
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1247 **Hearing Date:** April 24, 2018
Author: Gaines
Version: April 2, 2018
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Vessels: Operation Under the Influence of Alcohol or Drugs: Chemical Testing*

HISTORY

Source: California State Sheriffs' Association

Prior Legislation: SB 644 (Stone), 2017, vetoed
AB 1829 (Levine), Ch. 68, Stats. 2016
AB 539 (Levine), Ch. 118, Stats. 2015
SB 717 (DeSaulnier), Ch. 317, Stats. 2013
SB 1890 (Hurttt), Ch. 740, Stats. 1997
SB 1119 (Seymour), Ch. 1114, Stats. 1989

Support: Peace Officers Research Association of California

Opposition: None known

PURPOSE

The purpose of this bill is to amend existing law that authorizes an officer to request a person arrested of boating under the influence to submit to chemical testing by deleting the requirement that the vessel is mechanically propelled.

Existing law prohibits a person from operating any vessel or manipulating water skis, an aquaplane, or a similar device while under the influence of an alcoholic beverage, any drug, or the combined influence of an alcoholic beverage and any drug. (Harb. & Nav. Code, § 655, subd. (b).)

Existing law prohibits a person from operating any recreational vessel or manipulating any water skis, aquaplane, or similar device if the person has an alcohol concentration of 0.08 percent or more in his or her blood. (Harb. & Nav. Code, § 655, subd. (c).)

Existing law prohibits a person from operating any vessel other than a recreational vessel if the person has an alcohol concentration of 0.04 percent or more in his or her blood. (Harb. & Nav. Code, § 655, subd. (d).)

Existing law authorizes a peace officer, having reasonable cause to believe that any person was operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar

device under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, who lawfully arrests the person for any violation of specified offenses involving the reckless or negligent operation of a vessel or water-related device while under the influence of an alcoholic beverage or any drug, or both, to request that person to submit to chemical testing of his or her blood, breath, or urine for the purpose of determining the drug or alcoholic content of the blood. (Harb. & Nav. Code, § 655.1, subd. (b).)

Existing law requires persons arrested for operating a mechanically propelled vessel or manipulating any water skis, aquaplane, or similar device under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug to be notified that they have a right to refuse chemical testing. (Harb. & Nav. Code, § 655.1, subd. (b).)

Existing law defines “chemical test” to mean a test that analyzes an individual’s breath, blood, or urine for evidence of drug or alcohol use. (Harb. & Nav. Code, § 651, subd. (e).)

Existing law defines “vessel” to include every description of a watercraft or other artificial contrivance used or capable of being used as a means of transportation on water, except as specified. (Harb. & Nav. Code, § 651, subd. (aa).)

Existing law defines “mechanically propelled vessel” to mean any vessel actively propelled by machinery, whether or not the machinery is the principal source of propulsion. (Harb. & Nav. Code, § 655.1, subd. (a).)

This bill deletes the description that the vessel must be “mechanically propelled” and makes conforming changes.

COMMENTS

1. Need for This Bill

According to the author of this bill:

The Harbors and Navigation Code contains no definition of "machinery" and a vague definition of "mechanically propelled." California Boating Law gives an officer authority to request the operator of a "mechanically propelled vessel" submit to the chemical testing of their blood, breath, or urine if lawfully arrested for operating a vessel or other equipment while under the influence of drugs and/or alcohol. The problem is an operator of a 30-foot sailboat with no motor, operating under sail at 20 knots, with an BAC level .10% stopped for a boating violation and arrested can refuse the officer's request for a chemical test since there is question as to whether the sailboat is a "mechanically propelled vessel."

Law enforcement should be able ask an arrested person to provide a chemical test of an operator of a sailing craft that could cause major damage, injure someone, or cause death. Boating officers are under the assumption that a sail is "machinery" just as an "oar" is for a canoe or kayak. There is a lack of clarity as to whether operators of vessels or craft using a sail, paddle, etc. can be asked to submit to

chemical testing. Sailing vessels with or without motors piloted by a person under the influence create a safety issue for all boaters.

2. Statistics on Boating Accidents Involving Alcohol

According to California State Parks Division of Boating and Waterways' statistics, from 2012 to 2016, about a quarter of all boating fatalities involved alcohol. Alcohol testing was conducted in 35% of the boating fatalities where alcohol was involved.

(See 2016 California Recreational Boating Accident Statistics, Div. of Boating and Waterways, < https://dbw.parks.ca.gov/pages/28702/files/2016DBW_AccidentStats_Ca_051217.pdf> p. 17.)

3. Effect of this Legislation

Existing law prohibits a person from boating under the influence of alcohol and/or drugs, as specified, and authorizes an officer who arrests a person for boating under the influence to submit to chemical testing of his or her blood, breath, or urine for the purpose of determining the drug or alcohol content. Existing law states that the officer must inform the person that he or she has the right to refuse to submit chemical testing and authorizes a search warrant to be issued when a person refuses to submit to the test.

The statute that prohibits boating under the influence states that it is unlawful for a person to operate "any vessel" while under the influence of alcohol and/or drugs, as specified. However, the law that authorizes an officer who arrests a person for a violation of boating under the influence specifies "mechanically propelled vessel", which appears to be narrower than the general boating under the influence provision. This bill deletes "mechanically propelled" from that section.

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