Amendment
LCO No. 8204

General Assembly
January Session, 2011

Offered by:
SEN. WILLIAMS, 29th Dist.
SEN. LOONEY, 11th Dist.
SEN. COLEMAN, 2nd Dist.
SEN. DOYLE, 9th Dist.
SEN. LEBEAU, 3rd Dist.
SEN. DUFF, 25th Dist.
SEN. SLOSSBERG, 14th Dist.
SEN. STILLMAN, 20th Dist.
SEN. MEYER, 12th Dist.

To: Subst. Senate Bill No. 1112 File No. 454 Cal. No. 272

"AN ACT CONCERNING BOATING UNDER THE INFLUENCE."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Subsection (b) of section 15-140l of the general statutes is
4 repealed and the following is substituted in lieu thereof (Effective July
5 1, 2011):

6 (b) Any person guilty of reckless operation of a vessel in the first
7 degree while under the influence shall be fined not less than two
8 thousand five hundred dollars or more than five thousand dollars or
9 imprisoned not more than two years, or both and such person's safe
10 boating certificate, certificate of personal watercraft operation or right
11 to operate a vessel that requires a safe boating certificate shall be
12 suspended by the commissioner in accordance with the provisions of
Sec. 2. Subsection (b) of section 15-140n of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2011):

(b) Any person guilty of reckless operation of a vessel in the second degree while under the influence shall be fined not less than five hundred dollars or more than one thousand dollars or imprisoned not more than six months, or both and such person's safe boating certificate, certificate of personal watercraft operation or right to operate a vessel that requires a safe boating certificate shall be suspended by the commissioner in accordance with the provisions of section 15-133.

Sec. 3. Subsection (j) of section 15-140q of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2011):

(j) Notwithstanding the provisions of subsections (b) to (i), inclusive, of this section, any peace officer who obtains the results of a chemical analysis of a blood sample taken from an operator of a vessel involved in an accident who suffered or allegedly suffered physical injury in such accident shall notify the commissioner and submit to the commissioner a written report if such results indicate that at the time of the alleged offense such person had an elevated blood alcohol content, and if such person was arrested for a violation of section 15-132a, subsection (d) of section 15-133 or section 15-140l, as amended by this act, or 15-140n, as amended by this act, in connection with such accident. The report shall be made on a form approved by the commissioner containing such information as the commissioner prescribes and shall be subscribed and sworn under penalty of false statement, as provided in section 53a-157b, by the peace officer. The commissioner shall, after notice and an opportunity for hearing, which shall be conducted in accordance with chapter 54, suspend the safe boating certificate, right to operate a vessel that requires a safe boating
certificate for operation or certificate of personal watercraft operation
of such person for a period of up to ninety days, or, if such person has
previously had such person's operating privilege suspended under this
section, for a period up to one year. Each hearing conducted under this
section shall be limited to a determination of the following issues: (1)
Whether the peace officer had probable cause to arrest the person for
operating a vessel while under the influence of intoxicating liquor or
drugs, or both, or while such person has an elevated blood alcohol
content; (2) whether such person was placed under arrest; (3) whether
such person was operating the vessel; (4) whether the results of the
analysis of the blood of such person indicate that such person had an
elevated blood alcohol content; and (5) whether the blood sample was
obtained in accordance with conditions for admissibility as set forth in
subsection (b) of section 15-140r or section 15-140s, as amended by this
act. If, after such hearing, the commissioner finds on any issue in the
negative, the commissioner shall not impose a suspension. The fees of
any witness summoned to appear at the hearing shall be the same as
provided by the general statutes for witnesses in criminal cases.

Sec. 4. Section 15-140r of the general statutes is repealed and the
following is substituted in lieu thereof (Effective July 1, 2011):

(a) Except as provided in section 15-140s, as amended by this act, or
subsection (d) of this section, in any criminal prosecution for the
violation of section 15-132a, subsection (d) of section 15-133, section 15-
140l, as amended by this act, or 15-140n, as amended by this act, or
subsection (b) of section 53-206d, evidence respecting the amount of
alcohol or drug in the defendant's blood or urine at the time of the
alleged offense, as shown by a chemical analysis of the defendant's
breath, blood or urine shall be admissible and competent provided: (1)
The defendant was afforded a reasonable opportunity to telephone an
attorney prior to the performance of the test and consented to the
taking of the test upon which such analysis is made; (2) a true copy of
the report of the test result was mailed to or personally delivered to the
defendant within twenty-four hours or by the end of the next regular
business day, after such result was known, whichever is later; (3) the
test was performed by or at the direction of a certified law enforcement officer according to methods and with equipment approved by the Department of Public Safety, and if a blood test was performed, it was performed on a blood sample taken by a person licensed to practice medicine and surgery in this state, a qualified laboratory technician, an emergency medical technician II or a registered nurse in accordance with the regulations adopted under subsection (b) of this section; (4) the device used for such test was checked for accuracy in accordance with the regulations adopted under subsection (b) of this section; (5) an additional chemical test of the same type was performed at least [thirty] ten minutes after the initial test was performed or, if requested by the peace officer for reasonable cause, an additional chemical test of a different type was performed to detect the presence of a drug or drugs other than or in addition to alcohol, except that the results of the initial test shall not be inadmissible under this subsection if reasonable efforts were made to have such additional test performed in accordance with the conditions set forth in this subsection and such additional test was not performed or was not performed within a reasonable time, or the results of such additional test are not admissible for failure to meet a condition set forth in this subsection; and (6) evidence is presented that the test was commenced within two hours of operation of the vessel or expert testimony establishes the reliability of a test commenced beyond two hours of operation of the vessel. In any prosecution under this section it shall be a rebuttable presumption that the results of such chemical analysis establish the ratio of alcohol in the blood of the defendant at the time of the alleged offense, except that if the results of the additional test indicate that the ratio of alcohol in the blood of such defendant is ten-hundredths of one per cent or less of alcohol, by weight, and is higher than the results of the first test, evidence shall be presented that demonstrates that the test results and the analysis thereof accurately indicate the blood alcohol content at the time of the alleged offense.

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

(c) If a person is charged with a violation of section 15-132a,
subsection (d) of section 15-133, 15-140l, as amended by this act, or 15-
140n, as amended by this act, the charge may not be reduced, nolled or
dismissed unless the prosecuting authority states in open court such
prosecutor's reasons for the reduction, nolle or dismissal.

(d) In any criminal prosecution for a violation of section 15-132a,
subsection (d) of section 15-133 or section 15-140l, as amended by this
act, or 15-140n, as amended by this act, evidence that the defendant
refused to submit to a blood, breath or urine test requested in
accordance with section 15-140q, as amended by this act, shall be
admissible provided the requirements of subsection (a) of said section
have been satisfied. If a case involving a violation of section 15-132a,
subsection (d) of section 15-133 or section 15-140l, as amended by this
act, or 15-140n, as amended by this act, is tried to a jury, the court shall
instruct the jury as to any inference that may or may not be drawn
from the defendant's refusal to submit to a blood, breath or urine test.

Sec. 5. Section 15-140s of the general statutes is repealed and the
following is substituted in lieu thereof (Effective July 1, 2011):
Evidence respecting the amount of alcohol or drug in the blood or urine of an operator of a vessel involved in an accident who has suffered or allegedly suffered physical injury in such accident, which evidence is derived from a chemical analysis of a blood or urine sample taken from such person at the scene of the accident, while en route to a hospital or at a hospital after such accident, shall be competent evidence to establish probable cause for the arrest by warrant of such person for a violation of [subsection (d) of section] section 15-132a, 15-133, 15-140l, as amended by this act, or 15-140n, as amended by this act, and shall be admissible and competent in any subsequent prosecution thereof if: (1) The blood or urine sample was taken in the regular course of business of the hospital for the diagnosis and treatment of such injury; (2) the blood sample was taken by a person licensed to practice medicine in this state, a qualified laboratory technician, an emergency technician II or a registered nurse; (3) a police officer has demonstrated to the satisfaction of a judge of the Superior Court that such officer has reason to believe that such person was operating a vessel while under the influence of intoxicating liquor or drug, or both, and that the chemical analysis of such blood or urine sample constitutes evidence of the commission of the offense of operating a vessel upon the waters of this state while under the influence of intoxicating liquor or drug, or both, in violation of [subsection (d) of section] section 15-132a, 15-133, 15-140l, as amended by this act, or 15-140n, as amended by this act; and (4) such judge has issued a search warrant in accordance with section 54-33a authorizing the seizure of the chemical analysis of such blood or urine sample."

This act shall take effect as follows and shall amend the following sections:

<table>
<thead>
<tr>
<th>Section</th>
<th>Effective Date</th>
<th>Amended Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 1</td>
<td>July 1, 2011</td>
<td>15-140l(b)</td>
</tr>
<tr>
<td>Sec. 2</td>
<td>July 1, 2011</td>
<td>15-140n(b)</td>
</tr>
<tr>
<td>Sec. 3</td>
<td>July 1, 2011</td>
<td>15-140q(j)</td>
</tr>
<tr>
<td>Sec. 4</td>
<td>July 1, 2011</td>
<td>15-140r</td>
</tr>
<tr>
<td>Sec. 5</td>
<td>July 1, 2011</td>
<td>15-140s</td>
</tr>
</tbody>
</table>