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1
2 An act relating to commercial and recreational water
3 activities; providing a short title; amending s.
4 327.02, F.S.; defining terms; amending s. 327.37,
5 F.S.; prohibiting certain commercial and recreational
6 water activities within certain areas; creating s.
7 327.375, F.S.; requiring the operator of a vessel
8 engaged in commercial parasailing to ensure that
9 specified requirements are met; requiring the owner of
10 a vessel engaged in commercial parasailing to obtain
11 and maintain an insurance policy; providing minimum
12 coverage requirements for the insurance policy;
13 providing requirements for proof of insurance;
14 specifying the insurance information that must be
15 provided upon request; requiring the operator to have
16 a current and valid license issued by the United
17 States Coast Guard; prohibiting commercial parasailing
18 unless certain equipment is present on the vessel and
19 certain weather conditions are met; requiring that a
20 weather log be maintained and made available for
21 inspection; providing a criminal penalty; amending ss.
22 320.08, 327.391, 328.17, 342.07, 713.78, and 715.07,
23 F.S.; conforming cross-references; providing an
24 effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. This act may be cited as the "White-Miskell
29 Act."

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30 Section 2. Section 327.02, Florida Statutes, is amended to
31 read:

32 327.02 Definitions.—As used in this chapter and in chapter
33 328, unless the context clearly requires a different meaning,
34 the term:

35 (1) "Airboat" means a vessel that is primarily designed for
36 use in shallow waters and powered by an internal combustion
37 engine with an airplane-type propeller mounted above the stern
38 and used to push air across a set of rudders.

39 (2) "Alien" means a person who is not a citizen of the
40 United States.

41 (3) "Boating accident" means a collision, accident, or
42 casualty involving a vessel in or upon, or entering into or
43 exiting from, the water, including capsizing, collision with
44 another vessel or object, sinking, personal injury, death,
45 disappearance of a any person from on board under circumstances
46 that ~~which~~ indicate the possibility of death or injury, or
47 property damage to any vessel or dock.

48 (4) "Canoe" means a light, narrow vessel with curved sides
49 and with both ends pointed. A canoe-like vessel with a transom
50 may not be excluded from the definition of a canoe if the width
51 of its transom is less than 45 percent of the width of its beam
52 or it has been designated as a canoe by the United States Coast
53 Guard.

54 (5) "Commercial parasailing" means providing or offering to
55 provide, for consideration, any activity involving the towing of
56 a person by a motorboat if:

57 (a) One or more persons are tethered to the towing vessel;

58 (b) The person or persons ascend above the water; and

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59 (c) The person or persons remain suspended under a canopy,
60 chute, or parasail above the water while the vessel is underway.

61
62 The term does not include ultralight glider towing conducted
63 under rules of the Federal Aviation Administration governing
64 ultralight vehicles as defined in 14 C.F.R. part 103.

65 (6)~~(5)~~ "Commercial vessel" means:

66 (a) A ~~Any~~ vessel primarily engaged in the taking or landing
67 of saltwater fish or saltwater products or freshwater fish or
68 freshwater products, or a ~~any~~ vessel licensed pursuant to s.
69 379.361 from which commercial quantities of saltwater products
70 are harvested, from within and without the waters of this state
71 for sale ~~either~~ to the consumer or to a ~~retail dealer,~~ or
72 wholesale dealer.

73 (b) Any other vessel, except a recreational vessel as
74 defined in this section.

75 (7)~~(6)~~ "Commission" means the Fish and Wildlife
76 Conservation Commission.

77 (8)~~(7)~~ "Dealer" means a ~~any~~ person authorized by the
78 Department of Revenue to buy, sell, resell, or otherwise
79 distribute vessels. Such person must ~~shall~~ have a valid sales
80 tax certificate of registration issued by the Department of
81 Revenue and a valid commercial or occupational license required
82 by any county, municipality, or political subdivision of the
83 state in which the person operates.

84 (9)~~(8)~~ "Division" means the Division of Law Enforcement of
85 the Fish and Wildlife Conservation Commission.

86 (10)~~(9)~~ "Documented vessel" means a vessel for which a
87 valid certificate of documentation is outstanding pursuant to 46

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88 C.F.R. part 67.

89 (11)~~(10)~~ "Floating structure" means a floating entity, with
90 or without accommodations built thereon, which is not primarily
91 used as a means of transportation on water but which serves
92 purposes or provides services typically associated with a
93 structure or other improvement to real property. The term
94 ~~"floating structure"~~ includes, but is not limited to, an ~~each~~
95 entity used as a residence, place of business or office with
96 public access; a~~r~~ hotel or motel; a~~r~~ restaurant or lounge; a~~r~~
97 clubhouse; a~~r~~ meeting facility; a~~r~~ storage or parking facility;
98 or a~~r~~ mining platform, dredge, dragline, or similar facility or
99 entity represented as such. Floating structures are expressly
100 excluded from the definition of the term "vessel" provided in
101 this section. Incidental movement upon water or resting
102 partially or entirely on the bottom does ~~shall~~ not, in and of
103 itself, preclude an entity from classification as a floating
104 structure.

105 (12)~~(11)~~ "Florida Intracoastal Waterway" means the Atlantic
106 Intracoastal Waterway, the Georgia state line north of
107 Fernandina to Miami; the Port Canaveral lock and canal to the
108 Atlantic Intracoastal Waterway; the Atlantic Intracoastal
109 Waterway, Miami to Key West; the Okeechobee Waterway, Stuart to
110 Fort Myers; the St. Johns River, Jacksonville to Sanford; the
111 Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf
112 Intracoastal Waterway, Carrabelle to Tampa Bay; Carrabelle to
113 Anclote open bay section, using the ~~using the~~ Gulf of Mexico; the Gulf
114 Intracoastal Waterway, Carrabelle to the Alabama state line west
115 of Pensacola; and the Apalachicola, Chattahoochee, and Flint
116 Rivers in Florida.

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117 ~~(13)-(12)~~ "Homemade vessel" means a any vessel built after
118 October 31, 1972, for which a federal hull identification number
119 is not required to be assigned by the manufacturer pursuant to
120 federal law, or a any vessel constructed or assembled before
121 ~~prior to~~ November 1, 1972, by an entity other than a licensed
122 manufacturer for its his or her own use or the use of a specific
123 person. A vessel assembled from a manufacturer's kit or
124 constructed from an unfinished manufactured hull is shall be
125 considered to be a homemade vessel if such a vessel is not
126 required to have a hull identification number assigned by the
127 United States Coast Guard. A rebuilt or reconstructed vessel may
128 not shall in no event be construed to be a homemade vessel.

129 (14) "Kite boarding" or "kite surfing" means an activity in
130 which a kite board or surfboard is tethered to a kite so as to
131 harness the power of the wind and propel the board across a body
132 of water. For purposes of this subsection, the term "kite" has
133 the same meaning as used in 14 C.F.R. part 101.

134 ~~(15)-(13)~~ "Houseboat" means a any vessel that which is used
135 primarily as a residence for at least a minimum of 21 days
136 during any 30-day period, in a county of this state if such, and
137 ~~this~~ residential use of the vessel is to the preclusion of its
138 ~~the use of the vessel~~ as a means of transportation.

139 ~~(16)-(14)~~ "Length" means the measurement from end to end
140 over the deck parallel to the centerline, excluding sheer.

141 ~~(17)-(15)~~ "Lien" means a security interest that which is
142 reserved or created by a written agreement recorded with the
143 Department of Highway Safety and Motor Vehicles pursuant to s.
144 328.15 and that which secures payment or performance of an
145 obligation and is generally valid against third parties.

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146 (18)~~(16)~~ "Lienholder" means a person holding a security
147 interest in a vessel, which interest is recorded with the
148 Department of Highway Safety and Motor Vehicles pursuant to s.
149 328.15.

150 (19)~~(17)~~ "Live-aboard vessel" means:

151 (a) A ~~Any~~ vessel used solely as a residence and not for
152 navigation;

153 (b) A ~~Any~~ vessel represented as a place of business or a
154 professional or other commercial enterprise; or

155 (c) A ~~Any~~ vessel for which a declaration of domicile has
156 been filed pursuant to s. 222.17.

157
158 A commercial fishing boat is expressly excluded from the term
159 "live-aboard vessel."

160 (20)~~(18)~~ "Livery vessel" means a ~~any~~ vessel leased, rented,
161 or chartered to another for consideration.

162 (21)~~(19)~~ "Manufactured vessel" means a ~~any~~ vessel built
163 after October 31, 1972, for which a federal hull identification
164 number is required pursuant to federal law, or a ~~any~~ vessel
165 constructed or assembled before ~~prior to~~ November 1, 1972, by a
166 duly licensed manufacturer.

167 (22)~~(20)~~ "Marina" means a licensed commercial facility that
168 ~~which~~ provides secured public moorings or dry storage for
169 vessels on a leased basis. A commercial establishment authorized
170 by a licensed vessel manufacturer as a dealership is ~~shall be~~
171 considered a marina for nonjudicial sale purposes.

172 (23)~~(21)~~ "Marine sanitation device" means ~~any~~ equipment,
173 other than a toilet, for installation on board a vessel, ~~which~~
174 is designed to receive, retain, treat, or discharge sewage, and

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175 any process to treat such sewage. Marine sanitation device Types
176 I, II, and III shall be defined as provided in 33 C.F.R. part
177 159.

178 (24)~~(22)~~ "Marker" means a ~~any~~ channel mark or other aid to
179 navigation, an information or regulatory mark, an isolated
180 danger mark, a safe water mark, a special mark, an inland waters
181 obstruction mark, or mooring buoy in, on, or over the waters of
182 the state or the shores thereof, and includes, but is not
183 limited to, a sign, beacon, buoy, or light.

184 (25) "Moored ballooning" means the operation of a moored
185 balloon pursuant to 14 C.F.R. part 101.

186 (26)~~(23)~~ "Motorboat" means a ~~any~~ vessel equipped with
187 machinery for propulsion, irrespective of whether the propulsion
188 machinery is in actual operation.

189 (27)~~(24)~~ "Muffler" means an automotive-style sound-
190 suppression device or system designed to effectively abate the
191 sound of exhaust gases emitted from an internal combustion
192 engine and prevent excessive sound when installed on such an
193 engine.

194 (28)~~(25)~~ "Navigation rules" means, for vessels on:

195 (a) ~~For vessels on~~ Waters outside ~~of~~ established
196 navigational lines of demarcation as specified in 33 C.F.R. part
197 80, the International Navigational Rules Act of 1977, 33 U.S.C.
198 s. 1602, as amended, including the appendix and annexes thereto,
199 through October 1, 2012.

200 (b) ~~For vessels on~~ All waters not outside of such
201 established lines of demarcation, the Inland Navigational Rules
202 Act of 1980, 33 C.F.R. parts 83-90, as amended, through October
203 1, 2012.

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204 (29)~~(26)~~ "Nonresident" means a citizen of the United States
205 who has not established residence in this state and has not
206 continuously resided in this state for 1 year and in one county
207 for the 6 months immediately preceding the initiation of a
208 vessel titling or registration action.

209 (30)~~(27)~~ "Operate" means to be in charge of, ~~or~~ in command
210 of, or in actual physical control of a vessel upon the waters of
211 this state, ~~or~~ to exercise control over or to have
212 responsibility for a vessel's navigation or safety while the
213 vessel is underway upon the waters of this state, or to control
214 or steer a vessel being towed by another vessel upon the waters
215 of the state.

216 (31)~~(28)~~ "Owner" means a person, other than a lienholder,
217 having the property in or title to a vessel. The term includes a
218 person entitled to the use or possession of a vessel subject to
219 an interest in another person which is, reserved or created by
220 agreement and securing payment of performance of an obligation. or
221 ~~but~~ The term does not include ~~excludes~~ a lessee under a lease
222 not intended as security.

223 (32)~~(29)~~ "Person" means an individual, partnership, firm,
224 corporation, association, or other entity.

225 (33)~~(30)~~ "Personal watercraft" means a vessel less than 16
226 feet in length which uses an inboard motor powering a water jet
227 pump, or as its primary source of motive power and which is
228 designed to be operated by a person sitting, standing, or
229 kneeling on the vessel, rather than in the conventional manner
230 of sitting or standing inside the vessel.

231 (34)~~(31)~~ "Portable toilet" means a device consisting of a
232 lid, seat, containment vessel, and support structure which ~~that~~

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233 is specifically designed to receive, retain, and discharge human
234 waste and which ~~that~~ is capable of being removed from a vessel
235 by hand.

236 (35)~~(32)~~ "Prohibited activity" means ~~such~~ activity that ~~as~~
237 will impede or disturb navigation or creates a safety hazard on
238 waterways of this state.

239 (36)~~(33)~~ "Racing shell," "rowing scull," or "racing kayak"
240 means a manually propelled vessel that ~~which~~ is recognized by
241 national or international racing associations for use in
242 competitive racing and in which all occupants, with the
243 exception of a coxswain, if one is provided, row, scull, or
244 paddle and that ~~which~~ is not designed to carry and does not
245 carry any equipment not solely for competitive racing.

246 (37)~~(34)~~ "Recreational vessel" means a ~~any~~ vessel:

247 (a) Manufactured and used primarily for noncommercial
248 purposes; or

249 (b) Leased, rented, or chartered to a person for his or her
250 ~~the person's~~ noncommercial use.

251 (38)~~(35)~~ "Registration" means a state operating license on
252 a vessel which is issued with an identifying number, an annual
253 certificate of registration, and a decal designating the year
254 for which a registration fee is paid.

255 (39)~~(36)~~ "Resident" means a citizen of the United States
256 who has established residence in this state and has continuously
257 resided in this state for 1 year and in one county for the 6
258 months immediately preceding the initiation of a vessel titling
259 or registration action.

260 (40)~~(37)~~ "Sailboat" means a ~~any~~ vessel whose sole source of
261 propulsion is the wind.

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262 (41) "Sustained wind speed" means a wind speed determined
263 by averaging the observed wind speed rounded up to the nearest
264 mile per hour over a 2-minute period.

265 ~~(42)(38)~~ "Unclaimed vessel" means an ~~any~~ undocumented
266 vessel, including its machinery, rigging, and accessories, which
267 is in the physical possession of a ~~any~~ marina, garage, or repair
268 shop for repairs, improvements, or other work with the knowledge
269 of the vessel owner and for which the costs of such services
270 have been unpaid for more than ~~a period in excess of~~ 90 days
271 after ~~from~~ the date written notice of the completed work is
272 given by the marina, garage, or repair shop to the vessel owner.

273 ~~(43)(39)~~ "Vessel" is synonymous with boat as referenced in
274 s. 1(b), Art. VII of the State Constitution and includes every
275 description of watercraft, barge, and airboat, other than a
276 seaplane on the water, used or capable of being used as a means
277 of transportation on water.

278 ~~(44)(40)~~ "Waters of this state" means any navigable waters
279 of the United States within the territorial limits of this
280 state, ~~and~~ the marginal sea adjacent to this state and the high
281 seas when navigated as a part of a journey or ride to or from
282 the shore of this state, and all the inland lakes, rivers, and
283 canals under the jurisdiction of this state.

284 Section 3. Subsection (5) of section 327.37, Florida
285 Statutes, is amended, and subsection (6) is added to that
286 section, to read:

287 327.37 Water skis, parasails, ~~and~~ aquaplanes, kite
288 boarding, kite surfing, and moored ballooning regulated.—

289 (5) A person may not operate any vessel towing a parasail
290 or engage in parasailing or moored ballooning within 100 feet of

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291 the marked channel of the Florida Intracoastal Waterway or
292 within 2 miles of the boundary of any airport unless otherwise
293 permitted under federal law.

294 (6) A person may not engage in kite boarding or kite
295 surfing within an area that extends 1 mile in a direct line
296 along the centerline of an airport runway and that has a width
297 measuring one-half mile unless otherwise permitted under federal
298 law.

299 Section 4. Section 327.375, Florida Statutes, is created to
300 read:

301 327.375 Commercial parasailing.-

302 (1) The operator of a vessel engaged in commercial
303 parasailing shall ensure that the provisions of this section and
304 s. 327.37 are met.

305 (2) The owner or operator of a vessel engaged in commercial
306 parasailing may not offer or provide for consideration any
307 parasailing activity unless the owner or operator first obtains
308 and maintains in full force and effect a liability insurance
309 policy from an insurance carrier licensed in this state or
310 approved by the Office of Insurance Regulation or an eligible
311 surplus lines insurer. Such policy must provide bodily injury
312 liability coverage in the amounts of at least \$1 million per
313 occurrence and \$2 million annual aggregate. Proof of insurance
314 must be available for inspection at the location where
315 commercial parasailing is offered or provided for consideration,
316 and each customer who requests such proof shall be provided with
317 the insurance carrier's name and address and the insurance
318 policy number.

319 (3) The operator of a vessel engaged in commercial

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320 parasailing must have a current and valid license issued by the
321 United States Coast Guard authorizing the operator to carry
322 passengers for hire. The license must be appropriate for the
323 number of passengers carried and the displacement of the vessel.
324 The license must be carried on the vessel and be available for
325 inspection while engaging in commercial parasailing activities.

326 (4) A vessel engaged in commercial parasailing must be
327 equipped with a functional VHF marine transceiver and a separate
328 electronic device capable of providing access to National
329 Weather Service forecasts and current weather conditions.

330 (5) (a) Commercial parasailing is prohibited if the current
331 observed wind conditions in the area of operation include a
332 sustained wind speed of more than 20 miles per hour; if wind
333 gusts are 15 miles per hour higher than the sustained wind
334 speed; if the wind speed during gusts exceeds 25 miles per hour;
335 if rain or heavy fog results in reduced visibility of less than
336 0.5 mile; or if a known lightning storm comes within 7 miles of
337 the parasailing area.

338 (b) The operator of the vessel engaged in commercial
339 parasailing shall use all available means to determine
340 prevailing and forecasted weather conditions and record this
341 information in a weather log each time passengers are to be
342 taken out on the water. The weather log must be available for
343 inspection at all times at the operator's place of business.

344 (6) A person or operator who violates this section commits
345 a misdemeanor of the second degree, punishable as provided in s.
346 775.082 or s. 775.083.

347 Section 5. Paragraph (d) of subsection (5) of section
348 320.08, Florida Statutes, is amended to read:

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349 320.08 License taxes.—Except as otherwise provided herein,
350 there are hereby levied and imposed annual license taxes for the
351 operation of motor vehicles, mopeds, motorized bicycles as
352 defined in s. 316.003(2), tri-vehicles as defined in s. 316.003,
353 and mobile homes, as defined in s. 320.01, which shall be paid
354 to and collected by the department or its agent upon the
355 registration or renewal of registration of the following:

356 (5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT;
357 SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

358 (d) A wrecker, as defined in s. 320.01, which is used to
359 tow a vessel as defined in s. 327.02~~(39)~~, a disabled, abandoned,
360 stolen-recovered, or impounded motor vehicle as defined in s.
361 320.01, or a replacement motor vehicle as defined in s. 320.01:
362 \$41 flat, of which \$11 shall be deposited into the General
363 Revenue Fund.

364 Section 6. Subsection (1) of section 327.391, Florida
365 Statutes, is amended to read:

366 327.391 Airboats regulated.—

367 (1) The exhaust of every internal combustion engine used on
368 any airboat operated on the waters of this state shall be
369 provided with an automotive-style factory muffler, underwater
370 exhaust, or other manufactured device capable of adequately
371 muffling the sound of the exhaust of the engine as described in
372 s. 327.02(25) ~~s. 327.02(24)~~. The use of cutouts or flex pipe as
373 the sole source of muffling is prohibited, except as provided in
374 subsection (4). Any person who violates this subsection commits
375 a noncriminal infraction punishable as provided in s. 327.73(1).

376 Section 7. Subsection (4) of section 328.17, Florida
377 Statutes, is amended to read:

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378 328.17 Nonjudicial sale of vessels.—

379 (4) A marina, as defined in s. 327.02~~(20)~~, shall have:

380 (a) A possessory lien upon any vessel for storage fees,
381 dockage fees, repairs, improvements, or other work-related
382 storage charges, and for expenses necessary for preservation of
383 the vessel or expenses reasonably incurred in the sale or other
384 disposition of the vessel. The possessory lien attaches ~~shall~~
385 ~~attach~~ as of the date the vessel is brought to the marina or as
386 of the date the vessel first occupies rental space at the marina
387 facility.

388 (b) A possessory lien upon any vessel in a wrecked, junked,
389 or substantially dismantled condition~~7~~ which has been left
390 abandoned at a marina~~7~~ for expenses reasonably incurred in the
391 removal and disposal of the vessel. The possessory lien attaches
392 ~~shall attach~~ as of the date the vessel arrives at the marina or
393 as of the date the vessel first occupies rental space at the
394 marina facility. If the funds recovered from the sale of ~~the~~
395 ~~vessel~~~~7~~ or from the scrap or salvage value of the vessel~~7~~ are
396 insufficient to cover the expenses reasonably incurred by the
397 marina in removing and disposing of the vessel, all costs in
398 excess of recovery shall be recoverable against the owner of the
399 vessel. For a vessel damaged as a result of a named storm, the
400 provisions of this paragraph shall be suspended for 60 days
401 after ~~following~~ the date the vessel is damaged in the named
402 storm. The operation of the provisions specified in this
403 paragraph run concurrently with, and do not extend, the 60-day
404 notice periods provided in subsections (5) and (7).

405 Section 8. Subsection (2) of section 342.07, Florida
406 Statutes, is amended to read:

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407 342.07 Recreational and commercial working waterfronts;
408 legislative findings; definitions.—

409 (2) As used in this section, the term "recreational and
410 commercial working waterfront" means a parcel or parcels of real
411 property which ~~that~~ provide access for water-dependent
412 commercial activities, including hotels and motels as defined in
413 s. 509.242(1), or provide access for the public to the navigable
414 waters of the state. Recreational and commercial working
415 waterfronts require direct access to or a location on, over, or
416 adjacent to a navigable body of water. The term includes water-
417 dependent facilities that are open to the public and offer
418 public access by vessels to the waters of the state or that are
419 support facilities for recreational, commercial, research, or
420 governmental vessels. These facilities include public lodging
421 establishments, docks, wharfs, lifts, wet and dry marinas, boat
422 ramps, boat hauling and repair facilities, commercial fishing
423 facilities, boat construction facilities, and other support
424 structures over the water. As used in this section, the term
425 "vessel" has the same meaning as in s. 327.02~~(39)~~. Seaports are
426 excluded from the definition.

427 Section 9. Paragraph (b) of subsection (1) of section
428 713.78, Florida Statutes, is amended to read:

429 713.78 Liens for recovering, towing, or storing vehicles
430 and vessels.—

431 (1) For the purposes of this section, the term:

432 (b) "Vessel" means every description of watercraft, barge,
433 and airboat used or capable of being used as a means of
434 transportation on water, other than a seaplane or a "documented
435 vessel" as defined in s. 327.02~~(9)~~.

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436 Section 10. Paragraph (b) of subsection (1) of section
437 715.07, Florida Statutes, is amended to read:

438 715.07 Vehicles or vessels parked on private property;
439 towing.—

440 (1) As used in this section, the term:

441 (b) "Vessel" means every description of watercraft, barge,
442 and airboat used or capable of being used as a means of
443 transportation on water, other than a seaplane or a "documented
444 vessel" as defined in s. 327.02~~(9)~~.

445 Section 11. This act shall take effect October 1, 2014.