S T A T E O F N E W Y O R K

7359--A

Cal. No. 719

I N S E N A T E

March 31, 2010

Introduced by Sen. SERRANO -- (at request of the Office of Parks, Recreation and Historic Preservation) -- read twice and ordered printed, and when printed to be committed to the Committee on Cultural Affairs, Tourism, Parks and Recreation -- reported favorably from said committee and committed to the Committee on Codes -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the navigation law, in relation to personal watercraft; and to repeal certain provisions of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivisions 30 and 31 of section 2 of the navigation law, subdivision 30 as added by chapter 455 of the laws of 1990, are REPEALED, and two new subdivisions 31 and 35 are added to read as follows:

31. "PERSONAL WATERCRAFT" SHALL MEAN A VESSEL LESS THAN SIXTEEN FEET IN LENGTH PROPELLED BY WATER JET PUMP OR OTHER MECHANICAL POWER AS ITS PRIMARY SOURCE PROPULSION AND WHICH IS DESIGNED TO BE OPERATED BY A PERSON SITTING, STANDING, OR KNEELING ON, OR BEING TOWED BEHIND THE VESSEL RATHER THAN IN THE CONVENTIONAL MANNER OF SITTING OR STANDING INSIDE THE VESSEL.

35. "LIVERY" SHALL MEAN ANY PERSON OR BUSINESS ENGAGED IN THE LEASING, HIRING OR RENTING OF RESIDENTIAL OR PLEASURE VESSELS, INCLUDING ROWBOATS AND CANOES, FOR WHICH A FEE IS CHARGED OR WHERE PROVIDED AS AN ACCOMMODATION OR PRIVILEGE OF ACCOMMODATION, RESORT OR AMUSEMENT.

S 2. Paragraphs a, b and c of subdivision 1-a of section 49 of the navigation law, as amended by chapter 248 of the laws of 2005, are amended to read as follows:

a. No person shall operate a personal watercraft [or specialty propcraft] upon the navigable waters of the state or any tidewaters bordering on or lying within the boundaries of Nassau and Suffolk counties unless the operator is fourteen years of age or older and the holder of, or is accompanied by a person over eighteen years of age who is the

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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holder of a boating safety certificate issued by the commissioner, the United States power squadrons, the United States coast guard auxiliary, or other state or government, as a result of completing a course approved by the commissioner.

b. No person who is the owner of a personal watercraft [or specialty prop-craft] shall knowingly authorize or permit the operation thereof on the navigable waters of the state or any tidewaters bordering on or lying within the boundaries of Nassau or Suffolk counties unless the operator is fourteen years of age or older and the holder of, or is accompanied by a person over eighteen years of age who is the holder of a boating safety certificate issued by the commissioner, the United States power squadrons, United States coast guard auxiliary, or other state or government, as a result of completing a course approved by the commissioner.

c. For the purposes of this subdivision "accompanied" shall mean upon the vessel. [Provided, however, that until January first, two thousand nine, in relation to a person less than fourteen years of age who is the holder of a boating safety certificate issued by the commissioner, the United States power squadrons, United States coast guard auxiliary or other state or government, accompanied shall also mean within view and not more than five hundred feet from a person aboard a vessel or personal watercraft, who is over eighteen years of age and the holder of a boating safety certificate issued by the commissioner, the United States power squadrons, United States coast guard auxiliary or other state or government, as a result of completing a course approved by the commissioner.]

S 3. Subdivision 2 of section 71-d of the navigation law, as amended by chapter 805 of the laws of 1992, is amended to read as follows:

2. Any person convicted of violating this section shall be guilty of a violation punishable [by a fine of not less than twenty-five nor more than one hundred dollars] AS SET FORTH IN SECTION SEVENTY-THREE-C OF THIS ARTICLE.

S 4. Section 73-a of the navigation law, as added by chapter 455 of the laws of 1990, paragraph a of subdivision 1 as amended by chapter 305 of the laws of 2001, paragraphs c and g of subdivision 1 and subdivisions 2 and 3 as amended by chapter 380 of the laws of 1996, paragraph e of subdivision 1 as amended by chapter 320 of the laws of 1995, paragraphs (d) and (e) of subdivision 2 as amended and paragraph (f) of subdivision 2 as added by chapter 138 of the laws of 1998, is amended to read as follows:

S 73-a. Regulations of personal watercraft [and specialty prop-craft].

1. Personal watercraft [and specialty prop-craft]. a. No person shall operate a personal watercraft [or a specialty prop-craft] unless each person riding on such vessel is wearing a securely fastened United States Coast Guard approved personal flotation device.

b. No person shall operate a personal watercraft [or a specialty prop-craft] unless such vessel is equipped and fitted with a United States Coast Guard approved device for arresting carburetor backfire.

c. No person shall operate a personal watercraft [or a specialty prop-craft] unless such vessel is equipped with:

(i) [at least two ventilators fitted with cowls or their equivalent for the purpose of properly and efficiently ventilating the bilges of every engine and fuel tank compartment in order to remove any inflammable or explosive gases provided, however, if the vessel is so constructed as to have the greater portion of the bilges under the engine and fuel tanks open and exposed to the natural atmosphere at all

times such vessel need not be required to be fitted with such ventilators] ONE B-1 SIZED UNITED STATES COAST GUARD APPROVED FIRE EXTINGUISHER; and

(ii) an efficient sound producing mechanical appliance, except sirens, capable of producing a blast of two seconds or more in duration and of such strength as to be heard plainly for a distance of at least one-half mile in still weather; and

(iii) a [fluorescent-orange] UNITED STATES COAST GUARD APPROVED ORANGE distress flag [which shall be a minimum of one foot square] or other appropriate United States Coast Guard approved visual distress signal.

d. Any person operating a personal watercraft [or a specialty prop-craft] equipped by the manufacturer with a lanyard type engine cut-off switch shall attach such lanyard to his or her person, clothing, or personal flotation device as is appropriate for the specific vessel.

e. No person shall operate a personal watercraft [or a specialty prop-craft] at any time from sunset to sunrise.

f. No person shall operate a personal watercraft [or a specialty prop-craft] within five hundred feet of any designated bathing area, except in bodies of water where the opposing shoreline is less than five hundred feet from such designated area and in accordance with speed regulations and restrictions as provided by local law or ordinance but in no event at a speed in excess of ten miles per hour, provided, however, that nothing contained in this subdivision shall be construed to prohibit the launching of such vessel from designated launching areas or sites.

g. Every personal watercraft [and specialty prop-craft] shall at all times be operated in a reasonable and prudent manner. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property, including, but not limited to, (i) weaving through congested vessel traffic, or (ii) jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed, or (iii) swerving at the last possible moment to avoid collision shall constitute reckless operation of a vessel, as provided in section forty-five of this article.

h. The provisions of this section shall not apply to any performer engaged in a professional exhibition or any person preparing to participate or participating in a regatta, race, marine parade, tournament, or exhibition authorized under section thirty-four of this chapter.

i. The provisions of this section shall apply to the operation of a personal watercraft [and a specialty prop-craft] on any waterway or body of water located within New York state and not privately owned and any part of any body of water adjacent to New York state over which the state has territorial jurisdiction, including all tidewaters bordering on and lying within the boundaries of Nassau and Suffolk counties.

j. The provisions of section forty of this [chapter] ARTICLE shall not apply to personal watercraft [or specialty prop-craft].

K. NO PERSON SHALL OPERATE A PERSONAL WATERCRAFT WITH A PASSENGER RIDING IN FRONT OF THE OPERATOR AND EACH PASSENGER MUST BE ABLE TO PLACE HIS OR HER FEET FIRMLY ON THE DECK WHILE HOLDING ONTO THE OPERATOR OR ONTO THE HANDHOLDS.

2. Liveries. Notwithstanding the provisions of section forty-nine or seventy-one-d of this [chapter] ARTICLE, no livery shall lease, hire, or rent a personal watercraft [or a specialty prop-craft] to any person unless:

(a) such person is [sixteen] EIGHTEEN years of age or older.

(b) the operator of such livery, or his designated agent, prior to permitting the use by such person of such personal watercraft [or specialty prop-craft], explains and demonstrates to such person by video or actual in water demonstration the operating procedure of such personal watercraft [or specialty prop-craft] and the use of such vessel's safety equipment;

(c) such person, after receiving the explanation and demonstration required pursuant to paragraph (b) of this subdivision, demonstrates to such livery operator or to such designated agent the ability to operate such vessel and use the applicable safety equipment;

(d) such person has presented genuine proof of identification and age; and except as provided in paragraph (f) of this subdivision, has demonstrated compliance with section forty-nine of this article, to such livery operator or the livery operator's designated agent prior to the time of leasing, hiring or renting such vessel;

(e) such livery operator or his designated agent, at the time of such leasing, hiring or renting, records the name, address and age of the user of the leased, hired or rented vessel, and the model, year, name of manufacturer, and state registration or federal documentation numbers of the leased, hired or rented vessel. Such records shall be maintained for a period of not less than one year; and

(f) notwithstanding the provisions of paragraph (d) of this subdivision and subdivision one-a of section forty-nine of this article, a person over eighteen years of age may operate such personal watercraft [or specialty prop-craft] without the certificate required pursuant to section forty-nine of this article when such operation is restricted by the operator of such livery, or the livery operator's designated agent, to a specified area, no part of which shall be more than twenty-five hundred feet from the livery location, or, if removed from the livery location, not more than five hundred feet from the livery operator or agent assigned by the livery operator to supervise such operation and such personal watercraft [or specialty propcraft] and/or the personal flotation device of the operator is clearly marked in such a manner as to be distinguishable by the operator of such livery or the livery operator's designated agent within the permitted areas of operation.

(G) THE OPERATOR OF SUCH LIVERY OR ANY DESIGNATED AGENT RESPONSIBLE FOR PROVIDING EXPLANATIONS AND DEMONSTRATIONS REQUIRED BY THIS SECTION SHALL HAVE SUCCESSFULLY COMPLETED A BOATING SAFETY COURSE APPROVED BY THE COMMISSIONER.

(H) THE OPERATOR OF SUCH LIVERY SHALL PROVIDE THE OPERATORS OF SUCH PERSONAL WATERCRAFT WITH ALL THE EQUIPMENT REQUIRED BY THIS CHAPTER. SUCH EQUIPMENT MUST BE FULLY EXPLAINED TO THE PERSON RENTING THE PERSONAL WATERCRAFT AND ALL EQUIPMENT MUST BE IN SERVICEABLE CONDITION.

3. Penalties for violation. (a) Every person convicted of a violation of this section, other than a conviction for a violation of subdivision two of this section, shall for a first conviction thereof be punished by a fine of not less than fifty dollars nor more than two hundred dollars; for a conviction of a second violation, both of which were committed within a period of twenty-four months, such person shall be punished by a fine of not less than one hundred dollars nor more than four hundred dollars; upon a conviction of a third or subsequent violation, all of which were committed within a period of twenty-four months, such person shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars and the revocation of the registration of the personal watercraft.

(b) Every person convicted of a violation of subdivision two of this section shall for a first conviction thereof be punished by a fine of not less than one hundred dollars nor more than two hundred dollars; for a conviction of a second violation, both of which were committed within a period of twenty-four months, such person shall be punished by a fine of not less than two hundred dollars nor more than four hundred dollars; upon a conviction of a third or subsequent violation, all of which were committed within a period of twenty-four months, such person shall be punished by a fine of not less than four hundred dollars nor more than eight hundred dollars.

S 5. This act shall take effect on the thirtieth day after it shall have become a law; provided, however, that paragraphs (g) and (h) of subdivision 2 of section 73-a of the navigation law as added by section four of this act shall take effect January 1, 2011; provided further, however, that the amendments to paragraph (f) of subdivision 2 of section 73-a of the navigation law made by section four of this act shall not affect the repeal of such paragraph and shall be deemed repealed therewith.