

The bill requires anyone who leases, hires, or rents a vessel to any person and who provides the information required by this section to enroll in, attend, and successfully complete, at his or her own expense, a boating safety course that meets the minimum standards established by the FWC's rules.

The bill prohibits any livery from knowingly leasing, hiring, or renting a personal watercraft to any person who has not received instruction in safe handling of personal watercraft pursuant to the FWC's rules.

The bill does not appear to have a significant fiscal impact on state or local governments. There may be an indeterminate fiscal impact on the private sector due to loss of personal watercraft sales.

The bill would become effective on July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberties: This bill raises the minimum lawful age to operate a personal watercraft from fourteen to sixteen, requires any person operating a personal water craft to have completed an FWC approved boating safety course, and places additional requirements on individuals operating, leasing, hiring or renting such crafts.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

According to the Fish and Wildlife Conservation Commission (FWC), for the five-year time period from 2003 through 2007, a total of thirty-four operators of personal watercraft, age fourteen to less than sixteen years, were involved in reportable boating accidents. Ten of these incidences involved rented personal watercraft.¹

Section 327.02(39), F.S., defines boat as synonymous with vessel and includes every description of watercraft, barge, and airboat, other than a seaplane on water, used or capable of being used as a means of transportation on water. Personal watercraft is defined in s. 327.02(30), F.S., as a particular type of vessel that is less than sixteen 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.

Personal watercrafts have engines that produce 100 hp or more and can exceed speeds of 60 mph. The defining characteristic of personal watercraft is the engine that drives them. Most water craft are powered by either a propeller or sail but personal watercraft are powered by a water jet – a design characteristic that accounts for many of the dangers associated with personal watercraft use. The water jet works by taking in water through intake valves, accelerating the water, and expelling it through an output valve at the rear of the craft. Personal watercraft do not have a rudder and are both powered and maneuvered by the water jet. Directional control of a personal watercraft is achieved when the moveable output nozzle is turned so that the thrust of the water controls the direction of the craft. Consequently, if power is lost (or reduced) the operator of a personal watercraft loses the ability to steer the vessel. Also, personal watercraft do not have a mechanical braking mechanism such as shifting a propeller driven vessel into reverse. If an operator wishes to stop a personal watercraft they must either execute a sharp turning maneuver or allow the craft to glide to a stop.²

Section 327.395, F.S., specifies that any person twenty-one years of age or younger may not operate any vessel powered by a motor of ten horsepower or greater unless they have completed a boating safety course approved by the Fish and Wildlife Conservation Commission (FWC) or passed a course equivalency examination approved by the FWC. While operating any vessel of ten horsepower or greater, a person twenty-one years of age or younger must have with them both the boater safety identification card issued for successfully completing the boating safety course and photographic identification. A violation of these requirements is a non-criminal infraction and is punishable by a fine of \$50.

However, s. 327.395(6), F.S., exempts operators twenty-one years of age or younger from the boating education requirement if they are:

¹ FWC, 2008. Legislative Bill Analysis - House Bill 703.

² SafetyForum, 2008. <http://www.safetyforum.com/pwc/>

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

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 NASBLA³ 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.

According to the FWC, their 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 a guideline for developing rules. The Executive Director can adopt NASBLA rules by reference but the FWC is the final decider regarding approval of boating course content.

Florida law currently allows individuals fourteen years of age or greater 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.

Section 327.39, F.S., also requires that:

- a person operating or being towed behind a personal watercraft shall wear a type I, II, III, or V personal floatation device;
- if a personal watercraft is equipped with a lanyard type cutoff switch, any person operating the personal watercraft must attach the lanyard to his or her person;
- a person operating a personal watercraft may only do so between the hours of one-half hour before sunrise to one-half hour after sunset; and
- a person operating a personal watercraft must do so in a safe and prudent manner at all times.

A violation of these requirements is a non-criminal infraction and is punishable by a fine of \$50.

Section 327.54, F.S., contains the provisions for regulation of livery vessels where a livery vessel is defined by s. 327.02(18), F.S., to mean any vessel leased, rented, or chartered to another for consideration. The statute requires that 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 ten horsepower or greater, unless the livery provides pre-rental or pre-ride instruction that includes, but need not be limited to, the operational characteristics of the vessel to be rented, safe vessel operation and vessel right-of-way rules,

³ NASBLA, 2008. <http://www.nasbla.org/>.

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 this information on behalf of the livery must have successfully completed a boater safety course approved by the National Association of State Boating Law Administrators 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.

As required by s. 327.54, F.S., 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 their compliance with FWC's rules. Section 327.54(4)(a), F.S., provides that a livery may not lease, hire, or rent a personal watercraft to any person who is less than eighteen years of age.

Any violation of the requirements on liveries is a misdemeanor of the second degree and is punishable as provided in ss. 775.082 or 775.083, F.S.

Additional requirements, for liveries renting or leasing personal watercraft, are established by rule 68D-36, F.A.C. This rule establishes minimum instructional requirements that persons renting or leasing personal watercraft must provide to all individuals intending to operate the personal watercraft. The requirements include:

- operator responsibility and ethics;
- navigation rules;
- navigation aids, buoys and waterway markers;
- awareness to changes in weather and water conditions;
- 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.

The rule also specifies that a livery may not lease or rent a personal watercraft to any person unless, prior to rental, they show a safe operation instructional tape to, or provide and review safe operation literature 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 amends s. 327.39, F.S., to increase the minimum age for operators of personal watercraft from fourteen years to sixteen years. The bill makes it a misdemeanor of the second degree for any person having charge or control over a personal watercraft to knowingly let a person younger than sixteen years operate that personal watercraft or to knowingly let any person operate that personal watercraft who does not have a boating safety identification card in compliance with s. 327.395, F.S. This extends to all persons, regardless of age, the requirement to have completed a boating safety course approved by the FWC before operating a personal watercraft.

The bill amends s. 327.39, F.S., to make it a misdemeanor of the second degree 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 s. 327.54, F.S., as well as the rules of the FWC.

The bill amends s. 327.54, F.S., to require anyone who leases, hires, or rents a vessel to any person and who provides the information required by this section, to enroll in, attend, and successfully complete, at his or her own expense, a boating safety course that meets the minimum standards established by the FWC's rules. The bill deletes the statutory requirement that the course be approved by the NASBLA. However, the FWC's rules still require NASBLA approval.

The bill amends s. 327.54, F.S., to prohibit any livery from knowingly leasing, hiring, or renting a personal watercraft to any person who has not received instruction in safe handling of personal watercraft pursuant to rule 68D-36, F.A.C., or any other program established by the FWC. Also, any person obtaining a personal watercraft from a livery must provide the livery with a written statement attesting to their compliance with rule 68D-36, F.A.C., or any other program established by the FWC.

C. SECTION DIRECTORY:

Section 1: amends s. 327.39, F.S., revises certain requirements for owners and operators of personal watercraft.

Section 2: amends s. 327.54, F.S., revises requirements relating to the boating safety course required for leasing or renting a vessel or 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:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

Increasing the lawful age for operating a personal watercraft from fourteen to sixteen does not affect liveries since the minimum lawful age for renting a personal watercraft is eighteen⁴.

There may be an indeterminate fiscal impact on the private sector from decreased sales of personal watercraft vessels due to the change in lawful age of the operator of such vessel from 14 to 16.

⁴ Section 327.54(4)(a), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds, nor does it appear to reduce the authority that cities or counties have to raise revenues in the aggregate, nor does it appear to reduce the percentage of a state tax shared with cities or counties

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is granted to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill twice refers to rule 68D-36, F.A.C. This rule could subsequently be amended, repealed, or renumbered without statutory change. Consequently, liveries might be required to adhere to inappropriate rule requirements or might be relieved from compliance with necessary requirements.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES