

By the Committee on Natural Resources and Senators Burt and Clary

312-1878-98

1 A bill to be entitled
2 An act relating to boating safety and emergency
3 responses; amending s. 316.003, F.S.;
4 redefining the term "authorized emergency
5 vehicles" to include reference to vehicles of
6 the Department of Environmental Protection;
7 amending s. 327.02, F.S.; redefining the term
8 "operate" with respect to vessels; amending s.
9 327.352, F.S.; revising language with respect
10 to the operation of a vessel while under the
11 influence; providing Legislative intent;
12 restoring a penalty for refusal to submit to
13 chemical or physical testing; conforming
14 provisions relating to boating under the
15 influence to driving under the influence;
16 creating s. 327.35201, F.S.; restoring a
17 penalty for refusal to submit to chemical
18 testing; amending s. 327.50, F.S.; revising
19 language with respect to vessel safety
20 regulations, equipment and lighting
21 requirements to clarify responsibility for
22 compliance; amending s. 327.731, F.S.;
23 increasing the number of convictions necessary
24 for mandatory education; clarifying compliance
25 procedures; providing effective dates.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Subsection (1) of section 316.003, Florida
30 Statutes, is amended to read:

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1 316.003 Definitions.--The following words and phrases,
2 when used in this chapter, shall have the meanings
3 respectively ascribed to them in this section, except where
4 the context otherwise requires:

5 (1) AUTHORIZED EMERGENCY VEHICLES.--Vehicles of the
6 fire department (fire patrol), police vehicles, and such
7 ambulances and emergency vehicles of municipal departments,
8 public service corporations operated by private corporations,
9 the Department of Environmental Protection, and the Department
10 of Transportation as are designated or authorized by their
11 respective ~~the~~ department or the chief of police of an
12 incorporated city or any sheriff of any of the various
13 counties.

14 Section 2. Subsection (24) of section 327.02, Florida
15 Statutes, is amended to read:

16 327.02 Definitions of terms used in this chapter and
17 in chapter 328.--As used in this chapter and in chapter 328,
18 unless the context clearly requires a different meaning, the
19 term:

20 (24) "Operate" means to be in charge of or in command
21 of or in ~~the~~ actual physical control of a vessel that is
22 underway upon the waters of this state, or to exercise control
23 over or to have responsibility for a vessel's navigation or
24 safety while the vessel is underway upon the waters of this
25 state, or to control or steer a vessel being towed by another
26 vessel upon the waters of the state.

27 Section 3. Paragraphs (a) and (c) of subsection (1) of
28 section 327.352, Florida Statutes, are amended to read:

29 327.352 Breath, blood, and urine tests for alcohol,
30 chemical substances, or controlled substances; implied
31 consent; right to refuse.--

1 (1)(a) The Legislature declares that the operation of
2 a vessel is a privilege that must be exercised in a reasonable
3 manner. In order to protect the public health and safety, it
4 is essential that a lawful and effective means of reducing the
5 incidence of boating while impaired or intoxicated be
6 established. Therefore, any person who accepts the privilege
7 extended by the laws of this state of operating a vessel
8 within this state is, by so operating such vessel, deemed to
9 have given his or her consent to submit to an approved
10 chemical test or physical test including, but not limited to,
11 an infrared light test of his or her breath for the purpose of
12 determining the alcoholic content of his or her blood or
13 breath, and to a urine test for the purpose of detecting the
14 presence of chemical substances as set forth in s. 877.111 or
15 controlled substances, if the person is lawfully arrested for
16 any offense allegedly committed while the person was operating
17 a vessel while under the influence of alcoholic beverages,
18 chemical substances, or controlled substances. The chemical
19 or physical breath test must be incidental to a lawful arrest
20 and administered at the request of a law enforcement officer
21 who has reasonable cause to believe such person was operating
22 the vessel within this state while under the influence of
23 alcoholic beverages. The urine test must be incidental to a
24 lawful arrest and administered at a detention facility or any
25 other facility, mobile or otherwise, which is equipped to
26 administer such tests at the request of a law enforcement
27 officer who has reasonable cause to believe such person was
28 operating a vessel within this state while under the influence
29 of controlled substances. The urine test shall be administered
30 at a detention facility or any other facility, mobile or
31 otherwise, which is equipped to administer such tests in a

1 reasonable manner that will ensure the accuracy of the
2 specimen and maintain the privacy of the individual involved.
3 The administration of one type of test does not preclude the
4 administration of another type of test. The person shall be
5 told that his or her failure to submit to any lawful test of
6 his or her breath or urine, or both, will result in a civil
7 penalty of \$500. The refusal to submit to a chemical or
8 physical breath or urine test upon the request of a law
9 enforcement officer as provided in this section is admissible
10 into evidence in any criminal proceeding.

11 (c) Any person who accepts the privilege extended by
12 the laws of this state of operating a vessel within this state
13 is, by operating such vessel, deemed to have given his or her
14 consent to submit to an approved blood test for the purpose of
15 determining the alcoholic content of the blood or a blood test
16 for the purpose of determining the presence of chemical
17 substances or controlled substances as provided in this
18 section if there is reasonable cause to believe the person was
19 operating a vessel while under the influence of alcoholic
20 beverages or chemical or controlled substances and the person
21 appears for treatment at a hospital, clinic, or other medical
22 facility and the administration of a breath or urine test is
23 impractical or impossible. As used in this paragraph, the term
24 "other medical facility" includes an ambulance or other
25 medical emergency vehicle. The blood test shall be performed
26 in a reasonable manner. Any person who is incapable of
27 refusal by reason of unconsciousness or other mental or
28 physical condition is deemed not to have withdrawn his or her
29 consent to such test. A blood test may be administered whether
30 or not such person is told that his or her failure to submit
31 to such a blood test will result in a civil penalty of \$500.

1 Any person who is capable of refusal shall be told that his or
2 her failure to submit to such a blood test will result in a
3 civil penalty of \$500. The refusal to submit to a blood test
4 upon the request of a law enforcement officer shall be
5 admissible in evidence in any criminal proceeding.

6 Section 4. Section 327.35201, Florida Statutes, is
7 created to read:

8 327.35201 Penalty for failure to submit to test.--

9 (1) A person who is lawfully arrested for an alleged
10 violation of s. 327.35 and who refuses to submit to any lawful
11 chemical or physical test pursuant to s. 327.352 is subject to
12 a civil penalty of \$500.

13 (2) When a person refuses to submit to any lawful
14 chemical or physical test pursuant to s. 327.352, a law
15 enforcement officer who is authorized to make arrests for
16 violations of this chapter shall file with the clerk of the
17 court and with the department, on a form provided by the
18 department, a certified statement that probable cause existed
19 to arrest the person for a violation of s. 327.35 and that the
20 person refused to submit to a test as required by s. 327.352.

21 (3) The clerk of the court, upon receipt of the
22 statement from the law enforcement officer, shall officially
23 notify the person by certified mail that he or she must pay a
24 civil penalty of \$500 to the clerk of the court within 30
25 calendar days after receipt of the notice.

26 (4) A person who has received a notice pursuant to
27 subsection (3) may, within 30 days after the receipt, request
28 a hearing before a county court judge. A request for a hearing
29 tolls the period for payment of the civil penalty, and, if
30 assessment of a civil penalty is sustained by the hearing and
31 any subsequent judicial review, the civil penalty must be paid

1 within 30 days after final disposition. The clerk of the court
2 shall notify the department of the final disposition of all
3 actions filed under this section.

4 (5) It is unlawful for any person who has not paid a
5 civil penalty imposed pursuant to this section, or who has not
6 requested a hearing with respect to the civil penalty, within
7 30 calendar days after receipt of notice of the civil penalty
8 to operate a vessel upon the waters of this state. Violation
9 of this subsection is a misdemeanor of the first degree,
10 punishable as provided in s. 775.082 or s. 775.083.

11 (6) Moneys collected by the clerk of the court
12 pursuant to this section shall be disposed of in the following
13 manner:

14 (a) If the arresting officer was employed or appointed
15 by a state law enforcement agency, except the Game and Fresh
16 Water Fish Commission, the money shall be deposited into the
17 Marine Resources Conservation Trust Fund.

18 (b) If the arresting officer was employed or appointed
19 by a county or municipal law enforcement agency, the money
20 shall be deposited into the law enforcement trust fund of that
21 agency.

22 (c) If the arresting officer was employed or appointed
23 by the Game and Fresh Water Fish Commission, the money shall
24 be deposited into the State Game Trust Fund.

25 Section 5. Section 327.50, Florida Statutes, is
26 amended to read:

27 327.50 Vessel safety regulations; equipment and
28 lighting requirements.--

29 (1) (a) The owner and operator of every vessel on the
30 waters of this state shall carry, store, maintain, and use
31 safety equipment in accordance with current United States

1 Coast Guard safety equipment requirements as specified in the
2 Code of Federal Regulations, unless expressly exempted by the
3 department state law.

4 (b) No person shall operate a vessel less than 26 feet
5 in length on the waters of this state unless every person
6 under 6 years of age on board the a motorboat, sailboat, or
7 vessel is wearing which measures less than 26 feet in length
8 shall wear a type I, type II, or type III Coast Guard approved
9 personal flotation device while such ~~motorboat, sailboat, or~~
10 vessel is underway. For the purpose of this section,
11 "underway" shall mean at all times except when a ~~motorboat,~~
12 ~~sailboat, or~~ vessel is anchored, moored, made fast to the
13 shore, or aground.

14 (2) No person shall operate a vessel on the waters of
15 this state unless said vessel is equipped with properly
16 serviceable ~~Every vessel on the waters of this state shall~~
17 ~~display the~~ lights and shapes required by the navigation
18 rules.

19 (3) The use of sirens or flashing, occulting, or
20 revolving red or blue emergency lights on any vessel is
21 prohibited, except as expressly provided in the navigation
22 rules or annexes thereto on a vessel operated by a law
23 ~~enforcement officer or fire protection officer in the~~
24 ~~performance of his or her official duties or on a vessel~~
25 ~~engaged in emergency rescue activity.~~

26 Section 6. Effective October 1, 1998, section 327.731,
27 Florida Statutes, is amended to read:

28 327.731 Mandatory education for violators.--

29 (1) Every ~~The court shall require any person convicted~~
30 of a criminal violation of this chapter, every ~~any~~ person
31 convicted of a noncriminal infraction under this chapter if

1 the infraction resulted in a reportable boating accident, and
2 every any person convicted of two a noncriminal infractions
3 infraction as defined in s. 327.73(1)(h) through (k), (m)
4 through (p), (s), and (t), said infractions occurring within a
5 12-month period, must(f) through (n), excepting (j), to:

6 (a) Enroll in, attend, and successfully complete, at
7 his or her own expense, a boating safety course that meets
8 minimum standards established by the department by rule
9 provided that the department may provide by rule for waivers
10 of the attendance requirement for violators residing in areas
11 where classroom presentation of the course is not available;

12 (b) File with the ~~court and the~~ department within 90
13 days proof of successful completion of the course;

14 (c) Refrain from operating a vessel until he or she
15 has filed the proof of successful completion of the course
16 with the ~~court and the~~ department.

17
18 Any person who has successfully completed an approved boating
19 course shall be exempt from these provisions upon showing
20 proof to the ~~court and the~~ department as specified in
21 paragraph (b).

22 (2) For the purposes of this section, "conviction"
23 means a finding of guilt, or the acceptance of a plea of
24 guilty or nolo contendere, regardless of whether or not
25 adjudication was withheld or whether imposition of sentence
26 was withheld, deferred, or suspended. Any person who operates
27 a vessel on the waters of this state in violation of the
28 provisions of this section is guilty of a misdemeanor of the
29 second degree, punishable as provided in s. 775.082 or s.
30 775.083.

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1 (3) The department shall print on the reverse side of
2 the defendant's copy of the boating citation a notice of the
3 provisions of this section. Upon conviction, the clerk of the
4 court shall notify the defendant that it is unlawful for him
5 or her to operate any vessel until he or she has complied with
6 this section, but failure of the clerk of the court to provide
7 such a notice shall not be a defense to a charge of unlawful
8 operation of a vessel under subsection (2).

9 Section 7. Except as otherwise provided in this act
10 this act shall take effect upon becoming a law.

11
12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 SB 1794 & 2200

15 Section 2 of SB 1794 which provided that it is unlawful for a
16 person under the age of 21 having a breath-alcohol level of
17 0.02 or higher to operate a vessel has been deleted, together
18 with procedures for enforcing the prohibition. Also deleted
19 from SB 1794 is section 3, which renamed the boating safety
20 identification card, clarified that the minimum age for
21 operation of a vessel powered by a motor of 10 horsepower or
22 more is 16, and revised requirements for DEP-approved boater
23 education courses.

24 The committee substitute also provides that any funds derived
25 from the \$500 penalty for refusal to take a test to determine
26 one's breath-alcohol level will be deposited into the State
27 Game Trust Fund, if the arrest was made by a Game and Fresh
28 Water Fish Commission officer. Finally, the definition of
29 "operate" is revised to apply only when a vessel is underway.
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