



Florida Fish and Wildlife Conservation Commission

Legislative Affairs Office

620 South Meridian Street • Tallahassee, FL 32399-1600

(850) 487-3795 • FAX (850) 410-5265

2014 Session Legislative Proposal

Agenda Item 9B (2)

September 6, 2013

Attachment 4

Title: Mandatory Education for Boating Law Violators Change from In-Person Attendance Requirement to Online Attendance Option

Submitted by: Division of Law Enforcement

I. Summary of the Proposal

This proposal would amend statute to allow law violators to satisfy mandatory boating safety education requirements by taking an online course, in addition to the current requirement of an in-person course. It would also eliminate Fish and Wildlife Conservation Commission (Commission) discretion to provide for waivers of in-person attendance requirements for violators of section 327.731, F.S.

II. Present Situation

Section 327.395(1), F.S., requires that, with exceptions found in section 327.395(6), F.S., a person born on or after January 1, 1988, may not operate a vessel powered by a motor of 10 horsepower or greater unless such person has in his or her possession aboard the vessel, both photographic identification and a boater safety identification card issued by the Commission, which shows that he or she has:

- (1) completed a Commission-approved boater education course that meets the minimum 8-hour instruction requirement established by the National Association of State Boating Law Administrators; or
- (2) passed a course equivalency examination approved by the Commission; or
- (3) passed a temporary certificate examination developed or approved by the Commission.

These courses can be taken in person, in a classroom setting, where available, or can be completed online.

Failure to comply with the boating safety education requirement is a noncriminal infraction under section 327.395(7), F.S., and is punishable by a \$50 fine.

Sections 327.355(5)(c) and 327.731(1)(a), F.S., require completion of additional mandatory boating safety education for specified violations of the law. Section 327.355(5)(c), F.S. requires any person under the age of 21, who is convicted of being in control of a vessel with a breath-alcohol level of 0.02 or higher, to “enroll in, attend, and successfully complete a boating safety course that meets minimum standards established

by the (Commission) by rule.” Section 327.731(1)(a), F.S., requires that the following persons enroll in, attend, and successfully complete a boating safety course that meets minimum standards established by the Commission by rule:

- (1) every person convicted of a criminal violation of Chapter 327, F.S. (Vessel Safety);
- (2) every person convicted of a noncriminal infraction under Chapter 327, F.S., where the infraction resulted in a reportable boating accident; and
- (3) every person convicted of two noncriminal infractions as defined in sections 327.73(1)(h)-(k), (m), (o), (p), and (s)-(x), F.S., when the infractions occur within a 12-month period.

Criminal violations of Chapter 327 include, but are not limited to, the following examples:

- Unlawfully leaving the scene of a boating accident;
- Reckless operation of a vessel or personal watercraft;
- Boating under the influence of alcohol or drugs;
- Operating a vessel while the privilege to operate is suspended;
- Skiing while impaired or under the influence;
- Allowing a person under the age of 14 to operate a personal watercraft;
- Vessel title or registration fraud; and
- Altering or removing a hull identification number.

A reportable boating accident occurs when the operator of a vessel is in any manner involved in an accident resulting in:

- Personal injury requiring medical treatment beyond first aid;
- The death of a person;
- The disappearance of a person under circumstances which indicate the possibility of death or injury; or
- Damage to a vessel or other property which totals \$2000 or more.

The Commission adopted Chapter 68D-36.104 and Chapter 68D-36.106, Florida Administrative Code, to provide the standards for these education courses.

Both of these additional boating safety education sections require a person to enroll in, attend, and successfully complete an in-person boating safety course; the requirement may not be completed via an online course. The Commission identifies these courses as “Mandatory Education for Violators” courses (MEV). Section 327.731, F.S., provides that the Commission may provide by rule for waivers of the attendance requirement for violators of that section residing in areas where classroom presentation of the course is not available.

Each year, approximately 500 boat operators are required to complete mandatory education for violators (MEV) requirements.

When sections 327.355 and 327.731, F.S., were adopted in 1998 and 1996, respectively, boating safety education courses were available only in a classroom setting or through

home study courses. The home study courses consist of a booklet containing the course material, the test, and the test sheet. Home study students take the course and complete the test at their leisure and without any oversight. Section 327.731, F.S., was changed in 1998 to require classroom attendance, in part, because of a concern about lack of supervision for the home study course.

When the in-person attendance requirement was added to the MEV statutes, there were no online boating safety courses available in Florida. In the years since classroom attendance has been required, online courses have been growing in availability and popularity, and classroom course offerings have been declining. Today, over sixty percent of students who take an approved boating safety course in Florida do so in an online class.

Online education is the trend with other required education programs in the State. Florida's driver improvement courses, taken by drivers who have committed traffic violations, are offered online. In 2011, just over 375,000 students completed a basic driver improvement course in Florida. Of that number, over 286,000 (76%) students completed their requirements using online/distance learning courses.

Although online courses do not offer the same amount of oversight as a classroom course (such as a proctored final exam), technology now allows these courses to have students electronically sign these exams and for security features to be included in the exam session that improve oversight. As an example, a student who takes an online course today may have to answer security questions that randomly "pop up" throughout their online classroom session, to ensure that the person taking the exam is in fact, the violator. Of the 500 people required to complete MEV in-person education requirements, approximately 50 complaints are received each year about the difficulty people have in finding a course within a reasonable distance and within a reasonable amount of time.

An example of the limited availability of in-person, classroom MEV courses is in southwest Florida. During 2012, there were only 33 classroom courses available in Charlotte, Lee, and Collier Counties, and these counties have more than 80,000 registered vessels. Of these 33 classroom courses available, only four were offered during the summer. As this example shows, and as is commonly the case, there are fewer courses available when the waters are the busiest. In addition, almost 95 percent of instructors who teach the required in-person boating safety education courses are volunteers with the United States Coast Guard or the United States Power Squadrons. The Commission cannot control or mandate when these volunteers will make the required courses available. Through the Internet, however, boating safety education courses are available in every county in Florida, any time of day or night. People can more easily complete the statutory education requirements when online courses are available in addition to classroom courses. Among providers offering the basic boater safety education course required by section 327.395(1), F.S., for example, there are ten online course providers in the State and only four who provide in-person classes.

III. Effect of Proposed Changes

This proposal would amend statute to allow people to satisfy the MEV statutory requirements by taking an online course or an in-person course. It would also eliminate Commission discretion to provide for waivers of in-person attendance requirements for violators of section 327.731, F.S.

IV. Impact on All Pertinent Statutes/Rules/Constitution

Sections 327.355(5)(c) and 327.731(1)(a), F.S. would be amended, as follows:

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

(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, at his or her own expense, a classroom or on-line boating safety course that is approved by and meets minimum standards established by the ~~department~~ commission by rule.

327.731 Mandatory education for violators.—

(1) Every person convicted of a criminal violation of this chapter, every person convicted of a noncriminal infraction under this chapter if the infraction resulted in a reportable boating accident, and every person convicted of two noncriminal infractions as defined in s. 327.73(1)(h)-(k), (m), (o), (p), and (s)-(x), said infractions occurring within a 12-month period, must:

- (a) Enroll in, attend, and successfully complete, at his or her own expense, a classroom or on-line boating safety course that is approved by and meets the minimum standards established by the commission by rule; ~~however, the commission may provide by rule pursuant to chapter 120 for waivers of the attendance requirement for violators residing in areas where classroom presentation of the course is not available;~~
- (b) File with the commission 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 commission.

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

A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations?

No

B. Does the proposed legislation raise significant constitutional concerns under the United States or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, and impairment of contracts)?

No

C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties?

No

V. Affected Agencies and Groups

Violators of Chapter 327, F.S.; classroom (in-person) only MEV course providers; U.S. Coast Guard Auxiliary volunteers; U.S. Power Squadrons volunteers

VI. Fiscal Impact

A. On the Commission

None

B. On Other State Agencies

None

C. On Private Sector

There may be a small negative fiscal impact on organizations that offer only classroom, in-person courses, but these entities will have the option of making the course available online. It is anticipated that any fiscal impact to these organizations will be minimal. Students taking courses to meet mandatory education requirements make up a small part of the organizations' student load.

Those individuals who will be subject to MEV requirements may experience a small positive fiscal impact if the proposal is implemented, since the cost to the student for an MEV classroom course ranges from \$30 to \$50 and the cost to a student for online courses ranges from free to \$30. For some of these violators, the positive fiscal impact may even be larger, since under current law, they may be required to travel longer distances to find a classroom course in order to comply with the statute.

D. On Local Governments

None

E. Tax/Fee Issues
None