

HB 2079 A STAFF MEASURE SUMMARY**Carrier:** Sen. Bentz**Senate Committee On Judiciary****Action Date:** 05/22/19**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 6-1-0-0**Yeas:** 6 - Bentz, Fagan, Gelser, Manning Jr, Prozanski, Thatcher**Nays:** 1 - Linthicum**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Michael Lantz, Counsel**Meeting Dates:** 4/18, 5/22**WHAT THE MEASURE DOES:**

Replaces crime of reckless operation of a boat with reckless boating. Defines reckless boating. Reduces offense of failing to carry a personal floatation device from a Class B violation to a Class D violation. Requires suspension of individual's boating safety education card if person is convicted of reckless boating or boating while under the influence intoxicants (BUII) for one year. Creates two-pronged process for police officer to request consent for breath or urine test from individual arrested under suspicion of BUII. Directs officer to first ask for consent to test individual and then, if individual refuses, to ask for physical cooperation and explain legal consequences of refusal to cooperate. Provides that evidence of refusal to cooperate can be used against defendant in court and that person who refuses is subject to three-year suspension of boating safety education card and a three-year prohibition on applying for a certificate of title, registration, or numbering.

ISSUES DISCUSSED:

- Updates to boating safety statutes
- Efforts to conform with standards in vehicle code
- Fines for personal flotation device violations
- Explanation of boating safety education card

EFFECT OF AMENDMENT:

Creates two-pronged process for police officer to request consent for breath or urine test from individual arrested under suspicion of BUII. Resolves conflict with House Bill 3005 A.

BACKGROUND:

Under current Oregon law, a person commits the crime of reckless operation of a boat if the person operates a boat carelessly and heedlessly in willful or wanton disregard of the rights, safety, or property of others. Additionally, failure to carry properly sized personal floatation device for each person on board that is easily accessible is a Class B violation. Meanwhile, a person who boats under the influence of intoxicates (BUII) is not eligible to apply to title, register, or number a new boat and shall have all current titles, registrations, or numberings canceled for at least one year and substantially longer if the person refused to take an otherwise lawfully requested breath or urine test after being arrested under suspicion of BUII.

House Bill 2079 A renames the crime of reckless operation of a boat to reckless boating and replaces obsolete language with the recklessness standard used in the vehicle code. It also reduces the classification of failing to carry a personal flotation device from a Class B violation to a Class D violation and requires suspension of an individual's boating safety education card for one year if the individual is convicted of reckless boating or BUII. Additionally, it creates a bifurcated process for a police officer to request a suspect's consent and physical cooperation for a breath or urine test to comply with the Oregon Supreme Court's decision in *State v. Banks* (364

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Or. 332, 2019) when the officer arrests a suspect under suspicion of BUII. First, the officer will ask the suspect to consent to the test. If the suspect refuses, the officer will then only ask the suspect for physical cooperation, either after the officer has requested and received a warrant from a judge or under one of several exceptions to the warrant requirement contained in current law. At the same time, the officer will inform the suspect of the the administrative penalties for failing to cooperate. If the suspect refuses to provide a sample, evidence of the suspect's refusal to cooperate can be used against the suspect in court, though not evidence of the suspect's initial refusal to give consent. The individual refusing to cooperate will also have his or her boating safety education card suspended for three years and will be ineligible to apply for a title, registration, or numbering his or her boat during that time. Finally, HB 2079 A removes the requirement that a person convicted of BUII have his or her current title, registration, or numbering canceled if convicted of BUII to ensure non-parties to the case are not affected.