

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  
2 87th General Assembly  
3 Regular Session, 2009  
4

# A Bill

SENATE BILL 38

5 By: Senator Faris  
6  
7

## For An Act To Be Entitled

9 AN ACT TO INCREASE THE MINIMUM AGE FOR OPERATION  
10 OF A PERSONAL WATERCRAFT; TO APPLY THE ALCOHOL  
11 AND DRUG TESTING REQUIREMENTS USED FOR MOTOR  
12 VEHICLES TO OPERATION OF BOATS AND PERSONAL  
13 WATERCRAFT; TO REQUIRE PARENTAL CONSENT FOR  
14 RECEIPT OF A BOATER EDUCATION CERTIFICATE; TO  
15 AMEND THE EXAMINATION REQUIREMENTS FOR A BOATER  
16 EDUCATION CERTIFICATE; AND FOR OTHER PURPOSES.  
17

## Subtitle

18 AN ACT TO BE KNOWN AS "RACHEL'S BILL"  
19 FOR THE PURPOSE OF IMPROVING PERSONAL  
20 WATERCRAFT SAFETY.  
21  
22  
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
25

26 SECTION 1. Arkansas Code § 27-101-205 is amended to add a new  
27 subsection to read as follows:

28 27-101-205. Collision or accident.

29 (a) It shall be the duty of the operator of a vessel involved in a  
30 collision, accident, or other casualty, so far as he or she can do so without  
31 serious danger to his or her own vessel, crew, and passengers, if any, to  
32 render to other persons affected by the collision, accident, or other  
33 casualty assistance that may be practicable and that may be necessary in  
34 order to save them from or minimize any danger caused by the collision,  
35 accident, or other casualty and also to give his or her name, address, and  
36 identification of his or her vessel in writing to any person injured and to



1 the owner of any property damaged in the collision, accident, or other  
2 casualty.

3 (b) In the case of collision, accident, or other casualty involving a  
4 vessel, if the collision, accident, or other casualty results in death or  
5 injury to a person or damage to property in excess of five hundred dollars  
6 (\$500) or the disappearance of a person from a vessel under circumstances  
7 that indicate death or injury, the Arkansas State Game and Fish Commission or  
8 local sheriff's department having an established water patrol shall be  
9 immediately notified in order for an investigation to be conducted. In  
10 addition, the operator of the vessel shall submit a Department of  
11 Transportation, United States Coast Guard Form CG-3865 to the Arkansas State  
12 Game and Fish Commission Boating Safety Office within ten (10) working days.

13 (c) When the operator of a vessel is involved in a collision, accident  
14 or other casualty resulting in loss of human life or when there is reason to  
15 believe death may result, and there exists probable cause to believe that the  
16 operator is guilty of a violation of § 27-101-202 (7) prohibiting the  
17 operation of a vessel while intoxicated or under the influence of any  
18 narcotic drug, barbituate, or marijuana, a chemical test of the operator's  
19 blood, breath, or urine shall be administered to the operator, even if  
20 fatally injured, to determine the presence of and percentage of concentration  
21 of alcohol or drugs, or both, in the operator's body.

22 ~~(e)~~(d) In accordance with any request duly made by an authorized  
23 official or agency of the United States, any information compiled or  
24 otherwise available to the Arkansas State Game and Fish Commission pursuant  
25 to this section shall be transmitted to that official or agency of the United  
26 States.

27 ~~(d)~~(e) Any law enforcement agency in the State of Arkansas  
28 investigating a boating accident will forward a copy of the completed  
29 accident report to the Boating Safety Office of the Arkansas State Game and  
30 Fish Commission within thirty (30) days of the accident.

31 ~~(e)~~(f)(1) It shall be unlawful for any person involved in a boating  
32 accident to purposely leave the scene of the accident without complying with  
33 the requirements in subsections (a) and (b) of this section.

34 (2) Violation of this subsection shall be punishable with a fine  
35 of not less than two hundred fifty dollars (\$250) nor more than five hundred  
36 dollars (\$500).

1           (3) In the event the accident resulted in grave personal injury  
2 or death, violations of this section shall be a Class D felony and, upon  
3 conviction, punished accordingly.

4  
5           SECTION 2. Arkansas Code § 27-101-501 is amended to read as  
6 follows:

7           (a) The General Assembly finds and determines that:

8           (1) The regulation of boating and boaters in the state is the  
9 primary responsibility of the Arkansas State Game and Fish Commission under  
10 Arkansas Constitution, Amendment 35;

11           (2) Most boating accidents in the state are due primarily to the  
12 lack of training or the improper training of boaters;

13           (3) The establishment of a boater training and safety program in  
14 this state would greatly improve and facilitate boater safety in this state;  
15 and

16           (4) It is the purpose and intent of this section to authorize  
17 the commission to establish and operate a boater safety and training program  
18 in this state.

19           (b)(1) The commission is authorized and encouraged to establish,  
20 maintain, and operate a program of boater training and boater safety in this  
21 state and to issue boater education certificates for the operation of  
22 motorboats and personal watercraft.

23           (2) Beginning January 1, 2010, The the program shall include,  
24 but not be limited to, without limitation:

25           (A) a A course of instruction designed to teach the  
26 safe and proper handling of ~~boats~~ motorboats and personal watercraft and any  
27 other related matters as shall be deemed appropriate by the commission; and

28           (B)(i) An examination administered at the conclusion of  
29 the course of instruction that shall include both a written examination and  
30 an actual demonstration of the applicant's ability to exercise ordinary and  
31 reasonable control in the operation of a motorboat or personal watercraft.

32           (ii) The examination shall be administered in person  
33 at a time and place designated by the commission.

34           (3) The course of instruction may be offered in  
35 cooperation with schools, private clubs and organizations, and may be offered  
36 by the commission in areas where requested and where other sponsorship is

1 unavailable.

2           (4) The commission shall also prepare and disseminate  
3 information on water safety to the public, including informational pamphlets,  
4 which shall be made available at popular tourist locations.

5           (c) The commission may adopt and enforce rules and regulations it  
6 shall deem appropriate and necessary to properly carry out the purposes and  
7 intent of this section.

8           (d)(1) ~~Effective January 1, 2001,~~ In order to operate a motorboat or a  
9 personal watercraft in Arkansas, all Arkansas residents born on or after  
10 January 1, 1986, and of legal age to operate a motorboat or personal  
11 watercraft must have successfully completed:

12                   (A) ~~an~~ An approved commission safe boating course  
13 and examination under subdivision (b)(2) of this section to obtain a  
14 permanent boater education certificate; or

15                   (B) ~~completed~~ A questionnaire to obtain a temporary  
16 boater education certificate under subsection (d)(4) of this section ~~in order~~  
17 ~~to operate a motorboat in Arkansas.~~

18           (2) The commission shall issue boating education certificates  
19 and furnish a copy of the state laws pertaining to the operation of ~~boats a~~ a  
20 motorboat or personal watercraft or informational material based on these  
21 laws to persons successfully completing an approved safe boating course and  
22 examination.

23           (3) Valid boating education certificates issued by other states  
24 to nonresidents shall be honored by this state if the boating education  
25 course is approved by the National Association of State Boating Law  
26 Administrators.

27           (4) Prior to operating a motorboat or a personal watercraft on  
28 the waters of this state, a nonresident or resident born on or after January  
29 1, 1986, and of legal age to operate a motorboat or a personal watercraft may  
30 obtain a temporary boater education certificate, which shall be valid for  
31 thirty (30) days, by completing a questionnaire developed by the commission.

32           (5)(A) The application of any person under eighteen (18) years  
33 of age for a permanent or temporary boater education certificate shall be  
34 signed and verified before a person authorized to administer oaths by either  
35 the custodial parent or guardian of the applicant.

36                   (B) For purposes of this section, duly authorized agents

1 of the commission shall be authorized to administer oaths without charge.  
 2

3 SECTION 3. Arkansas Code § 27-101-602 (d), concerning the minimum age  
 4 for operating a personal watercraft, is amended to read as follows:

5 (d) No person under ~~fourteen (14)~~ sixteen (16) years of age shall  
 6 operate a personal watercraft on the waters of this state, except:

7 (1) A person at least twelve (12) years of age may operate a  
 8 personal watercraft if a person at least eighteen (18) years of age is aboard  
 9 the vessel who:

10 (A) Has a valid boater education certificate; and

11 (B) Is in a position to take immediate control of the  
 12 vessel; or

13 (2) A person under twelve (12) years of age may operate a  
 14 personal watercraft if a person at least twenty-one (21) years of age is  
 15 aboard the vessel who:

16 (A) Has a valid boater education certificate; and

17 (B) Is in a position to take immediate control of the  
 18 vessel.

19  
 20 SECTION 4. Arkansas Code Title 27, Chapter 101, is amended to add a  
 21 new subchapter to read as follows:

22 Subchapter 8 – Operation of a Motorboat or Personal Watercraft While  
 23 Intoxicated.

24 27-101-801. Rules and regulations.

25 The rules promulgated by the Department of Health as authorized by § 5-  
 26 65-201 shall also be used to carry out the purposes of this subchapter.

27  
 28 27-101-802. Implied consent.

29 (a) Any person who operates a motorboat or personal watercraft, as  
 30 defined in § 27-101-103, or who is in actual physical control of a motorboat  
 31 or personal watercraft on the waters of this state is deemed to have given  
 32 consent, subject to the provisions of § 27-101-803, to a chemical test of his  
 33 or her blood, breath, or urine for the purpose of determining the alcohol or  
 34 controlled substance content of his or her blood, breath, or urine if:

35 (1) The person is arrested for any offense arising out of an act  
 36 alleged to have been committed while the person was operating a motorboat or

1 personal watercraft while intoxicated or while there was an alcohol  
2 concentration of eight-hundredths (0.08) or more in the person's blood,  
3 breath, or urine;

4 (2) The person is involved in an accident while operating or in  
5 actual physical control of a motor boat or personal watercraft; or

6 (3) At the time the person is arrested for operating a motorboat  
7 or personal watercraft while intoxicated, the law enforcement officer has  
8 reasonable cause to believe that the person is intoxicated or has an alcohol  
9 concentration of eight-hundredths (0.08) or more in the person's blood,  
10 breath, or urine.

11 (b) Any person who is dead, unconscious, or otherwise in a condition  
12 rendering him or her incapable of refusal is deemed not to have withdrawn  
13 consent provided by subsection (a) of this section, and a chemical test may  
14 be administered subject to the provisions of § 27-101-803.

15  
16 27-101-803. Administration.

17 (a) A chemical test shall be administered at the direction of a law  
18 enforcement officer having reasonable cause to believe the person to have  
19 been operating or in actual physical control of a motorboat or personal  
20 watercraft while intoxicated or while there was an alcohol concentration of  
21 eight-hundredths (0.08) or more in the person's blood, breath, or urine.

22 (b)(1) The law enforcement agency by which the law enforcement officer  
23 is employed shall designate which chemical test shall be administered, and  
24 the law enforcement agency is responsible for paying any expense incurred in  
25 conducting the chemical test.

26 (2)(A) If the person tested requests that an additional chemical  
27 test be administered as authorized in § 5-65-204 (e), the cost of the  
28 additional chemical test shall be borne by the person tested.

29 (B) If the person is found not guilty, the arresting law  
30 enforcement agency shall reimburse the person for the cost of the additional  
31 chemical test.

32 (3) If any person objects to the taking of his or her blood for  
33 a chemical test, as authorized in this subchapter, the breath or urine of the  
34 person may be used to make the chemical analysis.

35 (c) The approved methods of chemical testing and analysis shall be the  
36 same as those under § 5-65-204.

1       (d) The type of alcohol testing devices used shall be governed by the  
2 rules of the Department of Health and § 5-65-207.

3  
4       27-101-804. Refusal to submit.

5       (a) If a person under arrest refuses the request of a law enforcement  
6 officer to submit to a chemical test designated by the law enforcement agency  
7 under § 27-101-802, no chemical test shall be given, and the person's boater  
8 education certificate shall be seized by the law enforcement officer.

9       (b)(1) The Arkansas Game and Fish Commission shall then proceed to  
10 suspend the boating privilege of the arrested person.

11       (2) The suspension shall be as set forth in § 5-65-205(d).

12       (c) In addition to any other penalty provided for in this section:

13       (1) If the person is a resident without a boater education  
14 certificate in this state, the commission shall deny to that person the  
15 issuance of a boater education certificate for a period of six (6) months for  
16 a first offense; and

17       (2) For a second or subsequent offense by a resident without a  
18 boater education certificate, the commission shall deny to that person the  
19 issuance of a license or permit for a period of one (1) year.

20  
21       27-101-805. Evidence in prosecution.

22       With regard to evidence used in prosecution of a person charged with  
23 operating a motorboat or personal watercraft while intoxicated, the  
24 provisions of § 5-65-206 apply.