

JAN 28 1997
JUDICIARY

HOUSE FILE
BY GARMAN

90

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:

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HF 90

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 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 commits an aggravated misdemeanor and shall be imprisoned in
14 the county jail or a community-based correctional facility for
15 not less than seven days, which sentence shall not be
16 suspended notwithstanding section 901.5, subsection 3, and
17 section 907.3, subsection 3, and assessed a fine of not less
18 than seven hundred fifty dollars.

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

28 (1) If the person has been previously convicted of a
29 violation of this section two or more times.

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

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

1 caused the death.

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

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

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

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

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

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

35 d. A person who refuses to submit to a chemical test may

1 be arrested for an offense under this section.

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

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

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

15 EXPLANATION

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