

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas *As Engrossed: H3/18/03 H3/21/03 S4/2/03 S4/3/03*

2 84th General Assembly

A Bill

Act 1774 of 2003

3 Regular Session, 2003

HOUSE BILL 2525

4

5 By: Representative Haak

6 By: *Senator Horn*

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9

For An Act To Be Entitled

10 AN ACT TO AMEND ARKANSAS CODE TITLE 27 CHAPTER
11 101 PERTAINING TO WATERCRAFT; TO ADOPT MARINE
12 SANITATION LAWS IN CONFORMANCE WITH FEDERAL LAW;
13 TO AUTHORIZE THE DEPARTMENT OF HEALTH TO
14 ADMINISTER AND ENFORCE MARINE SANITATION LAWS; TO
15 DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

16

17

Subtitle

18 AN ACT TO ADOPT MARINE SANITATION LAWS
19 IN CONFORMANCE WITH FEDERAL LAW.

20

21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23

24 *SECTION 1. Arkansas Code § 27-101-102(a), concerning the applicability*
25 *of the general provisions for watercraft, is amended to read as follows:*

26 *(a) The provisions of ~~subchapters 1-3~~ of this chapter and of other*
27 *applicable laws of this state shall govern the operation, equipment,*
28 *numbering, and all other matters relating ~~thereto~~ to operation, equipment,*
29 *and numbering whenever any vessel shall be operated on the waters of this*
30 *state or when any activity regulated by this subchapter shall take place*
31 *~~thereon~~ on the waters of this state.*

32

33 *SECTION 2. Arkansas Code § 27-101-103, is amended to read as follows:*
34 *27-101-103. Definitions.*

35 *As used in ~~subchapters 1-3~~ of this chapter, unless the context*
36 *~~otherwise requires~~ this chapter, unless otherwise specified in the particular*



1 subchapter:

2 ~~(1) "Vessel" means every description of watercraft, other than a~~
3 ~~seaplane on the water, used or capable of being used as a means of~~
4 ~~transportation;~~

5 (1) "Commission" means the Arkansas State Game and Fish Commission;

6 ~~(2) "Motorboat" means any vessel operated upon water and which is~~
7 ~~propelled by sail or machinery, whether or not the machinery is the principal~~
8 ~~source of propulsion, but shall not include a vessel which has a valid marine~~
9 ~~document issued by the United States Customs Service of the United States~~
10 ~~Government or any federal agency successor thereto;~~

11 (2) "Length" means the extreme deck fore-and-aft measurement of a
12 vessel;

13 ~~(3) "Owner" means a person, other than a lienholder, having the~~
14 ~~property in or title to a motorboat. The term includes a person entitled to~~
15 ~~the use or possession of a motorboat subject to an interest in another~~
16 ~~person, reserved or created by agreement and securing payment or performance~~
17 ~~of an obligation, but the term excludes a lessee under a lease not intended~~
18 ~~as security;~~

19 (3) "Marina" means a dock or basin providing moorings for motorboats
20 and offering supply, repair, or other services for remuneration;

21 ~~(4) "Waters of this state" means any public waters within the~~
22 ~~territorial limits of the State of Arkansas;~~

23 (4) "Marine sanitation device" means equipment that is identified by
24 the United States Coast Guard as meeting the standards of the United States
25 Environmental Protection Agency to eliminate the discharge of untreated
26 sewage from vessels and is a device that receives, treats, retains, or
27 discharges sewage;

28 ~~(5) "Person" means an individual, partnership, firm, corporation,~~
29 ~~association, or other entity;~~

30 (5) "Motorboat" means any vessel operated upon water and which is
31 propelled by sail or machinery, whether or not the machinery is the principal
32 source of propulsion, but shall not include a vessel which has a valid marine
33 document issued by the United States Customs Service of the United States
34 Government or any federal agency successor thereto

35 (6) "Operate" means to navigate or otherwise use a motorboat or a
36 vessel;

1 ~~(7) "Length" means the extreme deck fore and aft measurement of a~~
2 ~~vessel;~~

3 (7) "Operator" means a person who is controlling the speed and
4 direction of a vessel or a person who is in direct physical control of a
5 vessel;

6 ~~(8) "Operator" means a person who is controlling the speed and~~
7 ~~direction of a vessel or a person who is in direct physical control of a~~
8 ~~vessel;~~

9 (8)(A) "Owner" means a person, other than a lienholder, having the
10 property in or title to a motorboat.

11 (B) "Owner" includes a person entitled to the use or possession
12 of a motorboat subject to an interest in another person, reserved or created
13 by agreement and securing payment or performance of an obligation, but
14 "owner" excludes a lessee under a lease not intended as security;

15 ~~(9) "Personal watercraft" means a vessel which uses an inboard motor~~
16 ~~powering a water jet pump as its primary source of motive power and which is~~
17 ~~designed to be operated by a person sitting, standing, or kneeling on the~~
18 ~~vessel, rather than the conventional manner of sitting or standing inside the~~
19 ~~vessel; and~~

20 (9) "Person" means an individual, partnership, firm, corporation,
21 association, or other entity;

22 ~~(10) "Commission" means the Arkansas State Game and Fish Commission.~~

23 (10) "Personal watercraft" means a vessel that uses an inboard
24 motor powering a water jet pump as its primary source of motive power and
25 which is designed to be operated by a person sitting, standing, or kneeling
26 on the vessel, rather than the conventional manner of sitting or standing
27 inside the vessel;

28 (11) "Vessel" means every description of watercraft, other than a
29 seaplane on the water, used or capable of being used as a means of
30 transportation; and

31 (12)(A) "Waters of this state" means any public waters within the
32 territorial limits of the State of Arkansas.

33 (B) However, waters that are confined within a pond, tank, or
34 lake, situated entirely on the premises of a single owner and that, except
35 under abnormal flood conditions, are in no way connected by water or with any
36 other flowing stream or body of water, or with any other body of water not

1 situated on the premises of the owner, are declared to be privately owned
2 waters and shall not be construed to be waters of this state.

3
4 SECTION 3. Arkansas Code § 27-101-105(a), concerning enforcement of
5 watercraft laws and failure to obey an officer, is amended to read as
6 follows:

7 (a)(1)(A) It shall be the duty of every sheriff, deputy sheriff, state
8 police officer, and enforcement officer of the Arkansas State Game and Fish
9 Commission to enforce the provisions of ~~subchapters 1-3~~ of this chapter,
10 except that it shall be the duty of the Department of Health to separately
11 enforce the provisions of subchapter 4 of this chapter.

12 (B) Certified law enforcement officers of the Department
13 of Parks and Tourism and municipal police officers may enforce the provisions
14 of ~~subchapters 1-3~~ of this chapter.

15 (2) In the exercise thereof, they shall have the authority to
16 stop and board any vessel subject to ~~subchapters 1-3~~ of this chapter and to
17 investigate any accident or violation involving vessels subject to
18 ~~subchapters 1-3~~ of this chapter.

19 (3) Upon investigation, they may direct the operator of any
20 vessel in violation of ~~subchapters 1-3~~ of this chapter to return to the dock
21 where the voyage originated or to the nearest dock if appropriate.

22
23 SECTION 4. Arkansas Code § 27-101-106 is amended to read as follows:
24 27-101-106. Jurisdiction.

25 Jurisdiction to try offenses under this subchapter shall be in the
26 courts of the county where the person owning or operating the boat resides or
27 in the county where the offense is committed or in any county through or by
28 which the boat is being run or operated on the waters of this state at the
29 time of the violation of this ~~subchapter~~ chapter.

30
31 SECTION 5. Arkansas Code § 27-101-108. is amended to read as follows:
32 27-101-108. Filing and publication of rules and regulations.

33 (a) A copy of the regulations adopted pursuant to ~~this subchapter~~
34 subchapters 1, 2, 3, 5, and 6 of this chapter and of any amendments thereto
35 shall be filed in the office of the Arkansas State Game and Fish Commission,
36 ~~and in the office of the Secretary of State, and the county clerk of each~~

1 ~~county of this state~~ the Arkansas State Library, and the Bureau of
 2 Legislative Research where ~~they~~ each copy shall be preserved as a public
 3 record.

4 (b) A copy of the regulations adopted under subchapter 4 and of any
 5 amendments those regulations shall be filed in the office of the Department
 6 of Health, in the office of the Secretary of State, the Arkansas State
 7 Library, and the Bureau of Legislative Research where each copy shall be
 8 preserved as a public record.

9 ~~(b)(c)~~ Rules and regulations under this section shall be published by
 10 the ~~Arkansas State Game and Fish Commission~~ responsible state agency in a
 11 convenient form for public use.

12
 13 SECTION 6. Arkansas Code § 27-101-109 is amended to read as follows:
 14 27-101-109. Remission of fines.

15 (a) All fines collected for violations of ~~subchapters 1-3~~ of this
 16 chapter shall be remitted to the issuing law enforcement office to be used by
 17 that office for the administration and enforcement of ~~subchapters 1-3~~ of this
 18 chapter.

19 (b) However, fines collected for violations of subchapter 4 shall be
 20 remitted to the Department of Health for administration and enforcement of
 21 subchapter 4.

22
 23 SECTION 7. Arkansas Code § 27-101-110 is amended to read as follows:
 24 27-101-110. Deposit of funds in State Treasury.

25 All fees collected by the Director of the Department of Finance and
 26 Administration under the provisions of ~~subchapters 1-3~~ of this chapter shall
 27 be deposited as special revenues in the State Treasury to the credit of the
 28 Special Revenue Fund Account of the State Apportionment Fund. All these funds
 29 shall be credited to the Boating Safety Account, which is established on the
 30 books of the Treasurer of State, Auditor of State, and the Chief Fiscal
 31 Officer of the State.

32
 33 SECTION 8. Arkansas Code § 27-101-111 (a), concerning distribution of
 34 funds from fees for watercraft, is amended to read as follows:

35 (a) The Treasurer of State, on or before the fifth of the month next
 36 following the month during which the funds shall have been received by him,

1 shall distribute the funds in the manner provided in this section:

2 (1) Three percent (3%) of the amount to the Constitutional
3 Officers Fund and the State Central Services Fund to be used for defraying
4 the necessary expenses of the state government; and

5 (2) Ninety-seven percent (97%) of the amount thereof, as
6 follows:

7 (A) ~~Ten percent (10%)~~ Eight percent (8%) to the
8 Constitutional Officers Fund and the State Central Services Fund.

9 (B) ~~Forty five percent (45%)~~ Thirty-four percent (34%) to
10 the Game Protection Fund for use by the Arkansas State Game and Fish
11 Commission as provided by law.

12 (C) ~~Forty five percent (45%)~~ Thirty-four percent (34%) to
13 the County Aid Fund which, on or before the tenth of the month following the
14 end of each calendar quarter, shall be remitted by state warrants to the
15 various county treasurers in the proportions thereof as between the
16 respective counties that, as certified by the Director of the Department of
17 Finance and Administration to the Treasurer of State, the total fees produced
18 from each county bears to the total of the fees produced from all counties.

19 (D) Twenty-four percent (24%) to the Marine Sanitation
20 Fund for use by the Department of Health to administer a marine sanitation
21 program.

22
23 SECTION 9. Arkansas Code § 27-101-306(d), concerning the numbering
24 period, expiration, and renewal for watercraft certificates of numbers, is
25 amended to read as follows:

26 (d)(1) A fee based on the length of the motorboat as set forth in this
27 subsection shall be charged for the issuance of a certificate of number and
28 for each renewal of each certificate of number.

29 (2) The fee to be collected for certificates shall be as
30 follows:

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35 Fee Category 3 Years

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Vessels less than sixteen feet (16') in length~~\$ 6.00~~
\$7.50

Vessels sixteen feet (16') to less than twenty-six feet (26').....~~12.00~~
15.00

Vessels twenty-six feet (26') ~~or more~~ to less than forty feet (40')
..... 51.00

Vessels forty feet (40') or more 105.00

SECTION 10. Arkansas Code § 27-101-310 (a), concerning destroyed or abandoned boats, is amended to read as follows:

(a) Whenever any motorboat numbered under the provisions of ~~subchapters 1-3 of this chapter~~ this subchapter shall be destroyed or abandoned, its owner shall notify the Director of the Department of Finance and Administration, within fifteen (15) days after the destruction or abandonment, and the certificate of number of the motorboat shall be terminated.

SECTION 11. The Heading for Arkansas Code Title 27, Chapter 101, Subchapter 4, is amended to read as follows:

Subchapter 4 - Funds Marine Sanitation.

SECTION 12. Arkansas Code § 27-101-406 is repealed.

~~27-101-406. Permit Fees.~~

~~(a) No person shall operate a marine toilet on a boat or a marine sanitation system on a boat that is not validly permitted by the Department of Health for the operation of that toilet or marine sanitation system.~~

1 ~~(b) The annual permit fee to operate a marine toilet on a boat or a~~
2 ~~marine sanitation system on a boat shall be forty five dollars (\$45.00) for~~
3 ~~the first marine toilet or marine sanitation system on a boat and fifteen~~
4 ~~dollars (\$15.00) for each additional marine toilet or marine sanitation~~
5 ~~system on the same boat. One third (1/3) of the fees shall apply to the~~
6 ~~minigrant program to be administered by the Department of Health.~~

7 ~~(c) A late penalty fee equal to one half (1/2) of the annual permit~~
8 ~~fee shall be charged to renew a permit sixty (60) days after the annual~~
9 ~~expiration date.~~

10
11 SECTION 13. Arkansas Code § 27-101-407 is amended to read as follows:

12 27-101-407. Marina Owners and operators of commercial boating
13 facilities, docks, and marinas.

14 (a) Marina Owners and operators of commercial boating facilities,
15 docks, and marinas shall cooperate with all applicable state and federal
16 agencies and the Marine Sanitation Advisory Committee to ensure that the
17 disposal of marine sewage is consistent with state and federal law.

18 (b) When accepting new boat arrivals, marina owners and operators of
19 commercial boating facilities, docks, and marinas shall inform ~~boat~~ vessel
20 owners and operators of the requirements of state and federal law regarding
21 the proper disposal of marine sewage.

22
23 SECTION 14. Arkansas Code § 27-101-408 is amended to read as follows:

24 27-101-408. Funds Marine sanitation funds.

25 (a) All fees and fines levied and collected under the provisions of
26 this subchapter are declared to be special revenues and shall be deposited in
27 the State Treasury to be credited to the ~~Public Health~~ Marine Sanitation Fund
28 to be used only for the administration of this subchapter.

29 (b) Subject to ~~such~~ rules and regulations as may be implemented by the
30 Chief Fiscal Officer of the State, the disbursing officer for the Department
31 of Health is authorized to transfer all unexpended funds relative to marine
32 toilets and marine sanitation systems that pertain to fees or fines
33 collected, as certified by the Chief Fiscal Officer of the State, to be
34 carried forward and made available for expenditures for the same purpose for
35 any following fiscal year.

36

1 SECTION 15. Arkansas Code Title 27, Chapter 101, Subchapter 4 is
2 amended by to additional sections to read as follows:

3 27-101-411. Marine sewage discharge prohibitions - Marine sanitation
4 device requirements.

5 (a)(1) Except to the extent permitted by federal law and in order to
6 protect the health and safety of persons using the waters of this state, it
7 is unlawful for any person to operate or use a vessel capable of discharging
8 untreated sewage from a vessel into the waters of this state.

9 (2) Raw sewage shall not be discharged from any vessel into
10 waters of this state.

11 (b)(1) On waters of this state, vessels which have toilet facilities
12 permanently installed shall be equipped with a United States Coast Guard
13 certified Marine Sanitation Device designed to receive, retain, treat, or
14 discharge sewage in accordance with applicable federal requirements.

15 (2) This section applies only to vessels equipped with
16 permanently installed toilet facilities and does not require the installation
17 of this type of facility in vessels not already so equipped.

18 (3) The use of portable toilets that can be emptied ashore in
19 regular sewage treatment systems is entirely within the spirit and letter of
20 this section and is encouraged.

21 (c)(1) All waste from Type III Marine Sanitation Devices shall be
22 disposed in approved sewage pumpout facilities.

23 (2) All waste from portable toilets shall be disposed in
24 approved waste reception or sewage pumpout facilities.

25 (d)(1) Except to the extent permitted by federal law, it shall be
26 unlawful for any person to discharge any treated or untreated sewage into any
27 waters of this state lawfully designated as no discharge.

28 (2) A no discharge designation shall be based on the criteria
29 established by the United States Environmental Protection Agency for
30 determining no discharge waters regarding marine sanitation devices, and
31 shall include federal impoundments owned or managed by the United States Army
32 Corps of Engineers.

33 (3) Any such discharge of sewage from a vessel shall be prima
34 facie evidence that the discharge was done by the operator, or owner, if the
35 operator cannot be determined, of the vessel.

36 (4) A no discharge type Type III Marine Sanitation Device, or a

1 Type I or II Marine Sanitation Device secured against discharge is required
2 in vessels operated on no discharge waters.

3 (5) A vessel equipped with a flow through Type I or II Marine
4 Sanitation Device that has been secured by a locked shut off valve, broken
5 line, or blanked off hull opening to prevent overboard discharge shall be
6 considered equipped with a no discharge type Marine Sanitation Device.

7
8 27-101-412. Sewage disposal by commercial boating facilities, docks,
9 and marinas.

10 (a) For purposes of this section, "sewage pumpout facility" means
11 equipment designed to receive the discharge of sewage from a Marine
12 Sanitation Device and allow the disposal of the sewage in a manner that
13 prevents the sewage from entering the waters of this state.

14 (b) By July 1, 2004, any person owning or operating a commercial
15 boating facility, dock, or marina that stores or houses vessels equipped with
16 toilet facilities and marine sanitation devices shall provide access to
17 sewage pumpout facilities.

18 (c) To provide access to sewage pumpout facilities, a commercial
19 boating facility, dock, or marina owner or operator may, as an illustration
20 of and not as a limit on the options available to the owner or operator:

21 (1) Build and operate pumpout facilities;

22 (2) Contract with another boating facility, dock, or marina with
23 pumpout facilities if the contacting boating facility, dock, or marina is not
24 more than eight (8) water miles away and is accessible in a way that does not
25 require vessels to be trailered; and

26 (2) Contract with a person licensed by the State of Arkansas to
27 provide pumpout facility service, if the service is available during normal
28 business hours, including holidays, and if the service can be provided within
29 a reasonable time upon request by a vessel owner or operator.

30
31 27-101-413. Department of Health – Powers and duties.

32 The Department of Health shall:

33 (1) Administer and enforce all laws and regulations, to the extent
34 permitted by federal law and in accordance with applicable regulations
35 adopted by the United States Coast Guard and the United States Environmental
36 Protection Agency, relating to marine toilet facilities, marine sanitation

1 devices, and unlawful discharge of marine sewage from vessels into waters of
2 this state;

3 (2) Enter at all reasonable times in or upon any vessel for the
4 purpose of inspecting and investigating conditions relating to marine toilet
5 facilities, marine sanitation devices, and unlawful discharge of marine
6 sewage from vessels into waters of this state;

7 (3) Adopt regulations, consistent with applicable federal law, after
8 consultation with the Marine Sanitation Advisory Committee, and that are
9 deemed necessary to carry out the provisions of this subchapter;

10 (4) Bring any appropriate action in court in the name of the State of
11 Arkansas that is necessary to carry out the provisions of this subchapter;
12 and

13 (5) Make, issue, modify, and revoke orders prohibiting or abating the
14 unlawful discharge of marine sewage from vessels into waters of this state.

15
16 27-101-414. Penalties.

17 (a) Any person who violates any provision of this subchapter or any
18 regulation promulgated under this subchapter shall be guilty of a misdemeanor
19 and subject to a fine not less than one hundred dollars (\$100) and not more
20 than one thousand dollars (\$1,000) or imprisonment not to exceed three (3)
21 months, or both.

22 (b)(1) Any person who violates any provision of this subchapter or any
23 regulation promulgated under this subchapter may be assessed an
24 administrative civil penalty not to exceed one thousand dollars (\$1,000) per
25 violation.

26 (2) The owner and operator of any vessel shall be jointly and
27 severally liable for the civil penalty imposed under this section.

28 (c) All fines and penalties imposed and collected under this section
29 shall be deposited in the Marine Sanitation Fund and shall be used to:

30 (1) Implement, administer, and enforce this subchapter;

31 (2) Construct, renovate, or operate sewage pumpout and waste
32 reception facilities; and

33 (3) Conduct education programs to inform vessel owners and
34 operators about the problem of human body waste discharges from vessels and
35 inform them of the locations of sewage pumpout and waste reception
36 facilities.

SECTION 16. Arkansas Code Title 19, Chapter 6, subchapter 4 is amended to and additional section to read as follows:

19-6-487. Marine Sanitation Fund.

(a) There is created on the books of the Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State a special revenue fund to be known as the "Marine Sanitation Fund".

(b)(1) All moneys collected under 27-101-110 shall be deposited into the State Treasury to the credit of the fund as special revenues.

(2) The fund shall also consist of any unexpended balances of fees and fines for use of the Marine Sanitation Program remaining in the Public Health Fund on June 30, 2003.

(3) The fund shall also consist of any other revenues as may be authorized by law.

(c) The fund shall be used by the Department of Health for the purposes set out in Title 27, Chapter 101, Subchapter 4.

SECTION 17. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the discharge of untreated sewage from vessels into waters of the State of Arkansas poses a serious threat to the public health and the environment; that such a serious threat needs to be rectified immediately; and that this act improves the state's ability to enforce laws relative to marine sanitation. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/ Haak

APPROVED: 4/22/2003