

By Representative Ziebarth

1 A bill to be entitled
2 An act relating to boater safety; amending s.
3 327.35, F.S.; lowering the amount of alcohol
4 required with respect to certain boating under
5 the influence infractions; creating s.
6 327.35215, F.S.; providing penalties for
7 failure to submit to a breath test or urine
8 test; creating s. 327.35216, F.S.; providing
9 for the suspension of the privilege to operate
10 a vessel for persons who are under 21 years of
11 age under certain circumstances; amending s.
12 327.395, F.S.; revising language with respect
13 to boater safety identification cards issued by
14 the Department of Environmental Protection;
15 providing an effective date.

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

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19 Section 1. Subsection (4) of section 327.35, Florida
20 Statutes, is amended to read:

21 327.35 Boating under the influence; penalties.--
22 (4) Any person who is convicted of a violation of
23 subsection (1) and who has a blood-alcohol level or
24 breath-alcohol level of 0.10 ~~0.20~~ or higher, or any person who
25 is convicted of a violation of subsection (1) and who at the
26 time of the offense was accompanied in the vessel by a person
27 under the age of 18 years, shall be punished:

28 (a) By a fine of:
29 1. Not less than \$500 or more than \$1,000 for a first
30 conviction.

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1 2. Not less than \$1,000 or more than \$2,000 for a
2 second conviction.

3 3. Not less than \$2,000 or more than \$5,000 for a
4 third conviction.

5 (b) By imprisonment for:

6 1. Not more than 9 months for a first conviction.

7 2. Not more than 12 months for a second conviction.

8 3. Not more than 12 months for a third conviction.

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10 For the purposes of this subsection, only the instant offense
11 is required to be a violation of subsection (1) by a person
12 who has a blood-alcohol level or breath-alcohol level of 0.10
13 ~~0.20~~ or higher.

14 Section 2. Section 327.35215, Florida Statutes, is
15 created to read:

16 327.35215 Penalty for failure to submit to test.--

17 (1) A person who is lawfully arrested for an alleged
18 violation of s. 327.35 and who refuses to submit to a breath
19 test or urine test pursuant to s. 327.352 is subject to a
20 civil penalty of \$500.

21 (2) When a person refuses to submit to a breath test
22 or urine test pursuant to s. 327.352, a law enforcement
23 officer who is authorized to make arrests for violations of
24 this chapter shall file with the clerk of the court, on a form
25 provided by the department, a certified statement that
26 probable cause existed to arrest the person for a violation of
27 s. 327.35 and that the person refused to submit to a test as
28 required by s. 327.352.

29 (3) The clerk of the court, upon receipt of the
30 statement from the law enforcement officer, shall officially
31 notify the person by certified mail that he or she must pay a

1 civil penalty of \$500 to the clerk of the court within 30
2 calendar days after receipt of the notice.

3 (4) A person who has received a notice pursuant to
4 subsection (3) may, within 30 days after the receipt, request
5 a hearing before a county court judge. A request for a hearing
6 tolls the period for payment of the civil penalty, and, if
7 assessment of the civil penalty is sustained by the hearing
8 and any subsequent judicial review, the civil penalty must be
9 paid within 30 days after final disposition. The clerk of the
10 court shall notify the department of the final disposition of
11 all actions filed under this section.

12 (5) It is unlawful for any person who has not paid a
13 civil penalty imposed pursuant to this section, or who has not
14 requested a hearing with respect to the civil penalty, within
15 30 calendar days after receipt of notice of the civil penalty
16 to operate a vessel upon the waters of this state. Violation
17 of this subsection is a misdemeanor of the first degree,
18 punishable as provided in s. 775.082 or s. 775.083.

19 (6) Moneys collected by the clerk of the court
20 pursuant to this section shall be disposed of in the following
21 manner:

22 (a) If the arresting officer was employed or appointed
23 by a state law enforcement agency, the moneys shall be
24 deposited into the Motorboat Revolving Trust Fund.

25 (b) If the arresting officer was employed or appointed
26 by a county or municipal law enforcement agency, the moneys
27 shall be deposited into the law enforcement trust fund of that
28 agency.

29 Section 3. Section 327.35216, Florida Statutes, is
30 created to read:

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1 327.35216 Suspension of privilege to operate vessel;
2 persons under 21 years of age; right to review.--

3 (1)(a) Notwithstanding s. 327.35, it is unlawful for a
4 person under the age of 21 who has a breath-alcohol level of
5 0.02 percent or higher to operate or be in actual physical
6 control of a vessel.

7 (b) A law enforcement officer who has probable cause
8 to believe that a vessel is being operated by or is in the
9 actual physical control of a person who is under the age of 21
10 while under the influence of alcoholic beverages or who has
11 any breath-alcohol level may lawfully detain such a person and
12 may request that person to submit to a test to determine his
13 or her breath-alcohol level.

14 (2)(a) A law enforcement officer or correctional
15 officer shall, on behalf of the department, suspend the
16 privilege of such person to operate a vessel if the person has
17 a blood-alcohol or breath-alcohol level of 0.02 percent or
18 higher. The officer shall also suspend, on behalf of the
19 department, the operating privilege of a person who has
20 refused to submit to a test as provided by paragraph (b). The
21 officer shall take the person's boater safety identification
22 card and shall issue the person a notice of suspension.

23 (b) The suspension under paragraph (a) must be
24 pursuant to, and the notice of suspension must inform the
25 operator of, the following:

26 1.a. The operator refused to submit to a lawful breath
27 test and his or her vessel operating privilege is suspended
28 for a period of 1 year for a first refusal or for a period of
29 18 months if his or her operating privilege has been
30 previously suspended as provided in this section as a result
31 of a refusal to submit to a test; or

1 b. The operator was under the age of 21 and was
2 operating or in actual physical control of a vessel while
3 having a blood-alcohol or breath-alcohol level of 0.02 percent
4 or higher; and the person's operating privilege is suspended
5 for a period of 6 months for a first violation, or for a
6 period of 1 year if his or her operating privilege has been
7 previously suspended as provided in this section for operating
8 or being in actual physical control of a vessel with a
9 blood-alcohol or breath-alcohol level of 0.02 percent or
10 higher.

11 2. The suspension period commences on the date of
12 issuance of the notice of suspension.

13 3. The operator may request a formal or informal
14 review of the suspension by the department within 10 days
15 after the issuance of the notice of suspension.

16 4. The operator may submit to the department any
17 materials relevant to the suspension of his or her
18 identification card.

19 (3) The law enforcement officer shall forward to the
20 department, within 5 days after the date of the issuance of
21 the notice of suspension, a copy of the notice of suspension,
22 the boater safety identification card of the person receiving
23 the notice of suspension, and an affidavit stating the
24 officer's grounds for belief that the person was under the age
25 of 21 and was operating or in actual physical control of a
26 vessel with any breath-alcohol level, and the results of any
27 breath test or an affidavit stating that a breath test was
28 requested by a law enforcement officer or correctional officer
29 and that the person refused to submit to such test. The
30 failure of the officer to submit materials within the 5-day
31 period specified in this subsection does not bar the

1 department from considering any materials submitted at or
2 before the hearing.

3 (4) If the department finds that the boater safety
4 identification card of the person should be suspended under
5 this section and if the notice of suspension has not already
6 been served upon the person by a law enforcement officer or
7 correctional officer as provided in subsection (2), the
8 department shall issue a notice of suspension.

9 (5) If the person whose boater safety identification
10 card is suspended requests an informal review under
11 subparagraph (2)(b)3., the department shall conduct the
12 informal review by a hearing officer employed by the
13 department within 30 days after the request is received by the
14 department. The informal review hearing must consist solely of
15 an examination by the department of the materials submitted by
16 a law enforcement officer or correctional officer and by the
17 person whose boater safety identification card and privilege
18 to operate a vessel are suspended, and the presence of an
19 officer or witness is not required.

20 (6) After completion of the informal review, notice of
21 the department's decision sustaining, amending, or
22 invalidating the suspension of the boater safety
23 identification card and privilege to operate a vessel must be
24 provided to the person. The notice must be mailed to the
25 person at the last known address shown on the department's
26 records, or to the address provided in the law enforcement
27 officer's report if such address differs from the address of
28 record, within 7 days after completing the review.

29 (7)(a) If the person whose boater safety
30 identification card and privilege to operate a vessel is
31 suspended requests a formal review, the department must

1 schedule a hearing to be held within 30 days after the request
2 is received by the department and must notify the person of
3 the date, time, and place of the hearing.

4 (b) The formal review hearing must be held before a
5 hearing officer employed by the department, and the hearing
6 officer may administer oaths, examine witnesses and take
7 testimony, receive relevant evidence, issue subpoenas,
8 regulate the course and conduct of the hearing, and make a
9 ruling on the suspension. The department and the person whose
10 boater safety identification card and privilege to operate a
11 vessel were suspended may subpoena witnesses, and the party
12 requesting the presence of a witness is responsible for paying
13 any witness fees and for notifying in writing the state
14 attorney's office in the appropriate circuit of the issuance
15 of the subpoena. If the person who requests a formal review
16 hearing fails to appear and the hearing officer finds the
17 failure to be without just cause, the right to a formal
18 hearing is waived and the suspension is sustained.

19 (c) A party may seek enforcement of a subpoena under
20 paragraph (b) by filing a petition for enforcement in the
21 circuit court of the judicial circuit in which the person
22 failing to comply with the subpoena resides. A failure to
23 comply with an order of the court constitutes contempt of
24 court. However, a person may not be held in contempt while a
25 subpoena is being challenged.

26 (d) The department must, within 7 days after a formal
27 review hearing, send notice to the person of the hearing
28 officer's decision as to whether sufficient cause exists to
29 sustain, amend, or invalidate the suspension.

30 (8) In a formal review hearing under subsection (7) or
31 an informal review hearing under subsection (5), the hearing

1 officer shall determine by a preponderance of the evidence
2 whether sufficient cause exists to sustain, amend, or
3 invalidate the suspension. The scope of the review is limited
4 to the following issues:

5 (a) If the boater safety identification card and
6 privilege to operate a vessel were suspended because the
7 individual, then under the age of 21, operated a vessel with a
8 blood-alcohol or breath-alcohol level of 0.02 percent or
9 higher:

10 1. Whether the law enforcement officer had probable
11 cause to believe that the person was under the age of 21 and
12 was operating or in actual physical control of a vessel in
13 this state with any blood-alcohol or breath-alcohol level or
14 while under the influence of alcoholic beverages.

15 2. Whether the person was under the age of 21.

16 3. Whether the person had a blood-alcohol or
17 breath-alcohol level of 0.02 percent or higher.

18 (b) If the boater safety identification card and
19 privilege to operate a vessel were suspended because of the
20 individual's refusal to submit to a breath test:

21 1. Whether the law enforcement officer had probable
22 cause to believe that the person was under the age of 21 and
23 was operating or in actual physical control of a vessel in
24 this state with any blood-alcohol or breath-alcohol level or
25 while under the influence of alcoholic beverages.

26 2. Whether the person was under the age of 21.

27 3. Whether the person refused to submit to a breath
28 test after being requested to do so by a law enforcement
29 officer or correctional officer.

30 4. Whether the person was told that if he or she
31 refused to submit to a breath test his or her privilege to

1 operate a vessel would be suspended for a period of 1 year or,
2 in the case of a second or subsequent refusal, for a period of
3 18 months.

4 (9) Based on the determination of the hearing officer
5 under subsection (8) for both informal hearings under
6 subsection (5) and formal hearings under subsection (7), the
7 department shall:

8 (a) Sustain the suspension of the person's privilege
9 to operate a vessel for a period of 1 year for a first
10 refusal, or for a period of 18 months if the operating
11 privilege of the person has been previously suspended, as
12 provided in this section, as a result of a refusal to submit
13 to a test. The suspension period commences on the date of the
14 issuance of the notice of suspension.

15 (b) Sustain the suspension of the person's privilege
16 to operate a vessel for a period of 6 months for operating or
17 being in actual physical control of a vessel while under the
18 age of 21 with a blood-alcohol or breath-alcohol level of 0.02
19 percent or higher, or for a period of 1 year if the operating
20 privilege of such person has been previously suspended as a
21 result of operating a vessel while under the age of 21 with a
22 breath-alcohol level of at least 0.02 percent but less than
23 0.08 percent. The suspension period commences on the date of
24 the issuance of the notice of suspension.

25 (10) A request for a formal review hearing or an
26 informal review hearing shall not stay the suspension of the
27 person's privilege to operate a vessel. If the department
28 fails to schedule the formal review hearing to be held within
29 30 days after receipt of the request therefor, the department
30 shall invalidate the suspension.

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1 (11) The formal review hearing may be conducted upon
2 a review of the reports of a law enforcement officer or
3 correctional officer, including documents relating to the
4 administration of a breath test or the refusal to take a test.
5 However, as provided in subsection (7), the operator may
6 subpoena the officer or any person who administered a breath
7 test.

8 (12) The formal review hearing and the informal review
9 hearing are exempt from chapter 120. The department may adopt
10 rules for conducting reviews under this section.

11 (13) A person may appeal any decision of the
12 department sustaining a suspension of his or her privilege to
13 operate a vessel by a petition for writ of certiorari to the
14 circuit court in the county wherein such person resides or
15 wherein a formal or informal review was conducted. However, an
16 appeal does not stay the suspension. This subsection does not
17 provide for a de novo appeal.

18 (14) By applying for and accepting and using a boater
19 safety identification card, a person under the age of 21 years
20 who holds the card is deemed to have expressed his or her
21 consent to the provisions of this section.

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

30 (16) A violation of this section is neither a boating
31 infraction nor a criminal offense, nor does being detained

1 pursuant to this section constitute an arrest. A violation of
2 this section is subject to the administrative action
3 provisions of this section, which are administered by the
4 department through its administrative processes.
5 Administrative actions taken pursuant to this section shall be
6 recorded in the boating records maintained by the department.
7 This section does not bar prosecution under s. 327.35.

8 Section 4. Subsection (1) of section 327.395, Florida
9 Statutes, is amended to read:

10 327.395 Boater ~~Boating~~ safety identification cards.--

11 (1) Effective January 1, 1999, no ~~Until October 1,~~
12 ~~2001, a person born after September 30, 1980, and on or after~~
13 ~~October 1, 2001, a person~~ under 21 years of age ~~or younger~~ may
14 ~~not~~ operate a vessel powered by a motor of 10 horsepower or
15 greater unless the ~~such~~ person is 16 years of age or older and
16 has in his or her possession aboard the vessel photographic
17 identification and a boater safety identification card issued
18 by the department which shows that he or she has:

19 (a) Completed a department-approved boater education
20 course that meets the minimum 8-hour instruction requirement
21 established by the National Association of State Boating Law
22 Administrators and which includes a written examination
23 covering waterway safety, waterway rules of operation, safety
24 equipment (as required by the Coast Guard), first aid, and
25 CPR;

26 (b) Passed a course equivalency examination approved
27 by the department; or

28 (c) Passed a temporary certificate examination
29 developed or approved by the department.

30 Section 5. This act shall take effect October 1 of the
31 year in which enacted.

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HOUSE SUMMARY

Revises provisions of law relating to boating safety to:
1. Lower the required blood-alcohol level for certain violations of boating safety.
2. Provide a penalty for failure to submit to a breath or urine test.
3. Provide for the suspension of the privilege to operate a vessel for described persons under 21 years of age.
4. Require a boater safety identification card to operate a boat for persons who are under 21 years of age.