

CHAPTER 278A

COMMERCIAL RECREATIONAL WATERCRAFT

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CHAPTER 278A

COMMERCIAL RECREATIONAL WATERCRAFT

An Act to provide for the regulation and control of commercial recreational watercraft and matters connected therewith. *20 of 2006*

[Assent 17th July, 2006]

[Commencement 25th August, 2006] *S.I. 46/2006.*

PRELIMINARY

1. This Act may be cited as the Commercial Recreational Watercraft Act. *Short title.*

2. In this Act, unless the context otherwise requires – *Interpretation.*

“authorized insurer” means a company registered in The Bahamas to carry on the business of insurance in respect of craft, personal injury and loss of life arising from accidents;

“authorised officer” means a member of the Royal Bahamas Police Force, the Royal Bahamas Defence Force and any officer of the New Providence Port Authority or Port Department or an officer authorized under section 38 of the Local Government Act; *Ch. 37.*

“Authority” means the Port Controller or a port authority in a port area as defined in the Port Authorities Act; *Ch. 269.*

“craft” means a commercial recreational watercraft including banana boats, parasail operations and any such crafts;

“licence” means a licence issued under this Act;

“Minister” means the Minister responsible for water sports;

“New Providence Port Authority” means the Port Authority for New Providence appointed under the Port Authorities Act; *Ch. 269.*

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“operator” means an owner or a person who manages or handles a craft;

“owner” includes owner, a part owner or any person who has possession of a craft;

“passenger” means a person who is carried on a craft;

“Port Controller” has the meaning assigned to it by section 2 of the Port Authorities Act;

“register” means the register or registers kept by the Port Controller under this Act and “registered” means registered in that register or those registers;

“Registration” means registration of a craft under this Act;

“Regulations” means regulations made under this Act;

“user” means a person who rents, rides, or is towed or drawn by a craft;

“waters” means the territorial waters of The Bahamas as prescribed;

“zoning” means any area designated by the Port Controller for usage by a craft as prescribed under regulations.

PART I - THE AUTHORITY

The Port Controller, port authority and functions.

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3. (1) The Port Controller or port authority in a port area as defined under the Port Authorities Act is the Authority under this Act.

(2) It shall be the function of the Authority –

(a) to regulate, control and administer all matters related to commercial recreational water sports in The Bahamas;

(b) to collect all licensing fees and other moneys payable under this Act except in the Family Islands where the Administrator shall collect fees and other moneys that are payable; and

(c) to advise the Government on any matters relating to its functions.

Powers of the Authority.

4. (1) Without prejudice to the generality of the foregoing provisions of this Act, but subject to the

provisions of this Act, the Authority shall have the power to discharge all things that are necessary to carry out its functions.

(2) It shall be lawful for any authorised officer to detain any craft suspected of being operated for hire and whether registered under this Act or not for the purpose of preventing or detecting the violation of any of the provisions of this Act, for so long as is necessary for the carrying out of his duty.

5. In the exercise of its functions, the Authority shall afford to the Minister facilities for obtaining information with respect to the property and activity of the Authority and shall furnish him with returns, accounts and other information with respect thereto and afford him facilities for the verification of any information furnished, in such manner and at such times as the Minister may require.

Relations between the Minister and the Authority.

**PART II - REGISTRATION OF CRAFT;
AUTHORISED OFFICER**

6. (1) For the purposes of this Act, the Port Controller shall maintain a register of all crafts.

Register of craft.

(2) The register shall contain a record of the following —

- (a) the name and address of the registered owner, and, where the owner is a company, the beneficial owner or owners of the company;
- (b) the name of the associated party where the owner is subjected to a hire purchase agreement;
- (c) the registered number, the make, model and serial number of the craft together with particulars of any previous registration;
- (d) the name and address of the insurer; and
- (e) the name and address of the licensed operator of the craft.

(3) The register may contain such other records and particulars as may be prescribed by the Minister, as the case may be.

7. (1) In order to be registered under this Act, a policy of insurance must be obtained by the owner of the

Requirements in respect of insurance.

craft with requirements as advised by the Authority as prescribed under regulations.

(2) The policy of insurance shall be effected with an authorized insurer.

Craft operators to be licensed.

8. (1) No craft shall ply, be offered or let for hire for use in the waters as prescribed in regulations unless and until it is registered by the Authority in the port area in which it is to operate.

(2) The operation of a craft is restricted to the areas prescribed in regulations.

(3) No person shall act as an operator of a craft required to be registered under this Act unless and until he holds a licence for that purpose.

Reckless operation of craft.

9. (1) No person shall operate or drive a craft —

(a) within two hundred feet of the shoreline in the designated areas prescribed under regulations;

(b) in wilful or reckless disregard for the safety of any person or property;

(c) without due caution and circumspection; or

(d) at a speed or in a manner likely to endanger life or limb or to damage the property of any person; and

(e) when entering or departing the shore except by way of the clearly delineated sea lane by the Port Authority using buoys and ropes between the open sea and the restricted zone and the shore.

(2) Any person who contravenes the provision of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment to a term not exceeding two years or both.

Sittings of the Authority.

10. (1) The Authority shall meet once in every quarter, or as often as is necessary for the purpose of considering applications, for the grant of licences, and for any other general purpose as provided for under this Act. The Authority shall give thirty (30) days notice, in respect of any new applications and fourteen (14) days notice in respect of renewal applications of a sitting and shall publish such notice in the Gazette and in at least one newspaper in The Bahamas, and, in the case of a port area

a copy of the notice shall be affixed in a conspicuous place near to the place of the intended sitting.

(2) Every notice under this section shall set out the full names and addresses of the applicants and the names and full descriptions of the craft in respect of which a licence is being applied for.

11. (1) Subject to the provisions of this Act, the Authority shall register a craft or grant a licence to an owner or operator if the applicant satisfies all the requirements that are specified by the Act and regulations thereto. All conditions and restrictions shall be endorsed on the certificate of registration or the licence, as the case may be.

Registration and
licensing by the
Authority.

(2) The Authority may at any time on good cause being shown and after an owner of a craft for hire or a licensed operator, as the case may be, has had an opportunity to explain any complaint against him before the Authority, cancel a registration or a licence, or impose conditions and restrictions in respect thereof.

(3) The registration of a craft or the licence issued to an operator under this Act shall be granted or renewed for a period not exceeding one year and ending on the thirty-first day of December.

(4) Notwithstanding the provisions of subsection (1), the Minister shall in his discretion determine from time to time the number of crafts of any type or class that may be registered at any one time in The Bahamas or in any part thereof, and notice of which number shall be published in the Gazette.

(5) Where the Minister proposes to increase or decrease under subsection (4) of this section the maximum number of any craft referred to in that subsection, he shall cause his proposals for that purpose to be published in the Gazette, and there shall elapse between the date of the publication in the Gazette and the date of the announcement or his determination, a period of not less than thirty days.

12. (1) Any person may oppose the registration of a craft or the grant of a licence to operate a craft, provided that —

Opposition to
grant of
registration or
licence.

(a) he has given written notice to the Authority and to the applicant of his intention to oppose the registration or the grant of a licence, as the case

may be, and has stated in such notice in specific terms the grounds of opposition; and

- (b) such notice has been given to the Authority and to the applicant not less than six days before the day fixed for the hearing of the application.

(2) The Authority may, notwithstanding that notice of opposition shall not have been given, adjourn the hearing of the application to a future day, and require the attendance of the applicant and any other person concerned on such day when the matter will be heard and the objection considered as if the notice hereinbefore prescribed had been given.

Procedure for registration and grant of licence.

13. (1) In all islands of The Bahamas an owner of a craft desirous of obtaining registration or a person desirous of obtaining a licence to operate a craft for hire under this Act may apply to the Authority for the port area in which the craft is to be operated.

(2) An owner of a craft who applies for registration under this Act shall submit in writing plans, specifications and inventories of the craft and produce for inspection the machinery, gear, fixtures, and equipments used in connection with the craft.

(3) An application under this section may be opposed before the Authority and the provisions of section 12 of this Act relating to the opposition of applications shall apply.

Certain persons disqualified from owning or operating a craft.

14. It shall not be lawful for any person who —

- (a) is under eighteen years of age; or
- (b) has been convicted of any offence, which in the opinion of the Authority renders him unfit to be the owner or operator of a craft for hire,

to obtain a licence to operate a craft.

Age prohibition to use of craft.

15. (1) An owner, operator or a person in charge of a craft or a person who makes it available for rent shall not allow a person who is under eighteen years of age to operate the craft.

(2) A person who is under eighteen years of age shall not rent or use a craft in and around the waters of The Bahamas.

(3) Every person who fails to comply with the provisions of this section shall be guilty of an offence and

shall be liable on summary conviction to a penalty not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both.

16. (1) An authorised officer may question any person respecting any contravention or suspected contravention of the provisions of this Act, and may go on board any craft for that purpose.

Powers of authorised officer.

(2) The owner or operator of a craft boarded pursuant to subsection (1) and every person found on board the craft shall give the authorised officer all reasonable assistance in his power to enable the officer to carry out his duties and functions under this Act, and shall furnish the officer with such information as he may reasonably require.

(3) An authorised officer may, in order to verify and ensure compliance with this Act,

(a) direct the user of a craft to stop the craft; and

(b) require the user of a craft to produce proof of age.

17. (1) Any authorised officer may at any time without summons, warrant or other process detain any craft and any person found in possession of the craft in relation to which he reasonably believes has been used to commit an offence.

Powers of seizure, arrest by authorised officers.

(2) Where any craft is seized or detained or any person is detained under subsection (1), the officer shall take into custody the person and the craft, and if the officer is not a police officer, that person and craft shall be delivered as soon as practicable to a police officer.

(3) Where on delivering any person into the custody of a police officer in accordance with the provisions of subsection (2) the authorised officer makes a complaint to such officer that such person has committed an offence against this Act, the police officer shall as soon as may be practicable cause such person to be brought before a Magistrate's Court to be dealt with according to law, and no later than the period permitted under section 19 of the Criminal Procedure Code.

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(4) Where any craft is delivered into the custody of a police officer at any place in accordance with subsection (2) such craft shall be detained in the custody of the Commissioner of Police at that place or at such other place as the Commissioner of Police may direct until the same

shall be forfeited or released as the case may be, in accordance with the provisions of this section.

(5) Any craft detained under subsection (1) shall be released upon demand to the owner or his duly accredited agent —

- (a) within the period of seven days next following the date of delivery of the craft to the police officer, if no proceedings are instituted within the period against the owner or other person in charge of the craft, unless the court orders the further detention of the craft for forensic examination;
- (b) in any case where such proceedings are instituted as aforesaid and the craft is not liable or ordered to be forfeited, upon the final determination of the proceedings and the payment of any fine imposed by the court in such proceedings, within the time prescribed by the court for such payment.

(6) Any craft detained under subsection (1) shall be subject to a lien in favour of the government for the amount of any fine imposed by the court upon the owner or other person in charge thereof in any proceedings in respect of an offence against this Act, and if such fine shall not have been paid by the due date for payment thereof the court, at the time of sentencing, may authorize the Authority, at any time thereafter to sell the craft by public auction and deduct the amount of the fine or fines unpaid and the expenses incurred in selling the craft from the proceeds of the sale and pay the balance to the Treasurer to be held by the Treasurer and paid by him to such person as shall satisfy him that he is entitled thereto.

Movement of craft.

18. (1) Subject to subsection (2), all authorised officers may, in order to promote public safety or to ensure compliance with this Act, direct or prohibit the movement of any craft.

(2) Except in an emergency, an authorised officer shall not, without the prior consent of the person in charge of monitoring marine traffic, give a direction under subsection (1) that would contradict a direction given by that person in respect of a craft when it is in the territorial waters of The Bahamas.

Signal for craft to stop.

19. (1) A signal for a craft to stop shall consist of —

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- (a) a series of short blasts on a siren, whistle, horn or other sounding device; or
 - (b) any readily understandable usual signal given by an authorised officer.
- (2) Every person shall comply with —
- (a) every direction and prohibition given by an authorised officer pursuant to section 18; and
 - (b) every signal made by an authorised officer pursuant to subsection (1).

PART III - OFFENCES AND PENALTIES

- 20.** (1) Every person being the owner of a craft — Offences and penalties.
- (a) required by this Act to be registered who shall fail to have such craft registered; or
 - (b) the registration whereof has been cancelled or has expired; or
 - (c) which is not submitted for inspection as prescribed,

and who shall ply, offer or let the same for hire shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both.

(2) An owner of a craft for hire who operates or employs an unlicensed person to operate a craft shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both.

(3) Every owner of a craft who by himself or a servant shall refuse or fail to admit on his own any person or persons authorised under this Act to board and enter and remain on such craft shall be guilty of an offence and shall on summary conviction be liable to a penalty not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both.

(4) Every person who is the owner, operator or person in charge of a craft that is operated contrary to this Act is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a

term not exceeding two years or both unless the craft was so operated without his knowledge or consent and he exercised all due diligence to prevent such operation.

(5) Every person whose employee or agent contravenes this Act is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both, whether or not the employee or agent is identified or has been prosecuted for the contravention, unless the contravention was committed without his knowledge or consent and he exercised all due diligence to prevent its commission.

Breach of conditions or restrictions of a licence or registration.

21. (1) A breach of any condition or restriction endorsed on a certificate of registration or licence by the Authority shall be deemed to be a breach of this Act.

(2) Every person who commits an offence under this Act for which no specific penalty has been provided shall be liable on summary conviction to a penalty not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both.

Intoxicating liquor or controlled substance.

22. Any person who operates a craft while under the influence of an intoxicating liquor or a controlled substance, or under the combined influence of an intoxicating liquor and controlled substance shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both.

Towing.

23. Any person or operator using a craft on the waters of The Bahamas for towing a person or persons on a surfboard, a parasail or similar devices without a person duly licensed in that craft in addition to the operator shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both.

PART IV - MISCELLANEOUS

Right of appeal from decision of the Authority.

24. (1) Any person specified in subsection (2) who is dissatisfied with a decision of the Authority shall have a right of appeal to the Minister and thereafter may, within fourteen days of the decision, appeal to the Minister who may confirm or reverse or otherwise vary the decision.

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- (2) The persons referred to in subsection (1) are:
- (a) an applicant for registration of a craft for hire;
 - (b) an applicant for a licence to operate a craft;
 - (c) a person objecting to the registration of a craft for hire;
 - (d) any person objecting to the grant of a licence to an operator of a craft for hire;
 - (e) any person whose registration has been cancelled or who has had conditions or restrictions or both imposed in respect of his registration;
 - (f) any person whose licence has been cancelled or who has had conditions or restrictions or both imposed on his licence.

(3) Any appellant under subsection (1) who is not satisfied with the decision of the Minister may appeal to a Judge of the Supreme Court by giving notice of appeal in writing to the Registrar of the Supreme Court and to the Minister within fourteen days of the decision of the Minister, and the notice of appeal shall be given, and the appeal shall be heard and determined in accordance with rules made under the Supreme Court Act, and the Minister and the Authority shall give effect to any order made by the Supreme Court on any such appeal.

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25. (1) In the event of a collision, accident, death or serious injury involving a craft while being operated within the waters of The Bahamas, the operator or person in charge shall give his name and address, and the registered number of the craft to any person injured in the accident, or to the owner of any property damaged, and he shall in addition report the fact to the police within two hours.

Accident
procedure and
suspension.

(2) The investigating officer in subsection (1) may withhold the licence of the operator or the person in charge of the craft, and where the licence is not available shall direct that it is produced at any police station within twenty four hours.

(3) The Authority, not including the Port Controller, shall, in the event of death, suspend the licence of the operator or person in charge of the craft at the time of the accident referred to in subsection (1) for such period of time as it may determine; where the Authority as specified in this subsection cannot be convened the licence of the

operator or person in charge of the craft at the time of the accident shall be deemed suspended for 3 days.

Regulations.

26. (1) The Minister shall, after consulting with the Authority, by regulations made under this Act –

- (a) prescribe the fees payable under this Act;
- (b) prescribe a code of ethics for users and operators of crafts;
- (c) divide all crafts into classes, which classes may be distinguished by reference to the following matters —
 - (i) the unladen weight or overall length or width of the craft;
 - (ii) the fact that the watercraft is designed or adapted to carry only a load, or only passengers, or both a load and passengers;
 - (iii) the nature or maximum weight of the load or the maximum number of passengers which the craft is designed or adapted to carry;
 - (iv) the fact that the craft is designed or adapted to be driven by persons suffering from a physical defect or disability;
- (d) make provision for the prohibition, regulation or authorisation subject to such restrictions or conditions as to construction, weight, equipment or use as may be specified;
- (e) make provision for temporary exemptions from any such provision in respect of any such class of craft while being used for special purposes or for tests or trials;
- (f) prescribe the various forms to be prescribed under this Act;
- (g) provide for the issue of duplicate certificates of registration and duplicate licences;
- (h) caused to be instituted a proper and enforceable rotation system;
- (i) require every applicant for the registration of a craft to satisfy the Authority that —
 - (i) he is a fit and proper person to operate a craft for hire;

- (ii) he is the owner of the craft in respect of which the application is made;
- (iii) the craft, the appurtenances thereto and any safety equipment to be registered have been properly maintained in accordance with the manufacturer's recommendations;
- (j) require every applicant for a licence —
 - (i) to satisfy the Authority as to his physical fitness and competence to operate a craft for hire before being entitled to be granted an operator's licence; and
 - (ii) to satisfy a qualified medical examiner as to his physical fitness to continue to hold an operator's licence, and to provide for the cancellation and surrender of any such licence if the holder fails to satisfy such examiner;
- (k) provide generally for carrying out the objects of this Act and for any matter to be otherwise prescribed under this Act.

(2) If a craft is used on the water in contravention of any regulations made under this section, any person who so uses such craft or causes or permits it to be used shall be guilty of an offence and liable on summary conviction therefor to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or both.

27. All fees received by the Authority under this Act, or under any regulations made thereunder, shall be paid into the Consolidated Fund. Payment into Consolidated Fund.

28. All expenses approved by the Authority and incurred in administering this Act shall be paid out of the Consolidated Fund by warrant in the usual manner. Expenses.

29. Any licence or registration issued under the Boat Registration Act and the Water Skiing and Motor Boat Control Act in respect of a craft before the commencement of this Act — Savings.
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- (a) shall have effect as from the commencement of this Act as if granted under this Act; and
- (b) shall remain in force, for the duration of the unexpired period as falls after the commencement of this Act.

Transitional
provisions.
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30. Every register kept in relation to a craft under the Boat Registration Act and the Water Skiing and Motor Boat Control Act shall be deemed to be part of the register to be kept in pursuance of this Act and shall continue to have effect accordingly.