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WATERS OF THE STATE, PORTS, AND WATECRAFTS Registration, Operation, and Sale of Watercraft: Enact Certain Provisions Relating to Persons Convicted of Operating a Moving Vessel, Moving Water Skis, Moving Aquaplane, Moving Surfboard, or Personal Watercraft While Under the Influence of Alcohol or Drugs; Provide for Zero Tolerance for Use of Drugs and Alcohol By Persons Under the Age of Twenty-One; Provide for a Cause of Action for Child Endangerment; Provide for Suspension of Boating Privileges

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WATERS OF THE STATE, PORTS, AND WATERCRAFT

Registration, Operation, and Sale of Watercraft: Enact Certain Provisions Relating to Persons Convicted of Operating a Moving Vessel, Moving Water Skis, Moving Aquaplane, Moving Surfboard, or Personal Watercraft While Under the Influence of Alcohol or Drugs; Provide for Zero Tolerance for Use of Drugs and Alcohol By Persons Under the Age of Twenty-One; Provide for a Cause of Action for Child Endangerment; Provide for Suspension of Boating Privileges

CODE SECTIONS: O.C.G.A. §§ 52-7-12 (amended), -7-12.5 to -12.6 (new)

BILL NUMBER: HB 1393

ACT NUMBER: 810

GEORGIA LAWS: 1998 Ga. Laws 672

SUMMARY: The Act amends the Georgia Registration, Operation, and Sale of Watercraft Act by (1) making it an offense for a person under the age of twenty-one to operate a vessel with a blood alcohol content of 0.02 grams or more and (2) creating a separate offense of child endangerment when any person operates a vessel under the influence of alcohol or drugs when a person under the age of fourteen is present. Additionally, the Act provides mechanisms for suspending the boating privileges of persons who violate the Act.

EFFECTIVE DATE: June 1, 1998¹

History

HB 1393 addresses the need for increased boating safety on Georgia waterways.² In 1990, 264,698 boats were registered in the State of

1. 1998 Ga. Laws 672, § 4, at 679. The Senate amended the effective date in recognition of the fact that if left at July 1st, half of the 1998 boating season would be over. *See* Telephone Interview with Rep. Clint Smith, House District No. 19 (May 22, 1998) [hereinafter Smith Interview].

2. *See* Telephone Interview with Lt. Col. Bob Brown, Department of Natural

Georgia.³ By 1997, the number of registered boats had increased to 302,000 and continues to climb.⁴ The increased traffic on Georgia's lakes and rivers contributed to twenty-eight fatalities in 1997.⁵ In that year, the Georgia Department of Natural Resources (DNR) reported 166 accidents, fourteen of which involved alcohol consumption, resulting in eighty-nine injuries and 366 arrests for boating under the influence (BUI).⁶

The DNR conducted a series of seven public meetings to hear public concerns and gather suggestions regarding boating safety on Georgia's waterways.⁷ Subsequent to the hearings, DNR Commissioner Lonice Barrett created an ad hoc committee, the Boating Safety Advisory Committee (BSAC),⁸ to formulate legislative proposals to promote safe boating on Georgia's rivers and lakes.⁹ The BSAC consisted of state legislators, law enforcement officials, boating industry representatives, marina owners, private citizens and citizens' groups, and DNR personnel.¹⁰ The BSAC met three times to accomplish its goals.¹¹ One major concern the BSAC addressed was the inability of DNR officers to keep drunken boaters off the waterways.¹²

Resources (DNR) (May 20, 1998) [hereinafter Brown Interview]. Lieutenant Colonel Brown is the Boating Law Administrator for the DNR and attended the seven public meetings sponsored by the DNR throughout Georgia. *See id.*; *see also* DNR Contact List for Members of the Boating Safety Advisory Committee (Dec. 1997) [hereinafter DNR Contact List] (available in Georgia State University College of Law Library).

3. *See* Kent Mitchell, *An Avenue to Review Rules; Changes in Boating Regulations Find Large Audience at Boat Show*, ATLANTA J. & CONST., Dec. 28, 1997, at F6.

4. *See id.*

5. *See* Terry Dickson, *Rewards for Sober Skippers*, FLA. TIMES-UNION, May 12, 1998, at B1 (citing statistics provided by the Georgia Department of Natural Resources); Brown Interview, *supra* note 2. Not only had the number of people and vessels increased, but the power and sophistication of the vessels increased dramatically. *See* Telephone Interview with Rep. Mickey Channell, House District No. 111 (May 19, 1998) [hereinafter Channell Interview]. Representative Channell was a member of the Boating Safety Advisory Committee. *See id.*

6. *See* Dickson, *supra* note 5 (citing figures provided by the DNR). Boat use is no longer confined to a single general purpose boat; now one might see "a 90 foot houseboat pulling one twenty foot ski boat and four personal watercraft [*i.e.*, ski jets]." Brown Interview, *supra* note 2.

7. *See* Brown Interview, *supra* note 2.

8. *See* DNR Contact List, *supra* note 2.

9. *See* Brown Interview, *supra* note 2.

10. *See* Channell Interview, *supra* note 5. The DNR also was represented at the committee but limited its role to mediating the inputs from different committee factions. *See* Brown Interview, *supra* note 2.

11. *See* Brown Interview, *supra* note 2.

12. *See id.*

As explained by Lieutenant Colonel Brown, “[an] officer would arrest a boater for [boating under the influence] in the morning, and [the offender would] be back on the lake in the afternoon. There was no mechanism in place to keep [intoxicated] boaters who were operating watercraft off the lake.”¹³

The BSAC heard three proposals addressing the problem of the recalcitrant intoxicated boater.¹⁴ The first involved tying BUI violations to an offender’s driver’s license.¹⁵ The proposal failed because of the potential “administrative nightmare” that could have occurred as information traversed the various state agencies that would be involved.¹⁶ Additionally, most BSAC members felt that this proposal would unduly restrict a person’s ability to drive.¹⁷

The second proposal suggested revocation of a vessel’s registration as a means of enforcement.¹⁸ However, this resolution failed to address the fact that the intoxicated boater might not own the vessel he or she was operating.¹⁹ Because of this shortcoming, the proposal failed.²⁰

The third proposal was to revoke an intoxicated person’s privilege to operate a vessel on Georgia’s waterways.²¹ This proposal incorporated substantial parts of the implied consent laws found in Georgia’s Motor Vehicle Code.²² The creation of the separate offense of child endangerment, as it applies to boating, is also consistent with a similar provision found in the Motor Vehicle Code.²³ This third proposal ultimately became HB 1393.²⁴

13. *Id.* Enforcement Officer Mike Burgamy stated: “I’ve put a man in jail (for BUI) and that night seen him out again in a boat.” Stacy Shelton, *Boating Crackdown Is Gathering Steam*, ATLANTA J. & CONST., Dec. 2, 1997, at C4.

14. *See* Brown Interview, *supra* note 2.

15. *See id.*; Shelton, *supra* note 13.

16. Brown Interview, *supra* note 2.

17. *See* Smith Interview, *supra* note 1. Representative Smith favored the proposal because of the potential deterrent effect it could have. *See id.* Representative Smith did not name the committee members who opposed this option. *See id.*

18. *See* Brown Interview, *supra* note 2.

19. *See id.* An additional complication could arise if the owner of a vessel whose registration was revoked sold the vessel to a relative or friend who might then register it in the new owner’s name. *See id.*

20. *See id.*

21. *See id.*

22. *See id.*; 1997 Ga. Laws 760, § 20, at 785 (codified at O.C.G.A. § 40-5-67.1 (1997)).

23. *See* Mitchell, *supra* note 3; 1997 Ga. Laws 760, § 23, at 794 (codified at O.C.G.A. § 40-6-391(l) (1997)).

24. *See* Brown Interview, *supra* note 2; *see also* HB 1393, as introduced, 1998 Ga. Gen. Assem.

*The Act**Section 1*

The first section of the Act amends Code section 52-7-12 by adding three new subsections, (j), (k), and (l).²⁵ Subsections (j) and (k) represent the General Assembly's intent to enforce a "zero tolerance" policy for use of alcohol and drugs by minors on Georgia waterways.²⁶ Subsection (j) imposes liability for "any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of subsection (k)."²⁷ Subsection (k) provides that "[a] person under the age of 21 shall not operate, navigate, steer, drive, or be in actual physical control of any moving vessel, moving water skis, moving aquaplane, moving surfboard or similar moving device, or personal watercraft while the person's alcohol concentration is 0.02 grams or more at any time within three hours" of the time of such operation.²⁸

Subsection (l) adds the "separate offense of endangering a child" which applies to any person in violation of Code section 52-7-12 who transports or tows a child under fourteen years of age at the time of the violation.²⁹ This subsection denies merger of the child endangerment offense into a violation of the Code section.³⁰ Punishment resulting from a conviction under this Code subsection is in accordance with subsection (d) of Code section 16-12-1, setting forth penalties for acts deemed to be "contributing to the delinquency, unruliness, or deprivation of a child."³¹

Section 2

Section 2 of the Act is the result of the BSAC's recommendations regarding suspension of boating privileges for BUI.³² This section creates Code section 52-7-12.5, which essentially adds four new

25. Compare 1994 Ga. Laws 680, § 5, at 684 (formerly found at O.C.G.A. 52-7-12 (1994)), with 1998 Ga. Laws 672 (codified at O.C.G.A. § 57-7-12 (Supp. 1998)).

26. 1998 Ga. Laws 672.

27. O.C.G.A. § 52-7-12(j) (Supp. 1998).

28. *Id.* § 52-7-12(k)(1).

29. *Id.* § 52-7-12(l).

30. *See id.*

31. *Id.*; 1996 Ga. Laws 273, § 1, at 274-75 (codified at O.C.G.A. § 16-12-1(d) (1996)).

32. *See* Brown Interview, *supra* note 2; 1998 Ga. Laws 672, § 2, at 673 (codified at O.C.G.A. § 52-7-12.5 (Supp. 1998)).

provisions to the prior statutory scheme.³³ First, the Code section provides that a “law enforcement officer” shall request administration of a breath, blood, or urine test when the “officer [has] reasonable grounds to believe that” the suspect was in control of a vessel while “in violation of Code [s]ection 57-7-12,” any conforming federal law, or any identical local ordinance “in accordance with Code [s]ection 52-7-21” and has arrested such person.³⁴ Drug or alcohol testing is also prescribed whenever an individual controlling a vessel was involved in an accident which resulted in “serious injuries or fatalities.”³⁵

Second, the new Code section requires the arresting officer to read a notice of implied consent to the individual prior to the administration of any drug or alcohol tests.³⁶ The implied consent notice requirements incorporate substantial parts of the implied consent laws found in Georgia’s Motor Vehicle Code.³⁷ Two different implied consent notices are provided, one for minors (those under the age of twenty-one) and one for individuals aged twenty-one or over.³⁸ This section makes clear that the implied consent provisions apply only to cases occurring on or after June 1, 1998.³⁹ Requirements for inspections of the “breath-testing instrument” are found in this section as well.⁴⁰

Third, the new Code section also provides for suspension of boating privileges for persons submitting to testing when their blood alcohol concentration is 0.02 grams or more for minors, or 0.10 grams or more for adults.⁴¹ Whenever an officer has reasonable grounds for requesting a test, or in the event of an accident involving serious injuries or death, any person who refuses to be tested for drugs or alcohol will have his or her boating privileges suspended for one year.⁴² All test results, or refusals to submit to testing, are to be forwarded to the DNR.⁴³

33. See O.C.G.A. § 52-7-12.5(a) (Supp. 1998).

34. *Id.*; see also 1977 Ga. Laws 1182, § 11, at 1193 (codified at O.C.G.A. § 52-7-21 (1997)).

35. O.C.G.A. § 52-7-12.5(a) (Supp. 1998).

36. See *id.* § 52-7-12.5(b).

37. Compare *id.* with 1997 Ga. Laws 760, § 20, at 785 (codified at O.C.G.A. § 40-5-67(b)(1) (1997)).

38. See O.C.G.A. § 52-7-12.5(b); see also 1997 Ga. Laws 760, § 20, at 785 (codified at O.C.G.A. § 40-5-67(b) (1997)).

39. See O.C.G.A. § 52-7-12.5(c) (Supp. 1998).

40. *Id.* § 52-7-12.5(i).

41. See *id.* § 52-7-12.5(d).

42. See *id.* § 52-7-12.5(d)-(e).

43. See *id.*

Finally, Code section 52-7-12.5 includes administrative and procedural mechanisms for notifying individuals that their boating privileges have been suspended.⁴⁴ Once notified, the individual has “ten business days” to request a hearing.⁴⁵ Hearings are to be recorded and they are to be limited to determining whether: (1) reasonable grounds existed for the law enforcement officer to request a test; (2) an accident involving serious injuries or death occurred; (3) the individual was advised of his or her implied consent rights; (4) the individual refused the test; (5) a test or tests, if administered, indicated that the individual’s blood alcohol concentration exceeded the legal limit; and (6) the tests were properly administered.⁴⁶ A stay of a suspension will be granted only when an individual requests a hearing which is not held within sixty days from the date of the request through no fault of the requesting individual.⁴⁷ In the event that the hearing officer upholds the suspension, an individual whose boating privileges are suspended “shall have a right to file for a judicial review.”⁴⁸ No stay of a suspension is to be granted during judicial review.⁴⁹

Section 3

Section 3 of the Act creates Code section 57-7-12.6, which establishes the lengths of suspensions for BUI offenses.⁵⁰ First offenses under the Code section are punishable by a one-year suspension of boating operator privileges, second offenses by three years, and third or more offenses by not less than five years.⁵¹ Boaters cannot get their operator privileges reinstated until they “submit [] proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Human Resources.”⁵² First and second offenders may apply to the DNR for early reinstatement

44. *See id.* § 52-7-12.5(f).

45. *Id.* § 52-7-12.5(g).

46. *See id.*

47. *See id.*

48. *Id.* § 52-7-12.5(h).

49. *See id.*

50. *See* 1998 Ga. Laws 672, § 3, at 678 (codified at O.C.G.A. § 52-7-12.6 (Supp. 1998)).

51. *See* O.C.G.A. § 52-7-12.6 (Supp. 1998). The time period for determining the number of offenses is five years computed from the date of the most recent arrest. *See id.*

52. *Id.* § 52-7-12.6(a)(2).

of their boating privileges.⁵³ No provision for early reinstatement exists for three or more offenses.⁵⁴

Section 4

Section 4 of the Act changes the effective date from the traditional date of July 1st to June 1st.⁵⁵ The date was changed in recognition of the fact that virtually half of the normal boating season would be over by July 1st.⁵⁶

HB 1393

Representative Channell of the 111th District introduced HB 1393 in the House on January 27, 1998.⁵⁷ The bill was referred to the House Game, Fish, and Parks Committee the same day.⁵⁸

Changes on the House Floor

The Committee approved the bill, without changes, and sent it to the full House on February 10, 1998.⁵⁹ HB 1393 was amended on the House floor the same day.⁶⁰ The first change added wording to new Code section 52-7-12.5 providing that the notice requirement for advising suspects of the implied consent law is sufficient if the arresting officer “substantially complie[s] with” the notice provision’s wording.⁶¹ The second change exempted from the Act vessels with motors rated at less than ten horsepower and sailboats less than twelve feet long.⁶² HB 1393, as amended, passed unanimously and was sent to the Senate for consideration.⁶³

53. *See id.* Before applying for reinstatement, first offenders must serve 30 days of their suspensions, and second offenders must serve 120 days. *See id.*

54. *See id.*

55. *See* 1998 Ga. Laws 672, § 4, at 679.

56. *See* Smith Interview, *supra* note 1.

57. *See* Channell Interview, *supra* note 5; State of Georgia Final Composite Status Sheet, Mar. 19, 1998; HB 1393, as introduced, 1998 Ga. Gen. Assem.

58. *See* 1997 Ga. H.B. 1393, Mar. 19, 1998, *available in* WESTLAW, GA-BILLS database [hereinafter GA-BILLS].

59. *See id.*

60. *See* State of Georgia Final Composite Status Sheet, Mar. 19, 1998.

61. HB 1393 (HFA), 1998 Ga. Gen. Assem. *Compare* HB 1393, as introduced, 1998 Ga. Gen. Assem., *with* HB 1393 (HFA), 1998 Ga. Gen. Assem.

62. *Compare* HB 1393, as introduced, 1998 Ga. Gen. Assem., *with* HB 1393 (HFA), 1998 Ga. Gen. Assem.

63. *See* *Lawmakers '98* (GPTV Broadcast, Feb.10, 1998) (remarks by Rep. Channell)

Changes in the Senate

The Senate referred HB 1393 to the Senate Natural Resources Committee on February 11, 1998.⁶⁴ The Committee returned a substituted version of HB 1393 and recommended passage by the full Senate on February 17, 1998.⁶⁵

The substituted version made three main changes. First, the substituted version added language to Code section 52-7-12.5(b), providing that suspects be advised that test results could be used against them.⁶⁶ Next, the effective date was moved from the traditional July 1st date to June 1st.⁶⁷ Finally, lawmakers reworded the provision for the length of a suspension for a third or subsequent offense.⁶⁸ The House version provided that: "the period of suspension shall be for five years. An operator's privilege suspended pursuant to Code [s]ection 52-7-12.5 shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program"⁶⁹ The Senate substitute changed this passage to read that "the period of suspension shall be for not less than five years and until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program."⁷⁰

Prior to the vote on March 16, 1998,⁷¹ Senator Donzella James proposed a floor amendment to the bill that added a new chapter, 43, to the end of title 31.⁷² The amendment defined and proposed regulations and oversight of public swimming pools in Georgia.⁷³ The Senate passed the bill, as amended, by a vote of 46-2.⁷⁴ The 'nays' reflected concern that the amendment exceeded the scope of the Act⁷⁵

(available in Georgia State University College of Law Library).

64. See GA-BILLS, *supra* note 58; State of Georgia Final Composite Status Sheet, Mar. 19, 1998.

65. See GA-BILLS, *supra* note 58; see also HB 1393 (SCS), 1998 Ga. Gen. Assem.

66. Compare HB 1393 (HFA), 1998 Ga. Gen. Assem., with HB 1393 (SCS), 1998 Ga. Gen. Assem.

67. See HB 1393 (SCS), 1998 Ga. Gen. Assem.

68. Compare HB 1393 (HFA), 1998 Ga. Gen. Assem., with HB 1393 (SCS), 1998 Ga. Gen. Assem.

69. HB 1393 (HFA), 1998 Ga. Gen. Assem.

70. HB 1393 (SCS), 1998 Ga. Gen. Assem.

71. See Telephone Interview with Sen. Robert Lamutt, Senate District No. 21 (May 26, 1998) [hereinafter Lamutt Interview]; see also State of Georgia Final Composite Status Sheet, Mar. 19, 1998.

72. See HB 1393 (SFA), 1998 Ga. Gen. Assem.

73. See *id.*

74. See Georgia Senate Voting Record, HB 1393 (Mar. 16, 1998).

75. See Lamutt Interview, *supra* note 71. Senator Lamutt was concerned that the

and that it attempted to introduce legislation regulating public swimming pools without a proper public hearing and full legislative debate.⁷⁶ The objections centered on the constitutionality of the amendment and the expansion of the powers of the DNR to regulate semi-private and private swimming pools used for public purposes; an area of regulation reserved to county authorities.⁷⁷ The Senate sent the amended version of the bill to the House on March 16, 1998.⁷⁸

Final Passage

When presented with the amended bill on March 18, 1998, the House refused to concur in the Senate's amendment⁷⁹ because lawmakers opposed the inclusion of the language regulating swimming pools.⁸⁰ House members determined that HB 1393, as amended by the Senate, would be unconstitutional.⁸¹ The Senate insisted on its amendment on March 19, 1998.⁸² As a result, HB 1393 was sent to a joint conference committee.⁸³ The House and Senate approved the conference committee recommendation on March 19, 1998.⁸⁴ The result was the adoption of the Senate substituted version without the language regulating swimming pools.⁸⁵

Opposition to HB 1393

Aside from the controversy surrounding the Senate amendment regarding regulation of swimming pools, opposition to HB 1393 was

amendment would violate the Georgia Constitution's requirement that a bill restrict itself to a single subject. *See id*; *see also*, GA. CONST. art. III, § 5, ¶ 3.

76. *See* Lamutt Interview, *supra* note 71.

77. *See id*.

78. *See* GA-BILLS, *supra* note 58; *see also* State of Georgia Final Composite Status Sheet, Mar. 19, 1998.

79. *See* GA-BILLS, *supra* note 58; *see also* State of Georgia Final Composite Status Sheet, Mar. 19, 1998.

80. *See* Smith Interview, *supra* note 1.

81. *See id*. The House determined that the single subject provision of the Georgia Constitution would be violated if the swimming pool legislation was included. *See id*; *see also* GA. CONST. art. III, § 5, ¶ 3.

82. *See* GA-BILLS, *supra* note 58.

83. *See id*.

84. *See id*; *see also* Georgia House of Representatives Status Sheet No. 40, at 3 (Mar. 19, 1998).

85. *Compare* HB 1393 (CCS), 1998 Ga. Gen. Assem., *and* O.C.G.A. §§ 52-7-12 to -12.6 (Supp. 1998), *with* HB 1393 (SFA), 1998 Ga. Gen. Assem.

virtually non-existent.⁸⁶ Some legislators were concerned that HB 1393 was an intrusion into personal liberty;⁸⁷ however, most agreed that the safety of Georgia's waterways outweighed those concerns.⁸⁸

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86. See Channell Interview, *supra* note 5; Smith Interview, *supra* note 1; Lamutt Interview, *supra* note 71.

87. See Telephone Interview with Sen. Casey Cagle, Senate District No. 49 (May 21, 1998) [hereinafter Cagle Interview]. Senator Cagle's district comprises the majority of Lake Lanier's shoreline. See *id.* He expressed concerns about government intrusions into personal liberty, but voted for HB 1393 as an effective means of promoting safety on Georgia's waterways. See *id.*; see also Lamutt Interview, *supra* note 71. Senator Lamutt actually voted against HB 1393 following the introduction of swimming pool regulations on the floor of the Senate. See *id.* He stated that this represented unwarranted government intrusion into personal freedoms. See *id.* However, without the offending language, Sen. Lamutt voted affirmatively for HB 1393. See *id.*

88. See Lamutt Interview, *supra* note 71; Cagle Interview, *supra* note 87.