

Bill No. CS/CS/HB 3265, 1st Eng.

Amendment No. ____

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Burt moved the following amendment:		
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13	Senate Amendment (with title amendment)		
14	On page 2, line 9, through page 11, line 29, delete all		
15	those lines		
16			
17	and insert:		
18	Section 2. Subsection (1) of section 316.003, Florida		
19	Statutes, is amended to read:		
20	316.003 Definitions.--The following words and phrases,		
21	when used in this chapter, shall have the meanings		
22	respectively ascribed to them in this section, except where		
23	the context otherwise requires:		
24	(1) AUTHORIZED EMERGENCY VEHICLES.--Vehicles of the		
25	fire department (fire patrol), police vehicles, and such		
26	ambulances and emergency vehicles of municipal departments,		
27	public service corporations operated by private corporations,		
28	<u>the Department of Environmental Protection,</u> and the Department		
29	of Transportation as are designated or authorized by <u>their</u>		
30	<u>respective</u> the department or the chief of police of an		
31	incorporated city or any sheriff of any of the various		

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1 counties.

2 Section 3. Subsection (24) of section 327.02, Florida
3 Statutes, is amended to read:

4 327.02 Definitions of terms used in this chapter and
5 in chapter 328.--As used in this chapter and in chapter 328,
6 unless the context clearly requires a different meaning, the
7 term:

8 (24) "Operate" means to be in charge of or in command
9 of or in the actual physical control of a vessel upon the
10 waters of this state, or to exercise control over or to have
11 responsibility for a vessel's navigation or safety while the
12 vessel is underway upon the waters of this state, or to
13 control or steer a vessel being towed by another vessel upon
14 the waters of the state; provided, however, that this
15 definition shall not apply to a person on a vessel that is
16 docked or otherwise made fast to the shore and shall not apply
17 to a vessel owner or operator who designates a driver pursuant
18 to s. 327.35.

19 Section 4. Effective April 1, 1999, subsection (2) of
20 section 327.03, Florida Statutes, is amended to read:

21 327.03 Administration of vessel registration and
22 titling laws; records.--

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

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

27 (b) Suspension of the vessel operating privilege under
28 ss. 327.35-327.355.

29 Section 5. Paragraphs (a) and (c) of subsection (1) of
30 section 327.352, Florida Statutes, are amended to read:

31 327.352 Breath, blood, and urine tests for alcohol,

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1 chemical substances, or controlled substances; implied
2 consent; right to refuse.--

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

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

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

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

6 Section 6. Section 327.35215, Florida Statutes, is
7 created to read:

8 327.35215 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 a blood
11 test, breath test, or urine test pursuant to s. 327.352 is
12 subject to a civil penalty of \$500.

13 (2) When a person refuses to submit to a blood test,
14 breath test, or urine 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, on a form provided by the department, a certified
18 statement that probable cause existed to arrest the person for
19 a violation of s. 327.35 and that the person refused to submit
20 to a test as required by s. 327.352. Along with the statement,
21 the officer must also submit a sworn statement on a form
22 provided by the department that the person has been advised of
23 both the penalties for failure to submit to the blood, breath,
24 or urine test and the procedure for requesting a hearing.

25 (3) A person who has been advised of the penalties
26 pursuant to subsection (2) may, within 30 days afterwards,
27 request a hearing before a county court judge. A request for a
28 hearing tolls the period for payment of the civil penalty,
29 and, if assessment of the civil penalty is sustained by the
30 hearing and any subsequent judicial review, the civil penalty
31 must be paid within 30 days after final disposition. The clerk

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1 of the court shall notify the department of the final
2 disposition of all actions filed under this section.

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

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

13 (a) If the arresting officer was employed or appointed
14 by a state law enforcement agency except the Game and Fresh
15 Water Fish Commission, the moneys shall be deposited into the
16 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 moneys
19 shall be deposited into the law enforcement trust fund of that
20 agency.

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

24 Section 7. Section 327.50, Florida Statutes, is
25 amended to read:

26 327.50 Vessel safety regulations; equipment and
27 lighting requirements.--

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

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1 Code of Federal Regulations, unless expressly exempted by the
2 department state law.

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

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

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

25 Section 8. Section 327.355, Florida Statutes, is
26 created to read:

27 327.355 Operation of vessels by persons under 21 years
28 of age who have consumed alcoholic beverages.--

29 (1)(a) Notwithstanding s. 327.35, it is unlawful for a
30 person under the age of 21 who has a breath-alcohol level of
31 0.02 percent or higher to operate or be in actual physical

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1 control of a vessel.

2 (b) A law enforcement officer who has probable cause
3 to believe that a vessel is being operated by or is in the
4 actual physical control of a person who is under the age of 21
5 while under the influence of alcoholic beverages or who has
6 any breath-alcohol level may lawfully detain such a person and
7 may request that person to submit to a test to determine his
8 or her breath-alcohol level. If the person under the age of 21
9 refuses to submit to such testing, the law enforcement officer
10 shall warn the person that failure to submit to the breath
11 test will result in the required performance of 50 hours of
12 public service and that his or her vessel operating privilege
13 will be suspended until the public service is performed.
14 Failure or refusal to submit to a breath test after this
15 warning is a violation of this section.

16 (2) Any person under the age of 21 who accepts the
17 privilege extended by the laws of this state of operating a
18 vessel upon the waters of this state, by so operating such
19 vessel, is deemed to have expressed his or her consent to the
20 provisions of this section.

21 (3) A breath test to determine breath-alcohol level
22 pursuant to this section may be conducted as authorized by s.
23 316.1932 or s. 327.352, or by a preliminary alcohol screening
24 test device listed in the United States Department of
25 Transportation's conforming-product list of evidential
26 breath-measurement devices. The reading from such a device is
27 admissible in evidence in any trial or hearing.

28 (4) A violation of this section is a noncriminal
29 infraction and being detained pursuant to this section does
30 not constitute an arrest. This section does not bar
31 prosecution under s. 327.35 and the penalties provided herein

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1 shall be imposed in addition to any other penalty provided for
2 boating under the influence or for refusal to submit to
3 testing.

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

6 (a) The court shall order the defendant to participate
7 in public service or a community work project for a minimum of
8 50 hours;

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

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

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

25 Section 9. Effective October 1, 1998, section 327.731,
26 Florida Statutes, is amended to read:

27 327.731 Mandatory education for violators.--

28 (1) Every ~~The court shall require any person convicted~~
29 of a criminal violation of this chapter, every ~~any~~ person
30 convicted of a noncriminal infraction under this chapter if
31 the infraction resulted in a reportable boating accident, and

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

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

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

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

16
17 Any person who has successfully completed an approved boating
18 course shall be exempt from these provisions upon showing
19 proof to the ~~court and the~~ department as specified in
20 paragraph (b).

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

30 (3) The department shall print on the reverse side of
31 the defendant's copy of the boating citation a notice of the

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

7 Section 10. Subsection (10) is added to section
8 327.35, Florida Statutes, to read:

9 327.35 Boating under the influence; penalties.--

10 (10) It is the intent of the Legislature to encourage
11 boaters to have a "designated driver" who does not consume
12 alcoholic beverages.

13 Section 11. Except as otherwise provided in this act,
14 this act shall take effect upon becoming a law.

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17 ===== T I T L E A M E N D M E N T =====

18 And the title is amended as follows:

19 On page 1, line 4, through page 2, line 3, delete those
20 lines

21

22 and insert:

23 amending s. 316.003, F.S.; redefining the term
24 "authorized emergency vehicles" to include
25 reference to vehicles of the Department of
26 Environmental Protection; amending s. 327.02,
27 F.S.; redefining the term "operate" with
28 respect to vessels; amending s. 327.03, F.S.;
29 directing the Department of Highway Safety and
30 Motor Vehicles to keep certain records and
31 perform certain duties; amending s. 327.352,

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1 F.S.; revising provisions with respect to the
2 operation of a vessel while under the
3 influence; providing legislative intent;
4 restoring a penalty for refusal to submit to
5 chemical or physical testing; conforming
6 provisions relating to boating under the
7 influence to driving under the influence;
8 creating s. 327.35215, F.S.; restoring a
9 penalty for refusal to submit to chemical
10 testing; amending s. 327.50, F.S.; revising
11 language with respect to vessel safety
12 regulations and equipment and lighting
13 requirements to clarify responsibility for
14 compliance; creating s. 327.355, F.S.;
15 prohibiting the operation of vessels by persons
16 under 21 years of age who have consumed
17 alcoholic beverages; providing penalties;
18 defining the term "conviction" for purposes of
19 the section; amending s. 327.731, F.S.;
20 increasing the number of convictions necessary
21 for mandatory education; clarifying compliance
22 procedures; amending s. 327.35, F.S.; providing
23 legislative intent; providing effective dates.

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