HOUSE DOCKET, NO. 2278 FILED ON: 2/17/2021

HOUSE . . . . . No. 3785

The Commonwealth of Massachusetts

PRESENTED BY:

Kathleen R. LaNatra

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Kathleen R. LaNatra	*12th Plymouth*	*2/17/2021*
Michelle L. Ciccolo	*15th Middlesex*	*2/26/2021*
Susan Williams Gifford	*2nd Plymouth*	*3/4/2021*
Mathew J. Muratore	*1st Plymouth*	*3/8/2021*
Josh S. Cutler	*6th Plymouth*	*5/11/2021*
Smitty Pignatelli	*4th Berkshire*	*5/12/2021*
Michael D. Brady	*Second Plymouth and Bristol*	*5/17/2021*
Patrick Joseph Kearney	*4th Plymouth*	*5/19/2021*
Susan L. Moran	*Plymouth and Barnstable*	*5/19/2021*
Patrick M. O'Connor	*Plymouth and Norfolk*	*6/21/2021*

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HOUSE . . . . . No. 3785

By Mrs. LaNatra of Kingston, a petition (accompanied by bill, House, No. 3785) of Kathleen R. LaNatra and others relative to boater safety. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

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:

SECTION 1. Chapter 29 of the General Laws is hereby amended by inserting after section 2OOOOO the following section:-

Section 2PPPPP. There shall be a Boater Safety Program Fund. Notwithstanding any general or special law to the contrary, there shall be credited to the fund: (i) the fees collected pursuant to section 9I and section 9J of chapter 90B; (ii) 75 per cent of all fines, costs, forfeitures, expenses and interest imposed pursuant to sections 2 through 14, inclusive, and sections 36 and 38 of said chapter 90B or any regulation made thereunder; (iii) 75 per cent of all fines issued pursuant to the fourth paragraph of section 10H of chapter 21A; (iv) any revenue from appropriations or other monies authorized by the general court and specifically designated to be credited to the fund; (v) any appropriation, grant, gift or other contribution made to the fund; and (vi) any income derived from the investment of amounts credited to the fund. The remaining 25 per cent of the fines, costs, forfeitures, expenses and interest imposed pursuant to said sections 2 through 14, inclusive, of said chapter 90B, or any regulation made thereunder,

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 per cent of the fines, costs, forfeitures, expenses and interest imposed pursuant to said sections 2 through 14, inclusive, of said chapter 90B, or any regulation made thereunder, and pursuant to the fourth paragraph of section 10H of chapter 21A payable to the office of law enforcement in the executive office of energy and environmental affairs established under section 10A of chapter 21A, 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 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 of 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 law enforcement; 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).

SECTION 2. Section 1 of chapter 90B of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by striking out the definitions of "Director" and "Division" inserting in place thereof the following definition:-

"Director",—the director of law enforcement of the office of law enforcement, or authorized designee.

"Division",—the office of law enforcement.

SECTION 3. Said section 1 of said chapter 90B, as so appearing, is hereby further amended by inserting after the definition of "Motorboat" the following 2 definitions:-

"NASBLA",—the national association of state boating law administrators.

"Office of 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 section 1 of said chapter 90B, as so appearing, is hereby further amended by striking out the definition of "Operator" and inserting in place thereof the following definition:-

"Operator",—any person who operates, has charge of the navigation or use of a motorboat or vessel or is responsible for the vessel and its passengers.

SECTION 5. Said Chapter 90B is hereby amended by inserting after section 9B the following 7 sections:-

Section 9C. In sections 9D to 9I, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Commercial fishing vessel", any vessel, boat, ship or other water craft designed, manufactured and used exclusively for the harvesting of fish, shellfish or 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 and lobster and shellfish vessels manufactured with pot hauler systems; provided, however, 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 purposes of 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.

"Non-resident", a person whose legal residence is not within the commonwealth.

"Other jurisdiction" or "another jurisdiction", any other state, territory and the District of Columbia; any state, province or territory of Canada; or, any other foreign state or country.

"Person", a natural person.

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

Section 9D. (a) The director shall establish a boater safety education examination for motorboat operators. The examination shall be in general alignment with the standards set by the NASBLA.

(b) The director may establish rules and regulations pertaining to such boater safety education examinations.

(c) A person may take the boater safety education examination online under supervised conditions at an authorized, self-certified supervisory location. Upon the successful completion of the boater safety education examination, the person shall be issued a boater safety certificate. Said certificate may be printed and used by the person taking the examination online. If a person

does not pass the boater safety education examination on the first attempt, the person shall take a boater safety education course before retaking the examination. The examination may be taken an unlimited number of times until successfully completed.

(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 or after January 1, 1993, beginning on January 1, 2023;

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

(iii) For persons born before January 1, 1964, beginning on January 1, 2025.

(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 a person 18 years of age or older who holds a valid boater safety certificate, showing their qualification to operate motorboats pursuant to clauses (ii) to (iv), inclusive, of subsection (f).

(f) No person 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; provided, however, a person who does not hold a valid boater safety certificate may operate a motorboat if the person:

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

(ii) holds a valid merchant mariner credential, pursuant to 46 USC § 7510, as a vessel master or mate of any tonnage, operator of uninspected passenger vessel, 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 a division law enforcement officer or has on board a printed self-certification evidencing such credentials;

(iii) is a non-resident, who is operating a motorboat on the waters of the commonwealth pursuant to 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 or has on board a printed self-certification evidencing such credentials;

(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 printed pursuant to 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 boater safety education course;

(viii) is the operator of a commercial fishing vessel; or

(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 division law enforcement officer or employee of a municipal fire department or the department of fire services in the performance of their official duties; (ii) the person is operating the motorboat in reasonable response to an onboard emergency including, but not limited to, when the operator or person supervising the operator pursuant to this section becomes incapacitated or physically unable to operate or supervise the operation of the vessel or in response to another vessel that has declared an emergency situation; (iii) the person is operating the motorboat under the direction of a division law enforcement officer; (iv) the vessel is a ship's lifeboat; (v) the vessel is the property of a branch of the armed forces of the United States, National Guard or United States Coast Guard, or is a military vessel of a foreign country; or (vi) the person operating the vessel is exempted pursuant to regulation or by waiver issued by the director.

(h) The division shall publish on its website: (i) all current laws and regulations applicable to the boater safety education requirements for motorboat operators; and (ii) the content expected to be understood and tested for in the boater safety examination. The Director may have multiple examinations such that not all examinations will ask the same questions.

(i) No person under the age of 16 shall operate a personal watercraft.

(j) An owner of a motorboat or other person 18 years of age or older, having custody or control of a motorboat, who knowingly permits a person under the age of 18, to operate the vessel in violation of this chapter, shall be held liable, jointly and severally with the operator, for

any violations, damages or injuries caused by such operator's operation of the vessel and for any fines, penalties or restitution resulting therefrom. Lack of ownership of the vessel or mistake as to the age of the operator shall not be defenses in an action filed pursuant to this section.

Section 9E. (a) (i) Providers of boater safety education courses or examinations for motorboat operators, shall supervise examinations to assure no assistance is provided to the person taking the examination. The director may require self-certification of all such boater safety education course providers that the examination conditions are enforced. If a provider fails to provide a required self-certification, the director may bar the provider from providing boater safety education courses or examinations. Upon the successful completion of the examination by a person, the director shall arrange for the electronic examination to send an electronic copy of the successful certificate to the division, as well as enable printing of the certificate at the location where the examination is taken. Boater safety certificates issued pursuant to this section 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.

(ii) Boater safety education certificates 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.

(iii) No person under 12 years of age shall be issued a boater safety certificate.

(iv) Boater safety certificates issued pursuant to this section 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. Any person authorized to enforce the provisions of chapter 90B pursuant to section 12 or the registrar of motor vehicles, may petition the director to immediately suspend a boater safety certificate for emergency or immediate threat purposes. The director may immediately suspend or revoke a boaters safety certificate for such emergency or immediate threat for public safety purposes. Such request for emergency action shall be on forms prescribed by the director.

(b) A boater safety certificate or equivalent documentation possessed by a resident of the commonwealth who, prior to the passage of this act, had successfully completed a boater safety education course for motorboat operators shall be considered valid, if issued by: (i) the director; (ii) a course provider other than the director; or (iii) another governmental jurisdiction; provided, the certificate or documentation evidences the successful passage of a boating safety education course for motorboat operators and, when issued, met the standards of NASBLA or the United States Coast Guard.

Section 9F. An eligible person who is a resident of the commonwealth and has acquired new ownership of a motorboat that is registered by the commonwealth or documented by the United States Coast Guard, shall upon electronic self-certification to the director, be authorized to print a one-time temporary boater safety certificate limited to the operation of the registered motorboat. A temporary boater safety certificate shall expire 120 days from the date the new registration or marine documentation issued by the Bureau of Customs of the United States government or any federal agency successor for the vessel . The director shall not provide for electronic issuance of a temporary boater certificate to a person who is under 18 years of age or has already been issued a temporary certificate under this section. No temporary boater safety certificate shall be extended or renewed.

Section 9G. (a) A person who does not hold a valid 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 may operate a motorboat that is rented from a boat rental business in the commonwealth for a period not exceeding 14 days, 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 rented vessel.

A person under the age of 16 who does not hold a valid boater safety certificate issued in the commonwealth or other jurisdiction may only 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 their qualification to operate the rental motorboat as described in this subsection.

(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 or an accessible electronic copy of the rental agreement 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 regulations promulgated by the director. Division law enforcement officers

may inspect such business, its audiovisual education instructions and documents provided to or signed by the renter or listed operator. Neither a boat livery or its 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 $500 for a first offense and no more than $1,500 for subsequent offenses.

Section 9H. A non-resident person 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 they legally reside; 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. If the jurisdiction of the non-resident person does not have a valid boater safety certificate, then the person shall be required to have onboard valid government issued documentation that identifies the person and their legal residential address.

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 other persons, pursuant to subsections (e) and (f) of section 9D or section 9G.

Section 9I. (a) The director shall establish a written examination to be issued by all providers of boater safety education courses at the completion of the course to all students. The director shall establish a minimum grade on the written examination that students must attain to be issued a boater safety certificate by the provider of the boater education course. The written examination may incorporate, in the discretion of the director, the applicable standards, practices

and policies of NASBLA, United States Coast Guard and relevant laws, rules and regulations of the commonwealth.

(b) (i) No person or entity may utilize or display the Massachusetts Environmental Police emblem or logo, the seal of safe boating, the 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 subsection shall be punishable by a fine of not less than $1,500 nor more than $2,500.

(ii) No person or entity may promote, display or offer any boater course that: (i) falsely or fraudulently represents the training or course curriculum as being approved or authorized by the director; or (ii) falsely or fraudulently associates the 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 $2,500 nor more than $5,000.

(c) A current list of self-certified supervisory locations at which one can take the examination shall be posted on the division's public internet website. This list shall include all providers that have sent in their self-certification checklist to the director and not had their self-certification revoked for failure to supervise the examination sufficiently.

Section 9J. The director may establish reasonable fees for taking the boating safety examination or printing a boater safety certificate or temporary boater safety permit; provided, the fee shall not exceed the reasonable costs of implementing the program over time. The initial fee shall be: (i) $50 to take the examination and $10 to print a state boater safety certificate with a copy sent electronically to the director; (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 amended 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 6. Paragraph (b) of section 11 of said chapter 90B, as appearing in the 2018 Official Edition, is hereby amended by inserting after the word “Issue”, in line 39, the words:- or authorize a designee to issue.

SECTION 7. Said 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 pursuant to section 12 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 section 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 $1,000 for a third or subsequent offense. A person shall not be subject to a civil penalty if they can produce and deliver to the director a boater safety certificate or other required document that was valid at the time of the violation.

Any person who produces a fraudulent, forged or intentionally falsely altered boater safety certificate or other false documentation in response to a request by an enforcing officer for boater safety education requirements under said sections 9C to 9I, inclusive, 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, may be punished by a fine of not more than a $5,000.

SECTION 8. This act shall be known as the David Hanson Boater Safety Act.