

JAN 9 1995

JUDICIARY

HOUSE FILE 14

BY GARMAN

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the offense of operating a watercraft while
2 intoxicated and providing penalties and other related matters.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 14

1 Section 1. Section 462A.14, Code 1995, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 462A.14 OPERATING A WATERCRAFT WHILE INTOXICATED --
5 IMPLIED CONSENT TO TEST.

6 1. As used in this section:

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

10 b. "Controlled substance" means controlled substance as
11 defined in section 124.101.

12 c. "Intoxicated" means the condition of a person who is
13 under the influence of alcohol, a controlled substance, a drug
14 other than alcohol or a controlled substance, or any
15 combination of alcohol, a controlled substance, or a drug
16 other than alcohol or a controlled substance, which impairs
17 thought and action and loss of normal control of the person's
18 faculties to an extent which endangers a person.

19 d. "Peace officer" means peace officer as defined in
20 section 801.4.

21 e. "Prima facie evidence of intoxication" includes
22 evidence that, at the time of an alleged violation, a person
23 had an alcohol concentration equal to or in excess of the
24 level specified in section 321J.2, subsection 1, paragraph
25 "b".

26 f. "Relevant evidence of intoxication" includes evidence
27 that, at the time of the alleged violation, a person had an
28 alcohol concentration of at least one-half, but not more than,
29 the level specified in section 321J.2, subsection 1, paragraph
30 "b".

31 g. "Watercraft" means a device for transportation by water
32 including a vessel, water skis, surfboard, or similar device
33 if the device is propelled by a motor or by sail.

34 2. a. A person who operates a watercraft while having an
35 alcohol concentration equal to or in excess of the level

1 specified in section 321J.2, subsection 1, paragraph "b", or
2 while intoxicated, commits a serious misdemeanor for the first
3 offense and shall be imprisoned in the county jail for not
4 less than forty-eight hours to be served as ordered by the
5 court, less credit for any time the person was confined in a
6 jail or detention facility following arrest, and assessed a
7 fine of not less than five hundred dollars. As an alternative
8 to a portion or all of the fine, the court may order the
9 person to perform not more than two hundred hours of unpaid
10 community service.

11 b. A person who violates this section and who has
12 previously been convicted of a violation of this section
13 within the previous six years commits an aggravated
14 misdemeanor and shall be imprisoned in the county jail or a
15 community-based correctional facility for not less than seven
16 days, which sentence shall not be suspended notwithstanding
17 section 901.5, subsection 3, and section 907.3, subsection 3,
18 and assessed a fine of not less than seven hundred fifty
19 dollars.

20 c. A person who violates this section commits a class "D"
21 felony and shall be imprisoned in the county jail for a
22 determinate sentence of not more than one year but not less
23 than thirty days, which shall not be suspended,
24 notwithstanding section 901.5, subsection 3, and section
25 907.3, subsection 3, or committed to the custody of the
26 director of the department of corrections, and assessed a fine
27 of not less than seven hundred fifty dollars in either of the
28 following cases:

29 (1) If the person has twice been previously convicted of a
30 violation of this section within the previous six years.

31 (2) If the offense results in serious bodily injury to
32 another person and the court determines that the person who
33 committed the offense caused the serious bodily injury.

34 d. A person who violates this section commits a class "C"
35 felony if the crime results in the death of another person and

1 the court determines that the person who committed the offense
2 caused the death.

3 e. A person who operates a watercraft after the person has
4 been ordered, pursuant to this section, not to operate a
5 watercraft commits a simple misdemeanor.

6 3. a. Except for a penalty imposed under subsection 2,
7 paragraph "e", in addition to a criminal penalty imposed for a
8 misdemeanor under this section, the court shall order the
9 person not to operate a watercraft for at least one year.

10 b. In addition to a criminal penalty imposed for a felony
11 under this section, the court shall order the person not to
12 operate a watercraft for at least two years.

13 4. a. A person who operates a watercraft in waters over
14 which this state has jurisdiction impliedly consents to submit
15 to the chemical test provisions of this section as a condition
16 of operating a watercraft in this state. If a person refuses
17 to submit to a chemical test under this section, the court
18 shall order the person not to operate a watercraft for at
19 least one year.

20 b. A peace officer who has probable cause to believe that
21 a person has committed an offense under this section shall
22 offer the person the opportunity to submit to a chemical test.
23 However, it is not necessary for the peace officer to offer a
24 chemical test to an unconscious person. A peace officer may
25 offer a person more than one chemical test under this section.
26 However, all tests must be administered within two hours after
27 the officer had probable cause to believe the person violated
28 this section. A person must submit to each chemical test
29 offered by a peace officer in order to comply with the implied
30 consent provisions of this section.

31 c. If the chemical test results in relevant evidence that
32 the person is intoxicated, the person may be arrested for an
33 offense under this section. If the chemical test results in
34 prima facie evidence that the person is intoxicated, the
35 person shall be arrested for an offense under this section.

1 d. A person who refuses to submit to a chemical test may
2 be arrested for an offense under this section.

3 e. At any proceeding under this section, a person's
4 refusal to submit to a chemical test is admissible into
5 evidence.

6 f. If a person refuses to submit to a chemical test under
7 this section, the peace officer shall inform the person that
8 the person's refusal will result in the suspension of the
9 person's watercraft operation privileges.

10 5. At any proceeding concerning an offense under this
11 section, evidence of the amount by weight of alcohol that was
12 in the blood of the person charged with the offense at the
13 time of the alleged violation, as shown by an analysis of the
14 person's blood, breath, urine, or other bodily substance, is
15 admissible.

16 EXPLANATION

17 This bill prohibits the operation of a watercraft by a
18 person who is intoxicated and imposes an implied consent to
19 test for those persons operating a watercraft similar to that
20 applied in chapter 321J to persons operating a motor vehicle.
21 A person who operates a watercraft while intoxicated commits a
22 serious misdemeanor for a first offense, an aggravated
23 misdemeanor for a second offense, a class "D" felony for a
24 third offense or if the offense resulted in a serious injury
25 to another caused by the offender, and a class "C" felony if
26 the offense resulted in the death of another and was caused by
27 the offender. In addition to criminal penalties, the court
28 shall order a person who commits a misdemeanor offense of
29 operating watercraft while intoxicated not to operate a
30 watercraft for at least one year. For a person who commits an
31 offense which is a felony the court shall order the person not
32 to operate a watercraft for two years. If a person refuses to
33 take a chemical test when requested by a peace officer, the
34 court shall order the person not to operate a watercraft for
35 one year. A person who violates an order not to operate a

1 watercraft commits a simple misdemeanor.

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