

By Senator Clary

7-1712-98

See HB 3869

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 Enviromental 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.

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

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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 upon the  
22 waters of this state, or to exercise control over or to have  
23 responsibility for a vessel's navigation or safety upon the  
24 waters of this state, or to control or steer a vessel being  
25 towed by another vessel upon the waters of the state.

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

28           327.352 Breath, blood, and urine tests for alcohol,  
29 chemical substances, or controlled substances; implied  
30 consent; right to refuse.--

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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, the money shall be  
16 deposited into the Marine Resources Conservation Trust Fund.

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

21 Section 5. Section 327.50, Florida Statutes, is  
22 amended to read:

23 327.50 Vessel safety regulations; equipment and  
24 lighting requirements.--

25 (1) (a) The owner and operator of every vessel on the  
26 waters of this state shall carry, store, maintain, and use  
27 safety equipment in accordance with current United States  
28 Coast Guard safety equipment requirements as specified in the  
29 Code of Federal Regulations, unless expressly exempted by the  
30 department ~~state~~ law.

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

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

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

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

25           327.731 Mandatory education for violators.--

26           (1) Every ~~The court shall require any~~ person convicted  
27 of a criminal violation of this chapter, every any person  
28 convicted of a noncriminal infraction under this chapter if  
29 the infraction resulted in a reportable boating accident, and  
30 every any person convicted of a noncriminal infraction as  
31 defined in s. 327.73(1)(h) through (k), (m) through (p), (s),

1 and (t), said infractions occurring within a 12-month period,  
2 ~~must(f) through (n), excepting (j), to:~~

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

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

11 (c) Refrain from operating a vessel until he or she  
12 has filed the proof of successful completion of the course  
13 with the ~~court and the~~ department.  
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15 Any person who has successfully completed an approved boating  
16 course shall be exempt from these provisions upon showing  
17 proof to the ~~court and the~~ department as specified in  
18 paragraph (b).

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

28 (3) The department shall print on the reverse side of  
29 the defendant's copy of the boating citation a notice of the  
30 provisions of this section. Upon conviction, the clerk of the  
31 court shall notify the defendant that it is unlawful for him



1 or her to operate any vessel until he or she has complied with  
2 this section, but failure of the clerk of the court to provide  
3 such a notice shall not be a defense to a charge of unlawful  
4 operation of a vessel under subsection (2).

5 Section 7. Except as otherwise provided herein, this  
6 act shall take effect upon becoming a law.

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HOUSE SUMMARY

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11 Includes the Department of Environmental Protection  
12 within a list of agencies which are permitted to have  
13 authorized emergency vehicles. Revises a provision of law  
14 relating to the operation of a vessel under the influence  
15 of alcohol or controlled substances to provide the intent  
16 of the Legislature that the operation of a vessel is a  
17 privilege which must be exercised in a reasonable manner.  
18 Provides that the refusal to submit to a chemical or  
19 physical breath or urine test upon the request of a law  
20 enforcement officer is admissible into evidence in any  
21 criminal proceeding. Revises provisions of law relating  
22 to vessel safety regulations and equipment and lighting  
23 requirements. Revises language with respect to mandatory  
24 education for violators. See bill for details.

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