

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1873

Bill Subtitle: TO AMEND THE OBLIGATIONS OF AN OPERATOR OF A VESSEL INVOLVED IN A COLLISION OR ACCIDENT; AND TO AMEND THE CRIMINAL PENALTIES.

Basic Change :

Sponsor: Rep. L. Fite

This bill amends the obligations of an operator of a vessel involved in a collision or accident as well as increasing the penalties from not less than \$250 nor more than \$500 to an amount not less than \$500 nor more than \$1,000.

The obligations of an operator involved in a collision or accident added in this bill are:

- Immediately stop at the scene of the accident or as close as possible;
- Render to those affected by the accident any assistance as may be practicable; and
- Give in writing the name and address of the operator and the owner of the vessel to each person injured and to the owner of any property damaged in the accident.

If a collision or accident involving a vessel results in death, serious physical injury, property damage that a reasonable person could estimate to be in excess of \$2,000 or the disappearance of a person from a vessel under circumstances that indicate serious physical injury or death, the operator of the vessel shall:

- Immediately notify the Arkansas Game & Fish Commission (AGFC), local sheriff's department or other local law enforcement agency that has an established water patrol;
- Remain at the scene of the accident until AGFC or law enforcement agency arrives; and
- Submit a U.S. Department of Homeland Security, U.S. Coast Guard Form CD-3865 to the AGFC Boating Safety Office within 10 working days.
- A person convicted under this subsection is guilty of a Class D felony. Also, the Office of Driver Services shall revoke the driver's license of a person found guilty under this subsection.

The bill further provides:

- In addition to any chemical testing required by law, the law enforcement officer shall use a portable breath-testing instrument to test the operator of the vessel at the scene of the accident if the accident results in death or serious physical injury.
- The breath analysis made by the portable breath-testing instrument required under this section is admissible in a criminal proceeding, and the failure or inability to obtain an additional chemical test or tests by a person shall not prevent the admission of the results obtained by the portable breath-testing instrument.
- However, this section does not limit the defendant's right during a criminal proceeding to confront the person who performs the calibration test or check on the portable breath-testing instrument, the operator of the portable breath-testing instrument, or a representative of the law enforcement agency.
- A person who refuses to submit to a breath analysis at the scene of the collision or accident as required and is convicted shall be guilty of an unclassified misdemeanor and shall be sentenced to imprisonment in the county jail for not less than 90 days or more than 1 year.

Revenue Impact :

None.

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Taxpayer Impact :

Taxpayer fines, penalties, and legal obligations would be subject to change under this bill.

Resources Required :

No additional resources are required if this bill is passed.

Time Required :

No additional time is required if this bill is passed.

Procedural Changes :

No procedural changes will be required if this bill is passed.

Other Comments :

None.

Legal Analysis :

HB1873 amends the obligations and punishments on boat operators involved in a boating accident. Accidents resulting in death or serious injury will require operators to submit to chemical testing. Further, portable breath test results will be admissible in both criminal and civil actions resulting from the accident. Portable breath tests have generally not been admissible in court proceedings.

Ambiguity exists in § 27-101-205(a), as proposed, as "accident" and "collision" are not defined terms. By nature, boats may bump docks, structures, or other boats in the regular course of operation. It is unclear at what point this statute becomes effective.

A constitutional concern exists in § 27-101-205(f)(2), as proposed, where portable breath test results are admissible even if additional tests are unavailable. Arkansas law at § 5-65-203 offers drivers/operators additional chemical tests at their own expense. DFA would likely be unable to suspend drivers' licenses based solely on portable breath test results.

More constitutional concerns exist in § 27-101-205(f)(4) in sentencing boat operators to mandatory jail time for refusing to submit to chemical testing. The bill presents a potential due process violation to punish a person for refusing to incriminate themselves, especially if based only on portable breath test results, and without the option of a second test. Further, this bill offers no requirement of informing operators of their rights regarding refusing tests.

A grammatical error exists on page 4, line 28: "...defendant's right during a criminal proceedingto confront..." It is recommended the bill be amended to include space between "proceeding" and "to."

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