

By Senator King

8-960-00

1                                   A bill to be entitled  
2           An act relating to boating safety; amending s.  
3           316.193, F.S.; including certain  
4           alcohol-related boating offenses in offenses  
5           that are considered previous offenses for  
6           purposes of penalties for the offense of  
7           driving under the influence; amending s.  
8           316.635, F.S.; revising provisions related to  
9           the jurisdiction of courts over minors who  
10          commit traffic or boating violations; amending  
11          s. 318.32; empowering hearing officers to hear  
12          cases involving boating violations; amending s.  
13          327.02, F.S.; revising definitions; amending s.  
14          327.04, F.S.; authorizing the Fish and Wildlife  
15          Conservation Commission to adopt rules;  
16          amending s. 327.22, F.S.; revising provisions  
17          relating to the regulations of vessels in  
18          restricted areas by local governments; creating  
19          s. 327.303, F.S.; prescribing accident report  
20          forms to be used for boating accidents;  
21          amending s. 327.32, F.S.; establishing a  
22          standard of care for vessel operators to limit  
23          liability; amending s. 327.33, F.S.; revising  
24          provisions relating to vessel operation in the  
25          vicinity of a divers-down flag; amending s.  
26          861.065, F.S.; revising provisions relating to  
27          the design and display of divers-down flags;  
28          amending s. 327.35, F.S.; requiring certain  
29          persons convicted of boating under the  
30          influence to have evaluations and complete  
31          substance-abuse-treatment programs; providing

1 an exemption for boaters with designated  
2 drivers; amending s. 327.355, F.S.; conforming  
3 a reference; amending s. 327.36, F.S.; revising  
4 terminology regarding blood and breath-alcohol  
5 levels; amending s. 327.37, F.S.; revising  
6 personal flotation device requirements for  
7 water skiing, parasailing, or aquaplaning  
8 participants; amending s. 327.39, F.S.;  
9 revising requirements for the operation of  
10 personal watercraft relating to flotation  
11 devices, reckless or careless operation, and  
12 minimum age for operation; prohibiting the  
13 lease, hiring, or rental to certain persons;  
14 providing a penalty; amending s. 327.395, F.S.;  
15 revising the age limits regarding boating  
16 safety identification card requirements;  
17 amending ss. 327.40 and 327.41, F.S.; revising  
18 the requirements for placing safety and  
19 navigational markers on state waters; amending  
20 s. 327.46, F.S.; revising provisions relating  
21 to the authority to establish restricted areas;  
22 creating s. 327.49, F.S.; authorizing certain  
23 testing of vessels and vessel motors on the  
24 waters of the state; amending s. 327.54, F.S.;  
25 revising requirements for leasing, hiring, or  
26 renting of vessels by liveries, relating to  
27 prerenal or preride instruction, minimum age  
28 for rental, safety information and instruction,  
29 and limitation of liability; requiring liveries  
30 to carry certain insurance coverage; providing  
31 a penalty; amending s. 327.72, F.S.; extending

1 the time within which to pay certain penalties  
2 without incurring further sanctions; amending  
3 s. 327.73, F.S.; revising penalties for vessel  
4 laws violations; providing additional court  
5 costs; providing for alternative penalties;  
6 amending s. 327.731, F.S.; requiring certain  
7 persons convicted of divers-down flag  
8 violations to attend a boating safety course;  
9 creating s. 327.732, F.S.; providing penalties  
10 for minors convicted of boating violations;  
11 amending ss. 328.48, 328.56, 328.70, 328.72,  
12 F.S.; conforming provisions; requiring the  
13 registration number of antique vessels to be  
14 permanently attached to each side of the  
15 forward half of the vessels; amending s.  
16 328.76, F.S.; limiting the use of personal  
17 watercraft registration fees; amending s.  
18 713.78, F.S.; redefining the term "vessel";  
19 amending s. 938.17, F.S.; conforming  
20 provisions; assessing a court-cost charge to  
21 certain persons convicted of boating offenses;  
22 amending s. 947.146, F.S.; providing that  
23 inmates convicted of BUI manslaughter who are  
24 also habitual offenders are ineligible for  
25 control release; amending s. 985.05, F.S.;  
26 providing that the clerk of the court destroy  
27 certain records of boating violations and  
28 forward certain boating-violation records to  
29 the Fish and Wildlife Conservation Commission;  
30 amending s. 985.212, F.S.; providing for the  
31 fingerprinting of juvenile boating violators;

1 providing that such records are public records;  
2 providing an effective date.

3

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

5

6 Section 1. Subsection (6) of section 316.193, Florida  
7 Statutes, is amended to read:

8 316.193 Driving under the influence; penalties.--

9 (6) With respect to any person convicted of a  
10 violation of subsection (1), regardless of any penalty imposed  
11 pursuant to subsection (2), subsection (3), or subsection (4):

12 (a) For the first conviction, the court shall place  
13 the defendant on probation for a period not to exceed 1 year  
14 and, as a condition of such probation, shall order the  
15 defendant to participate in public service or a community work  
16 project for a minimum of 50 hours; or the court may order  
17 instead, that any defendant pay an additional fine of \$10 for  
18 each hour of public service or community work otherwise  
19 required, if, after consideration of the residence or location  
20 of the defendant at the time public service or community work  
21 is required, payment of the fine is in the best interests of  
22 the state. However, the total period of probation and  
23 incarceration may not exceed 1 year. The court must also, as a  
24 condition of probation, order the impoundment or  
25 immobilization of the vehicle that was operated by or in the  
26 actual control of the defendant or any one vehicle registered  
27 in the defendant's name at the time of impoundment or  
28 immobilization, for a period of 10 days or for the unexpired  
29 term of any lease or rental agreement that expires within 10  
30 days. The impoundment or immobilization must not occur  
31 concurrently with the incarceration of the defendant. The

1 impoundment or immobilization order may be dismissed in  
2 accordance with paragraph (e), paragraph (f), or paragraph  
3 (g).

4           (b) For the second conviction for an offense that  
5 occurs within a period of 5 years after the date of a prior  
6 conviction for violation of this section, the court shall  
7 order imprisonment for not less than 10 days. The court must  
8 also, as a condition of probation, order the impoundment or  
9 immobilization of the vehicle that was operated by or in the  
10 actual control of the defendant or any one vehicle registered  
11 in the defendant's name at the time of impoundment or  
12 immobilization, for a period of 30 days or for the unexpired  
13 term of any lease or rental agreement that expires within 30  
14 days. The impoundment or immobilization must not occur  
15 concurrently with the incarceration of the defendant. The  
16 impoundment or immobilization order may be dismissed in  
17 accordance with paragraph (e), paragraph (f), or paragraph  
18 (g). At least 48 hours of confinement must be consecutive.

19           (c) For the third or subsequent conviction for an  
20 offense that occurs within a period of 10 years after the date  
21 of a prior conviction for violation of this section, the court  
22 shall order imprisonment for not less than 30 days. The court  
23 must also, as a condition of probation, order the impoundment  
24 or immobilization of the vehicle that was operated by or in  
25 the actual control of the defendant or any one vehicle  
26 registered in the defendant's name at the time of impoundment  
27 or immobilization, for a period of 90 days or for the  
28 unexpired term of any lease or rental agreement that expires  
29 within 90 days. The impoundment or immobilization must not  
30 occur concurrently with the incarceration of the defendant.  
31 The impoundment or immobilization order may be dismissed in

1 accordance with paragraph (e), paragraph (f), or paragraph  
2 (g). At least 48 hours of confinement must be consecutive.

3 (d) The court must at the time of sentencing the  
4 defendant issue an order for the impoundment or immobilization  
5 of a vehicle. Within 7 business days after the date that the  
6 court issues the order of impoundment or immobilization, the  
7 clerk of the court must send notice by certified mail, return  
8 receipt requested, to the registered owner of each vehicle, if  
9 the registered owner is a person other than the defendant, and  
10 to each person of record claiming a lien against the vehicle.

11 (e) A person who owns but was not operating the  
12 vehicle when the offense occurred may submit to the court a  
13 police report indicating that the vehicle was stolen at the  
14 time of the offense or documentation of having purchased the  
15 vehicle after the offense was committed from an entity other  
16 than the defendant or the defendant's agent. If the court  
17 finds that the vehicle was stolen or that the sale was not  
18 made to circumvent the order and allow the defendant continued  
19 access to the vehicle, the order must be dismissed and the  
20 owner of the vehicle will incur no costs. If the court denies  
21 the request to dismiss the order of impoundment or  
22 immobilization, the petitioner may request an evidentiary  
23 hearing.

24 (f) A person who owns but was not operating the  
25 vehicle when the offense occurred, and whose vehicle was  
26 stolen or who purchased the vehicle after the offense was  
27 committed directly from the defendant or the defendant's  
28 agent, may request an evidentiary hearing to determine whether  
29 the impoundment or immobilization should occur. If the court  
30 finds that either the vehicle was stolen or the purchase was  
31 made without knowledge of the offense, that the purchaser had

1 no relationship to the defendant other than through the  
2 transaction, and that such purchase would not circumvent the  
3 order and allow the defendant continued access to the vehicle,  
4 the order must be dismissed and the owner of the vehicle will  
5 incur no costs.

6 (g) The court shall also dismiss the order of  
7 impoundment or immobilization of the vehicle if the court  
8 finds that the family of the owner of the vehicle has no other  
9 private means of transportation.

10 (h) All costs and fees for the impoundment or  
11 immobilization, including the cost of notification, must be  
12 paid by the owner of the vehicle or, if the vehicle is leased  
13 or rented, by the person leasing or renting the vehicle,  
14 unless the impoundment or immobilization order is dismissed.  
15 All provisions of s. 713.78 shall apply.

16 (i) The person who owns a vehicle that is impounded or  
17 immobilized under this paragraph, or a person who has a lien  
18 of record against such a vehicle and who has not requested a  
19 review of the impoundment pursuant to paragraph (e), paragraph  
20 (f), or paragraph (g), may, within 10 days after the date that  
21 person has knowledge of the location of the vehicle, file a  
22 complaint in the county in which the owner resides to  
23 determine whether the vehicle was wrongfully taken or withheld  
24 from the owner or lienholder. Upon the filing of a complaint,  
25 the owner or lienholder may have the vehicle released by  
26 posting with the court a bond or other adequate security equal  
27 to the amount of the costs and fees for impoundment or  
28 immobilization, including towing or storage, to ensure the  
29 payment of such costs and fees if the owner or lienholder does  
30 not prevail. When the bond is posted and the fee is paid as  
31 set forth in s. 28.24, the clerk of the court shall issue a

1 certificate releasing the vehicle. At the time of release,  
2 after reasonable inspection, the owner or lienholder must give  
3 a receipt to the towing or storage company indicating any loss  
4 or damage to the vehicle or to the contents of the vehicle.

5 (j) A defendant, in the court's discretion, may be  
6 required to serve all or any portion of a term of imprisonment  
7 to which the defendant has been sentenced pursuant to this  
8 section in a residential alcoholism treatment program or a  
9 residential drug abuse treatment program. Any time spent in  
10 such a program must be credited by the court toward the term  
11 of imprisonment.

12  
13 For the purposes of this section, any conviction for a  
14 violation of s. 327.35; a previous conviction for the  
15 violation of former s. 316.1931, former s. 327.351, former s.  
16 860.01, or former s. 316.028; or a previous conviction outside  
17 this state for driving or boating under the influence, driving  
18 or boating while intoxicated, driving or boating with an  
19 unlawful blood-alcohol level, driving or boating with an  
20 unlawful breath-alcohol level, or any other similar  
21 alcohol-related or drug-related traffic or boating offense, is  
22 also considered a previous conviction for violation of this  
23 section. However, in satisfaction of the fine imposed pursuant  
24 to this section, the court may, upon a finding that the  
25 defendant is financially unable to pay either all or part of  
26 the fine, order that the defendant participate for a specified  
27 additional period of time in public service or a community  
28 work project in lieu of payment of that portion of the fine  
29 which the court determines the defendant is unable to pay. In  
30 determining such additional sentence, the court shall consider  
31 the amount of the unpaid portion of the fine and the



1 reasonable value of the services to be ordered; however, the  
2 court may not compute the reasonable value of services at a  
3 rate less than the federal minimum wage at the time of  
4 sentencing.

5 Section 2. Section 316.635, Florida Statutes, is  
6 amended to read:

7 316.635 Courts having jurisdiction over traffic  
8 violations; powers relating to custody and detention of  
9 minors.--

10 (1) A court which has jurisdiction over traffic and  
11 boating violations shall have original jurisdiction in the  
12 case of any minor who is alleged to have committed a violation  
13 of law or of a county or municipal ordinance pertaining to the  
14 operation of a motor vehicle or vessel; however, any traffic  
15 or boating offense that is punishable by law as a felony shall  
16 be under the jurisdiction of the circuit court.

17 (2) If a minor is arrested for the commission of a  
18 criminal traffic or boating offense and transportation is  
19 necessary, the minor shall not be placed in any police car or  
20 other vehicle which at the same time contains an adult under  
21 arrest, except upon special order of the circuit court.  
22 However, if the minor is alleged to have participated with an  
23 adult in the same offense or transaction, the minor may be  
24 transported in the same vehicle with the adult.

25 (3) If a minor is taken into custody for a criminal  
26 traffic or boating offense or a violation of chapter 322 and  
27 the minor does not demand to be taken before a magistrate, the  
28 arresting officer or booking officer shall immediately notify,  
29 or cause to be notified, the minor's parents, guardian, or  
30 responsible adult relative of the action taken. After making  
31

1 every reasonable effort to give notice, the arresting officer  
2 or booking officer may:

3 (a) Issue a notice to appear pursuant to chapter 901  
4 and release the minor to a parent, guardian, responsible adult  
5 relative, or other responsible adult;

6 (b) Issue a notice to appear pursuant to chapter 901  
7 and release the minor pursuant to s. 903.06;

8 (c) Issue a notice to appear pursuant to chapter 901  
9 and deliver the minor to an appropriate substance abuse  
10 treatment or rehabilitation facility or refer the minor to an  
11 appropriate medical facility as provided in s. 901.29. If the  
12 minor cannot be delivered to an appropriate substance abuse  
13 treatment or rehabilitation facility or medical facility, the  
14 arresting officer may deliver the minor to an appropriate  
15 intake office of the Department of Juvenile Justice, which  
16 shall take custody of the minor and make any appropriate  
17 referrals; or

18 (d) If the violation constitutes a felony and the  
19 minor cannot be released pursuant to s. 903.03, transport and  
20 deliver the minor to an appropriate Department of Juvenile  
21 Justice intake office. Upon delivery of the minor to the  
22 intake office, the department shall assume custody and proceed  
23 pursuant to chapter 984 or chapter 985.

24  
25 If action is not taken pursuant to paragraphs (a)-(d), the  
26 minor shall be delivered to the Department of Juvenile  
27 Justice, and the department shall make every reasonable effort  
28 to contact the parents, guardian, or responsible adult  
29 relative to take custody of the minor. If there is no parent,  
30 guardian, or responsible adult relative available, the  
31 department may retain custody of the minor for up to 24 hours.

1           (4) A minor who willfully fails to appear before any  
2 court or judicial officer as required by written notice to  
3 appear is guilty of contempt of court. Upon a finding by a  
4 court, after notice and a hearing, that a minor is in contempt  
5 of court for willful failure to appear pursuant to a valid  
6 notice to appear, the court may:

7           (a) For a first offense, order the minor to serve up  
8 to 5 days in a staff-secure shelter as defined in chapter 984  
9 or chapter 985 or, if space in a staff-secure shelter is  
10 unavailable, in a secure juvenile detention center.

11           (b) For a second or subsequent offense, the court may  
12 order a minor to serve up to 15 days in a staff-secure shelter  
13 or, if space in a staff-secure shelter is unavailable, in a  
14 secure juvenile detention center.

15           Section 3. Subsection (1) of section 318.32, Florida  
16 Statutes, is amended to read:

17           318.32 Jurisdiction; limitations.--

18           (1) Hearing officers shall be empowered to accept  
19 pleas from and decide the guilt or innocence of any person,  
20 adult or juvenile, charged with any civil traffic or boating  
21 infraction and shall be empowered to adjudicate or withhold  
22 adjudication of guilt in the same manner as a county court  
23 judge under the statutes, rules, and procedures presently  
24 existing or as subsequently amended, except that hearing  
25 officers shall not:

26           (a) Have the power to hold a defendant in contempt of  
27 court, but shall be permitted to file a motion for order of  
28 contempt with the appropriate state trial court judge;

29           (b) Hear a case involving a traffic crash or boating  
30 accident resulting in injury or death; or

31

1 (c) Hear a criminal traffic offense case or a case  
2 involving a civil traffic or boating infraction issued in  
3 conjunction with a criminal traffic or boating offense.

4 Section 4. Subsections (4), (20), (21), (22), (24),  
5 (27), (32), and (34) of section 327.02, Florida Statutes, are  
6 amended, and subsection (38) is added to that section to read:

7 327.02 Definitions of terms used in this chapter and  
8 in chapter 328.--As used in this chapter and in chapter 328,  
9 unless the context clearly requires a different meaning, the  
10 term:

11 (4) "Commercial vessel" means:

12 (a) Any vessel primarily engaged in the taking or  
13 landing of saltwater fish or saltwater products or freshwater  
14 fish or freshwater products, or any vessel licensed pursuant  
15 to s. 370.06 from which commercial quantities of saltwater  
16 products are harvested, from within and without the waters of  
17 this state for sale either to the consumer, retail dealer, or  
18 wholesale dealer.

19 (b) Any other vessel, other than a recreational  
20 ~~engaged in any activity wherein a fee is paid by the user,~~  
21 ~~either directly or indirectly, to the owner, operator, or~~  
22 ~~custodian of the vessel.~~

23 (20) "Motorboat" means any vessel that ~~which~~ is  
24 propelled or powered by machinery, whether the machinery is  
25 operating or not ~~and which is used or capable of being used as~~  
26 ~~a means of transportation on water.~~

27 (21) "Navigation rules" means the International  
28 Navigational Rules Act of 1977, 33 U.S.C. appendix following  
29 section 1602, as amended, and including all annexes in effect  
30 ~~on June 1, 1983,~~ for vessels on waters outside of established  
31 navigational lines of demarcation as specified in 33 C.F.R.

1 part 80 or the Inland Navigational Rules Act of 1980, 33  
2 U.S.C. sections 2001, et seq., as amended, and including all  
3 annexes in effect on December 24, 1981, for vessels on all  
4 waters not outside of such lines of demarcation.

5 (22) "Recreational ~~Noncommercial~~ vessel" means any  
6 vessel that is manufactured and used primarily for  
7 noncommercial purposes, including one that is leased, rented,  
8 or chartered to a person for that person's noncommercial use  
9 ~~other than a commercial vessel as defined in this section.~~

10 (24) "Operate" means to be in charge of or in command  
11 of or in actual physical control of a vessel upon the waters  
12 of this state, or to exercise control over or to have  
13 responsibility for a vessel's navigation or safety while the  
14 vessel is underway upon the waters of this state, or to  
15 control or steer a vessel being towed by another vessel upon  
16 the waters of the state; ~~provided, however, that this~~  
17 ~~definition shall not apply to a person on a vessel that is~~  
18 ~~docked or otherwise made fast to the shore and shall not apply~~  
19 ~~to a vessel owner or operator who designates a driver pursuant~~  
20 ~~to s. 327.35.~~

21 (27) "Personal watercraft" means a ~~small class A-1 or~~  
22 ~~A-2~~ vessel less than 16 feet in length which uses an outboard  
23 ~~motor, or an~~ inboard motor powering a water jet pump, ~~as its~~  
24 primary source of motive power and which is designed to be  
25 operated by a person sitting, standing, or kneeling on, ~~or~~  
26 ~~being towed behind~~ the vessel, rather than in the conventional  
27 manner of sitting or standing inside the vessel.

28 (32) "~~Regulatory~~ Marker" means any channel mark or  
29 other navigational aid, informational or regulatory mark,  
30 isolated danger mark, safe-water mark, special mark, inland  
31 waters obstruction mark, or mooring buoy ~~anchored or fixed~~

1 ~~marker~~ in, on, or over the waters of this state or its shores  
2 ~~water, or anchored platform on the surface of the water, other~~  
3 ~~than a marker provided in s. 327.40,~~and includes, but is not  
4 limited to, a sign, beacon, buoy, or light ~~bathing beach~~  
5 ~~marker, speed zone marker, information marker, restricted zone~~  
6 ~~marker, congested area marker, or warning marker.~~

7 (34) "Sailboat" means any vessel whose sole source of  
8 propulsion is the ~~natural element (i.e., wind).~~

9 (38) "Livery vessel" means any vessel that is leased,  
10 rented, or chartered to another for consideration.

11 Section 5. Section 327.04, Florida Statutes, is  
12 amended to read:

13 327.04 Rules.--The commission ~~department~~ has authority  
14 to adopt rules pursuant to ss. 120.536(1) and 120.54 to  
15 implement the provisions of this chapter conferring powers or  
16 duties upon it.

17 Section 6. Subsection (1) of section 327.22, Florida  
18 Statutes, is amended to read:

19 327.22 Regulation of vessels by municipalities or  
20 counties.--

21 (1) Nothing in this chapter shall be construed to  
22 prohibit any municipality or county that expends money for the  
23 patrol, regulation, and maintenance of any lakes, rivers, or  
24 waters and for other boating-related activities in such  
25 municipality or county from regulating vessels resident in  
26 such municipality or county. Any county or municipality may  
27 adopt ordinances which provide for enforcement of noncriminal  
28 violations of restricted areas ~~s. 327.33 relating to the~~  
29 ~~careless operation of a vessel~~ which result ~~results~~ in the  
30 endangering or damaging of property, by citation mailed to  
31 registered owner of the vessel. Any such ordinance shall apply

1 only in legally established ~~designated~~ restricted areas which  
2 are properly marked pursuant to s. 327.40 and s. 327.41 ~~and in~~  
3 ~~need of shoreline protection~~. Any county and the  
4 municipalities located within the county may jointly regulate  
5 vessels.

6 Section 7. Section 327.303, Florida Statutes, is  
7 created to read:

8 327.303 Accident report forms.--

9 (1) The commission shall prepare and, upon request,  
10 supply to police departments, sheriffs, and other appropriate  
11 agencies or individuals forms for accident reports as required  
12 in this chapter. The forms must provide for sufficiently  
13 detailed information to disclose, with reference to a boating  
14 accident, the cause and conditions then existing and the  
15 persons and vessels involved. Accident report forms may  
16 require the policy numbers of liability insurance and the  
17 names of carriers covering any vessel involved in the  
18 accident.

19 (2) Each written accident report must be made on the  
20 appropriate form approved by the commission and must contain  
21 all the information required unless it is not available.  
22 Notwithstanding any other provisions of this section, an  
23 accident report produced electronically by a law enforcement  
24 officer must, at a minimum, contain the same information as is  
25 called for on forms approved by the commission.

26 Section 8. Section 327.32, Florida Statutes, is  
27 amended to read:

28 327.32 Vessel declared dangerous instrumentality;  
29 civil liability.--All vessels, of whatever classification, are  
30 ~~shall be~~ considered dangerous instrumentalities in this state,  
31 and any operator of a vessel shall, during any utilization of

1 the vessel, exercise the ~~highest~~ highest degree of care, caution, and  
2 circumspection ordinarily exercised by a cautious and prudent  
3 mariner under similar circumstances in order to prevent  
4 injuries to others. The limitation of liability for ~~reckless~~  
5 ~~or careless~~ negligent operation of a vessel shall be governed  
6 by 46 U.S.C., appendix ss. 181-189 ~~confined to the operator in~~  
7 ~~immediate charge of the vessel and not imposed upon the owner~~  
8 ~~of the vessel, unless the owner is the operator or is present~~  
9 ~~in the vessel when any injury or damage is occasioned by the~~  
10 ~~reckless or careless operation of such vessel, whether such~~  
11 ~~recklessness or carelessness consists of a violation of the~~  
12 ~~provisions of the statutes of this state, or disregard in~~  
13 ~~observing such care and such operation as the rules of the~~  
14 ~~common law require.~~

15 Section 9. Subsection (2) of section 327.33, Florida  
16 Statutes, is amended to read:

17 327.33 Reckless or careless operation of vessel.--

18 (2) Any person operating a vessel upon the waters of  
19 this state shall operate the vessel in a reasonable and  
20 prudent manner, having regard for other waterborne traffic,  
21 posted speed and wake restrictions, the presence of a  
22 divers-down flag as defined in s. 327.331 ~~s. 861.065~~, and all  
23 other attendant circumstances so as not to endanger the life,  
24 limb, or property of any person. ~~Any person operating a~~  
25 ~~vessel on a river, inlet, or navigation channel shall make a~~  
26 ~~reasonable effort to maintain a distance of 100 feet from any~~  
27 ~~divers-down flag.~~ The failure to operate a vessel in a manner  
28 described in this subsection constitutes careless operation.  
29 However, vessel wake and shoreline wash resulting from the  
30 reasonable and prudent operation of a vessel shall, absent  
31 negligence, not constitute damage or endangerment to property.



1 Any person who violates the provisions of this subsection  
2 commits ~~is guilty of~~ a noncriminal violation as defined in s.  
3 775.08.

4 Section 10. Section 861.065 is transferred, renumbered  
5 as section 327.331, Florida Statutes, and amended to read:

6 327.331 ~~861.065~~ Divers; definitions; divers-down flag  
7 required; obstruction to navigation of certain waters;  
8 penalty.--

9 (1) As used in this section, the term:

10 (a) "Diver" means any person who is wholly or  
11 partially submerged in the waters of the state and is equipped  
12 with a face mask and snorkel or underwater breathing  
13 apparatus.

14 (b) ~~(2)~~ "Underwater breathing apparatus" means ~~shall~~  
15 ~~mean~~ any apparatus, whether self-contained or connected to a  
16 distant source of air or other gas, whereby a person wholly or  
17 partially submerged in water is enabled to obtain or reuse air  
18 or any other gas or gases for breathing without returning to  
19 the surface of the water.

20 (c) ~~(3)~~ "Divers-down flag" means ~~shall mean~~ a flag that  
21 meets the requirements set forth in subsection (2).

22 (2) A divers-down flag must:

23 (a) Be square or rectangular, and if rectangular, the  
24 length must not be less than the height nor more than 25  
25 percent larger than the height. It must have a wire or other  
26 stiffener to hold it fully unfurled and extended in the  
27 absence of a wind or breeze.

28 (b) Be red with a white diagonal stripe that begins at  
29 the top-staff side of the flag and extends diagonally to the  
30 lower opposite corner. The width of the stripe must be 25  
31 percent of the height of the flag.

1           (c) Be a minimum of 12 by 12 inches if displayed on a  
2 buoy or float towed by the diver and 20 by 24 inches if  
3 displayed from a vessel or structure.

4           (d) If displayed from a vessel, be displayed from the  
5 highest point of the vessel or such other location so that the  
6 visibility of the flag is not obstructed in any direction.~~is~~  
7 ~~either square or rectangular, to approximately 4 units high by~~  
8 ~~5 units long, with a 1-unit diagonal stripe. The divers-down~~  
9 ~~flag shall have a white diagonal stripe on a red background.~~  
10 ~~The stripe shall begin at the top staff-side of the flag and~~  
11 ~~extend diagonally to the opposite lower corner. The flag~~  
12 ~~shall be free-flying and shall be lowered when all divers are~~  
13 ~~aboard or ashore. The minimum size shall be 12 by 12 inches.~~

14           (3)(a)(4) All divers must shall prominently display a  
15 divers-down flag in the area in which the diving occurs, other  
16 than when diving in an area customarily used for swimming  
17 only.

18           (b)(5) A No diver or group of divers may not shall  
19 display one or more divers-down flags on a river, inlet, or  
20 navigation channel, except in case of emergency, in a manner  
21 that which shall unreasonably constitutes ~~constitute~~ a  
22 navigational hazard.

23           (6) Divers must shall make reasonable efforts to stay  
24 within 100 feet of the divers-down flag on rivers, inlets, and  
25 navigation channels. Any person operating a vessel on a river,  
26 inlet, or navigation channel must make a reasonable effort to  
27 maintain a distance of 100 feet from any divers-down flag.

28           (c) Divers must make reasonable efforts to stay within  
29 300 feet of the divers-down flag on all waters other than  
30 rivers, inlets, and navigation channels. Any person operating  
31 a vessel on waters other than a river, inlet, or navigation

1 channel must make a reasonable effort to maintain a distance  
2 of 300 feet from a divers-down flag.

3 (d) Any vessel other than a law enforcement or rescue  
4 vessel that approaches within 100 feet of a divers-down flag  
5 on rivers, inlets, or navigation channels or within 300 feet  
6 of a divers-down flag on waters other than rivers, inlets, or  
7 navigation channels must proceed no faster than is necessary  
8 to maintain headway and steerageway.

9 (e) A divers-down flag must be lowered once all divers  
10 are aboard or ashore. A person may not operate any vessel  
11 displaying a divers-down flag unless the vessel has one or  
12 more divers in the water.

13 (4)(7) Any willful violation of this section is a  
14 noncriminal infraction, punishable as provided in s. 327.73  
15 shall be a misdemeanor of the second degree punishable as  
16 provided by s. 775.082 or s. 775.083.

17 Section 11. Subsections (3), (4), (5), (6), and (10)  
18 of section 327.35, Florida Statutes, are amended to read:

19 327.35 Boating under the influence; penalties;  
20 "designated drivers".--

21 (3) Any person:

22 (a) Who is in violation of subsection (1);

23 (b) Who operates a vessel; and

24 (c) Who, by reason of such operation, causes:

25 1. Damage to the property or person of another commits  
26 a misdemeanor of the first degree, punishable as provided in  
27 s. 775.082 or s. 775.083.

28 2. Serious bodily injury to another, as defined in s.  
29 316.1933, commits a felony of the third degree, punishable as  
30 provided in s. 775.082, s. 775.083, or s. 775.084.

31

1           3. The death of any human being commits BUI  
2 manslaughter, and commits:

3           a. A felony of the second degree, punishable as  
4 provided in s. 775.082, s. 775.083, or s. 775.084.

5           b. A felony of the first degree, punishable as  
6 provided in s. 775.082, s. 775.083, or s. 775.084, if:

7           (I) At the time of the accident, the person knew, or  
8 should have known, that the accident occurred; and

9           (II) The person failed to give information and render  
10 aid as required by s. 327.30 ~~s. 316.062~~.

11

12 This sub-subparagraph does not require that the person knew  
13 that the accident resulted in injury or death.

14           (4) Any person who is convicted of a violation of  
15 subsection (1) and who has a blood-alcohol level or  
16 breath-alcohol level of 0.16 ~~0.20~~ or higher, or any person who  
17 is convicted of a violation of subsection (1) and who at the  
18 time of the offense was accompanied in the vessel by a person  
19 under the age of 18 years, shall be punished:

20           (a) By a fine of:

21           1. Not less than \$500 or more than \$1,000 for a first  
22 conviction.

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

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

27           (b) By imprisonment for:

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

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

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

31

1 For the purposes of this subsection, only the instant offense  
2 is required to be a violation of subsection (1) by a person  
3 who has a blood-alcohol level or breath-alcohol level of 0.16  
4 ~~0.20~~ or higher.

5 (5) In addition to any sentence or fine, the court  
6 shall place any offender convicted of violating this section  
7 on monthly reporting probation and shall require completion of  
8 ~~attendance at~~ a substance abuse course specified by the court,  
9 which must include a psychosocial evaluation of the offender.  
10 ~~If and~~ the agency conducting the course refers ~~may refer~~ the  
11 offender to an authorized substance abuse treatment service  
12 provider for substance abuse ~~evaluation and~~ treatment, in  
13 addition to any sentence or fine imposed under this section,  
14 completion of all such education, evaluation, and treatment is  
15 a condition of reporting probation. The offender shall assume  
16 reasonable costs for such education, evaluation, and  
17 ~~treatment, with completion of all such education, evaluation,~~  
18 ~~and treatment being a condition of reporting probation.~~  
19 Referral to treatment resulting from a psychosocial evaluation  
20 may not be waived without a supporting independent  
21 psychosocial evaluation conducted by an authorized provider of  
22 substance abuse treatment agency appointed by the court, which  
23 shall have ~~and with~~ access to the original psychological  
24 evaluation before the independent psychosocial evaluation is  
25 completed. The court must review both evaluations before  
26 deciding on the request for waiver. The offender shall bear  
27 the full cost of this procedure. The term "substance abuse"  
28 means the abuse of alcohol or any substance named or described  
29 in Schedules I through V of s. 893.03. If an offender who is  
30 referred to treatment under this subsection fails to report  
31 for or complete such treatment or fails to complete the

1 substance abuse education course and evaluation, the agency  
2 conducting the course shall notify the court and the  
3 offender's probation officer of the failure. Upon receipt of  
4 the notice, the court shall order the offender not to operate  
5 any vessel upon the waters of this state for the remainder of  
6 the period of probation.

7 (6) With respect to any person convicted of a  
8 violation of subsection (1), regardless of any other penalty  
9 imposed:

10 (a) For the first conviction, the court shall place  
11 the defendant on probation for a period not to exceed 1 year  
12 and, as a condition of such probation, shall order the  
13 defendant to participate in public service or a community work  
14 project for a minimum of 50 hours. The court must also, as a  
15 condition of probation, order the impoundment or  
16 immobilization of the vessel that was operated by or in the  
17 actual control of the defendant or any one vehicle registered  
18 in the defendant's name at the time of impoundment or  
19 immobilization, for a period of 10 days or for the unexpired  
20 term of any lease or rental agreement that expires within 10  
21 days. The impoundment or immobilization must not occur  
22 concurrently with the incarceration of the defendant. The  
23 impoundment or immobilization order may be dismissed in  
24 accordance with paragraph (e) or paragraph (f). The total  
25 period of probation and incarceration may not exceed 1 year.

26 (b) For the second conviction for an offense that  
27 occurs within a period of 5 years after the date of a prior  
28 conviction for violation of this section, the court shall  
29 order imprisonment for not less than 10 days. The court must  
30 also, as a condition of probation, order the impoundment or  
31 immobilization of the vessel that was operated by or in the

1 actual control of the defendant or any one vehicle registered  
2 in the defendant's name at the time of impoundment or  
3 immobilization, for a period of 30 days or for the unexpired  
4 term of any lease or rental agreement that expires within 30  
5 days. The impoundment or immobilization must not occur  
6 concurrently with the incarceration of the defendant. The  
7 impoundment or immobilization order may be dismissed in  
8 accordance with paragraph (e) or paragraph (f). At least 48  
9 hours of confinement must be consecutive.

10 (c) For the third or subsequent conviction for an  
11 offense that occurs within a period of 10 years after the date  
12 of a prior conviction for violation of this section, the court  
13 shall order imprisonment for not less than 30 days. The court  
14 must also, as a condition of probation, order the impoundment  
15 or immobilization of the vessel that was operated by or in the  
16 actual control of the defendant or any one vehicle registered  
17 in the defendant's name at the time of impoundment or  
18 immobilization, for a period of 90 days or for the unexpired  
19 term of any lease or rental agreement that expires within 90  
20 days. The impoundment or immobilization must not occur  
21 concurrently with the incarceration of the defendant. The  
22 impoundment or immobilization order may be dismissed in  
23 accordance with paragraph (e) or paragraph (f). At least 48  
24 hours of confinement must be consecutive.

25 (d) The court must at the time of sentencing the  
26 defendant issue an order for the impoundment or immobilization  
27 of a vessel. Within 7 business days after the date that the  
28 court issues the order of impoundment, ~~and once again 30~~  
29 ~~business days before the actual impoundment or immobilization~~  
30 ~~of the vessel,~~ the clerk of the court must send notice by  
31 certified mail, return receipt requested, to the registered

1 owner of each vessel, if the registered owner is a person  
2 other than the defendant, and to each person of record  
3 claiming a lien against the vessel.

4 (e) A person who owns but was not operating the vessel  
5 when the offense occurred may submit to the court a police  
6 report indicating that the vessel was stolen at the time of  
7 the offense or documentation of having purchased the vessel  
8 after the offense was committed from an entity other than the  
9 defendant or the defendant's agent. If the court finds that  
10 the vessel was stolen or that the sale was not made to  
11 circumvent the order and allow the defendant continued access  
12 to the vessel, the order must be dismissed and the owner of  
13 the vessel will incur no costs. If the court denies the  
14 request to dismiss the order of impoundment or immobilization,  
15 the petitioner may request an evidentiary hearing.

16 (f) A person who owns but was not operating the vessel  
17 when the offense occurred, and whose vessel was stolen or who  
18 purchased the vessel after the offense was committed directly  
19 from the defendant or the defendant's agent, may request an  
20 evidentiary hearing to determine whether the impoundment or  
21 immobilization should occur. If the court finds that either  
22 the vessel was stolen or the purchase was made without  
23 knowledge of the offense, that the purchaser had no  
24 relationship to the defendant other than through the  
25 transaction, and that such purchase would not circumvent the  
26 order and allow the defendant continued access to the vessel,  
27 the order must be dismissed and the owner of the vessel will  
28 incur no costs.

29 (g) All costs and fees for the impoundment or  
30 immobilization, including the cost of notification, must be  
31 paid by the owner of the vessel or, if the vessel is leased or



1 rented, by the person leasing or renting the vessel, unless  
2 the impoundment or immobilization order is dismissed.

3 (h) The person who owns a vessel that is impounded or  
4 immobilized under this paragraph, or a person who has a lien  
5 of record against such a vessel and who has not requested a  
6 review of the impoundment pursuant to paragraph (e) or  
7 paragraph (f), may, within 10 days after the date that person  
8 has knowledge of the location of the vessel, file a complaint  
9 in the county in which the owner resides to determine whether  
10 the vessel was wrongfully taken or withheld from the owner or  
11 lienholder. Upon the filing of a complaint, the owner or  
12 lienholder may have the vessel released by posting with the  
13 court a bond or other adequate security equal to the amount of  
14 the costs and fees for impoundment or immobilization,  
15 including towing or storage, to ensure the payment of the  
16 costs and fees if the owner or lienholder does not prevail.  
17 When the bond is posted and the fee is paid as set forth in s.  
18 28.24, the clerk of the court shall issue a certificate  
19 releasing the vessel. At the time of release, after reasonable  
20 inspection, the owner or lienholder must give a receipt to the  
21 towing or storage company indicating any loss or damage to the  
22 vessel or to the contents of the vessel.

23 (i) A defendant, in the court's discretion, may be  
24 required to serve all or any portion of a term of imprisonment  
25 to which the defendant has been sentenced pursuant to this  
26 section in a residential alcoholism treatment program or a  
27 residential drug abuse treatment program. Any time spent in  
28 such a program must be credited by the court toward the term  
29 of imprisonment.

30  
31

1 For the purposes of this section, any conviction for a  
2 violation of s. 316.193, a previous conviction for the  
3 violation of former s. 316.1931, former s. 327.351, former s.  
4 860.01, or former s. 316.028, or a previous conviction outside  
5 this state for driving or boating under the influence, driving  
6 or boating while intoxicated, driving or boating with an  
7 unlawful blood-alcohol level, driving or boating with an  
8 unlawful breath-alcohol level, or any other similar  
9 alcohol-related or drug-related traffic or boating offense, is  
10 also considered a previous conviction for violation of this  
11 section.

12 (10) It is the intent of the Legislature to encourage  
13 boaters to have a "designated driver"; therefore, this section  
14 does not apply to a person on a vessel that is docked or  
15 otherwise made fast to the shore and does not apply to a  
16 vessel owner or operator who is not in actual physical control  
17 of the vessel and who has designated a driver who does not  
18 consume any alcoholic beverages, any chemical substance set  
19 forth in s. 877.111, or any substance controlled under chapter  
20 893.

21 Section 12. Paragraph (a) of subsection (1) of section  
22 327.355, Florida Statutes, is amended to read:

23 327.355 Operation of vessels by persons under 21 years  
24 of age who have consumed alcoholic beverages.--

25 (1)(a) Notwithstanding s. 327.35, it is unlawful for a  
26 person under the age of 21 who has a breath-alcohol level of  
27 0.02 ~~percent~~ or higher to operate or be in actual physical  
28 control of a vessel.

29 Section 13. Paragraph (a) of subsection (2) of section  
30 327.36, Florida Statutes, is amended to read:

31

1           327.36 Mandatory adjudication; prohibition against  
2 accepting plea to lesser included offense.--

3           (2)(a) A ~~No~~ trial judge may not accept a plea of  
4 guilty to a lesser offense from a person who is charged with a  
5 violation of s. 327.35, manslaughter resulting from the  
6 operation of a vessel, or vessel homicide and who has been  
7 given a breath or blood test to determine blood or breath  
8 alcohol content, the results of which show a blood-alcohol  
9 level ~~blood or breath-alcohol level~~ ~~breath-alcohol content by~~  
10 ~~weight~~ of 0.16 percent or more.

11           Section 14. Subsection (2) of section 327.37, Florida  
12 Statutes, is amended to read:

13           327.37 Water skis, parasails, and aquaplanes  
14 regulated.--

15           (2)(a) A person may not engage in water skiing,  
16 parasailing, aquaplaning, or any similar activity at any time  
17 between the hours from one-half hour after sunset to one-half  
18 hour before sunrise.

19           (b) A person may not engage in water skiing,  
20 parasailing, aquaplaning, or any similar activity unless such  
21 person is wearing a noninflatable type I, type II, type III,  
22 or ~~noninflatable~~ type V personal flotation device approved by  
23 the United States Coast Guard.

24           Section 15. Section 327.39, Florida Statutes, is  
25 amended to read:

26           327.39 Personal watercraft; additional regulations  
27 ~~regulated~~--

28           (1) A person may not operate a personal watercraft  
29 unless each person riding on or being towed behind such vessel  
30 is wearing a type I, type II, type III, or type V personal  
31

1 flotation device, other than an inflatable device, approved by  
2 the United States Coast Guard.

3 (2) A person operating a personal watercraft equipped  
4 by the manufacturer with a lanyard type engine cutoff switch  
5 must attach such lanyard to his or her person, clothing, or  
6 personal flotation device as is appropriate for the specific  
7 vessel.

8 (3) A person may not operate a personal watercraft at  
9 any time between the hours from one-half hour after sunset to  
10 one-half hour before sunrise. However, an agent or employee of  
11 a fire or emergency rescue service is exempt from this  
12 subsection while performing his or her official duties.

13 (4) A personal watercraft must at all times be  
14 operated in a reasonable and prudent manner. Maneuvers which  
15 unreasonably or unnecessarily endanger life, limb, or  
16 property, including, but not limited to, weaving through  
17 congested vessel traffic, jumping the wake of another vessel  
18 unreasonably or unnecessarily close to such other vessel or  
19 when visibility around such other vessel is obstructed, and  
20 swerving at the last possible moment to avoid collision shall  
21 constitute reckless operation of a vessel, as provided in s.  
22 327.33(1). Any person operating a personal watercraft must  
23 comply with the provisions of s. 327.33.

24 (5)(a) A ~~No~~ person under the age of 14 may not ~~shall~~  
25 operate any ~~a~~ personal watercraft on the waters of this state.

26 (b) A person under the age of 18 may not operate any  
27 leased, hired, or rented personal watercraft on the waters of  
28 this state; except that a person 16 or 17 years of age may  
29 operate a leased, hired, or rented personal watercraft if  
30 accompanied by a person at least 18 years of age, both at the  
31 time of rental and who is on board and in command during all

1 phases of operation, and if both persons have complied with s.  
2 327.395 when applicable.

3 (6)(a) It is unlawful for the owner of any personal  
4 watercraft or any person having charge over or control of a  
5 personal watercraft to authorize or knowingly permit the same  
6 to be operated by a person under 14 years of age in violation  
7 of this section.

8 (b) It is unlawful for the owner of any leased, hired,  
9 or rented personal watercraft or any person having charge over  
10 or control of a leased, hired, or rented personal watercraft  
11 to authorize or knowingly permit the watercraft to be operated  
12 by:

13 1. Any person under 18 years of age in violation of  
14 this section; except that a person 16 or 17 years of age may  
15 operate a leased, hired, or rented personal watercraft if  
16 accompanied by a person at least 18 years of age, both at the  
17 time of rental and who is on board and in command during all  
18 phases of operation, and if both persons have complied with s.  
19 327.395 when applicable; or

20 2. Any person who has not received instruction in the  
21 safe handling of personal watercraft, in compliance with rules  
22 established by the commission, and signed a written statement  
23 attesting to the same. The commission shall establish rules  
24 prescribing the instructions to be given, which shall take  
25 into account the nature and operational characteristics of  
26 personal watercraft and general principles and regulations  
27 pertaining to boating safety.

28 (c) Any person who violates this subsection commits  
29 ~~shall be guilty of~~ a misdemeanor of the second degree,  
30 punishable as provided in s. 775.082 or s. 775.083.

31

1           (7) This section does not apply to a performer engaged  
2 in a professional exhibition or a person preparing to  
3 participate or participating in a regatta, race, marine  
4 parade, tournament, or exhibition held in compliance with s.  
5 327.48.

6           Section 16. Effective July 1, 2001, paragraph (a) of  
7 subsection (5) and paragraph (a) of subsection (6) of section  
8 327.39, Florida Statutes, are amended to read:

9           327.39 Personal watercraft; additional regulations.--

10           (5)(a) A ~~No~~ person under the age of 15 may not ~~14~~  
11 ~~shall~~ operate any personal watercraft on the waters of this  
12 state.

13           (6)(a) It is unlawful for the owner of any personal  
14 watercraft or any person having charge over or control of a  
15 personal watercraft to authorize or knowingly permit the same  
16 to be operated by a person under 15 ~~14~~ years of age in  
17 violation of this section.

18           Section 17. Subsection (1) of section 327.395, Florida  
19 Statutes, is amended to read:

20           327.395 Boating safety identification cards.--

21           (1) Until October 1, 2006 ~~2001~~, a person born after  
22 September 30, 1980, and on or after October 1, 2006 ~~2001~~, a  
23 person 26 ~~21~~ years of age or younger may not operate a vessel  
24 powered by a motor of 10 horsepower or greater unless such  
25 person has in his or her possession aboard the vessel  
26 photographic identification and a boater safety identification  
27 card issued by the commission which shows that he or she has:

28           (a) Completed a commission-approved boater education  
29 course that meets the minimum 8-hour instruction requirement  
30 established by the National Association of State Boating Law  
31 Administrators;

1 (b) Passed a course equivalency examination approved  
2 by the commission; or

3 (c) Passed a temporary certificate examination  
4 developed or approved by the commission.

5 Section 18. Section 327.40, Florida Statutes, is  
6 amended to read:

7 327.40 Uniform waterway markers for safety and  
8 navigation.--

9 (1) Waterways in Florida, ~~unmarked by the Coast Guard,~~  
10 which need marking for safety or navigation purposes, shall be  
11 marked under the United States Aids to Navigation System, 33  
12 C.F.R. part 62. Until December 31, 2003, channel markers and  
13 obstruction markers conforming to the Uniform State Waterway  
14 Marking System, 33 C.F.R. subpart 66.10 may continue to be  
15 used on state waters that are not navigable waters of the  
16 United States Uniform Safety and Navigation System adopted by  
17 ~~the advisory panel of state officials to the Merchant Marine~~  
18 ~~Council of the United States Coast Guard.~~

19 (2) Application for marking inland lakes and state  
20 waters and any navigable waters under concurrent jurisdiction  
21 of the Coast Guard and the division shall be made to the  
22 division, accompanied by a map locating the approximate  
23 placement of markers, a list of the markers to be placed, a  
24 statement of the specifications of the markers, a statement of  
25 ~~concerning~~ the purpose of marking, and the names of persons  
26 responsible for the placement and upkeep of such markers. The  
27 division shall assist the applicant in securing ~~will secure~~  
28 the proper permission from the Coast Guard where required,  
29 make such investigations as needed and issue a permit. The  
30 division shall furnish the applicant with the information  
31 concerning the system adopted and the rules ~~regulations~~

1 existing for placing and maintaining the ~~uniform safety and~~  
2 ~~navigation~~ markers. The division shall keep records of all  
3 approvals given and counsel with individuals, counties,  
4 municipalities, motorboat clubs, or other groups desiring to  
5 mark waterways for safety and navigation purposes in Florida.

6 (3) The placement of any safety or navigation marker  
7 on state submerged lands under this section does not subject  
8 such lands to the lease requirements of chapter 253.

9 Aquaculture leaseholds shall be marked as required by this  
10 section, however, the commission may approve alternative  
11 marking requirements as a condition of the lease pursuant to  
12 s. 253.68. This section notwithstanding, a permit is not  
13 required for the placement of markers required by such a  
14 lease.

15 (4) A person, municipality, county, or other  
16 governmental entity may not place any safety or navigation  
17 markers in, on, or over state waters or shores without a  
18 permit from the division.

19 Section 19. Section 327.41, Florida Statutes, is  
20 amended to read:

21 327.41 Uniform waterway regulatory markers.--

22 (1) The Fish and Wildlife Conservation Commission  
23 shall adopt rules and regulations pursuant to chapter 120  
24 establishing a uniform system of regulatory markers for state  
25 waters which is the Florida Intracoastal Waterway, compatible  
26 with the system of regulatory markers prescribed by the United  
27 States Coast Guard in the United States Aids to Navigational  
28 System, 33 C.F.R., part 62, and ~~shall give due regard to the~~  
29 ~~System of Uniform Waterway Markers approved by the Advisory~~  
30 ~~Panel of State Officials to the Merchant Marine Council,~~  
31 ~~United States Coast Guard.~~



1           (2) Any county or municipality that ~~which~~ has been  
2 granted a restricted area designation, pursuant to s. 327.46,  
3 for a portion of the Florida Intracoastal Waterway within its  
4 jurisdiction or that has adopted a restricted area by  
5 ordinance pursuant to s. 370.12(2)(o), s. 327.22, or s.  
6 327.60, or any other governmental entity that has legally  
7 established a restricted area, may apply to the Fish and  
8 Wildlife Conservation Commission for permission to place  
9 regulatory markers within the restricted area.

10           (3) Application for placing regulatory markers ~~on the~~  
11 ~~Florida Intracoastal Waterway~~ shall be made to the Fish and  
12 Wildlife Conservation Commission, as provided in s. 327.40  
13 ~~Division of Marine Resources, accompanied by a map locating~~  
14 ~~the approximate placement of the markers, a statement of the~~  
15 ~~specification of the markers, a statement of purpose of the~~  
16 ~~markers, and a statement of the city or county responsible for~~  
17 ~~the placement and upkeep of the markers.~~

18           (4) A ~~No~~ person, ~~or~~ municipality, county, or other  
19 governmental entity may not ~~shall~~ place any regulatory markers  
20 in, on, or over any state waters or shores ~~the Florida~~  
21 ~~Intracoastal Waterway~~ without a permit from the Fish and  
22 Wildlife Conservation Commission pursuant to s. 327.40  
23 ~~Division of Marine Resources.~~

24           (5) ~~Aquaculture leaseholds shall be marked as required~~  
25 ~~by this section, and the commission may approve alternative~~  
26 ~~marking requirements as a condition of the lease pursuant to~~  
27 ~~s. 253.68. The provisions of this section notwithstanding, no~~  
28 ~~permit shall be required for the placement of markers required~~  
29 ~~by such a lease.~~

30  
31

1           ~~(6)~~ The commission may ~~is authorized to~~ adopt rules  
2 ~~pursuant to chapter 120 to administer~~ implement the provisions  
3 of this section and s. 327.40.

4           Section 20. Section 327.46, Florida Statutes, is  
5 amended to read:

6           327.46 Restricted areas.--

7           (1)(a) The commission may ~~shall have the authority for~~  
8 ~~establishing, by rule pursuant to chapter 120, establish~~  
9 restricted areas on the waters of the state for any purpose  
10 deemed necessary for the safety of the public, including, but  
11 not limited to, vessel ~~boat~~ speeds and vessel ~~boat~~ traffic  
12 where such restrictions are deemed necessary based on boating  
13 accidents, visibility, hazardous currents or water levels  
14 ~~tides~~, vessel-traffic congestion, or other navigational  
15 hazards. Each such restricted area shall be developed in  
16 consultation and coordination with the governing body of the  
17 county or municipality in which the restricted area is located  
18 and, where required, with United States Coast Guard and the  
19 United States Army Corps of Engineers. Restricted areas shall  
20 be established by the commission in accordance with procedures  
21 under chapter 120.

22           (b) Restricted areas on waters other than the Florida  
23 Intracoastal Waterway may be created only for public safety  
24 purposes, as provided in paragraph (a), by counties and  
25 municipalities by ordinance pursuant to s. 327.60. The  
26 commission may provide consultation and assistance in the  
27 development of such restricted areas and shall, upon request  
28 from a local government, coordinate consultation and  
29 cooperation with the United States Coast Guard and the United  
30 States Army Corps of Engineers.

31

1           (2) It is unlawful for any person to operate a vessel  
2 in a prohibited manner or to carry on any prohibited activity  
3 as defined in this chapter deemed a safety hazard or  
4 interference with navigation as provided above within a  
5 restricted ~~water~~ area that ~~which~~ has been clearly marked by  
6 regulatory markers ~~buoys or some other distinguishing device~~  
7 ~~as a bathing or otherwise restricted area in accordance with~~  
8 ~~and marked as authorized under this chapter.~~ 7 provided, that

9           (3) This section shall not apply in the case of an  
10 emergency or to a law enforcement, fire-fighting, patrol or  
11 rescue vessel owned or operated by a governmental entity  
12 ~~craft.~~

13           Section 21. Section 327.49, Florida Statutes, is  
14 created to read:

15           327.49 Testing vessels and vessel motors.--Subject to  
16 reasonable rules adopted by the commission, manufacturers of  
17 vessels and vessel motors operating test facilities may test  
18 such vessels or vessel motors on the waters to ensure that  
19 they meet generally accepted boating safety standards.

20           Section 22. Section 327.54, Florida Statutes, is  
21 amended to read:

22           327.54 Liveries; safety regulations; penalty.--

23           (1) A livery may not knowingly lease, hire, or rent a  
24 vessel to any person:

25           (a) When the number of persons intending to use the  
26 vessel exceeds the number considered to constitute a maximum  
27 safety load for the vessel as specified on the authorized  
28 persons capacity plate of the vessel.

29           (b) When the horsepower of the motor exceeds the  
30 capacity of the vessel.

31

1 (c) When the vessel does not contain the required  
2 safety equipment required under s. 327.50.

3 (d) When the vessel is not seaworthy.

4 (e) When the vessel is equipped with a motor of 10  
5 horsepower or greater, unless the livery provides ~~there is a~~  
6 ~~prerental or preride instruction that includes:in the safe~~  
7 ~~operation of the vessel by the livery.~~

8 1. Operational characteristics of the vessel to be  
9 rented.

10 2. Safe vessel operation and vessel right-of-way.

11 3. The responsibility of the vessel operator for the  
12 safe and proper operation of the vessel.

13 4. Local characteristics of the waterway where the  
14 vessel will be operated.

15  
16 Any person delivering the information specified in this  
17 paragraph must have successfully completed a boater safety  
18 course approved by the National Association of State Boating  
19 Law Administrators and this state.

20 (f) Unless the livery displays boating safety  
21 information in a place visible to the renting public. The  
22 commission shall prescribe, by rule, the contents and size of  
23 the boating safety information to be displayed.

24 (2) A livery may not knowingly lease, hire, or rent  
25 any vessel powered by a motor of 10 horsepower or greater to  
26 any person who is required to comply with s. 327.395, unless  
27 such person presents a valid boater safety identification card  
28 to the livery.

29 (3) If a vessel is unnecessarily overdue, the livery  
30 shall notify the proper authorities.

31

1           (4)(a) A livery may not lease, hire, or rent a  
2 personal watercraft to any person who is under 18 ~~16~~ years of  
3 age, nor may it permit such personal watercraft to be operated  
4 by a person who is under 18 years of age; except that a livery  
5 may permit a person 16 or 17 years of age to operate such  
6 personal watercraft if that person is accompanied by a person  
7 at least 18 years of age at the time of rental and who is on  
8 board and in command during all phases of operation and if  
9 both have complied with s. 327.395 when applicable ~~lease,~~  
10 ~~hire, or rent such watercraft or other vessel to any other~~  
11 ~~person, unless the livery displays boating safety information~~  
12 ~~about the safe and proper operation of vessels.~~

13           (b) A livery may not knowingly lease, hire, or rent a  
14 personal watercraft to any person who has not ~~and requires a~~  
15 ~~signature by the lessee that he or she has received~~  
16 instruction in the safe handling of ~~the~~ personal watercraft,  
17 in compliance with rules ~~standards~~ established by the  
18 commission, and signed a written statement attesting to the  
19 same department.

20           (5) A livery may not lease, hire, or rent any personal  
21 watercraft or offer to lease, hire, or rent any personal  
22 watercraft unless the livery carries a policy from a licensed  
23 insurance carrier in this state, insuring against any  
24 accident, loss, injury, property damage, or other casualty  
25 caused by or resulting from the operation of the personal  
26 watercraft. The insurance policy shall provide coverage of at  
27 least \$500,000 per person and \$1 million per event. The livery  
28 must have proof of such insurance available for inspection at  
29 the location where personal watercraft are being leased,  
30 hired, or rented and shall provide to each renter the  
31

1 insurance carrier's name and address and the insurance policy  
2 number.

3 (6)~~(5)~~ Any person convicted of violating this section  
4 is guilty of a misdemeanor of the second degree, punishable as  
5 provided in s. 775.082 or s. 775.083.

6 ~~(6) When the livery has complied with subsections (1),~~  
7 ~~(2), (3), and (4), its liability ceases and the person leasing~~  
8 ~~the vessel from the livery is liable for any violations of~~  
9 ~~this chapter and is personally liable for any accident or~~  
10 ~~injury occurring while in charge of such vessel.~~

11 Section 23. Section 327.72, Florida Statutes, is  
12 amended to read:

13 327.72 Penalties.--Any person failing to comply with  
14 the provisions of this chapter or chapter 328 not specified in  
15 s. 327.73 or not paying the civil penalty ~~fine~~ specified in  
16 that said section within 30 ~~10~~ days, except as otherwise  
17 provided in this chapter or chapter 328, is guilty of a  
18 misdemeanor of the second degree, punishable as provided in s.  
19 775.082 or s. 775.083.

20 Section 24. Subsections (1) and (4) of section 327.73,  
21 Florida Statutes, are amended, and subsections (9), (10), and  
22 (11) are added to that section to read:

23 327.73 Noncriminal infractions.--

24 (1) Violations of the following provisions of the  
25 vessel laws of this state are noncriminal infractions:

26 (a) Section 328.46, relating to operation of  
27 unregistered and unnumbered vessels.

28 (b) Section 328.48(4), relating to display of number  
29 and possession of registration certificate.

30 (c) Section 328.48(5), relating to display of decal.

31 (d) Section 328.52(2), relating to display of number.

- 1 (e) Section 328.54, relating to spacing of digits and  
2 letters of identification number.
- 3 (f) Section 328.60, relating to military personnel and  
4 registration of vessels.
- 5 (g) Section 328.72(14), relating to operation with an  
6 expired registration.
- 7 (h) Section 327.33(2), relating to careless operation.
- 8 (i) Section 327.37, relating to water skiing,  
9 aquaplaning, parasailing, and similar activities.
- 10 (j) Section 327.44, relating to interference with  
11 navigation.
- 12 (k) Violations relating to restricted areas and speed  
13 limits:
- 14 1. Established by the department pursuant to s.  
15 327.46.
- 16 2. Established by local governmental authorities  
17 pursuant to s. 327.22 or s. 327.60.
- 18 3. Speed limits established pursuant to s. 370.12(2).
- 19 (l) Section 327.48, relating to regattas and races.
- 20 (m) Section 327.50(1) and (2), relating to required  
21 safety equipment, lights, and shapes.
- 22 (n) Section 327.65, relating to muffling devices.
- 23 (o) Section 327.33(3)(b), relating to navigation  
24 rules.
- 25 (p) Section 327.39(1), (2), (3), and (5), relating to  
26 personal watercraft.
- 27 (q) Section 327.53(1), (2), and (3), relating to  
28 marine sanitation.
- 29 (r) Section 327.53(4), (5), and (7), relating to  
30 marine sanitation, for which the civil penalty is \$250.
- 31

1 (s) Section 327.395, relating to boater safety  
2 education.

3 (t) Section 327.52(3), relating to operation of  
4 overloaded or overpowered vessels.

5 (u) Section 327.331, relating to divers-down flags,  
6 for which the civil penalty is \$75.

7  
8 Any person cited for a violation of any such provision shall  
9 be deemed to be charged with a noncriminal infraction, shall  
10 be cited for such an infraction, and shall be cited to appear  
11 before the county court. The civil penalty for any such  
12 infraction is \$50, except as otherwise provided in this  
13 section. Any person who fails to appear or otherwise properly  
14 respond to a uniform boating citation shall, in addition to  
15 the charge relating to the violation of the boating laws of  
16 this state, be charged with the offense of failing to respond  
17 to such citation and, upon conviction, be guilty of a  
18 misdemeanor of the second degree, punishable as provided in s.  
19 775.082 or s. 775.083. A written warning to this effect shall  
20 be provided at the time such uniform boating citation is  
21 issued.

22 (4) Any person charged with a noncriminal infraction  
23 under this section may:

24 (a) Pay the civil penalty, either by mail or in  
25 person, within 30 ~~10~~ days of the date of receiving the  
26 citation; or

27 (b) If he or she has posted bond, forfeit bond by not  
28 appearing at the designated time and location.

29  
30 A ~~if the person who~~ who cited follows either of the above  
31 ~~procedures, he or she~~ shall be deemed to have admitted the



1 infraction and to have waived the right to a hearing on the  
2 issue of commission of the infraction. Such admission may  
3 ~~shall~~ not be used as evidence in any other proceedings.

4 (9)(a) A person who does not comply with the court's  
5 requirements or who does not pay the civil penalties specified  
6 in this section within 30 days must pay additional court costs  
7 of \$12, which shall be used by the clerks of the courts to  
8 defray the costs of tracking unpaid uniform boating citations.

9 (b) A person who does not comply with the court's  
10 requirements as to civil penalties specified in this section  
11 because of demonstrable financial hardship may satisfy such  
12 civil penalties by public works or community service. Each  
13 hour of such service shall be applied at the rate of the  
14 minimum wage toward payment of the person's civil penalties.  
15 However, if the person has a trade or profession for which  
16 there is a community service need and application, the rate  
17 for each hour of such service shall be the average standard  
18 wage for such trade or profession. A person who does not  
19 comply with the court's requirements as to such civil  
20 penalties and does not demonstrate financial hardship may  
21 also, at the discretion of the court, satisfy the civil  
22 penalties by public works or community service in the same  
23 manner.

24 (c) If the noncriminal infraction has caused or  
25 resulted in the death of another, the court may require the  
26 violation to perform 120 community service hours in addition to  
27 any other penalties.

28 (10) A person cited for any infraction that results in  
29 an accident that causes the death or serious bodily injury of  
30 another person, as defined in s. 327.353(1), may not avoid a  
31 court appearance under subsection (4).

1           (11)(a) Court costs, in addition to the civil penalty,  
2 shall be imposed by the court in an amount not less than:  
3           1. For swimming or diving infractions.....\$3.  
4           2. For nonmoving boating infractions.....\$6.  
5           3. For boating infractions listed in s. 327.731(1)  
6 .....\$10.  
7           (b) In addition to the court costs, the court shall  
8 impose a \$3 court cost surcharge for each infraction to be  
9 distributed as provided in s. 938.01 and a \$2 court cost as  
10 provided in s. 938.15 when assessed by a municipality or  
11 county.  
12           (c) Court costs imposed under this subsection may not  
13 exceed \$30. A criminal justice selection center or other local  
14 criminal justice access and assessment center may be funded  
15 from these court costs.  
16           Section 25. Subsection (1) of section 327.731, Florida  
17 Statutes, is amended to read:  
18           327.731 Mandatory education for violators.--  
19           (1) Every person convicted of a criminal violation of  
20 this chapter, every person convicted of a noncriminal  
21 infraction under this chapter if the infraction resulted in a  
22 reportable boating accident, and every person convicted of two  
23 noncriminal infractions as defined in s. 327.73(1)(h) through  
24 (k), (m) through (p), and (s) through (u), ~~and (t)~~, said  
25 infractions occurring within a 12-month period, must:  
26           (a) Enroll in, attend, and successfully complete, at  
27 his or her own expense, a boating safety course that meets  
28 minimum standards established by the commission by rule;  
29 however, the commission may provide by rule pursuant to  
30 chapter 120 for waivers of the attendance requirement for  
31

1 violators residing in areas where classroom presentation of  
2 the course is not available;

3 (b) File with the commission within 90 days proof of  
4 successful completion of the course;

5 (c) Refrain from operating a vessel until he or she  
6 has filed the proof of successful completion of the course  
7 with the commission.

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

12 Section 26. Section 327.732, Florida Statutes, is  
13 created to read:

14 327.732 Sanctions for infractions by minors.--

15 (1) If a court finds that a minor has committed a  
16 violation of any provision of chapter 327, the court may also:

17 (a) Reprimand or counsel the minor and the minor's  
18 parents or guardian.

19 (b) Require the minor to successfully complete a  
20 commission-approved boater education course that meets the  
21 minimum 8-hour instruction requirement established by the  
22 National Association of State Boating Law Administrators.

23 (c) Order the minor to remit to the general fund of  
24 the local governmental body a sum not exceeding the maximum  
25 fine applicable to an adult for a like offense.

26 (d) Order the minor to participate in public service  
27 or a community work project for a minimum number of hours. A  
28 minor who participates in such a work program is considered an  
29 employee of the state for the purposes of chapter 440.

30 (e) Impose a curfew or other restriction on the minor  
31 for not more than 6 months.

1           (2) Failure to comply with any sanction imposed by the  
2 court constitutes contempt of court. Upon a finding by the  
3 court, after notice and a hearing, that a minor is in contempt  
4 of court, the court may:

5           (a) For a first offense, order the minor to serve up  
6 to 5 days in a staff-secure shelter, or, if space in a  
7 staff-secure shelter is unavailable, in a secure juvenile  
8 detention center.

9           (b) For a second for subsequent offense, order the  
10 minor to serve up to 15 days in a staff-secure shelter or, if  
11 space in a staff-secure shelter is unavailable, in a secure  
12 juvenile detention center.

13           (3) A minor may not be imprisoned in an adult  
14 detention facility.

15           (4) A minor who is arrested for a violation of s.  
16 327.35 may be released from custody when:

17           (a) The minor is no longer under the influence of the  
18 alcohol, chemical substance, or controlled substance and is  
19 not affected to the extent that his or her normal faculties  
20 are impaired;

21           (b) The minor's breath-alcohol level is less than  
22 0.05; or

23           (c) Six hours have elapsed after the minor's arrest.

24           Section 27. Subsection (2) of section 328.48, Florida  
25 Statutes, is amended to read:

26           328.48 Vessel registration, application, certificate,  
27 number, decal, duplicate certificate.--

28           (2) All vessels used ~~operated~~ on the waters of the  
29 state must be registered, either commercial or recreational  
30 ~~noncommercial~~ as defined herein, except as follows:

31

1 (a) A vessel used exclusively on private lakes and  
2 ponds.

3 (b) A vessel owned by the United States Government.

4 (c) A vessel used exclusively as a ship's lifeboat.

5 (d) A non-motor-powered vessel.

6 Section 28. Section 328.56, Florida Statutes, is  
7 amended to read:

8 328.56 Vessel registration number.--Each vessel that  
9 is used ~~operated~~ on the waters of the state must display a  
10 commercial or recreational ~~noncommercial~~ Florida registration  
11 number, unless it is:

12 (1) A vessel used exclusively on private lakes and  
13 ponds.

14 (2) A vessel owned by the United States Government.

15 (3) A vessel used exclusively as a ship's lifeboat.

16 (4) A non-motor-powered vessel.

17 (5) A federally documented vessel.

18 (6) A vessel already covered by a registration number  
19 in full force and effect which has been awarded to it pursuant  
20 to a federally approved numbering system of another state or  
21 by the United States Coast Guard in a state without a  
22 federally approved numbering system, if the vessel has not  
23 been within this state for a period in excess of 90  
24 consecutive days.

25 (7) A vessel operating under a valid temporary  
26 certificate of number.

27 (8) A vessel from a country other than the United  
28 States temporarily using the waters of this state.

29 (9) An undocumented vessel used exclusively for  
30 racing.

31

1           Section 29. Section 328.70, Florida Statutes, is  
2 amended to read:

3           328.70 Legislative intent with respect to uniform  
4 registration fee, classification of vessels.--It is declared  
5 to be the intent of the Legislature that all vessels in the  
6 state be subject to a uniform registration fee at a rate based  
7 on the length of the vessels. It is also declared to be the  
8 intent of the Legislature that all vessels be classified as  
9 either "commercial" or "recreational"~~noncommercial~~ and that  
10 all such vessels be registered according to the provisions of  
11 s. 328.72. Any vessel which is required to be registered and  
12 meets the definition of a commercial vessel shall be  
13 classified and registered as a "commercial vessel." Any  
14 vessel which is required to be registered and is not used  
15 ~~operated~~ for commercial purposes shall be classified and  
16 registered as a "recreational"~~noncommercial~~ vessel." Livery  
17 vessels shall be classified as commercial or recreational  
18 based on the manner in which they are used.

19           Section 30. Subsections (2) and (6) of section 328.72,  
20 Florida Statutes, are amended to read:

21           328.72 Classification; registration; fees and charges;  
22 surcharge; disposition of fees; fines; marine turtle  
23 stickers.--

24           (2) ANTIQUE VESSEL REGISTRATION FEE.--

25           (a) A vessel that is at least 30 years old, used only  
26 for recreational ~~noncommercial~~ purposes, and powered by the  
27 vessel's original-type power plant may be registered as an  
28 antique vessel. When applying for registration as an antique  
29 vessel, the owner of such a vessel shall submit certification,  
30 as prescribed by the Department of Highway Safety and Motor  
31

1 Vehicles or from a marine surveyor that the vessel meets the  
2 requirements of this paragraph.

3 (b) The registration number for an antique vessel  
4 shall be permanently attached to each side of the forward half  
5 of the vessel ~~displayed~~ as provided in ss. 328.48 and 328.54.

6 (c) The Department of Highway Safety and Motor  
7 Vehicles may issue a decal identifying the vessel as an  
8 antique vessel. The decal shall be displayed as provided in  
9 ss. 327.11 and 327.14.

10 (6) CHANGE OF CLASSIFICATION.--If the classification  
11 of a vessel changes from recreational ~~noncommercial~~ to  
12 commercial, or from commercial to recreational ~~noncommercial~~,  
13 and a current registration certificate has been issued to the  
14 owner, the owner shall within 30 days forward his or her  
15 certificate to the county tax collector with a fee of \$2.25  
16 and a new certificate shall be issued.

17 Section 31. Subsection (1) of section 328.76, Florida  
18 Statutes, is amended to read:

19 328.76 Marine Resources Conservation Trust Fund;  
20 vessel registration funds; appropriation and distribution.--

21 (1) Except as otherwise specified and less any  
22 administrative costs, all funds collected from the  
23 registration of vessels through the Department of Highway  
24 Safety and Motor Vehicles and the tax collectors of the state  
25 shall be deposited in the Marine Resources Conservation Trust  
26 Fund for recreational channel marking; public launching  
27 facilities; law enforcement and quality control programs;  
28 aquatic weed control; manatee protection, recovery, rescue,  
29 rehabilitation, and release; and marine mammal protection and  
30 recovery. The funds collected pursuant to s. 328.72(1) shall  
31 be transferred as follows:

1 (a) In each fiscal year, an amount equal to \$1 for  
2 each vessel registered in this state shall be transferred to  
3 the Save the Manatee Trust Fund for manatee and marine mammal  
4 research, protection, and recovery in accordance with the  
5 provisions of s. 370.12(4)(a).

6 (b) In addition, in each fiscal year, an amount equal  
7 to 50 cents for each vessel registered in this state shall be  
8 transferred to the Save the Manatee Trust Fund in accordance  
9 with the provisions of s. 370.12(4)(b) for use by those  
10 facilities approved to rescue, rehabilitate, and release  
11 manatees as authorized pursuant to the Fish and Wildlife  
12 Service of the United States Department of the Interior.

13 (c) Two dollars from each recreational ~~noncommercial~~  
14 vessel registration fee, except that for class A-1 vessels,  
15 shall be transferred to the Invasive Plant Control Trust Fund  
16 for aquatic weed research and control.

17 (d) Forty percent of the registration fees from  
18 commercial vessels shall be used for law enforcement and  
19 quality control programs.

20 (e) Forty percent of the registration fees from  
21 commercial vessels shall be transferred to the Invasive Plant  
22 Control Trust Fund for aquatic plant research and control.

23 (f) Notwithstanding any other provision of this  
24 subsection and except as provided in paragraphs (a) and (b),  
25 fees from the registration of personal watercraft may not be  
26 transferred from the Marine Resources Conservation Trust Fund  
27 and may only be appropriated for increased on-the-water  
28 enforcement of boating laws, rules, and ordinances. However,  
29 counties shall continue to receive the share of the fees  
30 provided in s. 328.72(1).

31



1           Section 32. Paragraph (b) of subsection (1) of section  
2 713.78, Florida Statutes, is amended to read:

3           713.78 Liens for recovering, towing, or storing  
4 vehicles and undocumented vessels.--

5           (1) For the purposes of this section, the term:

6           (b) "Vessel" means any watercraft, barge, or air boat  
7 used or capable of being used for transportation on water,  
8 other than a seaplane or documented vessel as defined in s.  
9 327.02(8)~~has the same meaning as the term "undocumented~~  
10 ~~vessel" as defined in s. 327.02(36).~~

11           Section 33. Subsection (2) of section 938.17, Florida  
12 Statutes, is amended to read:

13           938.17 County delinquency prevention.--

14           (2) In counties in which the sheriff's office is a  
15 partner in a juvenile assessment center pursuant to s.  
16 985.209, or a partner in a suspension program developed in  
17 conjunction with the district school board in the county of  
18 the sheriff's jurisdiction, the court shall assess court costs  
19 of \$3 per case, in addition to any other authorized cost or  
20 fine, on every person who, with respect to a charge,  
21 indictment, prosecution commenced, or petition of delinquency  
22 filed in that county or circuit, pleads guilty, nolo  
23 contendere to, or is convicted of, or adjudicated delinquent  
24 for, or has an adjudication withheld for, a felony or  
25 misdemeanor, or a criminal traffic or boating offense or  
26 handicapped parking violation under state law, or a violation  
27 of any municipal or county ordinance, if the violation  
28 constitutes a misdemeanor under state law.

29           Section 34. Subsection (3) of section 947.146, Florida  
30 Statutes, is amended to read:

31           947.146 Control Release Authority.--

1           (3) Within 120 days prior to the date the state  
2       correctional system is projected pursuant to s. 216.136 to  
3       exceed 99 percent of total capacity, the authority shall  
4       determine eligibility for and establish a control release date  
5       for an appropriate number of parole ineligible inmates  
6       committed to the department and incarcerated within the state  
7       who have been determined by the authority to be eligible for  
8       discretionary early release pursuant to this section. In  
9       establishing control release dates, it is the intent of the  
10      Legislature that the authority prioritize consideration of  
11      eligible inmates closest to their tentative release date. The  
12      authority shall rely upon commitment data on the offender  
13      information system maintained by the department to initially  
14      identify inmates who are to be reviewed for control release  
15      consideration. The authority may use a method of objective  
16      risk assessment in determining if an eligible inmate should be  
17      released. Such assessment shall be a part of the department's  
18      management information system. However, the authority shall  
19      have sole responsibility for determining control release  
20      eligibility, establishing a control release date, and  
21      effectuating the release of a sufficient number of inmates to  
22      maintain the inmate population between 99 percent and 100  
23      percent of total capacity. Inmates who are ineligible for  
24      control release are inmates who are parole eligible or inmates  
25      who:

26           (a) Are serving a sentence that includes a mandatory  
27      minimum provision for a capital offense or drug trafficking  
28      offense and have not served the number of days equal to the  
29      mandatory minimum term less any jail-time credit awarded by  
30      the court;

31

1 (b) Are serving the mandatory minimum portion of a  
2 sentence enhanced under s. 775.087(2) or (3), or s. 784.07(3);

3 (c) Are convicted, or have been previously convicted,  
4 of committing or attempting to commit sexual battery, incest,  
5 or any of the following lewd or indecent assaults or acts:  
6 masturbating in public; exposing the sexual organs in a  
7 perverted manner; or nonconsensual handling or fondling of the  
8 sexual organs of another person;

9 (d) Are convicted, or have been previously convicted,  
10 of committing or attempting to commit assault, aggravated  
11 assault, battery, or aggravated battery, and a sex act was  
12 attempted or completed during commission of such offense;

13 (e) Are convicted, or have been previously convicted,  
14 of committing or attempting to commit kidnapping, burglary, or  
15 murder, and the offense was committed with the intent to  
16 commit sexual battery or a sex act was attempted or completed  
17 during commission of the offense;

18 (f) Are convicted, or have been previously convicted,  
19 of committing or attempting to commit false imprisonment upon  
20 a child under the age of 13 and, in the course of committing  
21 the offense, the inmate committed aggravated child abuse,  
22 sexual battery against the child, or a lewd or lascivious  
23 offense committed upon or in the presence of a person less  
24 than 16 years of age;

25 (g) Are sentenced, have previously been sentenced, or  
26 have been sentenced at any time under s. 775.084, or have been  
27 sentenced at any time in another jurisdiction as a habitual  
28 offender;

29 (h) Are convicted, or have been previously convicted,  
30 of committing or attempting to commit assault, aggravated  
31 assault, battery, aggravated battery, kidnapping,

1 manslaughter, or murder against an officer as defined in s.  
2 943.10(1), (2), (3), (6), (7), (8), or (9); against a state  
3 attorney or assistant state attorney; or against a justice or  
4 judge of a court described in Art. V of the State  
5 Constitution; or against an officer, judge, or state attorney  
6 employed in a comparable position by any other jurisdiction;  
7 or

8 (i) Are convicted, or have been previously convicted,  
9 of committing or attempting to commit murder in the first,  
10 second, or third degree under s. 782.04(1), (2), (3), or (4),  
11 or have ever been convicted of any degree of murder or  
12 attempted murder in another jurisdiction;

13 (j) Are convicted, or have been previously convicted,  
14 of DUI manslaughter under s. 316.193(3)(c)3. or BUI  
15 manslaughter under s. 327.35(3)(c)3., and are sentenced, or  
16 have been sentenced at any time, as a habitual offender for  
17 such offense, or have been sentenced at any time in another  
18 jurisdiction as a habitual offender for such offense;

19 (k)1. Are serving a sentence for an offense committed  
20 on or after January 1, 1994, for a violation of the Law  
21 Enforcement Protection Act under s. 775.0823(2), (3), (4), or  
22 (5), and the subtotal of the offender's sentence points is  
23 multiplied pursuant to former s. 921.0014 or s. 921.0024;

24 2. Are serving a sentence for an offense committed on  
25 or after October 1, 1995, for a violation of the Law  
26 Enforcement Protection Act under s. 775.0823(2), (3), (4),  
27 (5), (6), (7), or (8), and the subtotal of the offender's  
28 sentence points is multiplied pursuant to former s. 921.0014  
29 or s. 921.0024;

30 (l) Are serving a sentence for an offense committed on  
31 or after January 1, 1994, for possession of a firearm,

1 semiautomatic firearm, or machine gun in which additional  
2 points are added to the subtotal of the offender's sentence  
3 points pursuant to former s. 921.0014 or s. 921.0024; or  
4 (m) Are convicted, or have been previously convicted,  
5 of committing or attempting to commit manslaughter,  
6 kidnapping, robbery, carjacking, home-invasion robbery, or a  
7 burglary under s. 810.02(2).

8  
9 In making control release eligibility determinations under  
10 this subsection, the authority may rely on any document  
11 leading to or generated during the course of the criminal  
12 proceedings, including, but not limited to, any presentence or  
13 postsentence investigation or any information contained in  
14 arrest reports relating to circumstances of the offense.

15 Section 35. Subsections (1) and (2) of section 985.05,  
16 Florida Statutes, are amended to read:

17 985.05 Court records.--

18 (1) The clerk of the court shall make and keep records  
19 of all cases brought before it pursuant to this part. The  
20 court shall preserve the records pertaining to a child charged  
21 with committing a delinquent act or violation of law until the  
22 child reaches 24 years of age or reaches 26 years of age if he  
23 or she is a serious or habitual delinquent child, until 5  
24 years after the last entry was made, or until 3 years after  
25 the death of the child, whichever is earlier, and may then  
26 destroy them, except that records made of traffic or boating  
27 offenses in which there is no allegation of delinquency may be  
28 destroyed as soon as this can be reasonably accomplished. The  
29 court shall make official records of all petitions and orders  
30 filed in a case arising pursuant to this part and of any other  
31

1 pleadings, certificates, proofs of publication, summonses,  
2 warrants, and writs that are filed pursuant to the case.

3 (2) The clerk shall keep all official records required  
4 by this section separate from other records of the circuit  
5 court, except those records pertaining to motor vehicle  
6 violations, which shall be forwarded to the Department of  
7 Highway Safety and Motor Vehicles, and those records  
8 pertaining to boating violations, which shall be forwarded to  
9 the Fish and Wildlife Conservation Commission. Except as  
10 provided in ss. 943.053 and 985.04(4), official records  
11 required by this part are not open to inspection by the  
12 public, but may be inspected only upon order of the court by  
13 persons deemed by the court to have a proper interest therein,  
14 except that a child and the parents, guardians, or legal  
15 custodians of the child and their attorneys, law enforcement  
16 agencies, the Department of Juvenile Justice and its  
17 designees, the Parole Commission, and the Department of  
18 Corrections shall always have the right to inspect and copy  
19 any official record pertaining to the child. The court may  
20 permit authorized representatives of recognized organizations  
21 compiling statistics for proper purposes to inspect, and make  
22 abstracts from, official records under whatever conditions  
23 upon the use and disposition of such records the court may  
24 deem proper and may punish by contempt proceedings any  
25 violation of those conditions.

26 Section 36. Subsection (3) of section 985.212, Florida  
27 Statutes, is amended to read:

28 985.212 Fingerprinting and photographing.--

29 (3) This section does not prohibit the fingerprinting  
30 or photographing of child or boating traffic violators. All  
31 records of such traffic or boating violations shall be kept in

1 the full name of the violator and shall be open to inspection  
2 and publication in the same manner as adult traffic or boating  
3 violations. This section does not apply to the photographing  
4 of children by the Department of Juvenile Justice or the  
5 Department of Children and Family Services.

6 Section 37. Except as otherwise provided in this act,  
7 this act shall take effect July 1, 2000.

8  
9 \*\*\*\*\*

10 SENATE SUMMARY

11 Revises provisions relating to boating safety laws.  
12 Includes certain alcohol-related boating offenses among  
13 those considered previous offenses for purposes of DUI  
14 penalties. Clarifies provisions relating to courts with  
15 jurisdiction over minors who commit traffic or boating  
16 violations. Revises definitions. Authorizes hearing  
17 officers to hear boating violation cases. Provides for  
18 the adoption of rules. Clarifies local governments'  
19 authority to regulate vessels in restricted areas.  
20 Prescribes accident report forms to be used for boating  
21 accidents. Establishes a standard of care for vessel  
22 operators. Revises provisions related to the design and  
23 use of divers-down flags and regulates the operation of  
24 vessels in the vicinity of such flags. Requires certain  
25 violators to attend substance abuse treatment programs.  
26 Provides an exemption for boats with designated drivers.  
27 Revises terminology relating to blood and breath-alcohol  
28 levels. Revises requirements regarding personal  
29 floatation devices for skiing, parasailing, and  
30 aquaplaning. Revises certain restrictions on the  
31 operation of personal watercraft and restricts the rental  
or leasing of such crafts to certain persons. Revises the  
boating safety identification card requirements. Revises  
standards for the placement of certain markers on state  
waters. Revises requirements regarding the establishment  
of restricted areas. Authorizes the testing of vessels  
and motors on state waters. Requires liveries to carry  
insurance and adhere to other guidelines. Extends the  
time within which to pay certain penalties. Establishes  
additional court costs for certain violators and provides  
alternative penalties. Requires certain persons who  
violate divers-down flag laws to attend boating safety  
classes. Provides penalties for minors convicted of  
boating infractions. Provides location requirements for  
the placement of registration numbers on antique vessels.  
Limits the use of personal watercraft registration fees.  
Provides that certain inmates convicted of specified BUI  
offenses are ineligible for control release. Requires the  
clerk of the court to destroy certain boating violation  
records and send records to the commission. Provides for  
the fingerprinting of juvenile boating violators. (See  
bill for details.)