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# WATERS OF THE STATE, PORTS, AND WATERCRAFT Registration, Operation, and Sale of Watercraft: Redefine "Vessel"; Create the Felony Crimes of Homicide by Vessel, Feticide by Vessel, and Serious Injury by Vessel

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## WATERS OF THE STATE, PORTS, AND WATERCRAFT

### *Registration, Operation, and Sale of Watercraft: Redefine “Vessel”; Create Felony Crimes of Homicide by Vessel, Feticide by Vessel, and Serious Injury by Vessel*

CODE SECTIONS: O.C.G.A. §§ 52-7-3 (amended), -12.2 to -12.4  
(new), -26 (amended)

BILL NUMBER: SB 111

ACT NUMBER: 232

GEORGIA LAWS: 1995 Ga. Laws 236

SUMMARY: The Act amends the Georgia Boat Safety Act by providing a new definition of the term “vessel.” Additionally, the Act designates homicide by vessel in the first and second degree, feticide by vessel in the first and second degree, and serious injury by vessel as new crimes.

EFFECTIVE DATE: April 7, 1995<sup>1</sup>

### *History*

Until the 1995 legislative session, Georgia was known as a state with “some of the weakest boating laws in the country.”<sup>2</sup> However, an incident that devastated several families and outraged Georgians sent Lieutenant Governor Pierre Howard and SB 111’s sponsors into action.<sup>3</sup>

The incident occurred on the evening of August 27, 1994.<sup>4</sup> Two members of a wedding party were killed and six others were injured when their ski boat was struck by a cabin cruiser on

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1. The Act became effective upon approval of the Governor.

2. *A Watershed Year for Boating Safety*, ATLANTA CONST., Oct. 11, 1994, at A8.

3. GEORGIA SENATE WEEKLY WRAP-UP REPORT, at 3 (Feb. 3, 1995). This legislation was proposed by Lt. Governor Pierre Howard, and the bill was sponsored by Sen. Guy Middleton, Senate District No. 50; Sen. Arthur “Skin” Edge, IV, Senate District No. 28; Sen. Eddie Madden, Senate District No. 47; and Sen. Casey Cagle, Senate District No. 49.

4. *Law & Order Metropolitan Public Safety Report: Boat Owner’s Son Questioned About Accident at Lanier*, ATLANTA J., Sept. 6, 1994, at C5.

Lake Lanier.<sup>5</sup> Despite the loss of two lives, the Georgia Boat Safety Act,<sup>6</sup> in its previous form, only permitted the authorities to charge the careless boater with a misdemeanor.<sup>7</sup>

SB 111 was introduced to close a loophole in the law that did not address hit-and-run situations<sup>8</sup> and to put Georgia's boating laws on par with its tougher traffic laws.<sup>9</sup>

### *SB 111*

The purpose of the Act is to strengthen Georgia's boating laws and to create a safer environment for boaters.<sup>10</sup> The Act amends Code section 52-7-3 by adopting a new definition of the term "vessel."<sup>11</sup> Sailboards are specifically excluded from the meaning of "vessel" under chapter 7 of title 52 with respect to the new crimes created by the Act and its accompanying penalties because they are not operated by motor upon the water.<sup>12</sup> However, boat traffic rules of the road are still applicable to sailboards.<sup>13</sup> Senator Casey Cagle explained that while persons operating watercraft must take personal responsibility for their actions, an accident involving a sailboard is extremely unlikely to result in serious injury or death.<sup>14</sup>

The Act further amends chapter 7 of title 52 by adding new Code section 52-7-12.2.<sup>15</sup> The Act defines "homicide by vessel in the first degree" as causing the death of a person, "without

5. Dennis McCafferty, *Stiffer Laws Ok'd as Boater in Fatal Case is Sentenced*, ATLANTA J., Mar. 9, 1995, at C2.

6. 1973 Ga. Laws 1427, § 1 (codified at O.C.G.A. § 52-7-1 (1995)).

7. Dennis McCafferty, *Man Pleads Guilty, Gets 2 Years in Fatal Lanier Boat Accident*, ATLANTA J., Mar. 8, 1995, at B2. Terry Wayne McCullough, of Cumming, Georgia, was charged with failure to report the accident and failure to render aid, which drew a fine of \$2300 and the maximum prison sentence of two years. *Id.*

8. Telephone Interview with Sen. Casey Cagle, Senate District No. 49 (Apr. 25, 1994) [hereinafter Cagle Interview]. Sen. Cagle felt particularly close to this legislation as the tragic accident at Lake Lanier occurred in his district. *Id.*

9. GEORGIA SENATE WEEKLY WRAP-UP REPORT, at 2 (Feb. 3, 1995).

10. Cagle Interview, *supra* note 8.

11. O.C.G.A. § 52-7-3(25) (1995).

12. Cagle Interview, *supra* note 8.

13. O.C.G.A. § 52-7-3(25) (1995); *see* 1987 Ga. Laws 567 (codified at O.C.G.A. § 52-7-18 (1995) (providing rules of the road for boat traffic)).

14. Cagle Interview, *supra* note 8.

15. O.C.G.A. § 52-7-12.2 (1995).

malice aforethought,"<sup>16</sup> when the death is caused by one of the following: (1) operating a jet ski over five miles per hour within one hundred feet of shore, an anchored vessel, or persons in the water;<sup>17</sup> (2) operating a moving vessel while under the influence of alcohol or drugs;<sup>18</sup> (3) recklessly operating a vessel;<sup>19</sup> (4) violating boating safety zones;<sup>20</sup> (5) failing to render aid;<sup>21</sup> or (6) failing to stop for a law enforcement officer.<sup>22</sup> A conviction of first degree homicide by vessel is a felony punishable by imprisonment of two to fifteen years.<sup>23</sup>

The Act then defines "homicide by vessel in the second degree" as causing the death of another person, without intent, by violating any of the provisions of title 52 other than those specifically referred to in Code section 52-7-12.2(a).<sup>24</sup> A violation of Code section 52-7-12.2(b) carries with it the same penalty as any misdemeanor under Georgia law.<sup>25</sup>

The Act also defines the offense of "feticide by vessel in the first degree" as causing "the death of an unborn child so far developed as to be ordinarily called 'quick' by any injury to the mother,"<sup>26</sup> when the death is caused by any one of the boating violations constituting homicide by vessel in the first degree.<sup>27</sup> First degree feticide by vessel is a felony punishable by imprisonment of two to fifteen years.<sup>28</sup>

16. *Id.* § 52-7-12.2(a).

17. 1992 Ga. Laws 2075 (codified at O.C.G.A. § 52-7-8.2(j) (1995)). The subsection also prohibits such operation within 100 feet of any "wharf, dock, pier, piling, bridge structure, or abutment." *Id.*

18. 1992 Ga. Laws 2075 (codified at O.C.G.A. § 52-7-12 (1995)).

19. 1994 Ga. Laws 680 (codified at O.C.G.A. § 52-7-12.1 (1995)).

20. 1992 Ga. Laws 998 (codified at O.C.G.A. § 52-7-13(b) (1995)).

21. 1973 Ga. Laws 1427 (codified at O.C.G.A. § 52-7-14(a) (1995)).

22. *Id.* (codified at O.C.G.A. § 52-7-25(c) (1995)).

23. O.C.G.A. § 52-7-12.2(a) (1995).

24. *Id.* § 52-7-12.2(b).

25. *Id.*; see also *id.* § 17-10-3 (1990 & Supp. 1995) (defining misdemeanor punishments). The penalty for conviction of a misdemeanor crime shall be fines not in excess of \$1000, twelve months in jail, or both. *Id.* § 17-10-3(a)(1).

26. *Id.* § 52-7-12.3(a)(1) (1995) (the offense thus corresponds to first degree homicide when injury results in the death of born persons).

27. *Id.*; see *supra* notes 17-22 and accompanying text.

28. O.C.G.A. § 52-7-12.3(a)(2) (1995).

"Feticide by vessel in the second degree" is defined by Code section 52-7-12.3<sup>29</sup> as causing the death of an unborn child by violating any of the provisions of title 52 other than those specified in Code section 52-7-12.3(a).<sup>30</sup> A conviction for this misdemeanor offense is punishable by a fine not to exceed \$1000, twelve months in jail, or both.<sup>31</sup>

The Act adds Code section 52-7-12.4,<sup>32</sup> which defines the felony of "serious injury by vessel" as causing, "without malice," bodily harm to another by depriving that person of the use of any member, by rendering any member useless, by causing organic brain damage which causes any of the above, or by seriously disfiguring the body or any member by violating the aforementioned boat safety violations.<sup>33</sup> This crime is punishable by a prison term of one to five years.<sup>34</sup>

The definitions of the newly created boating crimes substantially replicate their counterparts in chapter 6 of title 40 covering serious traffic offenses.<sup>35</sup> SB 111 was drafted to parallel current traffic laws relating to deaths and serious injuries involving vehicles on Georgia's roads.<sup>36</sup>

Finally, the Act amends Code section 52-7-26 by changing the definition of penalties under chapter 7 of title 52.<sup>37</sup> The provision formerly provided that any violator of this article was

29. *Id.* § 52-7-12.3(b)(1).

30. *Id.* The offense corresponds to second degree homicide when the injury results in the death of born persons. *Id.*

31. *Id.* § 52-7-12.3(b)(2). Punishment is provided in O.C.G.A. § 17-10-3 (1990 & Supp. 1995).

32. *Id.* § 52-7-12.4. The only amendment made to SB 111 during the entire legislative process was by the House Committee on Game, Fish, and Parks to correct a typographical error. SB 111 (HCA), 1995 Ga. Gen. Assem. In the original bill, O.C.G.A. § 52-7-12.4 was erroneously enumerated as § 52-7-12.3, and the committee amendment corrected this error. *Id.*

33. O.C.G.A. § 52-7-12.4 (1995); *see also supra* notes 17-22 and accompanying text.

34. O.C.G.A. § 52-7-12.4 (1995).

35. *See* 1992 Ga. Laws 2093 (codified at O.C.G.A. § 40-6-393 (1994)) (defining homicide by vehicle in the first and second degree); 1991 Ga. Laws 1109 (codified at O.C.G.A. § 40-6-393.1 (1994)) (defining feticide by vehicle in the first and second degree); 1990 Ga. Laws 2048 (codified at O.C.G.A. § 40-6-394 (1994)) (defining serious injury by vehicle).

36. Cagle Interview, *supra* note 8.

37. O.C.G.A. § 52-7-26 (1995).

guilty of a misdemeanor.<sup>38</sup> The Act amends Code section 52-7-26 to accommodate the stiffer penalties provided by the new sections.<sup>39</sup> In addition to adopting this Act, the General Assembly established a special task force to look at other laws that may help create a safer environment on Georgia's waterways.<sup>40</sup> Through the enactment of SB 111 and stiffer penalties for boating negligence, accidents causing serious injury or death may be deterred.<sup>41</sup>

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38. 1983 Ga. Laws 3, § 41 (formerly found at O.C.G.A. § 52-7-26 (Supp. 1994)).

39. O.C.G.A. § 52-7-26 (1995).

40. Cagle Interview, *supra* note 8.

41. Cagle Interview, *supra* note 8.