

STORAGE NAME: h3265s1.gg

DATE: April 1, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3265

RELATING TO: Boater Safety

SPONSOR(S): Committee on Law Enforcement and Public Safety, and Representative Ziebarth and Others

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) LAW ENFORCEMENT AND PUBLIC SAFETY 6 YEAS 0 NAYS
- (2) GENERAL GOVERNMENT APPROPRIATIONS
- (3)
- (4)
- (5)

I. SUMMARY:

Committee Substitute for House Bill 3265 provides for a \$500 penalty for anyone who is arrested on an alleged violation of boating under the influence, and who refuses to submit to a blood test, breath test or urine test. When a person refuses to submit to such a test, the arresting officer must prepare a certified statement that there was probable cause to arrest the person for boating under the influence, and that the person refused to submit to the test. The arresting officer must, at the time of refusal, inform the violator of the penalty for refusing to submit to the alcohol test and explain the procedure for requesting a hearing in the matter. It is unlawful for the person to operate a vessel in Florida waters, prior to either paying the civil penalty or requesting a hearing. Operating a vessel under these circumstances is punishable as a first degree misdemeanor. The clerk of court must notify the Department of Environmental Protection of the final disposition of all such cases.

Any money collected by the clerk of court for such a penalty must be distributed to either the Marine Resources Conservation Trust Fund, if the arresting officer was employed by a state law enforcement agency, or if the arresting officer was employed or appointed by a county or municipal law enforcement agency, the money shall be deposited into the law enforcement trust fund of that agency.

Committee Substitute for House Bill 3265 would also makes it unlawful for any person under the age of 21 who has a blood-alcohol or breath-alcohol level of 0.02 or higher to operate or be in actual physical control of a vessel. A law enforcement officer who has probable cause to believe that a person under age 21 has such a blood or breath-alcohol level may detain such person and request that person submit to a breath-alcohol test. If the under-age person has a blood-alcohol or breath-alcohol level of 0.02 or higher, or refuses to take the test, the law enforcement officer shall issue a notice suspending the operating privilege of that person and take the person's boater safety identification card. The notice must either state that the operator refused to submit to the test, for which the privilege is suspended 1 year for the first refusal, or 18 months on subsequent suspensions, or that the operator was operating a vessel with a blood-alcohol or breath alcohol level of 0.02 or higher, requiring suspension for a period of 6 months for a first violation, and 1 year for a subsequent violation.

The operator may request a formal or informal review by the department within 10 days after issuance of the notice of suspension. An informal review is conducted within 30 days of receipt of the request, by a hearing officer employed by the department, and is based solely on materials submitted by the law enforcement officer and the person requesting review. The presence of the officer and witnesses is not required. If a formal review is requested, a hearing is conducted before a department hearing officer who may administer oaths, examine witnesses, take testimony, and receive evidence.

Finally, the bill imposes a minimum age requirement to obtain a Boater Safety Identification Card of 16 years or older, for persons under 21 years of age operating a vessel powered by a motor of 10 horsepower or higher. The instructional requirement to obtain such a card must include a written examination covering waterway safety, waterway rules of operation, safety equipment, first aid, and CPR.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 327.35, F.S., currently prohibits boating under the influence, and sets forth several different levels of seriousness for such offenses. Subsection (1) makes illegal the operation of a vessel by any person who is under the influence of alcoholic beverages or chemical substances to the extent that the person's normal faculties are impaired, or if the person's blood-alcohol level or breath-alcohol levels 0.08 or higher. Under this subsection, the first offense is punishable by a fine of between \$250 and \$500 and not more than 6 months imprisonment. A second conviction is punishable by a fine of from \$500 to \$1,000, and not more than 9 months imprisonment. A third conviction is punishable by a fine of between \$1,000 and \$2,500, and not more than 12 months imprisonment. Any fourth or subsequent conviction is a third degree felony.

A second level of punishment is provided for any person who violates subsection (1) *and* by reason of such operation of a vessel causes damage to the property or person of another. This offense is punishable as a misdemeanor of the first degree. If the person causes serious bodily injury to another, the offense is punishable as a third degree felony. If the person causes death, the offense is a second or first degree felony, depending upon the specific circumstances.

A third level of punishment is provided for those with higher blood-alcohol or breath-alcohol levels. If a person operates a vessel with a blood-alcohol or breath-alcohol level of 0.20 or higher, that person, for a first offense, is subject to a fine of between \$500 and \$1,000, and not more than 9 months imprisonment. A second conviction is punishable by a fine of between \$1,000 and \$2,000, and not more than 12 months imprisonment. A third conviction is punishable by a fine between \$2,000 and \$5,000, and not more than 12 months imprisonment.

Section 327.35, F.S., was amended in 1996 in an attempt to conform the penalties for operating a vessel under the influence with the penalties for driving under the influence, as described in s. 316.193, F.S., including the enhanced penalty for failing to give information and render aid at the scene of an accident if the individual was driving under the influence and caused an accident resulting in death or serious injury. The statute also provides that anyone convicted of the offense of BUI be placed on probation and ordered to attend a substance abuse course or receive treatment for substance abuse,

the cost to be borne by the offender. The rules and procedures for the impounding and retrieval of a vessel involved in a BUI offense are compatible with those for DUI offenses. BUI convictions from another state can be considered a previous conviction for sentencing purposes.

Section 327.352, F.S., makes BUI laws regarding breath, blood, and urine testing run parallel to current DUI laws (s. 316.1932, F.S.). This section provides that any person who operates a vessel in Florida is deemed to have given consent to submit to a test to determine the presence of chemical or controlled substances incidental to a lawful arrest for BUI, with probable cause. The refusal to submit to a test is admissible into evidence in any criminal proceeding. It also provides that consent to testing for chemical or controlled substances is implied when a person appears at a hospital, clinic, ambulance or other medical emergency vehicle, that any person who is incapable of refusing a test does not withdraw his or her implied consent, that a person arrested for BUI but not required to take a test may request that the arresting officer arrange for a test to be administered to determine the presence of chemical or controlled substances. The statute lists the persons who are qualified to administer a blood test. It provides that a person can seek an independent test in addition to the test administered at the direction of law enforcement. The law enforcement officer must provide timely telephone access, but it is up to the individual to arrange and secure the test at the person's own expense. Test results requested by law enforcement must be made available to the accused or an attorney for the accused, and no medical personnel can be held civilly or criminally liable as a result of administering a blood or urine test.

Previously, the Florida Statutes contained a section 327.3521, F.S.(1995), which provided a penalty for failure to submit to a breath test or urine test. This statutory section was repealed by s. 20, ch. 96-330, Laws of Florida. The rationale set forth in the bill analysis for this repeal is "because these provisions are expanded and incorporated into ss. 327.35 and 327.352, F.S." However, the \$500 penalty for failure to submit to testing was not incorporated into these provisions.

Section 327.353, F.S., generally conforms BUI law regarding the right of law enforcement officials to use reasonable force to acquire a blood test in cases of death or serious bodily injury to DUI law. If a law enforcement officer has probable cause to believe that an individual operated a vessel or was in the actual physical control of a vessel while under the influence and caused the death or serious bodily injury of a human being, the law enforcement officer may use reasonable force to require the individual to submit to a test. Resisting an officer's efforts to take a blood test is admissible evidence in court.

Section 327.395, F.S., provides that until October 2001, a person born after September 30, 1980, and beginning October 1, 2001, a person 21 years of age or younger may not operate a vessel powered by a engine of 10 horsepower or more unless the operator has aboard the vessel photographic identification and a boating-safety identification card issued by the DEP which shows that the operator has:

1. Completed a DEP-approved boater-education course that meets the minimum 8-hour instruction requirement established by the National Association of State Boating Law Administrators; or
2. Passed a course equivalency examination approved by the DEP; or

3. Passed a temporary certificate examination developed or approved by the DEP.

A person complying with any of the above options may receive a boater safety identification card.

The DEP is authorized to appoint liveries, marinas, or others as its agents to administer the course or examinations and issue identification cards under guidelines established by the DEP. An agent must charge a \$2 examination fee, which must be forwarded to the department with proof of passage of the examination and may also charge and keep a \$1 service fee.

A boating-safety identification card issued to a person who has completed a boater-education course or a course equivalency examination is valid for life. A card issued to a person who has passed a temporary certification examination is valid for 12 months from the date of issuance.

An exemption is provided from the requirement that one must have a boating-safety identification card and photographic identification while operating a vessel with an engine of 10 horsepower or more if the operator:

1. Is licensed by the United State Coast Guard to serve as master of a vessel;
2. Operates a vessel only on a private lake or pond;
3. Is accompanied in the vessel by a person who is exempt from the bill's requirements or is 18 years of age or older who holds a boating-safety identification card and is attending to the operation of the vessel and responsible for any violation that occurs during the operation;
4. Is a nonresident who has in his possession proof that he has completed a boater education course or equivalency examination in another state which meets or exceed the requirements of the bill;
5. Is exempted by rule of the DEP.

A violation of the above provisions constitutes a noncriminal infraction, for which the penalty is a \$50 fine.

The DEP must institute and coordinate a statewide program of boating-safety instruction and certification to ensure that boating courses and examinations are available in each county of the state. The DEP is also authorized to establish and collect a \$2.00 examination fee.

Section 327.54, F.S., prohibits a livery from knowingly leasing, hiring, or renting a vessel powered by an engine of 10 horsepower or more to any person who is required to comply with section 327.395, F.S., unless the person presents a valid boating-safety identification card to the livery. Before leasing, hiring, or renting a personal watercraft to a person under 16 years of age, a livery must also display boating-safety information about the safe and proper operation of vessels, in compliance with standards established by the DEP, and must provide prerental or preride instructions in the safe operation of all vessels equipped with motors of 10 horsepower or greater.

Section 327.73, F.S., provides for noncriminal infractions relating to boating-safety education. The section also requires all civil penalties collected to be deposited in to the Marine Resources Conservation Trust Fund and used for boating safety education.

B. EFFECT OF PROPOSED CHANGES:

Committee Substitute for House Bill 3265 provides for a \$500 penalty for anyone who is arrested on an alleged violation of boating under the influence, and who refuses to submit to a blood test, breath test or urine test. When a person refuses to submit to such a test, the arresting officer must prepare a certified statement that there was probable cause to arrest the person for boating under the influence, and that the person refused to submit to the test. The arresting officer must, at the time of refusal, inform the violator of the penalty for refusing to submit to the test, and explain the procedure for requesting a hearing on the matter. It is unlawful for the person to operate a vessel in Florida waters, prior to either paying the civil penalty or requesting a hearing. Operating a vessel under these circumstances is punishable as a first degree misdemeanor. The clerk of court must notify the Department of Environmental Protection of the final disposition of all such cases.

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Committee Substitute for House Bill 3265 also makes it unlawful for any person under the age of 21 who has a breath-alcohol level of 0.02 or higher to operate or be in actual physical control of a vessel. A law enforcement officer who has probable cause to believe that a person under age 21 has such a blood or breath-alcohol level may detain such person and request that person submit to a breath-alcohol test. If the under-age person has a blood-alcohol or breath-alcohol level of 0.02 or higher, or refuses to take the test, the law enforcement officer shall issue a notice suspending the operating privilege of that person and take the person's boater safety identification card. The notice must either state that the operator refused to submit to the test, for which the privilege is suspended 1 year for the first refusal, or 18 months on subsequent suspensions, or that the operator was operating a vessel with a blood-alcohol or breath alcohol level of 0.02 or higher, requiring suspension for a period of 6 months for a first violation, and 1 year for a subsequent violation.

The operator may request a formal or informal review by the Department within 10 days after issuance of the notice of suspension. An informal review is conducted within 30 days of receipt of the request, by a hearing officer employed by the department, and is based solely on materials submitted by the law enforcement officer and the person requesting review. The presence of the officer and witnesses is not required. If a formal review is requested, a hearing is conducted before a department hearing officer who may administer oaths, examine witnesses, take testimony, and receive evidence.

Finally, the Committee Substitute imposes a minimum age requirement to obtain a Boater Safety Identification Card, of 16 years or older, for persons under 21 years of age operating a vessel powered by a motor of 10 horsepower or greater. The instructional

requirement to obtain such a card must include a written examination covering waterway safety, waterway rules of operation, safety equipment, first aid, and CPR.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

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(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

ss. 327.35, 327.25215, 327.35216, and 327.395

E. SECTION-BY-SECTION RESEARCH:

Section 1: Provides a \$500 civil penalty for any person lawfully arrested for boating under the influence, who refuses to submit to a breath or urine test.

Section 2: Makes it unlawful for any person under 21 years of age, who has an blood-alcohol or breath-alcohol level of 0.02 or higher, to operate or be in physical control of a vessel. Provides for detention and submission to blood or breath-alcohol tests, and suspension of operating privileges for any person refusing to submit to a test.

Section 3: Persons under 21 years of age are required to obtain a boater safety identification card prior to operation of any vessel powered by a motor of 10 horsepower or greater. The bill makes 16 the minimum age to obtain a boater safety identification card.

Section 4: Provides for an effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

The recurring costs associated with requests and the conduct of formal and informal reviews of suspension of boater safety identification cards is indeterminate at this time.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

There may be some costs borne by the clerks and the county courts, associated with hearings requested in cases involving refusing to submit to a test. The amount involved is indeterminate.

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The amount of revenue which may be generated by the \$500 civil penalty for the Marine Resources Conservation Trust Fund and local law enforcement trust funds is indeterminate at this time.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

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V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 17, 1998, the Committee on Law Enforcement and Public Safety approved seven amendments to the bill, making it a committee substitute.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

Prepared by:

Legislative Research Director:

Kurt E. Ahrendt

Kurt E. Ahrendt

AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

Legislative Research Director:

Cynthia P. Kelly

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