

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 155 Vessel Safety

SPONSOR(S): Kiar and others

TIED BILLS: IDEN./SIM. BILLS: SB 306

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--|-----------|----------|----------------|
| 1) Agriculture & Natural Resources Policy Committee | 13 Y, 1 N | Deslatte | Reese |
| 2) Public Safety & Domestic Security Policy Committee | 6 Y, 1 N | Krol | Kramer |
| 3) General Government Policy Council | | | |
| 4) Natural Resources Appropriations Committee | | | |
| 5) Full Appropriations Council on General Government & Health Care | | | |

SUMMARY ANALYSIS

The bill increases the minimum age for a person operating a personal watercraft on the waters of the state from 14 to 16 years. The bill makes it unlawful for the owner of, or any person having charge or control over a personal watercraft, to authorize or knowingly permit the watercraft to be operated by a person under 16 years of age or by a person 21 years of age or younger who does not hold a boating safety identification card in compliance with current law.

The bill makes it unlawful for the owner of, or any person having charge or control over any leased, hired, or rented personal watercraft to authorize or knowingly permit the watercraft to be operated by anyone who has not received instruction in the safe handling of personal watercraft in compliance with current law, and rules established by the Fish and Wildlife Conservation Commission (FWC).

The bill requires anyone receiving instruction in the safe handling of personal watercraft pursuant to a program established by rule of the FWC to provide the owner of, or person having charge or control over, a leased, hired or rented personal watercraft, or a livery with a written statement attesting to the same. The requirement provides for the instruction to be pursuant to rules of the FWC or any other program established by rule of the FWC.

The bill requires that any person delivering information on safe operation of personal watercraft must enroll in, attend, and successfully complete, at his or her own expense, a boating safety course approved by the National Association of State Boating Law Administrators (NASBLA) and the FWC.

The bill does not have a fiscal impact on state or local governments. There may be a fiscal impact on the private sector, although it is not anticipated to be significant. Livery personnel who have not attended a boating safety course would be required to do so before providing pre-rental or pre-ride instruction. Courses which meet this requirement cost an average of \$35 per student.

The bill has an effective date of July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

According to the latest data from the Florida Fish and Wildlife Conservation Commission (FWC), between 2003 through 2007, a total of 34 operators of personal watercraft¹ who were between the ages of 14 and 16 were involved in reportable boating accidents, 10 of which were rented personal watercraft.²

Currently, s. 327.395, F.S., states that any person 21 years of age or younger may not operate a vessel³ powered by a motor of 10 horsepower or greater unless such person has in his or her possession aboard the vessel photographic identification and a boater safety identification card issued by the FWC. An identification card is issued to a person 21 years of age or younger who has completed a boating education course or a course equivalency examination and is valid for life.⁴ Exceptions that would exempt operators 21 years of age or younger from the boating education requirement include:

- If licensed by the United States Coast Guard (USCG) to serve as master on a vessel;
- If operating a vessel on a private lake or pond;
- If accompanied by a person who is attendant to the operation of the vessel and is exempt from this requirement;
- If accompanied by a person who is attendant to the operation of the vessel, is 18 years of age or older, and who holds a valid boating safety identification card; or
- If a non-resident that has proof of successful completion of a boating safety course that meets or exceeds the requirements of the FWC.

¹ Section 327.02(30) F.S., defines "personal watercraft" as "a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel."

² FWC 2009 bill analysis.

³ Section 327.02(39) F.S., defines "vessel" as "synonymous with boat as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water."

⁴ Section 327.395(5), F.S.

The FWC's rule 68D-36.104, F.A.C., specifies that boating safety courses offered by the FWC pursuant to s. 327.395, F.S., must maintain current approval by the National Association of State Boating Law Administrators (NASBLA). The NASBLA is a professional association representing the recreational boating authorities of all 50 states and the U.S. territories. The NASBLA's objectives are to foster partnerships among and between the states, the USCG and others; to craft model boating laws; to maintain national education and training standards; and to advocate the needs of the state boating programs before the U.S. Congress and federal agencies.⁵

According to the FWC, its participation with the NASBLA is aimed at maintaining national consistency and reciprocity agreements with regard to boating education, and the FWC uses NASBLA rules as guidelines for developing rules. The Executive Director of the FWC can adopt NASBLA rules by reference, but the FWC is the final decider regarding approval of boating course content.

Florida law currently allows individuals 14 years of age or older to operate a personal watercraft on waters of the state provided they meet the boating safety education requirements specified in s. 327.395, F.S. Section 327.39, F.S., makes it a misdemeanor of the second degree, punishable as provided in ss. 775.082 or 775.083, F.S., for any person having charge or control over a personal watercraft to knowingly let a person younger than fourteen years operate that personal watercraft.

Currently, s. 327.54, F.S., provides for regulation of livery vessels. A livery vessel is defined by s. 327.02(18), F.S., to mean any vessel leased, rented, or chartered to another for consideration. A livery may not knowingly lease, hire, or rent a vessel to any person whenever:

- The number of persons intending to use the vessel exceeds the number considered to constitute a maximum safety load for the vessel;
- The horsepower of the motor exceeds the capacity of the vessel;
- The vessel does not contain the required safety equipment;
- The vessel is not seaworthy;
- The vessel is equipped with a motor of 10 horsepower or greater, unless the livery provides pre-rental or pre-ride instruction that includes, but is not limited to, the operational characteristics of the vessel to be rented, safe vessel operation and vessel right-of-way rules, the responsibility of the vessel operator for the safe and proper operation of the vessel, and the local characteristics of the waterway where the vessel will be operated.

Any person delivering the instructional information on behalf of the livery must have successfully completed a boater safety course approved by the NASBLA and the state. The FWC is the state's primary agent for this course approval; however, the FWC may appoint liveries, marinas or other persons to administer the boating safety course.⁶

Section 327.54, F.S., provides that a livery may not knowingly lease, hire, or rent a personal watercraft to any person who has not received instruction in safe handling of personal watercraft pursuant to the FWC's rules. The person obtaining a personal watercraft from a livery must provide the livery with a written statement attesting to his or her compliance with FWC's rules. A livery may not lease, hire, or rent a personal watercraft to any person who is less than 18 years of age.

Rule 68D-36.107 of the Florida Administrative Code (F.A.C.) provides additional requirements for liveries renting or leasing personal watercraft. The rule establishes minimum instructional requirements that persons renting or leasing personal watercraft must provide to all individuals intending to operate the personal watercraft. These requirements include:

- Operator responsibility and ethics;
- Navigation rules;
- Navigation aids, buoys and waterway markers;
- Awareness to changes in weather and water conditions;

⁵ NASBLA website, <http://www.nasbla.org>

⁶ Section 327.395(4), F.S.

- Water skiing and other activities specific to personal watercraft;
- Boating accident causes, prevention, and legal requirements of the operator;
- Propulsion, steering and stopping characteristics of personal watercraft; and
- Awareness of other vessels and dangers of reckless operations, manatees, and environmental concerns.

Finally, the rule specifies that a livery may not lease or rent a personal watercraft to any person unless, prior to rental, a safe operation instructional tape is shown to the potential renter, or safe operation literature is provided and reviewed with each prospective operator. That livery must also provide an on-the-water demonstration and observe each person who will operate the personal watercraft to verify the prospective operators' ability to safely handle the personal watercraft. Any person delivering this information on behalf of the livery must have successfully completed a boater safety course approved by the NASBLA and the state.

Effect of Proposed Changes

The bill increases the minimum age for any person operating a personal watercraft on the waters of the state from 14 to 16 years. The bill also makes it unlawful for the owner of any personal watercraft, or any person having charge over or control of a personal watercraft, to authorize or knowingly permit the watercraft to be operated by a person under 16 years of age or by a person 21 years of age or younger who does not hold a boating safety identification card to operate a personal watercraft in compliance with s. 327.395, F.S.

The bill amends current law making it unlawful for the owner of, or any person having charge or control over any leased, hired, or rented personal watercraft to authorize or knowingly permit the watercraft to be operated by anyone who has not received instruction in the safe handling of personal watercraft in compliance with rules of the FWC. The instruction must be in compliance with s. 327.54, F.S.

The bill requires anyone receiving instruction in the safe handling of personal watercraft pursuant to a program established by rule of the FWC to provide the owner of, or person having charge or control over, a leased, hired or rented personal watercraft, or a livery with a written statement attesting to the same. The requirement provides for the instruction to be pursuant to rule 68D-36, F.A.C. or any other program established by rule of the FWC.

The bill provides that a livery may not knowingly lease, hire, or rent a personal watercraft to any person who has not received instruction in the safe handling of personal watercraft pursuant to rule 68D-36, F.A.C. or any other rule established by the commission pursuant to chapter 120.

The bill requires that any persons delivering the required instruction in the safe handling of personal watercraft enroll in, attend, and successfully complete a boating safety course that meets the minimum standards established by the FWC and the National Association of State Boating Law Administrators (NASBLA).

B. SECTION DIRECTORY:

Section 1. Amends s. 327.39, F.S., revising certain requirements for operating personal watercraft.

Section 2. Amends s. 327.54, F.S., revising the requirements relating to the boating safety course required for leasing or renting a personal watercraft from a livery.

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases the age restriction on a person who may operate a personal watercraft from 14 to 16 years of age. Minimally, failure to comply with this provision of the bill could result in a non-criminal infraction that carries a civil penalty of \$50 as well as other civil penalties as provided in s. 327.73, F.S. A person who chooses to appear before the county court to dispute the infraction may be issued a civil penalty not to exceed \$500, if the commission proves that the infraction took place. Court costs imposed cannot exceed \$45. If a person who is cited for a violation of s. 327.395, F.S., can show a valid boating safety identification card issued to that person at the time of the citation, the clerk of the court may dismiss the case and may assess a dismissal fee of up to \$10.

According to the FWC, fiscal impacts on the private sector are not anticipated to be significant. Any livery personnel who have not attended a boating safety course would be required to do so before providing pre-rental or pre-ride instruction. The FWC reports that courses which meet this requirement cost an average of \$35 per student.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES