

By the Committees on Transportation, Natural Resources and
Senators Burt and Clary

306-2036-98

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.
9 327.03, F.S.; directing the Department of
10 Highway Safety and Motor Vehicles to keep
11 certain records and perform certain duties;
12 amending s. 327.352, F.S.; revising provisions
13 with respect to the operation of a vessel while
14 under the influence; providing legislative
15 intent; restoring a penalty for refusal to
16 submit to chemical or physical testing;
17 conforming provisions relating to boating under
18 the influence to driving under the influence;
19 creating s. 327.35215, F.S.; restoring a
20 penalty for refusal to submit to chemical
21 testing; amending s. 327.50, F.S.; revising
22 language with respect to vessel safety
23 regulations and equipment and lighting
24 requirements to clarify responsibility for
25 compliance; creating s. 327.355, F.S.;
26 prohibiting the operation of vessels by persons
27 under 21 years of age who have consumed
28 alcoholic beverages; providing penalties;
29 defining the term "conviction" for purposes of
30 the section; amending s. 327.731, F.S.;
31 increasing the number of convictions necessary

1 for mandatory education; clarifying compliance
2 procedures; amending s. 327.35, F.S.; providing
3 legislative intent; providing effective dates.
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5 Be It Enacted by the Legislature of the State of Florida:
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7 Section 1. Subsection (1) of section 316.003, Florida
8 Statutes, is amended to read:

9 316.003 Definitions.--The following words and phrases,
10 when used in this chapter, shall have the meanings
11 respectively ascribed to them in this section, except where
12 the context otherwise requires:

13 (1) AUTHORIZED EMERGENCY VEHICLES.--Vehicles of the
14 fire department (fire patrol), police vehicles, and such
15 ambulances and emergency vehicles of municipal departments,
16 public service corporations operated by private corporations,
17 the Department of Environmental Protection, and the Department
18 of Transportation as are designated or authorized by their
19 respective ~~the~~ department or the chief of police of an
20 incorporated city or any sheriff of any of the various
21 counties.

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

24 327.02 Definitions of terms used in this chapter and
25 in chapter 328.--As used in this chapter and in chapter 328,
26 unless the context clearly requires a different meaning, the
27 term:

28 (24) "Operate" means to be in charge of or in command
29 of or in ~~the~~ actual physical control of a vessel upon the
30 waters of this state, or to exercise control over or to have
31 responsibility for a vessel's navigation or safety while the

1 vessel is underway upon the waters of this state, or to
2 control or steer a vessel being towed by another vessel upon
3 the waters of the state; provided, however, that this
4 definition shall not apply to a person on a vessel that is
5 docked or otherwise made fast to the shore and shall not apply
6 to a vessel owner or operator who designates a driver pursuant
7 to s. 327.35.

8 Section 3. Effective April 1, 1999, subsection (2) of
9 section 327.03, Florida Statutes, is amended to read:

10 327.03 Administration of vessel registration and
11 titling laws; records.--

12 (2) The Department of Highway Safety and Motor
13 Vehicles shall keep records and perform such other clerical
14 duties as required pertaining to:

15 (a) Vessel registration and titling ~~as required~~.

16 (b) Suspension of the vessel operating privilege under
17 ss. 327.35-327.355.

18 Section 4. Paragraphs (a) and (c) of subsection (1) of
19 section 327.352, Florida Statutes, are amended to read:

20 327.352 Breath, blood, and urine tests for alcohol,
21 chemical substances, or controlled substances; implied
22 consent; right to refuse.--

23 (1)(a) The Legislature declares that the operation of
24 a vessel is a privilege that must be exercised in a reasonable
25 manner. In order to protect the public health and safety, it
26 is essential that a lawful and effective means of reducing the
27 incidence of boating while impaired or intoxicated be
28 established. Therefore, any person who accepts the privilege
29 extended by the laws of this state of operating a vessel
30 within this state is, by so operating such vessel, deemed to
31 have given his or her consent to submit to an approved

1 chemical test or physical test including, but not limited to,
2 an infrared light test of his or her breath for the purpose of
3 determining the alcoholic content of his or her blood or
4 breath, and to a urine test for the purpose of detecting the
5 presence of chemical substances as set forth in s. 877.111 or
6 controlled substances, if the person is lawfully arrested for
7 any offense allegedly committed while the person was operating
8 a vessel while under the influence of alcoholic beverages,
9 chemical substances, or controlled substances. The chemical
10 or physical breath test must be incidental to a lawful arrest
11 and administered at the request of a law enforcement officer
12 who has reasonable cause to believe such person was operating
13 the vessel within this state while under the influence of
14 alcoholic beverages. The urine test must be incidental to a
15 lawful arrest and administered at a detention facility or any
16 other facility, mobile or otherwise, which is equipped to
17 administer such tests at the request of a law enforcement
18 officer who has reasonable cause to believe such person was
19 operating a vessel within this state while under the influence
20 of controlled substances. The urine test shall be administered
21 at a detention facility or any other facility, mobile or
22 otherwise, which is equipped to administer such tests in a
23 reasonable manner that will ensure the accuracy of the
24 specimen and maintain the privacy of the individual involved.
25 The administration of one type of test does not preclude the
26 administration of another type of test. The person shall be
27 told that his or her failure to submit to any lawful test of
28 his or her breath or urine, or both, will result in a civil
29 penalty of \$500. The refusal to submit to a chemical or
30 physical breath or urine test upon the request of a law
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1 enforcement officer as provided in this section is admissible
2 into evidence in any criminal proceeding.

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

27 Section 5. Section 327.35215, Florida Statutes, is
28 created to read:

29 327.35215 Penalty for failure to submit to test.--

30 (1) A person who is lawfully arrested for an alleged
31 violation of s. 327.35 and who refuses to submit to a blood

1 test, breath test, or urine test pursuant to s. 327.352 is
2 subject to a civil penalty of \$500.

3 (2) When a person refuses to submit to a blood test,
4 breath test, or urine test pursuant to s. 327.352, a law
5 enforcement officer who is authorized to make arrests for
6 violations of this chapter shall file with the clerk of the
7 court, on a form provided by the department, a certified
8 statement that probable cause existed to arrest the person for
9 a violation of s. 327.35 and that the person refused to submit
10 to a test as required by s. 327.352. Along with the statement,
11 the officer must also submit a sworn statement on a form
12 provided by the department that the person has been advised of
13 both the penalties for failure to submit to the blood, breath,
14 or urine test and the procedure for requesting a hearing.

15 (3) A person who has been advised of the penalties
16 pursuant to subsection (2) may, within 30 days afterwards,
17 request a hearing before a county court judge. A request for a
18 hearing tolls the period for payment of the civil penalty,
19 and, if assessment of the civil penalty is sustained by the
20 hearing and any subsequent judicial review, the civil penalty
21 must be paid within 30 days after final disposition. The clerk
22 of the court shall notify the department of the final
23 disposition of all actions filed under this section.

24 (4) It is unlawful for any person who has not paid a
25 civil penalty imposed pursuant to this section, or who has not
26 requested a hearing with respect to the civil penalty, within
27 30 calendar days after receipt of notice of the civil penalty
28 to operate a vessel upon the waters of this state. Violation
29 of this subsection is a misdemeanor of the first degree,
30 punishable as provided in s. 775.082 or s. 775.083.

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1 (5) Moneys collected by the clerk of the court
2 pursuant to this section shall be disposed of in the following
3 manner:

4 (a) If the arresting officer was employed or appointed
5 by a state law enforcement agency except the Game and Fresh
6 Water Fish Commission, the moneys shall be deposited into the
7 Marine Resources Conservation Trust Fund.

8 (b) If the arresting officer was employed or appointed
9 by a county or municipal law enforcement agency, the moneys
10 shall be deposited into the law enforcement trust fund of that
11 agency.

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

15 Section 6. Section 327.50, Florida Statutes, is
16 amended to read:

17 327.50 Vessel safety regulations; equipment and
18 lighting requirements.--

19 (1)(a) The owner and operator of every vessel on the
20 waters of this state shall carry, store, maintain, and use
21 safety equipment in accordance with current United States
22 Coast Guard safety equipment requirements as specified in the
23 Code of Federal Regulations, unless expressly exempted by the
24 department ~~state law.~~

25 (b) No person shall operate a vessel less than 26 feet
26 in length on the waters of this state unless every person
27 under 6 years of age on board the ~~a motorboat, sailboat, or~~
28 vessel ~~is wearing which measures less than 26 feet in length~~
29 ~~shall wear~~ a type I, type II, or type III Coast Guard approved
30 personal flotation device while such ~~motorboat, sailboat, or~~
31 vessel is underway. For the purpose of this section,

1 "underway" shall mean at all times except when a ~~motorboat,~~
2 ~~sailboat, or~~ vessel is anchored, moored, made fast to the
3 shore, or aground.

4 (2) No person shall operate a vessel on the waters of
5 this state unless said vessel is equipped with properly
6 serviceable ~~Every vessel on the waters of this state shall~~
7 ~~display the~~ lights and shapes required by the navigation
8 rules.

9 (3) The use of sirens or flashing, occulting, or
10 revolving ~~red or blue emergency~~ lights on any vessel is
11 prohibited, except as expressly provided in the navigation
12 rules or annexes thereto ~~on a vessel operated by a law~~
13 ~~enforcement officer or fire protection officer in the~~
14 ~~performance of his or her official duties or on a vessel~~
15 ~~engaged in emergency rescue activity.~~

16 Section 7. Section 327.355, Florida Statutes, is
17 created to read:

18 327.355 Operation of vessels by persons under 21 years
19 of age who have consumed alcoholic beverages.--

20 (1)(a) Notwithstanding s. 327.35, it is unlawful for a
21 person under the age of 21 who has a breath-alcohol level of
22 0.02 percent or higher to operate or be in actual physical
23 control of a vessel.

24 (b) A law enforcement officer who has probable cause
25 to believe that a vessel is being operated by or is in the
26 actual physical control of a person who is under the age of 21
27 while under the influence of alcoholic beverages or who has
28 any breath-alcohol level may lawfully detain such a person and
29 may request that person to submit to a test to determine his
30 or her breath-alcohol level. If the person under the age of 21
31 refuses to submit to such testing, the law enforcement officer

1 shall warn the person that failure to submit to the breath
2 test will result in the required performance of 50 hours of
3 public service and that his or her vessel operating privilege
4 will be suspended until the public service is performed.
5 Failure or refusal to submit to a breath test after this
6 warning is a violation of this section.

7 (2) Any person under the age of 21 who accepts the
8 privilege extended by the laws of this state of operating a
9 vessel upon the waters of this state, by so operating such
10 vessel, is deemed to have expressed his or her consent to the
11 provisions of this section.

12 (3) A breath test to determine breath-alcohol level
13 pursuant to this section may be conducted as authorized by s.
14 316.1932 or s. 327.352, or by a preliminary alcohol screening
15 test device listed in the United States Department of
16 Transportation's conforming-product list of evidential
17 breath-measurement devices. The reading from such a device is
18 admissible in evidence in any trial or hearing.

19 (4) A violation of this section is a noncriminal
20 infraction and being detained pursuant to this section does
21 not constitute an arrest. This section does not bar
22 prosecution under s. 327.35 and the penalties provided herein
23 shall be imposed in addition to any other penalty provided for
24 boating under the influence or for refusal to submit to
25 testing.

26 (5) Any person who is convicted of a violation of
27 subsection (1) shall be punished as follows:

28 (a) The court shall order the defendant to participate
29 in public service or a community work project for a minimum of
30 50 hours;

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1 (b) The court shall order the defendant to refrain
2 from operating any vessel until the 50 hours of public service
3 or community work has been performed; and

4 (c) Enroll in, attend, and successfully complete a
5 boating safety course that meets minimum standards established
6 by the department by rule.

7 (6) For the purposes of this section, "conviction"
8 means a finding of guilt or the acceptance of a plea of guilty
9 or nolo contendere, regardless of whether or not adjudication
10 was withheld. Notwithstanding the provisions of s. 948.01, no
11 court may suspend, defer, or withhold imposition of sentence
12 for any violation of this section. Any person who operates any
13 vessel on the waters of this state while his or her vessel
14 operating privilege is suspended pursuant to this section
15 commits a misdemeanor of the first degree, punishable as
16 provided in s. 775.082 or s. 775.083.

17 Section 8. Effective October 1, 1998, section 327.731,
18 Florida Statutes, is amended to read:

19 327.731 Mandatory education for violators.--

20 (1) Every ~~The court shall require any~~ person convicted
21 of a criminal violation of this chapter, every ~~any~~ person
22 convicted of a noncriminal infraction under this chapter if
23 the infraction resulted in a reportable boating accident, and
24 every ~~any~~ person convicted of two ~~a~~ noncriminal infractions
25 infraction as defined in s. 327.73(1)(h) through (k), (m)
26 through (p), (s), and (t), said infractions occurring within a
27 12-month period, must~~(f) through (n),~~ ~~excepting (j),~~ to:

28 (a) Enroll in, attend, and successfully complete, at
29 his or her own expense, a boating safety course that meets
30 minimum standards established by the department by rule;
31 however, the department may provide by rule for waivers of the

1 attendance requirement for violators residing in areas where
2 classroom presentation of the course is not available;

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

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

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9 Any person who has successfully completed an approved boating
10 course shall be exempt from these provisions upon showing
11 proof to the ~~court and the~~ department as specified in
12 paragraph (b).

13 (2) For the purposes of this section, "conviction"
14 means a finding of guilt, or the acceptance of a plea of
15 guilty or nolo contendere, regardless of whether or not
16 adjudication was withheld or whether imposition of sentence
17 was withheld, deferred, or suspended. Any person who operates
18 a vessel on the waters of this state in violation of the
19 provisions of this section is guilty of a misdemeanor of the
20 second degree, punishable as provided in s. 775.082 or s.
21 775.083.

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

30 Section 9. Subsection (10) is added to section 327.35,
31 Florida Statutes, to read:

1 327.35 Boating under the influence; penalties.--
2 (10) It is the intent of the Legislature to encourage
3 boaters to have a "designated driver" who does not consume
4 alcoholic beverages.

5 Section 10. Except as otherwise provided in this act,
6 this act shall take effect upon becoming a law.

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8 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
9 COMMITTEE SUBSTITUTE FOR
 CS for SB's 1794 and 2200

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11 Clarifies the definition of "operates."

12 Requires the Department of Highway Safety and Motor Vehicles
13 to keep records of suspended vessel operating privileges
starting April 1, 1999.

14 Provides 50 hours of public service for persons operating a
15 vessel who are under 21 years of age and refuse to submit to a
breath-alcohol test. A breath-alcohol level of 0.02 percent or
16 higher is unlawful.

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