

By Senator Burt

16-1323B-98

See CS/HB 3265

1 A bill to be entitled
2 An act relating to boater safety; creating s.
3 327.35215, F.S.; providing penalties for
4 failure to submit to a breath test or urine
5 test; creating s. 327.35216, F.S.; providing
6 for the suspension of the privilege to operate
7 a vessel for persons who are under 21 years of
8 age under certain circumstances; amending s.
9 327.395, F.S.; revising provisions with respect
10 to boater safety identification cards issued by
11 the Department of Environmental Protection;
12 providing an effective date.

14 Be It Enacted by the Legislature of the State of Florida:

16 Section 1. Section 327.35215, Florida Statutes, is
17 created to read:

18 327.35215 Penalty for failure to submit to test.--

19 (1) A person who is lawfully arrested for an alleged
20 violation of s. 327.35 and who refuses to submit to a blood
21 test, breath test, or urine test pursuant to s. 327.352 is
22 subject to a civil penalty of \$500.

23 (2) When a person refuses to submit to a blood test,
24 breath test, or urine test pursuant to s. 327.352, a law
25 enforcement officer who is authorized to make arrests for
26 violations of this chapter shall file with the clerk of the
27 court, on a form provided by the department, a certified
28 statement that probable cause existed to arrest the person for
29 a violation of s. 327.35 and that the person refused to submit
30 to a test as required by s. 327.352. Along with the statement,
31 the officer must also submit to a sworn statement on a form

1 provided by the department that the person has been advised of
2 both the penalties for failure to submit to the blood, breath,
3 or urine test and the procedure for requesting a hearing.

4 (3) A person who has been advised of the penalties
5 pursuant to subsection (2) may, within 30 days afterwards,
6 request a hearing before a county court judge. A request for a
7 hearing tolls the period for payment of the civil penalty,
8 and, if assessment of the civil penalty is sustained by the
9 hearing and any subsequent judicial review, the civil penalty
10 must be paid within 30 days after final disposition. The clerk
11 of the court shall notify the department of the final
12 disposition of all actions filed under this section.

13 (4) It is unlawful for any person who has not paid a
14 civil penalty imposed pursuant to this section, or who has not
15 requested a hearing with respect to the civil penalty, within
16 30 calendar days after receipt of notice of the civil penalty
17 to operate a vessel upon the waters of this state. Violation
18 of this subsection is a misdemeanor of the first degree,
19 punishable as provided in s. 775.082 or s. 775.083.

20 (5) Moneys collected by the clerk of the court
21 pursuant to this section shall be disposed of in the following
22 manner:

23 (a) If the arresting officer was employed or appointed
24 by a state law enforcement agency, the moneys shall be
25 deposited into the Marine Resources Conservation Trust Fund.

26 (b) If the arresting officer was employed or appointed
27 by a county or municipal law enforcement agency, the moneys
28 shall be deposited into the law enforcement trust fund of that
29 agency.

30 Section 2. Section 327.35216, Florida Statutes, is
31 created to read:

1 327.35216 Suspension of privilege to operate vessel;
2 persons under 21 years of age; right to review.--

3 (1)(a) Notwithstanding s. 327.35, it is unlawful for a
4 person under the age of 21 who has a breath-alcohol level of
5 0.02 or higher to operate or be in actual physical control of
6 a vessel.

7 (b) A law enforcement officer who has probable cause
8 to believe that a vessel is being operated by or is in the
9 actual physical control of a person who is under the age of 21
10 while under the influence of alcoholic beverages or who has
11 any breath-alcohol level may lawfully detain such a person and
12 may request that person to submit to a test to determine his
13 or her breath-alcohol level.

14 (2)(a) A law enforcement officer shall, on behalf of
15 the department, suspend the privilege of such person to
16 operate a vessel if the person has a blood-alcohol or
17 breath-alcohol level of 0.02 or higher. The officer shall
18 also suspend, on behalf of the department, the operating
19 privilege of a person who has refused to submit to a test as
20 provided by paragraph (b). The officer shall take the person's
21 boater safety identification card and shall issue the person a
22 notice of suspension.

23 (b) The suspension under paragraph (a) must be
24 pursuant to, and the notice of suspension must inform the
25 operator of, the following:

26 1.a. The operator refused to submit to a lawful breath
27 test and his or her vessel operating privilege is suspended
28 for a period of 1 year for a first refusal or for a period of
29 18 months if his or her operating privilege has been
30 previously suspended as provided in this section as a result
31 of a refusal to submit to a test; or

1 b. The operator was under the age of 21 and was
2 operating or in actual physical control of a vessel while
3 having a blood-alcohol or breath-alcohol level of 0.02 or
4 higher; and the person's operating privilege is suspended for
5 a period of 6 months for a first violation, or for a period of
6 1 year if his or her operating privilege has been previously
7 suspended as provided in this section for operating or being
8 in actual physical control of a vessel with a blood-alcohol or
9 breath-alcohol level of 0.02 or higher.

10 2. The suspension period commences on the date of
11 issuance of the notice of suspension.

12 3. The operator may request a formal or informal
13 review of the suspension by the department within 10 days
14 after the issuance of the notice of suspension.

15 4. The operator may submit to the department any
16 materials relevant to the suspension of his or her
17 identification card.

18 (3) The law enforcement officer shall forward to the
19 department, within 5 days after the date of the issuance of
20 the notice of suspension, a copy of the notice of suspension,
21 the boater safety identification card of the person receiving
22 the notice of suspension, and an affidavit stating the
23 officer's grounds for belief that the person was under the age
24 of 21 and was operating or in actual physical control of a
25 vessel with any breath-alcohol level, and the results of any
26 breath test or an affidavit stating that a breath test was
27 requested by a law enforcement officer and that the person
28 refused to submit to such test. The failure of the officer to
29 submit materials within the 5-day period specified in this
30 subsection does not bar the department from considering any
31 materials submitted at or before the hearing.

1 (4) If the department finds that the boater safety
2 identification card of the person should be suspended under
3 this section and if the notice of suspension has not already
4 been served upon the person by a law enforcement officer as
5 provided in subsection (2), the department shall issue a
6 notice of suspension.

7 (5) If the person whose boater safety identification
8 card is suspended requests an informal review under
9 subparagraph (2)(b)3., the department shall conduct the
10 informal review by a hearing officer employed by the
11 department within 30 days after the request is received by the
12 department. The informal review hearing must consist solely of
13 an examination by the department of the materials submitted by
14 a law enforcement officer and by the person whose boater
15 safety identification card and privilege to operate a vessel
16 are suspended, and the presence of an officer or witness is
17 not required.

18 (6) After completion of the informal review, notice of
19 the department's decision sustaining, amending, or
20 invalidating the suspension of the boater safety
21 identification card and privilege to operate a vessel must be
22 provided to the person. The notice must be mailed to the
23 person at the last known address shown on the department's
24 records, or to the address provided in the law enforcement
25 officer's report if such address differs from the address of
26 record, within 7 days after completing the review.

27 (7)(a) If the person whose boater safety
28 identification card and privilege to operate a vessel is
29 suspended requests a formal review, the department must
30 schedule a hearing to be held within 30 days after the request
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1 is received by the department and must notify the person of
2 the date, time, and place of the hearing.

3 (b) The formal review hearing must be held before a
4 hearing officer employed by the department, and the hearing
5 officer may administer oaths, examine witnesses and take
6 testimony, receive relevant evidence, issue subpoenas,
7 regulate the course and conduct of the hearing, and make a
8 ruling on the suspension. The department and the person whose
9 boater safety identification card and privilege to operate a
10 vessel were suspended may subpoena witnesses, and the party
11 requesting the presence of a witness is responsible for paying
12 any witness fees and for notifying in writing the state
13 attorney's office in the appropriate circuit of the issuance
14 of the subpoena. If the person who requests a formal review
15 hearing fails to appear and the hearing officer finds the
16 failure to be without just cause, the right to a formal
17 hearing is waived and the suspension is sustained.

18 (c) A party may seek enforcement of a subpoena under
19 paragraph (b) by filing a petition for enforcement in the
20 circuit court of the judicial circuit in which the person
21 failing to comply with the subpoena resides. A failure to
22 comply with an order of the court constitutes contempt of
23 court. However, a person may not be held in contempt while a
24 subpoena is being challenged.

25 (d) The department must, within 7 days after a formal
26 review hearing, send notice to the person of the hearing
27 officer's decision as to whether sufficient cause exists to
28 sustain, amend, or invalidate the suspension.

29 (8) In a formal review hearing under subsection (7) or
30 an informal review hearing under subsection (5), the hearing
31 officer shall determine by a preponderance of the evidence

1 whether sufficient cause exists to sustain, amend, or
2 invalidate the suspension. The scope of the review is limited
3 to the following issues:

4 (a) If the boater safety identification card and
5 privilege to operate a vessel were suspended because the
6 individual, then under the age of 21, operated a vessel with a
7 blood-alcohol or breath-alcohol level of 0.02 or higher:

8 1. Whether the law enforcement officer had probable
9 cause to believe that the person was under the age of 21 and
10 was operating or in actual physical control of a vessel in
11 this state with any blood-alcohol or breath-alcohol level or
12 while under the influence of alcoholic beverages.

13 2. Whether the person was under the age of 21.

14 3. Whether the person had a blood-alcohol or
15 breath-alcohol level of 0.02 or higher.

16 (b) If the boater safety identification card and
17 privilege to operate a vessel were suspended because of the
18 individual's refusal to submit to a breath test:

19 1. Whether the law enforcement officer had probable
20 cause to believe that the person was under the age of 21 and
21 was operating or in actual physical control of a vessel in
22 this state with any blood-alcohol or breath-alcohol level or
23 while under the influence of alcoholic beverages.

24 2. Whether the person was under the age of 21.

25 3. Whether the person refused to submit to a breath
26 test after being requested to do so by a law enforcement
27 officer.

28 4. Whether the person was told that if he or she
29 refused to submit to a breath test his or her privilege to
30 operate a vessel would be suspended for a period of 1 year or,
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1 in the case of a second or subsequent refusal, for a period of
2 18 months.

3 (9) Based on the determination of the hearing officer
4 under subsection (8) for both informal hearings under
5 subsection (5) and formal hearings under subsection (7), the
6 department shall:

7 (a) Sustain the suspension of the person's privilege
8 to operate a vessel for a period of 1 year for a first
9 refusal, or for a period of 18 months if the operating
10 privilege of the person has been previously suspended, as
11 provided in this section, as a result of a refusal to submit
12 to a test. The suspension period commences on the date of the
13 issuance of the notice of suspension.

14 (b) Sustain the suspension of the person's privilege
15 to operate a vessel for a period of 6 months for operating or
16 being in actual physical control of a vessel while under the
17 age of 21 with a blood-alcohol or breath-alcohol level of 0.02
18 or higher, or for a period of 1 year if the operating
19 privilege of such person has been previously suspended as a
20 result of operating a vessel while under the age of 21 with a
21 breath-alcohol level of at least 0.02 but less than 0.08. The
22 suspension period commences on the date of the issuance of the
23 notice of suspension.

24 (10) A request for a formal review hearing or an
25 informal review hearing shall not stay the suspension of the
26 person's privilege to operate a vessel. If the department
27 fails to schedule the formal review hearing to be held within
28 30 days after receipt of the request therefor, the department
29 shall invalidate the suspension.

30 (11) The formal review hearing may be conducted upon
31 a review of the reports of a law enforcement officer,

1 including documents relating to the administration of a breath
2 test or the refusal to take a test. However, as provided in
3 subsection (7), the operator may subpoena the officer or any
4 person who administered a breath test.

5 (12) The formal review hearing and the informal review
6 hearing are exempt from chapter 120. The department may adopt
7 rules for conducting reviews under this section.

8 (13) A person may appeal any decision of the
9 department sustaining a suspension of his or her privilege to
10 operate a vessel by a petition for writ of certiorari to the
11 circuit court in the county wherein such person resides or
12 wherein a formal or informal review was conducted. However, an
13 appeal does not stay the suspension. This subsection does not
14 provide for a de novo appeal.

15 (14) By applying for and accepting and using a boater
16 safety identification card, a person under the age of 21 years
17 who holds the card is deemed to have expressed his or her
18 consent to the provisions of this section.

19 (15) A breath test to determine breath-alcohol level
20 pursuant to this section may be conducted as authorized by s.
21 316.1932 or by a preliminary alcohol screening test device
22 listed in the United States Department of Transportation's
23 conforming-product list of evidential breath-measurement
24 devices. The reading from such a device is presumed accurate
25 and is admissible in evidence in any administrative hearing
26 conducted under this section.

27 (16) A violation of this section is neither a boating
28 infraction nor a criminal offense, nor does being detained
29 pursuant to this section constitute an arrest. A violation of
30 this section is subject to the administrative action
31 provisions of this section, which are administered by the

1 department through its administrative processes.
2 Administrative actions taken pursuant to this section shall be
3 recorded in the boating records maintained by the department.
4 This section does not bar prosecution under s. 327.35.

5 Section 3. Subsection (1) of section 327.395, Florida
6 Statutes, is amended to read:

7 327.395 Boater ~~Boating~~ safety identification cards.--

8 (1) Until October 1, 2001, a person born after
9 September 30, 1980, and on or after October 1, 2001, a person
10 21 years of age or younger may not operate a vessel powered by
11 a motor of 10 horsepower or greater unless the such person is
12 16 years of age or older and has in his or her possession
13 aboard the vessel photographic identification and a boater
14 safety identification card issued by the department which
15 shows that he or she has:

16 (a) Completed a department-approved boater education
17 course that meets the minimum 8-hour instruction requirement
18 established by the National Association of State Boating Law
19 Administrators and which includes a written examination
20 covering waterway safety, waterway rules of operation, safety
21 equipment (as required by the Coast Guard), first aid, and
22 CPR;

23 (b) Passed a course equivalency examination approved
24 by the department; or

25 (c) Passed a temporary certificate examination
26 developed or approved by the department.

27 Section 4. This act shall take effect October 1 of the
28 year in which enacted.

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LEGISLATIVE SUMMARY

Provides penalties for failure to submit to a breath test or urine test for boating offenses. Provides for the suspension of a minor's privilege to operate a vessel under specified circumstances. Revises provisions governing boater safety identification cards. (See bill for details.)