

Model State Boat Act – 2005 revision to conform with NASBLA Model Act Standards

MODEL STATE BOAT ACT

This model act was prepared by the NASBLA Model Act Committee, and adopted by the NASBLA membership on November 14, 1973. It has been reformatted to more closely conform to the NASBLA Model Act Standards adopted in 2005 as part of the Association's Model Act Review and Standardization Project.

History

A Federal Boat Safety Act enacted by Congress in 1958 authorized the states to take over specific boating safety functions, which until then had been performed by the United States Coast Guard. The Council of State Governments (CSG) followed this action by developing a model "State Boat Act," and in 1958, urged state officials concerned with boating safety legislation to enact the substance of the suggested act during the next session of their legislatures. That model act contained the suggested minimum state boating legislation required under the provisions of the federal act to permit a state to take over boat numbering and vessel casualty reporting functions from the Coast Guard.

The Outboard Boating Club of America, following enactment of the federal act, developed an "Omnibus Boating Code" to complement and supplement it. This Code contained a "State Boat Numbering Act," "Pleasure Boating Act," and other model acts for consideration by the states as adjuncts to what essentially was minimum boating legislation suggested in the CSG model.

The aforementioned model acts generally were accepted by the states as the standards to be followed. However, a spectacular growth in the popularity of boating, and many changes and improvements in motors, boats and associated equipment followed the publication of these model acts. Hence, many states determined that it was essential to the interests of boating safety to amend or expand state boating laws to require lifesaving devices on all boats and to otherwise deviate from the suggested provisions of the aforementioned model acts. The National Association of State Boating Law Administrators (NASBLA), aware of the shortcomings in the existing model acts, directed its Model Act Committee to develop a revised Model State Boat Act.

The Model State Boat Act, dated April 28, 1968, was approved by both NASBLA and CSG. The model was designed to guide any state planning to enact legislation establishing a state vessel numbering and casualty reporting system or to revise existing state statutes under the provisions of the Federal Boating Act of 1958. It also contained other suggested provisions for consideration by the states as adjuncts to the essential required legislation.

The 1968 version of the Model State Boat Act required further revision to bring it into conformity with the provisions of the Federal Boat Safety Act of 1971. This problem was discussed at a general membership meeting of NASBLA during the Association's annual conference in Tampa,

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Fla., November 1971. The membership directed the Association's Model Act Committee to revise and update the act, and to limit the material in the revision to only those items required to be contained in state laws or regulations pursuant to the Federal Boat Safety Act of 1971. In arriving at this decision, the membership considered various factors, and particularly the provisions of Sections 25 and 26 of the new Federal Act. Section 25 of the Act required approval by the United States Coast Guard of a state boating safety program for the state to be eligible to secure full federal financial assistance under its provisions.

An excerpt from Section 25 of the Federal Boat Safety Act of 1971 reads: "In order to encourage greater state participation and consistency in boating safety efforts, and particularly greater safety patrol and enforcement activities, the Secretary may accept state boating safety programs directed at implementing and supplementing this Act. Acceptance is necessary for a state to receive full rather than partial federal financial assistance under this Act."

An excerpt from Section 26 of the Federal Boat Safety Act reads: "The Secretary shall accept a state boating safety program which: 1) incorporates a state vessel numbering system previously approved under this Act or includes such a numbering system as part of the proposed boating safety program; 2) includes generally the other substantive content of the Model State Boat Act as approved by the National Association of State Boating Law Administrators in conjunction with the Council of State Governments, or is in substantial conformity therewith, or conforms sufficiently to insure uniformity and promote comity among the several jurisdictions."

Model Act

The following Model State Boat Act did not purport to cover every conceivable legal provision that is essential in a comprehensive State Boating Code. Instead, the contents treat primarily the areas of federal preemption where any state laws or regulations enacted were to conform almost verbatim in each state. The act provided a framework for conformity with the federal act, and eligibility for federal financial assistance under the provisions of the act in the form of minimum essential state boating safety legislation.

In presenting this model, NASBLA fully recognized that the magnitude of the task of adopting or revising state laws and regulations to conform to the federal act would vary from state to state. It also recognized that many states' constitutional and statutory requirements would require changes in the content and organization of the model act.

MODEL STATE BOAT ACT

**TO PROVIDE FOR A COORDINATED STATE BOATING SAFETY PROGRAM
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF [INSERT STATE
NAME]**

COMMENT: This Act or any portion thereof should be prefaced by a descriptive title conforming to the requirements of the constitution or statutes of the state enacting it. The federal act does not prescribe a title to be used by each state.

ARTICLE 1. General Provisions

1
2 Section 1. [*Declaration of Policy and Purpose*] It is hereby declared to be the policy of the
3 Legislature and the purpose of this act to improve boating safety and to foster greater
4 development, use, and enjoyment of all the waters of the state by encouraging and assisting
5 participation by the several political subdivisions of the state, the boating industry, and the boating
6 public in development of more comprehensive boating safety programs, and by creating more
7 flexible regulatory authority concerning the use of boats and equipment. It is further declared to
8 be the policy of the Legislature to encourage greater and continuing uniformity of boating laws
9 and regulations as among the subdivisions of the state, several states, and the federal government;
10 a higher degree of reciprocity and comity among the several jurisdictions; and closer cooperation
11 and assistance between the state and the federal government in developing, administering, and
12 enforcing federal and state laws and regulations pertaining to boating safety.

COMMENT: The policy and purpose declaration should be modified as necessary to conform to the requirements of the constitution or statutes of the state enacting it. The contents of this Section are not governed by the federal act.

1 Section 2. [*Definitions.*] As used in this act:
2 (1) "Associated equipment" means:
3 (i) Any system, part or component of a boat as originally manufactured or any similar part or
4 component manufactured or sold for replacement, repair, or improvement of such system, part, or
5 component;
6 (ii) Any accessory or equipment for, or appurtenance to, a boat; and
7 (iii) Any marine safety article, accessory, or equipment intended for use by a person on board
8 a boat.
9 The term does not include radio equipment.
10 (2) "Boat" means any vessel:
11 (i) Manufactured or used primarily for noncommercial use; or
12 (ii) Leased, rented, or chartered to another for the latter's noncommercial use; or
13 (iii) Engaged in the carrying of six or fewer passengers.

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- 14 (3) "Federal laws and requirements" means all statutes, standards, rules, regulations and other
15 laws of the United States, which may be applicable to any and all of the subject matters of this act.
16 (4) "Department" means [insert name of agency charged with administering the state's boating
17 safety programs and the provisions of this act].
18 (5) "Manufacturer" means any person engaged in the:
19 (i) Manufacture, construction, or assembly of boats or associated equipment; or
20 (ii) Manufacture or construction of components for boats and associated equipment to be sold
21 for subsequent assembly; or
22 (iii) Importation into the state for sale of boats, associated equipment, or components thereof.
23 (6) "Operator" means a person who claims lawful possession of a vessel by virtue of legal title
24 or equitable interest therein which entitles him to such possession.
25 (7) "Passenger" means every person carried on board a vessel other than:
26 (i) The owner or the owner's representative;
27 (ii) The operator;
28 (iii) Bona fide members of the crew engaged in the business of the vessel who have
29 contributed no consideration for their carriage and who are paid for their services; or
30 (iv) Any guests on board a vessel that is being used exclusively for pleasure purposes who
31 have not contributed any consideration, directly, or indirectly, for their carriage.
32 (8) "Person" means an individual, firm, partnership, corporation, company, association, joint
33 stock association, or governmental entity and includes a trustee, receiver, assignee, or similar
34 representative of any of them.
35 (9) "State" means a state of the United States, the Commonwealth of Puerto Rico, the Virgin
36 Islands, Guam, American Samoa, and the District of Columbia.
37 (10) "Undocumented vessel" means a vessel that does not and is not required to have a valid
38 marine document as a vessel of the United States.
39 (11) "Use" means to operate, navigate, or employ.
40 (12) "Vessel" means every description of watercraft, other than a seaplane on the water, used or
41 capable of being used as a means of transportation on the water.
42 (13) "Waters of the state" means any waters within the jurisdiction of the state, the marginal
43 seas adjacent to the state and the high seas when navigated as a part of a journey or ride to or
44 from the shores of the state.

COMMENTS: The definition in paragraph (3) is optional. For the definition in paragraph (13), states that have no seacoast should delete the reference to marginal seas and high seas. Similarly, states that exclude private waters should amend the definition.

1 Section 3. [*Applicability.*]

- 2 (a) The provisions of this act apply to vessels and associated equipment used, to be used, or
3 carried in vessels used, on waters subject to the jurisdiction of this state.
4 (b) The provisions of this act, except those sections where the content expressly indicates
5 otherwise, do not apply to:
6 (1) Foreign vessels temporarily using waters subject to state jurisdiction;

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- 7 (2) Military or public vessels of the United States, except recreational type public vessels;
8 (3) A vessel whose owner is this state or a subdivision thereof, which is used principally for
9 governmental purposes and which is clearly identifiable as such;
10 (4) A ship's lifeboats.

COMMENT: A state may delete the exemption in paragraph (3) of this section and thereby require compliance by these vessels.

1 Section 4. [*Operation of Non-Complying Vessels Prohibited.*]

2 (a) No person shall use or give permission for the use of any vessel to which this act applies,
3 unless the vessel is in compliance with the requirements of this act and the applicable standards
4 and regulations are promulgated under the authority of this act.

5 (b) No person may use any vessel to which this act applies, including those exempt in Section
6 3(b) in a negligent manner so as to endanger the life, limb, or property of any person.

1 Section 5. [*Regulations and Standards.*]

2 (a) The department may issue regulations for the use, manufacture, and sale of vessels, to which
3 this act applies, with respect to:

- 4 (1) The numbering and marking of undocumented vessels;
5 (2) Requirements for associated equipment;
6 (3) Boat and associated equipment standards;
7 (4) Operating requirements;
8 (5) Boating safety education;
9 (6) Safety patrol and enforcement activity.

10 (b) The department shall prescribe such rules and regulations as may be necessary with respect
11 to vessels to which this act applies, including those otherwise exempted by [insert full federal
12 citation] concerning the reporting and investigation of casualties and accidents.

COMMENT: Paragraphs (3) through (6) under Subsection (a) are optional.

1 Section 6. [*Release of Information.*]

2 (a) Any person may request from the department, vessel numbering and registration information
3 which is retrievable from the vessel numbering system records of the states. When the department
4 is satisfied that the request is reasonable and related to a boating safety purpose, the information
5 shall be furnished upon payment by such person of the cost of retrieval and furnishing of the
6 information requested.

7 (b) Boating accident reports required under the authority of Section 5 of this act are not public
8 records available for public inspection release. The fact that such reports have been made shall be
9 admissible as evidence solely to show compliance with this Section or regulations promulgated
10 under the authority of Section 5 of this act. No such report nor any part thereof nor any statement
11 contained therein shall be admissible as evidence for any purpose in any civil or criminal trial.

12 (c) Boating accident reports and any information compiled from them may be released to law
13 enforcement agencies and officials of the United States Coast Guard for analytical and statistical

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14 purposes.

COMMENT: Subsection (b) is optional.

1 Section 7. [*Penalties.*] Any person who violates any provision of this act or the implementing
2 regulations shall be guilty of a [misdemeanor] and shall be subject to a fine of not less than [insert
3 dollar amount] or more than [insert dollar amount] for each such violation.

COMMENT: This Section should be modified as necessary to conform to the requirements of the state enacting it.

1 Section 8. [*Effective Date.*] [Insert effective date.]