

JAN 22 1997
JUDICIARY

HOUSE FILE 65
BY KREIMAN

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

A BILL FOR

1 An Act prohibiting the operation of a motorboat while
2 intoxicated, providing for chemical testing of suspected
3 violators, and subjecting violators to penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 65

1 Section 1. Section 462A.14, Code 1997, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 462A.14 DEFINITIONS -- OPERATING WHILE INTOXICATED.

5 As used in this section and sections 462A.14A and 462A.14B:

6 1. "Alcohol beverage" includes alcohol, wine, spirits,
7 beer, or any other beverage which contains ethyl alcohol and
8 is fit for human consumption.

9 2. "Alcohol concentration" means the number of grams of
10 alcohol per any of the following:

11 a. One hundred milliliters of blood.

12 b. Two hundred ten liters of breath.

13 c. Sixty-seven milliliters of urine.

14 3. "Chemical test" means an analysis of a person's blood,
15 breath, urine, or other bodily substance for the determination
16 of the presence of alcohol, a controlled substance, or a drug.

17 4. "Controlled substance" means controlled substance as
18 defined in section 124.101.

19 5. "Motorboat" means any watercraft, as defined in section
20 462A.2, that is propelled by an engine.

21 6. "Peace officer" means peace officer as defined in
22 section 801.4.

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

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

33 Sec. 2. NEW SECTION. 462A.14A OPERATING A MOTORBOAT
34 WHILE INTOXICATED.

35 1. A person commits the offense of operating a motorboat

1 while intoxicated if the person operates a motorboat in either
2 of the following conditions:

3 a. While under the influence of an alcoholic beverage or
4 other drug or a combination of the substances.

5 b. While having an alcohol concentration as defined in
6 section 462A.14 of .10 or more.

7 2. A person who violates this section commits:

8 a. A serious misdemeanor for the first offense and shall
9 be imprisoned in the county jail for not less than forty-eight
10 hours to be served as ordered by the court, less credit for
11 any time the person was confined in a jail or detention
12 facility following arrest, and assessed a fine of not less
13 than five hundred dollars nor more than one thousand dollars.
14 As an alternative to a portion or all of the fine, the court
15 may order the person to perform not more than two hundred
16 hours of unpaid community service.

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

26 c. A person who violates this section commits a class "D"
27 felony and shall be imprisoned in the county jail for a
28 determinate sentence of not more than one year but not less
29 than thirty days, which shall not be suspended,
30 notwithstanding section 901.5, subsection 3, and section
31 907.3, subsection 3, or committed to the custody of the
32 director of the department of corrections, and assessed a fine
33 of not less than seven hundred fifty dollars in either of the
34 following cases:

35 (1) If the person has twice been previously convicted of a

1 violation of this section within the previous six years.

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

5 d. A person who violates this section commits a class "C"
6 felony if the crime results in the death of another person and
7 the court determines that the person who committed the offense
8 caused the death.

9 e. A person who operates a motorboat after the person has
10 been ordered, pursuant to this section, not to operate a
11 motorboat commits a simple misdemeanor.

12 3. a. Except for a penalty imposed under subsection 2,
13 paragraph "e", in addition to a criminal penalty imposed for a
14 misdemeanor under this section, the court shall order the
15 person not to operate a motorboat for a period of time not to
16 exceed one year.

17 b. In addition to a criminal penalty imposed for a felony
18 under this section, the court shall order the person not to
19 operate a motorboat for a period of time not to exceed two
20 years.

21 4. a. A person who operates a motorboat in waters over
22 which this state has jurisdiction impliedly consents to submit
23 to the chemical test provisions of this section as a condition
24 of operating a motorboat in this state. If a person refuses
25 to submit to a chemical test under this section, the court
26 shall order the person not to operate a motorboat for a period
27 of time not to exceed one year.

28 b. A peace officer who has probable cause to believe that
29 a person has committed an offense under this section shall
30 offer the person the opportunity to submit to a chemical test.
31 However, it is not necessary for the peace officer to offer a
32 chemical test to an unconscious person. A peace officer may
33 offer a person more than one chemical test under this section.
34 However, all tests must be administered within two hours after
35 the officer had probable cause to believe the person violated

1 this section. A person must submit to each chemical test
2 offered by a peace officer in order to comply with the implied
3 consent provisions of this section.

4 c. If the chemical test results in relevant evidence of
5 intoxication, the person tested may be arrested for an offense
6 under this section. If the chemical test results in prima
7 facie evidence of intoxication, the person tested shall be
8 arrested for an offense under this section.

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

11 e. At any proceeding under this section, a person's
12 refusal to submit to a chemical test is admissible into
13 evidence.

14 f. If a person refuses to submit to a chemical test under
15 this section, the peace officer shall inform the person that
16 the person's refusal will result in the suspension of the
17 person's motorboat operating privileges.

18 5. At any proceeding concerning an offense under this
19 section, evidence of the alcohol concentration of the person
20 charged with the offense at the time of the alleged violation
21 is admissible.

22 Sec. 3. NEW SECTION. 462A.14B PRELIMINARY SCREENING
23 TEST.

24 When a peace officer has reasonable grounds to believe that
25 a motorboat operator may be violating or has violated section
26 462A.14A, or the operator has been involved in a motorboat
27 collision resulting in injury or death, the peace officer may
28 request the operator to provide a sample of the operator's
29 breath for a preliminary screening test using a device
30 approved by the commissioner of public safety for that
31 purpose. The results of this preliminary screening test may
32 be used for the purpose of deciding whether an arrest should
33 be made and whether to request a chemical test authorized in
34 section 462A.14A, but shall not be used in any court action
35 except to prove that a chemical test was properly requested of

1 a person pursuant to this section and section 462A.14A.

2 Sec. 4. NEW SECTION. 462A.14C ARREST AND CONVICTION
3 STATISTICS.

4 The department shall collect and maintain statistics on the
5 number of arrests and convictions for violations of section
6 462A.14A that occur each year.

7 Sec. 5. Section 462A.23, subsection 2, paragraph b, Code
8 1997, is amended by striking the paragraph and inserting in
9 lieu thereof the following:

10 b. Operating a motorboat as defined in section 462A.14
11 while intoxicated, or manipulating water skis, a surfboard, or
12 a similar device while in an intoxicated condition or under
13 the influence of a narcotic drug.

14 Sec. 6. Section 912.1, subsection 2, Code 1997, is amended
15 to read as follows:

16 2. "Crime" means conduct that occurs or is attempted in
17 this state, poses a substantial threat of personal injury or
18 death, and is punishable as a felony or misdemeanor, or would
19 be so punishable but for the fact that the person engaging in
20 the conduct lacked the capacity to commit the crime under the
21 laws of this state. "Crime" does not include conduct arising
22 out of the ownership, maintenance, or use of a motor vehicle,
23 motorcycle, motorized bicycle, train, boat, or aircraft except
24 for violations of section 321.261, 321.277, 321J.2, ~~462A.14~~
25 462A.14A, or 707.6A, or when the intention is to cause
26 personal injury or death. A license revocation under section
27 321J.9 or 321J.12 shall be considered by the department as
28 evidence of a violation of section 321J.2 for the purposes of
29 this chapter.

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EXPLANATION

31 This bill prohibits the operation of a motorboat while
32 intoxicated by an alcoholic beverage, other drug, or
33 combination of the substances and imposes an implied consent
34 to chemical testing for persons who operate a motorboat
35 similar to that applied in chapter 321J to persons who operate

1 a motor vehicle. A person who operates a motorboat while
2 intoxicated commits a serious misdemeanor for a first offense,
3 an aggravated misdemeanor for a second offense, a class "D"
4 felony for a third offense or if the offense resulted in a
5 serious bodily injury to another caused by the offender, and a
6 class "C" felony if the offense resulted in the death of
7 another and was caused by the offender. In addition to the
8 criminal penalties, the court shall order a person who commits
9 a misdemeanor offense of operating a motorboat while
10 intoxicated not to operate a motorboat for not more than one
11 year. For a person who commits an offense which is a felony
12 the court shall order the person not to operate a motorboat
13 for not more than two years. Violation of such an order is a
14 simple misdemeanor. If a person refuses to take a chemical
15 test when requested by a peace officer, the court shall order
16 the person not to operate a motorboat for not more than one
17 year. The bill provides for preliminary screening of a
18 suspect with a breath test, the results of which may be used
19 to determine if a chemical test should be made.

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