

HOUSE No. 4229

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, November 26, 2019.

The committee on Environment, Natural Resources and Agriculture, to whom was referred the petition (accompanied by bill, House, No. 821) of Kathleen R. LaNatra and others for legislation to implement a boating education program within the Division of Law Enforcement of the Department of Fisheries, Wildlife and Environmental Law Enforcement, reports recommending that the accompanying bill (House, No. 4229) ought to pass.

For the committee,

SMITTY PIGNATELLI.

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The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to boater safety to be known as the David Hanson Act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. This Act shall be referred to as the “David Hanson Boater Safety Act”.

2 SECTION 2. Section 1 of chapter 90B of the General Laws, as appearing in the 2014
3 Official Edition, is hereby amended by striking out the following definitions; “Director” and
4 “Operator” and inserting in place thereof, the following definitions:-

5 “Director,” - the director of law enforcement of the office of law enforcement, or his
6 authorized designee.

7 “Operator” – any person who operates, or has charge of the navigation, or use of a
8 motorboat or vessel and/or, is responsible for the vessel and its passengers.

9 SECTION 3. Said section 1 of said chapter 90B, as so appearing, is hereby further
10 amended by inserting, after the definition of “Motorboat”, the following definitions:-

11 “NASBLA” – The National Association of State Boating Law Administrators

“Office of law enforcement” or “division of law enforcement of the department of fisheries, wildlife and environmental law enforcement”, the office of law enforcement in the executive office of energy and environmental affairs established under section 10A of chapter 21A, also known as the “Massachusetts Environmental Police”.

SECTION 4. Said Chapter 90B is further amended by adding after section 9B the following 7 sections:-

Section 9C. In sections 9D to 9I, inclusive, the following words shall have the following meanings:

“Commercial Fishing Vessel” - for the purpose of this chapter means; any vessel, boat, ship or other water craft designed, manufactured and used exclusively for the harvesting of fish, shellfish and crustaceans for purposes of sale, barter or exchange and shall include any vessel documented under the laws of the United States to carry passengers for hire exclusively to harvest fish, shellfish or crustaceans. Commercial fishing vessels shall include Fishing trawlers (with or without shellfish dredges), Seine vessels, Longline vessels, Gillnet vessels, Hydraulic shellfish dredges, lobster and shellfish vessels manufactured with pot hauler systems.

Vessels designed and manufactured for recreational purposes in accordance with United States Coast Guard regulations, which are utilized for fishing purposes on a seasonal, part-time, or occasional basis; or which are utilized in a recreational manner at any time, shall be considered recreational vessels for the purpose of MGL 90B section 9D and shall not be considered a “Commercial Fishing Vessel”.

“Motorboat”, a vessel propelled by machinery whether or not, such machinery is the principal source of propulsion.

34 “Non-resident”, a person whose legal residence is not within the commonwealth.

35 “Other jurisdiction” or “another jurisdiction”, any other state, territory and the District of
36 Columbia of the United States; any state, Province and Territory of Canada; and, any other
37 foreign state or country.

38 “Person”, a natural person.

39 “Personal watercraft”, a motorboat of less than 16 feet in length, propelled by an inboard
40 water jet pump or other machinery as its primary source of motor propulsion which is designed
41 to be operated by a person sitting, standing or kneeling on the vessel rather than being operated
42 in the conventional manner by a person sitting or standing inside the vessel.

43 Section 9D. (a) The director of the office of law enforcement shall establish and
44 administer a boater safety education program for motorboat operators, to include without
45 limitation, course content, education certification standards, knowledge testing, qualifications of
46 course instructors, approval of course and equivalency examination providers and other
47 administrative requirements pursuant to the provisions of this section and sections 9E and 9I.
48 Such education program shall be in alignment with the standards set by the National Association
49 of State Boating Law Administrators.

50 (b) As a part of the boater safety education program, the director shall establish a uniform
51 equivalency examination. The Director shall establish rules and regulation pertaining to such
52 equivalency examinations. (c) A person upon the successful completion of an approved boater
53 safety education course or equivalency examination for motorboat operators shall be issued a
54 boater safety certificate pursuant to section 9E.

(d) No person who was born on or after the specified date shall operate a motorboat on the waters of the commonwealth unless the person complies with the boater safety educational requirements of this section, beginning on the respective dates as follows:

(i) For persons who were born on and after January 1, 1993, beginning on January 1, 2023, and

(ii) For persons who were born on and after January 1, 1964, beginning on January 1, 2024.

(e) No person under the age of 12, shall operate a motorboat on the waters of the commonwealth, unless the person is accompanied onboard and directly supervised by another, who is 18 years of age or older, and holds a valid boater safety certificate, showing his qualification to operate motorboats pursuant to clauses (ii) to (iv), inclusive, of subsection (f).

(f) No person who is 12 years of age or older, shall operate a motorboat on the waters of the commonwealth, unless the person has onboard a valid boater safety certificate for motorboat operators. Notwithstanding, a person who does not hold a required boater safety certificate may operate a motorboat if the person:

(i) is accompanied onboard and directly supervised by another, who is 18 years of age or older who has onboard a valid boater safety certificate showing his qualification to operate motorboats pursuant to clauses (ii) to (iv), inclusive;

(ii) holds a valid Mariner's Credential as a vessel Master or Mate of any tonnage, Operator of Uninspected Passenger Vessel (OUPV) , launch operator's license or other similar license to captain a commercial vessel, issued by the United States Coast Guard, or an equivalent

type license issued by any state of the United States or foreign government, provided the license is onboard when operating the vessel and available for inspection by an enforcement officer;

(iii) is a non-resident, who is operating a motorboat on the waters of the commonwealth in accordance with the provisions of section 9H;

(iv) is an active member in the armed forces of the United States, National Guard, or United States Coast Guard, and who is qualified to operate motorboats based on training or position in such branch or organization; provided, the person has onboard documentation showing his qualification;

(v) has acquired new ownership of a motorboat that is numbered by the commonwealth or documented by the United States Coast Guard, and has onboard a valid temporary boater safety certificate to operate the vessel issued to the person by the director under section 9F;

(vi) is an operator of a motorboat rented in the commonwealth accordance with the provisions of section 9G;

(vii) is an operator of a motorboat in a qualified boater safety education course.

(viii) is the operator of a commercial fishing vessel as herein defined.

(ix) is a student attending an accredited secondary school, maritime school, college or university and is operating a motorboat in conjunction with a prescribed course of instruction.

(g) The boater safety education requirements and operator age requirements to operate motorboats under this section shall not apply when: (i) the vessel is operated by a law enforcement officer or a public fire service member in the performance of official duties, (ii) the person is operating the motorboat in reasonable response to an onboard emergency, when the

97 operator or person supervising the operator, while underway, becomes incapacitated or
98 physically unable to operate or supervise the operation of the vessel, or in response to another
99 vessel underway who has declared an emergency situation, (iii) the person is operating the
100 motorboat under the direction of a law enforcement officer, (iv) the vessel is a “ship’s lifeboat”
101 as defined in section 1, (v) the vessel, is the property of a branch of the armed forces of the
102 United States, National Guard, or United States Coast Guard, or is a military vessel of a foreign
103 country, or (vi) the person operating the vessel is exempted under regulation or by waiver issued
104 by the director.

105 (h) All current laws and regulations applicable to the boater safety education
106 requirements for motorboat operators under this chapter shall be posted on the office of law
107 enforcement’s public internet website.

108 (i) Nothing in this section shall be construed so as to permit the operation of a Personal
109 Watercraft by persons under the age of 16. No person under the age of 16 shall operate a
110 Personal Watercraft.

111 (j) An owner of a motorboat, or other person 18 years of age or older, having custody or
112 control of a motorboat, who knowingly permits another who is under the age of 18, to operate
113 such vessel in violation of this chapter, shall be held liable, jointly and severally with the
114 operator, for any violations, damage, or injuries caused by such operator's operation of the vessel
115 and for any fines, penalties or restitution resulting therefrom. Lack of ownership of the vessel or
116 mistake as to the age of the operator shall not be defenses in an action filed pursuant to this
117 section.

Section 9E. (a) Providers of authorized boater safety education courses or examinations for motorboat operators, shall notify the Director or his designee that such eligible person has successfully completed a course or equivalency exam. The Office of Law Enforcement shall issue all certificates. Boater safety certificates issued shall be in the form prescribed by the director. The director shall be authorized to issue a boater safety certificate to motorboat operators without the completion of a boater safety education course if the person holds a valid boating safety certificate to operate motorboats issued or recognized by the government of another jurisdiction provided such course is in alignment with NASBLA standards and that meets the boating safety education standards of the commonwealth. Such certificate may only be issued upon successful examination of the commonwealth's boating regulations.

No boater safety education certificate or similar documentation issued or authorized by another governmental jurisdiction shall be valid for the operation of a motorboat or personal watercraft in the commonwealth under this section unless approved by the Director.

A current list of Director approved jurisdictions and acceptable forms of boater safety education certification documentation that meet the boater safety education requirement shall be displayed on the official public website of the Office of Law Enforcement.

No person who is under 12 years of age, shall be issued a boater safety certificate.

Boater safety certificates issued under this subsection shall be valid for the lifetime of the person named on the certificate, except as otherwise provided by law, court judgement or administrative hearing conducted by the Director or his designee. Notwithstanding, any person authorized to enforce the provisions of M.G.L. Chapter 90B pursuant to section 12 of said chapter, or the Registrar of the Registry of Motor Vehicles, may petition the Director to

140 immediately suspend a boater safety certificate for emergency or immediate threat purposes.
141 The Director may immediately suspend or revoke a boaters safety certificate for such emergency
142 or immediate threat for public safety purposes. Such request for emergency action shall be on
143 forms prescribed by the Director.

144 (b) A resident of the commonwealth, who prior to the passage of this act, had
145 successfully completed a boater safety education course for motorboat operators, and as a result
146 was issued a boater safety certificate or equivalent documentation shall be considered valid, if
147 issued by: (i) the director, or (ii) a course provider other than the director, provided, the
148 certificate or documentation evidences the successful passage of a boating safety education
149 course for motorboat operators and, when issued, met the standards of the National Association
150 of State Boating Law Administrators or the United States Coast Guard.

151 Section 9F. An eligible person who is a resident of the commonwealth and has acquired
152 new ownership of a motorboat that is registered by the commonwealth or documented by the
153 United States Coast Guard, shall upon proper application to the director, be issued a one-time
154 temporary boater safety certificate limited to the operation of the motorboat. A temporary boater
155 safety certificate issued by the director shall expire 120 days from the date the new registration
156 or documentation for the vessel issues. The director shall not issue a temporary boater certificate
157 to a person who is under 18 years of age or has been issued a certificate under this section. No
158 temporary boater safety certificate shall be extended or renewed.

159 Section 9G. (a) A person may operate a motorboat that is rented from a boat rental
160 business in the commonwealth for a period not exceeding 14 days, who does not hold a valid
161 boater safety certificate or other documentation that shows his qualification to operate

motorboats pursuant to clauses (ii) to (iv), inclusive, of subsection (f) of section 9D, provided the person: (i) is 16 years of age or older, (ii) before operating the motorboat has recently viewed at the boat rental business or other location, a brief instructional audiovisual on motorboat safety as prescribed by the director, and, (iii) has certified under oath to viewing completely the motorboat safety audiovisual on the rental agreement and in the form prescribed by the director.

Certification documentation issued to an operator by a boat livery, shall be restricted to the operation of the vessel rented.

A person under the age of 16 who does not hold a valid boater safety certificate issued in the commonwealth or other jurisdiction, may operate a rented motorboat, if a supervising adult 18 years of age or older is onboard the vessel, provided, the adult is an authorized operator listed in the rental agreement, and holds documentation that shows his qualification to operate the rental motorboat as described in the prior paragraph.

(b) No person shall operate a motorboat rented in the commonwealth unless the person is an authorized operator listed in the rental agreement by the boat rental business and, the rental agreement document or accessible electronic copy is onboard when operating the vessel.

(c) No boat rental business, its owners, agents or employees, shall rent a motorboat to a person unless the person meets the boater safety educational requirements to operate the vessel under this chapter or regulation. Enforcement Officers may inspect such business, its audiovisual education instructions and documents provided to and/or signed by such renter or listed operator. Neither a boat livery or his agent or employee, shall rent or lease a motorboat or personal watercraft in violation of this section. Any boat livery that rents or leases any motorboat or

personal watercraft in violation of this section shall be punished by a fine of five hundred dollars for a first offense and no more than fifteen hundred dollars for subsequent offenses.

Section 9H. A person who is a non-resident may operate a motorboat on the waters of the commonwealth, if the person (i) is in compliance with the boater safety education requirements of the jurisdiction where he legally resides, and (ii) has onboard a valid boater safety certificate or other equivalent documentation showing the person is in compliance with the boating safety education requirements to operate motorboats, issued or recognized by the government of such other jurisdiction provided the education program is in alignment with NASBLA standards. If the jurisdiction of the non-resident person does not have mandated boater safety education requirements for motorboat operators, then the person shall be required to have onboard valid government issued documentation that identifies the person and his legal residential address, provided however, such identification documentation shall not meet the boater safety educational qualifications to operate motorboats rented in the commonwealth.

Non-resident persons who, operate motorboats pursuant to this section and are 18 years of age or older, may supervise the operation of motorboats by others, under the applicable provisions of subsections (e) and (f) of section 9D and section 9G.

Section 9I. (a) The director shall establish a minimum standard of boater safety education competency and skills necessary to operate motorboats under section 9D, which to the extent practicable shall incorporate, the applicable standards, practices and policies of the National Association of State Boating Law Administrators, United States Coast Guard and the boating laws, rules and regulations of the commonwealth.

204 The director shall establish the required minimum hours of course instruction or
205 equivalent training, for boater safety education courses for motorboat operators.

206 As necessary, the director may modify the program to comply with any change of
207 standards, policies, laws and regulations related to motorboat safety.

208 (b) The director shall regulate providers of boater safety education courses and
209 equivalency examinations for motorboat operators, to ensure boating safety educational program
210 requirements and guidelines are observed.

211 The director shall establish by regulation a uniform standard for the approval and
212 participation of providers of boater safety education courses and equivalency examinations for
213 motorboat operators. The regulations shall include, without limitation, the applicable standards
214 and procedures related to, approval and reauthorization of providers; course instructor
215 qualifications; manner and content of courses and equivalency examinations; issuance of boater
216 safety certificates; and other administrative requirements and policies. The director may require
217 reimbursement from providers in the event state issued materials are supplied. To increase
218 public access to boater safety education, the director shall have the authority to approve boater
219 safety courses and equivalency examinations that are accessible in an internet format or
220 combination of website based and classroom format.

221 A request to the director for approval as a provider of boater safety education courses for
222 motorboat operators shall be made by written application pursuant to regulations then in effect.
223 The director shall approve an application, if the provider and the planned course or equivalency
224 examinations meet the applicable regulatory standards. Such approval shall be conditioned on
225 the compliance and continued adherence by such person of the current standard established. For

the limited purposes of this paragraph, a “person” shall also include any agency or political subdivision of the federal government or the commonwealth; and any quasi-public, non-profit or private corporation, authority, trust, partnership, or other entity.

Approval of boater safety courses providers shall be subject to continued compliance by the provider of program standards and requirements.

The Director may suspend or revoke such provider approval at any time for non-compliance or violations of law or regulation. Course providers approved by the director shall ensure all course instructors pass a Criminal Offender Record (CORI) check prior. Such CORI checks shall be on an annual basis and subject to the review of the Office of Law Enforcement. The Director or his designee may inspect course provider documents and course material at any time.

(c) No person or entity may utilize or display the Massachusetts Environmental Police Emblem or logo, the Seal of Boating Safety, the National Association of State Boating Law Administrators (NASBLA) logo, or Seal of the Commonwealth of Massachusetts or any part thereof, without first obtaining written authorization of the Director. Any violation of this provision shall be punishable by a fine of not less than fifteen hundred dollars, nor more than twenty-five hundred dollars. (ii) No person or entity may promote, display, or offer any boater course in a manner that falsely or fraudulently represents the training or course curriculum as being approved or authorized by the Director; or falsely or fraudulently associates said training or curriculum with the Massachusetts Environmental Police, or NASBLA. Any violation of this provision shall be punished by a fine of not less than twenty-five hundred dollars nor more than

five thousand dollars or by imprisonment for no more than two years a house of correction or by both fine and imprisonment.

(d) The Director may assess a reasonable fee not to exceed one hundred dollars for review and approval of such applicant's instructional course.

(e) A current list of director approved providers of boater safety education courses and equivalency examinations shall be posted on the office of law enforcement's public internet website.

Section 9J. The director may establish reasonable fees for a boater safety certificate or temporary boater safety permit; provided, the fee, shall not exceed: (i) \$30 to initially issue a state boater safety certificate; (ii) \$20 to issue, replace or amend a temporary boater safety permit, and (ii) \$15, to replace a lost or illegible boater safety certificate, or to amend an issued certificate for reason of a change of address or legal name. The Director may require supporting documentation for purposes amending such certificate relative to a change in name or address.

SECTION 5. Paragraph (b) of section 11 of said chapter 90B, as so appearing, is hereby amended by inserting after the word "Issue", in line 39, the words:- or authorize his designees to issue, .

SECTION 6. Chapter 90B is hereby amended by inserting after section 38, the following section:-

Section 38A. Any person who, is operating a motorboat or is supervising a motorboat operator, when requested by an officer empowered to enforce this chapter, fails without reasonable excuse, to produce and allow examination of a required boater safety certificate or

other documentation, to show compliance with the boater safety education requirements under sections 9C to 9I, inclusive, shall for any violation of this provision or regulation adopted hereof, be subject to a civil penalty not to exceed \$100 for a first offense, not to exceed \$300 for a second offense and not to exceed \$1000 for third or subsequent offenses. A person shall have an affirmative defense against a charge for the failure to produce a required certificate or other document, if before or at trial on such charge, the prior issued certificate or other document, or actual copy thereof, that was valid when the violation occurred, is given to the court or trial justice.

Any person who, in response to a request by an enforcing officer under the prior paragraph, produces a fraudulent, forged or altered boater safety certificate or other documentation to show compliance with the boater safety education requirements under said sections 9C to 9I, inclusive, excepting copies or corrections allowed by the director or issuing government authority; or falsely represents to the officer that the produced certificate or other document belongs to such person or was issued or authorized by a governmental authority, shall be punished by a fine of not more than a \$1000 fine, or by imprisonment in the house of correction for not more than 1 year, or by both fine and imprisonment.

SECTION 7. There shall be established and set up on the books of the Commonwealth, a Boater Safety Program Fund. Notwithstanding the provisions relative to the distribution of fines, penalties and forfeitures in section 10G of chapter 21A, to the contrary, there shall be credited to the fund all of the fees collected by the Commonwealth, pursuant to section 9I and section 9J of chapter 90B pursuant to SECTION 4 of this Bill; in addition to 75 percent of all fines (not inclusive of Environmental Police Trust Fund monies assessed as a surcharge pursuant to MGL 90B section 39), costs, forfeitures, expenses and interest imposed pursuant to sections 2 through

14, and sections 36 and 38 of said chapter 90B, or any regulation made thereunto, and pursuant to the fourth paragraph of section 10H of chapter 21A, any revenue from appropriations or other monies authorized by the general court and specifically designated to be credited to the fund, any appropriation or grant explicitly made to the fund and any income derived from the investment of amounts credited to the fund. The remaining 25 percent of the fines, costs, forfeitures, expenses and interest imposed pursuant to said sections 2 through 14, of said chapter 90B, or any regulation made thereunto, and pursuant to the fourth paragraph of section 10H of chapter 21A shall be distributed equally among the divisions, departments or offices involved; or to the division, department or office if a single law enforcement agency was involved. Monies contributed from said 25 percent of the fines, costs, forfeitures, expenses and interest imposed pursuant to said sections 2 through 14, of said chapter 90B, or any regulation made thereunto, and pursuant to the fourth paragraph of section 10H of chapter 21A payable to the Office of Law Enforcement, shall be deposited in the Massachusetts Environmental Police Trust Fund.

(b) The Director of the Office of Law Enforcement, as trustee, shall administer the fund. All amounts credited to the fund may be expended, without further appropriation, for use by the Office of Environmental Law Enforcement for the following purposes: (i) the development, administration and management of boater safety training, awareness and education programs relative to boater safety and safe operation of vessels; (ii) administering a paddlecraft safety and responsibility program (iii) training of law enforcement personnel of the Office of Law Enforcement in courses of instruction including but not limited to; boat safety instructor training, vessel operation, search, rescue and recovery, boat accident investigations, underwater recovery training, boating under the influence and drug recognition expert training, and costs of any related equipment for administering said training; (iv) equipment required for the investigation

vessel accidents and any search and rescue or recovery made thereto; (vi) enforcement of statutes, regulations and policies applicable to the use of vessels; (vii) grants made by the Office of Law Enforcement through competitive grant process to municipalities for the purposes of clause (i) and other vessel safety activities, including all direct and indirect costs of personnel or contractors of the office of environmental law enforcement Boat Safety Bureau and Boat Theft Bureau provided, however, that the Director of the Office of Law Enforcement shall report annually, not later than January 15, to the house and senate committees on ways and means and the joint committees on environment, natural resources and agriculture, relative to the source and amount of funds deposited into the fund, the amount distributed and the purpose and recipient of expenditures from the fund.

(c) Monies deposited into the fund that are unexpended at the end of the fiscal year shall not revert to the General Fund and shall be available for expenditure in subsequent fiscal years.

(d) Not less than 25 per cent of the monies deposited in the fund shall be expended on a fiscal year basis for the activities identified in clause (i),(ii) or (iii) of subsection (b) or for grants made pursuant to clause (v) of subsection (b) to fund the activities identified in clause (i) of subsection (b). Monies that are deposited in the fund that are unexpended at the end of the fiscal year shall not revert to the general fund and shall be available for expenditure in subsequent fiscal years.

SECTION 8. Said Chapter 90B as so appearing is hereby further amended by inserting after section 5D, the following section:

Section 5E. Whoever holds themselves out to be a dealer in vessels shall be permitted by the Office of Law Enforcement. The Director shall promulgate regulations relative to sale of

336 vessels, vessel safety equipment, display of boating safety information and related safety
337 placards. The Director may require such dealers to offer for sale, personal floatation devices and
338 other such required safety equipment. Such vessel dealers are subject to inspection by the
339 Director, his designee or other enforcement personnel of the Office of Law Enforcement.
340 Persons or entities in violation of this section or any rule or regulation made thereunto shall be
341 punished by a fine of \$500 (five hundred dollars) for a first offense and \$1000 (one thousand
342 dollars) for subsequent offenses.