

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 provisions 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; amending s. 327.35, F.S.; providing  
4 legislative intent; providing effective dates.  
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6 Be It Enacted by the Legislature of the State of Florida:  
7

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

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

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

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

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

27 327.02 Definitions of terms used in this chapter and  
28 in chapter 328.--As used in this chapter and in chapter 328,  
29 unless the context clearly requires a different meaning, the  
30 term:  
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1           (24) "Operate" means to be in charge of or in command  
2 of or in the actual physical control of a vessel upon the  
3 waters of this state, or to exercise control over or to have  
4 responsibility for a vessel's navigation or safety while the  
5 vessel is underway upon the waters of this state, or to  
6 control or steer a vessel being towed by another vessel upon  
7 the waters of the state; provided, however, that this  
8 definition shall not apply to a person on a vessel that is  
9 docked or otherwise made fast to the shore and shall not apply  
10 to a vessel owner or operator who designates a driver pursuant  
11 to s. 327.35.

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

14           327.03 Administration of vessel registration and  
15 titling laws; records.--

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

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

20           (b) Suspension of the vessel operating privilege under  
21 ss. 327.35-327.355.

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

24           327.352 Breath, blood, and urine tests for alcohol,  
25 chemical substances, or controlled substances; implied  
26 consent; right to refuse.--

27           (1)(a) The Legislature declares that the operation of  
28 a vessel is a privilege that must be exercised in a reasonable  
29 manner. In order to protect the public health and safety, it  
30 is essential that a lawful and effective means of reducing the  
31 incidence of boating while impaired or intoxicated be

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

1 his or her breath or urine, or both, will result in a civil  
2 penalty of \$500. The refusal to submit to a chemical or  
3 physical breath or urine test upon the request of a law  
4 enforcement officer as provided in this section is admissible  
5 into evidence in any criminal proceeding.

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

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

1           327.35215 Penalty for failure to submit to test.--

2           (1) A person who is lawfully arrested for an alleged  
3 violation of s. 327.35 and who refuses to submit to a blood  
4 test, breath test, or urine test pursuant to s. 327.352 is  
5 subject to a civil penalty of \$500.

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

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

27           (4) It is unlawful for any person who has not paid a  
28 civil penalty imposed pursuant to this section, or who has not  
29 requested a hearing with respect to the civil penalty, within  
30 30 calendar days after receipt of notice of the civil penalty  
31 to operate a vessel upon the waters of this state. Violation

1 of this subsection is a misdemeanor of the first degree,  
2 punishable as provided in s. 775.082 or s. 775.083.

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

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

10 (b) If the arresting officer was employed or appointed  
11 by a county or municipal law enforcement agency, the moneys  
12 shall be deposited into the law enforcement trust fund of that  
13 agency.

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

17 Section 7. Section 327.50, Florida Statutes, is  
18 amended to read:

19 327.50 Vessel safety regulations; equipment and  
20 lighting requirements.--

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

27 (b) No person shall operate a vessel less than 26 feet  
28 in length on the waters of this state unless every person  
29 under 6 years of age on board ~~the a motorboat, sailboat, or~~  
30 vessel ~~is wearing which measures less than 26 feet in length~~  
31 ~~shall wear~~ a type I, type II, or type III Coast Guard approved

1 personal flotation device while such ~~motorboat, sailboat, or~~  
2 vessel is underway. For the purpose of this section,  
3 "underway" shall mean at all times except when a ~~motorboat,~~  
4 ~~sailboat, or~~ vessel is anchored, moored, made fast to the  
5 shore, or aground.

6 (2) No person shall operate a vessel on the waters of  
7 this state unless said vessel is equipped with properly  
8 serviceable ~~Every vessel on the waters of this state shall~~  
9 ~~display the~~ lights and shapes required by the navigation  
10 rules.

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

18 Section 8. Section 327.355, Florida Statutes, is  
19 created to read:

20 327.355 Operation of vessels by persons under 21 years  
21 of age who have consumed alcoholic beverages.--

22 (1)(a) Notwithstanding s. 327.35, it is unlawful for a  
23 person under the age of 21 who has a breath-alcohol level of  
24 0.02 percent or higher to operate or be in actual physical  
25 control of a vessel.

26 (b) A law enforcement officer who has probable cause  
27 to believe that a vessel is being operated by or is in the  
28 actual physical control of a person who is under the age of 21  
29 while under the influence of alcoholic beverages or who has  
30 any breath-alcohol level may lawfully detain such a person and  
31 may request that person to submit to a test to determine his



1 or her breath-alcohol level. If the person under the age of 21  
2 refuses to submit to such testing, the law enforcement officer  
3 shall warn the person that failure to submit to the breath  
4 test will result in the required performance of 50 hours of  
5 public service and that his or her vessel operating privilege  
6 will be suspended until the public service is performed.  
7 Failure or refusal to submit to a breath test after this  
8 warning is a violation of this section.

9 (2) Any person under the age of 21 who accepts the  
10 privilege extended by the laws of this state of operating a  
11 vessel upon the waters of this state, by so operating such  
12 vessel, is deemed to have expressed his or her consent to the  
13 provisions of this section.

14 (3) A breath test to determine breath-alcohol level  
15 pursuant to this section may be conducted as authorized by s.  
16 316.1932 or s. 327.352, or by a preliminary alcohol screening  
17 test device listed in the United States Department of  
18 Transportation's conforming-product list of evidential  
19 breath-measurement devices. The reading from such a device is  
20 admissible in evidence in any trial or hearing.

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

28 (5) Any person who is convicted of a violation of  
29 subsection (1) shall be punished as follows:  
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1           (a) The court shall order the defendant to participate  
2 in public service or a community work project for a minimum of  
3 50 hours;

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

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

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

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

22           327.731 Mandatory education for violators.--

23           (1) Every ~~The court shall require~~ any person convicted  
24 of a criminal violation of this chapter, every ~~any~~ person  
25 convicted of a noncriminal infraction under this chapter if  
26 the infraction resulted in a reportable boating accident, and  
27 every ~~any~~ person convicted of two ~~a~~ noncriminal infractions  
28 infraction as defined in s. 327.73(1)(h) through (k), (m)  
29 through (p), (s), and (t), said infractions occurring within a  
30 12-month period, must(f) through (n), ~~excepting (j), to:~~

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

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

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

12  
13 Any person who has successfully completed an approved boating  
14 course shall be exempt from these provisions upon showing  
15 proof to the ~~court and the~~ department as specified in  
16 paragraph (b).

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

26           (3) The department shall print on the reverse side of  
27 the defendant's copy of the boating citation a notice of the  
28 provisions of this section. Upon conviction, the clerk of the  
29 court shall notify the defendant that it is unlawful for him  
30 or her to operate any vessel until he or she has complied with  
31 this section, but failure of the clerk of the court to provide

1 such a notice shall not be a defense to a charge of unlawful  
2 operation of a vessel under subsection (2).

3 Section 10. Subsection (10) is added to section  
4 327.35, Florida Statutes, to read:

5 327.35 Boating under the influence; penalties.--  
6 (10) It is the intent of the Legislature to encourage  
7 boaters to have a "designated driver" who does not consume  
8 alcoholic beverages.

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

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