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STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 20
 Title: An Act relating to implied consent to preliminary breath test...
 Sponsor: Sen. Ray
 Requestor: Sen. HESS
 Date of Request: 2-6-85

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Paul Conger

Phone: 465-4338

Division: Administrative Services

Date: 2-6-85

Approved by Commissioner: Michael J. Kle...

Date: 2-6-85

Agency: Public Safety

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER _ SB 20

Support

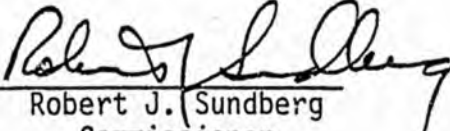
February 1, 1985

SB 20 - "An Act relating to implied consent to preliminary breath test by aircraft and watercraft operators."

The purpose of this legislation is to include aircraft and watercraft operators in the implied consent statute for breath tests.

Passage of this legislation will allow law enforcement officers to administer the preliminary breath test which can provide probable cause to administer an additional test of sufficient validity to stand as court evidence of operating a vehicle, watercraft, or aircraft while intoxicated.

During the past few years numerous instances have taken place where lives have been lost due to watercraft operators and pilots being under the influence of alcohol.


Robert J. Sundberg
Commissioner

STATE OF ALASKA
THE LEGISLATUREPOUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

December 17, 1984

SUBJECT: Operating watercraft while intoxicated.
(Work Order No. 14-0225)

TO: Senator Bill Ray

FROM: George W. Edwards *GWE*
Legislative Counsel

In response to your request concerning legislation in the area of watercraft operation, I researched existing law and made copies of relevant statutes for your review. Existing law addresses the intoxicated watercraft operator situation in Title 5, Amusements and Sports, at AS 5.25.060 and in Title 28, Motor Vehicles. Under Title 28 all of the drunk-driving laws which apply to motor vehicles apply to aircraft and watercraft as well. Thus it would appear that our existing prohibition against intoxicated watercraft operators is at least as strong as that of other states.

There is however a distinction among vehicle operators made in AS 28.35.031 which may warrant elimination. There operators of motor vehicles, aircraft and watercraft are all required by the implied consent law to submit to a breath test for alcohol. Only motor vehicle operators, however, are required to submit to preliminary breath tests in the field under subsection (b). These preliminary test devices are handheld portable units and I can't think of any practical reason they could not be used on aircraft and watercraft operators under essentially the same circumstances as they are now used on drivers of motor vehicles. These circumstances must include either an accident or a moving violation of law before the preliminary test can be required.

If there is any other help I can give you with regard to this inquiry please let me know.

GWE:ojb
J10/034

(23) "veterans organization" means a civic, service or charitable organization in the state, or a branch or lodge or chapter of a national or state organization in the state, not for pecuniary profit, the membership of which consists of individuals who were members of the armed services or forces of the United States, and which has been in existence for five years before applying for a license under this chapter. (§ 1 ch 27 SLA 1960; am §§ 4, 5 ch 66 SLA 1976; am §§ 6-8 ch 27 SLA 1982; am § 8 ch 59 SLA 1983)

Revisor's notes. — This section was reorganized in 1983 to put the defined words in alphabetical order.

Effect of amendments. — The 1982 amendment inserted "cutboard motor association" and "or nonprofit trade" in paragraph (15), inserted a comma

following "rights to participate" and the language beginning "the specified kinds of games" and ending "\$2 or less and in" in paragraph (16), and added paragraph (22).

The 1983 amendment added paragraph (16).

Chapter 25. Watercraft.

Article

3. General Provisions (§§ 05.25.060, 05.25.090)

Article 3. General Provisions.

Section

60. Prohibited operation
90. Penalties

Sec. 05.25.060. Prohibited operation. (a) A person may not operate a watercraft whether for recreational purposes or any other purpose or manipulate water skis, a surfboard, or a similar device on the waters of the state in a reckless or negligent manner so as to endanger the life or property of another person.

(b) A person may not operate a watercraft whether for recreational purposes or any other purpose in violation of AS 28.35.030 on the waters of the state while under the influence of any intoxicating liquor, narcotic drug, barbiturate or marijuana. (§ 3 ch 63 SLA 1961; am § 1 ch 60 SLA 1976; am § 3 ch 117 SLA 1982)

Effect of amendments. — The 1982 amendment substituted "in violation of AS 28.35.030" for "or manipulate water skis, a

surfboard, or a similar device" in subsection (b).

Sec. 05.25.090. Penalties. A person who violates any provision of this chapter is guilty of a misdemeanor and is punishable by a fine of not more than \$500, or by imprisonment of not more than six months, or by both, for each violation unless that person is convicted of a violation of AS 28.35.030, in which case the sentence shall be in accordance with AS 28.35.030. (§ 10 ch 63 SLA 1961; am § 4 ch 117 SLA 1982)

Sec. 28.35.030. Operating a vehicle, aircraft or watercraft while intoxicated. (a) A person commits the crime of driving while intoxicated if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

(1) while under the influence of intoxicating liquor, or any controlled substance listed in AS 11.71.140 — 11.71.190;

(2) when, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.10 percent or more by weight of alcohol in the person's blood or 100 milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.10 grams or more of alcohol per 210 liters of the person's breath; or

(3) while the person is under the combined influence of intoxicating liquor and another substance.

(b) Driving while intoxicated is a class A misdemeanor.

(c) Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than \$250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than \$500 if, within the preceding 10 years, the person has been previously convicted once in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 30 consecutive days and a fine of not less than \$1,000 if, within the preceding 10 years, the person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses: (1) driving while intoxicated under this or another law or ordinance with substantially similar elements; (2) refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. The execution of sentence may not be suspended nor may probation be granted except on condition that the minimum imprisonment provided in this section is served. Imposition of sentence may not be suspended. In addition, if the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked in accordance with AS 28.15.181 and the vehicle used in commission of the offense may be forfeited under AS 28.35.036. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of

alcohol education or rehabilitation that the court, after consideration of any information compiled under (d) of this section, finds appropriate.

(d) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under (c) of this section shall supply the Alaska court system with the information regarding the condition and treatment of those persons as the supreme court may require by rule. Information compiled under this subsection is confidential and may only be used by a court in sentencing a person convicted under (c) of this section, or by an officer of the court in preparing a presentence report for the use of the court in sentencing a person convicted under (c) of this section.

(e) A person who is sentenced to imprisonment for 72 consecutive hours upon a first conviction under (c) of this section and who is not released from imprisonment after 72 hours may not bring an action against the state or a municipality or its agents, officers, or employees for damages resulting from the additional period of confinement if

(1) the employee or employees who released the person exercised due care and, in releasing the person, followed the standard release procedures of the prison facility; and

(2) the additional period of confinement did not exceed 12 hours.

(f) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction.

(g) In this section,

(1) "operate an aircraft" means to use, navigate, pilot, or taxi an aircraft in the airspace over this state, or upon the land or water inside this state;

(2) "operate a watercraft" means to navigate or use a vessel used or capable of being used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial limits or under the jurisdiction of the state. (§ 50-5-3 ACLA 1949; am § 1 ch 107 SLA 1955; am § 1 ch 121 SLA 1967; am § 45 ch 32 SLA 1971; am § 4 ch 74 SLA 1974; am §§ 2, 3 ch 152 SLA 1978; am § 28 ch 94 SLA 1980; am § 10 ch 129 SLA 1980; am § 21 ch 45 SLA 1982; am §§ 13 — 15 ch 117 SLA 1982; am §§ 13 — 15 ch 77 SLA 1983)

Revisor's notes. — In 1984, former subsection (f) was redesignated as present subsection (g) and former subsection (g) was redesignated as present subsection (f).

Cross references. — For sentences for class A misdemeanors, see AS 12.55.035(b)(3) and 12.55.135(a).

Effect of amendments. — The first 1980 amendment, in subsection (a) as it existed prior to the second 1980 amendment, deleted "under AS 11.05.150" from

the end of the third sentence and substituted "AS 28.15.181" for "AS 28.15.110(c)" in the fourth sentence.

The second 1980 amendment rewrote the section.

The first 1982 amendment substituted "or any controlled substance listed in AS 11.71.140 — 11.71.190" for "depressant, hallucinogenic, stimulant or narcotic drug as defined in AS 17.10.230(13) and AS 17.12.150(3)" in subsection (a)(1).

purposes of statute or ordinance making it a criminal offense to operate an automobile while in that condition, 142 ALR 555.

What is a "motor vehicle" within statutes making it an offense to drive while intoxicated, 66 ALR2d 1146.

Right to trial by jury in criminal prosecution for driving while intoxicated or similar offense, 16 ALR3d 1373.

Driving under the influence, or when addicted to the use, of drugs as criminal offense, 17 ALR3d 815.

Applicability, to operation of motor vehicle on private property, of legislation making drunken driving a criminal offense, 29 ALR3d 938.

What amounts to violation of drunken driving statute in officer's "presence" or "view" so as to permit warrantless arrest, 74 ALR3d 1138.

What constitutes driving, operating, or being in control of motor vehicle for purposes of driving while intoxicated statute or ordinance, 93 ALR3d 7.

Reckless driving as lesser included offense of driving while intoxicated or similar charge, 10 ALR4th 1252.

Denial of accused's request for initial contact with attorney — drunk driving cases, 18 ALR4th 705.

Sec. 28.35.031. Implied consent. (a) A person who operates or drives a motor vehicle in this state or who operates an aircraft as defined in AS 28.35.030(g)(1) or who operates a watercraft as defined by AS 28.35.030 (g)(2) shall be considered to have given consent to a chemical test or tests of the person's breath for the purpose of determining the alcoholic content of the person's blood or breath if lawfully arrested for an offense arising out of acts alleged to have been committed while the person was operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated. The test or tests shall be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person was operating or driving a motor vehicle or operating an aircraft or a watercraft in this state while intoxicated.

(b) A person who operates or drives a motor vehicle in this state shall be considered to have given consent to a preliminary breath test for the purpose of determining the alcoholic content of the person's blood or breath. A law enforcement officer may administer a preliminary breath test at the scene of the incident if the officer has reasonable grounds to believe that a person's ability to operate a motor vehicle is impaired by the ingestion of alcoholic beverages and that the person

- (1) was driving a motor vehicle that is involved in an accident; or
- (2) committed a moving traffic violation.

(c) Before administering a preliminary breath test under (b) of this section, the officer shall advise the person that refusal may be used against the person in a civil or criminal action arising out of the incident and that refusal is an infraction. If the person refuses to submit to the test, the test shall not be administered.

(d) The result of the test under (b) of this section may be used by the law enforcement officer to determine whether the driver should be arrested.

(e) Refusal to submit to a preliminary breath test at the request of a law enforcement officer is an infraction.

v. State, Sup. Ct. Op. No. 1254 (File No. 2761), 548 P.2d 376 (1976).

Rule announced generally to have prospective effect but also to have partial retroactive effect. — See *Lauderdale v. State*, Sup. Ct. Op. No. 1254 (File No. 2761), 548 P.2d 376 (1976).

Applied in *Wilson v. State*, Ct. App. Op. No. 129 (File No. 6222), 650 P.2d 426 (1982).

Quoted in *Simpson v. Municipality of*

Anchorage, Ct. App. Op. No. 57 (File Nos. 4945, 4946, 5288), 635 P.2d 1197 (1981); *Lundquist v. Department of Pub. Safety*, Sup. Ct. Op. No. 2763 (File No. 7075), 674 P.2d 780 (1983); *Jensen v. State*, Ct. App. Op. No. 271 (File No. 7488), 667 P.2d 188 (1983).

Cited in *Coleman v. State*, Ct. App. Op. No. 229 (File No. 7215), 658 P.2d 1364 (1983).

Collateral references. — 60 C.J.S., *suspect chemical sobriety test under Motor Vehicles*, § 164.16. implied consent law, 95 ALR3d 710.
Duty of law enforcement officer to offer

Sec. 28.35.032. Refusal to submit to chemical test. (a) If a person under arrest refuses the request of a law enforcement officer to submit to a chemical test under AS 28.35.031(a), after being advised by the officer that the refusal will, if that person was arrested while operating or driving a motor vehicle for which a driver's license is required, result in the denial or revocation of the license or nonresident privilege to drive, that the refusal may be used against the person in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated, and that the refusal is a misdemeanor, a chemical test shall not be given, except as provided by AS 28.35.035.

(b) [Repealed, § 25 ch 77 SLA 1983.]

(c) [Repealed, § 25 ch 77 SLA 1983.]

(d) [Repealed, § 25 ch 77 SLA 1983.]

(e) The refusal of a person to submit to a chemical test of breath under (a) of this section is admissible evidence in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating or driving a motor vehicle or operating an aircraft or watercraft while intoxicated.

(f) Refusal to submit to the chemical test of breath authorized by AS 28.35.031(a) is a class A misdemeanor.

(g) Upon conviction of a person under this section, the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than \$250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than \$500 if, within the preceding

Duty to public. — This section does not create a duty by the Department of Public Safety toward the public which, if breached, can form the basis of a civil action for negligence against the department. *Lundquist v. Department of Pub. Safety*, Sup. Ct. Op. No. 2763 (File No. 7075), 674 P.2d 780 (1983).

Limitation for purposes other than DWI prosecutions. — AS 28.35.032(a) cannot be restricted to apply solely to driving while intoxicated prosecutions, and to the extent that the statute, by providing that "a chemical test shall not be given" following a breathalyzer refusal,

affirmatively limits the manner in which evidence of intoxication may be obtained, its limitation must apply with equal force in all prosecutions "arising out of acts alleged to have been committed while the defendant was operating or driving a motor vehicle while intoxicated." *Pena v. State*, Ct. App. Op. No. 245 (File No. 6174), 664 P.2d 169 (1983).

Former subsection (b) construed. — See *Graham v. State*, Sup. Ct. Op. No. 2403 (File No. 4092), 633 P.2d 211 (1981).

Cited in *Wilson v. State*, Ct. App. Op. No. 356 (File Nos. 7523, 7526, 7833), P.2d (1984).

Collateral references. — 7A Am. Jur. 2d, *Automobiles and Highway Traffic*, §§ 122 to 132, 141.

60 C.J.S., *Motor Vehicles*, § 164.16; 61A C.J.S., *Motor Vehicles*, § 593(1).

Requiring submission to physical examination or test as violation of constitutional rights, 25 ALR2d 1407.

Admissibility in criminal case of evidence that accused refused to submit to scientific test to determine amount of alcohol in system, 87 ALR2d 370, 26 ALR4th 1112.

Suspension or revocation of driver's license for refusal to take sobriety test, 88 ALR2d 1064.

Request before submitting to chemical sobriety test to communicate with counsel as refusal to take test, 97 ALR3d 852.

Request for prior administration of additional test as constituting refusal to submit to chemical sobriety test under implied consent law, 98 ALR3d 572.

Sec. 28.35.033. Chemical analysis of blood. (a) Upon the trial of a civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated, the amount of alcohol in the person's blood or breath at the time alleged shall give rise to the following presumptions:

(1) If there was 0.05 percent or less by weight of alcohol in the person's blood, or 50 milligrams or less of alcohol per 100 milliliters of the person's blood, or 0.05 grams or less of alcohol per 210 liters of the person's breath, it shall be presumed that the person was not under the influence of intoxicating liquor.

(2) If there was in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the person's blood, or in excess of 50 but less than 100 milligrams of alcohol per 100 milliliters of the person's blood, or in excess of 0.05 grams but less than 0.10 grams of alcohol per 210 liters of the person's breath, that fact does not give rise to any presumption that the person was or was not under the influence of intoxicating liquor, but that fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

1983 SUPPLEMENT

§ 8-738

Effect of amendment. — The 1983 amendment, effective July 1, 1983, deleted "or issue a new certificate preceding "and man" in the first sentence in subsection (b).

As the remainder of the section was not affected by the amendment, it is not set forth above.

Editor's note. — Section 2, ch. 8, Acts 1983.

provides that "the provisions of this act are intended solely to correct technical errors in the law and that there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this act."

§ 8-736. Same — Forms; investigations.

(a) The Department shall prescribe and provide suitable forms of applications, certificates of title, notices of security interests, and all other notices and forms necessary to carry out §§ 8-729 through 8-736. (1983, ch. 8.)

Effect of amendment. — The 1983 amendment, effective July 1, 1983, substituted "certificates" for "certificate" in subsection (a).

As the remainder of the section was not affected by the amendment, it is not set forth above.

Editor's note. — Section 2, ch. 8, Acts 1983.

provides that "the provisions of this act are intended solely to correct technical errors in the law and that there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this act."

§ 8-738. Operating vessel while intoxicated or while under influence of alcohol and/or drugs.

(a) *Prohibitions enumerated.* — A person may not operate or attempt to operate a vessel while the person:

- (1) Is intoxicated;
- (2) Is under the influence of alcohol;
- (3) Is so far under the influence of any drug, combination of drugs, or combination of drugs and alcohol that the person cannot operate a vessel safely; or
- (4) Is under the influence of any controlled dangerous substance, as defined in Article 27, § 277 of the Code, unless the person is entitled to use the controlled dangerous substance under the laws of this State.

(b) *Evidentiary requirements applicable.* — The evidentiary requirements of §§ 10-302 through 10-307 of the Courts Article are applicable to any violation of this section.

(c) *Defense.* — Unless the person charged with any violation of this section was unaware that the alcohol, drug, combination of drugs, or combination of drugs and alcohol would make the person incapable of safely operating a vessel, it is not a defense to any charge of violating this section that the person is or was entitled to use the alcohol, drug, combination of drugs, or combination of drugs and alcohol under the laws of this State. (1983, ch. 575.)

Editor's note. — Section 2, ch. 575, Acts 1983, provides that the act shall take effect July 1, 1983.

§ 10-204. Public records — Admissibility generally.

Effect of section. — This section simply makes records competent evidence; it does not address their relevance or judicial effect. Carr v. State, 50 Md. App. 209, 437 A.2d 238 (1981). Birth certificate is a public record and no

witness is needed to introduce it. Scott v. State, 43 Md. App. 323, 405 A.2d 420 (1979), modified, 289 Md. 647, 426 A.2d 923 (1981). Cited in Temoney v. State, 290 Md. 251, 429 A.2d 1018 (1981).

§ 10-205. Same — Exceptions.

(a) Confidential records. — Records, reports, statements, notes, or information assembled or obtained by the State Department of Health and Mental Hygiene, the Maryland Commission to Study Problems of Drug Addiction, the Medical and Chirurgical Faculty or its allied medical societies, an in-hospital staff committee, or a national organized medical society or research group that are declared confidential by § 4-102 of the Health-General Article or § 14-602 of the Health Occupations Article, are not admissible in evidence in any proceeding.

(1981, ch. 9, § 1; 1982, ch. 770 § 4.)

Effect of amendments. — The 1981 amendment substituted "§ 1-1 of Article 43 of the Code or § 14-602 of the Health Occupations Article" for "§ 1-1 or § 134 of Article 43 of the Code" near the end of subsection (a). Section 3 of the act provides that it shall take effect July 1, 1981, contingent upon the taking effect of the Health Occupations Article (ch. 8, Acts 1981).

The 1982 amendment, effective July 1, 1982, substituted "that are declared confidential by § 4-102 of the Health-General Article" for "which are declared confidential by § 1-1 of Article 43 of the Code" in subsection (a). As subsection (b) was not affected by the amendments, it is not set forth above.

Subtitle 3. Motor Vehicle Laws.

§ 10-301. Use of radio-micro waves to prove speed of vehicles.

The speed of a motor vehicle may be proved by evidence of a test made upon it with a device designed to measure and indicate the speed of a moving object by means of radio-micro waves. (An. Code 1957, art. 35, § 91; 1973, 1st Sp. Sess., ch. 2, § 1; 1983, ch. 307.)

Effect of amendment. — The 1983 amendment, effective July 1, 1983, substituted "measure and indicate" for "measure, indicate, and record".

§ 10-302. Chemical test for intoxication — Admissibility by analysis.

In a prosecution for a violation of a law concerning a person who is driving or attempting to drive a vehicle in violation of § 21-902 of the Transportation Article, a chemical test of his breath or blood may be administered to the person for the purpose of determining the alcohol content of his blood. (An. Code 1957, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1; 1977, ch. 14, § 6; ch. 164, § 3; 1980, ch. 41.)

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Effect of amendment. — The 1980 amendment, effective July 1, 1980, substituted "alcohol" for "alcohol" near the end of the section.

University of Baltimore Law Review. — For note, "Maryland's Drunk Driving Laws: An Overview," see 11 U. Balt. L. Rev. 357 (1982).

Legislative intent. — The legislature intended the requirements of this section to apply in prosecutions for the violation of any law concerning a person accused of driving while intoxicated or impaired. State v. Loscomb, 291 Md. 424, 435 A.2d 764 (1981).

Purpose of section. — This section is concerned with the protection of the public, rather than the protection of an accused. State v. Moon, 291 Md. 463, 436 A.2d 420 (1981).

Effect of section is to permit a chemical test

of one's breath or blood whenever there is a violation of any law that involves driving while intoxicated or impaired. Loscomb v. State, 45 Md. App 598, 416 A.2d 1276 (1980), modified, 291 Md. 424, 435 A.2d 764 (1981).

This section and TR § 16-205.1 (c) are in pari materia; they must be construed harmoniously in order to give full effect to each enactment. State v. Loscomb, 291 Md. 424, 435 A.2d 764 (1981).

Schmerber doctrine applied. — For application of Schmerber v. California, 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 908 (1966), holding that the privilege against self-incrimination does not extend to involuntarily obtained blood samples, see State v. Moon, 291 Md. 463, 436 A.2d 420 (1981).

§ 10-303. Same — Time limitation.

University of Baltimore Law Review. — For note, "Maryland's Drunk Driving Laws: An Overview," see 11 U. Balt. L. Rev. 357 (1982).

Legislative intent. — The legislature intended the requirements of this section to apply in prosecutions for the violation of any law concerning a person accused of driving while intoxicated or impaired. State v. Loscomb, 291 Md. 424, 435 A.2d 764 (1981).

Purpose of section. — This section is concerned with the protection of the public, rather than the protection of an accused. State v. Moon, 291 Md. 463, 436 A.2d 420 (1981).

This section and TR § 16-205.1 (c) are in pari materia; they must be construed harmoniously in order to give full effect to each enactment. State v. Loscomb, 291 Md. 424, 435 A.2d 764 (1981).

§ 10-304. Same — Qualifications of person administering test; equipment.

(a) Definitions. — (1) In this section the following words have the meanings indicated.

(2) "Qualified medical person" means any person permitted by law to withdraw blood from humans.

(3) "Qualified person" means a person who has received training in the use of the equipment in a training program approved by the toxicologist under the Postmortem Examiners Commission and who is either a police officer, a police employee, or an employee of the office of the Chief Medical Examiner.

(b) Breath test. — The chemical test of breath shall be administered by a qualified person with equipment approved by the toxicologist under the Postmortem Examiners Commission at the direction of a police officer. The officer arresting the individual may not administer the chemical test of breath.

(c) Blood test. — The blood shall be obtained by a qualified medical person using equipment approved by the toxicologist under the Postmortem Examiners Commission acting at the request of a police officer. The chemical test of blood shall be conducted by a qualified person using equipment approved by the toxicologist under the Postmortem Examiners Commission in a laboratory approved by that toxicologist.

(e) Proof of approved equipment. — For the purpose of establishing that the test was administered with equipment approved by the toxicologist under the

See last page for § 303

v. State, modified, 251, 429
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Postmortem Examiners Commission, a statement signed by the toxicologist certifying that the equipment used in the test has been approved by him shall be prima facie evidence of the approval, and the statement is admissible in evidence without the necessity of the toxicologist personally appearing in court.

(1980, ch. 41; 1982, ch. 770, § 4; 1983, ch. 289.)

Effect of amendments. — The 1980 amendment, effective July 1, 1980, rewrote subsection (a), eliminated "making the charge that the person was driving while intoxicated or while his driving ability was impaired by the consumption of alcohol" at the end of subsection (b) and rewrote subsection (c).

The 1982 amendment, effective July 1, 1982, substituted "under the Postmortem Examiners Commission" for "of the office of the Chief Medical Examiner of the Department of Postmortem Examiners" in paragraph (3) of subsection (a), in subsection (b), in both sentences in subsection (c) and in subsection (e) and substituted "approved by that toxicologist" for "approved by the toxicologist of the office of the Chief Medical Examiner of the Department of Postmortem Examiners" in the second sentence of subsection (c).

The 1983 amendment, effective July 1, 1983, added the second sentence in subsection (b).

As the remainder of the section was not affected by the amendments, it is not set forth above.

University of Baltimore Law Review. — For note, "Maryland's Drunk Driving Laws: An Overview," see 11 U. Balt. L. Rev. 357 (1982).

Legislative intent. — The legislature intended the requirements of this section to apply in prosecutions for the violation of any law concerning a person accused of driving while intoxicated or impaired. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

Purpose of section. — This section is concerned with the protection of the public, rather than the protection of an accused. *State v. Moon*, 291 Md. 463, 436 A.2d 420 (1981).

This section and TR § 16-205.1 (c) are in pari materia; they must be construed harmoniously in order to give full effect to each enactment. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

§ 10-305. Same — Type of test administered.

(a) *Type of test administered.* — The type of test administered to the defendant shall be the chemical test of breath except that the chemical test of blood shall be the type of test administered if:

- (1) The defendant is unconscious or otherwise incapable of refusing to take a chemical test for alcohol;
- (2) Injuries to the defendant require removal of the defendant to a medical facility; or
- (3) The equipment for administering the chemical test of breath is not available.

(b) *Person incapable of test refusal.* — Any person who is dead, unconscious, or otherwise in a condition rendering him incapable of test refusal shall be deemed not to have withdrawn consent. (An. Code 1957, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1; 1981, ch. 240; 1983, ch. 289.)

Effect of amendments. — The 1981 amendment, effective July 1, 1981, designated the former provisions of the section as subsection (a), divided the former first sentence into the present first and second sentences, added "to be" in the present first sentence, substituted "the defendant's" for "either his" in the present second sentence in subsection (a), added "due to facilities or equipment not being available" at the end of that sentence, substituted "this

inability" for "his inability" in the last sentence in the subsection, substituted "the trial" for "his trial" therein and added subsections (b) and (c).

The 1983 amendment, effective July 1, 1983, substituted present subsection (a) for former subsections (a) and (b) and redesignated former subsection (c) as present subsection (b).

University of Baltimore Law Review. — For note, "Maryland's Drunk Driving Laws: An

Overview," see 11 U. Balt. L. Rev. 357 (1982).

Legislative intent. — The legislature intended the requirements of this section to apply in prosecutions for the violation of any law concerning a person accused of driving while intoxicated or impaired. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

Purpose of section. — This section is concerned with the protection of the public, rather than the protection of an accused. *State v.*

Moon, 291 Md. 463, 436 A.2d 420 (1981).

This section and TR § 16-205.1 (c) are in *pari materia*; they must be construed harmoniously in order to give full effect to each enactment. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

Applied in *Loscomb v. State*, 45 Md. App. 598, 416 A.2d 1276 (1980), modified, 291 Md. 424, 435 A.2d 764 (1981).

§ 10-306. Same — Admissibility of test results without presence or testimony of technician.

(a) Subject to the provisions of subsection (b), in any criminal trial in which intoxication due to the consumption of alcohol, or being under the influence of alcohol, is an issue, an official copy of the results of a chemical test of breath or blood administered by a person authorized to administer the test, is admissible as substantive evidence, without the presence or testimony of the technician who administered the test.

(1982, ch. 95.)

Effect of amendment.

The 1982 amendment, effective July 1, 1982, deleted "or impairment" following "intoxication" and inserted "or being under the influence of alcohol" in subsection (a).

As subsection (b) was not affected by the amendment, it is not set forth above.

University of Baltimore Law Review. — For note, "Maryland's Drunk Driving Laws: An Overview," see 11 U. Balt. L. Rev. 357 (1982).

Legislative intent. — The legislature intended the requirements of this section to apply in prosecutions for the violation of any

law concerning a person accused of driving while intoxicated or impaired. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

Purpose of section. — This section is concerned with the protection of the public, rather than the protection of an accused. *State v. Moon*, 291 Md. 463, 436 A.2d 420 (1981).

This section and TR § 16-205.1 (c) are in *pari materia*; they must be construed harmoniously in order to give full effect to each enactment. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

§ 10-307. Same — Results of analysis and presumptions.

(a) *In general.* — In a proceeding in which a person is charged with a violation of § 388A of Article 27 or with driving or attempting to drive a vehicle in violation of § 21-902 of the Transportation Article, the amount of alcohol in the person's breath or blood shown in chemical analysis as provided in this subtitle is admissible in evidence and has the effect set forth in subsections (b) through (e) of this section.

(b) *No intoxication presumed.* — If there was in the person's blood at the time of testing 0.05 percent or less by weight of alcohol, as determined by an analysis of the person's blood or breath, it shall be presumed that the defendant was not intoxicated and that the defendant was not driving while under the influence of alcohol.

(c) *No presumption.* — If at the time of testing there was in the person's blood more than 0.05 percent but less than 0.08 percent by weight of alcohol, as determined by an analysis of the person's blood or breath, this fact may not give rise to any presumption that the defendant was or was not intoxicated or

that the defendant was or was not driving while under the influence of alcohol, but this fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(d) *Prima facie evidence of impairment.* — If at the time of testing there was in the person's blood 0.08 percent or more by weight of alcohol, as determined by an analysis of the person's blood or breath, it shall be prima facie evidence that the defendant was driving while under the influence of alcohol.

(e) *Prima facie evidence of intoxication.* — If at the time of testing there was in the person's blood 0.13 percent or more by weight of alcohol, as determined by an analysis of the person's blood or breath, it shall be prima facie evidence that the defendant was intoxicated. (An. Code 1957, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 691, § 8; ch. 864, § 2; 1975, ch. 9; 1977, ch. 14, § 6; 1978, chs. 423, 454; 1981, ch. 242.)

Effect of amendments.

The 1981 amendment, effective July 1, 1981, substituted "the defendant was not driving while under the influence of alcohol" for "his driving ability was not impaired by the consumption of alcohol" at the end of subsection (b), substituted "the defendant was or was not driving while under the influence of alcohol" for "his driving ability was or was not impaired by the consumption of alcohol" in subsection (b), substituted "0.08 percent" for "0.10 percent" in subsections (c) and (d), substituted "defendant was driving while under the influence of alcohol" for "defendant's driving ability was impaired by the consumption of alcohol" at the end of subsection (d), substituted "0.13 percent" for "0.15 percent" in subsection (e) and clarified language in subsections (b), (c), (d) and (e).

University of Baltimore Law Review. — For note, "Maryland's Drunk Driving Laws: An Overview," see 11 U. Balt. L. Rev. 357 (1982).

Legislative intent. — The legislature intended the requirements of this section to apply in prosecutions for the violation of any law concerning a person accused of driving while intoxicated or impaired. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

Purpose of section. — This section is concerned with the protection of the public, rather than the protection of an accused. *State v. Moon*, 291 Md. 463, 436 A.2d 470 (1981).

This section and TR § 16-205.1 (c) are in

pari materia; they must be construed harmoniously in order to give full effect to each enactment. *State v. Loscomb*, 291 Md. 424, 435 A.2d 764 (1981).

Applicability of section in criminal prosecutions. — The statutory presumptions set forth in this section apply in criminal prosecutions specified in subsection (a) and only when the prerequisites of §§ 10-302 through 10-309 of this article are met. *Fouche v. Masters*, 47 Md. App. 11, 420 A.2d 1279 (1980).

Section not applicable in civil cases. — The jury in a civil case may not apply the presumptions relating to intoxication and impairment set forth in this section. *Fouche v. Masters*, 47 Md. App. 11, 420 A.2d 1279 (1980).

Compliance with section required. — Whenever a person is charged under article 27, § 398, and the basis of the charge is the alleged intoxication of the accused while operating a motor vehicle, no evidence derived from any chemical analysis administered or caused to be administered by the police is admissible in evidence unless there has been compliance with this section. *Loscomb v. State*, 45 Md. App. 595, 416 A.2d 1276 (1980), modified, 291 Md. 424, 435 A.2d 764 (1981).

Proof of unsafe operation is not a necessary element of the offenses of driving while intoxicated or driving while under the influence of alcohol. 68 Op. Att'y Gen. (May 2, 1983).

§ 10-308. Same — Other evidence.

The evidence of the chemical analysis does not limit the introduction of other evidence bearing upon whether the defendant was intoxicated or whether the defendant was driving while under the influence of alcohol. (An. Code 1957, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1; 1977, ch. 14, § 6; 1981, ch. 242.)

§ 10-301. Use of radio-micro waves to prove speed of vehicles.

The speed of a motor vehicle may be proved by evidence of a test made upon it with a device designed to measure, indicate, and record the speed of a moving object by means of radio-micro waves. (An. Code 1957, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1.)

REVISOR'S NOTE

This section is new language derived from Article 35, § 101. This section was enacted in 1953. Maryland Laws 1973, ch. 786 removed the requirement of notifying the motorist by highway markings of the presence of radio-micro wave devices used to record speed. Language and style are changed.

Sufficiency of evidence. - The use of radar apparatus, like the use of speedometers, cameras, and X-rays, has now reached such general acceptance by State legislatures, executive departments of state and federal governments, the courts and the public that it is no longer necessary for the prosecution to offer expert testimony to explain the theory and operation of the radar equipment. It is sufficient to show that the equipment has been properly tested and checked, that it was managed by a competent operator, that proper operating procedures were followed, and that proper records were kept. United States v. Drew, 156 F. Supp. 200 (D. Md. 1957).

§ 10-302. Chemical test for intoxication - Admissibility by analysis.

In a prosecution for a violation of a law concerning a person who is driving or attempting to drive a vehicle in violation of § 11-302 of Article 66 1/2 of the Code a chemical test of his breath, blood, urine, or other bodily substance may be administered to the person for the purpose of determining the alcoholic content in his body. (An. Code 1957, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1.)

REVISOR'S NOTE

This section is new language derived from that section. Style is changed, and the language streamlined.

Maryland Law Review. - For article on chemical tests for alcoholic intoxication, see 17 Md. L. Rev. 193 (1957). For symposium on compulsory use of chemical tests for alcoholic intoxication, see 11 Md. L. Rev. 111 (1954).

For case note on official denial of a blood test as constituting a violation of due process of law, see 23 Md. B. Rev. 232 (1963).

§ 10-303. Same - Time limitation.

The specimen of breath, blood, or urine shall be taken within two hours after the person accused is apprehended. (An. Code 1957, art. 35, § 100; 1973, 1st Sp. Sess., ch. 2, § 1.)

REVISOR'S NOTE

This section is new language derived from Article 35, § 100 (a). Style and language are changed in subdividing this long subsection.

10-301-101

FLORIDA

1984 REGULAR SESSION

Ch. 84-188

BOATING SAFETY

Tentative classification changes not available at time of publication

CHAPTER 84-188

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 100

A bill to be entitled

An act relating to boating safety; creating ss. 327.351-327.354, F.S.; prohibiting the operation of a vessel while intoxicated; providing punishment; providing tests to determine intoxication or impairment; providing legislative intent; providing for right to refuse; authorizing use of blood tests in cases of death or serious bodily injury; providing for certain presumptions of impairment; amending s. 327.32, F.S.; providing civil liability for reckless or careless operation of a vessel; amending s. 327.33, F.S.; providing criminal penalties for reckless or careless operation of a vessel; amending s. 327.35, F.S.; providing for fines, imprisonment, and community work projects for persons guilty of operating a vessel while under the influence of alcoholic beverages, chemical or controlled substances; amending s. 327.37, F.S.; prescribing certain safety rules for operating a vessel towing persons on water skis, aquaplanes, innertubes, and sleds; amending s. 327.50, F.S.; prohibiting use of sirens and

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emergency lights on all vessels other than law enforcement, fire, and emergency vessels; amending s. 327.54, F.S.; prohibiting liveries from renting a vessel not containing the safety equipment required by s. 327.50, F.S.; amending s. 327.56, F.S.; authorizing searches of vessels by law enforcement officers to ascertain compliance with safety regulations; amending s. 327.70, F.S.; providing that any authorized law enforcement officer shall enforce ch. 327 and ch. 328, F.S.; amending s. 327.72, F.S.; providing a \$25 fine for the careless operation of a vessel; repealing s. 327.51, F.S., relating to ventilator ducts; providing an effective date.

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

Section 1. Section 327.351, Florida Statutes, is created to read:

327.351 Operation of a vessel while intoxicated; punishment.--

(1) It is unlawful for any person, while in an intoxicated condition or under the influence of alcoholic beverages; any chemical substance set forth in s. 877.111; or any substance controlled under chapter 893 to such extent as to deprive him of full possession of his normal faculties, to operate on the waters of this state any vessel. Any person convicted of a violation of this section shall be punished as

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provided in s. 327.35. For the purposes of this subsection, a previous conviction under s. 327.35 shall also be considered a previous conviction for violation of this subsection.

(2) If, however, damage to the property or person of another, other than damage resulting in the death of any person, is done by such intoxicated person under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893, to such extent as to deprive him of full possession of his normal faculties, by reason of the operation of any vessel mentioned herein, he is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, but the penalty imposed for a violation of this subsection shall be not less than the penalty provided under s. 327.35, and if the death of any human being is caused by the operation of a vessel by any person while so intoxicated, such person shall be deemed guilty of manslaughter and on conviction shall be punished as provided by existing law relating to manslaughter.

(3) A conviction under the provisions of this section shall not be a bar to any civil suit for damages against the person so convicted.

Section 2. Section 327.352, Florida Statutes, is created to read:

327.352 Tests for impairment or intoxication; right to refuse.--

(1)(a) The Legislature declares that 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

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incidence of boating while impaired or intoxicated be established.

(b) Any person who operates a vessel within this state shall submit to an approved chemical breath test to determine the alcoholic content of the blood, and to a urine test to detect the presence of controlled substances, if that person is lawfully arrested for any offense allegedly committed while operating a vessel while under the influence of alcoholic beverages or controlled substances. The breath test shall be incidental to a lawful arrest and administered at the request of a law enforcement officer who has probable cause to believe such person was operating the vessel within this state while under the influence of alcoholic beverages. The urine test shall be incidental to a lawful arrest and administered at a detention facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has probable 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 specimens and maintain the privacy of the individual involved. The administration of either test shall not preclude the administration of the other test. The refusal to submit to a chemical breath or urine test upon the request of a law enforcement officer as provided in this section shall be admissible into evidence in any criminal proceeding.

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(c) If the arresting officer does not request a chemical test of the person arrested for any offense allegedly committed while the person was operating a vessel while under the influence of alcoholic beverages or controlled substances, such person may request the arresting officer to have a chemical test made of the arrested person's breath, urine, or blood for the purpose of determining the alcoholic content of the person's blood or the presence of controlled substances, and, if so requested, the arresting officer shall have the test performed.

(d) The provisions of s. 316.1932(1)(f), relating to administration of tests for determining the weight of alcohol in the defendant's blood, additional tests at the defendant's expense, availability of test information to the defendant or the defendant's attorney, and liability of medical institutions and persons administering such tests are incorporated into this act.

(2) The results of any test administered pursuant to this section for the purpose of detecting the presence of any controlled substance shall not be admissible as evidence in a criminal prosecution for the possession of a controlled substance.

(3) Notwithstanding any provisions of law pertaining to the confidentiality of hospital records or other medical records, information obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of s. 327.35 or s. 327.351 upon request therefor.

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Section 3. Section 327.353, Florida Statutes, is created to read:

327.353 Blood test for impairment or intoxication in cases of death or serious bodily injury; right to use reasonable force.--

(1) Notwithstanding any recognized ability to refuse to submit to the tests provided in s. 327.352, if a law enforcement officer has probable cause to believe that a vessel operated by a person under the influence of alcoholic beverages or controlled substances has caused the death or serious bodily injury of a human being, such person shall submit, upon the request of a law enforcement officer, to a test of his blood for the purpose of determining the alcoholic content thereof or the presence of controlled substances therein. The law enforcement officer may use reasonable force if necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. "Serious bodily injury" means a physical condition which creates a substantial risk of death; serious, personal disfigurement; or protracted loss or impairment of the function of any bodily member or organ.

(2) The provision of s. 316.1933(2), relating to blood tests for impairment or intoxication are incorporated into this act.

(3)(a) Any criminal charge resulting from the incident giving rise to the officer's demand for testing should be tried concurrently with a charge of any violation arising out of the court. If such charges are tried separately, the fact that such person refused, resisted, obstructed, or opposed

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testing shall be admissible at the trial of the criminal offense which gave rise to the demand for testing.

(b) The results of any test administered pursuant to this section for the purpose of detecting the presence of any controlled substance shall not be admissible as evidence in a criminal prosecution for the possession of a controlled substance.

(4) Notwithstanding any provision of law pertaining to the confidentiality of hospital records or other medical records, information obtained pursuant to this section shall be released to a court, prosecuting attorney, defense attorney, or law enforcement officer in connection with an alleged violation of s. 327.35 or s. 327.351 on request therefor.

Section 4. Section 327.354, Florida Statutes, is created to read:

327.354 Presumption of impairment; testing methods.--

(1) It is unlawful and punishable as provided in s. 327.35 for any person who is under the influence of alcoholic beverages or controlled substances, when affected to the extent that his normal faculties are impaired, to operate a vessel on the waters of this state.

(2) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while operating a vessel while under the influence of alcoholic beverages or controlled substances, when affected to the extent that his normal faculties were impaired or to the extent that he was deprived of full possession of his normal faculties, the results of any test

Additions in text are indicated by underline; deletions by ~~strikeouts~~

administered in accordance with s. 327.352 or s. 327.353 and this section shall be admissible into evidence when otherwise admissible, and the amount of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood or breath, shall give rise to the following presumptions:

(a) If there was at that time 0.05 percent or less by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of alcoholic beverages to the extent that his normal faculties were impaired.

(b) If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of alcoholic beverages to the extent that his normal faculties were impaired, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcoholic beverages to the extent that his normal faculties were impaired.

(c) If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, that fact shall be prima facie evidence that the person was under the influence of alcoholic beverages to the extent that his normal faculties were impaired.

The percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 milliliters of blood. The foregoing provisions of this subsection shall not be construed

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as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of alcoholic beverages to the extent that his normal faculties were impaired.

(3) A chemical analysis of a person's blood to determine alcoholic content or a chemical analysis of a person's breath, in order to be considered valid under the provisions of this section, must have been performed substantially in accordance with methods approved by the Department of Health and Rehabilitative Services and by an individual possessing a valid permit issued by the department for this purpose. Any insubstantial differences between approved techniques and actual testing procedures in any individual case shall not render the test or test results invalid. The Department of Health and Rehabilitative Services may approve satisfactory techniques or methods, ascertain the qualification and competence of individuals to conduct such analyses, and issue permits which shall be subject to termination or revocation in accordance with rules adopted by the department.

(4) Any person charged with operating a vessel while under the influence of alcoholic beverages or controlled substances to the extent that his normal faculties were impaired, whether in a municipality or not, shall be entitled to trial by jury according to the Florida Rules of Criminal Procedure.

Section 5. Section 327.32, Florida Statutes, is amended to read:

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327.32 Vessel Boat declared dangerous instrumentality: civil liability.--All vessels boats, of whatever classification, shall be considered dangerous instrumentalities in this state and any operator of such vessels boats shall, during any utilization of said vessels boats, exercise the highest degree of care in order to prevent injuries to others. Liability for reckless or careless negligent operation of a vessel boat shall be confined to the operator person in immediate charge of or operating the vessel boat and not the owner of the vessel boat, unless the owner he is the operator or is present in the vessel boat when any injury or damage is occasioned by the reckless or careless negligent operation of such vessel, whether such recklessness or carelessness negligence consists of a violation of the provisions of the statutes of this state, or disregard negligence in observing such care and such operation as the rules of the common law require.

Section 6. Section 327.33, Florida Statutes, is amended to read:

327.33 Reckless or careless negligent operation of vessel.--

(1) It is unlawful to operate a vessel in a reckless manner. A person is guilty of reckless operation of a vessel who operates any vessel, or manipulates any water skis, aquaplane, or similar device, in willful or wanton disregard for the safety of persons or property; or without due regard, caution, and circumspection; or at a speed or in a manner as to endanger, or likely to endanger, life or limb, or damage the property of, or injure any person. Any person who

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violates a provision of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person operating a vessel upon the waters of this state shall operate the vessel in a reasonable and prudent manner, having regard for other waterborne traffic, vessel wake, and all other attendant circumstances so as not to endanger the life, limb, or property of any person. Failure to operate a vessel in such a manner shall constitute careless operation. However, vessel wake and shoreline wash resulting from the reasonable and prudent operation of a vessel shall absent negligence not constitute damage or endangerment to property. Any person who violates the provisions of this subsection is guilty of a noncriminal violation as defined in s. 775.08.

(3) ~~(2)~~ Unless otherwise provided in this chapter, the ascertainment of fault in vessel boat operations and marine accidents shall be determined according to the United States Coast Guard Navigation Rules in effect on October 1, 1981, and as thereafter amended.

Section 7. Section 327.35, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 327.35, F.S., for present text.)

327.35 Operating motorboat while under the influence of alcoholic beverages, chemical substances, or controlled substances; penalties.--

(1) It is unlawful and punishable as provided in subsection (2) for:

Additions in text are indicated by underline; deletions by ~~strikeouts~~

(a) Any person who is under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111 or any substance controlled under chapter 893, when affected to the extent that his normal faculties are impaired, to operate a vessel on the waters of this state; or

(b) Any person with a blood alcohol level of 0.10 percent or above to operate a vessel within this state.

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

(a) By a fine of:

1. Not less than \$250 nor more than \$500 for a first conviction;

2. Not less than \$500 nor more than \$1,000 for a second conviction;

3. Not less than \$1,000 nor more than \$2,500 for a third or subsequent conviction; and

(b) By imprisonment for:

1. Not more than 6 months for a first conviction.

2. Not more than 9 months for a second conviction.

3. Not more than 12 months for a third or subsequent conviction.

(3) The court shall require any person convicted of violating this section or s. 327.351 to attend a substance abuse course specified by the court; and the agency conducting the course may refer the person to an authorized agency for substance abuse evaluation and treatment, in addition to any sentence or fine imposed under this section. Such person shall assume reasonable costs for such education, evaluation, and treatment. "Substance abuse" means the abuse of alcohol

or any substance named or described in Schedules I through V of s. 893.03.

(4) With respect to any person convicted of a violation of subsection (1), regardless of any penalty imposed pursuant to subsection (2):

(a) For the first conviction thereof, the court shall order the defendant to participate in public service or a community work project for a minimum of 50 hours.

(b) For the second conviction within a period of 3 years from the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 10 days.

(c) For the third conviction within a period of 5 years from the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 30 days.

Section 8. Sect: 327.37, Florida Statutes, is amended to read:

327.37 Water skis and aquaplanes regulated.--

(1) No person shall operate a vessel on any waters of this state towing a person on water skis, or an aquaplane, or similar device unless there is in such vessel a person in addition to the operator, in a position to observe the progress of the person being towed, or the vessel is equipped with a wide-angle rear view mirror mounted in such manner as to permit the operator of the vessel to observe the progress of the person being towed.

(2) No person shall engage in water skiing, aquaplaning, or similar activity at any time between the hours

Additions in text are indicated by underline; deletions by ~~strikeouts~~

or any substance named or described in Schedules I through V of a. 893.03.

(4) With respect to any person convicted of a violation of subsection (1), regardless of any penalty imposed pursuant to subsection (2):

(a) For the first conviction thereof, the court shall order the defendant to participate in public service or a community work project for a minimum of 50 hours.

(b) For the second conviction within a period of 3 years from the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 10 days.

(c) For the third conviction within a period of 5 years from the date of a prior conviction for violation of this section, the court shall order imprisonment for not less than 30 days.

Section 8. Section 327.37, Florida Statutes, is amended to read:

327.37 Water skis and aquaplanes regulated.--

(1) No person shall operate a vessel on any waters of this state towing a person on water skis, or an aquaplane, or similar device unless there is in such vessel a person in addition to the operator, in a position to observe the progress of the person being towed, or the vessel is equipped with a wide-angle rear view mirror mounted in such manner as to permit the operator of the vessel to observe the progress of the person being towed.

(2) No person shall engage in water skiing, aquaplaning, or similar activity at any time between the hours

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from one-half hour after sunset to one-half hour before sunrise.

(3) The provisions of subsections (1) and (2) do not apply to a performer engaged in a professional exhibition or a person preparing to participate in an official regatta, boat race, marine parade, tournament, or exhibition.

(4) No person shall operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, aquaplane, innertube, sled, or similar device may be affected or controlled, in such a way as to cause the water skis, aquaplane, innertube, sled, or similar device or any person thereon to collide or strike against any vessel, bridge, wharf, pier, dock, buoy, platform, piling, channel marker, or any other object, except slalom buoys, ski jumps, or like objects used normally in competitive or recreational skiing.

Section 9. Section 327.50, Florida Statutes, is amended to read:

327.50 Vessel safety regulations; equipment and lighting requirements.--

(1) Every vessel on the waters of this state shall carry safety equipment and conform to uniform lighting requirements in accordance with current United States Coast Guard safety and lighting requirements, as set forth in Titles 33 and 46, Code of Federal Regulations, unless expressly exempt by state law.

(2) The use of sirens or flashing red or blue emergency lights on any vessel is prohibited except on a vessel operated by a law enforcement officer or fire

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protection officer in the performance of his official duties or on a vessel used for emergency rescue activity.

Section 10. Section 327.54, Florida Statutes, is amended to read:

327.54 Boat Liveries; safety regulations; penalty.--

(1) No boat livery shall knowingly lease, hire, or rent a vessel boat to any person:

(a) When the number of persons intending to use the vessel boat shall exceed the number deemed to constitute a maximum safety load for the vessel pursuant to the vessel's authorized person's capacity plate boat.

(b) When the horsepower of the motor exceeds the capacity of the vessel boat, making the vessel boat unsafe to operate.

(c) When the vessel boat does not contain the required safety equipment pursuant to s. 327.50 a Coast Guard-approved lifesaving device for each person occupying the boat and other equipment as required for the class of vessel as set forth in s. 327.57.

(d) When the boat does not contain a suitable anchor and anchor line of appropriate size and length.

(e) When the boat does not contain an appropriate paddle or oar.

~~(d)(f)~~ (f) When the vessel boat is not seaworthy.

(2) No boat livery shall close until the last boat has returned. If a vessel boat is unnecessarily overdue, the livery shall notify the proper authorities.

(3) Any person convicted of violating this section shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083.

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(4) Where the boat livery has complied with subsections (1) and (2), his liability shall cease and a person leasing the vessel boat from the livery shall be liable for any violations of this chapter and shall be personally liable for any accident or injury occurring while in charge of such vessel boat.

Section 11. Section 327.56, Florida Statutes, is amended to read:

327.56 Safety inspections; qualified.--No officer shall board any vessel to make a safety inspection if the owner or operator is not aboard. When the owner or operator is aboard, an officer may board a vessel with consent or when he has probable cause or knowledge to believe that a violation of a provision of this chapter has occurred or is occurring. An officer may board a vessel when the operator refuses to display the safety equipment required by law, when requested to do so by a law enforcement officer.

Section 12. Section 327.70, Florida Statutes, is amended to read:

327.70 Enforcement.--

(1) This chapter and chapter 328 shall be enforced by the Division of Law Enforcement of the department and its officers, the Game and Fresh Water Fish Commission and its officers, the sheriffs of the various counties and their deputies, and any other authorized law enforcement officer, all of whom may order the removal of vessels deemed to be an interference or a hazard to public safety, enforce the provisions of this chapter and chapter 328, or cause any

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inspections to be made of all vessels boats in accordance with this chapter and chapter 328, in the water of this state.

(2) Such officers shall have the power and duty to issue such orders and to make such investigations, reports, and arrests in connection with any violation of the provisions of this chapter and chapter 328 as are necessary to effectuate the intent and purpose of this chapter and chapter 328.

Section 13. Section 327.72, Florida Statutes, is amended to read:

327.72 Penalties.--

(1) Any violation of the provisions of s. 327.33(2) ~~s. 327.57(1)(a) and 2~~ shall be deemed a noncriminal violation, as defined in s. 775.08(3), punishable by a fine of \$25.

(2) Any person failing to comply with the provisions of this chapter or chapter 328 not specified in subsection (1) or not paying the fine specified in subsection (1) within 10 days, except as otherwise provided in this chapter or chapter 328, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 14. Section 327.51, Florida Statutes, is hereby repealed.

Section 15. This act shall take effect October 1, 1984.

Approved by the Governor June 13, 1984.

Filed in Office Secretary of State June 14, 1984.

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