

- SUBJECT:** Requirements for operating personal watercraft and certain boats
- COMMITTEE:** Culture, Recreation, and Tourism — committee substitute recommended
- VOTE:** 6 ayes — Guillen, Elkins, Deshotel, Kuempel, Larson, T. Smith
0 nays
3 absent — Dukes, T. King, Price
- WITNESSES:** For — Tim Lindt, Britteny Sage Lindt, Britteny Sage Lindt Fund - 501(c)3, Victims of Fatal Watercraft Incidents; (*Registered, but did not testify*: Rod Malone, Recreation Boating Safety Advisory Panel, Boating Trades Association of Texas)

Against — None

On — (*Registered, but did not testify*: Nancy Herron, Jeffery Parrish, Texas Parks and Wildlife Department)
- BACKGROUND:** Texas Parks and Wildlife Code, ch. 31 sets out the state’s water safety policy and defines several terms related to water safety. Texas law defines a personal watercraft as a motorboat designed to be operated while the person is sitting, standing, or kneeling on the vessel rather than sitting or standing inside the vessel. A motorboat includes any vessel either propelled or designed to be propelled by machinery, whether or not the machinery is permanently or temporarily attached or is the main cause of propulsion.
- Age limits.** Under current law, those under age 16 may not operate either personal watercraft or a motorboat with horsepower of over 15 unless the underage operator is accompanied by an adult or is at least 13 and has successfully completed a boating safety course prescribed and approved by the Parks and Wildlife Department (TPWD).
- Boater education requirements.** Parks and Wildlife Code, sec. 31.109 applies only to a person born on or after September 1, 1984, and who operates a vessel with more than 10 horsepower in its motor, or a windblown vessel longer than 14 feet. A person governed by this section

of the Parks and Wildlife Code must carry a photo identification card and a department-issued boater identification card. A violation occurs if a person governed by this provision is caught without possession of both cards. The violation will be dismissed by a court, however, if the person can submit proof of completion of a boater safety education course.

Exemption from boater education requirements. Certain persons are exempt from having to possess both the photo and boater identification cards. An operator is not subject to the boater education law if the person:

- holds a master's, mate's, or operator's license issued by the U. S. Coast Guard;
- is being supervised by an adult at least 18 years old who possesses a boater identification card or is exempt from the identification requirement on other bases;
- is at least 18 years old;
- as a nonresident of Texas has proof that he or she has successfully completed a boater education course or similar exam approved by TDPW; or
- is deemed exempt by TDPW rule.

DIGEST:

Age limits. CSHB 1395 would prohibit a person under age 13 from operating a personal watercraft or a motorboat with a manufacturer's rating of more than 15 unless the person was supervised by a person who could legally operate the watercraft or motorboat and who was physically on board while it was in motion. The bill would remove provisions from current law that allow a 13 year-old to operate a watercraft if the child has completed a boater safety course.

CSHB 1395 would amend Parks and Wildlife Code, sec. 31.109 to apply requirements to carry a photo ID and boater identification card when operating certain vessels to a person born on or after September 1, 1993. The requirement would apply to those operating a vessel powered by a motor that had a horsepower of more than 15 or a windblown vessel over 14 feet long. The person subject to this section would have to have a photo ID card and either a department-issued boater ID card or some proof of completion of requirements to obtain a vessel operator's license issued by the U.S. Coast Guard.

Exemption from boater education requirements. A person would be exempt from the boater education requirements if supervised by a person

who was at least 18 years old who either possessed the required boater ID card or was otherwise exempt. To be considered to be supervising the operator of a watercraft, the person would have to actually be on the watercraft while it was in motion. A customer of a business engaged in renting, showing, demonstrating, or testing boats would be exempt by rule of the Parks and Wildlife Commission from the boater education requirement. The commission would have to create a boater education deferral program, which would be made available at no cost to boat dealers, manufacturers, and distributors.

Boater education requirements. If a person charged with an offense for failing to have the required documentation could provide the court or prosecuting attorney, on or before the trial, with a qualifying document that was issued and valid at the time of the offense, the court would have to dismiss the charge.

If a person were charged with a Class C Parks and Wildlife Code misdemeanor for failing to possess the necessary ID, the bill would allow the person, within 10 days of the offense, to make a written or oral motion requesting permission to take either:

- a boater education course approved by TPWD; or
- a vessel operator's licensing course provided by the U.S. Coast Guard.

The court would have to delay the proceedings and allow 90 days for the person to provide the court with written proof of successful completion of either course. The charge would be dismissed if the person successfully completed the course and the court accepted the proof.

The bill would apply only to offenses committed on or after the effective date of the bill. If any part of an offense were committed before the effective date of this bill, the offense would be considered committed before CSHB 1395's effective date.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

SUPPORTERS
SAY:

Recommended by the Advisory Panel on Recreational Boat Safety, CSHB 1395 would incorporate findings from a thorough examination of Texas boating safety issues conducted over the past two years. The advisory panel includes representatives of the public and the boat manufacturing and retail industries. Its recommendations for CSHB 1395 would reflect the views of Texas citizens and businesses.

Texas deaths per 100,000 registered boats were two times the national average two years ago, and CSHB 1395 would assist in removing Texas from an unfavorable spotlight. The advisory panel found that similar changes in other states reduced boating accidents and deaths, and the goal of the bill would be to replicate these results in Texas. For example, Alabama saw significant decreases in fatalities resulting from boating safety legislation that included increased boater safety education and a requirement for licenses for boat operators. The bill would incorporate valid research into Texas law and bring Texas water safety to a level comparable to other states.

Because TPWD already has the necessary infrastructure in place to accommodate increased boater education requirements, the bill would not create a burden on the department to implement changes. The boater education requirements under the bill could be fulfilled by those wishing to take courses without an unreasonable burden. Courses would be available not only at live sites, but also online.

CSHB 1395 also would prevent currently qualified people from being subjected to additional requirements in order to enjoy water recreation. The exemption date of 1993 set in the bill would excuse those who could legally operate boats and other watercraft without needing education and would phase in others slowly with no fiscal costs to the state. The 1993 exemption date also would produce no economic setback to the boat manufacturing and retail industries because of the deferrals and exemptions outlined in the bill, which would allow the industries to anticipate and absorb any changes in the boating market.

The bill would provide specific procedures for Texas courts to follow when assessing whether a dismissal was appropriate for a violation under the law. Opportunity for dismissal under the bill would help courts manage any increased burden on state dockets.

OPPONENTS
SAY:

Although CSHB 1395 would attempt to educate more Texas citizens seeking to enjoy recreational activities on state waters, it could not guarantee that people would comply and thus lead to a reduction in accidents or fatalities. Enforcement would be difficult. CSHB 1395 would require operators to carry documentation of boater education, but even people who had the required documents might not carry them. In addition, nothing would prevent those without the education or documentation from entering the water and operating watercraft.