

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 320

INTRODUCER: Senators Sachs and Margolis

SUBJECT: Commercial Parasailing

DATE: January 7, 2014

REVISED: 2/11/2014

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Niles</u>	<u>Imhof</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	<u></u>	<u></u>	<u>CM</u>	<u></u>
3.	<u></u>	<u></u>	<u>CA</u>	<u></u>

I. Summary:

SB 320 amends ch. 327, F.S., relating to Commercial Parasailing. The bill defines commercial parasailing. The bill establishes minimum requirements for liability insurance, including liability coverage in the amounts of at least one million dollars per occurrence and a two million dollar annual aggregate. The bill requires safety briefings for parasailing participants and maintenance of a weather log by parasailing operators.

The bill requires that the operator of the vessel engaged in commercial parasailing evaluate weather conditions and wind speeds as defined in the bill. The bill prohibits commercial parasailing during wind speeds that exceed twenty miles per hour, wind gusts fifteen miles per hour greater than the present wind speed, wind speed during gusts that exceeds twenty-five miles per hour, or when a lightning storm comes within seven miles of the parasailing area. The bill requires that the vessel operator have licensure from the United States Coast Guard appropriate for the number of passengers and the displacement of the vessel.

The bill provides an effective date of October 1, 2014.

II. Present Situation:

Parasailing Activity

The Florida Fish and Wildlife Conservation Commission (FWC) estimates there are approximately 100 active commercial parasail operators in Florida, generally operating along the Atlantic Ocean and Gulf of Mexico coastlines.¹ One exception is at Walt Disney World where parasailing takes place on Bay Lake, in Orange County.²

¹2014 Legislative Analysis for SB 320, Legislative Affairs Office, Florida Fish and Wildlife Conservation Commission, December 4, 2013.

² *Id.*

Data compiled by the FWC indicates that:³

- From January 1, 2001, through October 30, 2013, 21 accidents involving parasail vessels have occurred in Florida, resulting in 23 injuries and 6 fatalities;
- In 10 of the accidents, high winds or sudden wind gusts were a contributing factor;
- In 6 of the 10 accidents with wind as a contributing factor, there was equipment failure;
- The boating accident reports state that the wind gusts were produced by sudden thunderstorms in the area of the parasailing operation;
- The other 11 accidents were caused by a variety of factors, including equipment failure and operator error; and
- Equipment failure was also a contributing factor in one fatal accident from 2012. The investigation revealed the personal harness was in poor condition and was unable to sustain the stress of supporting an individual under a parasail.

July 1, 2013 Incident

The most recent incident occurred in Panama City Beach on July 1, 2013.⁴ Two Indiana teenage girls were parasailing when weather conditions caused the vessel to lose connection and control of the parasail.⁵ The teenagers were critically injured after they were detached from the boat then hit a building, power line and several parked car.⁶ As of August 6, 2013 both teens were released from the hospital but may require additional surgeries.⁷

The United States Coast Guard's report of the July 1, 2013 incident identifies the vessel involved as "Why Knot" and the owner as Aquatic Adventures.⁸ Aquatic Adventures owns ten parasailing vessels in Panama City Florida and, while not a member of a parasail organization, it uses the Water Sports Industry Association (WSIA) Parasail Training Manual as part of its captain training program.⁹ The USCG report found that facts contributing to this accident included:

- The vessel operators' failure to become aware of and respond appropriately to weather conditions;
- Using equipment and in a way that deviated from product instructions and the Water Sports Industry Association (WSIA) Parasail Training manual; and
- Failure to adhere to WSIA proximity to shore guidelines.¹⁰

The captain and employees of Aquatic Adventures failed to consult all available data, including weather radar data that would have warned of an approaching severe weather system.¹¹ Although

³ *Id.*

⁴ United States Coast Guard, *UPDATE: Coast Guard investigates parasail accident near the Commodore Condominiums in Panama City Beach* (July 18 2013), available at <http://www.uscgnews.com/go/doc/4007/1855061/UPDATE-Coast-Guard-investigates-parasail-accident-near-the-Commodore-Condominiums-in-Panama-City-Beach> (Last visited Jan. 3, 2014).

⁵ *Id.*

⁶ Dennis Pillion, *Second girl injured in Panama City Beach parasailing accident released from Indiana hospital*, AL.com, http://blog.al.com/gulf-coast/2013/08/second_girl_injured_in_parasail.html (Last visited January 3, 2014).

⁷ *Id.*

⁸ United States Coast Guard, *Report of Investigation into the Circumstances Surrounding the Incident Involving M/V "Why Know" Personal Injury on 07/01/3013*, No. 4 (Dec. 16, 2013).

⁹ *Id.*

¹⁰ *Id.* at 30.

¹¹ *Id.* at 12 and 31.

“Why Knot” was equipped with an operational VHF Marine Band Radio, Aquatic Adventures employees relied only on handheld radios to collaborate on conditions.¹²

The parasail used during the incident is described as a 39 foot parasail canopy¹³ manufactured in 2012 designed to operate in winds not greater than 12 to 14 m.p.h.¹⁴ “Why Knot” was built in 1998 when parasail sizes were typically smaller and carried less wind resistance. The winch mechanism used to pull in the parasail did not include a hydraulic break, a feature included in new winch systems.¹⁵ According to the USCG, the combination of parasail size and wind conditions may have exceeded the capabilities of the winch.¹⁶

The WSIA Parasail Training Manual indicates appropriate distance from the shoreline to conduct parasailing operations, given wind speed and towline length in order to provide time and space for reactive measures.¹⁷ According to the USCG, due to the inappropriate proximity of the vessel to the shoreline, the captain was not able to maneuver the vessel in a way to prevent the towline from disconnecting.¹⁸

The USCG issued a Marine Safety Alert regarding parasailing operations on July 22, 2013, noting that a series of parasail incidents involving weather conditions and equipment maintenance since 2006 have resulted in 11 deaths and 52 injuries.¹⁹ The alert referenced the “Standard Guide for Monitoring Weather Conditions for Safe Parasail Operation,”²⁰ that was adopted by the industry.²¹ The industry is currently working on standards for crew requirements, equipment specifications, and owner/operator operational guidelines for parasailing operations.²² However, these standards are voluntary recommendations and there is no enforcement authority in place.

Licensing and Endorsement Suggestion by United States Coast Guard

According to the USCG, there are currently no regulations specifically pertaining to parasail equipment, and operators/owners choose equipment based on industry standards that vary by location and vessel type. There are also no regulations providing appropriate weather conditions to conduct parasail operations nor regulations requiring operators to monitor the prevailing or forecasted weather conditions.²³ Currently, the USCG promotes parasail safety by reactive rather than proactive measures, for example, taking action against the license of an operator for acts of

¹² *Id.* at 7.

¹³ *Id.* at 21. Larger parasails, such as 39-42 foot sized, have become more popular due to their ability to carry more weight in lighter wind conditions.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 21.

¹⁶ *Id.* at 18 and 21.

¹⁷ *Id.* at 30.

¹⁸ *Id.* at 23.

¹⁹ United States Coast Guard, *Marine Safety Alert, Assistant Commandment for Prevention Policy: Parasailing Operations* (July 22, 2013) available at <http://www.uscg.mil/d7/sectmiami/pdf/KYRSafetyAlert.pdf> (Last visited Feb. 3, 2014).

²⁰ Developed by ASTM International, formerly known as the American Society for Testing and Materials (ASTM).

²¹ See ASTM Standard F2993-13 published on April 1, 2013 at <http://www.astm.org/Standards/F2993.htm> (Last visited December 23, 2013).

²² See ASTM Subcommittee F24.65 on Parasailing at <http://www.astm.org/COMMIT/SUBCOMMIT/F2465.htm> (Last visited December 23, 2013).

²³ United States Coast Guard, *Report of Investigation into the Circumstances Surrounding the Incident Involving M/V “Why Know” Personal Injury on 07/01/3013*, at 31 (Dec. 16, 2013).

misconduct or negligence or pursuing civil or criminal penalties when appropriate for negligent operations.²⁴ The USCG suggests that proactive initiatives to require vessels to hold a parasailing endorsement could aid in preventing future parasailing accidents.²⁵

Under 46 U.S.C. s. 7101, USCG has the authority and discretion to issue licenses to inspected²⁶ and uninspected vessels based on the applicant's ability to operate a vessel for particular service. In issuing a license, the Coast Guard can consider qualifications that are necessary, reasonable and related to a profession, which may include suitable career patterns and other qualifying requirements appropriate to the particular industry of operation.²⁷

Parasailing requires operators to perform functions beyond the level of a traditional passenger vessel. Therefore, as noted above, 46 U.S.C s. 7101, the USCG may consider necessary, reasonable and related qualifications to the parasailing industry during the licensing process, affectively addressing known or latent unsafe conditions prior to a harmful occurrence.²⁸ According to USCG, this parasail endorsement might provide a means of determining and verifying professional qualifications necessary to serve on a particular vessel, as well as require actions on the part of parasail operators instead of solely relying on their ability to implement voluntary industry standards.²⁹

Current Regulation

Section 327.37, F.S., regulates vessels towing persons on water skis, parasails, and aquaplanes, and addresses safety requirements including observation of the person being towed, time restrictions, use of personal flotation devices, operational distance restrictions, and operations near airports.

Relevant requirements for vessels towing a person on any waters of the state (except those engaged in certain regattas, boat races, marine parades, tournaments, or exhibitions):³⁰

- A person may not 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;
- A person may not operate a vessel on any waters of this state towing a person attached to a parasail or similar device unless there is a person in the vessel, in addition to the operator, in a position to observe the progress of the person being towed. Use of a wide angle mirror does not satisfy this requirement;
- Water skiing, parasailing, aquaplaning, or any similar activity (water sports) may not be conducted from one-half hour after sunset to one-half hour before sunrise;

²⁴ *Id.* at 34. See 46 U.S.C s. 7701 and 46 U.S.C. s. 2304.

²⁵ *Id.* at 32.

²⁶ The Coast Guard inspects commercial passenger vessels carrying six or more passengers for hire under 46 C.F.R. Subchapter T-Small Passenger Vessels.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ See s. 327.48, F.S.

- A noninflatable type I, type II, type III, or type V personal flotation device approved by the United States Coast Guard must be worn by those engaged in water sports;
- A person may not operate or manipulate any vessel, tow rope, or other device by which the direction or location of water skis, parasail, aquaplane, innertube, sled, or similar device may be affected or controlled, in such a way as to cause the water skis, parasail, aquaplane, innertube, sled, or similar device or any person, to collide or strike against or be likely to collide or strike against any vessel, bridge, wharf, pier, dock, buoy, platform, piling, channel marker, or other object, except slalom buoys, ski jumps, or like objects used normally in competitive or recreational skiing; and
- A person may not operate any vessel towing a parasail or engage in parasailing within 100 feet of the marked channel of the Florida Intracoastal Waterway.

A violation of s. 327.37, F.S., is a noncriminal infraction under s. 327.73, F.S. The civil penalty that may be imposed in county court is \$50, but after written warning provided with the issuance of the boating citation, any person who fails to appear or otherwise properly respond to the citation, in addition to the charge relating to violation of the boating laws, shall be charged with the offense of failing to respond to the citation. Upon conviction for such failure to respond, the violator is guilty of a second degree misdemeanor punishable by up to 60 days in jail and a fine not exceeding \$500.

According to the FWC, the Federal Aviation Administration (FAA) regulates parasails as kites because a parasail is a parachute held aloft by wind resulting from the movement of the boat towing it.³¹ The FAA defines a kite as a framework, covered with paper, cloth, metal, or other material, intended to be flown at the end of a rope or cable, and having as its only support the force of the wind moving past its surfaces. The FAA regulates kites only to the extent that they are objects in airspace. The regulations provide that no person may operate a moored balloon or kite.³²

- Less than 500 feet from the base of any cloud;
- More than 500 feet above the surface of the earth;
- From an area where the ground visibility is less than three miles; or
- Within five miles of the boundary of any airport.

The moored balloon or kite's must have colored pennants at 50 foot intervals or less, starting at 150 feet above the surface of the earth that are visible for at least 1 mile.

A parasail operator may obtain a certificate of authorization or a waiver from the FAA containing special provisions allowing deviation from the regulations, in order for the certificate of authorization to remain valid.³³ According to the FWC, common special provisions imposed by the FAA are:³⁴

³¹ See *supra* note 1.

³² See Title 14 C.F.R. Part 101.

³³ Title 14 C.F.R. s. 101.3.

³⁴ See *supra* note 1.

- Required attendance by parasail operators at an annual operator safety and standardization meeting sponsored by the FAA, if available in the area, and if an operator is unable to attend a scheduled annual meeting, the operator must arrange for an individual meeting;
- A prohibition against conducting parasail operations when the ceiling is less than 1,000 feet above ground level and the ground visibility is less than 2 miles, winds are above 20 miles per hour (mph), and/or gusts of wind are occurring at 15 mph or greater;
- Time restrictions including a prohibition on parasail operations between sunset and sunrise or during any period when a suspension of airport traffic or diversion of other aircraft will cause a hardship to scheduled air carrier operations;
- Distance limits requiring that parasail operations not be conducted closer than 500 feet to any aircraft, and the parasail not be maneuvered so as to force any aircraft toward the swim line (an imaginary line along the coast marking the offshore boundary where most people are likely to swim) or a populated beach;
- A requirement that parasail operators yield the right-of-way to all aircraft;
- Constant observation by the vessel captain and all crew members of the parasail and surrounding airspace to ensure safety, with the observers in a position to observe the operation and airspace and to halt or restrict the parasail operations if necessary; and
- A requirement that the holder of the Certificate of Waiver or Authorization contact the air traffic control tower of an airport when proposed parasail operations are to be conducted within five miles of the airport, at least one week prior to conducting parasail operations, for the purpose of providing real-time notice of activities including the proposed area of operation, the duration of the activity, and the altitude of the parasail.

III. Effect of Proposed Changes:

Section 1 of the bill provides that the title for the act is the White-Miskell Act. The bill is named for two women who died from parasailing accidents in Pompano Beach. Amber White, 15, died in 2007 after windy conditions caused the line connecting the parasail she and her sister were riding to break free of its vessel and they collided with a hotel roof. Kathleen Miskell, 28, died in 2012 after a harness malfunction caused her to drop 200 feet into the water where she drowned.

Section 2 of the bill amends s. 327.02, F.S., to define commercial parasailing as the towing (for consideration) of a person by a motorboat, when one or more persons are tethered to the vessel, ascend above the water, and remain suspended under a canopy while the vessel is underway (excluding ultralight air vehicles). The bill also defines sustained wind speed as a wind speed determined by averaging the observed wind speed rounded up to the nearest whole knot of speed over a two-minute period.

Section 3 of the bill creates s. 327.375, F.S., which requires that:

- Minimum bodily injury liability insurance coverage of at least \$1 million per occurrence and \$2 million annual aggregate obtained and maintained by the owner or operator of a vessel;
- Proof of insurance must be available for inspection at the location where commercial parasailing is offered or provided for consideration;

- The insurance carrier's name and address and the policy number to customers requesting that information;
- A current and valid license issued by the United States Coast Guard to the person operating the parasailing vessel which is appropriate for the number of passengers and the size of the vessel;
- A parasailing vessel must be equipped with a functional VHF marine transceiver and a separate electronic device capable of providing access to National Weather forecasts and current weather conditions;
- An operator must use all available means to determine weather conditions and record this information in a weather log each time passengers are to be taken out on the water; and
- Recorded weather information should be available for inspection at all times at the operator's place of business.

A person or operator who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.³⁵

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the FWC, commercial parasailing operators in Florida may incur additional costs to obtain the insurance coverage stated in the bill, and those costs are difficult to estimate because they will vary with each operator's claims history and current coverage amounts.³⁶

³⁵ Sections 775.082, and 775.083, F.S., provide that a misdemeanor of the second degree are punishable by up to 60 days in jail, a fine of up to \$500, or both at the discretion of the Court.

³⁶ 2014 Legislative Analysis for SB 320, Legislative Affairs Office, Florida Fish and Wildlife Conservation Commission undated.

According to an industry representative that offers this type of insurance, operators generally do carry some type of insurance for their operations. Many times, they are tenants of a hotel, marina or local government that requires them to carry insurance as a condition of their lease or agreement.

C. Government Sector Impact:

According to the FWC, there may be a fiscal impact from costs associated with FWC law enforcement officers educating current commercial parasailing operators on new regulations and how operators may come into compliance.³⁷ The impact is estimated to be nominal and can likely be absorbed within existing resources.³⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.02, 320.08, 327.391, 328.17, 342.07, 713.78, and 715.07.

This bill creates section 327.375 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³⁷ *Id.*

³⁸ *Id.*