

HOUSE BILL NO. 322

INTRODUCED BY EUDAILY, MERCER, ADDY

BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

IN THE HOUSE

JANUARY 20, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 2, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 4, 1987	PRINTING REPORT.
FEBRUARY 5, 1987	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 6, 1987	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
	ON MOTION, TAKEN FROM SECOND READING AND REREFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 17, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 18, 1987	PRINTING REPORT.
FEBRUARY 19, 1987	SECOND READING, DO PASS.
FEBRUARY 20, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 80; NOES, 12.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 21, 1987

INTRODUCED AND REFERRED TO COMMITTEE
ON FISH & GAME.

MARCH 27, 1987

COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 30, 1987

SECOND READING, CONCURRED IN.

ON MOTION, RULES SUSPENDED AND BILL
PLACED ON THIRD READING THIS DAY.

THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 7, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 8, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 322
 2 INTRODUCED BY Emily Mercer Kelly
 3 BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH BLOOD
 6 ALCOHOL STANDARDS FOR PERSONS WHO OPERATE OR ARE IN ACTUAL
 7 PHYSICAL CONTROL OF MOTORBOATS OR VESSELS OR ARE
 8 MANIPULATING WATER SKIS, SURFBOARDS, OR SIMILAR DEVICES
 9 WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AMENDING
 10 SECTION 23-2-523, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
 11 DATE."
 12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 14 Section 1. Section 23-2-523, MCA, is amended to read:
 15 "23-2-523. Prohibited operation and mooring --
 16 enforcement. (1) No person may operate or knowingly permit
 17 any person to operate any motorboat or vessel or manipulate
 18 any water skis, surfboard, or similar device or other
 19 contrivance in a reckless or negligent manner so as to
 20 endanger the life, limb, or property of any person.
 21 (2) No person may knowingly operate or knowingly
 22 ~~permit--any--person--to--operate~~ be in actual physical control
 23 of any motorboat or vessel or manipulate any water skis,
 24 surfboard, or similar device ~~or--other--contrivance~~ while
 25 ~~intoxicated--or~~ under the influence of ~~any--narcotic--drug~~

1 ~~barbiturate,--or--marijuana~~ alcohol or drugs.
 2 (3) It is unlawful for the owner of any motorboat or
 3 vessel or any person having such in charge or in control to
 4 authorize or knowingly permit the same to be operated by any
 5 person who by reason of physical or mental disability is
 6 incapable of operating such watercraft under the prevailing
 7 circumstances.
 8 (4) No person may operate or knowingly permit any
 9 person to operate any motorboat or vessel at a rate of speed
 10 greater than will permit such person, in the exercise of
 11 reasonable care, to bring the vessel to a stop within the
 12 assured clear distance ahead. However, nothing in this part
 13 is intended to prevent the operator of a vessel actually
 14 competing in a regatta which is sanctioned by an appropriate
 15 governmental unit from attempting to attain high speeds on a
 16 marked racing course.
 17 (5) No person may make a reckless approach to,
 18 departure from, or passage by a dock, ramp, diving board, or
 19 float.
 20 (6) Skiers being pulled by motorboats must have on
 21 their person a life preserver, buoyant vest, or ski belt.
 22 (7) No person may moor a vessel to any of the buoys or
 23 beacons placed in any waters of this state by the authority
 24 of the United States, an agency of the United States, or the
 25 department or in any manner hang on with a vessel to such



1 buoy or beacon, except in the act of maintenance work on
2 such buoy or beacon, nor may any person deface, remove, or
3 destroy any such buoy, beacon, or other authorized
4 navigational marker maintained in the waters of this state.

5 (8) If an officer whose duty it is to enforce the
6 sections of this law observes a vessel being used without
7 sufficient lifesaving or firefighting devices or in an
8 overloaded or other unsafe condition and in his judgment
9 such use creates an especially hazardous condition, he may
10 direct the operator to take whatever immediate and
11 reasonable steps would be necessary for the safety of those
12 aboard the vessel, including directing the operator to
13 return to mooring or launching site and to remain there
14 until the situation creating the hazard is corrected or
15 ended."

16 NEW SECTION. Section 2. Blood alcohol concentration
17 standards -- evidence admissible -- administration of tests.

18 (1) The presumptions contained in 61-8-401(3)(a) apply to
19 any criminal action or proceeding arising out of acts
20 alleged to have been committed in violation of 23-2-523(2).

21 (2) Evidence of the amount of alcohol in a person's
22 blood at the time of the act alleged and any other competent
23 evidence bearing on the question of whether the person was
24 under the influence of alcohol at the time of the act
25 alleged is admissible in any criminal action or proceeding

1 arising out of acts alleged to have been committed in
2 violation of 23-2-523(2).

3 (3) If a person charged with violation of 23-2-523(2)
4 refuses to submit to a chemical test of his blood, breath,
5 or urine for the purpose of determining the alcoholic
6 content of his blood, none will be given, but proof of
7 refusal is admissible in any criminal action or proceeding
8 arising out of acts alleged to have been committed in
9 violation of 23-2-523(2).

10 (4) The provisions relating to administration of tests
11 provided in 61-8-405 and the definition of blood alcohol
12 concentration provided in 61-8-407 apply to any testing done
13 to determine the blood alcohol concentration of a person
14 charged with violation of 23-2-523(2).

15 NEW SECTION. Section 3. Rulemaking authority of the
16 department. The department of fish, wildlife, and parks may
17 adopt rules to implement sections 1 and 2.

18 NEW SECTION. Section 4. Codification instruction.
19 Section 2 is intended to be codified as an integral part of
20 Title 23, chapter 2, part 5, and the provisions of Title 23,
21 chapter 2, part 5, apply to section 2.

22 NEW SECTION. Section 5. Effective date. This act is
23 effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 322

INTRODUCED BY EUDAILY, MERCER, ADDY

BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH BLOOD ALCOHOL STANDARDS FOR PERSONS WHO OPERATE OR ARE IN ACTUAL PHYSICAL CONTROL OF MOTORBOATS OR VESSELS SAILBOATS OR ARE MANIPULATING WATER SKIS, SURFBOARDS, OR SIMILAR DEVICES ATTACHED TO MOTORBOATS WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AMENDING SECTION 23-2-523, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-2-523, MCA, is amended to read:

"23-2-523. Prohibited operation and mooring -- enforcement. (1) No person may operate or knowingly permit any person to operate any motorboat or vessel or manipulate any water skis, surfboard, or similar device or other contrivance in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(2) No person may knowingly operate or knowingly ~~permit--any--person-to-operate~~ be in actual physical control of any motorboat or vessel SAILBOAT or manipulate any water skis, surfboard, or similar device ATTACHED TO A MOTORBOAT ~~or--other--contrivance~~ while intoxicated--or under the

influence of ~~any--narcotic-drug,-barbiturate-or-marijuana~~ alcohol or drugs.

(3) It is unlawful for the owner of any motorboat or vessel or any person having such in charge or in control to authorize or knowingly permit the same to be operated by any person who by reason of physical or mental disability is incapable of operating such watercraft under the prevailing circumstances.

(4) No person may operate or knowingly permit any person to operate any motorboat or vessel at a rate of speed greater than will permit such person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. However, nothing in this part is intended to prevent the operator of a vessel actually competing in a regatta which is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(5) No person may make a reckless approach to, departure from, or passage by a dock, ramp, diving board, or float.

(6) Skiers being pulled by motorboats must have on their person a life preserver, buoyant vest, or ski belt.

(7) No person may moor a vessel to any of the buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States, or the

1 department or in any manner hang on with a vessel to such
 2 buoy or beacon, except in the act of maintenance work on
 3 such buoy or beacon, nor may any person deface, remove, or
 4 destroy any such buoy, beacon, or other authorized
 5 navigational marker maintained in the waters of this state.

6 (8) If an officer whose duty it is to enforce the
 7 sections of this law observes a vessel being used without
 8 sufficient lifesaving or firefighting devices or in an
 9 overloaded or other unsafe condition and in his judgment
 10 such use creates an especially hazardous condition, he may
 11 direct the operator to take whatever immediate and
 12 reasonable steps would be necessary for the safety of those
 13 aboard the vessel, including directing the operator to
 14 return to mooring or launching site and to remain there
 15 until the situation creating the hazard is corrected or
 16 ended."

17 NEW SECTION. Section 2. Blood alcohol concentration
 18 standards -- evidence admissible -- administration of tests.

19 (1) The presumptions contained in 61-8-401(3)(a) apply to
 20 any criminal action or proceeding arising out of acts
 21 alleged to have been committed in violation of 23-2-523(2).

22 (2) Evidence of the amount of alcohol in a person's
 23 blood at the time of the act alleged and any other competent
 24 evidence bearing on the question of whether the person was
 25 under the influence of alcohol at the time of the act

1 alleged is admissible in any criminal action or proceeding
 2 arising out of acts alleged to have been committed in
 3 violation of 23-2-523(2).

4 (3) If a person charged with violation of 23-2-523(2)
 5 refuses to submit to a chemical test of his blood, breath,
 6 or urine for the purpose of determining the alcoholic
 7 content of his blood, none will be given, but proof of
 8 refusal is admissible in any criminal action or proceeding
 9 arising out of acts alleged to have been committed in
 10 violation of 23-2-523(2).

11 (4) The provisions relating to administration of tests
 12 provided in 61-8-405 and the definition of blood alcohol
 13 concentration provided in 61-8-407 apply to any testing done
 14 to determine the blood alcohol concentration of a person
 15 charged with violation of 23-2-523(2).

16 ~~NEW SECTION. Section 3. Rulemaking authority of the~~
 17 ~~department. The department of fish, wildlife, and parks may~~
 18 ~~adopt rules to implement sections 1 and 2.~~

19 NEW SECTION. Section 3. Codification instruction.
 20 Section 2 is intended to be codified as an integral part of
 21 Title 23, chapter 2, part 5, and the provisions of Title 23,
 22 chapter 2, part 5, apply to section 2.

23 NEW SECTION. Section 4. Effective date. This act is
 24 effective on passage and approval.

-End-

1 HOUSE BILL NO. 322
 2 INTRODUCED BY EUDAILY, MERCER, ADDY
 3 BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH BLOOD
 6 ALCOHOL STANDARDS FOR PERSONS WHO OPERATE ~~OR-ARE-IN-ACTUAL~~
 7 ~~PHYSICAL--CONTROL--OF~~ MOTORBOATS OR VESSELS SAILBOATS,
 8 INCLUDING A SAILBOAT PROPELLED BY A MOTOR OF ANY KIND, OR
 9 ARE MANIPULATING WATER SKIS, SURFBOARDS, OR SIMILAR DEVICES
 10 ATTACHED TO MOTORBOATS WHILE UNDER THE INFLUENCE OF ALCOHOL
 11 OR DRUGS; AMENDING SECTION 23-2-523, MCA; AND PROVIDING AN
 12 IMMEDIATE EFFECTIVE DATE."

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 18 any person to operate any motorboat or vessel or manipulate
 19 any water skis, surfboard, or similar device or other
 20 contrivance in a reckless or negligent manner so as to
 21 endanger the life, limb, or property of any person.
 22 (2) No person may knowingly operate or knowingly
 23 permit any person to operate ~~be-in-actual--physical--control~~
 24 of any motorboat or vessel SAILBOAT, INCLUDING A SAILBOAT
 25 PROPELLED BY A MOTOR OF ANY KIND, or manipulate any water

1 skis, surfboard, or similar device ATTACHED TO A MOTORBOAT
 2 ~~or--other--contrivance~~ while intoxicated--or under the
 3 influence of ~~any--narcotic-drug,barbiturate,or-marijuana~~
 4 alcohol or drugs.

5 (3) It is unlawful for the owner of any motorboat or
 6 vessel or any person having such in charge or in control to
 7 authorize or knowingly permit the same to be operated by any
 8 person who by reason of physical or mental disability is
 9 incapable of operating such watercraft under the prevailing
 10 circumstances.

11 (4) No person may operate or knowingly permit any
 12 person to operate any motorboat or vessel at a rate of speed
 13 greater than will permit such person, in the exercise of
 14 reasonable care, to bring the vessel to a stop within the
 15 assured clear distance ahead. However, nothing in this part
 16 is intended to prevent the operator of a vessel actually
 17 competing in a regatta which is sanctioned by an appropriate
 18 governmental unit from attempting to attain high speeds on a
 19 marked racing course.

20 (5) No person may make a reckless approach to,
 21 departure from, or passage by a dock, ramp, diving board, or
 22 float.

23 (6) Skiers being pulled by motorboats must have on
 24 their person a life preserver, buoyant vest, or ski belt.

25 (7) No person may moor a vessel to any of the buoys or



1 beacons placed in any waters of this state by the authority
 2 of the United States, an agency of the United States, or the
 3 department or in any manner hang on with a vessel to such
 4 buoy or beacon, except in the act of maintenance work on
 5 such buoy or beacon, nor may any person deface, remove, or
 6 destroy any such buoy, beacon, or other authorized
 7 navigational marker maintained in the waters of this state.

8 (8) If an officer whose duty it is to enforce the
 9 sections of this law observes a vessel being used without
 10 sufficient lifesaving or firefighting devices or in an
 11 overloaded or other unsafe condition and in his judgment
 12 such use creates an especially hazardous condition, he may
 13 direct the operator to take whatever immediate and
 14 reasonable steps would be necessary for the safety of those
 15 aboard the vessel, including directing the operator to
 16 return to mooring or launching site and to remain there
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21 (1) The presumptions contained in 61-8-401(3)(a) apply to
 22 any criminal action or proceeding arising out of acts
 23 alleged to have been committed in violation of 23-2-523(2).

24 (2) Evidence of the amount of alcohol in a person's
 25 blood at the time of the act alleged and any other competent

1 evidence bearing on the question of whether the person was
 2 under the influence of alcohol at the time of the act
 3 alleged is admissible in any criminal action or proceeding
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 5 violation of 23-2-523(2).

6 (3) If a person charged with violation of 23-2-523(2)
 7 refuses to submit to a chemical test of his blood, breath,
 8 or urine for the purpose of determining the alcoholic
 9 content of his blood, none will be given, but proof of
 10 refusal is admissible in any criminal action or proceeding
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 12 violation of 23-2-523(2).

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 14 provided in 61-8-405 and the definition of blood alcohol
 15 concentration provided in 61-8-407 apply to any testing done
 16 to determine the blood alcohol concentration of a person
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 20 ~~adopt rules to implement sections 1 and 2.~~

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 23 Title 23, chapter 2, part 5, and the provisions of Title 23,
 24 chapter 2, part 5, apply to section 2.

25 NEW SECTION. Section 4. Effective date. This act is

HB 0322/03

1 effective on passage and approval.

-End-

1 HOUSE BILL NO. 322

2 INTRODUCED BY EUDAILY, MERCER, ADDY

3 BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

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5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH BLOOD
6 ALCOHOL STANDARDS FOR PERSONS WHO OPERATE ~~OR-ARE-IN-ACTUAL~~
7 ~~PHYSICAL--CONTRBL--OF~~ MOTORBOATS OR ~~VESSELS~~ SAILBOATS,
8 INCLUDING A SAILBOAT PROPELLED BY A MOTOR OF ANY KIND, OR
9 ARE MANIPULATING WATER SKIS, SURFBOARDS, OR SIMILAR DEVICES
10 ATTACHED TO MOTORBOATS WHILE UNDER THE INFLUENCE OF ALCOHOL
11 OR DRUGS; AMENDING SECTION 23-2-523, MCA; AND PROVIDING AN
12 IMMEDIATE EFFECTIVE DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 23-2-523, MCA, is amended to read:

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17 enforcement. (1) No person may operate or knowingly permit
18 any person to operate any motorboat or vessel or manipulate
19 any water skis, surfboard, or similar device or other
20 contrivance in a reckless or negligent manner so as to
21 endanger the life, limb, or property of any person.

22 (2) No person may knowingly operate or knowingly
23 ~~permit any person to operate be-in-actual--physical--control~~
24 of any motorboat or vessel ~~SAILBOAT, INCLUDING A SAILBOAT~~
25 PROPELLED BY A MOTOR OF ANY KIND, or manipulate any water

1 skis, surfboard, or similar device ATTACHED TO A MOTORBOAT
2 ~~or--other--contrivance~~ while intoxicated--or under the
3 influence of ~~any--narcotic-drug, barbiturate, or-marijuana~~
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5 (3) It is unlawful for the owner of any motorboat or
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8 person who by reason of physical or mental disability is
9 incapable of operating such watercraft under the prevailing
10 circumstances.

11 (4) No person may operate or knowingly permit any
12 person to operate any motorboat or vessel at a rate of speed
13 greater than will permit such person, in the exercise of
14 reasonable care, to bring the vessel to a stop within the
15 assured clear distance ahead. However, nothing in this part
16 is intended to prevent the operator of a vessel actually
17 competing in a regatta which is sanctioned by an appropriate
18 governmental unit from attempting to attain high speeds on a
19 marked racing course.

20 (5) No person may make a reckless approach to,
21 departure from, or passage by a dock, ramp, diving board, or
22 float.

23 (6) Skiers being pulled by motorboats must have on
24 their person a life preserver, buoyant vest, or ski belt.

25 (7) No person may moor a vessel to any of the buoys or

THIRD READING

HB 322

1 beacons placed in any waters of this state by the authority
 2 of the United States, an agency of the United States, or the
 3 department or in any manner hang on with a vessel to such
 4 buoy or beacon, except in the act of maintenance work on
 5 such buoy or beacon, nor may any person deface, remove, or
 6 destroy any such buoy, beacon, or other authorized
 7 navigational marker maintained in the waters of this state.

8 (8) If an officer whose duty it is to enforce the
 9 sections of this law observes a vessel being used without
 10 sufficient lifesaving or firefighting devices or in an
 11 overloaded or other unsafe condition and in his judgment
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 13 direct the operator to take whatever immediate and
 14 reasonable steps would be necessary for the safety of those
 15 aboard the vessel, including directing the operator to
 16 return to mooring or launching site and to remain there
 17 until the situation creating the hazard is corrected or
 18 ended."

19 NEW SECTION. Section 2. Blood alcohol concentration
 20 standards -- evidence admissible -- administration of tests.

21 (1) The presumptions contained in 61-8-401(3)(a) apply to
 22 any criminal action or proceeding arising out of acts
 23 alleged to have been committed in violation of 23-2-523(2).

24 (2) Evidence of the amount of alcohol in a person's
 25 blood at the time of the act alleged and any other competent

1 evidence bearing on the question of whether the person was
 2 under the influence of alcohol at the time of the act
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 5 violation of 23-2-523(2).

6 (3) If a person charged with violation of 23-2-523(2)
 7 refuses to submit to a chemical test of his blood, breath,
 8 or urine for the purpose of determining the alcoholic
 9 content of his blood, none will be given, but proof of
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 4 buoy or beacon, except in the act of maintenance work on
 5 such buoy or beacon, nor may any person deface, remove, or
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 7 navigational marker maintained in the waters of this state.

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 9 sections of this law observes a vessel being used without
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 20 standards -- evidence admissible -- administration of tests.

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 23 alleged to have been committed in violation of 23-2-523(2).

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 25 blood at the time of the act alleged and any other competent

1 evidence bearing on the question of whether the person was
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 5 violation of 23-2-523(2).

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 7 refuses to submit to a chemical test of his blood, breath,
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 9 content of his blood, none will be given, but proof of
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 14 provided in 61-8-405 and the definition of blood alcohol
 15 concentration provided in 61-8-407 apply to any testing done
 16 to determine the blood alcohol concentration of a person
 17 charged with violation of 23-2-523(2).

18 (5) AS USED IN 23-2-523(2), THE TERM "UNDER THE
 19 INFLUENCE" SHALL HAVE THE MEANING PROVIDED IN 61-8-401(3).

20 ~~NEW SECTION--Section 3--Rulemaking authority--of--the~~
 21 ~~department--The department of fish, wildlife, and parks may~~
 22 ~~adopt rules to implement sections 1 and 2.~~

23 NEW SECTION. Section 3. Codification instruction.
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 25 Title 23, chapter 2, part 5, and the provisions of Title 23,

1 chapter 2, part 5, apply to section 2.

2 NEW SECTION. SECTION 4. COORDINATION INSTRUCTION. IF
3 HOUSE BILL NO. 163, INCLUDING THE SECTION DEFINING THE
4 PHRASE "UNDER THE INFLUENCE", IS NOT PASSED AND APPROVED,
5 SECTION 2(5) OF THIS ACT IS VOID.

6 NEW SECTION. Section 5. Effective date. This act is
7 effective on passage and approval.

-End-

STANDING COMMITTEE REPORT

SENATE

March 27, 1987

19.....

MR. PRESIDENT

Fish and Game

We, your committee on.....

House Bill

No. 322

having had under consideration.....

Third reading copy (Blue color)

ESTABLISH DUI BLOOD ALCOHOL LEVELS/CHEMICAL TESTING FOR BOAT OPERATORS

Representative Ralph Eudaily (Senator Wm. Yellowtail)

House Bill

322

Respectfully report as follows: That..... No.....

be amended as follows:

1. Page 4, line 18.

Insert: "(5) As used in 23-2-523(2), the term "under the influence" shall have the meaning provided in 61-8-401(3)."

2. Page 4, following line 24.

Insert: "NEW SECTION. Section 4. Coordination instruction. If House Bill 163, including the section defining the phrase "under the influence" is not passed and approved, section 2(5) of this act is void."

Renumber subsequent section.

Amendments to HB 322
e:\7086c

AND AS AMENDED
BE CONCURRED IN

~~XXXXXXXX~~

~~XXXXXXXX~~

Ed Smith

Senator Ed Smith

Chairman.

3-27-87
Bill