



Florida Fish and Wildlife Conservation Commission

Legislative Affairs

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2009 Session Legislative Proposal

Title: Boating Under the Influence (BUI)

Submitted by: Division of Law Enforcement

1. Issue

This proposal will amend Florida Statutes to make appropriate Boating under the Influence (BUI) violations/penalties consistent with laws related to driving under the influence (DUI). Specifically, the blood alcohol level would be lowered from 0.20 or more to 0.15 or more to trigger enhanced penalties when charged with a BUI.

2. Present Situation

Section 327.35, Florida Statutes, prohibits the offense of boating under the influence (BUI) and has the same elements (other than the substitution of the word "vessel" for "vehicle") as the offense of driving under the influence. The fine and imprisonment provisions in the BUI statute are identical to those in the DUI statute; however BUI penalties do not include suspension of a driver's license. In the past, as DUI sections of law were changed during a legislative Session, BUI provisions were also amended to ensure that the sections of law remained consistent. Changes were made to DUI statutes during the 2008 Legislative Session, some of which create disparity between BUI and DUI statutes. The specific changes include:

- Section 316.193, Florida Statutes, lowered the Blood Alcohol Level (BAL) for purposes of triggering DUI enhanced penalties from 0.20 or more to 0.15 or more. According to the Department of Transportation (DOT), this change was needed to facilitate continued receipt of federal safety grant funds (approximately \$5 million received last year) under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). This section was also changed to delete an obsolete provision and allow the court to require the use of an approved ignition interlock device for a period of not less than 6 continuous months for a first DUI offense and for not less than 2 continuous years for a second offense.
- Section 316.656(2)(a), Florida Statutes, modified the threshold for enhanced penalties for DUI from 0.20 percent or more to 0.15 percent or more. Specifically, this section provides that a trial judge may not accept a guilty plea to a lesser offense from a person who has been given a breath or blood test to determine levels of alcohol content, the results of which show a blood or breath alcohol content by weight of 0.15 percent or more. According to the DOT, this change was needed to facilitate continued receipt of federal safety

grant funds under SAFETEA-LU.

3. Effect of Proposed Changes

This proposal would lower the threshold for enhanced penalties when charged with a BUI, from a BAL of 0.20 or more to 0.15 or more. It would make the threshold for BUI the same as for DUI.

4. Impact on All Pertinent Statutes/Rules

Sections 327.35 and 327.36, F.S.

5. Affected Agencies/Groups

All law enforcement agencies, the judicial system, and those persons subject to the provisions of DUI/BUI statutes could be impacted by this proposal.

6. Fiscal Impact

FWC

None

Private Sector

Persons found in violation of these BUI statutes would be subject to the enhanced penalties/fines provided by such statutes.

Governmental Agencies

No anticipated fiscal impact.

Tax/Fee issues

None

7. Proposed Language

Section 327.35 Boating under the influence; penalties; “designated drivers”.—

(4) Any person who is convicted of a violation of subsection (1) and who has a blood-alcohol level or breath-alcohol level of 0.15 ~~0.20~~ or higher, or any person who is convicted of a violation of subsection (1) and who at the time of the offense was accompanied in the vessel by a person under the age of 18 years, shall be punished:

(a) By a fine of:

1. Not less than \$1,000 or more than \$2,000 for a first conviction.
2. Not less than \$2,000 or more than \$4,000 for a second conviction.
3. Not less than \$4,000 for a third or subsequent conviction.

(b) By imprisonment for:

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

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

For the purposes of this subsection, only the instant offense is required to be a violation of subsection (1) by a person who has a blood-alcohol level or breath-alcohol level of 0.15 ~~0.20~~ or higher.

Section 327.36 Mandatory adjudication; prohibition against accepting plea to lesser included offense.—

(2)(a) No trial judge may accept a plea of guilty to a lesser offense from a person who is charged with a violation of s. 327.35, manslaughter resulting from the operation of a vessel, or vessel homicide and who has been given a breath or blood test to determine blood or breath alcohol content, the results of which show a blood-alcohol level or breath-alcohol level of 0.15 ~~0.16~~ or more.