessel so as to interfere with navigation.

## RECORD-KEEPING

The bill requires the courts to keep a record of boating law violations. This provision applies to any violation, not just boating while under the influence. The court must send a summary of the record to the DEP commissioner within five days of a conviction, forfeiture, *nolle*, or other disposition. The summary must include a statement of the operator's safe boating certificate or certificate of personal watercraft operation and the vessel's certificate. In the case of boating while under the influence, the court must report a conviction to the DEP and public safety commissioner. (The bill does not amend CGS Sec. 15-133c, which requires that the court notify DEP of such convictions within 30 days.) The DEP commissioner must suspend the boater's operating privilege for the period specified above.

## SAFE BOATING CERTIFICATES

The law requires a person to have a safe boating certificate or a U.S. Coast Guard license to operate a boat that is subject to the state's registration or numbering requirements, *i.e.*, most boats other than sailboats under 19.5 feet long, canoes, and rowboats. This requirement applies to state residents and people who own boats or real property in the state.

The bill bars the owner of a Connecticut-numbered or -registered boat from knowingly allowing anyone to operate the boat who (1) lives in Connecticut or owns property here and (2) does not have a Connecticut safe boating certificate or certificate of personal watercraft operation. But a person can operate the vessel while under the direct supervision of the owner. The bill does not establish a penalty for this offense.

The bill eliminates the DEP commissioner's explicit authority to enter into agreements with other states regarding certificate programs. It prohibits a person who has passed another state's safe boating course from operating a boat in state waters but has not obtained a safe boating certificate.

## COMMENT

***Definition of Being Under the Influence***

Current boating law (CGS Sec. 15-133) defines being under the influence as having a BAC of .10% or more. This definition is incorporated by reference in the criminal statutes on reckless operation of a vessel in the first or second degree while under the influence (CGS Sec. 15-140l and 15-140n). The bill deletes this definition and instead defines the term “elevated blood alcohol content” for purposes of these laws. But the bill does not make a conforming change to amend the reckless operation statutes, which continues to refer to boating under the influence. As a result, it is unclear what standard applies to these crimes.

***Suspension of a Boater’s Operating Privilege***

The bill requires suspension of a boater’s “operating privilege” for a first or second conviction of boating while under the influence and revocation for a third conviction. Section 3(b) states that the privilege is a document and implies that it is something other than a safe boating certificate. The statutes do not use this term in the context of boating and it is unclear what document the bill is referring to.

If the intent of the bill is to refer to safe boating certificates, the requirement for revocation for a third conviction conflicts with CGS Sec. 15-140e, which states that they are nonrevocable.

It appears that the suspension and revocation provisions cannot apply in cases where the boater is operating under a U.S. Coast Guard license, since state law cannot supersede federal law.

**COMMITTEE ACTION**

Environment Committee

Joint Favorable Substitute

Yea 23      Nay 0