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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:
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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.

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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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