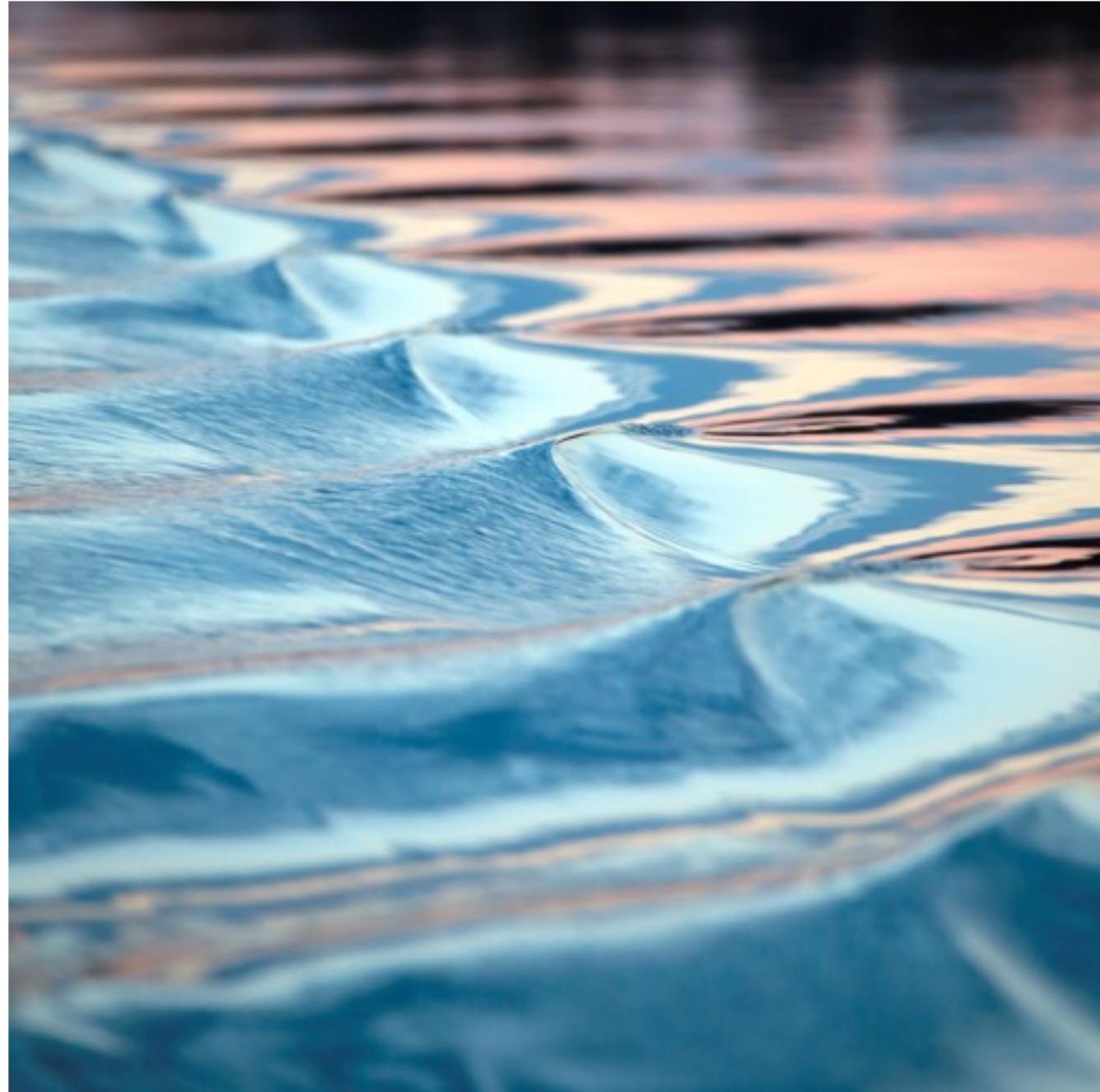


Boating Laws in South Carolina

Piecing It All Together



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**Boating Laws in South Carolina
Piecing It All Together**

Stephan V. Futeral, Esq. & Thomas C. Nelson, Esq.

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Foreword



Growing up and living in the Lowcountry has been a rare gift. Nothing says “home” quite like the smell of pluff mud coming off of the tidal flats and the spartina grass salt marshes. I spent many of my summers working on an oyster boat in Shem Creek but I also got a chance to play too! However, these days, I find I have less time for water-skiing and leisure boating. Nevertheless, no matter where I may go or what I may be doing, my heart and my soul will always be awash in the waters of the Lowcountry.

This book is dedicated to all of you who either know exactly why I’m so fond of the boating life in the Carolinas or are about to discover what I mean. This book isn’t a guide on safety. There’s no substitute for taking a course on boating safety. South Carolina’s waterways get busier every year, so we all need to do our part to keep things safe. This book is a guide for all boat owner and operators in South Carolina to help you “keep it legal” while you’re enjoying your time on the water. My law partner Thomas and I sincerely hope that after you’ve read this guide, you’ll share it with other boaters so that they will be informed too.

Best wishes,

A handwritten signature in black ink, appearing to read 'Stephan Futeral'. The signature is stylized and fluid, with a long horizontal stroke extending to the right.

Stephan Futeral

About the Authors

Stephan Futeral has been a criminal defense and a personal injury attorney since 1993. He was a judicial clerk for the Honorable C. Tolbert Goolsby, Jr., Judge of the South Carolina Court of Appeals, and he has been a law professor at the Charleston School of Law. He was granted membership to the National Trial Lawyers Top 100 Criminal Trial Lawyers. He practices law in Charleston, South Carolina with the law firm of Futeral & Nelson, LLC. For more information on Stephan Futeral's professional background, please [tap here](#).

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Thomas Nelson was recognized by Super Lawyers as a "Rising Star" as a General Litigation attorney in 2013 and 2014 and was granted membership to the National Trial Lawyers Top 100 Criminal Trial Lawyers. He is a partner in the law firm of Futeral & Nelson, LLC.

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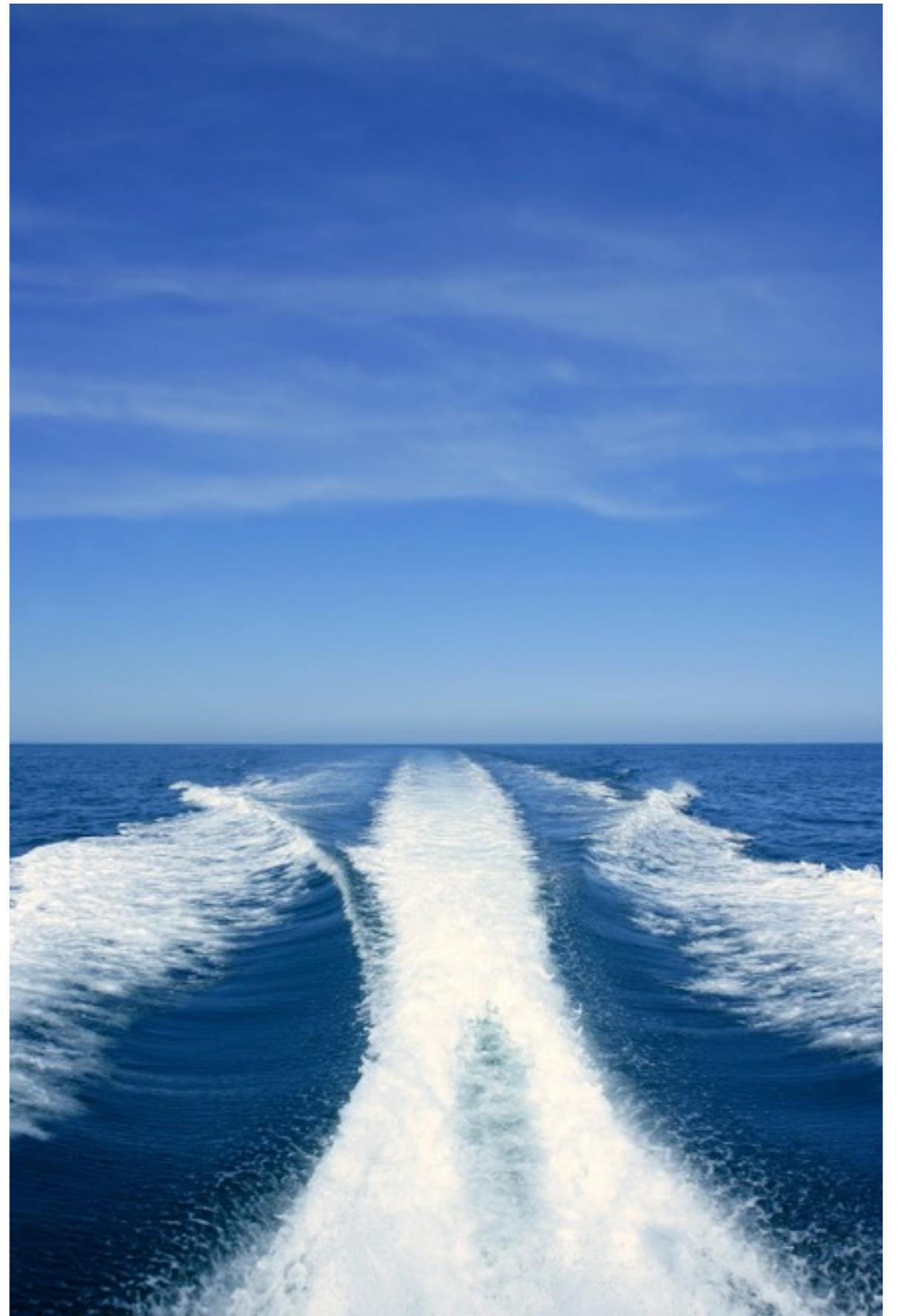
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Overview of Recreational Boating Laws

It's important for anyone operating a boat (referred to as “vessels” or “watercraft” in many of our laws) to understand which laws apply to them. This chapter covers some of the laws and answers some of the most frequently asked questions regarding recreational boating activities, inshore boating, and boats less than 26 feet in length.



REQUIRED BOATING EQUIPMENT IN SOUTH CAROLINA

Probably the most frequently asked question we get is what equipment is legally required on a boat. Here is the answer:

- **Current Title and Registration.** Additionally, all outboard motors five horsepower or greater must be titled.
- **Personal Floatation Devices** – (sometimes called “PFD’s” or life “jackets”). There needs to be a US Coast Guard approved PFD for each person on board or in tow. Each PFD must be easily accessible, in good condition, and of the proper size for each passenger. Boats 16 feet long or longer must also carry a Type IV throwable device. If the boat is less than 16 feet long, then any person under 12 years old must wear a suitable PFD at all times (we recommend this for any boat under 26 feet, even though the law may not require it).
- **Fire Extinguisher** – The boat must have a fire extinguisher that meets the US Coast Guard’s requirements.
- **Flares.**
- **Bell, Whistle, Working Horn** - The sound producing device must be loud enough to be considered “efficient.”
- **“Kill Switch”** – Every boat must have either a self-circling device or a lanyard-type engine cutoff switch.
- **Lighting** – A boat must have the following lights:

1. Sidelights which are visible from 1 mile. The starboard (right) sidelight must be green, and the port (left) sidelight must be red.
2. A masthead light which is visible from 2 miles.
3. A white stern light.

The required navigation lights must be displayed between sunset and sunrise and also during periods of restricted visibility.

IMPORTANT

A person may not use any rotating, strobing, flashing, or intermittently reflecting blue light. Any vessel at anchor must display anchor lights whether occupied or not between sunset and sunrise.

RULES ON THE WATERS IN SOUTH CAROLINA

On the road, we all know you can’t speed, you must stop for stop lights and stop signs, and you can’t cross over solid lines. There are many other things we see every day because most people regularly either drive or ride in automobiles. So, what are the rules when you are boating? Make sure that the following laws are also on your list of things not to do to avoid getting a citation by law enforcement:

- Don't move in excess of idle speed if you're within 50 feet of a moored or an anchored vessel, a wharf, a dock, a bulkhead, a pier, or a person in the water.
- Don't move in excess of idle speed if you're within 100 yards of the Atlantic Ocean coast line.
- Don't go within 50 feet of another vessel if it displays a "diver down flag," which is red with a diagonal white stripe. If the water is too narrow to allow 50 feet, you can only pass at no-wake speed. Leave as much distance between you and the flag.
- Don't obstruct a pier, a dock, a boat ramp, or an access area to the facilities.
- You must heave to and allow boarding when signaled by DNR, the Coast Guard, the Sheriff's Office, or any other law enforcement officer.
- Always maintain a proper look-out and always travel at a safe speed to avoid collisions.
- Yield the right of way to a vessel that you're passing. If two vessels are crossing paths, the vessel that has the other vessel on its starboard (right) side must yield right of way.
- When operating a power-driven vessel, you must give way to any vessel not under command, such as an anchored or disabled vessel, any vessel restricted in its ability to maneuver, such as a vessel towing another or laying cable, or one constrained by its draft, such as a large ship in a

channel, a vessel engaged in commercial fishing, and a sailboat under sail unless it is overtaking.

- When operating a vessel under sail, you must give way to any vessel not under command, any vessel restricted in its ability to maneuver, a vessel engaged in commercial fishing, and a vessel you're overtaking.
- The boat's hull should be marked for capacity in both "weight" and "number of people." Don't exceed these limitations.
- Don't pass a boat stopped by law enforcement at more than a no-wake speed.

DEPARTMENT OF NATURAL RESOURCES (DNR) SAFETY CHECKS

DNR, the Coast Guard, the Sheriff's Office, or any other law enforcement agency on the water may stop you for what they call a "safety check" to make sure you have all of the required equipment listed above. When they conduct these safety checks, they often have no suspicion or "probable cause" to believe you are committing criminal activity. However, there is a statute that requires you to stop your vessel in a way as to permit boarding if a law enforcement vessel activates its blue lights.

We've handled criminal cases where the only reason for the stop was the "safety check." The constitutionality of this stop is questionable, but the South Carolina Supreme Court hasn't

yet decided whether this stop is legal. For now, if you are signaled to stop, you should stop or you will make the situation worse. If you have all of the required equipment, you aren't intoxicated, and you're not engaged in illegal activity, then most safety checks will go down without a hitch.

AIDS TO NAVIGATION AND REGULATORY MARKERS

Boaters should be familiar with both the "aids to navigation" and the "regulatory markers." An aid to navigation is a device designed to assist a boater to determine a safe course or to warn of dangers or obstructions. A regulatory marker is a device which alerts a boater to dangerous areas, but they also restrict or control boating operations. Regulatory markers include speed zone markers, information markers, danger zone markers, restricted areas, mooring buoys, and other dangerous areas. Ignoring a regulatory marker can result in serious injury as well as criminal penalties. We urge you to follow all aids to navigation and regulatory markers. The agencies putting them in place for your safety.

NO WAKE ZONES IN SOUTH CAROLINA

DNR and the Coast Guard have designated various areas as "no wake zones." These zones are often found near boat landings and other high traffic areas. If you see a sign for a no wake zone, slow down to idle speed or a speed that isn't casting any wake. You can receive criminal penalties if you don't.

Some no wake zones aren't legitimate. People who live on the water and have docks put their own no wake signs out on the water. It isn't criminal or illegal to ignore these signs, but always remember, no matter where you are, you are responsible for your wake.

DNR and the Coast Guard put their logos on the legal "no wake" signs. If you don't see where DNR or the Coast Guard marked the no wake zone sign, then it might be a sign placed by a private owner. Even if it is a private owner's sign, consider all things pertaining to safety, such as whether you see people about to board a boat. Never ignore your wake.

HOMELAND SECURITY RESTRICTIONS

Don't approach within 100 yards and slow to a minimum speed within 500 yards of any U.S. Naval vessel.

IMPORTANT

Violators of the Naval Vessel Protection Zone face 6 years in prison and a \$250,000 fine. If you need to pass within 100 yards of a U.S. Naval vessel for safe passage, you must contact the U.S. Naval vessel or the Coast Guard escort vessel on VHF-FM channel 16.

Observe and avoid all security zones. Avoid commercial port areas, especially those that involve military, cruise-line, or petroleum facilities.

Observe and avoid other restricted areas near dams, power plants, etc.

Don't stop or anchor beneath bridges or in channels.

BOATING INSURANCE IN SOUTH CAROLINA

Boating insurance isn't required in South Carolina. However, as personal injury lawyers, we can't stress enough the importance of obtaining insurance. It's very cheap in comparison to automobile insurance, so there is no good excuse to pass on boating insurance. If you're financing your boat, the bank might require that you have some form insurance. If you do obtain a policy, consider the following items:

- **Liability Insurance** – Covers you if you cause personal injury or property damage to someone else.
- **Underinsured/Uninsured Coverage** – Covers you if you're injured by someone else, and they either have no insurance or don't have enough insurance to compensate you.
- **Comprehensive/Collision** – Covers you if the damage to your boat is your fault.
- **Salvage** – If you sink your boat, and you don't get it out, the fines can be very heavy. Unfortunately, removing a sunken or a stuck boat can be costly. Salvage insurance will cover this cost. It may be included in your comprehensive

coverage, but make sure. Adding salvage can cost as little as \$10 per year.

- **Towing** – This type of coverage will pay for a towing company if your boat breaks down on the water.
- **Boat Contents** – Consider adding coverage that will pay for damage to contents, fishing equipment, and other personal property.
- **Your Trailer** - Double-check your automobile policy to make sure it covers your boat trailer when you are driving on the road.

REGISTRATION AND NUMBERING OF BOATS IN SOUTH CAROLINA

Titles are required for nearly all boat with motors 5 horsepower or greater. The motor title decal must be displayed on the starboard side of the motor cover. Motorized watercraft must also be registered with your county. Registration numbers must be painted or permanently attached to each side of the front half of the hull. The letters and numbers can be no less than 3 inches in height, they must contrast with the color of the background, and they must be distinctly visible and legible. Hyphens must be as wide as letters and numbers other than "I" or "1."

Boat trailers don't need to be titled separately unless they weigh 2,500 lbs. empty.

CRIMINAL OFFENSES REGARDING BOATING IN SOUTH CAROLINA

Boating Under the Influence – A person can be charged with Boating Under the Influence (BUI) if there's probable cause to believe that the person was operating a vessel while under the influence of drugs, alcohol, or both. If convicted, the person can face a jail sentence, fines, loss of boating privileges, and impounding of the boat. The penalties become much stricter if the intoxicated driver causes property damage, bodily injury, or death.

Negligent Operation of a Boat – A person can be charged negligent operation of a boating device if the person boats in a careless manner. Operating a boat at more than idle speed in a no wake zone, failing to maintain a proper lookout for other boats or persons, operating too fast for conditions on the water, racing, or pulling a skier through a designated swimming area can each constitute negligent operation.

Reckless Boating – A person can be charged with reckless boating if the person boats in a reckless, willful, or wanton manner. Weaving through congested vessel traffic at more than idle speed, jumping the wake of another vessel within two hundred feet of that vessel, crossing the path or wake of another vessel when the visibility around the other vessel is obstructed, and maintaining a collision course with another vessel or object and swerving away near to the other vessel or object can each constitute reckless boating. Two offenses for reckless boating can result in suspension of boating privileges.

Always keep in mind the safety of you, those on your boat, those on other boats, and those on the land.

FISHING, CRABBING, AND SHRIMPING IN SOUTH CAROLINA

These laws are numerous. Check with the Department of Natural Resources before engaging in these activities if you are unfamiliar with the laws. There are limits on size and number per day for many species.

Also, make sure that every person on the boat is properly licensed for the activity. Even if you have a passenger on the boat who isn't fishing, that person should still have a license. It's important to know that violations of our fishing and gaming laws are much more serious than people believe. Jail and stiff fines are possible. Also, many types of violations allow the authorities to confiscate your boat. Also note that it is illegal to harass or disturb wildlife with your boat unless you are lawfully fishing (also known as "angling"), hunting, or trapping wildlife.

WATER SKIING IN SOUTH CAROLINA

If you're towing a skier, then you must either have a wide-angle rear-view mirror or another person on board to observe the skier. Skiers must wear a US Coast Guard-approved PFD of proper size and fastened. Skiing isn't allowed after sunset or before sunrise.

BOATING AGE LIMITS IN SOUTH CAROLINA

In South Carolina, boat operators under the age of 16 must complete a DNR-administered or approved boating course if the boat has a 15 h.p. motor or greater, or there must be an adult at least 18-years old on board. The adult can't be under the influence of alcohol.

BOATING ACCIDENTS IN SOUTH CAROLINA

As we've said, boats are dangerous. There're no brakes, seat belts, or airbags. You aren't enclosed on a boat like you are in a car, and the possibility of getting thrown out of a boat is great. The possibility of drowning exists. We can't stress enough that operators of boats should ensure they have the knowledge and the experience to keep everyone safe.

If an accident does occur, then the operator of the vessel has a duty to render assistance to the persons on the other vessel so long as he or she can do so without risking danger to his or her own vessel or passengers. Leaving the scene of a boating accident is a crime. Further, the operator of a vessel involved in an accident must report the accident to DNR whenever the accident results in loss of life, loss of consciousness, medical treatment, disability in excess of 24 hours, or property damage.

South Carolina's Boating Statutes

South Carolina's boating laws are scattered through various statutes. To keep you from having to search for them or from overlooking something important, this chapter pulls the statutes concerning boating in South Carolina.



Equipment and Operation

IN THIS SECTION

1. Vessel Displaying Blue Light
2. Diver Down or Persons Fishing
3. Records for Boat Liveries.
4. Towing
5. Negligent Operation
6. Reckless Operation
7. Boating Under the Influence (BUI)
8. Chemical Test for BUI
9. Reckless Homicide
10. Operating Under Suspension
11. Boat Livery Equipment & Registration
12. Duty in Collisions
13. Discharging Firearm at Landing
14. Cooperating with Coastguard
15. Abandoned Craft & Motor

§ 50-21-85. CONDITIONS FOR OPERATION OF VESSEL DISPLAYING BLUE LIGHT; OPERATING PROCEDURE IN PRESENCE OF SUCH VESSEL; VIOLATIONS.

A person shall not operate a vessel displaying or using a rotating, strobing, flashing, or intermittently reflecting blue light unless a duly commissioned law enforcement officer is on board.

The operator of a vessel being approached by a vessel flashing a blue light shall stop or maneuver in a way as to permit boarding, so far as possible without endangering his vessel, and not begin normal movement again until directed by the law enforcement officer or until the vessel flashing a blue light has cleared the immediate area.

The operator of a vessel approaching an area where a vessel flashing a blue light is located or patrolling shall slow his vessel to a no wake speed and shall maintain the speed until clear of the area.

A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than twenty-five dollars nor more than five hundred dollars, or imprisoned not more than thirty days for each violation.

§ 50-21-87. OPERATION OF VESSEL PROHIBITED WITHIN FIFTY FEET OF VESSEL DISPLAYING DIVER DOWN FLAG;

DIVING PROHIBITED WITHIN FIFTY FEET OF VESSEL WHOSE OCCUPANT IS FISHING.

(A) A person may not operate a vessel within fifty feet of another vessel when a diver is displaying a diver down flag (red with a diagonal white stripe) to mark the location of the diver. When the flag is being displayed in a water body too narrow to allow passage of another vessel other than within fifty feet, a vessel operator may proceed only past the displayed flag at a no-wake speed and allowing as much clearance between his vessel and the displayed flag as is safe and practical.

(B) A person may not engage in diving activities within fifty feet of a vessel whose occupant is fishing.

(C) A person does not violate this section if he fishes or displays a dive flag in an area before another person subsequently engages in diving activities or operates a vessel within fifty feet of a displayed dive flag.

§ 50-21-100. RECORDS TO BE KEPT BY OWNERS OF BOAT LIVERIES.

The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel; the identification number thereof, and the departure date and time, and the expected time of return. The record shall be preserved for at least six months.

§ 50-21-105. TOWING OF WATERCRAFT BY DEPARTMENT.

The department may tow away and store at the nearest commercial marina or any other suitable facility any unattended watercraft, a watercraft the operator of which is ill, intoxicated, or under a disability which renders him incapable of functioning safely, or other object which constitutes a hazard to navigation and which is not within an anchorage area approved by the United States Coast Guard.

The owner may regain control of the watercraft or other object by proving ownership to the operator of the facility and paying the fee charged for storage.

§ 50-21-110. NEGLIGENCE OPERATION OF WATER DEVICE; OFFENSE; PENALTIES.

(A) No person may operate any water device in a negligent manner.

(B) Negligent operation includes, but is not limited to, operating a water device at more than idle speed in a no wake zone, failing to maintain a proper lookout for other boats or persons, operating too fast for conditions on the water, racing, or pulling a skier through a designated swimming area.

(C) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than fifty nor more than two hundred dollars or imprisoned not more than thirty days for each violation.

(D) In addition to other penalties, the department shall require any person who is convicted under this section three times within a five-year period to attend and complete a boating safety education program approved by the department. The person required to attend the class shall reimburse the department for the expense of the class. A person's privilege to operate a water device within this State must be suspended until successful completion of the required class.

§ 50-21-111. RECKLESS OPERATION OF WATER DEVICE; OFFENSE; PENALTIES.

(A) A person who operates any water device in such a manner as to indicate either a wilful or wanton disregard for the safety of persons or property is guilty of reckless operation.

(B) Reckless operation includes, but is not limited to, weaving through congested vessel traffic at more than idle speed; or jumping the wake of another vessel within two hundred feet of that vessel; or crossing the path or wake of another vessel when the visibility around the other vessel is obstructed; or maintaining a collision course with another vessel or object and swerving away in close proximity to the other vessel or object.

(C) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars nor more than two hundred dollars or imprisoned for not more than thirty days.

(D) A person convicted of reckless operation, in addition to any other penalties, shall be required by the department to attend and complete a boating safety education program approved by the department. The person required to attend the program shall reimburse the department for the expense of the program. A person's privilege to operate a water device within this State shall be suspended until successful completion of the required program. A person's privilege to operate a water device within this State shall be suspended by the department for a period of ninety days upon conviction of a second offense of reckless operation of a water device within a five-year period. Following the ninety-day suspension, the person's privilege shall remain suspended until successful completion of a boating safety education program approved by the department. The person required to attend the program shall reimburse the department for the expense of the program.

§ 50-21-112. OPERATION OF MOVING MOTORIZED WATER DEVICE OR WATER DEVICE UNDER SAIL WHILE UNDER THE INFLUENCE OF DRUGS AND/OR ALCOHOL; OFFENSE; PENALTIES.

(A) It is unlawful for a person to operate a moving motorized water device or water device undersail upon the waters of this State while under the:

(1) influence of alcohol to the extent that the person's faculties to operate are materially and appreciably impaired;

(2) influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to operate are materially and appreciably impaired; or

(3) combined influence of alcohol and any other drug or drugs, or substances which cause impairment to the extent that the person's faculties to operate are materially and appreciably impaired. For purposes of this section "drug" means illicit or licit drug, a combination of licit or illicit drugs, a combination of alcohol and an illicit drug, or a combination of alcohol and a licit drug.

(B) A person violating this section is guilty of a misdemeanor and, upon conviction, must be punished:

(1) for a first offense, by a fine of two hundred dollars or imprisonment for not less than forty-eight hours nor more than thirty days. However, in lieu of the forty-eight hour minimum imprisonment, the court may provide for forty-eight hours of public service employment. The minimum forty-eight hour imprisonment or public service employment must be served at a time when it does not interfere with the offender's regular employment under terms and conditions, as the court considers proper. However, the court may not compel an offender to perform public service employment instead of the minimum sentence;

(2) for a second offense, by a fine of not less than two thousand dollars nor more than five thousand dollars and imprisonment for not less than forty-eight hours nor more

than one year. However, the fine imposed by this item may not be suspended in an amount less than one thousand dollars. Instead of service of imprisonment, the court may require that the individual complete an appropriate term of public service employment of not less than ten days upon terms and conditions the court considers proper. Upon imposition of a sentence of public service, the defendant may apply to the court to be allowed to perform his public service in his county of residence if he has been sentenced to public service in a county where he does not reside;

(3) for a third offense, by a fine of not less than three thousand five hundred dollars nor more than six thousand dollars and imprisonment for not less than sixty days nor more than three years.

(C) Any person convicted of operating a water device in violation of subsection (A), in addition to any other penalties, must be prohibited by the department from operating any water device within this State for six months for the first conviction, one year for the second conviction, and two years for the third conviction. Only those violations, which occurred within ten years including and immediately preceding the date of the last violation, shall constitute prior violations within the meaning of this section. A person whose privilege is suspended under the provisions of this section must be notified by the department of the suspension and of the requirement to enroll in and successfully complete an Alcohol and Drug Safety Action Program certified by the Department of Alcohol and Other Drug Abuse Services prior to

reinstatement of the privilege. An assessment of the extent and nature of the alcohol and drug abuse problem, if any, of the applicant must be prepared and a plan of education or treatment, or both, must be developed based upon the assessment. Entry into and successful completion of the services, if such services are necessary, recommended in the plan of education or treatment, or both, developed for the applicant is a mandatory requirement of the restoration of privileges to the applicant. The Alcohol and Drug Safety Action Program shall determine if the applicant has successfully completed the services. The Department of Alcohol and Other Drug Abuse Services shall determine the cost of services provided by each certified Alcohol and Drug Safety Action Program. Each applicant shall bear the cost of services recommended in the applicant's plan of education or treatment. The cost of services must be within the limits set forth in Section 56-5-2990(C). No applicant may be denied services due to an inability to pay. Inability to pay for services may not be used as a factor in determining if the applicant has successfully completed services. If the applicant has not successfully completed the services as directed by the Alcohol and Drug Safety Action Program within one year of enrollment, a hearing must be provided by the Alcohol and Drug Safety Action Program and if further needed by the Department of Alcohol and Other Drug Abuse Services. The department and the Department of Alcohol and Other Drug Abuse Services shall develop procedures necessary for the communication of information pertaining to reinstating the privilege, or otherwise. The procedures must be consistent

with the confidentiality laws of this State and the United States.

A person convicted under this section, in addition to any other penalties, shall be required by the department to attend and complete a boating safety education program approved by the department. The person required to attend the program shall reimburse the department for the expense of the program. The person's privilege to operate a water device within this State shall be suspended until successful completion of the required program.

(D) The suspension penalties assessed under this section are in addition to and not in lieu of any other civil remedies or criminal penalties which may be assessed. No part of the minimum sentences provided in this section may be suspended.

(E) For the purposes of this chapter any conviction, entry of a plea of guilty or of nolo contendere or forfeiture of bail, for the violation of any law or ordinance of this or any other state or any municipality of this or any other state that prohibits any person from operating a vessel or water device while under the influence of alcohol or drugs or a combination of both constitutes a prior offense for the purpose of any prosecution for any subsequent violation of this section. Only those offenses which occurred within a period of ten years including and immediately preceding the date of the last offense constitutes prior offenses within the meaning of this section.

§ 50-21-113. OPERATION OF MOVING WATER DEVICE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS RESULTING IN PROPERTY DAMAGE, GREAT BODILY INJURY OR DEATH; PENALTIES.

(A) A person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs operates a moving water device, or is in actual control of a moving water device within this State and causes great bodily injury or death of a person other than himself, is guilty of a felony and, upon conviction, must be punished by a mandatory fine of not less than:

(1) five thousand dollars nor more than ten thousand dollars and mandatory imprisonment for not less than thirty days nor more than fifteen years when great bodily injury results;

(2) ten thousand dollars nor more than twenty-five thousand dollars and mandatory imprisonment for not less than one year nor more than twenty-five years when death results. No part of the mandatory sentences required to be imposed by this section may be suspended, and probation may not be granted for any portion.

(B) As used in subsection (A) "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

(C) A person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs operates or is in actual control of a moving water device within this State and causes damage to property other than his own, or injury other than great bodily injury to a person other than himself, is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not less than five hundred dollars or imprisonment for not more than thirty days, or both.

(D) The department shall suspend the privilege of a person who is convicted or who pleads guilty or nolo contendere under this section to operate a water device or be in actual control of a moving water device within this State for a period to include any term of imprisonment plus:

(1) three years in the case of death or great bodily injury; or

(2) one year in the case of property damage or injury other than great bodily injury.

(E) The suspensions under this section are in addition to and not in lieu of any other civil remedies or criminal penalties.

§ 50-21-114. CHEMICAL TEST OR ANALYSIS OF BREATH, BLOOD, OR URINE; IMPLIED CONSENT; PRESUMPTIONS ARISING FROM BLOOD ALCOHOL CONTENT LEVELS.

(A)

(1) A person who operates a water device is considered to have given consent to chemical tests or analysis of his breath, blood, or urine to determine the presence of alcohol, drugs, or a combination of both, if arrested for an offense arising out of acts alleged to have been committed while the person was operating or directing the operation of a water device while under the influence of alcohol, drugs, or a combination of both. A test given must be administered at the direction of the arresting law enforcement officer. At the direction of the arresting officer, the person first must be offered a breath test to determine the alcohol concentration of his blood. If the person is physically unable to provide an acceptable breath sample because he has an injured mouth, is unconscious or dead, or for any other reason considered acceptable by licensed medical personnel, a blood sample may be taken. If the officer has reasonable grounds to believe the person is under the influence of drugs other than alcohol, the officer may order that a urine sample be taken for testing. If the breath analysis reading is eight one-hundredths of one percent or above by weight of alcohol in the person's blood, the officer may not require additional tests of the person as provided in this chapter.

(2) The breath test must be administered by a person trained and certified by the South Carolina Law Enforcement Division (SLED), using methods approved by SLED. The arresting officer may administer the tests if testing is done in conformity with the standards set out by SLED. Blood and urine samples must be taken by physicians licensed by the

State Board of Medical Examiners, registered nurses licensed by the State Board of Nursing, or other medical personnel trained to take the samples in a licensed medical facility. Blood samples or urine samples must be obtained and handled in accordance with procedures approved by SLED. No tests may be administered or samples taken unless the person has been informed that he does not have to take the test or give the samples, but that his privilege to operate a water device must be suspended or denied for one hundred eighty days if he refuses to submit to the tests.

(3) A hospital, physician, qualified technician, chemist, or registered nurse who takes samples or conducts the test or participates in the process of taking the samples or conducting the test in accordance with this section is not subject to a cause of action for assault, battery, or any other cause alleging that the drawing of blood or taking of samples at the request of the arrested person or a law enforcement officer was wrongful. This release from liability does not reduce the standard of medical care required of the person taking the samples or conducting the test. This qualified release also applies to the employer of the person who conducts the test or takes the samples. No person may be required by the arresting officer, or by any other law enforcement officer, to obtain or take any sample of blood or urine.

(4) The person tested or giving samples for testing may have a qualified person of his own choosing conduct additional tests at his expense and must be notified of that right. A

person's failure to request additional blood or urine tests is not admissible against the person in a criminal trial. The failure or inability of the person tested to obtain additional tests does not preclude the admission of evidence relating to the tests or samples taken at the direction of the law enforcement officer.

(5) The arresting officer must provide reasonable assistance to the person to contact a qualified person to conduct additional tests.

(6) SLED must administer the provisions of this subsection and may promulgate regulations necessary to carry out its provisions. The cost of the tests administered at the direction of the law enforcement officer must be paid from the general fund of the State. A fee of fifty dollars must be assessed at the time of the sentencing against persons convicted of, pleading guilty or nolo contendere to, or forfeiting bond for violating Section 50-21-112 or Section 50-21-113. This fee must be forwarded by the county treasurer to the State Treasurer and credited to the general fund of the State to defray any costs incurred by SLED and individuals and institutions obtaining the samples forwarded to SLED.

(B) In any criminal prosecution where a test or tests were administered pursuant to this chapter, the amount of alcohol in the person's blood at the time of the alleged violation, as shown by chemical analysis of the person's breath or other body fluids, gives rise to the following inferences:

(1) If there was at that time five one-hundredths of one percent or less by weight of alcohol in the person's blood, it is presumed conclusively that the person was not under the influence of alcohol.

(2) If there was at that time in excess of five one-hundredths of one percent but less than eight one-hundredths of one percent by weight of alcohol in the person's blood, this fact does not give rise to any inference that the person was or was not under the influence of alcohol, but this fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(3) If there was at that time eight one-hundredths of one percent or more by weight of alcohol in the person's blood, it may be inferred that the person was under the influence of alcohol.

(C) The provisions of this section may not be construed as limiting the introduction of other competent evidence bearing upon the question of whether or not the person was under the influence of alcohol, drugs, or a combination of them. Refusal, resistance, obstruction, or opposition to testing pursuant to this section is admissible as evidence at the trial of a person charged with the offense that precipitated the request for testing.

(D) A person who is unconscious or otherwise in a condition rendering him incapable of refusal is considered to be informed and not to have withdrawn the consent provided by subsection (A).

(E) If a person under arrest refuses, upon the request of a law enforcement officer, to submit to chemical tests provided in subsection (A), none may be given, but the department, on the basis of a report from the law enforcement officer that the arrested person was operating a water device within this State while under the influence of alcohol, drugs, or a combination of them, and that the person had refused to submit to the tests, must suspend his privilege to perform the above-mentioned activities for one hundred eighty days. The one hundred eighty-day period of suspension begins with the day after the date of the notice required to be given, unless a hearing is requested as provided, in which case the one hundred eighty-day period begins with the day after the date of the order sustaining the suspension. The report of the arresting officer must include what grounds he had for believing the arrested person was conducting the above-mentioned activity while under the influence of alcohol, drugs, or a combination of them.

(F) Upon suspending the operating privilege of a person, the department immediately shall notify the person in writing and upon his request give him an opportunity for a hearing as provided in Article 3, Chapter 23, Title 1 of the 1976 Code. The review must be scheduled by the Administrative Law Court in accordance with the division's procedural rules. The scope of the hearing is limited to the issues set out by the Administrative Procedures Act and the division's procedural rules. Upon order of the administrative law judge, the

department either shall rescind its order of suspension or continue the suspension of the privilege.

(G) If a boating accident or marine casualty involves a fatality, the coroner having jurisdiction shall direct that a chemical blood test be performed on the deceased, within forty-eight hours of receiving notification of the death, to determine blood alcohol concentration or the presence of drugs, and that the results of the test be recorded properly in the coroner's report.

(H) The suspensions under this section are in addition to and not in lieu of any other civil remedies or civil penalties which may be assessed.

§ 50-21-115. RECKLESS HOMICIDE BY OPERATION OF BOAT; PENALTY; PERSONS CONVICTED OF CERTAIN OFFENSES PROHIBITED FROM OPERATING BOAT.

When the death of a person ensues within three years as a proximate result of injury received by the operation of a boat in reckless disregard of the safety of others, the person operating the boat is guilty of reckless homicide. A person convicted of reckless homicide or a person who enters a plea of guilty of reckless homicide and receives sentence thereon must be fined not less than one thousand dollars nor more than five thousand dollars or imprisoned for not more than ten years, or both. A person convicted of reckless homicide, involuntary manslaughter, manslaughter, or murder in the

operation of a boat must be prohibited by the court having jurisdiction of these violations from operating any boat within this State for a period of not more than five years.

§ 50-21-116. CHEMICAL TESTS TO DETERMINE PRESENCE OF ALCOHOL AND/OR DRUGS; REQUESTING ADDITIONAL TESTS; RELEASE OF RESULTS.

Notwithstanding any other provision of law, a person must submit to either one or a combination of chemical tests of his breath, blood, or urine for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs, if there is probable cause to believe that the person violated or is under arrest for a violation of Section 50-21-113.

The tests must be administered at the direction of a law enforcement officer who has probable cause to believe that the person violated or is under arrest for violation of Section 50-21-113. The administration of one test does not preclude the administration of other tests. The resistance, obstruction, or opposition to testing pursuant to this section is evidence admissible at the trial of the offense which precipitated the requirement for testing. A person who is tested or gives samples for testing may have a qualified person of his choice conduct additional tests at his expense and must be notified of that right. A person's request or failure to request additional blood or urine tests is not admissible against the person in the criminal trial.

The provisions of Section 50-21-114, relating to the administration of tests to determine a person's alcohol concentration, additional tests at the person's expense, the availability of other evidence on the question of whether or not the person was under the influence of alcohol, drugs, or a combination of them, availability of test information to the person or his attorney, and the liability of medical institutions and person administering the tests are applicable to this section and also extend to the officer requesting the test, the State or its political subdivisions, or governmental agency, or entity which employs the officer making the request, and the agency, institution, or employer, either governmental or private, of persons administering the tests. Notwithstanding any other provision of law pertaining to confidentiality of hospital records or other medical records, information regarding tests performed pursuant to this section must be released, upon subpoena, to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of Section 50-21-113.

§ 50-21-117. OPERATION OF WATER DEVICE WHILE PRIVILEGES SUSPENDED; OFFENSE; PENALTIES.

(A) A person who operates any water device while his privileges are suspended is guilty of a misdemeanor and, upon conviction, must be fined two hundred dollars or imprisoned for thirty days for the first violation; for a second violation must be fined five hundred dollars and imprisoned for sixty

consecutive days; and for a third or subsequent violation must be imprisoned for not less than ninety days nor more than six months, no portion of which may be suspended by the trial judge.

(B) If the privileges of the person convicted were suspended pursuant to the provisions of Section 50-21-112 or 50-21-113, he must be punished as follows and no part of the minimum sentence may be suspended:

(1) for a first offense, imprisoned for not less than ten nor more than thirty days;

(2) for a second offense, imprisoned for not less than sixty days nor more than six months;

(3) for a third and subsequent offense, not less than six months nor more than three years.

(C) A person who is convicted under the provisions of subsection (A) must have his privileges suspended for an additional three years by the department.

(D) The suspension penalties assessed under this section are in addition to and not in lieu of any other civil remedies or criminal penalties which may be assessed.

§ 50-21-120. DUTY OF BOAT LIVERY AS TO EQUIPMENT, REGISTRATION AND THE LIKE; LIABILITY OF OWNER FOR NEGLIGENT OPERATION OF VESSEL.

Neither the owner, his agent, or employees of a boat livery operating in this State shall permit any vessel to depart from his premises unless it is in sound and safe operating condition, have a valid registration, is properly numbered and is provided, either by the owner or the renter, with the equipment required pursuant to Section 50-21-610 and any regulations made pursuant thereto; and the owner of a boat livery shall be liable for damage or injury which may result directly from his failure to meet the requirements of this paragraph; provided, however, that readily identifiable livery boats of less than twenty-six feet in length leased or rented to another for the latter's noncommercial use for less than seven days may have the registration certificate retained ashore by the owner or his representative.

The owner of a vessel shall be liable for any injury or damage occasioned by the negligent operation of such vessel whether the negligence consists of a violation of the provisions of the statutes of this State or neglecting to observe the ordinary care in the operation as the regulations of common law require. The owner shall not be liable, however, unless the vessel is being used with his express or implied consent or is in the possession of a person or organization legally responsible therefor. It shall be presumed that the vessel is being operated with the knowledge and consent of the owner if, at the time of the injury or damage, it is under control of a member of the owner's household. Nothing contained herein shall be construed to relieve any other person from any liability which he would otherwise have. Provided, the owner of a boat livery

shall not be liable as an owner as provided in this paragraph, and in case of any negligent injury or damage occasioned by the operation of a vessel rented or hired from a boat livery, the operator of the vessel shall be liable as owner thereof.

§ 50-21-130. DUTIES OF VESSEL OPERATOR INVOLVED IN COLLISION; OFFENSE AND PENALTIES; IMMUNITY OF PERSON RENDERING ASSISTANCE; ACCIDENT REPORTS; SUSPENSION OF PRIVILEGES.

(A) It is the duty of the operator of a vessel involved in a collision, accident, or other casualty, if he can do so without serious danger to his own vessel, crew, or passengers, to render assistance as may be practical or necessary to persons affected by the collision, accident, or other casualty including personal injury or property damage and also to give his name, address, and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty. A person who fails to stop or to comply with the requirements of this section, is guilty of:

(1) a misdemeanor, when personal injury or property damage results but great bodily injury or death does not result, and, upon conviction, must be imprisoned not less than thirty days nor more than one year or fined not less than one hundred dollars nor more than five thousand dollars, or both;

(2) a felony when great bodily injury results and, upon conviction, must be imprisoned not less than thirty days nor more than ten years and fined not less than five thousand dollars nor more than ten thousand dollars; or

(3) a felony when death results and, upon conviction, must be imprisoned not less than one year nor more than twenty-five years and fined not less than ten thousand dollars nor more than twenty-five thousand dollars.

(B) Any person who complies with subsection (1) of this section or who gratuitously and in good faith renders assistance at the scene of a vessel collision, accident, or other casualty shall not be liable for any civil damages as a result of the rendering of assistance or for any act or omission in providing or arranging salvage, towage, medical treatment, or other assistance.

(C) In the case of a reportable accident, the operator or owner of any vessel involved shall file a full description of the accident with the department and provide any information the department may require when requested as part of the investigation within forty-eight hours of the accident. The owner or operator of a watercraft involved must furnish his name, address, and identification of his watercraft in writing to any person injured or the owner of any property damaged in the accident as soon as possible after the collision. In the event an accident results in death, loss of consciousness, or serious bodily injury, the owner or operator immediately shall notify the department.

(D) The accident report must be without prejudice, and must be for the information of the department. However, a person alleged to have sustained injury or property damage or alleged to have caused injury or property damage, their attorney, personal representative, or an insurer may obtain a copy of the report. The fact the report has been made is admissible solely to show compliance with this section, but no report or any part or statement contained in the report is admissible as evidence in a civil trial. An insured alleged to be responsible for the accident cannot be reimbursed for property damages until the report is filed.

(E) The department shall administer a State Casualty Reporting System which shall be in conformity with that established by the United States Coast Guard.

(F) The department must suspend the privileges of a person convicted under this section for:

(1) two years if the operator of a vessel is convicted of not rendering assistance to persons affected in a collision, accident, or other casualty;

(2) one year if the operator of a vessel is convicted of not reporting a boating accident;

(3) a person's privilege to operate a watercraft shall not be reinstated until the person attends and completes a boating safety education program approved by the department. The person required to attend the class shall reimburse the department for the expense of the program.

(G) The suspension penalties assessed under this section are in addition to and not in lieu of any other civil remedies or criminal penalties which may be assessed.

§ 50-21-146. DISCHARGING FIREARM AT BOAT LANDING OR RAMP PROHIBITED.

A person who discharges a firearm at a public boat landing or ramp is guilty of a misdemeanor and, upon conviction, must be punished as provided in Section 50-1-130.

§ 50-21-150. PENALTIES.

A person who violates this chapter or regulations promulgated by the department pursuant to it where the penalty is not specified is guilty of a misdemeanor and, upon conviction, must be fined not less than twenty-five nor more than two hundred dollars or imprisoned not more than thirty days for each violation.

§ 50-21-175. WATERCRAFT TO HEAVE TO ON COAST GUARD SIGNAL; COOPERATION BY OPERATOR, CREW AND PASSENGERS; PENALTIES; MAGISTRATES COURT JURISDICTION.

(A) The operator and crew of any watercraft operating in state waters are required to heave to when signaled or hailed and allow boarding by law enforcement officers or U.S. Coast Guard personnel.

(B) The operator, crew, and passengers of any watercraft operating in state waters are required to cooperate with law enforcement officers or U. S. Coast Guard personnel.

(C) Any operator, crew member, or passenger of any watercraft violating this section is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars nor more than two thousand five hundred dollars or imprisoned for not more than thirty days.

(D) Notwithstanding any other provision of law, the magistrates court retains jurisdiction for violations of this section.

§ 50-21-190. ABANDONING WATERCRAFT OR OUTBOARD MOTOR; PENALTY; REMOVAL.

(A) It is unlawful to abandon a watercraft or outboard motor on the public lands or waters of this State or on private property without permission of the property owner. This section does not apply to persons who abandon a watercraft in an emergency for the safety of the persons onboard; however, after the emergency is over, the owner and operator of the abandoned watercraft shall make a bona fide attempt to recover the watercraft.

(B) A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than one thousand dollars nor more than five thousand dollars or imprisoned up to thirty days, or both. In addition, the owner must remove the abandoned watercraft within

fourteen days of conviction. The magistrates and municipal courts are vested with jurisdiction for cases arising under this section.

(C) An abandoned watercraft as identified by the department may be removed at the risk and expense of the owner and disposed of by any governmental agency that has jurisdiction over the area where the abandoned watercraft is located.

(D) The department must conduct investigations of any watercraft subject to the provisions of this section to determine the status of the watercraft as abandoned. The department must send written notice and make additional reasonable efforts to notify the last known owner, if any, of the status of the watercraft. If efforts to notify fail, then the department must post a notice on the watercraft advising that the watercraft is abandoned. If the owner claims the watercraft within forty-five days of the date the notice is posted, the watercraft is not considered abandoned.

(E) A watercraft identified by the department as abandoned for at least ninety days may be claimed by any person or entity as abandoned property.

Watercraft & Outboard Motors

IN THIS SECTION

1. Watercraft Titles
2. Certificate of Title & Ownership
3. Application for Certificate
4. Transfer of Title
5. Lost, Stolen, or Mutilated Certificate
6. Serial Number or Hull ID Number
7. Stolen Watercraft or Motor
8. Unlawful Acts
9. Seizure of Watercraft
10. Suspension or Revocation of Certificate
11. False Statements
12. Watercraft Not Previously Titled
13. Penalties
14. Obtaining Clear Title
15. Transfer When Taxes Owed
16. Number System & Registration

§ 50-23-20. WATERCRAFT TITLES; NOTIFICATION OF TRANSFER.

Any watercraft or outboard motor, or both, held or principally used in this State must be titled by the department. An owner of a watercraft or outboard motor titled in this State must notify the department within thirty days if ownership is transferred to another person, entity, or transferred out of state or otherwise disposed.

§ 50-23-55. CERTIFICATE OF TITLE AS EVIDENCE OF OWNERSHIP; WATERCRAFT FROM OTHER STATES.

(A) A certificate of title to a watercraft or outboard motor is prima facie evidence of ownership of a watercraft or outboard motor. All watercraft and outboard motors subject to the titling requirements of this chapter must be titled.

(B) No person may acquire a watercraft or outboard motor, subject to the titling requirements of this chapter, without obtaining a certificate of title or in the case of a new watercraft or outboard motor a manufacturer's or importer's statement of origin reflecting the person acquiring the watercraft or outboard motor as the original purchaser as provided in this chapter. In the case of watercraft or outboard motors from other jurisdictions that do not require titling, a bill of sale and proof of registration may be substituted for the title.

(C) No person may dispose of a watercraft or outboard motor subject to the titling provisions of this chapter without transferring to the person acquiring the watercraft or outboard motor a certificate of title reflecting the transfer of the watercraft or outboard motor. In the case of new watercraft, a manufacturer's statement of origin must be delivered to the purchaser. In the case of watercraft or outboard motors from other states or foreign jurisdictions, which do not title such watercraft or outboard motors, a bill of sale and proof of registration may be substituted.

**§ 50-23-60. APPLICATION FOR CERTIFICATE;
LATE PENALTY.**

(A) Every person who acquires a watercraft or outboard motor required to be titled under this chapter shall apply to the department within thirty days of the date of acquisition for a certificate of title for the watercraft or outboard motor accompanied by the required fee and on forms required by the department. The application must be signed by the person who acquires the watercraft or outboard motor and shall contain:

(1) the applicant's name, domiciled address including the county, date of birth, and the county where the watercraft is principally located, state issued identification number, and state of issue;

(2) for watercraft, a description of the watercraft, including its make, model, model year, length, the principal material used

in construction, hull number, and the manufacturer's engine serial number if an inboard; for an outboard motor, its make, model, model year, or year of manufacture, and horsepower, and manufacturer's serial number;

(3) the date of acquisition by the applicant, the name and address of the person from whom the watercraft or outboard motor was acquired, and the names and addresses of persons having a security interest in the order of their priority;

(4) a bill of sale; and

(5) further information reasonably required by the department to enable it to determine whether the owner is entitled to a certificate of title and the existence or nonexistence of security interests in the watercraft or outboard motor.

(B) Every dealer selling or exchanging a watercraft or outboard motor subject to titling under this chapter shall complete the application for a new title in the name of the purchaser before delivering the watercraft or outboard motor to the purchaser. The application shall contain the name and address of a lienholder and the date of the security agreement. It must be signed by the dealer showing the assigned dealer permit number, as well as by the owner, and the dealer shall submit the application to the department within thirty days of the sale. However, permitted marine dealers are not required to obtain titles for new vessels and outboard motors held in their inventory for sale until they are sold or exchanged as long as a proper manufacturer's or importer's statement of

origin is held by the dealer. The fees for title and registration may not exceed those required by this article and if requested must be itemized on the bill of sale to the new owner. This does not prohibit a dealer from charging an administrative fee for processing title and registration.

(C) If a dealer buys or acquires a used watercraft or outboard motor for resale and the watercraft or outboard motor is already covered by a certificate of title which is surrendered to him by the owner or lienholder at the time of delivery of the watercraft or outboard motor, the dealer need not send the certificate to the department at that time. Upon transferring the watercraft or outboard motor to another person, other than by creation of a security interest, within thirty days of sale he shall execute the assignment and warranty of title by a dealer, showing the name and address of the transferee and a lienholder and the date of his security agreement, in the spaces provided, on the certificate to the department with the transferee's application for a new certificate.

(D) If application for certificate of title is made for a watercraft or outboard motor last owned in another state or foreign country, the application shall contain or be accompanied by:

(1) the certificate of title issued by the other state or foreign country if any;

(2) other information or documents the department reasonably requires to establish the ownership of the

watercraft or outboard motor and the existence or nonexistence of security interests in it; or

(3) if the state or foreign country in which the watercraft or outboard motor was last owned does not issue certificates of title, a bill of sale or sworn statement of ownership or evidence of ownership required by the law of the state or foreign country from which the watercraft or outboard motor was brought into this State, and proof of registration plus other information or documents the department reasonably requires to establish the ownership of the watercraft or outboard motor and the existence or nonexistence of security interests in it.

(E) An application except those from permitted marine dealers presented after thirty days is subject to a late penalty of fifteen dollars.

(F) An application presented after sixty days is subject to a late penalty of thirty dollars.

§ 50-23-120. ASSIGNMENT AND WARRANTY OF TITLE; TRANSFEREE OR PURCHASER TO OBTAIN NEW CERTIFICATE OF TITLE.

(a) The owner at the time of delivery of the watercraft or outboard motor shall execute the assignment and warranty of title to the transferee in the space provided on the back of the certificate of title. If the title is voided, due to a change, cancellation of an assignment on a title due to error, or failure

of a purchase to materialize the owner, shall make application for a duplicate title within thirty days.

(b) The transferee or purchaser shall obtain a new certificate of title by application to the department accompanied by the required fee and upon the form or forms prescribed and furnished by the department. This application for certificate of title must be filed within thirty days after the delivery to him of the watercraft or outboard motor.

§ 50-23-130. TRANSFER OF OWNERSHIP BY OPERATION OF LAW; TERMINATION OF OWNERSHIP IN ACCORDANCE WITH SECURITY AGREEMENT.

(a) If the ownership of a watercraft or outboard motor is transferred by operation of law, such as by inheritance, devise or bequest, order in bankruptcy, insolvency, replevin, or execution sale, or satisfaction of mechanic's lien, or repossession upon default in performance of the terms of a security agreement, the transferee shall, except as provided in subsection (b), promptly mail or deliver to the department the last certificate of title, if available, or the manufacturer's or importer's statement of origin, or, if that is not possible, satisfactory proof of the transfer of ownership, and his application for a new certificate of title accompanied by the required fee, and upon the appropriate form or forms prescribed and furnished by the department.

(b) If the ownership of a watercraft or outboard motor is terminated in accordance with the terms of a security agreement by a lienholder named in the certificate of title, the transferee shall promptly mail or deliver to the department the last certificate of title, his application for a new title accompanied by the required fee and upon the form or forms prescribed and furnished by the department, and an affidavit by the lienholder or his authorized representative, setting forth the facts entitling him to possession and ownership of the watercraft or outboard motor, together with a copy of the journal entry, court order or instrument upon which such claim of possession and ownership is founded. If the lienholder cannot produce such proof of ownership, he may submit such evidence as he has with his application to the department, and the department may, if it finds the evidence to be satisfactory proof of ownership, issue a new certificate of title.

(c) If a lienholder succeeds to the interest of an owner in a watercraft or outboard motor by operation of law and holds such watercraft or outboard motor for resale, he need not secure a new certificate of title thereto but, upon transfer to another person, shall promptly mail or deliver to the transferee or to the department the certificate, affidavit and such other documents as the department may require.

§ 50-23-150. LOST, STOLEN, OR MUTILATED CERTIFICATE; ISSUANCE OF DUPLICATE CERTIFICATE.

(a) If a certificate of title is lost, stolen, mutilated or destroyed or becomes illegible, the first lienholder or, if none, the owner or legal representative of the owner named in the certificate, as shown by the records of the department, may obtain a duplicate by application to the department, furnishing such information concerning the original certificate and the circumstances of its loss, mutilation or destruction as may be required by the department.

(b) The duplicate certificate of title shall be a certified copy plainly marked "duplicate" across its face. It shall be mailed to the first lienholder named in it or, if none, to the owner.

(c) In case an original certificate of title is mutilated or rendered illegible, such mutilated or illegible certificate shall be returned to the department with the application for a duplicate.

(d) In the event a lost or stolen original certificate of title for which a duplicate has been issued is recovered, it shall be surrendered promptly to the department for cancellation.

§ 50-23-170. SERIAL NUMBER OR HULL IDENTIFICATION NUMBER.

(A) If a watercraft contains a permanent identification number placed on it by the manufacturer, the manufacturer's serial number must be used as the builder's hull number. If there is no manufacturer's serial number, if the manufacturer's serial number has been removed or obliterated, or if the watercraft is homemade, the department,

upon application, shall assign a permanent identification number which must be used as the builder's hull number for the watercraft. This assigned number must be affixed permanently to or imprinted by the applicant at the place and in the manner designated by the department upon the watercraft for which the builder's hull number is assigned.

"Homemade watercraft or outboard motor" means a watercraft or outboard motor which is built by an individual for personal use from raw materials which does not require the assignment of a federal hull identification number or serial number by a manufacturer pursuant to federal law. An individual may build or furnish raw materials to a builder under a contract to build a homemade watercraft or outboard motor to desired specifications. A copy of the contract, specifications, and bill of sale for raw materials must accompany registration and title application. The person furnishing materials under a contract may be considered the builder. A rebuilt or reconstituted watercraft or outboard motor must not be construed to be homemade. Every homemade watercraft must be certified as meeting safety standards of the United States Coast Guard before it can be sold by the builder. Certification must be furnished to the purchaser and a copy accompany applications for transfer to the department.

(B) Every outboard motor must have a permanent identification number placed on it in at least two locations by the manufacturer. This number must be used as the serial number. If there is no manufacturer's serial number or if the

manufacturer's serial number has been removed for a valid reason or obliterated, the department, upon a prescribed application, may assign a serial number for the outboard motor. This assigned serial number must be affixed permanently to or imprinted by the applicant at the place and in the manner designated by the department upon the outboard motor for which the serial number is assigned.

(C) No newly-manufactured watercraft or outboard motor may be sold or offered for sale by a person in this State unless the watercraft or outboard motor has a hull identification number or serial number permanently affixed, and the number also must be affixed permanently in a hidden place.

(D) Manufacturer's serial numbers or hull identification numbers for watercraft must be imprinted clearly in the stern transom knee or other essential hull member near the stern by stamping, impressing, or marking with pressure or for an inboard watercraft on the main inside beam. In lieu of imprinting, the manufacturer's serial number or hull identification number may be displayed on a plate in a permanent manner. In addition to being permanent the number must be accessible. Hull identification or serial numbers must be installed according to United States Coast Guard regulations. If the serial number or hull identification number is displayed in a location other than on or near the stern transom, the department must be notified by the manufacturer as to the location.

(E) No person may destroy, remove, alter, cover, or deface the manufacturer's serial number or hull identification number or part of it, or plate bearing the number, or a serial number or hull identification number or part of it assigned by the department or be in possession of an affected watercraft or outboard motor unless authorized in writing by the department and the Commandant of the United States Coast Guard.

§ 50-23-180. STOLEN OR CONVERTED WATERCRAFT OR OUTBOARD MOTOR; RECORDS OF REPORTS OF THEFT OR CONVERSION; NOTIFICATION OF RECOVERY.

(a) Every law enforcement agency, peace officer, owner, or insurer in the State, having knowledge of a stolen or converted watercraft or outboard motor, immediately shall furnish the department with full information concerning the theft or conversion.

(b) The department, whenever it receives a report of the theft or conversion of a watercraft or outboard motor, shall make a record of it, including the make of the stolen or converted watercraft or outboard motor and its hull number or serial number, and shall file the same in the numerical order of the hull number or serial number with the index records of the watercraft or outboard motors of such make. The department shall prepare a report listing watercraft and outboard motors

stolen and recovered as disclosed by the reports submitted to it, to be distributed as it deems advisable.

(c) In the event of the recovery of a stolen or converted watercraft or outboard motor, the owner or insurer immediately shall notify the department in writing.

(d) Law enforcement agencies shall notify the department of recovery of any stolen watercraft or outboard motor immediately.

§ 50-23-190. UNLAWFUL ACTS; POSSESSION, OPERATION, OR TRANSFER WITHOUT CERTIFICATE; FAILURE TO SURRENDER CERTIFICATE; IMPROPER DISPOSAL OF REJECTED OR DEFECTIVE HULL OR MOTOR.

No person may:

(1) be in possession of or operate on the waters of this State a watercraft or an outboard motor for which a certificate of title is required unless a certificate of title has been issued to the owner;

(2) be in possession of or operate on the waters of this State a watercraft or an outboard motor for which a certificate of title is required upon which the certificate of title has been canceled;

(3) be in possession of or operate on the waters of this State a sailboat or outboard motor required to be titled without properly displaying the title decal;

(4) sell, transfer, or otherwise dispose of a watercraft or an outboard motor without delivering to the purchaser or transferee a certificate of title or a manufacturer's or importer's statement of origin assigned to the purchaser or transferee as required by this chapter;

(5) fail to surrender to the department a certificate of title upon cancellation of the title by the department for a valid reason set forth in this chapter or regulations adopted pursuant to it; or

(6) dispose of a rejected or defective watercraft hull or outboard motor in the manufacturing process except by upgrading the hull to meet United States Coast Guard requirements or destroying the hull or outboard motor.

§ 50-23-200. UNLAWFUL ACTS; FORGING OR ALTERING STATEMENT OF ORIGIN, ASSIGNMENT, OR CERTIFICATE OF TITLE; STOLEN PROPERTY; ALTERED, REMOVED NUMBER.

No person may:

(1) alter, forge, or counterfeit a certificate of title or manufacturer's or importer's statement of origin for a watercraft or for an outboard motor;

(2) alter or falsify an assignment of a certificate of title, or an assignment or cancellation of a security interest on a certificate of title to a watercraft or to an outboard motor;

(3) hold or use a certificate of title to a watercraft or to an outboard motor nor hold or use an assignment or cancellation of a security interest on a certificate of title to a watercraft or to an outboard motor knowing it to have been altered, forged, counterfeited, or falsified;

(4) have possession of, buy, receive, sell or offer for sale, or otherwise dispose of a watercraft or an outboard motor knowing or having reason to believe the watercraft or outboard motor has been stolen. No person may procure or attempt to procure a certificate of title to a watercraft or an outboard motor or pass or attempt to pass a certificate of title or an assignment to a watercraft or an outboard motor knowing or having reason to believe the watercraft or the outboard motor has been stolen;

(5) have possession of, buy, receive, sell or offer for sale, or otherwise dispose of in this State a watercraft or an outboard motor on which a manufacturer's hull identification number or part of it or assigned serial number has been destroyed, removed, covered, altered, or defaced, knowing or having reason to believe of the destruction, removal, covering, alteration, or defacement of the manufacturer's hull identification number or part of it or assigned serial number;
or

(6) destroy, remove, cover, alter, or deface the manufacturer's hull identification number or part of it or assigned serial number on a watercraft or an outboard or inboard motor.

§ 50-23-205. SEIZURE OF CERTAIN WATERCRAFT; NOTICE OF SEIZURE AND OF TIME FOR REMOVAL; FORFEITURE AND DISPOSAL.

(A) A stolen or abandoned, junked, adrift, destroyed, or salvaged watercraft or outboard motor, a watercraft or outboard motor for which the true owner is not determined, or a watercraft or outboard motor on which the manufacturer's or assigned serial number has been destroyed, removed, covered, altered, or defaced may be seized.

(B) Upon seizure of the watercraft or outboard motor, the department shall notify a person claiming an interest in it, and the person has the right to prove his interest before the circuit court in the county where the property was seized. If no action is filed within sixty days of notification, the department may retain the property for official use or transfer the property to another public entity for official use, sell the property at public auction, or, if the watercraft or outboard motor is determined to be unsafe, destroy it. The proceeds derived from the sale must be deposited in the Boating Operating Fund of the department for administration of the program.

(C) When the department determines the owner of a seized watercraft or outboard motor and related marine equipment, it shall notify the owner by certified mail of the procedure, the location, and the fact that he has not less than thirty days from the date of the certified letter to remove the equipment from the department's storage facility. If a security interest has been perfected, the department must notify the lienholder by certified mail allowing thirty days to respond. Failure to respond within thirty days or remove the watercraft or outboard motor by the date designated forfeits the equipment to the department to be used or disposed of according to law.

§ 50-23-210. SUSPENSION OR REVOCATION OF CERTIFICATE.

(a) The department shall have the authority to suspend or revoke a certificate of title to a watercraft, or to an outboard motor, upon reasonable notice and hearing, when authorized by any other provision of law or if he finds:

(1) The certificate of title was fraudulently procured or erroneously issued, or

(2) The watercraft, or outboard motor, has been scrapped, dismantled, or destroyed, or transferred and registered in another state.

(b) Suspension or revocation of a certificate of title does not, in itself, affect the validity of a security interest noted on it;

(c) When the department suspends or revokes a certificate of title, the owner or person in possession of it shall, immediately upon receiving notice of the suspension or revocation, mail or deliver the certificate to the department; or

(d) The department may seize and impound any certificate of title which has been suspended and revoked.

§ 50-23-270. FALSE STATEMENT IN DOCUMENT OR OTHER SUBMISSION TO DEPARTMENT; PENALTY.

A transfer of a watercraft or outboard motor is subject to this chapter. A person making a false statement in a document or other submission to the department is guilty of a misdemeanor and, upon conviction, must be fined not less than fifty nor more than five hundred dollars or imprisoned not more than thirty days.

§ 50-23-275. WATERCRAFT NOT PREVIOUSLY TITLED.

A watercraft not previously required to be titled for which a title is required by this chapter must be titled at the time of renewal of the registration of the watercraft or transfer of the watercraft whichever occurs first. An owner of such a watercraft must secure a title for the watercraft within three years from the effective date of this section.

§ 50-23-280. PENALTIES.

(A) Unless otherwise specified, a person violating this chapter is guilty of a misdemeanor and, upon conviction, must be fined not less than twenty-five nor more than five hundred dollars or imprisoned not more than thirty days, or both.

(B) A dealer violating this chapter is guilty of a misdemeanor and, upon conviction, must be fined not less than twenty-five dollars for the first offense, and not less than one hundred dollars for a second offense within two years. For the second and subsequent offenses, the dealer's permit must be suspended for ninety days. Any demonstration numbers must be surrendered to the department. A dealer who submits a fraudulent document or payment to the department must be suspended for ninety days.

§ 50-23-290. OBTAINING CLEAR TITLE TO WATERCRAFT OR OUTBOARD MOTOR WITHOUT PROPER PROOF OF OWNERSHIP.

Any person coming into possession of a watercraft or outboard motor without proper proof of ownership must apply to the department for a title using the form prescribed by the department. The application must be supported by an affidavit setting forth the circumstances under which the watercraft or outboard motor was acquired. The applicant must attempt to notify the last known titled or registered owner and any lienholder of record by certified mail of the

application. The applicant must provide the department with proof of mailing.

The applicant must publish an advertisement in a newspaper of general circulation in the county of residence of the last known owner of record for three successive issues. If there is no prior owner of record, the advertisement must be published in the county where acquired. The advertisement must be as prescribed by the department in the application. Proof of advertising must be submitted to the department.

Thirty days after the date of the last advertisement if no claim of interest or ownership is made and the item has not been reported stolen, the department shall issue a clear title. If the item is reported stolen, the department shall dispose of the item according to law.

If there is a claim of interest adverse to the applicant, the department shall not issue a title until the issue is resolved. The parties may apply to a court of competent jurisdiction for resolution.

§ 50-23-295. TRANSFER OF TITLE TO WATERCRAFT OR OUTBOARD MOTOR ON WHICH PROPERTY TAXES OWED; PENALTY.

(A) A certificate of title to watercraft or an outboard motor may not be transferred if the department has notice that property taxes for property tax years beginning after 1999, are owed on the watercraft or outboard motor. If transfer of title has been denied pursuant to this section, a tax receipt on the

watercraft or outboard motor from the person officially charged with the collection of ad valorem taxes in the county where the taxes are due must be accepted as proof that the taxes have been paid. The bill of sale or title to watercraft or an outboard motor must require certification that property taxes that are due and payable for property tax years beginning after 1999, have been paid and are current as of the date of sale.

(B) A person who knowingly sells a watercraft for which he owes unpaid and outstanding property taxes, or on which he knows there is a property tax lien, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than thirty days. In addition to all applicable criminal penalties, a seller who falsely signs the certification required by subsection (A), that property taxes are current and paid on a watercraft transferred to the buyer, is liable to the buyer for three times the amount of damages directly associated with the false certification, as well as applicable costs and reasonable attorney's fees.

(C) The county treasurer or other appropriate official annually, or more frequently as the county considers appropriate, shall transmit a list of delinquent taxes due on watercraft and outboard motors to the department. The list may be transmitted in any electronic format considered acceptable by the department.

§ 50-23-310. NUMBERING OF VESSELS.

Every vessel using the waters of this State shall be numbered except those exempt by Section 50-23-320. No person shall operate or give permission for the operation of any such vessel on such waters unless the vessel is numbered in accordance with this chapter or in accordance with applicable Federal law or in accordance with a Federally-approved numbering system of another state and unless

(1) The certificate of number issued to such a vessel is on board and in full force and effect.

(2) The identifying number set forth in the certificate of number is displayed on each side of the forward half of the vessel.

(3) The decals issued by the department are attached to each side of the bow of the boat within six inches following the identifying number. Such decals, when a certificate of number is issued or renewed, shall be deemed a part of the registration number.

§ 50-23-320. EXCEPTIONS.

(A) A vessel is not required to be numbered under this chapter if it is:

(1) covered by a certificate of number in effect which has been issued to it pursuant to federal law;

(2) a federally approved numbering system of another state. However, this vessel must not be held or used in this State for more than sixty consecutive days;

- (3) from a country other than the United States and temporarily using the waters of this State;
- (4) a vessel whose owner is the United States except recreational-type vessels;
- (5) a vessel whose owner is the United States, a state, or political subdivision to a state used for governmental purposes and which is clearly identifiable as such;
- (6) a vessel's lifeboat if the boat is used solely for lifesaving purposes;
- (7) a vessel's tender;
- (8) boats designed, constructed, and used for racing;
- (9) a vessel belonging to a class of boats which has been exempted from numbering by the department after the department has found that the federal government has exempted the vessel or class of vessels from their numbering provisions or as otherwise permitted by the federal government;
- (10) documented by the United States Coast Guard or a federal agency successor to it;
- (11) used under authority of a valid temporary certificate of number issued by the department or its agent; or
- (12) a sailboat or paddle boat when no propulsion machinery of any description is installed in or attached to the boat.

(B) Nothing in this chapter prohibits the numbering of an undocumented vessel upon request by the owner even though the vessel is exempt from the numbering requirements of this chapter.

§ 50-23-330. CONFORMITY TO UNITED STATES GOVERNMENT NUMBERING SYSTEM.

In the event that an agency of the United States Government shall have in force an overall system of identification (numbering) for vessels within the United States, the numbering system employed pursuant to this chapter by the department shall be in conformity therewith.

§ 50-23-340. APPLICATION FOR AND ISSUANCE OF NUMBER AND CERTIFICATE; FEE.

The owner of each motorboat requiring numbering by this chapter shall file an application for a number with the department on forms approved by it. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee of thirty dollars. Upon receipt of the application in approved form, the department shall enter the same upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the motorboat and the name and address of the owner. The certificate of number shall be pocket size.

§ 50-23-345. TEMPORARY CERTIFICATE OF NUMBER.

(A) A transferee shall utilize the temporary certificate of number on the department's application form as a temporary certificate of number to permit the use of watercraft while applications for certificates of number are processed.

Temporary certificates of number apply to new and previously owned watercraft. A temporary certificate is valid for not more than sixty days from the date of purchase.

(B) When using a recently purchased watercraft under authority of a temporary certificate of number, the operator shall carry a copy of the bill of sale on board along with the temporary certificate of number.

(C) A temporary certificate of number must not be issued for a watercraft not having a hull or manufacturer's identification number.

(D) Duplicate or updated temporary certificates of number or updated bills of sale are prohibited.

(E) The number assigned to a temporary certificate of number must not be displayed on the watercraft.

(F) A transferee may operate a newly acquired outboard motor for sixty days while application for title is pending provided the bill of sale is in possession while operating the motor.

§ 50-23-350. ISSUANCE OF CERTIFICATES OF NUMBER BY AGENTS.

The department may issue any certificate of number directly or may authorize any person to act as agent for the issuing thereof. In the event that a person accepts such authorization, he may be allotted a block of numbers and certificates therefor which upon assignment and issue in conformity with this chapter and with any rules and regulations of the department adopted pursuant to this chapter shall be valid as if assigned and issued directly by the department.

§ 50-23-360. DISPLAY OF NUMBER.

The owner shall paint on or attach to each side of the forward half of the vessel the identification number in such a manner as may be prescribed by rules and regulations of the department; in order that it may be clearly visible the number shall be maintained in legible condition. No number other than the number validly assigned to a vessel shall be painted, attached or otherwise displayed on each side of the forward half of such vessel. Only one valid number may be displayed at any time.

§ 50-23-370. EXPIRATION AND RENEWAL.

(A) Except as otherwise provided, a certificate of number awarded pursuant to this chapter continues in effect for three years unless sooner terminated or discontinued in accordance with this chapter. Certificates of number may be renewed by

the owner in the same manner provided for in the initial securing of the certificates. The department shall fix a day and month of the year on which certificates of number expire unless renewed pursuant to this chapter.

(B) A renewal application for a certificate of number, except those from marine dealers, presented after thirty days from its expiration date is subject to a late penalty of fifteen dollars.

A renewal application for a certificate of number presented after sixty days from its expiration date is subject to a late penalty of thirty dollars.

§ 50-23-375. DISPLAY OF NUMBER OR DECAL ON WATERCRAFT OR OUTBOARD MOTOR OTHER THAN THAT FOR WHICH IT WAS ISSUED.

It is unlawful to display a registration number or a validation decal or an outboard motor title decal or sailboat title decal on any watercraft or outboard motor except on the watercraft or outboard motor for which it was issued.

§ 50-23-380. TRANSFER OF REGISTRATION UPON CHANGE OF OWNERSHIP; FEE.

(A) Upon the transfer of ownership of a watercraft, the purchaser shall file an application for transfer of a registration at a cost of six dollars. The application for transfer must be made by the purchaser within thirty days from date of

purchase. The purchaser may operate the watercraft for not more than sixty days on a temporary certificate of number.

(B) The provisions of this section for the transfer charge do not apply to watercraft owned by volunteer rescue squads used exclusively for the purposes of the squads.

§ 50-23-385. HOUSEBOATS WITH WASTE-HOLDING TANKS; INDEFINITE MOORING; WASTE PUMP-OUT.

Houseboats used for habitation may be indefinitely moored at a private dock as long as the houseboat has a waste-holding tank. Waste pump-out must be done at an approved pump-out facility. A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not less than five hundred dollars or imprisonment for thirty days, or both.

§ 50-23-400. NOTICE OF CHANGE OF ADDRESS.

Any holder of a certificate of number shall notify the department in writing within thirty days if his address no longer conforms to the address appearing on the certificate and, as part of the notification, shall furnish the department with his new address.

§ 50-23-420. DISPLAY OF HULL IDENTIFICATION NUMBER.

No vessel constructed after November 1, 1972, shall be offered for sale in this State unless the hull identification number is permanently displayed and affixed in accordance with United States Coast Guard rules and regulations.

§ 50-23-425. DENIAL OF RENEWAL OF REGISTRATION; PROOF OF PAYMENT OF PROPERTY TAXES ON WATERCRAFT.

A registration of watercraft may not be renewed pursuant to this chapter if the department has notice that property taxes are owed on the watercraft. If renewal of registration has been denied pursuant to this section, a tax receipt from the person officially charged with the collection of ad valorem taxes in the county of residence must be accepted as proof that the taxes have been paid.

Shipwrecks & Salvage

IN THIS SECTION

1. Custody & Notice of Unclaimed Stranded Goods
2. Sale of Unclaimed Stranded Goods
3. Repelling Entry into Stranded Vessels
4. Issuance of Warrants for Stolen Goods
5. Salvage Allowed Informer
6. Restoration of Goods Taken from Vessel

§ 54-7-10. CUSTODY AND NOTICE OF UNCLAIMED STRANDED GOODS.

If any ship, vessel, goods or effects shall be stranded or cast on shore and no person appears to claim the goods which shall be so saved, the local magistrate shall take them into his custody or possession and, as soon as may be, give notice and a schedule in writing of the different articles to the county treasurer, keeping a copy thereof, and deliver safely all such goods and effects to such treasurer or his order who shall be responsible for them and who shall give public notice thereof in a newspaper of general circulation in the county for at least sixty days, if no claim should be made.

§ 54-7-20. SALE OF UNCLAIMED STRANDED GOODS.

If such goods be not claimed within sixty days after such delivery to the county treasurer they shall be publicly sold or, if the goods be perishable, they shall be sold forthwith and, after deducting reasonable charges, the residue shall be lodged in the county treasury, for the use of the State, subject to the claim of the proprietor, his agent or attorney.

§ 54-7-30. REPELLING ENTRY INTO STRANDED VESSELS; CARRYING AWAY SAVED GOODS.

Any person, not empowered, who shall enter or try to enter forcibly on board any ship or vessel stranded or cast away or

in distress or molest in the preservation thereof may be repelled by force. And any person who shall carry away or secrete any goods and effects saved as aforesaid shall forfeit and pay treble the value, to be recovered by the owner of such goods or his agent in any court of competent jurisdiction in this State.

§ 54-7-40. ISSUANCE OF WARRANTS FOR STOLEN GOODS; PENALTY FOR RETENTION.

Any magistrate on information, upon oath, of any part of cargo or effects of any vessel lost or stranded on or near the seacoasts being unlawfully conveyed or concealed or of some cause or reasonable suspicion thereof may issue his warrant for searching for such goods or effects as in cases of stolen goods. If such goods or effects be found in any house or other place or in the possession of any person not legally authorized to have them and the person in whose possession they shall be found shall not immediately, upon demand, deliver them to the owner or person lawfully authorized to receive them, he shall forfeit and pay to the owner of such goods, his agent or attorney, treble the value of such goods.

§ 54-7-50. SALVAGE ALLOWED INFORMER.

Any person discovering where any such goods are wrongfully bought, sold or concealed, so that the owner, his agent or attorney, shall regain them, shall be entitled to a reasonable salvage, not exceeding twenty-five per cent on the value, to be

adjusted by the next neighboring magistrate, who is hereby required to adjust such value.

§ 54-7-60. RESTORATION OF GOODS TAKEN FROM VESSEL; REWARD; PENALTY FOR OFFERING FOR SALE.

If any person shall offer or expose for sale any goods or effects whatsoever belonging to any ship or vessel lost, stranded or cast on shore as aforesaid and unlawfully taken away or reasonably suspected to have been, the person to whom such goods or effects shall be so offered for sale or any magistrate may stop and seize such goods and effects and if the person who shall have offered them for sale or some other person in his behalf shall not, within ten days next after such seizure, make out to the satisfaction of such magistrate that he became honestly possessed of them, such goods and effects shall, by order of such magistrate, be forthwith delivered over to and for the use of the owner thereof, on proof of his claim and the payment of a reasonable reward, not exceeding five per cent on the value, to be ascertained by such magistrate, to the person who shall seize them. And he who offered such goods and effects for sale as aforesaid shall forfeit and pay to the owner twice the value of such goods, to be recovered according to law.

Interference with Navigation

IN THIS SECTION

1. Interfering with Aids to Navigation
2. Anchoring Vessel to Range Lights
3. Lien on Cost of Repairs or Replacements of Navigational Aids
4. Destroying, Damaging, or Obstructing Monuments or Buildings of United States Coast Surveys

§ 54-11-10. INTERFERING WITH AIDS TO NAVIGATION.

Any person who (a) shall moor any vessel of any kind whatsoever or any raft or part of a raft to any buoy, beacon or daymark placed in the waters of this State by the authority of the United States lighthouse board, (b) shall in any manner hang on with any vessel or raft or part of a raft to any such buoy, beacon or daymark, (c) shall wilfully remove, damage or destroy any such buoy, beacon or daymark, (d) shall cut down, remove, damage or destroy any beacon erected on land in this State by the authority of the United States lighthouse board or (e) through unavoidable accident run down, drag from its position or in any way injure any such buoy, beacon or daymark and shall fail to give notice of having done so as soon as practicable to the lighthouse inspector or lighthouse engineer of the district in which such buoy, beacon or daymark may be located shall, for every such offense, be guilty of a misdemeanor and shall be punished by a fine not to exceed two hundred dollars or imprisonment not to exceed three months, or both, at the discretion of the court.

§ 54-11-20. ANCHORING VESSEL TO RANGE LIGHTS.

It shall be unlawful for any vessel to anchor on the range-line of any range of lights established by the United States lighthouse board, unless such anchorage is unavoidable, and the master of any vessel so anchoring shall be guilty of a

misdemeanor and, upon conviction, shall be punished by a fine not to exceed fifty dollars.

§ 54-11-30. CHANGING POSITION OF NAVIGATIONAL AIDS.

Any person having charge of any raft passing any buoy, beacon or daymark, who shall not exercise due diligence in keeping clear of it or, if unavoidably fouling it, shall not exercise due diligence in clearing such raft without dragging from its position such buoy, beacon or daymark shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed fifty dollars.

§ 54-11-40. LIEN ON COST OF REPAIRS OR REPLACEMENTS OF NAVIGATIONAL AIDS.

The cost of repairing or replacing any such buoy, beacon or daymark which may have been misplaced, damaged or destroyed by any vessel or raft whatsoever having been made fast to any such buoy, beacon or daymark shall, when it shall be legally ascertained, be a lien upon such vessel or raft and may be recovered against such vessel or raft and the owner thereof in an action of debt in any court of competent jurisdiction in this State.

§ 54-11-50. DESTROYING, DAMAGING, OR OBSTRUCTING MONUMENTS OR BUILDINGS OF UNITED STATES COAST SURVEYS.

If any person shall wilfully and maliciously destroy or in any manner hurt, damage or obstruct or shall wilfully and maliciously cause or aid, assist, counsel or advise any other person or persons to destroy or in any manner to hurt, damage, injure or obstruct any signal, monument or building or any appendage thereto, used or constructed under and by virtue of the act of Congress of the United States passed February 10, 1807, entitled "An Act to Provide for Surveying the Coast of the United States," and the supplements thereto, he shall be liable to be indicted therefor and, on conviction, shall be imprisoned not less than one month or pay a fine not exceeding fifty dollars, or both, at the discretion of the court before which such conviction shall take place and shall be further liable to pay all expenses of repairing the same. And it shall not be competent for any person so offending to defend himself by pleading or giving in evidence that he was the owner or the agent or servant of the owner of the land where such damage was done or caused at the time it was caused or done.

Boating Under the Influence

Boating is one of the most popular pastimes in South Carolina. For some, boating also involves being stopped by law enforcement. These stops often come from “safety checks” on our waterways or as a result of some minor infraction. If a law enforcement officer has probable cause to believe the boat operator is impaired, the officer can arrest the operator for boating under the influence (BUI).



To get a conviction for a BUI, the officer must prove that the operator was under the influence of alcohol, drugs, or both so that his or her faculties to operate the boat were “materially and appreciably impaired.”

Boating Under the Influence 1st – BUI 1st is a misdemeanor, and a judge can sentence a convicted person to imprisonment of 48 hours up to 30 days, a fine, or community service. The person will also lose the privilege to operate a watercraft for 6 months. The person will have to complete the Alcohol and Drug Safety Action Program (ADSAP) as well, which usually costs about \$500. Finally, he or she will have to complete a boating safety course. If the intoxicated boater causes property damage or bodily injury that is something less than “great bodily injury,” the person’s boating privileges will be suspended for one year.

BUI 2nd – A judge can sentence a person to imprisonment of 48 hours up to one year and a fine of up to \$5,000. Heavy community service could come into play in lieu of the jail sentence. The person’s boating privileges will be suspended for one year, and the person must complete ADSAP and a boating safety course.

BUI 3rd – A judge can sentence a person to imprisonment of 60 days up to 3 years and a fine of \$3,500 up to \$6,000. The person’s boating privileges will be suspended for 2 years, and the person must complete ADSAP and a boating safety course.

Only violations that occurred within 10 years can cause later convictions to BUI 2nd, BUI 3rd, or greater.

FELONY BUI

Great Bodily Injury – If the intoxicated boater causes great bodily injury to someone else, then the boater is guilty of a felony, and the judge will sentence the boater to up to 15 years in jail and fine the person between \$5,000 and \$10,000. “Great bodily injury” is defined as “bodily injury which creates substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.”

Death – If the intoxicated boater causes someone’s death, the jail sentence for a conviction is between 1 and 25 years, and the fine will be between \$10,000 and \$20,000. In either case, the person’s boating privileges will be suspended for 3 years starting after the person is released from jail.

RECKLESS HOMICIDE BY OPERATION OF BOAT

Even if a boater isn’t intoxicated, the boater can face serious criminal consequences if he or she isn’t careful. If a person operates a boat “in reckless disregard of the safety of others” and this reckless operation results in someone’s death, then the person can be charged with Reckless Homicide by Operation of Boat. The sentence for this charge is up to 10 years in jail, a fine up to \$5,000, or both. The prosecution, in some cases, may attempt to charge the person with murder, involuntary manslaughter, or manslaughter, depending on the

circumstances. If convicted, the boater won't be able to operate a boat for 5 years.

FIELD SOBRIETY TESTS IN BUI CASES

In South Carolina, one of the responsibilities of the Department of Natural Resources (DNR) or other law enforcement such as the City of Charleston is to enforce boating under the influence laws. Part of their training is based on the standards set forth by the National Association of State Boating Law Administrators (NASBLA). Due to the difficulty in administering standard field sobriety testing on the water, certain agencies such as DNR administer what is called the Afloat Test Battery.

The Afloat Test Battery for BUI's is the "marine" version of field sobriety tests for DUI's. In some situations, there isn't an opportunity for an investigating officer to conduct sobriety tests on land. Instead, the officer conducts several tests while the suspect is seated on their boat or the officer's boat. The Afloat Test Battery consists of the following:

- **Horizontal Gaze Nystagmus (HGN) Test** – The HGN test, also known as the "pen test," requires the officer to move a pen or other object back and forth across the suspect's line of sight in a particular manner. The officer then looks for an involuntary movement of the eye called nystagmus. Nystagmus can be an indicator that a person is impaired.
- **Finger to Nose (FTN) Test** – During the finger to nose test, the officer asks the BUI suspect to bring the tip of the suspect's index finger up to touch the tip of the nose while his/her eyes are closed and his/her head is tilted slightly back. The suspect must do this six times, three with each hand.
- **Palm Pat (PP) Test** -In this test, the officer asks the suspect to extend one hand, palm up, in front of them with the other hand on top of the first facing down. Then, the suspect must rotate their top hand 180 degrees and pat their bottom hand alternating between the back of their hand and the bottom of their hand with the bottom hand remaining stationary. The suspect must count out loud – "One, Two . . . One, Two", etc. in relation to each pat.
- **Hand Coordination (HC) Test** – This test requires the suspect to perform a series of tasks with their hands. The suspect is required to make fists with both hands and to place their left fist thumb against their sternum and the thumb side of their right fist against the fleshy side of their left fist. From that position, the suspect must perform four tasks:
 1. First, count aloud from one to four, placing one fist in front of the other, in step-like fashion, making sure the thumb side of one fist is touching the fleshy side of the other fist at each step.
 2. Second, memorize the position of the fists after having counted to four, clap the hands three times (no

aloud count required), and return the fists in the memorized position.

3. Third, move the fists in step-like fashion in reverse order counting aloud from five to eight, and return the left fist to the chest.
4. Fourth, return their hands, opened and palms down, to their laps.

Unlike driving under the influence (DUI), the BUI laws don't require the arresting officer to videotape the suspect at the arrest scene, so it can be challenging to defend a person charged with BUI because the evidence is often limited to the officer's testimony of the events which may not be accurate and can be biased because the officer is attempting to obtain a conviction. Merely allowing a client to give a different story may not be enough in a jury's eyes. Therefore, it is important for your lawyer to be familiar with the Afloat Test Battery to successfully attack the administration and the results of the FST's administered on the water. Oftentimes, the officer makes many mistakes which compromise the validity of the tests.

DO YOU HAVE TO "BLOW" IN A BUI CASE?

A person arrested for BUI will be taken to a jail or police station where he or she will be asked to blow into the breath test machine (more formally known as the DataMaster DMT). The machine gives a blood-alcohol content (BAC)

reading. If you blow, your BAC will fall into one of these categories:

- **0.00% – 0.05%** – It is conclusively presumed you weren't under the influence of alcohol.
- **More than 0.05% but less than 0.08%** – If the case goes to trial, the jury can make no inference of intoxication from the reading.
- **0.08% or higher** – If the case goes to trial, the jury will be told they can infer the suspect was under the influence of alcohol.

You can refuse to take the breath test. However, if you don't take the test, then:

1. Your boating privileges will be suspended for 180 days. You can challenge this suspension if you request a hearing within 30 days of the arrest.
2. The prosecution will be able to argue at trial "that only a drunk person would refuse the test." As BUI defense lawyers, we'd rather deal with this argument than a high BAC reading.

WHAT ARE THE DEFENSES TO A BUI IN SOUTH CAROLINA?

Every case is different, so there is no single answer to this question. At Futeral & Nelson, we do a complete investigation

and gather all of the potential evidence in each case. This can include all sorts of things, but some of the more common are:

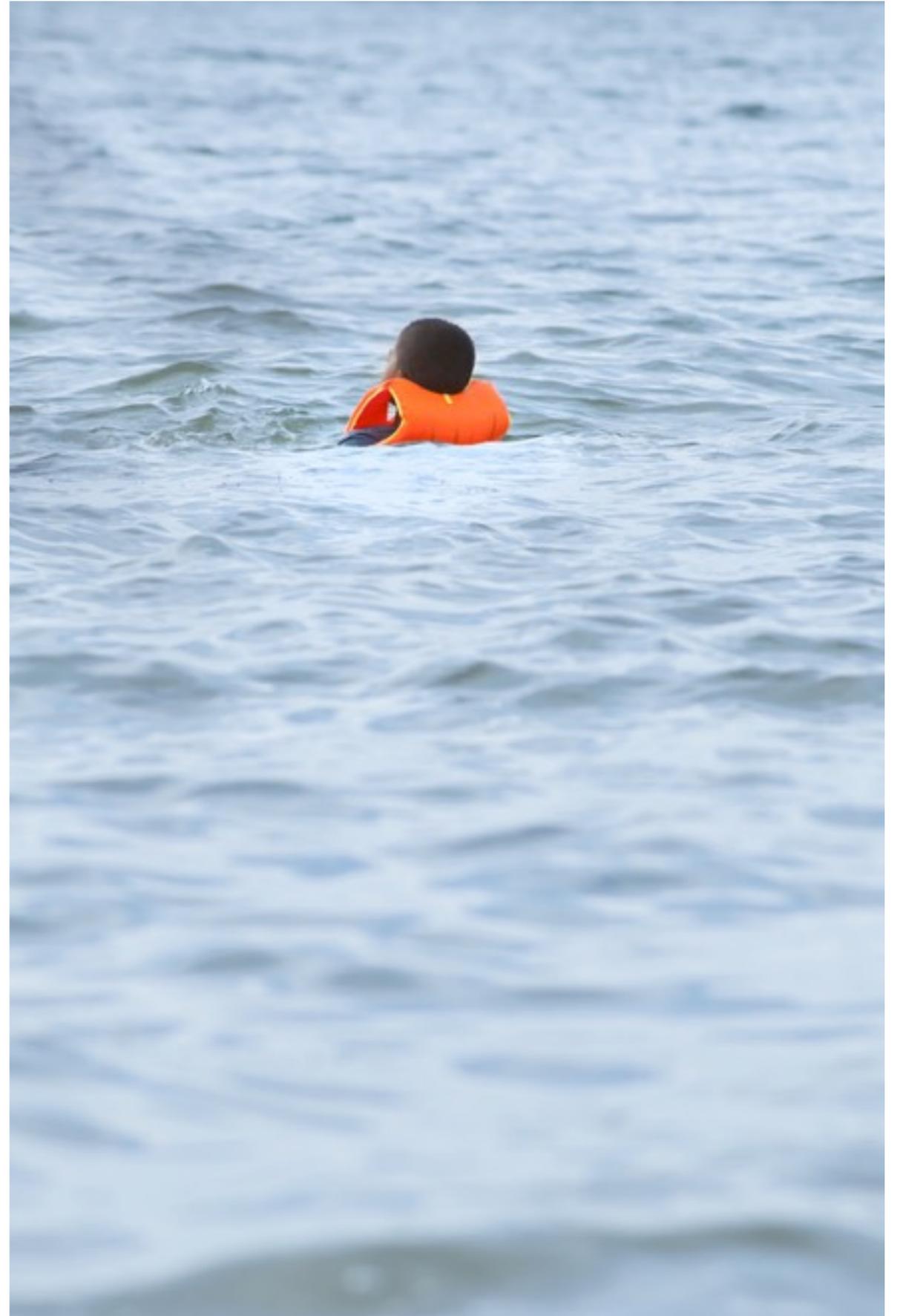
1. The incident report (to get the officer's side of the story);
2. The officer's training records;
3. Reports from the breathalyzer DMT machine (if you blew);
4. Video from the breath site;
5. Dispatch logs when the police or DNR called the incident in;
6. Records regarding the Afloat Test Battery and the officer's conclusions; and
7. Records showing our client's condition at the jail.

After we finish our investigation, we advise our clients as to the strengths and the weaknesses of their case. If the Afloat Test Battery was given, we attack the tests. If the client blew, we attack the machine. We make sure you're ready for trial because we don't want the prosecutor to perceive any weaknesses on our side. If we can't get a dismissal or get an acceptable deal for our client, then we put our trial experience to work. While all of this is taking place, we make sure the procedural posture of the case is in good shape, such as dealing with the court rosters, a jury demand if appropriate, and pre-trial motions.

If the case goes before a jury for trial, we're prepared to handle it. Before that happens, we try to bargain with the prosecution for a deal for our client. BUI cases can be resolved by a complete dismissal of the charges outright, a dismissal based upon a condition such as the completion of an alcohol class or boating safety class, a plea to negligent operation of a water device, or a plea to reckless boating. The best of these (dismissal) results in no fines or jail time and expungement of your criminal record. The worst of these (reckless boating) usually results in no jail time, a nominal fine, and the opportunity to expunge the BUI from your record, but the person will have to take DNR's boating safety class before he or she can operate a boat again. Depending on the case, sometimes we have to get more creative when structuring a deal with the prosecutor.

Dealing with a Boating Accident

Now matter how careful you are, boating accidents are a real possibility. Hopefully you'll never experience an accident while you're boating. However, you need to plan for the worst.



At the Boating Accident Scene

No matter how careful you are, there's always the chance that you may find yourself in a boating accident. Most people don't think about that possibility and they don't have a plan in case they are involved in an accident. Having said that, knowing what to do after a boating accident can make a huge difference to any insurance claim or legal claim you might have against the other boater.

Stay Calm - Of course, this is easier said than done. You may be in shock or experience a rush of adrenaline, feel anxiety, or suffer from pain. Nevertheless, you must stay calm despite the confusion surrounding the accident. If you start to panic, take a few moments to calm yourself by taking deep breaths.

Take Stock of the Situation - Before you do anything, take stock of what is going with you and around you. Check to see if you or anyone else is injured or is in the water and needs assistance. Also, note any dangers such as leaking fuel, a fire,

or oncoming boating traffic. Afterwards, do what you can to get yourself and others to safety before taking any other steps.

Contact DNR - Make sure that you contact the Department of Natural Resources (DNR) immediately.

Administer First Aid - If someone is injured in the boating accident, try to administer CPR if the victim needs it. If you're unfamiliar with life-saving techniques such as CPR, leave that to others or to the paramedics when they arrive. Also, don't try to move an injury victim unless it is **ABSOLUTELY NECESSARY** to avoid oncoming boating traffic or some other hazard. If you move someone with a back or a spinal injury, you may cause them further harm. Just leave the victim where you find him or her and try to keep them conscious until help arrives. If there is excessive bleeding, try to stem the flow of blood by putting pressure on the wound. If possible, get personal information from the victim including their full name, date of birth, and an emergency contact name and number. This information may help if the victim is unconscious when help arrives.

Get Witness, Operator & Accident Information – Record the names, phone numbers, and make, model, and color of all boats of the accident victims and the witnesses. Get the boater's insurance information if they have insurance. Also, write down detailed information about the damage to any boats involved in the accident.

Get DNR Information - Get the full name, the badge number, and the incident report number (along with a copy of the report, if possible) from the officer in charge at the scene.

Document the Damage to Your Boat – Before making any repairs to your boat, make sure ALL damage is well documented, measured, and photographed. If possible, preserve any broken pieces that came off of your boat. All of this information may be used as evidence at a later date.

IMPORTANT

Don't make ANY statements to others, except law enforcement, regarding what happened in the accident. Any statement you make after an accident can be used against you in future criminal trial or civil law suit, so you must be careful to provide accurate information.

Take Pictures of the Accident Scene – Most people have a camera built-into their cell phone or smart phone. Use it! Take photos and/or video of the entire accident area from different angles and distances. Make sure you get photos of any buoys, markers, the positions of boats in the accident, damage to all boats, and any unusual boating conditions.

Write Down Ever Detail You Remember - As soon as possible after the accident, write a detailed report of everything you remember about the accident. Be sure to

include the time of day, the weather, and other boating conditions at the time of accident. Remember, the longer you wait, the more details you are likely to forget.

After an Accident

Medical Treatment - Obviously, you should seek immediate medical treatment for your injuries. For minor injuries, consider seeing your regular physician who should already have your basic information and your medical records. For serious injuries or a specific injury, seek medical treatment from a specialist.

Your primary goal is to recovery from your accident to the fullest extent medically possible. Don't be a "bad" patient; if you're not a good patient, not only will you harm your chances for a full recovery but you will likely cause problems with any claim you have against insurance or legal claim against the person or persons who caused the accident. Here are three common mistakes "bad patients" make that have a negative impact on their health and their legal claim:

1. **Attempting to do too much too soon** - Some people are "stubborn" when it comes to following their doctor's

orders. They will start engaging in strenuous activities against the advice of their doctor and not follow the doctor's instructions. Take all the medications you're prescribed, get plenty of rest, complete your rehabilitation or physical therapy program, and follow ALL of your physician's orders.

2. **Downplaying pain and medical condition** - Some people don't like to complain about their situation. They will tell their doctor that everything is "fine" or that they're feeling better when they're still suffering. It is crucial that you are 100% honest and accurate about whatever may be going on with you medically. By accurately reporting your problems, your physician can accurately diagnose your condition and plan the best course of your treatment. Also, it's important to remember that everything your doctor records in your medical records will be reviewed by insurance companies and even lawyers to evaluate any claim you make for your injuries. If you inaccurately report that you're healthy, it will become difficult, if not impossible, for you to claim that you were injured in the accident.

3. **Canceling appointments with doctors or physical therapy** - Insurance companies and their lawyers will latch on to any reason to avoid or to reduce payment for your injuries. When you cancel or miss medical appointments, the insurance company and their lawyer will be quick to claim that you either you didn't need the treatment or that it's your fault that you aren't recovering from the accident.

Legal Issues & Lawyers

The more serious your accident may be, the more likely you'll need the help of a lawyer to deal with complex medical issues, insurance coverage issues, and issues surrounding fault for the accident. Regardless of whether you believe your accident to be a simple matter, it's always a good idea to meet with a lawyer as soon as possible for several reasons. You should meet with a lawyer to ask questions about insurance and the law to make sure that you have a strategy behind any claim you may make for your injuries. Most personal injury lawyers work on a contingency basis, so there shouldn't be any fees to meet with a lawyer. Also, even if you meet with a lawyer, you aren't obligated to hire that lawyer. So, you should take the time to meet with more than one attorney to choose the one you feel will do the best job for you.

Here are several issues that demonstrate why you should meet with a lawyer, if not hire one, to help you with any claims for injuries:

Dealing with the Insurance Adjuster - The person who is the primary contact with the other boater's insurance company is called an "adjuster." Usually there will be two adjusters: one to handle the property damage claim and one to handle the personal injury claim. Remember one thing, the adjuster isn't your friend. As friendly as he or she may be on the phone, they have one job - **TO PAY AS LITTLE AS POSSIBLE ON YOUR CLAIM.**

The adjuster will often tell you that they need to take your statement before processing your claim. Actually, in most cases, they can process the claim based upon the accident report and the statement they take from their own insured. They will be looking for things in your statement that may assist them in denying or devaluing your claim. They will look for things to use against you to claim that the accident was partly your fault or that you aren't as hurt as you claim to be. When adjusters ask us if they can take our clients' statements, we reply by saying we'd be happy to allow it if they'll allow us to take a statement from their insured. We've never had them agree to this request. We see no fairness in allowing our client to give a statement if their insured won't give one to us. Overall, any statements you give to the insurance company could hurt you a lot more than they help you.

Dealing with Insurance Claims - Handling personal injury claims takes experience in knowing the laws of insurance. Sometimes there may be others at fault that you didn't realize. Sometimes the other boater's policy limits are not enough to compensate you for your injuries, and you need

to know what else might be out there. For example, there may be more than one insurance policy that covers the accident. In this situation, a personal injury lawyer is trained to identify insurance coverage that can be “stacked” between policies. The law regarding stacking of insurance is, in a word, **complicated**.

Valuing Your Claim - Handling a personal injury claim is often more difficult than people realize. For example, it may be tough to figure out what your claim is worth. You may forget to include your lost wages. You may not know exactly how much compensation for pain and suffering you’re entitled to. You might not realize how important your medical records are in building your case, and you might even have difficulty reading the records. You might not realize that a case in one county of South Carolina is worth a totally different amount in another county because the jury pools in two neighboring counties can be completely different. The tendencies of the jury pools are huge factors in driving a claim’s value. In all, having a skilled personal injury lawyer on your side can only help to maximize your financial recovery.

Understanding Personal Injury Law - Knowing personal injury laws takes experience. Unless you’re a personal injury professional, you may be unfamiliar with all the laws that pertain to your claim. In other words, because you probably don’t know what you are legally entitled to, the insurance adjuster will probably take advantage of you. For example, in South Carolina, if you’re injured then your spouse also has a claim for “loss of consortium” because you may be unable to

help around the house with chores, taking care of children, and more. An insurance adjuster won’t tell you that your spouse is entitled to compensation. Insurance companies profit by under-compensating injured persons, so some companies will offer a lower settlement to you if you don’t have a personal injury lawyer on your side.

Maximizing Your Chances for Financial Recovery - An internal insurance company study showed that on average, insurance companies pay 2.1 times more on claims filed by attorneys than claims filed by individuals without an attorney. So, if you hire an experienced attorney, you may benefit from the attorney's work by saving time, energy, and receiving a larger settlement award from the insurance company.

If You're Going to Court

Hopefully you'll never be in the position of having to go to court to defend yourself for a boating violation or to make a claim for injuries from an accident. However, if you do, you need to understand what your role is in court and to know the best means of sharing the truth while you're on the witness stand.



Preparing for & Attending Court

IN THIS SECTION

1. Before You Go to Court
2. Dressing for Court
3. What to Bring & Not to Bring to Court
4. Arrive Early to Court
5. How to Behave in and Around the Courthouse
6. How to Speak to the Judge

For most persons, court can be an intimidating experience. Here are some pointers for anyone who has to go to court in South Carolina.

1. BEFORE YOU GO TO COURT

Try to get a good night's rest before you go to court. Furthermore, most courts don't allow food or drink, but they do have water fountains. Don't go on an empty stomach. When you are tired, hungry, or thirsty, you aren't at your best!

2. DRESSING FOR COURT

Dress properly and conservatively for each court hearing. Dress "business casual" or "dress like you are going to church." Failure to dress appropriately could result in your case being continued or you being excluded from the courtroom during the case. The judge hearing your case will associate your attire with the level of respect you are giving to the court.

Women should wear dresses which are knee length or longer or tailored slacks and a blouse. Men should wear tailored slacks and a shirt with a collar. Clothing should be clean.

Some examples of clothing that are *not* allowed include baseball caps, sleeveless tops, halter tops, backless dresses, low cuts dresses, miniskirts, shorts, blue jeans, t-shirts, flip-flops, and sandals. Tuck in your shirt.

Remove any piercings other than one pair of ear rings for women, covering any tattoos if possible, and having a conservative hair style and color. Even if you feel these things represent a particular belief or who you are, remember that you are presenting in front of a judge who may be deciding your fate. A “middle-of-the-road” appearance will minimize the chance of offending the court or jeopardizing your credibility. While most people don’t like being “judged,” that is exactly what going to court is all about.

3. WHAT TO BRING & NOT TO BRING TO COURT

Bring your entire file, which includes every document, CD-ROM, or thumb drive that relates to your case. You never know what could happen, and it’s best to be prepared. Even if you have a lawyer, some portion of your lawyer’s file may have accidentally stayed on his or her desk at the office, and you can actually save the day by having a copy of some document handy.

In some counties, you aren’t allowed to bring your cell phone, so it’s best to just leave it in your car if you’re unsure. If you’re allowed to have your phone, turn it off or put it on silent! If your cell phone goes off in the courtroom, the judge can take your phone and can possibly hold you in contempt (put you in jail). In fact, one Charleston County judge made the local headlines by putting a participant in a holding cell because her phone rang during court. At a minimum, the judge may take a ringing cell phone as a sign of disrespect.

For security reasons, you can’t bring any knives, scissors, nail files, tweezers, or other sharp objects into court. Also, you can’t bring in any mace.

You can bring a friend or a family member for moral support if it would make you more comfortable. Although this person won’t be able to sit at the table with you, he or she will at least be there in the courtroom to talk to you before and after.

4. ARRIVE EARLY TO COURT

The court won’t wait on you if you’re late. Talk to court staff upon arrival to make sure you’re in the right place and waiting outside of the right courtroom.

Another advantage of arriving early is that you’re able to sit down, to relax, and to gather your thoughts as you wait on your hearing. You’re more likely to present well in court if you walk inside in a relaxed state than if you’re running down the hallway trying to make your hearing on time.

5. HOW TO BEHAVE IN AND AROUND THE COURTHOUSE

You may find yourself waiting in a hallway outside of the courtroom. Be aware that people around you could be lawyers, witnesses, jurors, or others involved in your case. Don’t talk about your case because you never know who might overhear you. Also, don’t “cut up” or joke around (as many nervous people will do) as it could give someone a bad impression of you.

Even when parking your car, be polite and let other cars in front of you. Don't cut people off or exhibit frustration towards other drivers. You never know when your judge is in the other car.

If you find yourself waiting inside of the courtroom, just sit there, watch, and be silent. Judges may take whispering to your neighbor, sleeping, or certain other acts as a sign of disrespect. Your sincerity, or lack thereof, will be noticed. If the judge isn't telling a joke or laughing at a joke from one of the lawyers, you shouldn't be laughing either. Also, don't chew gum in the courtroom.

When your case is up, meaning you and your lawyer are addressing the court, continue to maintain a sincere demeanor at the table even if you don't like what others are saying. We've seen people scolded by judges on numerous occasions for making facial expressions, talking, or shaking their head in protest of what a lawyer or a witness is saying about their case. If you must speak, do it through your lawyer. Showing respect is of utmost importance. If you don't have a lawyer, be very careful of how you make any objections and be sure not to be disruptive to the proceedings.

6. HOW TO SPEAK TO THE JUDGE

Be humble, respectful, and polite. Address the judge as "Your Honor," "Sir," or "Ma'am." Address parties, witnesses, and lawyers as "Mr." or "Ms." I can't emphasize enough – show absolute respect, and it will likely be returned. Don't speak

unless the judge asks you to. Stand up when you speak to the judge unless he or she tells you that you can keep your seat. If the judge cuts you off, let it happen. We've seen numerous instances of people attempting to "talk over" judges, and it doesn't usually go well for that person. We've also seen people penalized by the judge for being too argumentative.

IMPORTANT

One BIG pet peeve of many judges is when a witness doesn't directly answer the question asked. If the question calls for a "yes" or "no" answer, don't beat around the bush. Answer yes or no. If you feel that your answer needs some explanation, first answer the question and then explain it.

You as a Witness

IN THIS SECTION

1. What the Prosecutor or Insurance Defense Lawyer Is Trying To Do
2. How the Other Lawyer Will Do It
3. Golden Rules of Testifying

1. WHAT THE PROSECUTOR OR INSURANCE DEFENSE LAWYER IS TRYING TO DO

If you're testifying in court, the goal of a prosecutor or an insurance defense lawyer on cross-examination is threefold:

1. To establish facts favorable to the other side through your testimony;
2. To discredit your testimony through other evidence or other witnesses; and
3. To discredit your witnesses through their own testimony.

2. HOW THE OTHER LAWYER WILL DO IT

Filling in the Gaps - Generally, the prosecutor's or defense attorney's case is made up of sketchy information from a few witnesses. The lawyer on the other side of your case will try to fill in the gaps in the case by using your testimony and the testimony of your witnesses to establish facts favorable to the other side.

Prior Inconsistent Statements - You must understand what a prior inconsistent statement is, how it is used, why it is used, and what to do when faced with one. Ideally, prior inconsistent statements are best explained away by simple testimony that a subsequent answer is based on more information and a better understanding of the facts and law.

Memory - Witnesses will never remember all details. The lawyer for the other side may ask specific questions about

details. Some will be irrelevant except to show that your witnesses' memories are not as great as you want the jury to believe. Some questions are designed to set your witnesses up to disagree with each other. Others are to elicit from your witnesses favorable facts, i.e., those which reinforce a police officer's testimony or fill in gaps in the other side's case. Finally, if you remember too many details or witnesses remember all the same details, the lawyer on the other side can argue that it is unnatural to remember so much and it was likely made up.

Bias - When you're in court, you obviously have something to lose. Friends, relatives and loved ones want, of course, to help you. The lawyer for the other side will attempt to insinuate that you and your friends would be willing to lie (perjure themselves) to help you. Unprepared witnesses can be caught off guard with questions of this nature. Some typical reactions of unprepared witnesses on which the prosecutor or insurance defense lawyer can capitalize include:

- **The reluctant witness:** A nervous or overcautious witness may repeat phrases, such as "Please repeat your question," or "I don't understand your question," or "as best as I can recall." These phrases are common stalling devices to allow the witness the time to formulate a well-reasoned response to a difficult or a tricky question. This type of witness appears too cautious and less truthful. If you know what to expect and what types of questions the lawyer for the other side will ask, there will be minimal need to clarify questions

and you won't have to hesitate and to appear reluctant to answer.

- **The volunteering witness:** Not only is this objectionable, it often gives the other lawyer food for more cross-examination. It is natural to want to explain some answers, but too much explaining may cause the jury to see you or your witnesses as insincere, biased, or prejudiced. A prepared witness not only knows what to volunteer, but when to do it.
- **The excessively opinionated, hostile, or belligerent witness:** A witness should be prepared to remain firm in his or her position. However, the witness must remain calm, cooperative, and seemingly objective. The last thing you want the jury to see is that you or your witnesses aren't objective and reasonable.
- **The "questioning" witness:** Answering a question with a question makes the witness appear sarcastic, insincere, and evasive. The jury will see this as an unwillingness to answer the question. This type of excessively biased witness defeats the purpose of his or her testimony for you because of his or her loss of credibility.
- **The professional witness:** Experts are "hired guns" and have generally been paid to testify. An expert must be properly prepared for testimony.

Prior Convictions - Many defendants and defense witnesses don't have admissible prior convictions. If you have

prior convictions, you should bring these to the attention of your lawyer so you can discuss their admissibility and how to handle that issue at trial.

3. GOLDEN RULES OF TESTIFYING

1. Tell the truth.
2. Think about the question asked, then answer it. Don't avoid the question, but don't be afraid to say "I don't know."
3. Ask the prosecutor or insurance defense lawyer to clarify the question, if necessary. Remember not to ask repeatedly to stall for time.
4. Pause slightly before answering to give your lawyer time to object, if necessary. Silence can be an attention getter, too! Listen carefully to objections. They signify that the question is potentially misleading or that the response can be potentially damaging to your case.
5. Don't argue. Remain calm and cooperative.
6. Don't be afraid to say "I don't remember" or "I'm not sure, it has been a long time since then."
7. Don't attempt to "match wits" with the lawyer for the other side.

The Best Answer to Every Legal Question

We've been helping people in South Carolina for many years, and we've been asked THOUSANDS of legal questions. Of course, there's also the most important question asked most often by any client – “What are my chances of winning or losing?”



No matter what the legal question might be, here is the BEST ANSWER TO EVERY LEGAL QUESTION. Ready? Here it is:

“IT DEPENDS.”

Disappointed? Please don't be; this is NOT a trick answer or a joke. It truly is the BEST answer that any lawyer can ever give to any client. It's also the most important thing about any case a client needs to understand.

When Stephan Futeral was a law professor, he'd ask his students questions about different legal problems. Their answers (much like young lawyers' answers to their clients) were always the same – “statute blah blah blah says X, Y, and Z” or “in the case of so and so, the court said A, B, and C.” Technically, their answers may have been correct, but they missed the point. The best answer to any legal question depends on many more things besides statutes or case law. The answer to any legal question, and what is more important the question of whether you win or lose, always depends on a combination of the following 5 things: The judge, the jurors, the facts, the client, and the lawyer.

There is Nothing “Absolute” About the Law

Very rarely is the law black or white; it works in shades of gray. The outcome depends on the judge, the jury, the facts, the client, and the lawyer:

1) The Judge – Despite what statutes or higher courts may have to say about the law, judges interpret the law as they see

fit. Because judges are human, sometimes they're mistaken about the law. That's why we have higher courts (appellate courts), to correct any mistakes (hopefully) made by the lower courts. On top of that, judges have their own personal views about the cases they hear, the parties and witnesses involved, and so on. Some judges do very little to hide the fact that they don't like certain types of cases such as accidents. Some judges are known for being very strict when it comes to sentencing anyone convicted of a crime. So, as you can see, the answers to any legal question, and in particular the outcome of a case, depends on who the judge might be.

2) The Jurors – Every juror is unique. Some are rich and some are poor. Some are liberal and some are conservative. The list of differences goes on. In the end, you wind up with a mix of jurors from all walks of life who bring their own personal views into the court room. This too should come as no big surprise – many jurors don't care for plaintiffs lawyers, criminal defense lawyers, or their clients. From the minute you walk into the courtroom with your lawyer, it is an uphill challenge for both you and your lawyer to convince the jurors of your sincerity and the righteousness of your case. Although the jurors don't decide the law (that's the judge's job) they do decide whether you win or lose.

There is another thing that you should know about jurors. No matter how well-crafted the presentation of your case may be, they're all going to hear and see your case differently. I'll give you a real world example of how this happens all the time – Hollywood movies. In bringing a movie to the theaters,

incredible amounts of time, effort, and money are put into creating a single production. Despite all these efforts, not everyone sees the film the same way. Some audience members liked it and some didn't. Some laughed at parts that weren't funny and others didn't laugh at all at the punch lines. Some missed parts of the movie by fiddling around with their popcorn or talking to the person next to them. In other words, although the audience all saw and heard the same movie, they all had a different view of it. The same is true for a number of jurors sitting in a box together and listening to the lawyers and their clients present their case. So, as you can see, the answer to the question of whether you win or lose your case depends on who your jurors might be on any given day.

3) The Facts – To prove your case, you must establish the facts. Facts can be documents, witnesses, physical evidence, and all sorts of things. Some of the facts are established by “direct evidence” and some by “circumstantial evidence.” Let's say at trial you are trying to prove to the jurors that it was raining outside. If you took the jurors outside and into the rain, that's “direct evidence” of the fact that it's raining. If, instead, you pointed out to the jurors that everyone walking into the courtroom was carrying an umbrella and was dripping wet, that's “circumstantial evidence” that it's raining. Unfortunately, many cases are based on circumstantial evidence which makes it more difficult to “connect the dots” before a judge or jury. Also, if you're proving your facts by other witnesses' testimony, not everyone says the same thing, some don't have a good recollection of events, and some will

contradict the testimony of other witnesses. So, when it comes to the important question of whether you win or lose, the answer depends on the facts of the case.

4) The Client – Every client is unique. Some clients are capable of doing a great job of testifying before a judge and a jury. Some clients are nervous when they speak in public and need a lot of work to be able to share their story. Some clients are more sympathetic than others. Some clients are well-prepared and well-organized and very helpful to their lawyer. Some clients aren't so helpful. The list of differences goes on and on. The point is, the answers to your questions and the outcome of your case, depends on you the client.

5) The Lawyer – The answers you get to your legal questions and the outcome of your case also depends on who you choose as your lawyer. Just like judges do, lawyers differ in their views and their interpretations of the law. So, it's not surprising that when some clients speak to more than one lawyer about their situation, they get different answers. Some lawyers tell their clients what they want to hear to make the client feel better. These lawyers aren't necessarily trying to be sneaky or dishonest; they do it out of compassion for the client. But at the end of the day, clients need to hear real, truthful answers from their lawyer and not just the things that are going to make them feel better about their case. As a client, you need to know the positives and negatives about your case so you can make the best informed decision about how to move forward such as whether to settle your claim or to take your case to trial.

Some lawyers have an excellent understanding of the law, but they're not familiar with judges or juries. Some lawyers are very prepared for court and some lawyers fly by the seat of their pants (there's no substitute for preparation). Some lawyers, despite all their efforts, just can't seem to connect with judges or jurors. Good trial lawyers must be good storytellers. They must present your case to a judge or jury, including the facts and the law, in a way that is understandable, compelling, sincere, and convincing. Just like a great, best-selling novel can be ruined by the movie director who brings the book's adaption to the big screen, the wrong lawyer can take the best set of facts and favorable law and turn it into a jumbled mess before a judge or a jury. So, the answers to your legal questions, including whether you win or lose, depends on who you choose as your lawyer.

Final Thoughts

As much as lawyers would love to give their clients a definite answer to all of their questions, the truthful and BEST answer is – “it depends.” When a lawyer tells you this, that means that the lawyer is considering ALL of the circumstances and not just what is written in a statute or a text book on case law. That's a good thing because, in the end, whatever the answers to your questions might be, it's the results that count.

Your Attorney

“If there were no bad people there would be no good lawyers.”

~ Charles Dickens

If you're in the situation of having to hire a lawyer, then it is time to give some thought to reviewing and comparing lawyers. Choosing from the many available attorneys also can be confusing. Here are some suggestions for how to choose the best attorney for you.



Choosing Your Lawyer

IN THIS SECTION

1. Ask Yourself . . .
2. Your Legal Budget vs. Your Legal Needs
3. Do Your Homework
4. Interview Your Lawyer
5. How You Feel

If you've never hired a lawyer, you may not know where to start. If you know someone who recently hired an attorney, then they may have a personal recommendation for you. However, you may feel uncomfortable asking for recommendations or discussing your case with people close to you. That's why the Internet can also be a valuable resource to research and to compare lawyers and their professional backgrounds. Sites such as Avvo, LinkedIn, and others can help you compare the experience and reputation of various lawyers.

1. ASK YOURSELF . . .

When you are meeting with potential lawyers, you must remember that not all attorneys are created equal. Here are some questions you should ask yourself before making your decision as to which lawyer to hire:

1) Does the lawyer pay attention to you while you are talking? You need an attorney who will be compassionate and dedicated to your needs. If the lawyer is distracted, taking other calls, checking emails, and so on, perhaps that lawyer is not the best for you.

2) Does the lawyer try to educate you and to answer your questions? A skilled lawyer knows that educating the client is important so that the client can make sound and informed decisions about their future.

3) Is the lawyer assertive without being arrogant? Some clients believe that having a "pit-bull" for a lawyer is

their best move. Obnoxious and egotistical doesn't mean better or skilled. You need an attorney that will calmly assert your rights and who will always act professionally.

4) Is the lawyer guaranteeing you results? If so, be cautious! Litigation in any court is risky and the outcome can't be predicted with any certainty. The outcome of your case depends on many things such as the present circumstances, future developments, and the decisions and the attitudes of judges and jurors. You need a lawyer who shoots straight with you, who tells you like it is, and doesn't just tell you what you want to hear.

2. YOUR LEGAL BUDGET VS. YOUR LEGAL NEEDS

As a general rule, well-seasoned attorneys charge higher fees, and newer lawyers are cheaper. You pay higher fees for experience. If you have a simple issue such as a speeding ticket and you are on a budget, then a recent law school graduate may fit the bill. However, if you are facing complex legal challenges, then your legal needs may justify the costs of a more knowledgeable attorney. Additionally, although younger lawyers may charge a lower hourly rate, it may actually take them longer to do the work (meaning more fees) than a veteran attorney who has been performing the same service for years. If you have a personal injury claim, then your lawyer should work on a contingency basis.

3. DO YOUR HOMEWORK

When you're searching for lawyers on the Internet, you should read beyond the marketing rhetoric if you really want to know who you are hiring. Here are some examples:

- If you visit a website that has plenty of descriptions of the lawyer's services but little information about the lawyer, then you may be missing the most important part of the picture – **the lawyer's experience.**
- If the lawyer's biography doesn't include the year that the lawyer graduated from law school, then chances are likely that the lawyer hasn't been practicing for very long and he or she has left this information out of their website for "marketing" purposes. This doesn't necessarily mean that the lawyer isn't able to handle your case, but it may mean that the lawyer is still "learning the ropes."

Here are some resources to learn more about your lawyer's background and experience:

- Look for the lawyer's Martindale Hubbell Rating. The Martindale Hubbell® Directory has been rating lawyers for the past 140 years. According to Martindale, "Peer Review Ratings™ help buyers of legal services identify, evaluate and select the most appropriate lawyer for a specific task at hand." Using information supplied by other lawyers and judges, Martindale rates lawyers based on performance in the areas of: (1) legal knowledge, (2) analytical capabilities, (3) judgment, (4) communication ability, and (5) legal

experience. The highest rating a lawyer or law firm may have is AV Preeminent. For more information about how the rating system works and to search for a lawyer's rating, visit www.martindale.com.

- A newcomer to the business of rating lawyers is Avvo. Avvo rates lawyers by "using a mathematical model that considers elements such as years of experience, board certification, education, disciplinary history, professional achievement, and industry recognition-all factors that are relevant to assessing a lawyer's qualifications." Their ratings rank from the highest of 9 – 10 (Superb) to the lowest of 1.0-1.9 (Extreme Caution). Also, Avvo posts reviews and comments by both other lawyers and by clients. Avvo's website can be found at www.avvo.com.

4. INTERVIEW YOUR LAWYER

Often when people meet with a lawyer for the first time, they are under significant stress because of their legal problems, and the conversation tends to focus solely on those problems. While you're discussing your case and seeking answers to your questions, take the time to ask the lawyer about his or her background and experience such as:

- How long they've practiced;
- Whether the lawyer has handled any cases similar to yours;
- How many similar cases has the lawyer handled;

- Who will handle the case (sometimes other lawyers within a firm besides the one you meet with will handle some of your work, and you should know more about the legal team working on your case); and
- Whether the attorney has malpractice insurance (malpractice insurance isn't required for many lawyers).

Here are two common questions that clients ask that will NOT help you to choose the right lawyer for you:

- "How many cases have you won?" - As any seasoned lawyer will tell you, "You can't win them all." Even if the lawyer has won every case up to that point, your case may be the first that they lose. So, if the lawyer boasts about their track record or gives you the impression that you can't lose, then perhaps you're not dealing with the most straightforward attorney.
- "What are the odds of winning my case?" - Although a lawyer may comfort you by telling you what you want to hear, you're better off getting a straight answer from the very beginning. The honest answer is - "It depends." Every case is unique, and your case's outcome depends on many variables which, realistically, cannot be predicted from "day one."

5. HOW YOU FEEL

The final, and perhaps the most important, thing you should consider when you hire your attorney is how you feel about

your first meeting. The bottom line is that if, for any reason, you don't feel comfortable with the lawyer you met, then go interview others (and there are many) until you're satisfied that you're choosing the best lawyer to represent you.

Working with Your Lawyer

One of the problems is that many people try to oversimplify their situation. There are many aspects to any type of case or legal problem, so the more your attorney knows about your case, the better it is for you.

1) Tell your lawyer the ENTIRE truth. Some folks are embarrassed about their situation. Some are concerned that they'll be criticized or judged by their lawyer if they share all of the truth. If you don't tell your lawyer the truth, you're hurting your chances of a favorable outcome. The more your lawyer knows about the "bad stuff," the more your lawyer can prepare to deal with any claims thrown your way. Remember, your lawyer took an oath of confidentiality. **EVERYTHING** you tell your lawyer stays with your lawyer. Don't hold back; tell the entire truth to your lawyer.

2) Explain without venting. There are many ways you can make your lawyer's job easier and to keep your legal fees and

costs down. First, you should tell your lawyer as much as you can about your current situation. However, you shouldn't spend too much time venting about your situation. Lawyers understand that their clients are going through an emotionally difficult time in their lives. Often, however, you would do better to talk to your friends, family, or a counselor to address these issues (and the cost is usually much less than paying your lawyer to listen).

3) Read everything your lawyer sends you. Another way to work better with your attorney is to read carefully everything that is sent to you. Some paperwork requires that you respond to the other party or the court within a certain time period, otherwise you may jeopardize your case. In all, there is no substitute for early, thorough preparation. Do all that is required of you within the time frames that your lawyer gives you, and your case may run smoother.

4) Don't contact a judge about your case. If you're represented by a lawyer, let all official communications come through and from your lawyer. Additionally, there are rules that prohibit one side or another from communicating directly with a judge.

5) Be patient. As a final note, you should understand that legal cases take time. First, it will take some time for your lawyer to gather all the information needed to proceed with your case. Part of this time depends on how quickly you provide the information your attorney requests. Then, your attorney may need to request information from the other side

through “discovery.” Afterward, it will take some time, depending on the court's schedule, before your case is resolved. In fact, some cases can take years. So, try to have patience with your attorney and with the courts. Impatience will not speed up the process but it will cause you more concern and could cost you more money.

Are “Aggressive” Lawyers “Effective” Lawyers?

Practicing law in South Carolina is remarkably genteel. In fact, the practice of law in Charleston, where we practice, is so well-mannered that in 2001 the ABA Journal ran, as its cover story, an article regarding southern collegiality and practicing law here in the Lowcountry. Of course, there are always exceptions, but overall our Bar prides itself on supporting one another and acting as professional colleagues and not as professional antagonists. To echo that sentiment, members of the South Carolina Bar must take an “Oath of Civility” toward one another and to members of the public. Unfortunately, lawyers throughout the country are not exactly revered for their congenial nature or their civility toward each other. To make matters worse, TV, movies, and dramatic fiction play to an audience that expects lawyers to shout at the witness during cross-examination - “YOU CAN’T HANDLE THE TRUTH!” The unfortunate “truth” is that even in the real world, many lawyers market themselves as being “aggressive” or are endorsed by other lawyers as such.

If you look up the word “aggressive,” you will find definitions that include “ready or likely to attack or confront,” “pursuing one's aims and interests forcefully, sometimes unduly so,” or “characterized by or tending toward unprovoked offensives or attacks.” Being “aggressive” is not the same thing as being “zealous.” “Zeal” is defined as “great energy or enthusiasm in the pursuit of a cause or an objective.” Zealousness is an admirable attribute; aggressiveness is not. Here is why:

1) Aggressive Lawyers Are On The “Short-List” -

Judges don't care for “aggressive” lawyers. Ask any judge, and they'll tell you that they are worn out from baby-sitting lawyers who can't get along with one another, who quibble over the most mundane aspects of their case, who accuse other lawyers of misdeeds, who complain about imagined slights, who hold hard-and-fast to deadlines without accommodation or courtesy, and the list goes on. Lawyers who place themselves on a judge's “short list” of intolerable lawyers are doing a great disservice to their clients.

Regrettably, many of the lawyers who place themselves on the “short-list” are either oblivious to (or “willfully dense” to) how their attitude negatively impacts upon the court's scheduling of matters, the court's receptiveness to the lawyer's concerns (“Cry Wolf Syndrome”) or even, at times, the court's rulings.

2) Aggressive Lawyers Get As Good As They Give -

We've let other lawyers out of default or extended firm deadlines as a professional courtesy. We can unequivocally state that in those cases, the outcome was positive for the clients and, in some cases, made more positive by acting

professionally. Of course, there will always be those parties, or their lawyers, who foster a hard-line approach to the case. However, perhaps a better practice is to set a positive tone from the beginning before you come out swinging the day the client walks into your door. If you're a lawyer who sets negative, aggressive tone from the outset, then don't be shocked when opposing counsel doesn't return your phone calls, doesn't grant you any extensions you request, doesn't work with you to complete discovery, etc. In all, what goes around does, indeed, come around. In the end, it would be best to have a reputation as being respected and a "lawyer's lawyer" than to be the attorney to whom everyone else is looking to dish out a little "payback."

3) Good Lawyers Don't Just "Try" Cases; Good Lawyers Try to "Resolve" Cases - Before we hop down off of our soapbox, there is one last point to be made. "Scorched earth" policies and aggressive behaviors don't benefit clients (except in the movies). Aggressive behaviors run up legal fees. Sparring with opposing counsel or writing threatening "paper tiger" letters or emails is, in a word, useless. As we say here in the South, "you catch more flies with honey than with vinegar."