

1 A bill to be entitled
2 An act relating to boating safety and emergency
3 responses; creating the "Kelly Johnson Act";
4 amending s. 316.003, F.S.; redefining the term
5 "authorized emergency vehicles" to include
6 reference to vehicles of the Department of
7 Environmental Protection; amending s. 327.02,
8 F.S.; redefining the term "operate" with
9 respect to vessels; amending s. 327.03, F.S.;
10 directing the Department of Highway Safety and
11 Motor Vehicles to keep certain records and
12 perform certain duties; amending s. 327.352,
13 F.S.; revising language with respect to the
14 operation of a vessel while under the
15 influence; providing legislative intent;
16 restoring a penalty for refusal to submit to
17 chemical or physical testing; conforming
18 provisions relating to boating under the
19 influence to driving under the influence;
20 creating s. 327.35215, F.S.; restoring a
21 penalty for refusal to submit to chemical
22 testing; amending s. 327.50, F.S.; revising
23 language with respect to vessel safety
24 regulations and equipment and lighting
25 requirements to clarify responsibility for
26 compliance; creating s. 327.355, F.S.;
27 prohibiting the operation of vessels by persons
28 under 21 years of age who have consumed
29 alcoholic beverages; providing penalties;
30 defining the term "conviction" for purposes of
31 the section; amending s. 327.731, F.S.;

1 increasing the number of convictions necessary
2 for mandatory education; clarifying compliance
3 procedures; providing effective dates.
4

5 Be It Enacted by the Legislature of the State of Florida:
6

7 Section 1. Short title.--This act shall be known as
8 the "Kelly Johnson Act."

9 Section 2. Subsection (1) of section 316.003, Florida
10 Statutes, is amended to read:

11 316.003 Definitions.--The following words and phrases,
12 when used in this chapter, shall have the meanings
13 respectively ascribed to them in this section, except where
14 the context otherwise requires:

15 (1) AUTHORIZED EMERGENCY VEHICLES.--Vehicles of the
16 fire department (fire patrol), police vehicles, and such
17 ambulances and emergency vehicles of municipal departments,
18 public service corporations operated by private corporations,
19 the Department of Environmental Protection, and the Department
20 of Transportation as are designated or authorized by their
21 respective ~~the~~ department or the chief of police of an
22 incorporated city or any sheriff of any of the various
23 counties.

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

26 327.02 Definitions of terms used in this chapter and
27 in chapter 328.--As used in this chapter and in chapter 328,
28 unless the context clearly requires a different meaning, the
29 term:

30 (24) "Operate" means to be in charge of or in command
31 of or in ~~the~~ actual physical control of a vessel upon the

1 waters of this state, or to exercise control over or to have
2 responsibility for a vessel's navigation or safety upon the
3 waters of this state, or to control or steer a vessel being
4 towed by another vessel upon the waters of the state; however,
5 this definition shall not apply to a person on a vessel that
6 is docked or otherwise made fast to the shore.

7 Section 4. Effective January 1, 1999, subsection (2)
8 of section 327.03, Florida Statutes, is amended to read:

9 327.03 Administration of vessel registration and
10 titling laws; records.--

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

14 (a) Vessel registration and titling as required.

15 (b) Suspension of the vessel operating privilege under
16 ss. 327.35-327.355.

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

19 327.352 Breath, blood, and urine tests for alcohol,
20 chemical substances, or controlled substances; implied
21 consent; right to refuse.--

22 (1)(a) The Legislature declares that the operation of
23 a vessel is a privilege that must be exercised in a reasonable
24 manner. In order to protect the public health and safety, it
25 is essential that a lawful and effective means of reducing the
26 incidence of boating while impaired or intoxicated be
27 established. Therefore, any person who accepts the privilege
28 extended by the laws of this state of operating a vessel
29 within this state is, by so operating such vessel, deemed to
30 have given his or her consent to submit to an approved
31 chemical test or physical test including, but not limited to,

1 an infrared light test of his or her breath for the purpose of
2 determining the alcoholic content of his or her blood or
3 breath, and to a urine test for the purpose of detecting the
4 presence of chemical substances as set forth in s. 877.111 or
5 controlled substances, if the person is lawfully arrested for
6 any offense allegedly committed while the person was operating
7 a vessel while under the influence of alcoholic beverages,
8 chemical substances, or controlled substances. The chemical
9 or physical breath test must be incidental to a lawful arrest
10 and administered at the request of a law enforcement officer
11 who has reasonable cause to believe such person was operating
12 the vessel within this state while under the influence of
13 alcoholic beverages. The urine test must be incidental to a
14 lawful arrest and administered at a detention facility or any
15 other facility, mobile or otherwise, which is equipped to
16 administer such tests at the request of a law enforcement
17 officer who has reasonable cause to believe such person was
18 operating a vessel within this state while under the influence
19 of controlled substances. The urine test shall be administered
20 at a detention facility or any other facility, mobile or
21 otherwise, which is equipped to administer such tests in a
22 reasonable manner that will ensure the accuracy of the
23 specimen and maintain the privacy of the individual involved.
24 The administration of one type of test does not preclude the
25 administration of another type of test. The person shall be
26 told that his or her failure to submit to any lawful test of
27 his or her breath or urine, or both, will result in a civil
28 penalty of \$500. The refusal to submit to a chemical or
29 physical breath or urine test upon the request of a law
30 enforcement officer as provided in this section is admissible
31 into evidence in any criminal proceeding.

1 (c) Any person who accepts the privilege extended by
2 the laws of this state of operating a vessel within this state
3 is, by operating such vessel, deemed to have given his or her
4 consent to submit to an approved blood test for the purpose of
5 determining the alcoholic content of the blood or a blood test
6 for the purpose of determining the presence of chemical
7 substances or controlled substances as provided in this
8 section if there is reasonable cause to believe the person was
9 operating a vessel while under the influence of alcoholic
10 beverages or chemical or controlled substances and the person
11 appears for treatment at a hospital, clinic, or other medical
12 facility and the administration of a breath or urine test is
13 impractical or impossible. As used in this paragraph, the term
14 "other medical facility" includes an ambulance or other
15 medical emergency vehicle. The blood test shall be performed
16 in a reasonable manner. Any person who is incapable of
17 refusal by reason of unconsciousness or other mental or
18 physical condition is deemed not to have withdrawn his or her
19 consent to such test. Any person who is capable of refusal
20 shall be told that his or her failure to submit to such a
21 blood test will result in a civil penalty of \$500. The refusal
22 to submit to a blood test upon the request of a law
23 enforcement officer shall be admissible in evidence in any
24 criminal proceeding.

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

27 327.35215 Penalty for failure to submit to test.--
28 (1) A person who is lawfully arrested for an alleged
29 violation of s. 327.35 and who refuses to submit to a blood
30 test, breath test, or urine test pursuant to s. 327.352 is
31 subject to a civil penalty of \$500.

1 (2) When a person refuses to submit to a blood test,
2 breath test, or urine test pursuant to s. 327.352, a law
3 enforcement officer who is authorized to make arrests for
4 violations of this chapter shall file with the clerk of the
5 court, on a form provided by the department, a certified
6 statement that probable cause existed to arrest the person for
7 a violation of s. 327.35 and that the person refused to submit
8 to a test as required by s. 327.352. Along with the statement,
9 the officer must also submit to a sworn statement on a form
10 provided by the department that the person has been advised of
11 both the penalties for failure to submit to the blood, breath,
12 or urine test and the procedure for requesting a hearing.

13 (3) A person who has been advised of the penalties
14 pursuant to subsection (2) may, within 30 days afterwards,
15 request a hearing before a county court judge. A request for a
16 hearing tolls the period for payment of the civil penalty,
17 and, if assessment of the civil penalty is sustained by the
18 hearing and any subsequent judicial review, the civil penalty
19 must be paid within 30 days after final disposition. The clerk
20 of the court shall notify the department of the final
21 disposition of all actions filed under this section.

22 (4) It is unlawful for any person who has not paid a
23 civil penalty imposed pursuant to this section, or who has not
24 requested a hearing with respect to the civil penalty, within
25 30 calendar days after receipt of notice of the civil penalty
26 to operate a vessel upon the waters of this state. Violation
27 of this subsection is a misdemeanor of the first degree,
28 punishable as provided in s. 775.082 or s. 775.083.

29 (5) Moneys collected by the clerk of the court
30 pursuant to this section shall be disposed of in the following
31 manner:

1 (a) If the arresting officer was employed or appointed
2 by a state law enforcement agency except the Game and Fresh
3 Water Fish Commission, the moneys shall be deposited into the
4 Marine Resources Conservation Trust Fund.

5 (b) If the arresting officer was employed or appointed
6 by a county or municipal law enforcement agency, the moneys
7 shall be deposited into the law enforcement trust fund of that
8 agency.

9 (c) If the arresting officer was employed or appointed
10 by the Game and Fresh Water Fish Commission, the moneys shall
11 be deposited in the State Game Trust Fund.

12 Section 7. Section 327.50, Florida Statutes, is
13 amended to read:

14 327.50 Vessel safety regulations; equipment and
15 lighting requirements.--

16 (1)(a) The owner and operator of every vessel on the
17 waters of this state shall carry, store, maintain, and use
18 safety equipment in accordance with current United States
19 Coast Guard safety equipment requirements as specified in the
20 Code of Federal Regulations, unless expressly exempted by the
21 department ~~state law~~.

22 (b) No person shall operate a vessel less than 26 feet
23 in length on the waters of this state unless every person
24 under 6 years of age on board ~~the a motorboat, sailboat, or~~
25 vessel ~~is wearing which measures less than 26 feet in length~~
26 ~~shall wear~~ a type I, type II, or type III Coast Guard approved
27 personal flotation device while such ~~motorboat, sailboat, or~~
28 vessel is underway. For the purpose of this section,
29 "underway" shall mean at all times except when a ~~motorboat,~~
30 ~~sailboat, or~~ vessel is anchored, moored, made fast to the
31 shore, or aground.

1 (2) No person shall operate a vessel on the waters of
2 this state unless said vessel is equipped with properly
3 serviceable ~~Every vessel on the waters of this state shall~~
4 ~~display the~~ lights and shapes required by the navigation
5 rules.

6 (3) The use of sirens or flashing, occulting, or
7 revolving ~~red or blue emergency~~ lights on any vessel is
8 prohibited, except as expressly provided in the navigation
9 rules or annexes thereto ~~on a vessel operated by a law~~
10 ~~enforcement officer or fire protection officer in the~~
11 ~~performance of his or her official duties or on a vessel~~
12 ~~engaged in emergency rescue activity.~~

13 Section 8. Section 327.355, Florida Statutes, is
14 created to read:

15 327.355 Operation of vessels by persons under 21 years
16 of age who have consumed alcoholic beverages.--

17 (1)(a) Notwithstanding s. 327.35, it is unlawful for a
18 person under the age of 21 who has a breath-alcohol level of
19 0.02 percent or higher to operate or be in actual physical
20 control of a vessel.

21 (b) A law enforcement officer who has probable cause
22 to believe that a vessel is being operated by or is in the
23 actual physical control of a person who is under the age of 21
24 while under the influence of alcoholic beverages or who has
25 any breath-alcohol level may lawfully detain such a person and
26 may request that person to submit to a test to determine his
27 or her breath-alcohol level. If the person under the age of 21
28 refuses to submit to such testing, the law enforcement officer
29 shall warn the person that failure to submit to the breath
30 test will result in the required performance of 50 hours of
31 public service and that his or her vessel operating privilege

1 will be suspended until the public service is performed.
2 Failure or refusal to submit to a breath test after this
3 warning is a violation of this section.

4 (2) Any person under the age of 21 who accepts the
5 privilege extended by the laws of this state of operating a
6 vessel upon the waters of this state, by so operating such
7 vessel, is deemed to have expressed his or her consent to the
8 provisions of this section.

9 (3) A breath test to determine breath-alcohol level
10 pursuant to this section may be conducted as authorized by s.
11 316.1932 or s. 327.352, or by a preliminary alcohol screening
12 test device listed in the United States Department of
13 Transportation's conforming-product list of evidential
14 breath-measurement devices. The reading from such a device is
15 admissible in evidence in any trial or hearing.

16 (4) A violation of this section is a noncriminal
17 infraction and being detained pursuant to this section does
18 not constitute an arrest. This section does not bar
19 prosecution under s. 327.35 and the penalties provided herein
20 shall be imposed in addition to any other penalty provided for
21 boating under the influence or for refusal to submit to
22 testing.

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

25 (a) The court shall order the defendant to participate
26 in public service or a community work project for a minimum of
27 50 hours;

28 (b) The court shall order the defendant to refrain
29 from operating any vessel until the 50 hours of public service
30 or community work has been performed; and
31

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

4 (6) For the purposes of this section, "conviction"
5 means a finding of guilt or the acceptance of a plea of guilty
6 or nolo contendere, regardless of whether or not adjudication
7 was withheld. Notwithstanding the provisions of s. 948.01, no
8 court may suspend, defer, or withhold imposition of sentence
9 for any violation of this section. Any person who operates any
10 vessel on the waters of this state while his or her vessel
11 operating privilege is suspended pursuant to this section
12 commits a misdemeanor of the first degree, punishable as
13 provided in s. 775.082 or s. 775.083.

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

16 327.731 Mandatory education for violators.--

17 (1) Every ~~The court shall require any~~ person convicted
18 of a criminal violation of this chapter, every ~~any~~ person
19 convicted of a noncriminal infraction under this chapter if
20 the infraction resulted in a reportable boating accident, and
21 every ~~any~~ person convicted of two ~~a~~ noncriminal infractions
22 infraction as defined in s. 327.73(1)(h) through (k), (m)
23 through (p), (s), and (t), said infractions occurring within a
24 12-month period, must~~(f) through (n), excepting (j), to:~~

25 (a) Enroll in, attend, and successfully complete, at
26 his or her own expense, a boating safety course that meets
27 minimum standards established by the department by rule;
28 however, the department may provide by rule for waivers of the
29 attendance requirement for violators residing in areas where
30 classroom presentation of the course is not available;
31

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

3 (c) Refrain from operating a vessel until he or she
4 has filed the proof of successful completion of the course
5 with the ~~court and the~~ department.
6

7 Any person who has successfully completed an approved boating
8 course shall be exempt from these provisions upon showing
9 proof to the ~~court and the~~ department as specified in
10 paragraph (b).

11 (2) For the purposes of this section, "conviction"
12 means a finding of guilt, or the acceptance of a plea of
13 guilty or nolo contendere, regardless of whether or not
14 adjudication was withheld or whether imposition of sentence
15 was withheld, deferred, or suspended. Any person who operates
16 a vessel on the waters of this state in violation of the
17 provisions of this section is guilty of a misdemeanor of the
18 second degree, punishable as provided in s. 775.082 or s.
19 775.083.

20 (3) The department shall print on the reverse side of
21 the defendant's copy of the boating citation a notice of the
22 provisions of this section. Upon conviction, the clerk of the
23 court shall notify the defendant that it is unlawful for him
24 or her to operate any vessel until he or she has complied with
25 this section, but failure of the clerk of the court to provide
26 such a notice shall not be a defense to a charge of unlawful
27 operation of a vessel under subsection (2).

28 Section 10. Except as otherwise provided herein, this
29 act shall take effect upon becoming a law.
30
31