

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4163/P2dn
MGG:nwn:jf

January 29, 2010

Representative Molepske:

1. This area of current law is quite challenging. Please review carefully. I'll be happy to be meet with interested parties to explain areas where there are questions.
2. Pursuant to our telephone conversation, this is a preliminary draft done under a new LRB number. Please note there are embedded four-star notes in the draft that need to be addressed. The Snowmobile Recreation Council's recommendation did not directly make it clear what penalties were desired.
3. Under current law, there are different provisions under the OWI boating law for commercial motorboats as opposed to recreational motorboats. "Commercial motorboat" is defined under current law in s. 30.50 (3d), and I have defined "recreational motorboat" in this draft. See s. 30.50 (9m). Under current law, a person operating a commercial motorboat runs afoul with the OWI law for having a blood alcohol concentration of 0.04 percent or more, as opposed to 0.08 percent or more. Under current law, prior convictions of the law applicable to the operation of commercial motorboats count as prior violations if a person is in court to be sentenced for the OWI operation of a recreational motorboat and vice versa. This draft does not affect these provisions. However, under OWI motor vehicle law, prior regular OWI convictions count when sentencing a person for OWI operation in a commercial or occupational setting, but prior commercial or occupational OWI convictions do not apply when sentencing a person for a regular OWI law violation. Apparently, the intent is to not count violations in excess of 0.04 percent when a person is being sentenced for personal behavior as opposed to behavior on the job, since 0.04 percent is almost absolute sobriety. Please let me know if you want any changes in this regard in the OWI boating laws.

Furthermore, as to the dichotomy between OWI operation of a commercial motorboat as opposed to a personal motorboat, in this draft the provisions authorizing the court to suspend motorboating or motor vehicle operating privileges of a motorboat operator under s. 30.688 apply only when the motorboat operator is in court to be sentenced for the OWI operation of a recreational motorboat, and not for the operation of commercial motorboat. Again, this is due to my understanding that the intent of this legislation is only to affect the penalties for the operation of recreational motorboats.

4. Under current law relating to the OWI operation of ATVs, motorboats, and snowmobiles the provisions for doubling the penalties when there is an underaged

passenger do not apply to OWI violations that involve the use of a controlled substance as opposed to alcohol. Do you want to include that change in this draft?

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