

SENATE SUBSTITUTE TO HB 1490:

AS PASSED SENATE**A BILL TO BE ENTITLED****AN ACT**

To amend Code Section 12-3-10 of the Official Code of Georgia Annotated, relating to directing persons to leave parks, historic sites, or recreational areas upon their refusal to observe rules and regulations and prohibited acts generally, so as to change certain provisions relating to prohibitions against having or using certain boats on state park lakes; to amend Code Section 16-9-70 of the Official Code of Georgia Annotated, relating to criminal use of an article with an altered identification mark, so as to include vessels within the applicability of said Code section; to amend Article 1 of Chapter 7 of Title 52 of the Official Code of Georgia Annotated, relating to general provisions relative to the registration, operation, and sale of watercraft, so as to change certain provisions relating to definitions; to change certain provisions relating to exemptions from vessel numbering requirements; to provide for certain requirements and prohibitions relative to hull identification numbers; to provide for seizure of certain vessels for which hull identification numbers are lacking or have been altered; to provide for forfeiture proceedings; to provide penalties for violations; to provide exemptions from hull identification numbering requirements; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 12-3-10 of the Official Code of Georgia Annotated, relating to directing persons to leave parks, historic sites, or recreational areas upon their refusal to observe rules and regulations and prohibited acts generally, is amended by striking subsections (e) through (h) and inserting in lieu thereof the following:

"(e) It shall be unlawful for any person to have or use a privately owned boat on any of the following state park lakes:

- (1) A. H. Stephens Federal Lake and Lake Liberty; or
- ~~(2) Black Rock Mountain Lake;~~
- ~~(3) Vogel Lake Trahlyta;~~
- ~~(4) Franklin D. Roosevelt Lake Delano;~~

(5)(2) John D. Tanner Lake (the 24 acre lake), provided that this prohibition shall apply only from May 1 through Labor Day of each year;

~~(6) Unicoi Lake; and~~

~~(7) Willaway Inlet of Fort Yargo Lake (25 acres).~~

~~(f) It shall be unlawful to use a boat, other than one on official business, with any type of motor on the following state park lakes:~~

~~(1) Unicoi Lake;~~

~~(2) Willaway Inlet of Fort Yargo Lake (25 acres); and~~

~~(3) Fort Mountain Lake Reserved.~~

(g) It shall be unlawful for any person to have or use a boat, other than one on official business, with other than an paddles or a portable bow or stern mounted electric trolling motor on any of the following state park lakes:

(1) Black Rock Mountain Lake;

(2) James H. 'Sloppy' Floyd Lake;

(3) A. H. Stephens-Lake Buncombe;

(4) Franklin D. Roosevelt-Lake Franklin or Lake Delano;

(5) John D. Tanner Lake (the 12 acre lake);

(5.1) John D. Tanner Lake (the 24 acre lake), provided that this prohibition shall apply only from the day after Labor Day each year through April 30 of the following year;

(6) Sweetwater Creek Lake; ~~and~~

(7) Hard Labor Creek Lake (the 37 acre lake);~~;~~

(8) Fort Mountain Lake;

(9) Vogel Lake; or

(10) Unicoi Lake.

(h) It shall be unlawful for any person to use a boat, other than one on official business, with a motor which is neither an electric trolling motor nor ten horsepower or less on the following state park lakes:

(1) Fort Yargo Lake;

(2) Hamburg Lake;

(3) Hard Labor Creek Lake (the 275 acre lake);

(4) High Falls Lake;

(5) Indian Springs Lake;

(6) Kolomoki Mounds Lake;

(7) Stephen C. Foster Lake;

(8) Laura S. Walker Lake (between 7:00 A.M. eastern standard time or eastern daylight time, whichever is applicable, and 11:00 A.M. eastern standard time or eastern daylight

time, whichever is applicable, and between 6:00 P.M. eastern standard time or 7:00 P.M. eastern daylight time, whichever is applicable, and sunset);

(9) Little Ocmulgee Lake (between 7:00 A.M. eastern standard time or eastern daylight time, whichever is applicable, and 11:00 A.M. eastern standard time or eastern daylight time, whichever is applicable, and between 6:00 P.M. eastern standard time or 7:00 P.M. eastern daylight time, whichever is applicable, and sunset); and

(10) Magnolia Springs Lake (between 7:00 A.M. eastern standard time or eastern daylight time, whichever is applicable, and 11:00 A.M. eastern standard time or eastern daylight time, whichever is applicable, and between 6:00 P.M. eastern standard time or 7:00 P.M. eastern daylight time, whichever is applicable, and sunset)."

SECTION 2.

Code Section 16-9-70 of the Official Code of Georgia Annotated, relating to criminal use of an article with an altered identification mark, is amended by striking subsection (a) and inserting in lieu thereof the following:

"(a) A person commits the offense of criminal use of an article with an altered identification mark when he or she buys, sells, receives, disposes of, conceals, or has in his or her possession a radio, piano, phonograph, sewing machine, washing machine, typewriter, adding machine, comptometer, bicycle, firearm, safe, vacuum cleaner, dictaphone, watch, watch movement, watch case, or any other mechanical or electrical device, appliance, contrivance, material, vessel as defined in Code Section 52-7-3, or other piece of apparatus or equipment, other than a motor vehicle as defined in Code Section 40-1-1, from which he or she knows the manufacturer's name plate, serial number, or any other distinguishing number or identification mark has been removed for the purpose of concealing or destroying the identity of such article."

SECTION 3.

Article 1 of Chapter 7 of Title 52 of the Official Code of Georgia Annotated, relating to the registration, operation, and sale of watercraft, is amended by striking Code Section 52-7-3, relating to definitions, and inserting in lieu thereof the following:

"52-7-3.

As used in this article, the term:

(1) 'Blind point' means that portion of any of the waters of this state in which there is a natural or man-made obstruction which prevents the operator of a vessel from seeing vessels approaching from the opposite side of the obstruction, thus creating a safety hazard which could result in a boating accident.

(2) 'Board' means the Board of Natural Resources.

(3) 'Boat livery' means a business which holds any vessel for renting, leasing, or chartering.

(4) 'Commissioner' means the commissioner of natural resources.

(5) 'Dealer' means any person engaged in the business of manufacturing vessels or selling new or used vessels at an established place of business.

(6) 'Department' means the Department of Natural Resources.

(7) 'Discharged' means, and shall include, spilled, leaked, pumped, poured, emitted, or dumped.

(7.1) 'Hazardous area' means any area which the commissioner has designated as such because of conditions which create a threat to the safety and welfare of boaters who may operate in such area.

(8) 'Holding tank' means any container which is designed to receive and hold sewage and other wastes discharged from a marine toilet and which is constructed and installed in such a manner that it can only be emptied by pumping out the contents of such holding tank.

(8.1) 'Homemade vessel' means any vessel that is built by an individual for personal use from raw materials that does not require the assignment of a federal hull identification number by a manufacturer pursuant to federal law. A person furnishing raw materials under a contract may be considered the builder of a homemade vessel. Antique boats, boats reconstructed from existing boat hulls, and rebuilt or reconstructed vessels are not considered homemade vessels.

(8.2) 'Hull identification number' or 'HIN' means a number assigned to vessels by the manufacturer of the vessel or by the issuing authority of a state as required by the United States Coast Guard in accordance with federal law.

(9) 'Idle speed' means a slow speed maintained by the operator of a mechanically propelled vessel reached by engaging the engine of the vessel into said speed by reducing the throttle to a minimum.

(9.1) 'Issuing authority' means, as to this state, the Department of Natural Resources; and, as to other states, the state if it has a numbering system approved by the United States Coast Guard or the United States Coast Guard if the state that does not have an approved numbering system.

(10) 'Marine toilet' includes any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage and any process to treat such sewage. A marine toilet must be equipped with a holding tank which can be emptied only by pumping out.

(11) 'Mechanically propelled vessel' means, for the purpose of determining fire extinguisher requirements, those vessels propelled by machinery using a volatile liquid for fuel.

(12) 'Nonmotorized vessel' means any vessel other than a sailboat which has no motor attached in a manner to make it readily available for operation.

(13) 'No wake' means that the wake or wash created by the movement of the vessel through the water is minimal.

(14) 'Operate' means to navigate or otherwise use a vessel which is not at anchor or moored, including vessels which are being paddled, are drifting, or are being powered by machinery.

(15) 'Operator' means the person who operates or has charge of the navigation or use of a vessel.

(16) 'Owner' means a person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the use or possession of a vessel subject to an interest in another person reserved or created by agreement and securing payment or performance of an obligation but the term excludes a lessee under a lease not intended as security.

(17) 'Person' means an individual, partnership, firm, corporation, association, or other legal entity.

(18) 'Personal flotation device' means any lifesaving device classified and approved as Type I, Type II, Type III, Type IV, or Type V (Hybrid) by the United States Coast Guard.

(19) 'Portable marine toilet' means any device which is movable or portable and is not permanently installed on a vessel and which is designed to receive and temporarily retain sewage.

(20) 'Power boat' means any boat, vessel, or water-going craft which is propelled by mechanical rather than manual means whether or not such propulsion device forms an integral part of the structure thereof.

(21) 'Protected fresh waters' means the waters of Lake Allatoona, Lake Blackshear, Clarks Hill Lake, Hartwell Lake, Lake Sidney Lanier, Lake Oconee, Lake Seminole, Lake Sinclair, Russell Lake, Walter F. George Reservoir, and West Point Lake.

(22) 'Reportable boating accident' means an accident, collision, or other casualty involving a vessel subject to this article which results in loss of life, injury sufficient to cause incapacitation for at least 24 hours, or actual physical damage to property, including vessels, in excess of \$2,000.00.

(22.1) 'Sailboard' means any sailboat whose unsupported mast is connected by a swivel or a flexible universal joint to a hull similar to the hull of a surfboard.

(23) 'Sewage' means human body wastes and the waste from toilets and other receptacles intended to receive or retain body wastes.

(24) 'Undocumented vessel' means a vessel which is not required to have and does not have a valid marine document issued by the United States Coast Guard or federal agency successor thereto.

(25) 'Vessel' means every description of watercraft, other than a seaplane on the water or a sailboard, used or capable of being used as a means of transportation on water and specifically includes, but is not limited to, inflatable rafts and homemade vessels; provided, however, Code Section 52-7-18, relating to rules of the road for boat traffic, shall be applicable to sailboards.

(26) 'Waters of this state' means any waters within the territorial limits of this state and the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of this state. This definition shall not include privately owned ponds or lakes not open to the public."

SECTION 4.

Said article is further amended by striking Code Section 52-7-6, relating to exemptions from vessel numbering requirements, and inserting in lieu thereof the following:

"52-7-6.

A vessel shall not be required to be numbered under ~~this article~~ Code Sections 52-7-4 and 52-7-5 if it is:

(1) Not motor propelled; provided, however, that sailboats 12 feet or more in length shall require registration;

(2) Covered by a certificate of number in full force and effect which has been issued to it pursuant to federal law or a federally approved numbering system of another state, provided that such vessel shall not be used on the waters of this state for a period in excess of 60 consecutive days;

(3) From a country other than the United States, provided that such vessel shall not be used on the waters of this state for a period in excess of 60 consecutive days;

(4) A vessel whose owner is the United States, a state, or a subdivision thereof, which vessel is used exclusively in the nonrecreation public service and which is clearly identifiable as such;

(5) A vessel's lifeboat if the boat is used solely for lifesaving purposes; this exemption does not include dinghies, tenders, speedboats, or other types of craft carried aboard vessels and used for other than lifesaving purposes;

(6) A vessel that is used exclusively for racing;

(7) A vessel belonging to a class of boats which has been exempted from numbering by the department after the department has found that:

(A) The numbering of vessels of such class will not materially aid in their identification;

(B) An agency of the federal government has a numbering system applicable to the class of vessel to which the vessel in question belongs; and

(C) The vessel would also be exempt from numbering if it were subject to the federal law;

(8) Operating temporarily by virtue of evidence that a recent application for a certificate of number has been submitted; or

(9) Used exclusively on privately owned ponds or lakes, except for those licensed by the Federal Energy Regulatory Commission."

SECTION 5.

Said article is further amended by adding new Code sections to read as follows:

"52-7-7.1.

(a) No person shall operate on the waters of this state a vessel manufactured after November 1, 1972, unless the vessel displays an assigned hull identification number as required by the United States Coast Guard or by the issuing authority, except any of those vessels exempted by Code Section 52-7-7.6. The hull identification number shall be carved, burned, stamped, embossed, or otherwise permanently affixed to the outboard side of the transom or the starboard side within two feet of the transom above the waterline in accordance with federal law or as directed by the issuing authority.

(b) No person shall operate on the waters of this state a vessel that was manufactured before November 1, 1972, for which an issuing authority has issued a hull identification number unless the hull identification number is clearly displayed on the hull of the vessel as described in subsection (a) of this Code section.

(c) No person shall destroy, remove, alter, cover, or deface the hull identification number, or any plate or decal bearing such number, of any vessel, except to make necessary repairs that require the removal of the HIN. Immediately upon completion of any repairs requiring the destruction, removal, alteration, covering, or defacing of a vessel's HIN, the person shall reaffix the hull identification number to the vessel in accordance with federal law or shall apply for a replacement hull identification number from the department.

(d) No person shall assign the same hull identification number to more than one vessel.

(e) Any person who willfully violates subsection (c) or (d) of this Code section with intent to misrepresent the identity of a vessel so as to convert or defraud shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than \$500.00

1 nor more than \$5,000.00, by imprisonment for not less than one nor more than five years,
2 or by both such fine and imprisonment.

3 52-7-7.2.

4 Each vessel manufactured or built after the effective date of this Code section for sale in
5 this state shall have a hull identification number displayed prior to sale or delivery for sale
6 in accordance with federal law and this article. The hull identification number shall not be
7 altered or replaced by the manufacturer or manufacturer's representative for the purpose
8 of upgrading the model year of a vessel after being offered for sale or delivered to any
9 dealer.

10 52-7-7.3.

11 (a) If the hull identification number on a vessel required by Code Section 52-7-7.1 or
12 52-7-7.2 to have a hull identification number does not exist or has been altered, removed,
13 destroyed, covered, or defaced or the real identity of the vessel cannot be determined, the
14 vessel, and any items used while towing said vessel, may be seized as contraband property
15 by a law enforcement agency or the department and shall be subject to forfeiture. Such
16 vessel shall not be sold or operated on the waters of the state unless the department:

- 17 (1) Receives a request from a law enforcement agency providing adequate
18 documentation for a replacement hull identification number; or
19 (2) Is directed by written order of a court of competent jurisdiction to issue to the vessel
20 a replacement hull identification number.

21 Thereafter, the replacement HIN shall be used for identification purposes. No vessel shall
22 be forfeited if the owner was unaware the vessel's HIN had been altered, removed,
23 destroyed, covered, or defaced.

24 (b) The failure to have the hull identification number clearly displayed in compliance with
25 this article shall be probable cause for any law enforcement officer to make further
26 inspection of the vessel in question to ascertain the true identity thereof.

27 52-7-7.4.

28 (a) Property subject to forfeiture under Code Section 52-7-7.3 and in the possession of any
29 state or local law enforcement agency shall not be subject to replevin but shall be deemed
30 to be in the custody of the superior court of the county wherein the property is located
31 subject only to the orders and decrees of the court having jurisdiction over the forfeiture
32 proceedings.

33 (b) The law enforcement agency having possession of any property subject to forfeiture
34 under Code Section 52-7-7.3 shall report such fact within ten days of taking possession to

1 the district attorney of the judicial circuit having jurisdiction in the county where the
2 property is located. Within 30 days from the date he or she receives such notice, the
3 district attorney of the judicial circuit shall file in the superior court of the county in which
4 the property is located an action for condemnation of the property. The proceedings shall
5 be brought in the name of the state, and the action shall be verified by a duly authorized
6 agent of the state in the manner required by law. The action shall describe the property,
7 state its location, state its present custodian, state the name of the owner, if known, state
8 the duly authorized agent of the state, allege the essential elements which are claimed to
9 exist, and shall conclude with a prayer of due process to enforce the forfeiture. Upon the
10 filing of such an action, the court shall promptly cause process to issue to the present
11 custodian in possession of the property described in the action, commanding him or her to
12 seize the property described in the action and to hold that property for further order of the
13 court. A copy of the action shall be served on the owner, if known. If the owner is known,
14 a copy of the action shall also be served upon any person having a duly recorded security
15 interest in or lien upon that property. If the owner is unknown or resides out of the state
16 or departs the state or cannot after due diligence be found within the state or conceals
17 himself or herself so as to avoid service, notice of the proceedings shall be published once
18 a week for two weeks in the newspaper in which the sheriff's advertisements are published.
19 Such publication shall be deemed notice to any and all persons having an interest in or right
20 affected by such proceeding and from any sale of the property resulting therefrom but shall
21 not constitute notice to any person having a duly recorded security interest in or lien upon
22 such property and required to be served under this Code section unless that person is
23 unknown or resides out of the state or departs the state or cannot after due diligence be
24 found within the state or conceals himself or herself to avoid service. At the expiration of
25 30 days after such filing, if no claimant has appeared to defend the action, the court shall
26 order the disposition of the seized property as provided for in this Code section. If the
27 owner of the vessel appears and defends the action and can show that he or she was
28 unaware of the fact that the hull identification number had been removed, altered, defaced,
29 falsified, or destroyed, the court shall order the property returned to the owner upon the
30 owner's paying proper expenses relating to proceedings for forfeiture, including the
31 expenses of the maintenance of custody, advertising, and court costs and upon the vessel
32 being assigned a new hull identification number as provided in this article.

33 (c) Except as otherwise provided in this article, when property is forfeited under this
34 article, the court may:

- 35 (1) Order that the vessel be retained by the law enforcement agency or the county in
36 which the vessel is located; or

(2) Order that the vessel be disposed of by sale, the proceeds of which shall be used to pay the proper expenses relating to the proceedings for forfeiture, including the expenses of maintenance of custody, advertising, and court costs, with the remaining funds to be paid into the general fund of the county.

(d) Prior to the vessel being sold or returned to the owner or otherwise disposed of, the department shall assign it a new hull identification number in accordance with federal law.

52-7-7.5.

(a) It shall be unlawful for any person to knowingly possess, manufacture, sell or exchange, offer to sell or exchange, aid in the sale or exchange, supply in blank, authorize, direct, or give away any counterfeit HIN, any counterfeit manufacturer's vessel HIN plate or decal, or any manufacturer's vessel HIN plate decal which is assigned to a vessel to be used for the purpose of identification of a vessel other than the one to which it is assigned; or to conspire to do any of the foregoing. However, nothing in this subsection shall be applicable to any approved hull identification number plate or decal issued as a replacement by the manufacturer or an issuing authority.

(b) It shall be unlawful for any person to knowingly buy, sell, offer for sale, receive, dispose of, conceal, or have in his or her possession any vessel, outboard motor, or part thereof on which the HIN or any manufacturer's identification label of any kind has been altered, removed, destroyed, covered, or defaced or to knowingly maintain such vessel, outboard motor, or part thereof in any manner which conceals or misrepresents the true identity of the vessel, the outboard motor, or any part thereof.

(c) Any person who violates subsection (a) or (b) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than \$500.00 nor more than \$5,000.00, by imprisonment for not less than one nor more than five years, or by both such fine and imprisonment.

52-7-7.6.

A vessel shall not be required to have a hull identification number under Code Section 52-7-7.1 or 52-7-7.2 if it is:

(1) An innertube; or

(2) A vessel used exclusively for racing."

SECTION 6.

Said chapter is further amended in Code Section 52-7-13, relating to boating safety zones, restrictions on use of motors and operation of houseboats on certain lakes, and exceptions, by redesignating subsection (h) as subsection (i) and by adding a new subsection (h) to read as follows:

“(h) The operation of any of the following vessels on Lake Burton, Seed Lake, Lake Rabun, Lake Tugalo, Tallulah Falls Lake, and Lake Yonah shall be prohibited:

(1) Any motorized vessel greater than 30 feet six inches in length; except for law enforcement, scientific research or dam operation and maintenance craft; or

(2) Any vessel equipped with any type of bypass mechanism that reduces or eliminates the effectiveness of the muffler or baffler system required by Code Section 52-7-10.”

SECTION 7.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 8.

All laws and parts of laws in conflict with this Act are repealed.