

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1275 Vessel Collisions, Accidents, and Casualties

SPONSOR(S): Grieco

TIED BILLS: **IDEN./SIM. BILLS:** SB 1834

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|---------|--|
| 1) Criminal Justice & Public Safety Subcommittee | | Frost | Hall |
| 2) Justice Appropriations Subcommittee | | | |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

Florida's Fish and Wildlife Conservation Commission (FWC) is responsible for regulating vessel safety throughout the state. FWC's Division of Law Enforcement enforces boating rules and regulations, coordinates boating safety campaigns and education, manages public waters and access to them, conducts boating accident investigations, identifies and removes derelict vessels, and investigates vessel theft and title fraud.

"Vessel" is synonymous with boat as referenced in the Florida Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, which is used or capable of being used as a means of transportation on water. Chapter 327, F.S., provides various penalties relating to vessel collisions, accidents, and casualties.

The penalties for recklessly or carelessly operating a vessel, boating under the influence (BUI), and vessel homicide are similar to the penalties applicable to recklessly or carelessly operating a motor vehicle, driving under the influence, and vehicular homicide. However, current law protects an unborn child from a person's unlawful vehicle operation and provides greater penalties for a number of offenses committed by a person driving a motor vehicle than those committed by a person operating a vessel.

HB 1275 amends the criminal penalties and creates new crimes for several vessel operation offenses to more closely mirror the penalties for the same offenses when committed by a person while operating a motor vehicle. The bill creates new crimes for leaving the scene of a boating accident which results in damage, injury, or death. A person who commits such an offense that results in:

- Only property damage, commits a first degree misdemeanor.
- Injury to a person that is not serious bodily injury, commits a third degree felony.
- Serious bodily injury to a person, commits a second degree felony.
- A person's death, commits a first degree felony, subject to a four year minimum mandatory prison sentence if he or she was under the influence at the time of the offense.

The bill creates the new crime of reckless or careless boating causing serious bodily injury to a person, a third degree felony.

The bill amends the current crime of BUI to include causing the death of an unborn child in the offense of BUI manslaughter, and subjects a person convicted of BUI manslaughter to a four year minimum mandatory prison sentence. The bill also amends the crime of vessel homicide to include killing an unborn child in the offense.

The bill may have an indeterminate positive impact on prison and jail beds by expanding the misdemeanor and felony offenses relating to unlawfully operating a vessel to more closely mirror the penalties for unlawfully operating a vehicle.

The bill provides an effective date of July 1, 2021.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1275.CRM

DATE: 3/20/2021

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Fish and Wildlife Conservation Commission (FWC) is responsible for regulating vessel¹ safety. FWC's Division of Law Enforcement:

- Enforces boating rules and regulations;
- Coordinates boating safety campaigns and education;
- Manages public waters and access to them;
- Conducts boating accident investigations;
- Identifies and removes derelict vessels; and
- Investigates vessel theft and title fraud.²

Vessel Collisions, Accidents, and Casualties

Under s. 327.30, F.S., a person operating a vessel that is involved in a collision, accident, or other casualty, must provide assistance as necessary and practicable to save any person affected or to minimize the damage caused and must provide, in writing, his or her name, address, and vessel identification to any person injured or to the owner of any property damaged. If a person damages an unattended vessel, he or she must make every reasonable effort to locate and notify the damaged vessel's owner or another person in charge of such vessel and provide his or her name, address, and vessel registration number.³

A vessel's operator must immediately notify law enforcement⁴ if a collision, accident, or other casualty involves a vessel capsizing, colliding with another vessel or object, sinking, an injury to a person requiring medical treatment beyond immediate first aid, a death, a person's disappearance from a vessel under circumstances indicating the possibility that he or she is injured or was killed, or damage to any vessel or other property appearing greater than \$2,000.⁵

A person operating a vessel involved in an accident or injury who leaves the scene of the accident or injury without providing all possible aid to the other persons involved and making a reasonable effort to locate the owner or other persons affected and without notifying the appropriate law enforcement official commits a third degree felony,⁶ unless the accident results in only property damage, in which case he or she commits a second degree misdemeanor.⁷ While a person who leaves the scene of a boating collision without taking appropriate actions commits either a second degree misdemeanor or a third degree felony, under s. 316.027, F.S., a person who leaves the scene of a vehicle accident commits a:

- Third degree felony, if the vehicle crash results in injury, other than serious bodily injury, to a person.
- Second degree felony,⁸ if the vehicle crash results in serious bodily injury to a person.
- First degree felony, if the vehicle crash results a person's death, and is subject to a four year minimum mandatory sentence.⁹

¹ "Vessel" is synonymous with boat as referenced in s. 1(b), Art. VII of the Florida Constitution and includes 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. S. 327.02(46), F.S.

² FWC, *Inside the FWC: Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Mar. 20, 2021); S. 327.70(1), F.S.

³ S. 327.30(1), F.S.

⁴ A person must notify either FWC's Division of Law Enforcement, the sheriff of the county in which the accident occurred, or the police chief of the municipality within which the accident occurred, if applicable. S. 327.30(2), F.S.

⁵ S. 327.30(2), F.S.

⁶ A third degree felony is punishable by up to five years in state prison and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

⁷ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Ss. 775.082 and 775.083, F.S.

⁸ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

⁹ A first degree felony is punishable by up to 30 years in state prison and a \$10,000 fine. Ss. 775.082 and 775.083, F.S. A person is also subject to a four year minimum mandatory sentence if he or she is under the influence when such a crash occurs.

Recklessly or Carelessly Operating a Vessel

Under s. 327.33, F.S., a person is guilty of operating a vessel in a reckless manner, if he or she operates any vessel, or manipulates any water skis, aquaplane, or similar device, in willful or wanton disregard for the safety of persons or property at a speed or in a manner as to endanger, or likely to endanger, life or limb, or damage the property of, or injure a person. Recklessly operating a vessel is a first degree misdemeanor.¹⁰

A person who operates a vessel in Florida waters must do so in a reasonable and prudent manner, with regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of another person outside the vessel or to endanger the life, limb, or property of another person by speeding excessively or overloading the vessel. A person who fails to operate a vessel in a reasonable and prudent manner commits a noncriminal violation. However, a vessel's wake and shoreline wash does not constitute damage or endangerment to property as long as the vessel is being operated in a reasonable and prudent manner, and its operator is not negligent.¹¹

Every person operating a vessel in Florida waters must comply with navigation rules. Failing to comply with navigation rules is punishable as follows:

- A person who violates navigation rules without recklessly operating a vessel, commits a noncriminal violation; and
- A person who violates navigation rules without recklessly operating a vessel, but whose violation results in a boating accident causing serious bodily injury or death, commits a second degree misdemeanor.¹²

Boating Under the Influence

A person commits the offense of boating under the influence (BUI) if he or she operates a vessel while:

- Under the influence of drugs or alcohol to the extent that his or her normal faculties are impaired;
- His or her blood-alcohol content is 0.08 or more grams of alcohol per 100 milliliters of blood; or
- His or her breath-alcohol content is 0.08 or more grams of alcohol per 210 liters of breath.¹³

A BUI offense is generally punishable as follows:

| Offense | Penalty | Fine | Imprisonment |
|--|-------------------|-----------------------------------|-----------------------------|
| 1st conviction | Misdemeanor | ≥ \$500 ≤ \$1,000 | up to 6 months |
| 2nd conviction ¹⁴ | Misdemeanor | ≥ \$1,000 ≤ \$2,000 | up to 9 months |
| 3rd conviction > 10 years after prior conviction ¹⁵ | Misdemeanor | ≥ \$2,000 ≤ \$5,000 | up to 12 months |
| 3rd conviction ≤ 10 years after prior conviction | 3rd degree felony | ≤ \$5,000 ¹⁶ | up to 5 years ¹⁷ |
| 4th or subsequent conviction | 3rd degree felony | ≥ \$2,000 ≤ \$5,000 ¹⁸ | up to 5 years ¹⁹ |

BUI Causing Property Damage, Injury, or Death

In addition to the general penalties assigned according to whether a person has a prior BUI conviction, BUI penalties may also be enhanced when the offense results in damage to property or injury to a

¹⁰ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

¹¹ Such noncriminal violation is punishable as provided under s. 327.73(1)(h), F.S.; S. 327.33(1), F.S.

¹² Punishable as provided under s. 327.73(1)(o), F.S.; 327.33(2), F.S.

¹³ S. 327.35(1), F.S.

¹⁴ S. 327.35(2)(a), F.S.

¹⁵ S. 327.35(2)(b)1.-2., F.S.

¹⁶ S. 775.083(1)(c), F.S.

¹⁷ Ss. 327.35(b)1. and 775.084, F.S.

¹⁸ S. 775.083(1)(c), F.S.

¹⁹ Ss. 327.35(b)3. and 775.084, F.S.

person. BUI causing property damage is a first degree misdemeanor,²⁰ BUI causing serious bodily injury to another person is a third degree felony,²¹ and BUI resulting in the death of any human being is considered BUI manslaughter. BUI manslaughter is a second degree felony, but is reclassified as a first degree felony if the offender leaves the scene without providing his or her information or rendering aid.²²

BUI penalties generally mirror the penalties for driving under the influence (DUI).²³ However, killing an unborn child²⁴ is also considered DUI manslaughter, and a person convicted of DUI manslaughter is subject to a four year minimum mandatory prison sentence.²⁵ BUI penalties do not currently include an offense for killing an unborn child or a minimum mandatory sentence.

Vessel Homicide

Under s. 782.072, F.S., a person commits vessel homicide if he or she kills a human being by operating a vessel in a reckless manner that is likely to cause death or great bodily harm to another person. Vessel homicide is generally a second degree felony. If a person commits vessel homicide and, at the time of the accident, knew or should have known that the accident occurred but he or she failed to give information and render aid,²⁶ the offense becomes a first degree felony. However, a person is not required to know that the accident resulted in injury or death.²⁷

Penalties for vessel homicide generally mirror the penalties for vehicular homicide. However, killing an unborn child is also considered vehicular homicide.²⁸ Vessel homicide does not currently include a similar crime for causing an unborn child's death.

Effect of Proposed Changes

HB 1275 amends the criminal penalties and creates new crimes for several vessel operation offenses to more closely mirror the penalties for the same offenses when committed by a person operating a motor vehicle. The bill creates new crimes for leaving the scene of a boating accident which results in damage, injury, or death, rather than just injury. A person who commits such an offense that results in:

- Only property damage, commits a first degree misdemeanor.
- Injury to a person that is not serious bodily injury,²⁹ commits a third degree felony.
- Serious bodily injury to a person, commits a second degree felony.
- A person's death, commits a first degree felony, subject to a four year minimum mandatory prison sentence if he or she was under the influence at the time of the offense.

The bill creates the new crime of reckless or careless boating causing serious bodily injury to a person, a third degree felony.

The bill amends the current crime of boating under the influence to include causing the death of an unborn child in the offense of BUI manslaughter, and subjects a person convicted of BUI manslaughter to a four year minimum mandatory prison sentence. The bill also amends the crime of vessel homicide to include killing an unborn child in the offense.

²⁰ S. 327.53(3)(c)1., F.S.

²¹ S. 327.53(3)(c)2., F.S.

²² S. 327.53(3)(c)3., F.S.

²³ See s. 316.193, F.S.

²⁴ "Unborn child" means a member of the species Homo sapiens, at any stage of development, who is carried in the womb. S. 775.021(5), F.S.

²⁵ S. 316.193(2)(c)1.b.(II), F.S.

²⁶ As required under s. 327.30, F.S.

²⁷ S. 782.072, F.S.

²⁸ See s. 782.071, F.S.

²⁹ The term "serious bodily injury" means an injury to any person, including the operator, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ. S. 327.353, F.S.

The bill may have an indeterminate positive impact on prison and jail beds by expanding the misdemeanor and felony offenses relating to unlawfully operating a vessel to more closely mirror the penalties for unlawfully operating a vehicle.

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 327.30, F.S., relating to collisions, accidents, and casualties.

Section 2: Amends s. 327.33, F.S., relating to reckless or careless operation of vessel.

Section 3: Amends s. 327.35, F.S., relating to boating under the influence; penalties; "designated drivers."

Section 4: Amends s. 782.072, F.S., relating to vessel homicide.

Section 5: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive impact on prison beds by expanding the felony offenses relating to unlawfully operating a vessel to more closely mirror penalties for unlawfully operating a vehicle.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive impact on jail beds by expanding the misdemeanor offenses relating to unlawfully operating a vessel to more closely mirror the penalties for unlawfully operating a vehicle.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES