

ACT 165

S.B. NO. 1642

A Bill for an Act Relating to Boating.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 200, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . ALCOHOL AND BOATING SAFETY

§200- Operating a vessel under influence of intoxicating liquor. (a) This part applies only to recreational vessels in the waters of the State. The operation of a nonrecreational vessel in the waters of the State while under the influence of intoxicating liquor is governed by 33 C.F.R. part 95.

(b) A person commits the offense of operating a vessel underway under the influence of intoxicating liquor if:

- (1) The person operates or assumes actual physical control of a vessel underway while under the influence of intoxicating liquor in an amount sufficient to impair the person’s normal mental faculties or ability to care for oneself and guard against casualty;
- (2) The person operates or assumes actual physical control of a vessel underway with .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood or .08 or more grams of alcohol per two hundred ten liters of breath.

For the purposes of this part, a person is considered to be operating a vessel underway when the person has an essential role in the operation of a vessel underway.

(c) A person committing the offense of operating a vessel underway under the influence of intoxicating liquor shall be sentenced as follows without possibility of probation or suspension of sentence:

- (1) For a first offense, or any offense not preceded within a five-year period by a conviction under this section, by:

- (A) A fourteen-hour minimum alcohol abuse rehabilitation program including education and counseling, or other comparable program deemed appropriate by the court;
 - (B) Ninety-day prompt suspension of the privilege of operating any vessel in the waters of the State with absolute prohibition from operating any vessel during suspension of such privilege; and
 - (C) Any one or more of the following:
 - (i) Seventy-two hours of community service work;
 - (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
 - (iii) A fine of not less than \$150 but not more than \$1,000;
- (2) For an offense which occurs within five years of a prior conviction under this section:
- (A) One year prompt suspension of the privilege of operating any vessel underway in the waters of the State with absolute prohibition from operating a vessel underway during the suspension of such privilege;
 - (B) Any one or more of the following:
 - (i) Not less than eighty hours of community service work; or
 - (ii) Not less than forty-eight consecutive hours but not more than sixty days of imprisonment of which at least forty-eight hours shall be served consecutively; and
 - (C) A fine of not less than \$500 but not more than \$1,000;
- (3) For an offense which occurs within five years of two prior convictions under this section, by:
- (A) A fine of not less than \$500 but not more than \$1,000;
 - (B) Suspension of privilege of operating a vessel underway in the waters of the State for a period not less than one year but not more than five years; and
 - (C) Not less than ten days but not more than one-hundred-eighty days imprisonment of which at least forty-eight hours shall be served consecutively.

(d) Whenever a court sentences a person pursuant to subsection (c)(2) or (3), the court shall also require that the offender be referred to a substance abuse counselor who has been certified pursuant to section 321-193 for an assessment of the offender's alcohol dependence and the need for treatment. The counselor shall submit a report with recommendations to the court. The court may require the offender to obtain appropriate treatment, if the counselor's assessment establishes the offender's alcohol abuse or dependence.

All costs for such assessment or treatment, or both, shall be borne by the offender.

(e) Any person sentenced under this part may be ordered to make restitution to the county for the actual cost incurred in conducting any blood tests under section 200- . The court may order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department, or other agency incurring the expense of the blood test.

§200- Operating a vessel after privilege suspended for operating a vessel under the influence of intoxicating liquor; penalties. No person whose privilege to operate a vessel in the waters of the State has been suspended pursuant to section 200- or 200- shall operate a vessel underway in the waters of this State while that privilege remains suspended. Any person convicted of violating this section shall be:

- (1) Sentenced to a term of imprisonment of at least three consecutive days but not more than thirty days;
- (2) Fined not less than \$250 but not more than \$1,000;

and that person's privilege to operate a vessel shall be suspended for an additional period of one year. The court for good cause may extend imprisonment from thirty days up to sixty days. The period of suspension shall commence upon the release of the person from the period of imprisonment imposed pursuant to this section.

§200- Records of convictions and suspensions of operating privileges to be maintained. The department shall maintain a record of all persons convicted of offenses and the period of suspension of operator privileges ordered by the court under this part.

§200- Evidence of intoxication. In any criminal prosecution for a violation of section 200- , the presence of .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of the defendant's blood or .08 or more grams of alcohol per two hundred ten liters of the defendant's breath within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the defendant's blood or breath shall create a presumption that the defendant was under the influence of intoxicating liquor at the time of the alleged violation.

§200- Implied consent of operator of vessel to submit to testing to determine alcoholic content of blood. (a) Any person who operates a vessel that is motorized or is greater than eight feet in length or both and is underway in the waters of the State shall be deemed to have given consent, subject to this part, to a test approved by the director of health of the person's breath or blood for the purpose of determining the alcoholic content of the person's blood.

(b) The test or tests shall be administered at the request of a law enforcement officer having reasonable grounds to believe the person operating a vessel underway in state waters is under the influence of intoxicating liquor only after:

- (1) A lawful arrest; and
- (2) The person has been informed by a law enforcement officer of the sanctions of sections 200- and 200-

(c) If there are reasonable grounds to believe that a person is in violation of section 200- , then such person shall have the option to take a breath or blood test, or both, for the purpose of determining the alcoholic content of that person's blood.

§200- Persons qualified to take blood specimen. No person, other than a physician, registered nurse, or person licensed in a clinical laboratory occupation under section 321-13, may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of a breath specimen.

§200- Additional tests. The person tested may have any physician, registered nurse, or person licensed in a clinical laboratory occupation under section 321-13 of the person's own choosing withdraw blood and any person of the person's own choosing administer a test or tests in addition to any administered at the direction of a law enforcement officer. The result of the test or tests may be used as provided in section 200- . The failure or inability to obtain an additional test by a person shall not preclude the admission of the test or tests taken at the direction of a law enforcement officer. Upon the request of the person who is tested, full information concerning the test or tests taken at the direction of the law enforcement officer shall be made available to that person.

§200- Consent of person incapable of refusal not withdrawn. The consent of a person deemed to have given consent pursuant to section 200- shall not be withdrawn by reason of the person being dead, unconsciousness, or being in any other state which renders the person incapable of consenting to examination, and the test may be given. In such event, a test of the person's blood shall be administered.

§200- Suspension of privilege to operate a vessel underway upon refusal to submit to testing. (a) If a person under arrest refuses to submit to a breath or blood test, none shall be given, except as provided in section 200- , but the arresting officer, as soon as practicable, shall submit an affidavit to a district judge of the circuit in which the arrest was made, stating:

- (1) That at the time of the arrest, the arresting officer had reasonable grounds to believe the arrested person had been operating a vessel underway on state waters while under the influence of intoxicating liquor;
- (2) That the arrested person had been informed of the sanctions of this section; and
- (3) That the person had refused to submit to a breath or blood test.

(b) Upon receipt of the affidavit, the district judge shall hold a hearing as provided in section 200- , and shall determine whether the statements contained in the affidavit are true and correct. If the district judge finds the statements contained in the affidavit are true, the judge shall suspend the arrested person's operating privilege as follows:

- (1) For a first suspension, or any suspension not preceded within a five-year period by a suspension under this section, for a period of twelve months; and
- (2) For any subsequent suspension under this section, for a period not less than two years and not more than five years.

(c) Whenever a court penalizes a person under this section, it shall also require that the person be referred to a substance abuse counselor who has been certified pursuant to section 321-193 for an assessment of the person's alcohol dependence and the need for treatment. The counselor shall submit a report with recommendations to the court. The court may require the person to obtain appropriate treatment. All costs for such assessment or treatment, or both, shall be borne by the penalized person.

(d) The penalties provided by this section are additional penalties and not substitutes for other penalties provided by law.

§200- Hearing before a district judge. A hearing to determine the truth and correctness of an affidavit submitted to a district judge shall be held within twenty days after the district judge has received the affidavit.

The district judge shall hear and determine:

- (1) Whether the arresting officer had reasonable grounds to believe that the person had been operating a vessel underway in the waters of this State while under the influence of intoxicating liquor;
- (2) Whether the person was lawfully arrested;
- (3) Whether the arresting officer had informed the person of the sanctions of sections 200- and 200- ; and
- (4) Whether the person refused to submit to a test of the person's breath or blood.

§200- Appeal to supreme court. An order of a district court issued under section 200- may be appealed to the supreme court.

§200- Interpretation of the tests. For the purposes of this part and to the fullest extent possible, the interpretation of the testing to determine alcoholic content of blood shall be as provided in section 200-

§200- Proof of refusal; admissibility. If a legally arrested person refuses to submit to a test of the person's breath or blood, proof of refusal shall be admissible only in a hearing under section 200- and shall not be admissible in any other action or proceeding, whether civil or criminal.

§200- Other evidence not excluded. This part shall not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor, including but not limited to personal observation by a law enforcement officer of the defendant's manner, disposition, speech, muscular movement, general appearance, or behavior.

§200- Test results to be collected. (a) The results of any test for alcohol content made upon any person shall be sent to the chairperson who shall compile the data without revealing the identity of any individual tested. These data may be available only to such other government agencies as the chairperson deems necessary and advisable.

(b) The results of any test for alcohol content made upon any person who has been fatally injured in a boating accident or upon the operator of a vessel underway involved in an accident which resulted in another person's death, shall be used only in accordance with section 200-29 or in the criminal prosecution of section 200- or 200-

§200- Applicable scope of part. Nothing in this part shall be construed to prevent the police from obtaining a sample of breath or blood as evidence of intoxication from the operator of any recreational vessel involved in an accident resulting in injury to or death of any person."

SECTION 2. Section 200-23, Hawaii Revised Statutes, is amended by adding four¹ new definitions to be appropriately inserted and to read as follows:

- "C.F.R." means the Code of Federal Regulations.
- "Recreational vessel" means any vessel that is being used for pleasure.
- "Underway" means that a vessel is not at anchor, or made fast to the shore, or aground."

SECTION 3. Section 200-23, Hawaii Revised Statutes, is amended by amending the definition of "boating accident" to read:

"Boating accident" means any occurrence involving a vessel or its equipment that results in:

- (1) The death of a person;
- (2) The loss of consciousness by any person, the receipt of medical treatment by any person, or the incapacity of any person for more than twenty-four hours;
- (3) Damage to the vessel and other property totalling more than \$200; or
- (4) The disappearance of a person from the vessel under circumstances that indicate possible death or injury."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 14, 1995.)

Note

1. So in original.