

FEB 25 1992

SENATE FILE 2211
BY COMMITTEE ON NATURAL
RESOURCES
Approved (p.479)
(SUCCESSOR TO SSB 2165)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the operation of watercraft, snowmobiles, and
2 all-terrain vehicles while intoxicated, establishing implied
3 consent for chemical testing, and providing penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2211

SENATE FILE 2211

S-5335

1 Amend Senate File 2211 as follows:
2 1. Page 2, line 15, by striking the words "An
3 aggravated" and inserting the following: "A serious".
4 2. Page 6, line 25, by striking the words "An
5 aggravated" and inserting the following: "A serious".
By JAMES R. RIORDAN

S-5335 FILED MARCH 20, 1992

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1 Section 1. Section 106.2, Code 1991, is amended by adding
2 the following new subsections and renumbering the subsections
3 as necessary:

4 NEW SUBSECTION. 1. "Alcohol concentration" means alcohol
5 concentration as defined in section 321J.1.

6 NEW SUBSECTION. 3A. "Chemical test" means an analysis of
7 a person's blood, breath, urine, or other bodily substance for
8 the determination of the presence of alcohol, a controlled
9 substance, or a drug.

10 NEW SUBSECTION. 4A. "Controlled substance" means
11 controlled substance as defined in section 204.101.

12 NEW SUBSECTION. 12A. "Intoxicated" means the condition of
13 a person who is under the influence of alcohol, a controlled
14 substance, a drug other than alcohol or a controlled
15 substance, or any combination thereof which impairs thought
16 and action and loss of normal control of the person's
17 faculties to an extent which endangers a person. However, a
18 person is not intoxicated if the person is not subject to the
19 provisions of section 321J.2 due to the exception for
20 prescription drugs contained in section 321J.2, subsection 6.

21 NEW SUBSECTION. 21A. "Peace officer" means peace officer
22 as defined in section 801.4.

23 NEW SUBSECTION. 22A. "Prima facie evidence of
24 intoxication" means evidence that, at the time of the alleged
25 violation, a person had an alcohol concentration of .10 or
26 more.

27 NEW SUBSECTION. 24A. "Relevant evidence of intoxication"
28 means evidence that, at the time of the alleged violation, a
29 person had an alcohol concentration of at least .05, but less
30 than .10.

31 NEW SUBSECTION. 25A. "Serious injury" means a serious
32 injury as defined in section 321J.1.

33 Sec. 2. Section 106.14, Code 1991, is amended by striking
34 the section and inserting in lieu thereof the following:

35 106.14 OPERATING A WATERCRAFT WHILE INTOXICATED -- IMPLIED

1 CONSENT TO TEST.

2 1. A person who operates a watercraft, water skis,
3 surfboard, or similar device while having an alcohol
4 concentration of .10 or more, or while intoxicated, commits
5 the offense of operating a watercraft while intoxicated.

6 2. a. A person who operates a watercraft while
7 intoxicated in violation of this section commits:

8 (1) A class "C" felony, if the offense results in the
9 death of another person and the court determines that the
10 person who committed the offense caused the death.

11 (2) A class "D" felony, if the offense is a second or
12 subsequent offense, or if the offense results in serious
13 injury to another person and the court determines that the
14 person who committed the offense caused the serious injury.

15 (3) An aggravated misdemeanor, for any other violation of
16 subsection 1.

17 b. A person who operates a watercraft, water skis,
18 surfboard, or similar device in violation of a court order
19 issued pursuant to this section commits a simple misdemeanor.

20 3. A conviction for, deferred judgment for, or plea of
21 guilty to, a violation of this section which occurred more
22 than six years prior to the date of the violation charged
23 shall not be considered in determining that the violation
24 charged is a second or subsequent offense. For the purpose of
25 determining if a violation charged is a second or subsequent
26 offense, deferred judgments pursuant to section 907.3 for
27 violations of this section and convictions or the equivalent
28 of deferred judgments for violations in any other states under
29 statutes substantially corresponding to this section shall be
30 counted as previous offenses. The courts shall judicially
31 notice the statutes of other states which define offenses
32 substantially equivalent to the offense defined in this
33 section and can therefore be considered corresponding
34 statutes. Each previous violation on which conviction or
35 deferral of judgment was entered prior to the date of the

1 violation charged shall be considered and counted as a
2 separate offense.

3 4. Upon a plea or verdict of guilty of a violation of this
4 section, or entry of a deferred judgment concerning a
5 violation of this section, in addition to any criminal penalty
6 imposed, the court shall order the defendant not to operate a
7 watercraft, water skis, surfboard, or similar device for the
8 following period of time:

9 a. At least two years for a felony offense.

10 b. At least one year for a misdemeanor offense.

11 The court shall require the defendant to complete the
12 boater safety course required in section 106.23A prior to the
13 expiration of the order. If the defendant does not complete
14 the course prior to expiration of the order, the defendant may
15 be subject to contempt proceedings and the court shall extend
16 the order until the defendant completes the course.

17 5. a. A person who operates a watercraft which is powered
18 by motor or sail, water skis, surfboard, or similar device in
19 waters over which this state has jurisdiction impliedly
20 consents to submit to the chemical test provisions of this
21 section as a condition of operation in this state. However,
22 this subsection shall not apply to other types of watercraft,
23 or to operation of watercraft, water skis, surfboards, or
24 similar devices in waters over which the state has no
25 jurisdiction. If a person refuses to submit to a chemical
26 test under this section, the court shall order the person not
27 to operate a watercraft, water skis, surfboard, or similar
28 device for at least one year.

29 b. A peace officer who has probable cause to believe that
30 a person has committed an offense under this section and that
31 the person is subject to the implied consent provisions of
32 this subsection shall offer the person the opportunity to
33 submit to a chemical test. However, it is not necessary for
34 the peace officer to offer a chemical test to an unconscious
35 person. A peace officer may offer a person more than one

1 chemical test under this section. However, all tests must be
2 administered within three hours after the officer had probable
3 cause to believe the person violated this section. A person
4 must submit to each chemical test offered by a peace officer
5 in order to comply with the implied consent provisions of this
6 section.

7 c. A person who is dead, unconscious, or otherwise in a
8 condition rendering the person incapable of consent or refusal
9 is deemed not to have withdrawn the implied consent provided
10 by this section, and a test or tests may be given if a
11 licensed physician certifies in advance of the test that the
12 person is dead, unconscious, or otherwise in a condition
13 rendering that person incapable of consent or refusal.

14 d. If the chemical test results in relevant evidence that
15 the person is intoxicated, the person may be arrested for an
16 offense under this section. If the chemical test results in
17 prima facie evidence that the person is intoxicated, the
18 person shall be arrested for an offense under this section.

19 e. A person who refuses to submit to a chemical test may
20 be arrested for an offense under this section.

21 f. At a proceeding under this section, a person's refusal
22 to submit to a chemical test is admissible into evidence.

23 g. If a person refuses to submit to a chemical test under
24 this section, the peace officer shall inform the person that
25 the person's refusal will result in the suspension of the
26 person's operating privileges.

27 6. At a proceeding concerning an offense under this
28 section, evidence of the amount by weight of alcohol that was
29 in the blood of the person charged with the offense at the
30 time of the alleged violation, as shown by an analysis of the
31 person's blood, breath, urine, or other bodily substance, is
32 admissible.

33 Sec. 3. Section 106.23, subsection 2, paragraph b, Code
34 1991, is amended to read as follows:

35 b. Operating a vessel or manipulating water skis,

1 surfboard or similar device while in-an intoxicated condition
2 or-under-influence-of-a-narcotic-drug in violation of section
3 106.14.

4 Sec. 4. NEW SECTION. 106.23A SAFETY COURSE REQUIRED.

5 Any person who has had the right to operate a vessel or
6 watercraft suspended, has been ordered by a court not to
7 operate a watercraft, water skis, surfboard, or similar
8 device, or who is involved in a watercraft or vessel accident
9 which results in property damage or personal injury shall
10 complete a boater safety course approved by the department
11 which includes the successful passage of a written examination
12 relating to the course of instruction, before the right to
13 operate is restored.

14 Sec. 5. Section 321G.1, Code Supplement 1991, is amended
15 by adding the following new subsections and renumbering the
16 subsections as necessary:

17 NEW SUBSECTION. 1. "Alcohol concentration" means alcohol
18 concentration as defined in section 321J.1.

19 NEW SUBSECTION. 2A. "Chemical test" means a chemical test
20 as defined in section 106.2.

21 NEW SUBSECTION. 3A. "Controlled substance" means
22 controlled substance as defined in section 204.101.

23 NEW SUBSECTION. 6A. "Intoxicated" means intoxicated as
24 defined in section 106.2.

25 NEW SUBSECTION. 12A. "Peace officer" means peace officer
26 as defined in section 801.4.

27 NEW SUBSECTION. 13A. "Prima facie evidence of
28 intoxication" means evidence that, at the time of the alleged
29 violation, the person had an alcohol concentration of .10 or
30 more.

31 NEW SUBSECTION. 14A. "Relevant evidence of intoxication"
32 means evidence that, at the time of the alleged violation, a
33 person had an alcohol concentration of at least .05, but less
34 than .10.

35 NEW SUBSECTION. 16A. "Serious injury" means a serious

1 injury as defined in section 321J.1.

2 Sec. 6. Section 321G.14, unnumbered paragraph 1, Code
3 1991, is amended to read as follows:

4 Any Unless another penalty is otherwise specifically
5 provided, a person who shall-violate-any violates a provision
6 of this chapter or any-regulation a rule of the commission or
7 director of transportation ~~shall-be~~ is guilty of a simple
8 misdemeanor.

9 Sec. 7. NEW SECTION. 321G.29 OPERATING A SNOWMOBILE OR
10 ALL-TERRAIN VEHICLE WHILE INTOXICATED.

11 1. A person who operates a snowmobile or all-terrain
12 vehicle while having an alcohol concentration of .10 or more,
13 or while intoxicated, commits the offense of operating a
14 snowmobile or all-terrain vehicle while intoxicated.

15 2. a. A person who operates a snowmobile or all-terrain
16 vehicle while intoxicated in violation of this section
17 commits:

18 (1) A class "C" felony, if the offense results in the
19 death of another person and the court determines that the
20 person who committed the offense caused the death.

21 (2) A class "D" felony, if the offense is a second or
22 subsequent offense, or if the offense results in serious
23 injury to another person and the court determines that the
24 person who committed the offense caused the serious injury.

25 (3) An aggravated misdemeanor, for any other violation of
26 subsection 1.

27 b. A person who operates a snowmobile or all-terrain
28 vehicle in violation of a court order issued pursuant to this
29 section commits a simple misdemeanor.

30 3. A conviction for, deferred judgment for, or plea of
31 guilty to, a violation of this section which occurred more
32 than six years prior to the date of the violation charged
33 shall not be considered in determining that the violation
34 charged is a second or subsequent offense. For the purpose of
35 determining if a violation charged is a second or subsequent

1 offense, deferred judgments pursuant to section 907.3 for
2 violations of this section and convictions or the equivalent
3 of deferred judgments for violations in any other states under
4 statutes substantially corresponding to this section shall be
5 counted as previous offenses. The courts shall judicially
6 notice the statutes of other states which define offenses
7 substantially equivalent to the offense defined in this
8 section and can therefore be considered corresponding
9 statutes. Each previous violation on which conviction or
10 deferral of judgment was entered prior to the date of the
11 violation charged shall be considered and counted as a
12 separate offense.

13 4. Upon a plea or verdict of guilty of a violation of this
14 section, or entry of a deferred judgment concerning a
15 violation of this section, in addition to any criminal penalty
16 imposed, the court shall order the defendant not to operate a
17 snowmobile or all-terrain vehicle for the following period of
18 time:

19 a. At least two years for a felony offense.

20 b. At least one year for a misdemeanor offense.

21 The court shall require the defendant to complete the
22 operator safety course required in section 321G.30 prior to
23 the expiration of the order. If the defendant does not
24 complete the course prior to expiration of the order, the
25 defendant may be subject to contempt proceedings and the court
26 shall extend the order until the defendant completes the
27 course.

28 5. a. A person who operates a snowmobile or all-terrain
29 vehicle on public property impliedly consents to submit to the
30 chemical test provisions of this section as a condition of
31 operation in this state. However, this subsection shall not
32 apply to the operation of a snowmobile or all-terrain vehicle
33 on private property. If a person refuses to submit to a
34 chemical test under this section, the court shall order the
35 person not to operate a snowmobile or all-terrain vehicle for

1 at least one year.

2 b. A peace officer who has probable cause to believe that
3 a person has committed an offense under this section and that
4 the person is subject to the implied consent provisions of
5 this subsection shall offer the person the opportunity to
6 submit to a chemical test. However, it is not necessary for
7 the peace officer to offer a chemical test to an unconscious
8 person. A peace officer may offer a person more than one
9 chemical test under this section. However, all tests must be
10 administered within three hours after the officer had probable
11 cause to believe the person violated this section. A person
12 must submit to each chemical test offered by a peace officer
13 in order to comply with the implied consent provisions of this
14 section.

15 c. A person who is dead, unconscious, or otherwise in a
16 condition rendering the person incapable of consent or refusal
17 is deemed not to have withdrawn the consent provided by this
18 section, and a test or tests may be given if a licensed
19 physician certifies in advance of the test that the person is
20 dead, unconscious, or otherwise in a condition rendering that
21 person incapable of consent or refusal.

22 d. If the chemical test results in relevant evidence that
23 the person is intoxicated, the person may be arrested for an
24 offense under this section. If the chemical test results in
25 prima facie evidence that the person is intoxicated, the
26 person shall be arrested for an offense under this section.

27 e. A person who refuses to submit to a chemical test may
28 be arrested for an offense under this section.

29 f. At a proceeding under this section, a person's refusal
30 to submit to a chemical test is admissible into evidence.

31 g. If a person refuses to submit to a chemical test under
32 this section, the peace officer shall inform the person that
33 the person's refusal will result in the suspension of the
34 person's operating privileges.

35 6. At a proceeding concerning an offense under this

1 section, evidence of the amount by weight of alcohol that was
2 in the blood of the person charged with the offense at the
3 time of the alleged violation, as shown by an analysis of the
4 person's blood, breath, urine, or other bodily substance, is
5 admissible.

6 Sec. 8. NEW SECTION. 321G.30 SAFETY COURSE REQUIRED.

7 Any person who has had the right to operate a snowmobile or
8 all-terrain vehicle suspended, has been ordered by a court not
9 to operate a snowmobile or all-terrain vehicle, or who is
10 involved in an accident which results in property damage or
11 personal injury shall complete an operator safety course
12 established under section 321G.2, subsection 5, including the
13 successful passage of an examination which includes a written
14 test relating to the course of instruction, before the right
15 to operate is restored.

16 EXPLANATION

17 This bill creates an offense for operating a watercraft,
18 water skis, surfboard, or similar device or a snowmobile or
19 all-terrain vehicle (ATV) while under the influence of alcohol
20 or a drug, or while having an alcohol concentration of .10 or
21 more. Under current law, operating these items while under
22 the influence is a simple misdemeanor. Under the bill, if the
23 offense results in the death of another person and the court
24 determines that the person who committed the offense caused
25 the death, the person commits a class "C" felony. If the
26 offense is a second or subsequent offense, or results in
27 serious injury caused by the offender, the bill provides that
28 the offense is a class "D" felony. Any other violation under
29 the bill is an aggravated misdemeanor. The penalties differ
30 from those provided in chapter 321J for operating a motor
31 vehicle while intoxicated (OWI), which provide a serious
32 misdemeanor for a first offense, an aggravated misdemeanor for
33 a second offense, and a class "D" felony for a third or
34 subsequent offense, pursuant to section 321J.2. The penalties
35 in the bill correspond to the penalty for vehicular homicide

1 established in section 707.6A. However, the bill differs from
2 the penalty for causing a serious injury while operating a
3 motor vehicle while intoxicated, which is an aggravated
4 misdemeanor, as opposed to a class "D" felony as provided in
5 this bill.

6 The bill provides a number of provisions which are similar
7 to those contained in chapter 321J, including an exception for
8 taking prescription drugs and a similar definition concerning
9 previous offenses, which must have occurred within the past
10 six years.

11 However, the bill differs from the OWI provisions in
12 several ways. While OWI chemical tests must be administered
13 within two hours, a chemical test for operating a watercraft,
14 snowmobile, or ATV must be given within three hours.
15 Moreover, the implied consent provisions of the bill are less
16 detailed than those for OWI contained in chapter 321J. Under
17 the bill, the implied consent provisions pertaining to
18 watercraft apply only to watercraft that are powered by motor
19 or sail, water skis, surfboard, or similar devices operated in
20 waters over which the state has jurisdiction. The snowmobile
21 and ATV implied consent provisions apply only to operation on
22 public property under the bill.

23 In addition, the implied consent provisions in the bill
24 establish two different standards as a result of testing. The
25 bill provides that if a chemical test results in an alcohol
26 concentration of .10 or more, the person shall be arrested,
27 but if the alcohol concentration is at least .05, but less
28 than .10, the person may be arrested.

29 The bill also provides that upon committing a violation,
30 the court shall order the person not to operate the items for
31 at least two years for a felony offense and one year for a
32 misdemeanor offense. Violation of the court order is a simple
33 misdemeanor. The bill requires the court to order the person
34 to complete a safety course required in the bill prior to
35 expiration of the order not to operate. Under the bill, a

1 person whose operating rights have been suspended or who is
2 involved in an accident involving property damage or personal
3 injury is also required to take the course.

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RIOBAN, CH.
DIELEMAN
HAGERLA

9/12/92

SSB 2165

NATURAL RESOURCES NOW

SENATE/HOUSE FILE 2211

BY (PROPOSED DEPARTMENT OF
NATURAL RESOURCES BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the operation of watercraft, snowmobiles, and
2 all-terrain vehicles while intoxicated, establishing implied
3 consent for chemical testing, and providing penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 106.2, Code 1991, is amended by adding
2 the following new subsections and renumbering the subsections
3 as necessary:

4 NEW SUBSECTION. 1. "Alcohol concentration" means alcohol
5 concentration as defined in section 321J.1.

6 NEW SUBSECTION. 3A. "Chemical test" means an analysis of
7 a person's blood, breath, urine, or other bodily substance for
8 the determination of the presence of alcohol, a controlled
9 substance, or a drug.

10 NEW SUBSECTION. 4A. "Controlled substance" means
11 controlled substance as defined in section 204.101.

12 NEW SUBSECTION. 12A. "Intoxicated" means the condition of
13 a person who is under the influence of alcohol, a controlled
14 substance, a drug other than alcohol or a controlled
15 substance, or any combination thereof which impairs thought
16 and action and loss of normal control of the person's
17 faculties to an extent which endangers a person. However, a
18 person is not intoxicated if the person is not subject to the
19 provisions of section 321J.2 due to the exception for
20 prescription drugs contained in section 321J.2, subsection 6.

21 NEW SUBSECTION. 21A. "Peace officer" means peace officer
22 as defined in section 801.4.

23 NEW SUBSECTION. 22A. "Prima facie evidence of
24 intoxication" means evidence that, at the time of the alleged
25 violation, a person had an alcohol concentration of .10 or
26 more.

27 NEW SUBSECTION. 24A. "Relevant evidence of intoxication"
28 means evidence that, at the time of the alleged violation, a
29 person had an alcohol concentration of at least .05, but less
30 than .10.

31 NEW SUBSECTION. 25A. "Serious injury" means a serious
32 injury as defined in section 321J.1.

33 Sec. 2. Section 106.14, Code 1991, is amended by striking
34 the section and inserting in lieu thereof the following:

35 106.14 OPERATING A WATERCRAFT WHILE INTOXICATED -- IMPLIED

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1 CONSENT TO TEST.

2 1. A person who operates a watercraft, water skis,
3 surfboard, or similar device while having an alcohol
4 concentration of .10 or more, or while intoxicated, commits
5 the offense of operating a watercraft while intoxicated.

6 2. a. A person who operates a watercraft while
7 intoxicated in violation of this section commits:

8 (1) A class "C" felony, if the offense results in the
9 death of another person and the court determines that the
10 person who committed the offense caused the death.

11 (2) A class "D" felony, if the offense is a second or
12 subsequent offense, or if the offense results in serious
13 injury to another person and the court determines that the
14 person who committed the offense caused the serious injury.

15 (3) An aggravated misdemeanor, for any other violation of
16 subsection 1.

17 b. A person who operates a watercraft, water skis,
18 surfboard, or similar device in violation of a court order
19 issued pursuant to this section commits a simple misdemeanor.

20 3. A conviction for, deferred judgment for, or plea of
21 guilty to, a violation of this section which occurred more
22 than six years prior to the date of the violation charged
23 shall not be considered in determining that the violation
24 charged is a second or subsequent offense. For the purpose of
25 determining if a violation charged is a second or subsequent
26 offense, deferred judgments pursuant to section 907.3 for
27 violations of this section and convictions or the equivalent
28 of deferred judgments for violations in any other states under
29 statutes substantially corresponding to this section shall be
30 counted as previous offenses. The courts shall judicially
31 notice the statutes of other states which define offenses
32 substantially equivalent to the offense defined in this
33 section and can therefore be considered corresponding
34 statutes. Each previous violation on which conviction or
35 deferral of judgment was entered prior to the date of the

1 violation charged shall be considered and counted as a
2 separate offense.

3 4. Upon a plea or verdict of guilty of a violation of this
4 section, or entry of a deferred judgment concerning a
5 violation of this section, in addition to any criminal penalty
6 imposed, the court shall order the defendant not to operate a
7 watercraft, water skis, surfboard, or similar device for the
8 following period of time:

9 a. At least two years for a felony offense.

10 b. At least one year for a misdemeanor offense.

11 The court shall require the defendant to complete the
12 boater safety course required in section 106.23A prior to the
13 expiration of the order. If the defendant does not complete
14 the course prior to expiration of the order, the defendant may
15 be subject to contempt proceedings and the court shall extend
16 the order until the defendant completes the course.

17 5. a. A person who operates a watercraft which is powered
18 by motor or sail, water skis, surfboard, or similar device in
19 waters over which this state has jurisdiction impliedly
20 consents to submit to the chemical test provisions of this
21 section as a condition of operation in this state. However,
22 this subsection shall not apply to other types of watercraft,
23 or to operation of watercraft, water skis, surfboards, or
24 similar devices in waters over which the state has no
25 jurisdiction. If a person refuses to submit to a chemical
26 test under this section, the court shall order the person not
27 to operate a watercraft, water skis, surfboard, or similar
28 device for at least one year.

29 b. A peace officer who has probable cause to believe that
30 a person has committed an offense under this section and that
31 the person is subject to the implied consent provisions of
32 this subsection shall offer the person the opportunity to
33 submit to a chemical test. However, it is not necessary for
34 the peace officer to offer a chemical test to an unconscious
35 person. A peace officer may offer a person more than one

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1 chemical test under this section. However, all tests must be
2 administered within three hours after the officer had probable
3 cause to believe the person violated this section. A person
4 must submit to each chemical test offered by a peace officer
5 in order to comply with the implied consent provisions of this
6 section.

7 c. A person who is dead, unconscious, or otherwise in a
8 condition rendering the person incapable of consent or refusal
9 is deemed not to have withdrawn the implied consent provided
10 by this section, and a test or tests may be given if a
11 licensed physician certifies in advance of the test that the
12 person is dead, unconscious, or otherwise in a condition
13 rendering that person incapable of consent or refusal.

14 d. If the chemical test results in relevant evidence that
15 the person is intoxicated, the person may be arrested for an
16 offense under this section. If the chemical test results in
17 prima facie evidence that the person is intoxicated, the
18 person shall be arrested for an offense under this section.

19 e. A person who refuses to submit to a chemical test may
20 be arrested for an offense under this section.

21 f. At a proceeding under this section, a person's refusal
22 to submit to a chemical test is admissible into evidence.

23 g. If a person refuses to submit to a chemical test under
24 this section, the peace officer shall inform the person that
25 the person's refusal will result in the suspension of the
26 person's operation privileges.

27 6. At a proceeding concerning an offense under this
28 section, evidence of the amount by weight of alcohol that was
29 in the blood of the person charged with the offense at the
30 time of the alleged violation, as shown by an analysis of the
31 person's blood, breath, urine, or other bodily substance, is
32 admissible.

33 Sec. 3. Section 106.23, subsection 2, paragraph b, Code
34 1991, is amended to read as follows:

35 b. Operating a vessel or manipulating water skis,

1 surfboard or similar device while in-an intoxicated condition
2 or-under-influence-of-a-narcotic-drug in violation of section
3 106.14.

4 Sec. 4. NEW SECTION. 106.23A SAFETY COURSE REQUIRED.

5 Any person who has had the right to operate a vessel or
6 watercraft suspended, has been ordered by a court not to
7 operate a watercraft, water skis, surfboard, or similar
8 device, or who is involved in a watercraft or vessel accident
9 which results in property damage or personal injury shall
10 complete a boater safety course approved by the department
11 which includes the successful passage of a written examination
12 relating to the course of instruction, before the right to
13 operate is restored.

14 Sec. 5. Section 321G.1, Code Supplement 1991, is amended
15 by adding the following new subsections and renumbering the
16 subsections as necessary:

17 NEW SUBSECTION. 1. "Alcohol concentration" means alcohol
18 concentration as defined in section 321J.1.

19 NEW SUBSECTION. 2A. "Chemical test" means a chemical test
20 as defined in section 106.2.

21 NEW SUBSECTION. 3A. "Controlled substance" means
22 controlled substance as defined in section 204.101.

23 NEW SUBSECTION. 6A. "Intoxicated" means intoxicated as
24 defined in section 106.2.

25 NEW SUBSECTION. 12A. "Peace officer" means peace officer
26 as defined in section 801.4.

27 NEW SUBSECTION. 13A. "Prima facie evidence of
28 intoxication" means evidence that, at the time of the alleged
29 violation, the person had an alcohol concentration of .10 or
30 more.

31 NEW SUBSECTION. 14A. "Relevant evidence of intoxication"
32 means evidence that, at the time of the alleged violation, a
33 person had an alcohol concentration of at least .05, but less
34 than .10.

35 NEW SUBSECTION. 16A. "Serious injury" means a serious

1 injury as defined in section 321J.1.

2 Sec. 6. Section 321G.14, unnumbered paragraph 1, Code
3 1991, is amended to read as follows:

4 Any Unless another penalty is otherwise specifically
5 provided, a person who shall-violate-any violates a provision
6 of this chapter or any-regulation a rule of the commission or
7 director of transportation ~~shall-be~~ is guilty of a simple
8 misdemeanor.

9 Sec. 7. NEW SECTION. 321G.29 OPERATING A SNOWMOBILE OR
10 ALL-TERRAIN VEHICLE WHILE INTOXICATED.

11 1. A person who operates a snowmobile or all-terrain
12 vehicle while having an alcohol concentration of .10 or more,
13 or while intoxicated, commits the offense of operating a
14 snowmobile or all-terrain vehicle while intoxicated.

15 2. a. A person who operates a snowmobile or all-terrain
16 vehicle while intoxicated in violation of this section
17 commits:

18 (1) A class "C" felony, if the offense results in the
19 death of another person and the court determines that the
20 person who committed the offense caused the death.

21 (2) A class "D" felony, if the offense is a second or
22 subsequent offense, or if the offense results in serious
23 injury to another person and the court determines that the
24 person who committed the offense caused the serious injury.

25 (3) An aggravated misdemeanor, for any other violation of
26 subsection 1.

27 b. A person who operates a snowmobile or all-terrain
28 vehicle in violation of a court order issued pursuant to this
29 section commits a simple misdemeanor.

30 3. A conviction for, deferred judgment for, or plea of
31 guilty to, a violation of this section which occurred more
32 than six years prior to the date of the violation charged
33 shall not be considered in determining that the violation
34 charged is a second or subsequent offense. For the purpose of
35 determining if a violation charged is a second or subsequent

1 offense, deferred judgments pursuant to section 907.3 for
2 violations of this section and convictions or the equivalent
3 of deferred judgments for violations in any other states under
4 statutes substantially corresponding to this section shall be
5 counted as previous offenses. The courts shall judicially
6 notice the statutes of other states which define offenses
7 substantially equivalent to the offense defined in this
8 section and can therefore be considered corresponding
9 statutes. Each previous violation on which conviction or
10 deferral of judgment was entered prior to the date of the
11 violation charged shall be considered and counted as a
12 separate offense.

13 4. Upon a plea or verdict of guilty of a violation of this
14 section, or entry of a deferred judgment concerning a
15 violation of this section, in addition to any criminal penalty
16 imposed, the court shall order the defendant not to operate a
17 snowmobile or all-terrain vehicle for the following period of
18 time:

19 a. At least two years for a felony offense.

20 b. At least one year for a misdemeanor offense.

21 The court shall require the defendant to complete the
22 operator safety course required in section 321G.30 prior to
23 the expiration of the order. If the defendant does not
24 complete the course prior to expiration of the order, the
25 defendant may be subject to contempt proceedings and the court
26 shall extend the order until the defendant completes the
27 course.

28 5. a. A person who operates a snowmobile or all-terrain
29 vehicle on public property impliedly consents to submit to the
30 chemical test provisions of this section as a condition of
31 operation in this state. However, this subsection shall not
32 apply to the operation of a snowmobile or all-terrain vehicle
33 on private property. If a person refuses to submit to a
34 chemical test under this section, the court shall order the
35 person not to operate a snowmobile or all-terrain vehicle for

1 at least one year.

2 b. A peace officer who has probable cause to believe that
3 a person has committed an offense under this section and that
4 the person is subject to the implied consent provisions of
5 this subsection shall offer the person the opportunity to
6 submit to a chemical test. However, it is not necessary for
7 the peace officer to offer a chemical test to an unconscious
8 person. A peace officer may offer a person more than one
9 chemical test under this section. However, all tests must be
10 administered within three hours after the officer had probable
11 cause to believe the person violated this section. A person
12 must submit to each chemical test offered by a peace officer
13 in order to comply with the implied consent provisions of this
14 section.

15 c. A person who is dead, unconscious, or otherwise in a
16 condition rendering the person incapable of consent or refusal
17 is deemed not to have withdrawn the consent provided by this
18 section, and a test or tests may be given if a licensed
19 physician certifies in advance of the test that the person is
20 dead, unconscious, or otherwise in a condition rendering that
21 person incapable of consent or refusal.

22 d. If the chemical test results in relevant evidence that
23 the person is intoxicated, the person may be arrested for an
24 offense under this section. If the chemical test results in
25 prima facie evidence that the person is intoxicated, the
26 person shall be arrested for an offense under this section.

27 e. A person who refuses to submit to a chemical test may
28 be arrested for an offense under this section.

29 f. At a proceeding under this section, a person's refusal
30 to submit to a chemical test is admissible into evidence.

31 g. If a person refuses to submit to a chemical test under
32 this section, the peace officer shall inform the person that
33 the person's refusal will result in the suspension of the
34 person's operation privileges.

35 6. At a proceeding concerning an offense under this

1 section, evidence of the amount by weight of alcohol that was
2 in the blood of the person charged with the offense at the
3 time of the alleged violation, as shown by an analysis of the
4 person's blood, breath, urine, or other bodily substance, is
5 admissible.

6 Sec. 8. NEW SECTION. 321G.30 SAFETY COURSE REQUIRED.

7 Any person who has had the right to operate a snowmobile or
8 all-terrain vehicle suspended, has been ordered by a court not
9 to operate a snowmobile or all-terrain vehicle, or who is
10 involved in an accident which results in property damage or
11 personal injury shall complete an operator safety course
12 established under section 321G.2, subsection 5, including the
13 successful passage of an examination which includes a written
14 test relating to the course of instruction, before the right
15 to operate is restored.

16 EXPLANATION

17 This bill creates an offense for operating a watercraft,
18 water skis, surfboard, or similar device or a snowmobile or
19 all-terrain vehicle (ATV) while under the influence of alcohol
20 or a drug, or while having an alcohol concentration of .10 or
21 more. Under current law, operating these items while under
22 the influence is a simple misdemeanor. Under the bill, if the
23 offense results in the death of another person and the court
24 determines that the person who committed the offense caused
25 the death, the person commits a class "C" felony. If the
26 offense is a second or subsequent offense, or results in
27 serious injury caused by the offender, the bill provides that
28 the offense is a class "D" felony. Any other violation under
29 the bill is an aggravated misdemeanor. The penalties differ
30 from those provided in chapter 321J for operating a motor
31 vehicle while intoxicated (OWI), which provide a serious
32 misdemeanor for a first offense, an aggravated misdemeanor for
33 a second offense, and a class "D" felony for a third or
34 subsequent offense, pursuant to section 321J.2. The penalties
35 in the bill correspond to the penalty for vehicular homicide

1 established in section 707.6A. However, the bill differs from
2 the penalty for causing a serious injury while operating a
3 motor vehicle while intoxicated, which is an aggravated
4 misdemeanor, as opposed to a class "D" felony as provided in
5 this bill.

6 The bill provides a number of provisions which are similar
7 to those contained in chapter 321J, including an exception for
8 taking prescription drugs and a similar definition concerning
9 previous offenses, which must have occurred within the past
10 six years.

11 However, the bill differs from the OWI provisions in
12 several ways. While OWI chemical tests must be administered
13 within two hours, a chemical test for operating a watercraft,
14 snowmobile, or ATV must be given within three hours.
15 Moreover, the implied consent provisions of the bill are less
16 detailed than those for OWI contained in chapter 321J. Under
17 the bill, the implied consent provisions pertaining to
18 watercraft apply only to watercraft that are powered by motor
19 or sail, water skis, surfboard, or similar devices operated in
20 waters over which the state has jurisdiction. The snowmobile
21 and ATV implied consent provisions apply only to operation on
22 public property under the bill.

23 In addition, the implied consent provisions in the bill
24 establish two different standards as a result of testing. The
25 bill provides that if a chemical test results in an alcohol
26 concentration of .10 or more, the person shall be arrested,
27 but if the alcohol concentration is at least .05, but less
28 than .10, the person may be arrested.

29 The bill also provides that upon committing a violation,
30 the court shall order the person not to operate the items for
31 at least two years for a felony offense and one year for a
32 misdemeanor offense. Violation of the court order is a simple
33 misdemeanor. The bill requires the court to order the person
34 to complete a safety course required in the bill prior to
35 expiration of the order not to operate. Under the bill, a

1 person whose operation rights have been suspended or who is
2 involved in an accident involving property damage or personal
3 injury is also required to take the course.

4 BACKGROUND STATEMENT

5 SUBMITTED BY THE AGENCY

6 Under current law, a peace officer must witness a boat
7 operator who is intoxicated and adversely affecting public
8 safety before issuing a citation. For the last two years, the
9 commission has proposed legislation to give peace officers the
10 same type of implied consent authority (to test for
11 intoxication) for boat operators as now exists for motor
12 vehicle operators.

13 During the 1991 legislative session, technical questions
14 arose, such as how the concept of implied consent applied to
15 boat operators. Also, it was believed that an individual
16 needed to have a license to operate a watercraft for implied
17 consent to be feasible. There was not enough interest in the
18 legislation to overcome these technical problems. A review of
19 programs in other states demonstrates that these issues can be
20 addressed.

21 Contacts with each of the states bordering Iowa show a
22 majority of them with implied consent laws. Illinois,
23 Minnesota, Nebraska, and Wisconsin have such legislation,
24 while Missouri and South Dakota do not. Both of these states
25 without implied consent laws are trying to get approval.
26 According to a contact in Missouri, a bill passed one house of
27 the legislature last year with only a few dissenting votes,
28 but time ran out before passage in the other chamber. The
29 contact is confident that language is now available which will
30 be accepted by legislators and is hopeful for passage in the
31 next session.

32 While Minnesota uses operator licenses as a part of their
33 implied consent enforcement program, the other states do not.
34 Fines and jail terms for misdemeanor charges, in addition to
35 mandated operator safety training, serve as the enforcement

1 tools. Information from the other states provides interesting
2 data on the frequency of intoxicated operator involvement in
3 accidents as well as high levels of correlation between
4 arrests for boating while intoxicated of the same people who
5 have been arrested for driving while intoxicated.

6 Last year, the general assembly was also given a bill draft
7 which proposed implied consent authority for snowmobiles and
8 all-terrain vehicles. The senate natural resources committee
9 adopted a bill which combined the two concepts into a single
10 bill. This legislation presents a combined bill. The
11 language in the proposal is very similar to past drafts from
12 the department with less emphasis on carrying forward all of
13 the detail found in the motor vehicle law as is the case in
14 the senate bill. The less detailed approach is also more
15 consistent with the laws in neighboring states.

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