

Sec. Judiciary 3/2) Do Pass 3/25 (p. 879)

MAR 11 1986

Place On Calendar

HOUSE FILE 2435
BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

(Formerly House Study Bill 552)

Passed House, Date 3-18-86 (p. 875) Passed Senate, Date 4-2-86 (p. 987)
Vote: Ayes 92 Nays 0 Vote: Ayes 46 Nays 0
Approved April 14, 1986 (p. 1475)

A BILL FOR

1 An Act providing the right to a chemical test upon arrest on a
2 charge of public intoxication.

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

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HF 2435

1 Section 1. Section 123.46, Code Supplement 1985, is
2 amended by striking the section and inserting in lieu thereof
3 the following:

4 123.46 CONSUMPTION IN PUBLIC PLACES -- INTOXICATION --
5 RIGHT TO CHEMICAL TEST ON ARREST.

6 1. As used in this section unless the context otherwise
7 requires:

8 a. "Arrest" means the same as defined in section 804.5 and
9 includes taking into custody pursuant to section 232.19.

10 b. "Chemical test" means a test of a person's blood,
11 breath, or urine to determine the percentage of alcohol
12 present by a qualified person using devices and methods
13 approved by the commissioner of public safety.

14 c. "Peace officer" means the same as defined in section
15 801.4.

16 d. "School" means a public or private school or that
17 portion of a public or private school which provides teaching
18 for any grade from kindergarten through grade twelve.

19 2. A person shall not use or consume alcoholic liquor,
20 wine, or beer upon the public streets or highways. A person
21 shall not use or consume alcoholic liquor in any public place
22 except premises covered by a liquor control license. A person
23 shall not possess or consume alcoholic liquors, wine, or beer
24 on public school property or while attending a public or
25 private school-related function. A person shall not be in-
26 toxicated or simulate intoxication in a public place. A
27 person violating this subsection is guilty of a simple
28 misdemeanor.

29 3. When a peace officer arrests a person on a charge of
30 public intoxication under this section, the peace officer
31 shall inform the person that the person may have a chemical
32 test administered at the person's own expense. If a device
33 approved by the commissioner of public safety for testing a
34 sample of a person's breath to determine the person's blood
35 alcohol concentration is available, that is the only test that

1 need be offered the person arrested. In a prosecution for
2 public intoxication, evidence of the results of a chemical
3 test performed under this subsection is admissible upon proof
4 of a proper foundation. The percentage of alcohol present in
5 a person's blood, breath, or urine established by the results
6 of a chemical test performed within two hours after the
7 person's arrest on a charge of public intoxication is presumed
8 to be the percentage of alcohol present at the time of arrest.

9 EXPLANATION

10 This bill provides a person arrested on a charge of public
11 intoxication the right to have an independent chemical test
12 performed at the person's expense. Evidence of the results of
13 the test are admissible in a trial on the charge of public
14 intoxication upon proof of a proper foundation. The results
15 of the test administered within two hours of arrest are pre-
16 sumed to reflect the person's alcohol concentration at the
17 time of arrest.

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Judiciary & Law Enforcement

Study Bill 552

Judiciary and Law Enforcement: Woods, Chair; Jay, Knapp, Kremer, Maulsby, McIntee and Renaud.

Now
HF 2435

HOUSE FILE

2435

BY (PROPOSED COMMITTEE ON JUDICIARY AND LAW ENFORCEMENT BILL)

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

A BILL FOR

1 An Act providing the right to a chemical test upon arrest on a
2 charge of public intoxication.

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

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3 the following:

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5 RIGHT TO CHEMICAL TEST ON ARREST.

6 1. As used in this section unless the context otherwise
7 requires:

8 a. "Arrest" means the same as defined in section 804.5 and
9 includes taking into custody pursuant to section 232.19.

10 b. "Chemical test" means a test of a person's blood,
11 breath, or urine to determine the percentage of alcohol
12 present by a qualified person using devices and methods
13 approved by the commissioner of public safety.

14 c. "Peace officer" means the same as defined in section
15 801.4.

16 d. "School" means a public or private school or that
17 portion of a public or private school which provides teaching
18 for any grade from kindergarten through grade twelve.

19 2. A person shall not use or consume alcoholic liquor,
20 wine, or beer upon the public streets or highways or in any
21 public place except premises covered by a liquor control
22 license. A person shall not possess or consume alcoholic
23 liquors, wine, or beer on public school property or while
24 attending a public or private school-related function. A
25 person shall not be intoxicated or simulate intoxication in a
26 public place. A person violating this subsection is guilty of
27 a simple misdemeanor.

28 3. When a peace officer arrests a person on a charge of
29 public intoxication under this section, the peace officer
30 shall inform the person that the person may have a chemical
31 test or tests administered by a person of the person's own
32 choosing and at the person's own expense. In a prosecution
33 for public intoxication, evidence of the results of a chemical
34 test performed under this subsection is admissible upon proof
35 of a proper foundation. The percentage of alcohol present in

1 a person's blood, breath, or urine established by the results
2 of a chemical test performed within two hours after the
3 person's arrest on a charge of public intoxication is presumed
4 to be the percentage of alcohol present at the time of arrest.

5 EXPLANATION

6 This bill provides a person arrested on a charge of public
7 intoxication the right to have an independent chemical test
8 performed at the person's expense. Evidence of the results of
9 the test are admissible in a trial on the charge of public
10 intoxication upon proof of a proper foundation. The results
11 of the test administered within two hours of arrest are pre-
12 sumed to reflect the person's alcohol concentration at the
13 time of arrest.

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HOUSE FILE 2435

AN ACT

PROVIDING THE RIGHT TO A CHEMICAL TEST UPON ARREST ON A CHARGE OF PUBLIC INTOXICATION.

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

Section 1. Section 123.46, Code Supplement 1985, is amended by striking the section and inserting in lieu thereof the following:

123.46 CONSUMPTION IN PUBLIC PLACES -- INTOXICATION -- RIGHT TO CHEMICAL TEST ON ARREST.

- 1. As used in this section unless the context otherwise requires:
 - a. "Arrest" means the same as defined in section 804.5 and includes taking into custody pursuant to section 232.19.
 - b. "Chemical test" means a test of a person's blood, breath, or urine to determine the percentage of alcohol present by a qualified person using devices and methods approved by the commissioner of public safety.
 - c. "Peace officer" means the same as defined in section 801.4.
 - d. "School" means a public or private school or that portion of a public or private school which provides teaching for any grade from kindergarten through grade twelve.
- 2. A person shall not use or consume alcoholic liquor, wine, or beer upon the public streets or highways. A person shall not use or consume alcoholic liquor in any public place except premises covered by a liquor control license. A person shall not possess or consume alcoholic liquors, wine, or beer on public school property or while attending a public or private school-related function. A person shall not be intoxicated or simulate intoxication in a public place. A person violating this subsection is guilty of a simple misdemeanor.
- 3. When a peace officer arrests a person on a charge of public intoxication under this section, the peace officer

shall inform the person that the person may have a chemical test administered at the person's own expense. If a device approved by the commissioner of public safety for testing a sample of a person's breath to determine the person's blood alcohol concentration is available, that is the only test that need be offered the person arrested. In a prosecution for public intoxication, evidence of the results of a chemical test performed under this subsection is admissible upon proof of a proper foundation. The percentage of alcohol present in a person's blood, breath, or urine established by the results of a chemical test performed within two hours after the person's arrest on a charge of public intoxication is presumed to be the percentage of alcohol present at the time of arrest.

DONALD D. AVENSON
Speaker of the House

ROBERT T. ANDERSON
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2435, Seventy-first General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved April 14, 1986

TERRY E. BRANSTAD
Governor

H.F. 2435