



# Council of the Cherokee Nation

Cherokee Nation Tribal  
Council  
17763 S. Muskogee Ave.  
Tahlequah, OK 74464

## Legislation Details (With Text)

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**Sponsors:** Keith Austin, Joe Deere, Victoria Vazquez, Janees Taylor, Mike Shambaugh  
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| Date      | Ver. | Action By           | Action                            | Result |
|-----------|------|---------------------|-----------------------------------|--------|
| 5/20/2021 | 1    | OFFICE OF THE CHIEF | Signed                            |        |
| 5/17/2021 | 1    | TRIBAL COUNCIL      | Approved                          | Pass   |
| 4/29/2021 | 1    | RULES COMMITTEE     | Approved and Forwarded to Council | Pass   |

### AN ACT AMENDING TITLE 21 OF THE CHEROKEE NATION CODE ANNOTATED AND DECLARING AN EMERGENCY

#### BE IT ENACTED BY THE CHEROKEE NATION:

#### Section 1. Title and Codification

This act shall be known and cited as the “Boating Safety Act of 2021” and codified as Title 21, Part IX “Boating Safety” of the Cherokee Nation Code Annotated, which is hereby amended in accordance with this Act.

#### Section 2. Purpose

The purpose of this Act is to establish laws relevant to boating safety within the Cherokee Reservation.

#### Section 3. Legislative History

|          |          |          |          |
|----------|----------|----------|----------|
| LA-10-90 | LA-32-03 | LA-20-08 | LA-03-21 |
| LA-13-91 | LA-36-03 | LA-22-08 | LA-07-21 |
| LA-24-02 | LA-08-06 | LA-08-12 |          |
| LA-25-02 | LA-10-06 | LA-09-12 |          |
| LA-39-02 | LA-18-06 | LA-35-12 |          |

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|----------|----------|----------|
| LA-40-02 | LA-29-06 | LA-10-13 |
| LA-41-02 | LA-31-06 | LA-09-16 |
| LA-42-02 | LA-34-06 | LA-12-18 |
| LA-31-03 | LA-09-07 | LA-28-20 |

**Section 4. Substantive Provisions**

**PART IX**

**BOATING SAFETY**

**§ 4200. Short title**

Section 4201 *et seq.* of this title shall be known and may be cited as the “Boating Safety Act of 2021”.

**§ 4201. Definitions**

In addition to the terms defined by the 63 O.S. § 4002, for the purposes of this Act:

1. “Buoy” means an anchored marker for marking a position on the water, or a hazard, shoal or mooring, or any other prohibitive activity area;
2. “Capacity plate” means a sign posted in view of the operator’s station on a vessel which designates the maximum weight capacity and horsepower restrictions of a vessel for safe operation;
3. “Diver’s flag” means a red flag not less than twenty (20) inches by twenty-four (24) inches with a four-inch white stripe running from one upper corner to a diagonal lower corner, and such flag is used to indicate a submerged diver;

4. "Emergency vessel" means any law enforcement vessel which is legally authorized to operate in the emergency mode;
5. "Law enforcement vessel" means any vessel legally authorized to operate under the color of law;
6. "Lienholder" means a person holding a security interest in a vessel, as shown on the vessel title;
7. "Manipulate" means to guide, steer or otherwise control;
8. "Marine sewage" means any substance, treated or untreated, that contains any of the waste products of humans or animals or foodstuffs;
9. "Marine toilet" means any latrine, head, lavatory or toilet intended to receive marine sewage and which is located on or in any vessel;
10. "Operator" means the person who operates, has actual physical control, or has charge of the navigation or use of a vessel;
11. "Parasail" means any device which, when airborne, is used or capable of being used for lifting or suspending a person who is being or will be towed by a vessel;
12. "Passenger" means any person riding in or upon any vessel or being towed for recreation on water skis, an inner tube, kneeboard, parasail or any similar device;

13. "Personal flotation device" means only a United States Coast Guard approved flotation device;

14. "Personal watercraft" means a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel, or a vessel which is similar in appearance and operation to a personal watercraft but which is powered by an outboard or propeller driven motor, or a vessel less than sixteen (16) feet in length which travels across the water above or on a cushion of air provided by engines, propellers or other means of propulsion;

15. "Sanctioned event" means any organized event on the waters of this Nation, including but not limited to regattas, motorboat or other boat races, marine parades, tournaments and exhibitions, which is approved and permitted by an authorizing agency;

16. "Under way" means the movement of a vessel whether by mechanical or non-mechanical means which is other than incidental to the force of wind, waves or current; and

17. "Wake" means the track of waves left by a vessel or other object moving through the water, and such waves are greater than the natural waves in the immediate area of the vessel, or are cresting and showing white water, or may cause injury or damage to any person or property.

**§ 4202. Reserved**

### **§ 4202.1. Operators of emergency vessels--Exercise of certain privileges**

A. The operator of an emergency vessel, when responding to an emergency call, when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a response to an emergency situation, may exercise the privilege set forth in this section, subject to the conditions set forth in subsection B of this section.

B. The operator of an emergency vessel may:

1. Park, moor or beach the vessel irrespective of the provisions of this title;
2. Proceed past a restrictive buoy, but only after slowing down as may be necessary for safe operation;
3. Exceed the maximum speed or wake limits so long as that action does not endanger life or property; and
4. Disregard rules governing direction of movement or turning in specified directions.

C. The exemptions granted in this section shall apply only when an emergency vessel is making use of audible and visual signals meeting the requirements of Section 4207 of this title.

D. The provisions of this section shall not relieve the operator of an emergency vessel from the duty to drive with due regard for the safety of all persons or protect

the driver from the consequences of reckless disregard for the safety of others.

## **§§ 4203-4205. Reserved**

## **§ 4206. Use of personal flotation devices**

A. 1. The operator of a vessel less than twenty-six (26) feet in length, while under way, shall require each passenger who is twelve (12) years of age or younger to wear a personal flotation device.

2. Any person operating or manipulating, or who is a passenger on a personal watercraft, water skis, a sailboard or a similar device shall wear a personal flotation device approved and designed for the activity in which the person is engaged.

B. Each personal flotation device shall be in good and serviceable condition, of the type prescribed by the United States Coast Guard and of a size suitable to the person who is or will be wearing it. A ski belt is not a United States Coast Guard approved personal flotation device.

## **§ 4207. Lights and other equipment**

A. Every vessel in all weathers between the hours from sunset to sunrise and during periods of restricted visibility shall carry and exhibit the lights prescribed by the United States Coast Guard when under way, including, but not limited to, the following:

1. Every power-driven vessel shall carry and exhibit:

a. a masthead light forward. A vessel less than twenty (20) meters, or less than sixty-five (65) feet seven and one-half (7 ½ ) inches in length need not exhibit this light forward of amidships but shall exhibit it as far forward as practicable, and

b. side lights, and

c. a stern light;

2. Any power-driven vessel of less than twelve (12) meters, or less than thirty-nine (39) feet four and one-half (4 ½ ) inches in length may carry and exhibit, in lieu of the lights prescribed in paragraph 1 of this subsection, an all-around white light and side lights;

3. Every sailing vessel shall carry and exhibit:

a. side lights, and

b. a stern light;

4. Any sailing vessel of less than twenty (20) meters, or less than sixty-five (65) feet seven and one-half (7 ½ ) inches, in length may combine the lights prescribed in paragraph 3 of this subsection within one lantern carried at or near the top of the mast where it can be seen as nearly all-around as possible;

5. Any sailing vessel may carry and exhibit, in addition to the lights prescribed in paragraph 3 of this subsection but not in conjunction with any combination lantern as provided in paragraph 4 of this subsection, two all-around lights in a vertical line, the upper being red and the lower being green, at or near the top of the mast where they can be seen as nearly all-around as possible;

6. Every sailing vessel of less than seven (7) meters, or less than twenty-three (23) feet eleven and one-half (11 ½ ) inches in length shall carry and exhibit if practicable, the lights prescribed in paragraph 3 or 4 of this subsection. If such exhibition is not practicable, there shall be carried ready at hand on the vessel a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision;

7. Every sailing vessel propelled by a combination of sail and motor shall carry and exhibit the lights of a power-driven vessel prescribed in paragraph 1 or 2 of this subsection;

8. Every manually powered vessel may carry and exhibit the lights prescribed in this subsection for sailing vessels. If such lights are not carried and exhibited, there shall be carried ready at hand on the vessel a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert collision; and

9. Every vessel at anchor shall carry and exhibit an all-around white light in such a position where it may best be seen. The deck of an anchored vessel may be illuminated by available auxiliary lights, provided the auxiliary lights do not interfere with the visibility of required lights or impair the safe navigation of other vessels.

For purposes of this section, “restricted visibility” shall mean any condition which restricts visibility including but not limited to fog, mist, falling snow, heavy rain or sandstorm.



B. Every vessel shall be provided with an efficient whistle or other sound-producing mechanical appliance; provided, however, no vessel, except for emergency and law enforcement vessels, shall be equipped with a siren.

C. Every vessel of eight (8) meters or greater, or twenty-six (26) feet three (3) inches or greater, in length shall be equipped with an efficient bell.

D. Every vessel shall be required to carry:

1. At least one wearable personal flotation device for each person on board so placed as to be readily accessible and of a size suitable to the person who is or will be wearing it; and

2. At least one type IV (throwable) personal flotation device on board, so placed as to be readily accessible. This paragraph shall not apply to any vessel under sixteen (16) feet in length.

All lifesaving devices shall be in good and serviceable condition.

E. Every vessel using flammable liquid as fuel shall be equipped with such number, size, and type of United States Coast Guard approved fire extinguisher as prescribed in the rules of the Department of Public Safety. Such extinguisher shall be capable of promptly and effectively extinguishing burning fuel. Fire extinguishers shall be at all times kept in condition for immediate and effective use and shall be so placed and secured to the vessel as to be readily accessible.

F. The provisions of subsections B, C, and E of this section shall not apply to vessels while competing in any race conducted pursuant to Section 4205 of this title, or, if such vessels are designed and intended solely for racing, while engaged in such navigation as is incidental to the tuning up of vessels and motors for the race.

G. Every vessel shall have the carburetor or carburetors of every motor therein, except outboard motors, using any liquid as fuel, equipped with a United States Coast Guard or U.L. or S.A.E. approved backfire flame arrestor or other appropriate attachment, as prescribed by the rules of the Department of Public Safety.

H. Every vessel, except open vessels, using any liquid as fuel shall be provided with such means as may be prescribed by the United States Coast Guard for properly and efficiently ventilating the bilges of the motor and fuel tank compartments so as to remove any explosive or inflammable gases.

I. No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof and as prescribed in the rules of the Department of Public Safety.

#### **§ 4208. Noise control equipment and noise levels**

A. No person shall operate upon the waters of this Nation any vessel or motor which is not equipped with a muffler or muffler system in good working order. The use of cutouts, removal of mufflers or muffler baffles, cutting or punching of holes in mufflers or otherwise modifying the original muffler or muffling system installed by the manufacturer or any subsequent muffler or muffling system so as to increase or modify the noise level is prohibited. This section shall not apply to vessels in the act of participating in a sanctioned event.

B. No person shall authorize, cause or permit unnecessary sounding of any whistle, horn, bell, siren or other sound-producing device on a vessel while such vessel is within any harbor limits or in areas of congested vessel traffic.

#### **§ 4209. Unlawful possession of vessel or motor--Penalties**

A person not entitled to possession of a vessel or motor who, without the consent of the owner and with intent to deprive him of the vessel or motor or its possession, takes, uses, or operates the vessel or motor, upon conviction, shall be guilty of a felony and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00), or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

**§ 4209.1. Knowingly receiving, possessing, selling or disposing of stolen or converted vessel or motor--Penalties**

A person not entitled to the possession of a vessel or motor who receives, possesses, sells or disposes of such vessel or motor, knowing said vessel or motor to be stolen or converted under circumstances constituting a crime, upon conviction, shall be guilty of a felony and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00), or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

**§ 4209.2. Removing or falsifying identification number of vessel or motor--Penalties**

A. As used in this section:

1. "Identification number" includes any identifying number, serial number, motor serial number or other distinguishing number or mark, placed on a vessel or motor by its manufacturer or by authority of an appropriate registering jurisdiction in accordance with the laws of another tribe, state, or country;

2. "Remove" includes deface, cover and destroy; and

3. "Falsify" includes alter and forge.

B. Any person or persons who shall remove or falsify or cause to be removed or falsified the hull identification number of a vessel or motor in this Nation, without first giving notice of such act to the registering jurisdiction, upon such form as such jurisdiction may prescribe, or any person who shall give a wrong description in any application for the registration of any vessel or motor in this Nation for the purpose of concealing or hiding the identity of such vessel or motor, upon conviction, shall be guilty of a felony and shall be punished by a fine of not more than Fifteen Thousand Dollars (\$15,000.00), or by imprisonment for not more than three (3) years, or by both such fine and imprisonment.

C. A person who buys, receives, possesses, sells or disposes of a vessel or motor, knowing that the identification number of the vessel or motor has been removed or falsified, upon conviction, shall be guilty of a misdemeanor.

D. A person who buys, receives, possesses, sells or disposes of a vessel or motor, knowing that the identification number of the vessel or motor has been removed or falsified and with intent to conceal or misrepresent the identity of the vessel or motor, upon conviction, shall be guilty of a felony and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00), or by imprisonment for not more than three (3) years, or by both such fine and imprisonment.

E. An identification number may be placed on a vessel or motor by its manufacturer in the regular course of business or placed or restored on a vehicle or engine by authority of the Commission without violating this section. An identification number so placed or restored is not falsified.

**§ 4209.3. Making false statement in application for certificate of title or assignment thereof for stolen vessel or motor--Penalties**

Any person who shall knowingly make any false statement of a material fact, either in his application for a certificate of title, as provided for in this title, or in any assignment thereof, or who, with intent to procure or pass title to a vessel or motor which he knows or has reason to believe has been stolen, or who shall receive or transfer possession of the same from or to another, or who shall have in his possession any vessel or motor which he knows or has reason to believe has been stolen, and who is not a duly authorized peace officer of this Nation engaged at the time in the performance of his duty as such officer, upon conviction, shall be guilty of a felony and shall be punished by a fine of not more than Fifteen Thousand Dollars (\$15,000.00), or by imprisonment for not more than three (3) years, or by both such fine and imprisonment.. This provision shall not be exclusive of any other penalties prescribed by an existing or future law for the larceny or unauthorized taking of a vessel or motor.

#### **§ 4209.4. Altering or forging certificate of title or assignment thereof--Penalties**

Any person who shall alter or forge, or cause to be altered or forged, any certificate of title issued by the Cherokee Nation Tax Commission, pursuant to the provisions of this title, or any assignment thereof, or who shall hold or use any such certificate or assignment, knowing the same to have been altered or forged, upon conviction, shall be guilty of a felony and shall be punished by a fine of not less than Fifty Dollars (\$50.00), and not more than Five Thousand Dollars (\$5,000.00), or by imprisonment for a period of not more than three (3) years, or by both such fine and imprisonment.

#### **§ 4209.5. Injuring, tampering with or damaging vessel or motor or accessories, appurtenances or attachments thereto--Climbing into or upon vessel with intent to commit crime**

A. A person who, with intent and without right to do so, injures or tampers with any vessel or motor or in any other manner damages any part or portion of said vessel or motor or any accessories, appurtenance or attachments thereto, upon

conviction, shall be guilty of a misdemeanor.

B. A person who, without right to do so and with intent to commit a crime, climbs into or upon a vessel whether it is in motion or at rest, attempts to manipulate any of the levers, starting mechanism or other mechanism or device of a vessel while the same is at rest and unattended, or sets in motion any vessel while the same is at rest and unattended, upon conviction, shall be guilty of a misdemeanor.

#### **§ 4209.6. Falsely reporting theft or conversion of vessel or motor**

A person who knowingly makes a false report of the theft or conversion of a vessel or motor to any duly authorized peace officer of this Nation, upon conviction, shall be guilty of a misdemeanor.

#### **§ 4209.7. Additional unlawful acts--Penalties**

A. Except as otherwise authorized by law, it shall be unlawful for any person to commit any of the following acts:

1. To lend or to sell to, or knowingly permit the use of by, one not entitled thereto any certificate of title or certificate of registration issued to or in the custody of the person so lending or permitting the use thereof;
2. To alter or in any manner change a certificate of title or certificate of registration issued under the laws of this Nation or any state;
3. To purchase identification or number plates on a certificate of title

assigned to another vessel or motor; or

4. To sell or dispose of, in any manner, a used vessel or motor without delivering to the purchaser a valid certificate of title in such purchaser's name or one properly and completely assigned to him at the time of sale.

B. Anyone violating any of the provisions of this section, upon conviction, shall be guilty of a misdemeanor and shall be fined not less than Ten Dollars (\$10.00) and not more than One Hundred Dollars (\$100.00).

#### **§ 4209.8. Inspections for purpose of locating stolen vessels and related equipment**

Any peace officer of this Nation may inspect any vessel, motor, trailer, or related equipment in any public garage or repair shop or in any place where such vessel, motor, trailer or related equipment is being held for sale or wrecking, for the purpose of locating stolen vessels, motors, trailers, or related equipment and investigating the title and registration of those items.

#### **§ 4210. Operation of certain devices or vessels--Prohibited acts--Yielding to emergency vessels--Penalties**

A. No person shall operate, manipulate or give permission to any person to operate or manipulate any parasails, water skis, surfboard, personal watercraft, or similar device, or any vessel in a reckless or negligent manner so as to endanger the life or property of any person.

B. No person shall lease or otherwise give permission to another person to operate any vessel on any waters of this Nation, except privately owned waters, while the operator is under the influence of alcohol or any substance included in the Uniform Controlled Dangerous Substances Act or any combination of alcohol and such substance.

C. Upon the immediate approach of an authorized emergency vessel making use of an audible or a visual signal or a combination thereof, the operator of every other vessel shall immediately stop his or her vessel whenever or wherever practical or otherwise yield the right-of-way until such authorized emergency vessel has passed, except when otherwise directed by a duly authorized peace officer of this Nation.

D. No person shall overload or give permission to overload a vessel with passengers or gear so as to exceed the posted capacity plate, United States Coast Guard standards, or the vessel manufacturer's recommended capacity.

E. No person shall operate or give permission to operate any vessel on the waters of this Nation for which the manufacturer has affixed a maximum horsepower capacity plate so as to exceed the posted capacity plate or to exceed the United States Coast Guard standards for maximum horsepower capacity; provided, this provision shall not apply to vessels operating in sanctioned events.

F. No person shall operate, drive or be in actual physical control of any vessel on any waters of this Nation, except privately owned waters, at speeds in excess of the speed limits established for those waters.

G. No person shall operate on the waters of this Nation, except privately owned waters, any vessel, including personal watercraft, within fifty (50) feet in proximity to another vessel when running at speeds of over ten (10) miles per hour; provided, this prohibition shall not apply to vessels operating in sanctioned events.



H. Any violation of the provisions of this section shall constitute a misdemeanor and shall be punishable, upon conviction, by a fine of not less than Fifty Dollars (\$50.00) nor more than Two Hundred Fifty Dollars (\$250.00) and shall be subject to imprisonment in the county jail for a period not to exceed six (6) months.

#### **§ 4210.1. Negligent homicide--Penalties**

A. When the death of any person ensues within one (1) year as a proximate result of injury received by the operating of a vessel by any person sixteen (16) years of age or older in reckless disregard of the safety of others, the person so operating such vessel shall be guilty of negligent homicide.

B. Any person convicted of negligent homicide shall be punished by imprisonment in the county jail for not more than one (1) year, or by a fine of not less than One Hundred Dollars (\$100.00) and not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

#### **§ 4210.2. Eluding or attempting to elude peace officer--Assisting peace officer--Arrests**

Any operator of a vessel who has received a visual and audible signal, a red light and a siren, from any duly authorized peace officer of this Nation, operating a vessel showing the same to be a law enforcement vessel, directing the said operator to bring his vessel to a stop and who willfully increases his speed or extinguishes his lights in an attempt to elude such officer, or willfully attempts in any other manner to elude the officer, or who does elude such officer, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not more than Two Thousand Dollars (\$2,000.00), or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment.

Said peace officer, while attempting to stop a violator of this section, may communicate a request for the assistance of other duly authorized peace officers from any office, department or agency of this Nation. Any such officer within this Nation, having knowledge of such request, is authorized to render such assistance in stopping the violator and may effect an arrest under this section upon probable cause.

#### **§ 4210.3. Transporting weapon in or discharging weapon from vessel--Exceptions--Penalties**

It shall be unlawful to transport a shotgun, rifle or pistol in or to discharge such weapons from a vessel, except for the purposes of hunting animals or fowl, and in compliance with existing tribal, state, and federal laws. Anyone violating the provisions of this section, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not less than Fifty Dollars (\$50.00) and not more than One Hundred Dollars (\$100.00), or by imprisonment in the county jail for not less than ten (10) days and not more than six (6) months, or by both such fine and imprisonment. Any person in possession of a valid handgun license from this Nation or a reciprocal state shall not be deemed guilty of transporting a pistol in violation of this section when a handgun is carried concealed or unconcealed upon or about their person in compliance with the provisions of the laws of this Nation.

#### **§ 4210.4. Care and prudent speed to be used in operation of vessel--Operation in wake zone--Parking, mooring or beaching in a swimming area--Violation**

A. Any person who operates or gives permission to operate a vessel on any waters of this Nation shall operate the same at a careful and prudent speed not greater than nor less than is reasonable or proper, having due regard to other vessels, water skiers, swimmers, sanctioned events, restrictive and informational markers or

buoys, existing wind conditions, waves, wakes or other weather conditions then existing.

B. No person shall operate or give permission to operate a vessel in a wake zone at a speed which is other than reasonable and prudent and which shows due regard for the existence of actual or potential hazards and obstacles, or in such a manner as to endanger the life, limb or property of any other person, or in such a manner as to create a wake. For the purpose of this title, "no wake zone" means any area posted with buoys or within one hundred fifty (150) feet of any boat ramp, dock, pier, or anchored or moored vessel.

C. No person shall park, moor, or beach a vessel at the perimeter of or within a swimming area marked with buoys and cable.

D. Any violation of the provisions of this section shall constitute a careless act in the operation of the vessel.

#### **§ 4210.5. Removing, tampering or interfering with or attaching vessel to waterway marker, navigational aid or buoy**

No person shall remove, tamper or otherwise interfere with or attach or moor a vessel to the anchor cable or any other part of any waterway marker, navigational aid or buoy.

#### **§ 4210.6. Sitting and standing in vessel while under way**

No person shall sit or ride on the sides of any vessel or the back of any seat of a vessel while under way at any speed greater than idle or trolling speed; provided, however, the operator of such vessel may stand if said vessel is specifically designed to be operated from a standing position. No person shall sit or ride on the covered

bow of any vessel while under way at any speed greater than idle or trolling speed unless such vessel is designed as such to allow access to the covered bow by way of side walkways or factory-equipped walk-through areas which are surrounded by life rails, deck rails, bow rails, or other such enclosure extending at least twenty-four (24) inches above the deck; provided, that no person riding in or operating a vessel shall extend any appendage over the edge of the vessel either above or below the rail if such vessel is at any speed greater than idle or trolling speed. No person shall stand on the covered bow of any vessel while under way at a speed greater than idle or trolling speed.

#### **§ 4210.7. Occupying front or back deck of vessel while underway**

No operator shall allow any person to occupy the front or back deck of any vessel while under way at any speed greater than idle or trolling speed unless such vessel is equipped with factory-installed seating or is designed as such to allow access to the front or back deck by way of side walkways or factory-equipped, walk-through areas to a flat deck surrounded by life rails, deck rails, stern rails, bow rails, or other such enclosures extending at least twenty-four (24) inches above the deck.

#### **§ 4210.8. Operation or control of vessel under influence of alcohol or other intoxicating substance**

A. It shall be unlawful for any person to operate or be in actual physical control of a vessel upon the waters of this Nation, except privately owned waters, who:

1. Has a blood or breath alcohol concentration of eight-hundredths (0.08) or more at the time of a test of the person's blood or breath;
2. Is under the influence of any other intoxicating substance to a degree which renders such person incapable of safely operating a vessel upon the

waters of this Nation; or

3. Is under the influence of alcohol and any other intoxicating substance to a degree which renders such person incapable of safely operating a vessel upon the waters of this Nation.

As used in this section, "other intoxicating substance" means any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act<sup>1</sup> or any other substance, other than alcohol, which is capable of being ingested, inhaled, injected or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions.

B. 1. Any person operating a vessel upon the waters of this Nation, except privately owned waters, shall be deemed to have given consent to a test or tests of such person's blood, breath, saliva or urine for the purpose of determining the presence and concentration of alcohol or any other intoxicating substance. Such tests shall be performed within two (2) hours of an arrest and in the same manner as provided for in 47 CNCA § 752.

2. Evidence that the person has refused to submit to a test or tests as required by this section shall be admissible upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed in violation of the provisions of this section.

3. Any person refusing to submit to such test or tests shall be in violation of this section and subject to the fines provided for herein.

C. Any person convicted of a violation of this section shall be guilty of a misdemeanor and fined in an amount not to exceed One Thousand Dollars (\$1,000.00). Any second or subsequent conviction shall be punishable by a fine in an amount of not less than One Thousand Dollars (\$1,000.00), nor more than Two

Thousand Five Hundred Dollars (\$2,500.00).

**§ 4210.9. Implied consent to administer drug or alcohol test**

A. 1. Any person who operates a vessel upon the waters of this Nation shall be deemed to have given consent to a test or tests of the blood or breath of the person, for the purpose of determining the alcohol concentration as defined in Section 7 of this act, and the blood, saliva or urine of the person, for the purpose of determining the presence or concentration of any other intoxicating substance as defined in this section, if arrested for any offense arising out of acts alleged to have been committed while the person was operating or in actual physical control of a vessel upon the waters of this Nation while under the influence of alcohol or other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance, or if the person is involved in a boating collision that resulted in the immediate death or serious injury of any person and is removed from the scene of the collision to a hospital or other health care facility outside this Nation before a law enforcement officer can effect an arrest.

2. A law enforcement officer, having reasonable grounds to believe that such person was operating or in actual physical control of a vessel while under the influence may direct the administration of or administer the test or tests.

3. As used in this section, "other intoxicating substance" means any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act and any other substance, other than alcohol, which is capable of being ingested, inhaled, injected or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions.

B. 1. The law enforcement agency by which the arresting officer is employed may designate, in accordance with the rules of the Board of Tests for Alcohol and Drug

Influence, whether blood or breath is to be tested for the alcohol concentration thereof, and whether blood, saliva or urine is to be tested for the presence or concentration of any other intoxicating substance therein.

2. In the event the law enforcement agency does not designate the test to be administered, breath shall be the substance tested for alcohol concentration. Blood may also be tested to determine the alcohol concentration thereof in the event that breath cannot be tested to determine the alcohol concentration thereof because of the lack of an approved device or qualified person to administer a breath test or because such breath test for any other reason cannot be administered in accordance with the rules of the Board.

3. In the event the law enforcement agency does not designate the test to be administered, blood, saliva or urine shall be the substance tested for the presence or concentration of any other intoxicating substance or the combination of alcohol and any other intoxicating substance.

C. In the event the person is incapable of submitting to and successfully completing, by reason of illness or injury or other physical disability, the test to be administered, an alternate test may be administered in accordance with the rules of the Board.

D. 1. Any person who is unconscious or otherwise incapable of refusing to submit to a test of the blood or breath of the person to determine the alcohol concentration thereof, or to a test of the blood, saliva or urine of the person to determine the presence or concentration of any other intoxicating substance therein, shall be deemed not to have withdrawn the consent provided by subsection A of this section, and such test may be administered as provided herein.

2. An unconscious person who has been issued a citation by a law enforcement officer for one of the offenses listed in subsection A of this section is arrested for purposes of this section. The arresting officer must leave a copy of the citation with the arrested person which may be accomplished by handing it to the arrested person, or by leaving it with the personal effects of the arrested party, so as to inform the unconscious

person of the arrest.

3. Any person who has been arrested for one of the offenses listed in subsection A of this section who is unconscious or injured and who requires immediate medical treatment as determined by a treating physician may be released by the arresting officer on the recognizance of the person for medical reasons. The arresting officer who releases an arrested person on the recognizance of the person must indicate the release on the face of the citation. Any person released on his or her own recognizance for medical reasons shall remain at liberty pending the filing of charges.

E. In addition to any test designated by the arresting officer, the arrested person may also designate any additional test to be administered to determine the concentration of alcohol, or the presence or concentration of any other intoxicating substance or the combination of alcohol and any other intoxicating substance. The cost of such additional test shall be at the expense of the arrested person.

A sufficient quantity of any specimen obtained at the designation of the arrested person shall be available to the law enforcement agency employing the arresting officer. Such specimens shall be treated in accordance with the rules applicable to the specimens obtained by an arresting officer.

F. When a law enforcement officer has determined that the blood alcohol content of an individual is to be tested for the presence or concentration of alcohol, other intoxicating substance, or the combination of alcohol and any other intoxicating substance, the law enforcement officer shall inform the individual to be tested that the withdrawal of blood shall only be performed by certain medical personnel as provided for in this act.

#### **§ 4210.10. Qualified persons to withdraw blood**

A. Only a licensed medical doctor, licensed osteopathic physician, licensed chiropractic physician, registered nurse, licensed practical nurse, or physician's



assistant, certified by the State Board of Medical Licensure and Supervision, the State Board of Osteopathic Examiners or Board of Chiropractic Examiners; an employee of a hospital or other health care facility authorized by the hospital or health care facility to withdraw blood; or other qualified person authorized by the Board of Tests for Alcohol and Drug Influence acting at the request of a law enforcement officer, may withdraw blood for purpose of having a determination made of its concentration of alcohol or the presence or concentration of other intoxicating substance. Only qualified persons authorized by the Board of Tests for Alcohol and Drug Influence may collect breath, saliva or urine, or administer tests of breath under the provisions of this section.

B. If the person authorized to withdraw blood as specified in subsection A of this section is presented with a written statement:

1. Authorizing blood withdrawal signed by the person whose blood is to be withdrawn;
2. Signed by a duly authorized peace officer that the person whose blood is to be withdrawn has agreed to the withdrawal of blood;
3. Signed by a duly authorized peace officer that the person whose blood is to be withdrawn has been placed under arrest and that the officer has probable cause to believe that the person, while intoxicated, has operated a vessel in such manner as to have caused the death or serious physical injury of another person, or the person has been involved in a boating collision and has been removed from the scene of the collision that resulted in the death or great bodily injury of any person, as defined in subsection B of 21 CNCA § 646, to a hospital or other health care facility outside the State of Oklahoma before the law enforcement officer was able to effect an arrest for such offense; or
4. In the form of an order from a district court that blood be withdrawn, the person authorized to withdraw the blood and the hospital or other health care facility where the withdrawal occurs may rely on such a statement or order as evidence that the person has consented to or has

been required to submit to the clinical procedure and shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to perform the procedure, the employer of such person, and the hospital or other health care facility shall not be liable in any action alleging lack of consent or lack of informed consent.

C. No person specified in subsection A of this section, no employer of such a person, and no hospital or other health care facility where blood is withdrawn shall incur any civil or criminal liability as a result of the proper withdrawal of blood when acting at the request of a law enforcement officer by the provisions of this title, or when acting in reliance upon a signed statement or court order as provided in this section, if the act is performed in a reasonable manner according to generally accepted clinical practice. No person specified in subsection A of this section shall incur any civil or criminal liability as a result of the proper collection of breath, saliva or urine when acting at the request of a law enforcement officer under the provisions of this title or when acting pursuant to a court order.

D. The blood, breath, saliva or urine specimens obtained shall be tested by the appropriate test as determined by the Board of Tests for Alcohol and Drug Influence, or tested by a laboratory that is exempt from the Board rules pursuant to 47 CNCA § 759, to determine the alcohol concentration thereof, or the presence and concentration of any other intoxicating substance which might have affected the ability of the person tested to operate a vessel safely.

E. When blood is withdrawn or saliva or urine is collected for testing of its alcohol concentration or other intoxicating substance presence or concentration, at the request of a law enforcement officer, a sufficient quantity of the same specimen shall be obtained to enable the tested person, at his or her own option and expense, to have an independent analysis made of such specimen. The excess blood, saliva or urine specimen shall be retained by a laboratory approved by the Board of Tests for Alcohol and Drug Influence, in accordance with the rules and regulations of the Board, or by a laboratory that is exempt from the Board rules pursuant to 47 CNCA § 759, for sixty (60) days from the date of collection. At any time within that period, the tested person or his or her attorney may direct that such blood, saliva or urine specimen be sent or delivered to a laboratory of his or her own choosing and approved by the Board for an independent analysis. Neither the tested person, nor any agent of such person, shall have access to the additional blood, saliva or urine specimen prior to the completion of the independent analysis,

except the analyst performing the independent analysis and agents of the analyst.

F. When a test of breath is performed for the purpose of determining the alcohol concentration thereof, except when such test is performed by means of an automated analyzer as designated by the Board of Tests for Alcohol and Drug Influence, a sufficient quantity of breath, or of the alcohol content of a fixed or measured quantity of breath, shall be obtained, in accordance with the rules and regulations of the Board to enable the tested person, at his or her own option and expense, to have an independent analysis made of such specimen. The excess specimen of breath, or of its alcohol content, shall be retained by the law enforcement agency employing the arresting officer, in accordance with the rules and regulations of the Board, for sixty (60) days from the date of collection. At any time within that period, the tested person, or his or her attorney, may direct that such specimen be sent or delivered to a laboratory of his or her own choosing and approved by the Board for an independent analysis. Neither the tested person, nor any agent of such person, shall have access to the additional specimen of breath, or of its alcohol content, prior to the completion of the independent analysis thereof, except the analyst performing the independent analysis and agents of the analyst.

G. The costs of collecting blood, breath, saliva or urine specimens for the purpose of determining the alcohol or other intoxicating substance thereof, by or at the direction of a law enforcement officer, shall be borne by the law enforcement agency employing such officer. The cost of collecting, retaining and sending or delivering to an independent laboratory the excess specimens of blood, breath, saliva or urine for independent analysis at the option of the tested person shall also be borne by such law enforcement agency. The cost of the independent analysis of such specimen of blood, breath, saliva or urine shall be borne by the tested person at whose option such analysis is performed. The tested person, or his or her agent, shall make all necessary arrangements for the performance of such independent analysis other than the forwarding or delivery of such specimen.

H. Tests of blood or breath for the purpose of determining the alcohol concentration thereof, and tests of blood, saliva or urine for the purpose of determining the presence or concentration of any other intoxicating substance therein, under the provisions of this section, whether administered by or at the direction of a law enforcement officer or administered independently, at the option of the tested person, on the excess specimen of such person's blood, breath, saliva or urine, to be considered valid and admissible in evidence under the provisions of this section, shall have been administered or performed in accordance with the

rules and regulations of the Board of Tests for Alcohol and Drug Influence, or performed by a laboratory that is exempt from the Board rules pursuant to 47 CNCA § 759.

I. Any person who has been arrested for any offense arising out of acts alleged to have been committed while the person was operating or in actual physical control of a vessel while under the influence of alcohol, any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance, who is not requested by a law enforcement officer to submit to a test, shall be entitled to have an independent test of his or her blood, breath, saliva or urine, which is appropriate as determined by the Board of Tests for Alcohol and Drug Influence for the purpose of determining its alcohol concentration or the presence or concentration of any other intoxicating substance therein, performed by a person of his or her own choosing who is qualified as stipulated in this section. The arrested person shall bear the responsibility for making all necessary arrangements for the administration of such independent test and for the independent analysis of any specimens obtained, and bear all costs thereof. The failure or inability of the arrested person to obtain an independent test shall not preclude the admission of other competent evidence bearing upon the question of whether such person was under the influence of alcohol, or any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance.

J. Any agency or laboratory certified by the Board of Tests for Alcohol and Drug Influence or any agency or laboratory that is exempt from the Board rules pursuant to 47 CNCA § 759, which analyzes breath, blood, or urine shall make available a written report of the results of the test administered by or at the direction of the law enforcement officer to:

1. The tested person, or his or her attorney;
2. The Commissioner of Public Safety; and
3. The Fatality Analysis Reporting System (FARS) analyst of the state, upon request.

The results of the tests provided for in this section shall be admissible in civil actions.

#### **§ 4210.11. Refusal to submit to drug or alcohol testing--Exceptions**

If a conscious person under arrest refuses to submit to testing of his or her blood or breath for the purpose of determining the alcohol concentration thereof, or to a test of his or her blood, saliva or urine for the purpose of determining the presence or concentration of any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance, none shall be given, unless the investigating officer has probable cause to believe that the person under arrest, while intoxicated, has operated a vessel in such a manner as to have caused the death or serious physical injury of any other person or persons. In that event, the test otherwise authorized by law may be made in the same manner as if a search warrant had been issued for the test or tests. The sample shall be taken in a medically acceptable manner at a hospital or other suitable health care facility.

#### **§ 4210.12. Laboratory report--Evidence**

A. At any proceeding held relevant to this act, a report of the findings of the laboratory of the Oklahoma State Bureau of Investigation, the medical examiner's report of investigation or autopsy report, or a laboratory report from a forensic laboratory operated by the State of Oklahoma or any political subdivision thereof, which has been made available to the person or an authorized representative at least five (5) days prior to the hearing, with reference to all or part of the evidence submitted, when certified as correct by the persons making the report shall be received as evidence of the facts and findings stated, if relevant and otherwise admissible in evidence. If the report is deemed relevant by either party, the court shall admit the report without the testimony of the person making the report, unless the court, pursuant to this subsection, orders the person to appear.

B. When any alleged controlled dangerous substance has been submitted to the laboratory of the Oklahoma State Bureau of Investigation for analysis, and the analysis shows that the submitted material is a controlled dangerous substance, the distribution of which constitutes a felony under the laws of this Nation, no portion of the substance shall be released to any other person or laboratory absent an order of a district court. The defendant shall additionally be required to submit to the court a procedure for transfer and analysis of the subject material to ensure the integrity of the sample and to prevent the material from being used in any illegal manner.

C. The court, upon motion of either party, shall order the attendance of any person preparing a report submitted as evidence in the hearing when it appears there is a substantial likelihood that material evidence not contained in the report may be produced by the testimony of any person having prepared a report.

D. If within five (5) days prior to the hearing or during a hearing, a motion is made pursuant to this section requiring a person having prepared a report to testify, the court may hear a report or other evidence but shall continue the hearing until such time notice of the motion and hearing is given to the person making the report, the motion is heard, and, if sustained, the testimony ordered can be given.

#### **§ 4210.13. Criminal trials--Use of alcohol or drug tests as evidence**

A. Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while operating or in actual physical control of a vessel while under the influence of alcohol or any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance, evidence of the alcohol concentration in the blood or breath of the person as shown by analysis of the blood or breath of the person performed in accordance with the provisions of Section 4 of this act and 47 CNCA § 759 or evidence of the presence or concentration of any other intoxicating substance as shown by analysis of such person's blood, breath, saliva, or urine specimens in accordance with the provisions of Section 4 of this act and 47 CNCA § 759 shall be admissible. Evidence that the person has refused to submit to either of said analyses is also admissible. For the purpose of this section, when the person is under the age of twenty-one (21) years,

evidence that there was, at the time of the test, any measurable quantity of alcohol is prima facie evidence that the person was under the influence of alcohol in violation of Section 3 of this act. For persons twenty-one (21) years of age or older:

1. Evidence that there was, at the time of the test, an alcohol concentration of seven-hundredths (0.07) or less is prima facie evidence that the person was not under the influence of alcohol; and

2. Evidence that there was, at the time of the test, an alcohol concentration of eight-hundredths (0.08) or more shall be admitted as prima facie evidence that the person was under the influence of alcohol.

B. For purposes of this section, "alcohol concentration" means grams of alcohol per one hundred (100) milliliters of blood if the blood was tested, or grams of alcohol per two hundred ten (210) liters of breath if the breath was tested.

C. To be admissible in a proceeding, the evidence shall first be qualified by establishing that the test was administered to the person within two (2) hours after the arrest of the person.

#### **§ 4210.14. Use of other competent evidence**

The provisions of this act do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol or any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance.

#### **§ 4211. Diving or submerging in body of water--Use of buoys--Operating vessel in**

## diving area

A. Any person diving or submerging in a body of water with the aid of any mechanical diving or breathing device or suit shall place a buoy with a flag in the water at or near the point of submergence or fly a flag from a vessel indicating divers are present, in the following manner:

1. Either the nationally recognized diver's flag or Alpha flag may be flown;
2. When flown from a vessel, at least one flag shall be flown not less than one (1) meter above the highest point of the vessel and shall be visible from a three-hundred-sixty-degree circle;
3. The buoy, flag or flags shall be in place only while actual diving operations are in progress;
4. No diving buoys may be closer than one hundred (100) yards to any functional boat ramp; and
5. The flag or flags shall be in good condition and legible, and the flag shall be in the extended position so as to be visible to any other vessel.

B. It shall be unlawful for any person to operate a vessel within one hundred fifty (150) feet of a diving buoy except while engaged in the rescue of a person in such area.

## § 4211.1. Inner tubes, air mattresses or floating chairs--Distance from shore



**restricted**

Inner tubes, air mattresses, floating chairs or similar devices shall not be more than fifty (50) feet from shore when being used by a swimmer.

**§ 4212. Towing person or persons using parasails, water skis or similar devices--  
Time restrictions--Professional exhibitions excepted--Colliding with or striking  
object or person--Operation of personal watercraft**

A. 1. No person shall operate or give permission to operate a vessel on any waters of this Nation for towing a person or persons using parasails or on water skis, a surfboard, or similar device unless there is in such vessel:

a. a person who is at least eight (8) years old, and who, in addition to the operator, is in a position to observe the progress of the person or persons being towed,

b. if the vessel is not a personal watercraft, an efficient wide angle convex rear view mirror installed on such vessel in such manner as to permit the person operating said vessel to face the direction of travel and be in a position to observe the progress of the person or persons being towed, or

c. if the vessel is a personal watercraft, two efficient wide angle convex rear view mirrors installed on such vessel in such manner as to permit the person operating such watercraft to face the direction of travel and be in a position to observe the progress of the person or person being towed.

2. Water skiing shall be allowed with any watercraft which is designed to accommodate two or more persons.

B. No person shall operate or give permission to operate a vessel on any waters of this Nation towing a person or persons using parasails or on water skis, a surfboard, a sailboard or similar device nor shall any person engage in parasailing, water skiing, surfboarding, sailboarding or similar activity at any time between the hours from sunset to sunrise or at such time visibility due to other existing conditions is obscured so as to endanger life or property.

C. The provisions of subsections A and B of this section do not apply to a performer engaged in a professional exhibition or a person or persons engaged in an activity authorized under Section 4205 of this title.

D. No person shall operate or give permission to operate or manipulate any vessel, tow rope or other device by which the direction or location of parasails, water skis, a surfboard, or similar device may be affected or controlled in such a way as to cause the parasails, water skis, surfboard, or similar device, or any person thereon to collide with or strike against any object or person.

E. 1. No person shall operate or give permission to operate a personal watercraft or similar device capable of being remote controlled by the skier unless such device is factory equipped with an engine kill switch capable of shutting off the engine in the event the skier becomes detached from the personal watercraft device. A person operating a personal watercraft equipped by the manufacturer with a lanyard type engine cutoff switch shall attach such lanyard to his or her person, clothing, or personal flotation device as appropriate for the specific vessel.

2. No person shall operate a personal watercraft at any time between the hours from sunset to sunrise unless equipped with prescribed lights.

## **§ 4213. Placing or disposing of marine sewage in Nation waters prohibited--Use of**

**total retention marine toilets required**

A. No person shall place or dispose of marine sewage in any waters of this Nation.

B. On and after July 1, 1995, no person shall operate a vessel equipped with a marine toilet which is not a total retention system in accordance with federal regulations regarding marine toilets.

**§ 4214. Collision, accident, or other casualty--Rendering of assistance by vessel operator--Notice--Accident report--Notice to appear--Written report--Drug and alcohol test**

A. The operator and/or passenger of a vessel involved in a collision, accident, or other casualty, shall render to other persons involved in the collision, accident, or other casualty reasonable assistance as may be necessary and practicable and shall immediately, by the quickest means of communication, give notice of such accident to the local police department if such accident occurs within a municipality, or to the office of the county sheriff or nearest state highway patrol headquarters after complying with the requirements of this section. The operator of a vessel involved in a collision, accident, or other casualty shall give his name, address, and identification of his vessel, in writing, to any person injured in the collision, accident, or other casualty and to the owner of any property damaged in the collision, accident, or other casualty.

B. Any operator of a vessel involved in a collision, accident, or other casualty who could be cited for a violation of the Boating Safety Act of 2021 where the collision, accident or other casualty resulted in the immediate death or great bodily injury, as defined in subsection B of 21 CNCA § 646, of any person shall submit to drug and alcohol testing as soon as practicable after such collision, accident or other casualty occurs. The boating violation shall constitute probable cause for purposes of 47

CNCA § 752 and the procedures found in 47 CNCA § 752 shall be followed to determine the presence of alcohol or controlled dangerous substances within the blood system of the operator of the vessel.

C. If a collision, accident, or other casualty results in death or injury to a person or damage to property in excess of Two Thousand Dollars (\$2,000.00), the operator of the vessel involved in the collision, accident, or other casualty shall file with the Department of Public Safety a full description of the collision, accident, or other casualty, and such information as the Department may require. No person shall be prosecuted or subjected to any penalty for providing such report to the Department and any statement or information included in such report shall not be received against the person upon any criminal investigation, proceeding or trial.

D. Whenever a person is halted by any duly authorized peace officer of this Nation for any violation of this act, which shall be punishable as a misdemeanor, the officer shall prepare in quadruplicate using the "Uniform Violations Complaint", a written notice to appear in court, such notices to appear to be serially numbered, containing the name and address of the person, the registration number of the vessel, if any, the offense charged, the time and place when and where the person shall appear in court, and such other pertinent information as may be necessary.

E. The time specified in the notice to appear must be at least five (5) calendar days after the alleged violation unless the person charged with the violation shall demand an earlier hearing.

F. The person charged with the violation may give his written promise to appear in court by signing the written notice to appear prepared by the officer, in which event the officer shall deliver a copy of the notice to appear to the person, and thereupon the officer shall not take the person into physical custody for the violation.

G. If the person charged with the violation is a minor, then the citing officer shall ascertain from the minor the name and address of the parents or legal guardian of the minor, and the officer shall cause a copy of the "violation" to be mailed to the address of the parents or legal guardian, within three (3) calendar days after the date of violation.

H. Except for felony violations, any duly authorized peace officer of this Nation at the scene of a boating accident may issue a written notice to appear to the operator of a vessel involved in the accident when, based upon personal investigation, the officer has reasonable and probable grounds to believe that the person has committed any offense in connection with the accident.

I. In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the Department of Public Safety pursuant to this section shall be transmitted to the official or agency of the United States.

J. Any employee or officer of an agency of this Nation, or employee or officer of a municipality or county in this state, shall make a written report to the Department of Public Safety if an occurrence involving a vessel or its equipment results in one or more of the following:

1. A person dies;
2. A person is injured and requires medical treatment beyond first aid;
3. Damage to the vessel and other property totals more than Two Thousand Dollars (\$2,000.00) or there is a complete loss of the vessel;
4. A person disappears from the vessel under circumstances that indicate death or injury;
5. A person drowns in swimming to retrieve a vessel that is adrift from its mooring or dock, having departed from a position of inherent safety such as a shore or pier;

6. A person drowns while swimming from a vessel for pleasure and the vessel does not contribute to the drowning;

7. A person drowns after falling from a vessel that is moored or anchored for use as a swimming platform or other purpose;

8. A person dies or is injured while in the act of launching a vessel into a body of water;

9. A person drowns or is injured while surfing;

10. A fatality or injury occurs to an operator or a crew member while participating in an organized/sanctioned race, or warm-up, in a vessel uniquely designed for racing; or

11. Damage, injury or death on a docked, moored or anchored vessel resulting from unusual wake or wave conditions.

#### **§ 4218. Violations--Penalties**

A. Except as otherwise provided by the provisions of this section, any person violating the provisions of the Boating Safety Act of 2021 for which another penalty is not provided, upon conviction thereof, shall be guilty of a misdemeanor and shall be subject to a fine not to exceed Fifty Dollars (\$50.00) for each such violation.

B. Any person who violates Section 4213 of this title for which another penalty is not provided, upon conviction thereof, shall be guilty of a misdemeanor and shall be subject to a fine of not less than Two Hundred Dollars (\$200.00) and not more

than One Thousand Dollars (\$1,000.00).

C. Any person who violates any provision of Sections 4206 through 4212 of this title, for which another penalty is not provided, upon conviction thereof, shall be guilty of a misdemeanor and shall be subject to a fine of not to exceed One Hundred Dollars (\$100.00) for each such violation.

#### **§ 4219. Nighttime speed limit**

It shall be unlawful for any person to operate any vessel upon the waters of this Nation, between the hours of one-half hour after sunset and one-half hour before sunrise at any speed in excess of thirty-five (35) miles per hour. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punishable by a fine of not less than Fifty Dollars (\$50.00) nor more than Two Hundred Fifty Dollars (\$250.00).

#### **§ 4220. Reserved**

#### **§ 4221. Failure to comply with lawful order or directive of law enforcement officer**

No person shall willfully fail or refuse to comply with any lawful order or directive of any law enforcement officer while in the performance of his or her duty of enforcing the provisions of this title. Failure to comply will constitute a misdemeanor punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00).

#### **§ 4222. Reserved**

§ 4230. Reserved

§ 4231. Reserved

§ 4232. Definitions--Requirements for persons younger than sixteen to operate certain motorized vessels, personal watercraft--Boating Safety Education Certificate

A. As used in this section:

1. "Vessel" means every device, other than a seaplane on the water, used or capable of being used as a means of transportation on water, but shall not include personal watercraft; and
2. "Boating safety education course" means a course in safe boating that meets or exceeds the minimum instruction standards as established by the National Association of State Boating Law Administrators in effect at the time the course is completed.

B. A person under sixteen (16) years of age shall not operate any vessel, as defined in this section, powered by a motor or combination of motors in excess of ten (10) horsepower or any sail-powered vessel sixteen (16) feet or greater in length on the waters of this Nation unless the person has:



1. Successfully completed a boating safety education course or has passed a proctored equivalency examination which tests the knowledge of information included in the curriculum of such a course; and

2. Received a Boating Safety Education Certificate as evidence of successful completion of a boating safety education course or an equivalency examination.

C. A person at least twelve (12) years of age, but who has not reached sixteen (16) years of age, shall not operate a vessel, as defined in this section, powered by a motor or combination of motors in excess of ten (10) horsepower or any sail-powered vessel sixteen (16) feet or greater in length on the waters of this Nation unless the person:

1. Has met the requirements listed in subsection B of this section; and

2. Is accompanied by a competent adult, eighteen (18) years of age or older, who is in a position on or in the vessel to take immediate control of the vessel being operated.

D. 1. A person under sixteen (16) years of age shall not operate a personal watercraft unless the person has met the requirements listed in subsection B of this section.

2. A person at least twelve (12) years of age, but who has not reached sixteen (16) years of age, shall not operate a personal watercraft unless the person:

- a. Has met the requirements listed in subsection B of this section;

and

b. Is under the visual supervision by a competent adult, eighteen (18) years of age or older within a distance of five hundred (500) yards.

The operator of a personal watercraft shall stay at least fifty (50) feet away from all moving vessels, shall idle at or in the vicinity of docks and swimmers, and shall wear an approved personal flotation device.

E. A Boating Safety Education Certificate issued by the Department of Public Safety to a person who has successfully completed a boating safety education course or course equivalency examination shall not expire.

F. A person who is operating a vessel on the waters of this Nation shall have in his or her immediate possession:

1. The original Boating Safety Education Certificate as proof the operator meets the requirements of this section; or
2. A photo identification that clearly shows the operator is sixteen (16) years of age or older.

Failure to present such proof upon request by a peace officer shall be prima facie evidence of a violation of this section.

#### **§ 4233. Exceptions to certification requirement**

Except as otherwise provided, a person is not required to comply with the certification required by Section 2 of this act if the person:

1. Is not a resident of this Nation or state and has proof the person has successfully completed a boating safety education course or equivalency examination in another state or foreign country that is approved by the Department of Public Safety;
2. Is participating in a sanctioned event as defined in Section 4201 et seq. of this title; or
3. Is operating a personal watercraft as defined in Section 4201 et seq. of this title in a no-wake zone while under the supervision of an adult.

#### **§ 4234. Unlawful acts regarding certificates**

It shall be unlawful for any person to:

1. Alter, forge, counterfeit or falsify any Boating Safety Education Certificate issued under the laws of this Nation or any other state;
2. Possess a Boating Safety Education Certificate that has been altered, forged, counterfeited or falsified;
3. Lend or to sell to, or knowingly permit the use of by one not entitled thereto, any Boating Safety Education Certificate; or

4. Make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application for a Boating Safety Education Certificate.

#### **§ 4235. Violation of certification requirement--Penalties**

A. Any parent, legal guardian or person having actual responsibility for a person under sixteen (16) years of age, or who is the owner of the vessel operated by a person under sixteen (16) years of age, who knows, or should have known, that the person operating the vessel is not in compliance with the certification required by Section 2 of this act<sup>1</sup> shall constitute a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not less than Fifty Dollars (\$50.00) nor more than One Hundred Dollars (\$100.00). Any second or subsequent conviction shall be punishable by a fine in an amount of not less than Two Hundred Fifty Dollars (\$250.00), nor more than Five Hundred Dollars (\$500.00).

B. A violation of the provisions of Section 2 of this act shall constitute a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00).

C. A court may defer the imposition of a fine and place a defendant on probation for a period not to exceed sixty (60) days if the defendant:

1. Is a first-time violator of a provision of this section;
2. Pleads guilty or nolo contendere or is found guilty;
3. Requests permission from the court to attend a boating safety education

course; and

4. Successfully completes a boating safety education course approved by the Department of Public Safety during the probation period.

E. Any person producing proof in court that a valid Boating Safety Education Certificate or equivalent form recognized by the Department of Public Safety reflecting such person has successfully completed a boating safety education course or is exempt from such course was in effect at the time of the alleged offense of Section 2 of this act shall be entitled to dismissal of such charge upon payment of court costs. If such proof is provided within two (2) regular business days after the violation, the charge shall be dismissed without payment of court costs.

#### **§ 4236. Reserved**

#### **Section 5. Provisions as cumulative**

The provisions of this act shall be cumulative to existing law.

#### **Section 6. Severability**

The provisions of this act are severable and if any part of provision hereof shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

#### **Section 7. Effective Date/Emergency Declared**

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.

#### **Section 8. Self-Help Contributions**

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.