

CHAPTER 98-308

Committee Substitute for Committee Substitute for House Bill No. 3265

An act relating to boating safety and emergency responses; creating the “Kelly Johnson Act”; amending s. 316.003, F.S.; redefining the term “authorized emergency vehicles” to include reference to vehicles of the Department of Environmental Protection; amending s. 327.02, F.S.; redefining the term “operate” with respect to vessels; amending s. 327.03, F.S.; directing the Department of Highway Safety and Motor Vehicles to keep certain records and perform certain duties; amending s. 327.352, F.S.; revising provisions with respect to the operation of a vessel while under the influence; providing legislative intent; restoring a penalty for refusal to submit to chemical or physical testing; conforming provisions relating to boating under the influence to driving under the influence; creating s. 327.35215, F.S.; restoring a penalty for refusal to submit to chemical testing; amending s. 327.50, F.S.; revising language with respect to vessel safety regulations and equipment and lighting requirements to clarify responsibility for compliance; creating s. 327.355, F.S.; prohibiting the operation of vessels by persons under 21 years of age who have consumed alcoholic beverages; providing penalties; defining the term “conviction” for purposes of the section; amending s. 327.731, F.S.; increasing the number of convictions necessary for mandatory education; clarifying compliance procedures; amending s. 327.35, F.S.; providing legislative intent; providing effective dates.

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

Section 1. Short title.—This act shall be known as the “Kelly Johnson Act.”

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

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

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

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

327.02 Definitions of terms used in this chapter and in chapter 328.—As used in this chapter and in chapter 328, unless the context clearly requires a different meaning, the term:

(24) “Operate” means to be in charge of or in command of or in the actual physical control of a vessel upon the waters of this state, or to exercise control over or to have responsibility for a vessel’s navigation or safety while the vessel is underway upon the waters of this state, or to control or steer a vessel being towed by another vessel upon the waters of the state; provided, however, that this definition shall not apply to a person on a vessel that is docked or otherwise made fast to the shore and shall not apply to a vessel owner or operator who designates a driver pursuant to s. 327.35.

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

327.03 Administration of vessel registration and titling laws; records.—

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

(a) Vessel registration and titling as required.

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

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

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

(1)(a) The Legislature declares that the operation of a vessel is a privilege that must be exercised in a reasonable manner. In order to protect the public health and safety, it is essential that a lawful and effective means of reducing the incidence of boating while impaired or intoxicated be established. Therefore, any person who accepts the privilege extended by the laws of this state of operating a vessel within this state is, by so operating such vessel, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath, and to a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111 or controlled substances, if the person is lawfully arrested for any offense allegedly committed while the person was operating a vessel while under the influence of alcoholic beverages, chemical substances, or controlled substances. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was operating the vessel within this state while under the influence of alcoholic beverages. The urine test must be incidental to a lawful arrest and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was operating a vessel within this state while under the influence of controlled substances. The urine test shall be administered at a

detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of one type of test does not preclude the administration of another type of test. The person shall be told that his or her failure to submit to any lawful test of his or her breath or urine, or both, will result in a civil penalty of \$500. The refusal to submit to a chemical or physical breath or urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

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

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

327.35215 Penalty for failure to submit to test.—

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

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

(3) A person who has been advised of the penalties pursuant to subsection (2) may, within 30 days afterwards, request a hearing before a county court judge. A request for a hearing tolls the period for payment of the civil

penalty, and, if assessment of the civil penalty is sustained by the hearing and any subsequent judicial review, the civil penalty must be paid within 30 days after final disposition. The clerk of the court shall notify the department of the final disposition of all actions filed under this section.

(4) It is unlawful for any person who has not paid a civil penalty imposed pursuant to this section, or who has not requested a hearing with respect to the civil penalty, within 30 calendar days after receipt of notice of the civil penalty to operate a vessel upon the waters of this state. Violation of this subsection is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

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

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

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

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

327.50 Vessel safety regulations; equipment and lighting requirements.—

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

(b) No person shall operate a vessel less than 26 feet in length on the waters of this state unless every person under 6 years of age on board the a motorboat, sailboat, or vessel is wearing which measures less than 26 feet in length shall wear a type I, type II, or type III Coast Guard approved personal flotation device while such motorboat, sailboat, or vessel is underway. For the purpose of this section, "underway" shall mean at all times except when a motorboat, sailboat, or vessel is anchored, moored, made fast to the shore, or aground.

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

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

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

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

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

(b) A law enforcement officer who has probable cause to believe that a vessel is being operated by or is in the actual physical control of a person who is under the age of 21 while under the influence of alcoholic beverages or who has any breath-alcohol level may lawfully detain such a person and may request that person to submit to a test to determine his or her breath-alcohol level. If the person under the age of 21 refuses to submit to such testing, the law enforcement officer shall warn the person that failure to submit to the breath test will result in the required performance of 50 hours of public service and that his or her vessel operating privilege will be suspended until the public service is performed. Failure or refusal to submit to a breath test after this warning is a violation of this section.

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

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

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

(5) Any person who is convicted of a violation of subsection (1) shall be punished as follows:

(a) The court shall order the defendant to participate in public service or a community work project for a minimum of 50 hours;

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

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

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

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

327.731 Mandatory education for violators.—

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

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

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

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

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

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

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

section, but failure of the clerk of the court to provide such a notice shall not be a defense to a charge of unlawful operation of a vessel under subsection (2).

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

327.35 Boating under the influence; penalties.—

(10) It is the intent of the Legislature to encourage boaters to have a “designated driver” who does not consume alcoholic beverages.

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

Approved by the Governor May 29, 1998.

Filed in Office Secretary of State May 29, 1998.