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JUDICIARY

HOUSE FILE

123

BY GARMAN

*1-25-99 Sponsor added - Davis*

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 123*

1 Section 1. Section 462A.14, Code 1999, 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, or had any  
19 amount of a controlled substance in the person.

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

22 e. "Prima facie evidence of intoxication" includes  
23 evidence that, at the time of an alleged violation, a person  
24 had an alcohol concentration equal to or in excess of the  
25 level specified in section 321J.2, subsection 1, paragraph  
26 "b", or that a person had any amount of a controlled substance  
27 in the person, as measured by a chemical test.

28 f. "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, but not more than,  
31 the level specified in section 321J.2, subsection 1, paragraph  
32 "b", or that a person had any amount of a controlled substance  
33 in the person, as measured by a chemical test.

34 g. "Serious injury" means serious injury as defined in  
35 section 321J.1.

1 h. "Watercraft" means a device for transportation by water  
2 including a vessel, water skis, surfboard, or similar device  
3 if the device is propelled by a motor or by sail.

4 2. a. A person who operates a watercraft while having an  
5 alcohol concentration equal to or in excess of the level  
6 specified in section 321J.2, subsection 1, paragraph "b", or  
7 while intoxicated, commits a serious misdemeanor for the first  
8 offense and shall be imprisoned in the county jail for not  
9 less than forty-eight hours to be served as ordered by the  
10 court, less credit for any time the person was confined in a  
11 jail or detention facility following arrest, which minimum  
12 sentence shall not be suspended notwithstanding section 901.5,  
13 subsection 3, and section 907.3, subsection 3, and shall be  
14 assessed a fine of one thousand dollars. As an alternative to  
15 a portion or all of the fine, the court may order the person  
16 to perform unpaid community service.

17 b. A person who commits a second offense of this section  
18 commits an aggravated misdemeanor and shall be imprisoned in  
19 the county jail or a community-based correctional facility for  
20 not less than seven days, which minimum sentence shall not be  
21 suspended notwithstanding section 901.5, subsection 3, and  
22 section 907.3, subsection 3, and shall be assessed a fine of  
23 not less than one thousand five hundred dollars nor more than  
24 five thousand dollars.

25 c. A person who commits a third or subsequent offense of  
26 this section commits a class "D" felony, and shall be  
27 imprisoned in the county jail for a determinate sentence of  
28 not more than one year but not less than thirty days, which  
29 minimum sentence shall not be suspended, notwithstanding  
30 section 901.5, subsection 3, and section 907.3, subsection 3,  
31 or committed to the custody of the director of the department  
32 of corrections, and shall be assessed a fine of not less than  
33 two thousand five hundred dollars nor more than seven thousand  
34 five hundred dollars in either of the following cases:

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

1 violation of this section two or more times.

2 (2) If the offense results in serious injury to another  
3 person and the court determines that the person who committed  
4 the offense caused the serious 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 watercraft after the person has  
10 been ordered, pursuant to this section, not to operate a  
11 watercraft commits contempt, punishable by imprisonment in the  
12 county jail for not less than forty-eight hours, which minimum  
13 sentence shall not be suspended notwithstanding section 901.5,  
14 subsection 3, and section 907.3, subsection 3.

15 3. a. Except for a penalty imposed under subsection 2,  
16 paragraph "e", in addition to a criminal penalty imposed for a  
17 misdemeanor under this section, the court shall order the  
18 person not to operate a watercraft for not less than one year  
19 nor more than two years.

20 b. In addition to a criminal penalty imposed for a felony  
21 under this section, the court shall order the person not to  
22 operate a watercraft for not less than two nor more than six  
23 years.

24 4. Notwithstanding the provisions of sections 901.5 and  
25 907.3, the court shall not defer judgment or sentencing with  
26 regard to any penalty imposed under this section.

27 5. a. A person who operates a watercraft in waters over  
28 which this state has jurisdiction impliedly consents to submit  
29 to the chemical test provisions of this section as a condition  
30 of operating a watercraft in this state. If a person refuses  
31 to submit to a chemical test under this section, the court  
32 shall order the person not to operate a watercraft for not  
33 less than one year nor more than two years.

34 b. A peace officer who has probable cause to believe that  
35 a person has committed an offense under this section shall

1 offer the person the opportunity to submit to a chemical test.  
2 However, it is not necessary for the peace officer to offer a  
3 chemical test to an unconscious person. A peace officer may  
4 offer a person more than one chemical test under this section.  
5 However, all tests must be administered within two hours after  
6 the officer had probable cause to believe the person violated  
7 this section. A person must submit to each chemical test  
8 offered by a peace officer in order to comply with the implied  
9 consent provisions of this section.

10 c. If the chemical test results in relevant evidence that  
11 the person is intoxicated, the person may be arrested for an  
12 offense under this section. If the chemical test results in  
13 prima facie evidence that the person is intoxicated, the  
14 person shall be arrested for an offense under this section.

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

17 e. At any proceeding under this section, a person's  
18 refusal to submit to a chemical test is admissible into  
19 evidence.

20 f. If a person refuses to submit to a chemical test under  
21 this section, the peace officer shall inform the person that  
22 the person's refusal will result in the suspension of the  
23 person's watercraft operation privileges.

24 6. At any proceeding concerning an offense under this  
25 section, evidence of the results of an analysis of the  
26 specimen of the person's blood, breath, urine, or other bodily  
27 substance, is admissible.

28 Sec. 2. Section 907.3, subsection 1, Code 1999, is amended  
29 by adding the following new paragraph:

30 NEW PARAGRAPH. 1. The offense is a violation of section  
31 462A.14, and a mandatory minimum sentence must be served by  
32 the defendant, either for a primary offense or as a result of  
33 a specified punishment for contempt under that section.

34 Sec. 3. Section 907.3, subsection 2, Code 1999, is amended  
35 by adding the following new paragraph:

1 NEW PARAGRAPH. f. The offense is a violation of section  
2 462A.14, to the extent that a mandatory minimum sentence must  
3 be served by the defendant, for a primary offense or as a  
4 result of a specified punishment for contempt under that  
5 section.

6 Sec. 4. Section 907.3, subsection 3, Code 1999, is amended  
7 by adding the following new paragraph:

8 NEW PARAGRAPH. f. A mandatory minimum sentence imposed  
9 for a violation of section 462A.14, or as a result of contempt  
10 proceedings specified under that section.

11 Sec. 5. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
12 3, shall not apply to this Act.

13 EXPLANATION

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

1 commits contempt, punishable by at least 48 hours in jail.

2 Judgment and sentencing may not be deferred, and mandatory  
3 minimum sentences may not be suspended. Corresponding  
4 amendments are made to Code section 907.3.

5 This bill may include a state mandate as defined in Code  
6 section 25B.3. This bill makes inapplicable Code section  
7 25B.2, subsection 3, which would relieve a political  
8 subdivision from complying with a state mandate if funding for  
9 the cost of the state mandate is not provided or specified.

10 Therefore, political subdivisions are required to comply with  
11 any state mandate included in this bill.

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