

CHAPTER 461B

USE OF STATE WATERS BY NONRESIDENTS

[P]

This chapter not enacted as a part of this title;
transferred from chapter 106A in Code 1993
See §321.498 et seq. for similar provisions for motor vehicles

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461B.1 Legal effect of use and operation.

The use, operation or maintenance by any nonresident of watercraft in the waters of this state, shall be deemed an appointment by such nonresident of the secretary of state as the nonresident’s true and lawful attorney upon whom may be served all original notices of suit growing out of such use, operation or maintenance or resulting in damage or loss to person or property and said use, operation or maintenance shall be deemed an agreement by such nonresident that any original notice of suit so served shall be of the same legal force and validity as if personally served on the nonresident in this state.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.1]

C93, §461B.1

461B.2 “Person” defined.

The term “*person*” as used in this chapter means:

1. The owner of watercraft whether it is being used and operated personally by said owner or by the owner’s agent.
2. An agent using and operating the watercraft for the agent’s principal.
3. Any person who is in charge of the watercraft and of the use and operation thereof with the express or implied consent of the owner.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.2]

C93, §461B.2

461B.3 Original notice — form.

The original notice of suit filed with the secretary of state shall be in form and substance the same as now provided in suits against residents of this state, except that the part of said notice pertaining to the return day shall be in substantially the following form, to wit:

“and unless you appear thereto and defend in the district court of Iowa in and for county at the courthouse in, Iowa before noon of the sixtieth day following the filing of this notice with the secretary of state, default will be entered and judgment rendered against you.”

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.3]

C93, §461B.3

461B.4 Manner of service.

Plaintiff in any such action shall cause the original notice of suit to be served as follows:

1. By filing a copy of said original notice of suit with said secretary of state, together with a fee of four dollars, and
2. By mailing to the defendant, and to each of the defendants if more than one, within ten days after said filing with the secretary of state, by restricted certified mail addressed to the

defendant at the defendant's last known residence or place of abode, a notification of the said filing with the secretary of state.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.4; 81 Acts, ch 21, §4]
C93, §461B.4

461B.5 Notification to nonresident — form.

The notification, provided for by this chapter, shall be substantially in the following form, to wit:

To (Here insert the name of each defendant and the defendant's residence or last known place of abode.)

You will take notice that an original notice of suit against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa, by filing a copy of said notice on the day of (month), (year), with the secretary of state.

Dated at, Iowa, this day of (month), (year)

.....

Plaintiff

By

Attorney for Plaintiff

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.5]
C93, §461B.5
2000 Acts, ch 1058, §56

461B.6 Optional notification.

In lieu of mailing said notification to the defendant in a foreign state, plaintiff may cause said notification to be personally served in the foreign state on the defendant by any adult person not a party to the suit, by delivering said notification to the defendant or by offering to make such delivery in case defendant refuses to accept delivery.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.6]
C93, §461B.6

461B.7 Proof of service.

Proof of the filing of a copy of said original notice of suit with the secretary of state, and proof of the mailing or personal delivery of said notification to said nonresident shall be made by affidavit of the party doing said acts. All affidavits of service shall be endorsed upon or attached to the originals of the papers to which they relate. All proofs of service, including the restricted certified mail return receipt, shall be forthwith filed with the clerk of the district court.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.7]
C93, §461B.7

461B.8 Actual service within this state.

The provisions of this chapter relative to service of original notice of suit on nonresidents shall not be deemed to prevent actual personal service in this state upon the nonresident in the time, manner, form, and under the conditions provided for service on residents.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.8]
C93, §461B.8
2009 Acts, ch 133, §157

461B.9 Venue of actions.

Actions against nonresidents as contemplated by this chapter may be brought in the county of which plaintiff is a resident, or in the county in which the injury was received or damage done.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.9]

C93, §461B.9

461B.10 Continuances.

The court in which such action is pending shall grant such continuances to a nonresident defendant as may be necessary to afford the nonresident defendant reasonable opportunity to defend said action.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.10]

C93, §461B.10

461B.11 Duty of secretary of state.

The secretary of state shall keep a record of all notices of suit filed with the secretary, shall not permit said filed notices to be taken from the secretary's office except on an order of court and shall, on request, and without fee, furnish any defendant with a certified copy of the notice in which the person is defendant.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.11]

C93, §461B.11

461B.12 Expenses and attorney fees.

If judgment is rendered against the plaintiff upon the trial of said action, said judgment shall include the reasonable expenses incurred by the defendant and the defendant's attorney in appearing to and defending against said action, provided that in the judgment of the trial court said action was commenced maliciously or without probable cause.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.12]

C93, §461B.12

461B.13 Dismissal — effect.

The dismissal of an action after the nonresident has entered a general appearance under the substituted service herein authorized shall bar the recommencement of the same action against the same defendant unless said recommenced action is accompanied by actual personal service of the original notice of suit on said defendant in this state.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.13]

C93, §461B.13

461B.14 Action against insurance.

Any contract insuring the liability of a nonresident operator of a motorboat in Iowa shall, in case of the death of said nonresident, be considered an asset of the nonresident's estate having a situs in Iowa in any civil action arising out of an accident in which said nonresident may be liable.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.14]

C93, §461B.14