

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 3, 1998 Revised: \_\_\_\_\_

Subject: Boating Safety/Emergency Responses

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Gee</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable/CS</u>
2.	<u>Caridi</u>	<u>Johnson</u>	<u>TR</u>	<u>Favorable/CS</u>
3.	<u>                    </u>	<u>                    </u>	<u>CJ</u>	<u>                    </u>
4.	<u>                    </u>	<u>                    </u>	<u>WM</u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

**I. Summary:**

This committee substitute includes the Department of Environmental Protection (DEP) within a list of agencies which are permitted to have authorized emergency vehicles. It revises a provision of law relating to the operation of a vessel under the influence of alcohol or controlled substances to provide the intent of the Legislature that the operation of a vessel is a privilege which must be exercised in a reasonable manner. The bill provides that the refusal to submit to a chemical or physical breath or urine test upon the request of a law enforcement officer will result in a \$500 civil penalty and is admissible into evidence in any criminal proceeding. It revises provisions of law relating to vessel safety regulations and equipment and lighting requirements and revises language with respect to mandatory education for violators.

This bill substantially amends sections 316.003, 327.02, 327.352, 327.50, and 327.731 of the Florida Statutes. The bill creates section 327.35201 of the Florida Statutes.

**II. Present Situation:**

Florida is the nation's leader in recreational boating accidents and deaths. Recent statistics indicate that alcohol is a factor in many accidents. During 1997, approximately one-half of the accidents reported were alcohol or drug-related, and in 51 percent of fatalities, alcohol or drugs were involved. During 1997, alcohol or drug-related accidents increased approximately 40 percent over the previous year.

Prior to 1996, there was a civil penalty of \$500 for any person under lawful arrest for boating under the influence who, although properly warned, nevertheless refused to submit to chemical or physical testing of his breath or urine. In 1996, the Legislature substantially amended the boating under the influence law to conform it to driving-under-the-influence provisions. The legislative

intent of the amendments was to eliminate, as far as it was possible to do so, the differences between the laws pertaining to driving and boating under the influence. As there was no similar

this provision was repealed for arrested boat operators who refuse to submit to testing. Drivers who refuse to submit to chemical or physical testing of their blood, breath, or urine lose their

similar "boaters' license" the Legislature did not include a similar suspension of operating privilege in the boating law. The result is that there is no longer any sanction for refusing to submit to breath or urine testing when arrested for boating under the influence and no incentive for arrested drunken boaters to submit to the test.

Section 316.003, F.S., authorizes emergency response vehicles, but does not include the DEP among the organizations authorized such vehicles.

Section 327.02, F.S., defines "operate" as being in physical control of a vessel, to exercise control over a vessel, or to steer a vessel being towed by another, but does not address responsibility.

Section 327.50, F.S., requires a vessel to carry safety equipment, but because no person is responsible for doing so, enforcement is difficult. This section also requires persons under the age of 6 to wear personal floatation devices when a vessel less than 26 feet in length is underway, but does not specifically prohibit a person from operating a vessel in violation of the statute. Similarly, although vessels must display required lights and shapes, a person is not specifically prohibited from operating a vessel without such serviceable equipment. Currently, the use of flashing or revolving red or blue emergency lights is prohibited unless the vessel is operated by a law enforcement or fire protection officer or is engaged in rescue work. The use of modern occulting lights is not prohibited

Section 327.731, F.S., requires a court to require violators of specified boating laws and rules to enroll in and successfully complete a DEP-approved boating safety course and requires proof of successful completion to be filed with the court and the DEP. A person required to enroll in a course may not operate a vessel until he has successfully completed the course. However, there is no specific requirement that a person attend such a course.

### **III. Effect of Proposed Changes:**

**Section 1.** Section 316.003, F.S., is amended to include vehicles of the DEP among authorized emergency vehicles, if so designated by the DEP.

**Section 2.** Section 327.02, F.S., is amended to provide that having responsibility for a vessel's navigation or safety, or to control a vessel fall within the definition of "operate." The definition is also revised to apply only when a vessel is underway. The section expressly does not apply to a person on a vessel that is docked or otherwise made fast to the shore and shall not apply to a vessel owner or operator who designates a driver pursuant to s. 327.35, F.S.

**Section 3.** Section 327.03, F.S., is amended to require the Department of Highway Safety and Motor Vehicles to keep records of suspended vehicle operation privileges beginning April 1, 1999.

**Section 4.** Section 327.352, F.S., is amended to provide that the operation of a vessel is a privilege that must be exercised in a reasonable manner and that in order to protect the public health and safety, it is essential that a lawful and effective means of reducing the incidence of boating while impaired or intoxicated be established. Therefore, this section reinstates the \$500 civil penalty for refusing to submit to a chemical or physical breath or urine test upon the request of a law enforcement officer as provided in s. 327.352, F.S., after having been warned of the consequences.

This section also imposes the \$500 civil penalty on a person who refuses a blood test, whether or not the person is told the consequences of a refusal. Blood tests may be administered to a person who is incapable of refusal through unconsciousness or other condition. Any person who is capable to refusal shall be told that his or her failure to submit to such a blood test will result in a civil penalty of \$500. The refusal to submit to a blood test upon the request of a law enforcement officer shall be admissible in evidence in any criminal proceeding.

**Section 5.** Section 327.35201, F.S., is created to provide that a person who is lawfully arrested for an alleged violation of s. 327.35, F.S., and who refuses to submit to any lawful chemical or physical test pursuant to s. 327.352, F.S., is subject to a civil penalty of \$500.

When a person refuses to submit to any lawful chemical or physical test pursuant to s. 327.352, F.S., a law enforcement officer who is authorized to make arrests for violations of ch. 327, F.S., must file with the clerk of the court and the DEP, on a form provided by the DEP, a certified statement that probable cause existed to arrest the person for a violation of s. 327.35, F.S., and that the person refused to submit to a test as required by s. 327.352, F.S.

The clerk of the court, upon receipt of the statement from the law enforcement officer, must officially notify the person by certified mail that he or she must pay a civil penalty of \$500 to the clerk of the court within 30 calendar days after receipt of the notice. A person who has received such a notice may, within 30 days after the receipt, request a hearing before a county court judge. A request for a hearing tolls the period for payment of the civil penalty, and, if assessment of a civil penalty is sustained by the hearing and any subsequent judicial review, the civil penalty must be paid within 30 days after final disposition. The clerk of the court must notify the DEP of the final disposition of all actions filed under this section.

The bill provides that it is unlawful for any person who has not paid a civil penalty imposed pursuant to this section, or who has not timely requested a hearing with respect to the civil penalty, to operate a vessel upon the waters of the state. Violation of these provisions is a first degree misdemeanor punishable as provided in s. 775.082 or s. 775.083, F.S.

All moneys collected by the clerk of the court pursuant to this section shall be disposed of in the following manner:

- If the arresting officer was employed or appointed by a state law enforcement agency, the money shall be deposited into the Marine Resources Conservation Trust Fund (MRCTF).
- If the arresting officer was employed or appointed by a county or municipal law enforcement agency, the money shall be deposited into the law enforcement trust fund of that agency.
- If the arresting officer was employed or appointed by the Game and Fresh Water Fish Commission, the money shall be deposited into the State Game Trust Fund. Any penalties from a violation of this section would be in addition to any from s. 327.35, F.S.

**Section 6.** Section 327.50, F.S., is amended to provide that the owner and operator of a vessel is responsible for ensuring that the vessel has required safety equipment on board, and to prohibit a person from operating a vessel less than 26 feet in length unless everyone on board under the age of 6 is wearing a type I, type II, or type III Coast Guard-approved personal floatation device. The definition of “underway” is revised to include “made fast to the shore” as not being underway.

The section includes a prohibition on the operation of a vessel without serviceable lights and shapes and on the use of occulting lights except as expressly provided in the navigation rules or annexes thereto. Provisions permitting the use of emergency lights by law enforcement or fire protection are deleted, as this is included in the navigation rules.

**Section 7.** For persons who are under 21 years of age and operating or in physical control of a vessel, the unlawful breath-alcohol level will be 0.02 percent or higher. The penalty for failure to submit to a breath-alcohol test will be 50 hours of public service and all vessel operating privileges will be suspended until such services are performed. Consent to the breath-alcohol test is deemed to have been expressed by use of the vessel operating privilege. A violation of this section is not a criminal infraction, however prosecution under s. 327.35 is not barred

**Section 8.** Effective October 1, 1998, s. 327.731, F.S., is amended to revise provisions directing the courts to require certain violators to attend a boating safety course. As revised, anyone convicted of a criminal violation of ch. 327, F.S., a noncriminal infraction resulting in a reportable boating accident, or a noncriminal infraction defined in s. 327.73(1)(h)-(k), (m)-(p), (s), and (t), F.S., if the infractions occurred within a 12-month period must enroll, attend, and successfully complete a DEP-approved boating safety course. The DEP is authorized to provide, by rule, waivers of the attendance requirement for violators residing in areas where classroom presentation of the course is unavailable. Provisions requiring that proof of successful course completion be filed with the court are deleted.

This section also requires the DEP to print on the reverse side of the defendant's copy of the boating citation a notice of the provisions of this section. Upon conviction, the clerk of the court must notify the defendant that it is unlawful for him or her to operate any vessel until he or she

has complied with this section, but failure of the clerk of the court to provide such a notice shall not be a defense to a charge of unlawful operation of a vessel under s. 327.731(2), F.S.

A subsection (10) is added to s. 327.35, F.S., to provide legislative intent to encourage boaters to have a "designated driver" who does not consume alcoholic beverages.

Subsection (2) of s. 327.03, F.S., which requires the Department of Highway Safety and Motor Vehicles to keep records of suspended vessel operating privileges under becoming a law.

#### **IV.**

A. Municipality/County Mandates Restrictions:

B. Public Records/Open Meetings Issues:

C. Trust Funds Restrictions:

#### **V. Economic Impact and Fiscal Note:**

Tax/Fee Issues:

None.

Private Sector Impact:

Persons refusing to be tested would pay a civil penalty of \$500. If the bill results in fewer

Persons under 21 refusing to be tested would contribute 50 hours of public service and be registered for a boating safety class.

Government Sector Impact:

Any civil penalties imposed as a result of an arrest by a state law enforcement agency will be employing the arresting officer. Otherwise, the penalties will be deposited into the appropriate local government trust fund.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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