

Opinion No. 2012-048

July 3, 2012

The Honorable Bill Sample
State Senator
22340 N. Hwy 7
Hot Springs, Arkansas 71909

Dear Senator Samples:

I am writing in response to your request for my opinion on the following question:

Does Act 728 [of 2011] violate the United States Constitution or the Constitution of the State of Arkansas?

You have provided the following background information:

During the 2011 regular legislative session, I sponsored SB560 which became Act 728. The Act requires an out-of-state motorboat or personal watercraft to have liability insurance in Arkansas.

RESPONSE

In my opinion, the answer to your question is “no.” In my opinion, this legislation does not offend any provision of the Arkansas or United States Constitution.

Your question is concerned with the following amendment, made pursuant Act 728 of 2011, to A.C.A. § 27-101-207(a):

(1)(A) It shall be unlawful for the owner of a motorboat of more than fifty horsepower (50 HP) or a personal watercraft to allow the operation of the motorboat or personal watercraft unless it is covered by a liability insurance policy ~~which~~that has been issued by an insurance company ~~authorized to do business in this state.~~

(B) The insurance policy must provide at least fifty thousand dollars (\$50,000) of liability coverage per occurrence.

(2) This section ~~shall~~ does not apply to ~~or~~

~~(A) — A~~ a motorboat or personal watercraft owned by the United States, a state government, or any political subdivision thereof; ~~or~~

~~(B) A motorboat or personal watercraft registered in another state.~~

The effect of this amendment is twofold: first, it removes the former requirement that the liability policy covering a described motorboat or personal watercraft have been issued by an insurance company “authorized to do business in this state”; and, secondly, it removes the exception from the insurance requirement of “a motorboat or personal watercraft registered in another state.” The net effect of these changes is to impose a general requirement that any motorboat or watercraft fitting the statutory description operate within Arkansas only if it is covered by liability insurance in the amount of at least \$50,000, regardless of where the vessel is registered or whether the insurer is registered to do business in the State of Arkansas. This amendment thus forecloses the possibility that a qualifying vessel registered in another state might lawfully operate in Arkansas waters without being insured against liability in at least the recited amount.

In my opinion, nothing in this statute as amended violates any provision of the Arkansas or United States Constitution.

Assistant Attorney General Jack Druff prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM/JHD:cyh