

STORAGE NAME: h3265s2.gg

DATE: April 8, 1998

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

BILL #: CS/CS/HB 3265

RELATING TO: Boating Safety and Emergency Responses

SPONSOR(S): Committees on General Government Appropriations and Law Enforcement and Public Safety, and Representative Ziebarth and Others

COMPANION BILL(S): HB 3869 (c), CS/SB 1794 (c), SB 2200 (c)

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

- (1) LAW ENFORCEMENT AND PUBLIC SAFETY YEAS 6 NAYS 0
- (2) GENERAL GOVERNMENT APPROPRIATIONS YEAS 9 NAYS 1
- (3)
- (4)
- (5)

I. SUMMARY:

This bill provides for a \$500 civil penalty for anyone who refuses to submit to a blood test, breath test, or urine test when arrested for boating while intoxicated. It is unlawful for the violator 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. Effective October 1, 1998, every person convicted of two noncriminal infractions under the provisions of the bill must attend a boating safety course. The Department of Highway Safety and Motor Vehicles is required to keep records pertaining to the suspension of water vessel operating privileges.

The bill 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. Operating privileges are suspended for a violator until after the completion of 50 hours of community service and a boating safety course. If the under-age person refuses to take a breath-alcohol test, the operating privilege is suspended pending the completion of 50 hours of community service.

The bill also amends the definitions of "authorized emergency vehicles" and "operate" as used in the boater safety statutes.

The fiscal impact of the bill to state agencies and state funds, and local governments is indeterminate.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 327.35, F.S., 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 level is 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 water vessel under the influence with the penalties for driving a motor vehicle under the influence, as described in section 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 boating under-the-influence (BUI) offense are compatible with those for driving under-the-influence (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 (section 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 section 20, chapter 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 sections 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 Department of Environmental Protection (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 DEP with proof of passage of the examination and may also charge and keep a \$1 service fee.

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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 pre-rental or pre-ride 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:

This bill provides for a \$500 civil penalty for anyone 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. Effective October 1, 1998, every person convicted of two noncriminal infractions under the provisions of the bill must attend a boating safety course. The Department of Highway Safety and Motor Vehicles is required by the bill to keep records pertaining to the suspension of water vessel operating privileges.

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 other than the Game and Fresh Water Fish Commission (GFWFC), or the State Game Trust Fund if the arresting officer was employed by GFWFC. 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.

The bill 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, the law enforcement officer shall issue a notice suspending the operating privilege pending the completion of 50 hours of community service and a boating safety course. If the under-age person refuses to take the test, the law enforcement officer shall issue a notice suspending the operating privilege pending the completion of 50 hours of community service.

The bill adds DEP vehicles to the definition of "authorized emergency vehicles" for purposes of chapter 316, F.S., known as the "Florida Uniform Traffic Control Law." In addition, the definition of "operate" is clarified to mean to be in charge of or in command of or in the actual physical control of a vessel upon the waters of the state, or to have responsibility for a vessel's navigation or safety upon the waters of the state, or to control or steer a vessel being towed by another vessel upon the waters of the state. The definition, however, does not apply to a person on a vessel that is docked.

Finally, the bill requires every owner and operator of a vessel on the waters of the state to carry, store, maintain, and use safety equipment specified by federal regulation. Requires that a every person under 6 years of age on any vessel less than 26 feet in length to ear a personal flotation device. Prohibits the use of sirens or occulting lights.

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?

No.

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

Yes. When a person refuses to submit to such a breath, urine or blood 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, who could be a state or a local 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.

In addition, the Department of Highway Safety and Motor Vehicles is required by the bill to keep records pertaining to the suspension of water vessel operating privileges.

Finally, the clerk of court in each county is required to collect penalties and inform persons of when boating privileges are suspended.

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

No.

- 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:

(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:

Sections 316.003, 327.02, 327.03, 327.352, 327.35215, 327.50, 327.355, and 327.731, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends section 316.003, F.S., to add the Department of Environmental Protection vehicles to the definition of authorized emergency vehicles for purposes of chapter 316, F.S., known as the "Florida Uniform Traffic Control Law."

Section 2: Amends section 327.02, F.S., to clarify the definition of "operate." States that "operate" means to be in charge of or in command of or in the actual physical control of a vessel upon the waters of the state, or to have responsibility for a vessel's navigation or safety upon the waters of the state, or to control or steer a vessel being towed by another vessel upon the waters of the state. Provides, however, that the definition does not apply to a person on a vessel that is docked.

Section 3: Amends section 327.03, F.S., to require the Department of Highway Safety and Motor Vehicles to keep records pertaining to the suspension of water vessel operating privilege.

Section 4: Amends section 327.352, F.S., to provide the Legislative declaration that to protect the public health and safety it is necessary to reduce the incidence of boating while impaired or intoxicated. Also 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. The refusal to submit to a blood test upon the request of a law enforcement officer shall be admissible in evidence in any criminal proceeding.

Section 5: Creates section 327.35215, F.S., to provide a process for payment of the penalty by persons who refuse to submit to a breath, urine, or blood test, and a process for such persons to request a hearing before a county court judge. Also makes it unlawful for any person who has not paid the required penalty, or has not requested a hearing within 30 calendar days after notice of the penalty, to operate a water vessel in the state. Violation is a misdemeanor of the first degree.

Provides that moneys collected for such penalties are to be deposited into the law enforcement trust fund of the arresting agency, if the arresting officer was employed or appointed by a county or municipal law enforcement agency. If the arresting officer was employed or appointed by the Game and Fresh Water Fish Commission, the moneys shall be deposited in the State Game Trust Fund. Money collected by other state law enforcement agencies are to be deposited into the Marine Resources Conservation Trust Fund.

Section 6: Amends section 327.50, F.S., to require every owner and operator of a vessel on the waters of the state to carry, store, maintain and use safety equipment specified by federal regulation. Requires that every person under 6 years of age on any vessel less than 26 feet in length to wear a personal flotation device. Prohibits the use of sirens or occulting lights.

Section 7: Creates section 327.355, F.S., to make 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 on the waters of the state. Provides for detention by law enforcement officers of persons for breath-alcohol tests. Any persons under age 21 who refuses to a test is required to perform 50 hours of community service and operating privileges are suspended until completion of the community service.

Any person under 21 years of age, who has a blood-alcohol or breath-alcohol level of 0.02 or higher, must perform 50 hours of community service and must attend and successfully complete a boating safety course. Vessel operating privileges are suspended until completion of these requirements.

Section 8. Amends section 327.731, F.S., effective October 1, 1998, to require every person convicted of two noncriminal infractions under the provisions of the bill to attend a boating safety course. Provides for waivers for violators residing in areas where classroom presentation of the course is not available. Provides that the clerk of court shall notify persons arrested that it is unlawful to operate any vessel until the boating safety course is completed.

Section 9: Provide that the act shall take effect upon becoming a law, except as otherwise provided in the bill.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

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

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The amount of revenue which may be generated by the \$500 civil penalty for local law enforcement agencies is indeterminate at this time.

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:

None.

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:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take any actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues in the aggregate, as such authority existed on February 1, 1989.

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

This bill does not reduce the percentage of a state tax shared with counties and municipalities as an aggregate on February 1, 1989.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 17, 1998, the House Committee on Law Enforcement and Public Safety approved seven amendments to the bill as originally filed and moved a committee substitute.

On April 7, 1998, the House Committee on General Government Appropriations adopted a "strike everything" amendment and moved a committee substitute resulting in CS/CS/HB 3265 which is the subject of this research statement. CS/CS/HB 3265 differs from the original bill by:

- Deleting the change from 0.20 to 0.10, in the blood-alcohol level considered unlawful for operation of a water vessel;
- Changing the penalties for persons under the age of 21 convicted of boating under the influence;
- Deleting changes to boater safety identification card requirements;
- Adding DEP vehicles to the definition of authorized emergency vehicles for purposes of the "Florida Uniform Traffic Control Law" and clarifying the definition of "operate;"
- Requiring the Department of Highway Safety and Motor Vehicles to keep records pertaining to the suspension of water vessel operating privilege;
- Providing a \$500 civil penalty for any person lawfully arrested for boating under the influence who refuses to submit to a breath or urine test;
- Requiring every person convicted of two noncriminal infractions under the provisions of the bill to attend a boating safety course.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

Prepared by:

Legislative Research Director:

Kurt E. Ahrendt

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AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

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