

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 1530

INTRODUCER: Environment and Natural Resources Committee and Senator Rouson

SUBJECT: Vessels

DATE: April 5, 2019

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|--------------------|
| 1. | <u>Anderson</u> | <u>Rogers</u> | <u>EN</u> | <u>Fav/CS</u> |
| 2. | <u>Erickson</u> | <u>Jones</u> | <u>CJ</u> | <u>Pre-meeting</u> |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1530 requires a vessel operator to reduce speed to a slow speed with minimum wake upon approaching within 300 feet of any emergency vehicle with its emergency lights activated or any construction vessel or barge under specified conditions. A vessel operator found in violation of this requirement is guilty of a noncriminal infraction.

The bill increases several of the civil penalties for a vessel deemed at risk of becoming derelict and increases several of the maximum civil penalties for anchoring or mooring in a prohibited area. The bill also creates civil penalties for vessels that fail to reduce speed for special hazards as specified in the bill.

There may be a positive fiscal impact on the Florida Fish and Wildlife Conservation Commission due to the new and increased civil penalties provided under the bill. See Section V. Fiscal Impact Statement.

The bill is effective on July 1, 2019.

II. Present Situation:

Anchoring or Mooring

Anchoring or mooring has been described as:

[A] boater's practice of seeking and using a safe harbor on the public waterway system for an undefined duration. This may be accomplished utilizing an anchor carried on the vessel,¹ or through the utilization of moorings permanently affixed to the bottom. Anchorages are areas that boaters regularly use for anchoring or mooring, whether designated or managed for that purpose or not. Mooring fields are areas designated and used for a system of properly spaced moorings.²

Derelict Vessels and Vessels at Risk of Becoming Derelict

A derelict vessel is a vessel that is:

- Left, stored, or abandoned in a wrecked, junked, or substantially dismantled condition upon any public waters of this state;
- At a port in the state without the consent of the agency that has jurisdiction of the port; or
- Docked, grounded, or beached upon the property of another without the consent of the owner of the property.³

In 2016, the Legislature prohibited neglected vessels or those in deteriorating conditions from anchoring, mooring, or occupying the waters of the state.⁴ Section 327.4107(2), F.S., provides that a vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on or has taken on water without an effective means to dewater;
- Spaces on the vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;
- The vessel has broken loose or is in danger of breaking loose from its anchor;
- The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, or is listing due to water intrusion, or is sunk or partially sunk; or
- The vessel does not have an effective means of propulsion for safe navigation within 72 hours after the vessel owner or operator receives telephonic or written notice stating such from an officer, and the vessel owner or operator is unable to provide a receipt, proof of purchase, or other documentation of having ordered necessary parts for vessel repair.⁵

¹ Section 327.02(46), F.S., defines the term "vessel" as including 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.

² Thomas T. Ankersen and Richard Hamann, *Anchoring Away: Government Regulation and the Rights of Navigation in Florida*, TP-157 (October 2006), at p. 2, available at <https://www.law.ufl.edu/pdf/academics/centers-clinics/clinics/conservation/resources/anchaway.pdf> (last visited on April 3, 2019).

³ Section 823.11(1)(b), F.S.

⁴ Ch. 2016-108, L.O.F.; s. 327.4107, F.S.

⁵ Section 327.4107, F.S., does not apply to a vessel that is moored to a private dock or wet slip with the consent of the owner for the purpose of receiving repairs. Section 327.4107(5), F.S.

Penalties for Prohibited Acts Relating to Derelict Vessels and Anchoring and Mooring

It is a first degree misdemeanor to store, leave, or abandon a derelict vessel in Florida.⁶ Further, such violation is punishable by a civil penalty of up to \$50,000 per violation per day.⁷ Each day during any portion of which the violation occurs constitutes a separate offense.⁸

Section 327.4107(3), F.S., provides that a person who anchors or moors a vessel at risk of becoming derelict on the waters of this state or allows such a vessel to occupy such waters commits a noncriminal infraction,⁹ punishable as provided in s. 327.73, F.S.¹⁰

Section 327.73(1)(aa), F.S., provides that an owner or operator of a vessel at risk of becoming derelict on waters of the state in violation of s. 327.4107, F.S., is subject to a uniform boating citation and civil penalty. The civil penalty provided is:

- \$50 for a first offense;
- \$100 for a second offense occurring 30 days or more after a first offense; and
- \$250 for a third offense occurring 30 days or more after a previous offense.

Section 327.4109, F.S., prohibits anchoring or mooring in certain areas or under certain conditions. Section 327.4109(1)(a), F.S., prohibits the owner or operator of a vessel from anchoring or mooring such that the nearest approach of the anchored or moored vessel is:

- Within 150 feet of any marina, boat ramp, boatyard, or other vessel launching or loading facility;
- Within 300 feet of a superyacht repair facility;¹¹ or
- Within 100 feet outward from the marked boundary of a public mooring field or a lesser distance if approved by the commission upon request of a local government within which the mooring field is located.¹²

Notwithstanding s. 327.4109(1), F.S., an owner or operator of a vessel may anchor or moor within 150 feet of any marina, boat ramp, boatyard, or other vessel launching or loading facility; within 300 feet of a superyacht repair facility; or within 100 feet outward from the marked boundary of a public mooring field if either of the following apply:

- The vessel suffers a mechanical failure that poses an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor for 5 business days or until the vessel is repaired, whichever occurs first.

⁶ Sections 376.15(2) and 823.11(2) and (5), F.S. A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

⁷ Sections 376.15(2) and 376.16(1), F.S.

⁸ Section 376.16(1), F.S.

⁹ Section 775.082(5), F.S., provides that any person who has been convicted of a noncriminal violation may not be sentenced to a term of imprisonment nor to any other punishment more severe than a fine, forfeiture, or other civil penalty, except as provided in ch. 316, F.S., or by ordinance of any city or county.

¹⁰ The penalty under s. 327.4107, F.S., is in addition to any other penalties provided by law. Section 327.4107(4), F.S.

¹¹ A “superyacht repair facility” is a facility that services or repairs a yacht with a water line of 120 feet or more in length. Section 327.4109(1)(a)2., F.S.

¹² This prohibition does not apply to: a vessel owned or operated by a governmental entity; a construction or dredging vessel on an active job site; a commercial fishing vessel actively engaged in commercial fishing; or a vessel actively engaged in recreational fishing if the persons onboard are actively tending hook and line fishing gear or nets. Section 327.4109(1)(b), F.S.

- Imminent or existing weather conditions in the vicinity of the vessel pose an unreasonable risk of harm to the vessel or the persons onboard such vessel. The owner or operator of the vessel may anchor or moor until weather conditions no longer pose such risk. During a hurricane or tropical storm, weather conditions are deemed to no longer pose an unreasonable risk of harm when the hurricane or tropical storm warning affecting the area has expired.

Section 327.4109(3), F.S., prohibits the owner or operator of a vessel from anchoring or mooring within the marked boundary of a public mooring field unless the owner or operator has a lawful right to do so by contractual agreement or other business arrangement.

Section 327.4109(4), F.S., prohibits the owner or operator of a vessel from anchoring, mooring, tying, or otherwise affixing or allowing the vessel to remain anchored, moored, tied, or otherwise affixed to an unpermitted, unauthorized, or otherwise unlawful object that is on or affixed to the bottom of the waters of this state. However, this subsection does not apply to a private mooring owned by the owner of privately owned submerged lands.

A violation of s. 327.4109, F.S., is a noncriminal infraction, and punishable as provided in s. 327.73(1)(bb), F.S.¹³ Section 327.73(1)(bb), F.S., provides that an owner or operator who anchors or moors in a prohibited area in violation of s. 327.4109, F.S., is subject to a uniform boating citation and civil penalty. The civil penalty provided is up to a maximum of:

- \$50 for a first offense;
- \$100 for a second offense; and
- \$250 for a third offense.¹⁴

Finally, s. 327.73(1) F.S., provides that any person who fails to appear or otherwise properly respond to a uniform boating citation must, in addition to the charge relating to the violation of the boating laws of this state, be charged with a second degree misdemeanor.¹⁵

III. Effect of Proposed Changes:

The bill creates s. 327.332, F.S., relating to special hazards requiring slow speeds by vessel operators. This new section requires vessel operators to reduce speed to a slow speed with minimum wake upon approaching certain hazardous conditions and provides that a vessel operator found in violation of this requirement is guilty of a noncriminal infraction. The hazardous conditions are:

- Approaching within 300 feet of any emergency vessel, including but not limited to, a law enforcement vessel, a United States Coast Guard vessel or auxiliary vessel, fire vessel, or tow vessel, with its emergency lights activated; and
- Approaching within 300 feet of any construction vessel or barge actively engaged in operations and displaying an orange flag or yellow flashing light from the tallest portion of the vessel or barge.

¹³ Section 327.4109(5), F.S.

¹⁴ Section 327.73(1)(bb), F.S.

¹⁵ A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

The bill also amends s. 327.73, F.S., relating to civil penalties for violations of specified vessel laws. The bill increases civil penalties for a violation of s. 327.4107, F.S., relating to vessels at risk of becoming derelict on waters of the state, from:

- \$100 to \$250 for a second offense occurring 30 days or more after a previous offense; and
- \$250 to \$500 for a third or subsequent offense occurring 30 days or more after a previous offense.

The bill increases the maximum civil penalty for a violation of s. 327.4109, F.S., relating to anchoring or mooring in a prohibited area, from:

- \$100 to \$250 for a second offense; and
- \$250 to \$500 for a third or subsequent offense.

Finally, the bill creates civil penalties for a violation of s. 327.332, F.S., the new section relating to vessels failing to reduce speed for special hazards:

- \$50 for a first offense;
- \$250 for a second offense occurring within 12 months after a prior conviction;
- \$500 for a third offense occurring within 36 months after a prior conviction; and
- \$1000 for a fourth or subsequent offense occurring within 72 months after a prior conviction.

The bill is effective on July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be a positive fiscal impact on the Florida Fish and Wildlife Conservation Commission due to the new and increased civil penalties provided under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 327.332 of the Florida Statutes.

This bill substantially amends section 327.73 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environment and Natural Resources Committee on April 2, 2019:

- Removes a provision relating to slowing speeds upon seeing a vessel or person in a hazardous or vulnerable position.
- Removes certain provisions relating to derelict vessels.
- Removes a provision relating to transfer of ownership of a vessel.
- Removes the authority to impound derelict vessels after three violations.

B. Amendments:

None.