



Senate

General Assembly

File No. 754

January Session, 2009

Substitute Senate Bill No. 832

Senate, April 21, 2009

The Committee on Judiciary reported through SEN. MCDONALD of the 27th 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. (NEW) (*Effective July 1, 2009*) (a) A person is guilty of
2 manslaughter in the second degree with a vessel when, while
3 operating a vessel upon the waters of this state under the influence of
4 intoxicating liquor or any drug, or both, such person causes the death
5 of another person as a consequence of the effect of such liquor or drug.

6 (b) Manslaughter in the second degree with a vessel is a class C
7 felony and the court shall suspend the safe boating certificate for
8 operation or certificate of personal watercraft operation for one year
9 for any person found guilty under this section.

10 Sec. 2. Section 15-140l of the general statutes is repealed and the
11 following is substituted in lieu thereof (*Effective July 1, 2009*):

12 (a) A person commits the offense of reckless operation of a vessel in
13 the first degree while under the influence when, while under the

14 influence of intoxicating liquor or any drug, or both, or while such
15 person has an elevated blood alcohol level content, such person
16 operates a vessel at such speed or maneuvers a vessel in such a manner
17 as to result in (1) [death or] serious physical injury to another person,
18 or (2) damage to property in excess of two thousand dollars.

19 (b) Any person guilty of reckless operation of a vessel in the first
20 degree while under the influence shall be fined not less than two
21 thousand five hundred dollars or more than five thousand dollars or
22 imprisoned not more than two years, or both.

23 Sec. 3. Section 14-227f of the general statutes is repealed and the
24 following is substituted in lieu thereof (*Effective July 1, 2009*):

25 (a) Any person whose motor vehicle operator's license or
26 nonresident operating privilege is suspended under subsection (g) of
27 section 14-227a for a conviction of a violation of subsection (a) of said
28 section or under section 14-227b for a second or subsequent time shall
29 participate in a treatment program which includes an assessment of
30 the degree of alcohol abuse and treatment, as appropriate, approved
31 by the Commissioner of Motor Vehicles. The commissioner shall not
32 reinstate the operator's license or nonresident operating privilege of
33 any such person until such person submits evidence to the
34 commissioner that such person has satisfactorily completed the
35 treatment program. Any person whose certificate is suspended or
36 revoked pursuant to section 15-133, as amended by this act, 15-140l,
37 [or] as amended by this act, 15-140n or section 1 of this act shall
38 participate in such treatment program.

39 (b) The treatment program shall be designed by the commissioner,
40 with the advice and assistance of the Motor Vehicle Operator's License
41 Medical Advisory Board established pursuant to section 14-46b, any
42 state agency or any other public or private entity engaged in the
43 provision of responsible services for the treatment of alcohol and drug
44 addiction as the commissioner may request. The program shall consist
45 of intensive treatment and a phase of continuing aftercare supervision
46 and monitoring on an individual basis. The program may be provided

47 by one or more private organizations approved by the commissioner
48 which meet qualifications established by him, provided the entire costs
49 of the program shall be paid from fees charged to the participants, the
50 amounts of which shall be subject to the approval of the commissioner.

51 (c) Upon receipt of notification from the commissioner of the
52 requirement to participate in the program, such person may, within
53 thirty days, petition the commissioner in writing for a waiver of such
54 requirement on the following grounds: (1) The petitioner is presently
55 undergoing a substantial treatment program for alcohol or drug
56 addiction, or has completed such a program subsequent to his most
57 recent arrest, either as a result of an order of the Superior Court or on a
58 voluntary basis, and (2) the petitioner does not, in the opinion of a
59 licensed physician based upon a personal examination, have a current
60 addiction problem which affects his ability to operate a motor vehicle
61 in a safe manner or pose a significant risk of having such a problem in
62 the foreseeable future. In reviewing and determining whether to grant
63 any such petition, the commissioner shall request and give due
64 consideration to the advice of the Motor Vehicle Operator's License
65 Medical Advisory Board. Any person aggrieved by the decision of the
66 commissioner may appeal such decision in accordance with the
67 provisions of chapter 54.

68 (d) The commissioner shall adopt regulations in accordance with
69 chapter 54 to implement the provisions of this section.

70 Sec. 4. Subsection (d) of section 15-133 of the general statutes is
71 repealed and the following is substituted in lieu thereof (*Effective July*
72 *1, 2009*):

73 (d) No person shall operate a vessel: (1) While under the influence
74 of intoxicating liquor or any drug, or both, or (2) while such person has
75 an elevated blood alcohol content. For the purposes of this section and
76 sections 15-140l, as amended by this act and 15-140n, "elevated blood
77 alcohol content" means: (A) A ratio of alcohol in the blood of such
78 person that is eight-hundredths of one per cent or more of alcohol, by
79 weight, or (B) if such person is under twenty-one years of age, a ratio

80 of alcohol in the blood of such person that is two-hundredths of one
81 per cent or more of alcohol, by weight. For the purposes of this section
82 and sections 15-140l, as amended by this act, 15-140n, 15-140o, [and] as
83 amended by this act, 15-140q, as amended by this act, and section 1 of
84 this act, "operate" means that the vessel is underway or aground and
85 not moored, anchored or docked.

86 Sec. 5. Subsection (b) of section 15-133c of the general statutes is
87 repealed and the following is substituted in lieu thereof (*Effective July*
88 *1, 2009*):

89 (b) The clerk of the court in which a conviction for a violation of
90 section 15-133, as amended by this act, 15-134, 15-140l, [or] as amended
91 by this act, 15-140n or section 1 of this act is rendered shall cause notice
92 of such conviction to be given to the Commissioner of Environmental
93 Protection not later than thirty days after such conviction.

94 Sec. 6. Subsection (a) of section 15-140e of the general statutes is
95 repealed and the following is substituted in lieu thereof (*Effective July*
96 *1, 2009*):

97 (a) No resident of the state, person owning real property in the state
98 or person owning a vessel in the state shall operate on the waters of the
99 state a vessel which is required to be registered or numbered pursuant
100 to this chapter unless such person has a valid vessel operator license
101 issued by the United States Coast Guard or has obtained a safe boating
102 certificate issued by the Commissioner of Environmental Protection.
103 No owner of a vessel shall knowingly authorize or permit a person
104 who is less than sixteen years of age who is required by this section to
105 obtain a safe boating certificate issued by the Commissioner of
106 Environmental Protection to operate such vessel on the waters of the
107 state without a safe boating certificate, unless such person is under the
108 direct onboard supervision of a person who is at least eighteen years of
109 age who has been issued a safe boating certificate and who has held
110 such certificate for at least two years. A safe boating certificate may be
111 suspended or revoked, pursuant to section 15-133, as amended by this
112 act, 15-140l, [or] as amended by this act, 15-140n or section 1 of this act,

113 and shall be valid for the life of the person to whom it is issued unless
114 otherwise suspended or revoked.

115 Sec. 7. Subsection (l) of section 15-140j of the general statutes is
116 repealed and the following is substituted in lieu thereof (*Effective July*
117 *1, 2009*):

118 (l) A certificate of personal watercraft operation may be suspended
119 or revoked in accordance with the provisions of section 15-133, as
120 amended by this act, 15-140l, [or] as amended by this act, 15-140n or
121 section 1 of this act.

122 Sec. 8. Section 15-140o of the general statutes is repealed and the
123 following is substituted in lieu thereof (*Effective July 1, 2009*):

124 (a) Any peace officer authorized to enforce the provisions of
125 sections 15-129, 15-133, as amended by this act, 15-133b, 15-133c, as
126 amended by this act, 15-140e to 15-140u, inclusive, as amended by this
127 act, 15-154, as amended by this act, and 15-156, as amended by this act,
128 who arrests an operator for a violation of subsection (d) of section 15-
129 133, as amended by this act, or section 15-140k, 15-140l, as amended by
130 this act, 15-140m, [or] 15-140n or section 1 of this act may take the
131 vessel operated in such violation into such peace officer's custody and
132 shall cause the [same] vessel to be taken to and stored in a suitable
133 place. There shall be no liability attached to such peace officer for any
134 damages to such vessel while in such peace officer's custody. All
135 charges necessarily incurred by such peace officer in the performance
136 of such duty shall be a lien upon such vessel. The owner or keeper of
137 any marina or other place where such vessel is stored shall have a lien
138 upon the [same] vessel for the storage charges and if such vessel has
139 been stored for a period of not less than sixty days, such owner or
140 keeper may sell the [same] vessel for storage charges owed thereon,
141 provided a notice of intent to sell shall be sent to the Commissioner of
142 Environmental Protection, the Commissioner of Motor Vehicles, and
143 the owner of such vessel, if known, five days before the sale of such
144 vessel. If the owner is unknown, such sale shall be advertised by such
145 marina owner or keeper in a newspaper published or having a

146 circulation in the town where such marina or other place is located
147 three times, commencing at least five days before the sale. The
148 proceeds of such sale, after deducting the amount due such marina
149 owner or keeper and all expenses of the peace officer who placed such
150 vessel in storage, shall be paid to the owner of such vessel or such
151 owner's legal representatives, if claimed by such owner or owners at
152 any time within one year from the date of such sale. If such balance is
153 not claimed within said period, it shall escheat to the state.

154 (b) Any vessel that is operated by a person who is arrested for a
155 violation of section 15-140n, in connection with such operation, or for a
156 violation of section 15-140l, as amended by this act, or section 1 of this
157 act, after being involved in a boating accident, may be impounded for
158 a minimum of forty-eight hours after the arrest. Any vessel involved in
159 a boating accident that results in death, serious physical injury, a
160 missing person or property damage in excess of two thousand dollars
161 may be seized for the collection of evidence and held until the
162 investigation of the boating accident or any related court proceedings
163 are concluded. Any trailer utilized by the operator to transport such
164 vessel may also be impounded to facilitate transport and handling of
165 such vessel.

166 Sec. 9. Section 15-140p of the general statutes is repealed and the
167 following is substituted in lieu thereof (*Effective July 1, 2009*):

168 Any fine imposed for a violation of subdivision (1) of subsection (a)
169 of section 15-140k, [or] subdivision (1) of subsection (a) of section 15-
170 140l, as amended by this act, or section 1 of this act shall be deposited
171 in the Criminal Injuries Compensation Fund established pursuant to
172 section 54-215.

173 Sec. 10. Subsection (j) of section 15-140q of the general statutes is
174 repealed and the following is substituted in lieu thereof (*Effective July*
175 *1, 2009*):

176 (j) Notwithstanding the provisions of subsections (b) to (i),
177 inclusive, of this section, any peace officer who obtains the results of a

178 chemical analysis of a blood sample taken from an operator of a vessel
179 involved in an accident who suffered or allegedly suffered physical
180 injury in such accident shall notify the commissioner and submit to the
181 commissioner a written report if such results indicate that at the time
182 of the alleged offense such person had an elevated blood alcohol
183 content, and if such person was arrested for a violation of subsection
184 (d) of section 15-133, as amended by this act, or section 15-140l, [or] as
185 amended by this act, 15-140n or section 1 of this act in connection with
186 such accident. The report shall be made on a form approved by the
187 commissioner containing such information as the commissioner
188 prescribes and shall be subscribed and sworn under penalty of false
189 statement, as provided in section 53a-157b, by the peace officer. The
190 commissioner shall, after notice and an opportunity for hearing, which
191 shall be conducted in accordance with chapter 54, suspend the safe
192 boating certificate, right to operate a vessel that requires a safe boating
193 certificate for operation or certificate of personal watercraft operation
194 of such person for a period of up to ninety days, or, if such person has
195 previously had such person's operating privilege suspended under this
196 section, for a period up to one year. Each hearing conducted under this
197 section shall be limited to a determination of the following issues: (1)
198 Whether the peace officer had probable cause to arrest the person for
199 operating a vessel while under the influence of intoxicating liquor or
200 drugs, or both, or while such person has an elevated blood alcohol
201 content; (2) whether such person was placed under arrest; (3) whether
202 such person was operating the vessel; (4) whether the results of the
203 analysis of the blood of such person indicate that such person had an
204 elevated blood alcohol content; and (5) whether the blood sample was
205 obtained in accordance with conditions for admissibility as set forth in
206 subsection (b) of section 15-140r, as amended by this act. If, after such
207 hearing, the commissioner finds on any issue in the negative, the
208 commissioner shall not impose a suspension. The fees of any witness
209 summoned to appear at the hearing shall be the same as provided by
210 the general statutes for witnesses in criminal cases.

211 Sec. 11. Section 15-140r of the general statutes is repealed and the
212 following is substituted in lieu thereof (*Effective July 1, 2009*):

213 (a) Except as provided in subsection (d) of this section, in any
214 criminal prosecution for the violation of subsection (d) of section 15-
215 133, as amended by this act, [sections] section 15-140l, [and] as
216 amended by this act, 15-140n, [and] or section 1 of this act or
217 subsection (b) of section 53-206d, evidence respecting the amount of
218 alcohol or drug in the defendant's blood or urine at the time of the
219 alleged offense, as shown by a chemical analysis of the defendant's
220 breath, blood or urine shall be admissible and competent provided: (1)
221 The defendant was afforded a reasonable opportunity to telephone an
222 attorney prior to the performance of the test and consented to the
223 taking of the test upon which such analysis is made; (2) a true copy of
224 the report of the test result was mailed to or personally delivered to the
225 defendant within twenty-four hours or by the end of the next regular
226 business day, after such result was known, whichever is later; (3) the
227 test was performed by or at the direction of a certified law enforcement
228 officer according to methods and with equipment approved by the
229 Department of Public Safety, [If] and if a blood test [is taken, it shall
230 be] was performed, it was performed on a blood sample taken by a
231 person licensed to practice medicine and surgery in this state, a
232 qualified laboratory technician, an emergency medical technician II or
233 a registered nurse in accordance with the regulations adopted under
234 subsection (b) of this section; (4) the device used for such test was
235 checked for accuracy in accordance with the regulations adopted
236 under subsection (b) of this section; (5) an additional chemical test of
237 the same type was performed at least thirty minutes after the initial
238 test was performed or, if requested by the peace officer for reasonable
239 cause, an additional chemical test of a different type was performed to
240 detect the presence of a drug or drugs other than or in addition to
241 alcohol, [provided] except that the results of the initial test shall not be
242 inadmissible under this subsection if reasonable efforts were made to
243 have such additional test performed in accordance with the conditions
244 set forth in this subsection and such additional test was not performed
245 or was not performed within a reasonable time, or the results of such
246 additional test are not admissible for failure to meet a condition set
247 forth in this subsection; and (6) evidence is presented that the test was

248 commenced within two hours of operation of the vessel. In any
249 prosecution under this section it shall be a rebuttable presumption that
250 the results of such chemical analysis establish the ratio of alcohol in the
251 blood of the defendant at the time of the alleged offense, except that if
252 the results of the additional test indicate that the ratio of alcohol in the
253 blood of such defendant is ten-hundredths of one per cent or less of
254 alcohol, by weight, and is higher than the results of the first test,
255 evidence shall be presented that demonstrates that the test results and
256 the analysis thereof accurately indicate the blood alcohol content at the
257 time of the alleged offense.

258 (b) The Commissioner of Public Safety shall ascertain the reliability
259 of each method and type of device offered for chemical testing and
260 analysis of blood, of breath and of urine and certify those methods and
261 types which [said commissioner] the Commissioner of Public Safety
262 finds suitable for use in testing and analysis of blood, breath and urine,
263 respectively, in this state. The Commissioner of Public Safety, after
264 consultation with the Commissioner of Public Health, shall adopt
265 regulations, in accordance with chapter 54, governing the conduct of
266 chemical tests, the operation and use of chemical test devices and the
267 training and certification of operators of such devices and the drawing
268 or obtaining of blood, breath or urine samples as [said commissioner]
269 the Commissioner of Public Safety finds necessary to protect the health
270 and safety of persons who submit to chemical tests and to insure
271 reasonable accuracy in testing results. Such regulations shall not
272 require recertification of a peace officer solely because such officer
273 terminates such officer's employment with the law enforcement
274 agency for which certification was originally issued and commences
275 employment with another such agency.

276 (c) If a person is charged with a violation of subsection (d) of section
277 15-133, as amended by this act, the charge may not be reduced, nolle
278 or dismissed unless the prosecuting authority states in open court such
279 prosecutor's reasons for the reduction, nolle or dismissal.

280 (d) In any criminal prosecution for a violation of subsection (d) of

281 section 15-133, as amended by this act, or section 15-140l, [or] as
282 amended by this act, 15-140n or section 1 of this act, evidence that the
283 defendant refused to submit to a blood, breath or urine test requested
284 in accordance with section 15-140q, as amended by this act, shall be
285 admissible provided the requirements of subsection (a) of said section
286 have been satisfied. If a case involving a violation of subsection (d) of
287 section 15-133, as amended by this act, or section 15-140l, [or] as
288 amended by this act, 15-140n or section 1 of this act is tried to a jury,
289 the court shall instruct the jury as to any inference that may or may not
290 be drawn from the defendant's refusal to submit to a blood, breath or
291 urine test.

292 Sec. 12. Subsections (a) and (b) of section 15-154 of the general
293 statutes are repealed and the following is substituted in lieu thereof
294 (*Effective July 1, 2009*):

295 (a) Any harbor master, deputy harbor master, conservation officer,
296 special conservation officer or state police officer and any municipal
297 police officer, any special police officer appointed under sections 29-18
298 and 29-19, any town marine officers appointed under section 15-154a
299 and certified by the commissioner for marine police duty and any lake
300 patrolman appointed under section 7-151b may enforce the provisions
301 of this chapter and chapter 446k, except that only peace officers shall
302 enforce the provisions of subsection (d) of section 15-133, as amended
303 by this act, and sections 15-140l, [and] as amended by this act, 15-140n
304 and section 1 of this act. In the enforcement of this chapter, such officer
305 may arrest, without previous complaint and warrant, any person who
306 fails to comply with the provisions of this chapter. Failure to appear in
307 court pursuant to such arrest, unless excused by the court or the state's
308 attorney or assistant state's attorney, shall constitute sufficient cause
309 for the suspension by the Commissioner of Motor Vehicles of the boat
310 registration of the boat involved for not more than thirty days or until
311 the matter is resolved by the court, whichever is sooner.

312 (b) When engaged in the enforcement of this chapter and chapter
313 446k, such officer shall have the authority to stop and board any vessel

314 which is under way or which is moored on the waters of this state for
315 the purposes of (1) examining decals, certificates and other documents,
316 (2) inspecting safety equipment and waste disposal systems, (3)
317 determining if the operation of such vessel exceeds the noise levels
318 established in subsection (b) of section 15-129, (4) searching when such
319 officer has probable cause to believe that any provision of any law of
320 this state or any rule or regulation of the Department of Environmental
321 Protection relating to boating or water pollution has been violated, (5)
322 determining compliance with sections 15-140l, [and] as amended by
323 this act, 15-140n, and section 1 of this act and subsections (d) and (e) of
324 section 15-133, as amended by this act, when such authorized officer
325 has probable cause to believe said section or subsection has been
326 violated, and (6) making arrests.

327 Sec. 13. Subsections (d) and (e) of section 15-156 of the general
328 statutes are repealed and the following is substituted in lieu thereof
329 (*Effective July 1, 2009*):

330 (d) (1) Any person who operates any vessel during the period such
331 person's certificate or right to operate a vessel in this state is under
332 suspension or revocation on account of a violation of subsection (d) of
333 section 15-133, as amended by this act, or subsection (c) of section 15-
334 154 shall be fined not less than five hundred dollars or more than one
335 thousand dollars and imprisoned not more than one year. In the
336 absence of any mitigating circumstances, as determined by the court,
337 thirty consecutive days of the sentence imposed may not be suspended
338 or reduced in any manner. The court shall specifically state, in writing,
339 for the record [the] any mitigating circumstances, or the absence
340 thereof.

341 (2) Any person convicted of reckless operation of a vessel in the first
342 or second degree while under the influence of intoxicating liquor or
343 any drug, or both, in violation of section 15-140l, as amended by this
344 act, or 15-140n, or of manslaughter in the second degree with a vessel,
345 in violation of section 1 of this act, who operates a vessel during the
346 period such person's certificate or right to operate a vessel in this state

347 is under suspension or revocation, in addition to any penalties
348 imposed in accordance with said sections or section 15-140o, as
349 amended by this act, shall be fined not less than five hundred dollars
350 or more than one thousand dollars and imprisoned not more than one
351 year. In the absence of any mitigating circumstances as determined by
352 the court, thirty consecutive days of the sentence imposed may not be
353 suspended or reduced in any manner. The court shall specifically state,
354 in writing, for the record any mitigating circumstances, or the absence
355 thereof.

356 (3) A court having jurisdiction of a violation of subdivision (1) or (2)
357 of this subsection may prohibit such person from operating any vessel
358 on any waters of this state for a period of not more than two years.
359 Notice of such suspension shall be transmitted forthwith by the court
360 to the Commissioner of Environmental Protection and the
361 Commissioner of Motor Vehicles.

362 (e) Any person who has had a safe boating certificate or certificate of
363 personal watercraft operation suspended or revoked under subsection
364 (d) of section 15-133, as amended by this act, or section 15-140l, as
365 amended by this act, 15-140n, [or] 15-154, as amended by this act, or
366 section 1 of this act shall, not later than two business days after the
367 suspension or revocation takes effect, return the certificate to the
368 commissioner. If such person fails to return the certificate to the
369 commissioner, the commissioner shall direct a conservation law
370 enforcement officer to secure possession thereof and to return the
371 certificate to the office of the commissioner. Failure of such person to
372 return the certificate shall be an infraction.

373 Sec. 14. Subsections (a) and (b) of section 54-56g of the general
374 statutes are repealed and the following is substituted in lieu thereof
375 (*Effective July 1, 2009*):

376 (a) There shall be a pretrial alcohol education system for persons
377 charged with a violation of section 14-227a, 14-227g, 15-133, as
378 amended by this act, 15-140l, [or] as amended by this act, 15-140n or
379 section 1 of this act. Upon application by any such person for

380 participation in such system and payment to the court of an
381 application fee of fifty dollars and a nonrefundable evaluation fee of
382 one hundred dollars, the court shall, but only as to the public, order
383 the court file sealed, provided such person states under oath, in open
384 court or before any person designated by the clerk and duly
385 authorized to administer oaths, under penalties of perjury that: (1) If
386 such person is charged with a violation of section 14-227a, such person
387 has not had such system invoked in such person's behalf within the
388 preceding ten years for a violation of section 14-227a, (2) if such person
389 is charged with a violation of section 14-227g, such person has never
390 had such system invoked in such person's behalf for a violation of
391 section 14-227a or 14-227g, (3) such person has not been convicted of a
392 violation of section 53a-56b or 53a-60d, a violation of subsection (a) of
393 section 14-227a before or after October 1, 1981, or a violation of
394 subdivision (1) or (2) of subsection (a) of section 14-227a on or after
395 October 1, 1985, and (4) such person has not been convicted in any
396 other state at any time of an offense the essential elements of which are
397 substantially the same as section 53a-56b or 53a-60d or subdivision (1)
398 or (2) of subsection (a) of section 14-227a. Unless good cause is shown,
399 a person shall be ineligible for participation in such pretrial alcohol
400 education system if such person's alleged violation of section 14-227a
401 or 14-227g caused the serious physical injury, as defined in section 53a-
402 3, of another person. The application fee imposed by this subsection
403 shall be credited to the Criminal Injuries Compensation Fund
404 established by section 54-215.

405 (b) The court, after consideration of the recommendation of the
406 state's attorney, assistant state's attorney or deputy assistant state's
407 attorney in charge of the case, may, in its discretion, grant such
408 application. If the court grants such application, [it] the court shall
409 refer such person to the Court Support Services Division for
410 assessment and confirmation of the eligibility of the applicant and to
411 the Department of Mental Health and Addiction Services for
412 evaluation. The Court Support Services Division, in making its
413 assessment and confirmation, may rely on the representations made by
414 the applicant under oath in open court with respect to convictions in

415 other states of offenses specified in subsection (a) of this section. Upon
416 confirmation of eligibility and receipt of the evaluation report, the
417 defendant shall be referred to the Department of Mental Health and
418 Addiction Services by the Court Support Services Division for
419 placement in an appropriate alcohol intervention program for one
420 year, or be placed in a state-licensed substance abuse treatment
421 program. Any person who enters the system shall agree: (1) To the
422 tolling of the statute of limitations with respect to such crime, (2) to a
423 waiver of such person's right to a speedy trial, (3) to complete ten or
424 fifteen counseling sessions in an alcohol intervention program or
425 successfully complete a substance abuse treatment program of not less
426 than twelve sessions pursuant to this section dependent upon the
427 evaluation report and the court order, (4) upon completion of
428 participation in the alcohol intervention program, to accept placement
429 in a treatment program upon recommendation of a provider under
430 contract with the Department of Mental Health and Addiction Services
431 pursuant to subsection (d) of this section or placement in a state-
432 licensed treatment program which meets standards established by the
433 Department of Mental Health and Addiction Services, if the Court
434 Support Services Division deems it appropriate, and (5) if ordered by
435 the court, to participate in at least one victim impact panel. The
436 suspension of the motor vehicle operator's license of any such person
437 pursuant to section 14-227b shall be effective during the period such
438 person is participating in such program, provided such person shall
439 have the option of not commencing the participation in such program
440 until the period of such suspension is completed. If the Court Support
441 Services Division informs the court that the defendant is ineligible for
442 the system and the court makes a determination of ineligibility or if the
443 program provider certifies to the court that the defendant did not
444 successfully complete the assigned program or is no longer amenable
445 to treatment, the court shall order the court file to be unsealed, enter a
446 plea of not guilty for such defendant and immediately place the case
447 on the trial list. If such defendant satisfactorily completes the assigned
448 program, such defendant may apply for dismissal of the charges
449 against such defendant and the court, on reviewing the record of the

450 defendant's participation in such program submitted by the Court
 451 Support Services Division and on finding such satisfactory completion,
 452 shall dismiss the charges. If the defendant does not apply for dismissal
 453 of the charges against such defendant after satisfactorily completing
 454 the assigned program the court, upon receipt of the record of the
 455 defendant's participation in such program submitted by the Court
 456 Support Services Division, may on its own motion make a finding of
 457 such satisfactory completion and dismiss the charges. Upon motion of
 458 the defendant and a showing of good cause, the court may extend the
 459 one-year placement period for a reasonable period for the defendant to
 460 complete the assigned program. A record of participation in such
 461 program shall be retained by the Court Support Services Division for a
 462 period of seven years from the date of application. The Court Support
 463 Services Division shall transmit to the Department of Motor Vehicles a
 464 record of participation in such program for each person who
 465 satisfactorily completes such program. The Department of Motor
 466 Vehicles shall maintain for a period of seven years the record of a
 467 person's participation in such program as part of such person's driving
 468 record. The Court Support Services Division shall transmit to the
 469 Department of Environmental Protection the record of participation of
 470 any person who satisfactorily completes such program who has been
 471 charged with a violation of the provisions of section 15-133, as
 472 amended by this act, 15-140l, [or] as amended by this act, 15-140n or
 473 section 1 of this act. The Department of Environmental Protection shall
 474 maintain for a period of seven years the record of a person's
 475 participation in such program as a part of such person's boater
 476 certification record.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2009	New section
Sec. 2	July 1, 2009	15-140l
Sec. 3	July 1, 2009	14-227f
Sec. 4	July 1, 2009	15-133(d)
Sec. 5	July 1, 2009	15-133c(b)
Sec. 6	July 1, 2009	15-140e(a)

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Judicial Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal
Correction, Dept.; Judicial Dpt (Probation)	GF - Cost	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill increases the criminal penalties for killing someone while operating a boat while under the influence. The penalty under current law is imprisonment for up to 2 years and/or a fine of up to \$5,000. Under the bill, any such violation could result in imprisonment for up to 10 years and/or a fine of up to \$10,000. Between 2002 and 2008, there were two convictions under CGS 15-140l(a)(1), which provides penalties for any person who kills or severely injures a person while operating a boat while under the influence.

To the extent that this change increases the likelihood that offenders would be prosecuted or receive harsher penalties, a potential revenue gain from criminal fines and potential cost for incarceration and/or probation supervision in the community exists. It is anticipated that relatively few fines would be imposed on an annual basis, and, consequently, any revenue gain under the bill is expected to be minimal. On average, it costs the state \$3,736 to supervise an offender on probation in the community as compared to \$44,165 to incarcerate the offender.

The Out Years

The annualized ongoing cost impact identified above would continue into the future subject to inflation; the annualized ongoing revenues would remain constant into the future since fine amounts are set by statute.

OLR Bill Analysis**sSB 832*****AN ACT CONCERNING BOATING SAFETY.*****SUMMARY:**

Under current law, the crime of reckless operation of a vessel in the first degree while under the influence, includes killing someone while operating a boat while under the influence of alcohol or drugs. The penalty is a fine of between \$2,500 and \$5000, up to two years in prison, or both.

This bill increases the penalty for this crime by eliminating the offense of killing someone from reckless operation of a vessel in the first degree while under the influence and creating in its place the crime of manslaughter in the second degree with a vessel (e.g., a boat), which is a class C felony under the bill, similar to motor vehicle law. By law, a class C felony is punishable by a fine of up to \$10,000, a prison term of up to 10 years, or both.

The bill extends existing law's provisions concerning reckless operation of a vessel in the first degree while under the influence to manslaughter in the second degree with a vessel.

The bill also makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2009.

MANSLAUGHTER IN THE SECOND DEGREE WITH A VESSEL

Under the bill, a person is guilty of this offense when, under the influence of intoxicating liquor or any drug, or both, he or she kills someone while operating a vessel on state waters as a consequence of the liquor's or drug's effect. The court must suspend the safe boating or personal watercraft (e.g., jet ski) operation certificate for one year

anyone found guilty of this offense.

The bill extends requirements and provisions under existing law that concern “reckless operation in the first degree while under the influence” to the crime of second degree manslaughter with a vessel under the bill. These include:

1. anyone whose boating certificate is suspended must participate in and complete an alcohol abuse and treatment program;
2. “operate” means the vessel is underway or aground and not moored, anchored, or docked;
3. the clerk of the court where a person is convicted must inform the Department of Environmental Protection (DEP) commissioner no later than 30 days after a boater’s conviction for an operating under the influence violation (DEP administers safe boating and personal watercraft operation certificates required to operate vessels);
4. only authorized peace officers may enforce drunken boating laws and these officers may take the vessels of violators into custody or impound them;
5. any fines imposed must be placed in the Criminal Injuries Compensation Fund (the fund provides financial assistance to crime victims);
6. when test results indicate a vessel operator violated the law by operating a vessel with an elevated blood alcohol content at the time of an accident, the peace officer who obtains the results of a chemical analysis of a blood sample taken from the vessel operator, who was involved in an accident and suffered or allegedly suffered physical injury in the accident, must notify the DEP commissioner and submit a written report to her;
7. evidence respecting the amount of alcohol or drug in a defendant’s blood or urine at the time of an alleged offense as

- shown by a chemical analysis of his or her breath, blood, or urine is admissible as the law provides (e.g., given that the defendant was provided reasonable opportunity to call an attorney before the test from which the analysis was made);
8. when a defendant refused a blood, breath, or urine test for an alleged violation and is tried by a jury, the court must instruct the jury as to any inference that may or may not be drawn from his or her refusal;
 9. operating a boat while certificate or right to operate is suspended or revoked for drunken boating results in a fine of between \$500 and \$1,000 and prison for up to one year, with 30 days of prison mandatory, unless there are mitigating circumstances;
 10. requiring anyone whose safe boating or personal watercraft operation certificate is suspended to return the certificate to DEP within two days of suspension or revocation; and
 11. if the defendant satisfactorily completes a pre-trial alcohol education program, he or she may apply for dismissal of the charges; upon a finding of satisfactory completion, the court must dismiss the charges and DEP must keep a record of program completion as part of the person's boater certification record for seven years.

BACKGROUND

Vehicular Manslaughter

By law, a person commits the crime of manslaughter in the second degree with a motor vehicle when, while operating a motor vehicle under the influence of alcohol or any drug, he or she causes the death of another person as a consequence of the effect of the alcohol or drugs. The penalty is a class C felony.

Legislative History

On April 3, 2009, the Judiciary Committee favorably reported the

substitute bill extending existing law's provisions concerning drunken boating to the bill's crime of manslaughter in the second degree with a vessel while under the influence of alcohol or drugs.

COMMITTEE ACTION

Environment Committee

Joint Favorable Change of Reference

Yea 29 Nay 0 (03/13/2009)

Judiciary Committee

Joint Favorable Substitute

Yea 37 Nay 0 (04/03/2009)