

JAN 12 2000

JUDICIARY

HOUSE FILE 2034

BY GARMAN
1-20-00 Sponsor added - Davis

Passed House, Date _____ Passed Senate, Date _____

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

Approved _____

A BILL FOR

1 An Act relating to operating a motorboat or sailboat while
2 intoxicated and providing penalties.

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

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HF 2034

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 DEFINITIONS -- OPERATING WHILE INTOXICATED.

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

7 1. "Alcohol concentration" means the number of grams of
8 alcohol per any of the following:

9 a. One hundred milliliters of blood.

10 b. Two hundred ten liters of breath.

11 c. Sixty-seven milliliters of urine.

12 2. "Alcoholic beverage" includes alcohol, wine, spirits,
13 beer, or any other beverage which contains ethyl alcohol and
14 is fit for human consumption.

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

18 4. "Controlled substance" means any drug, substance, or
19 compound that is listed in section 124.204 or 124.206, or any
20 metabolite or derivative of the drug, substance, or compound.

21 5. "Motorboat" means any watercraft, as defined in section
22 462A.2, that is propelled by an engine.

23 6. "Peace officer" means peace officer as defined in
24 section 801.4.

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

30 8. "Sailboat" means a watercraft, as defined in section
31 462A.2, that is propelled by wind through use of one or more
32 sails.

33 9. "Serious injury" means a bodily injury which creates a
34 substantial risk of death, or which causes serious permanent
35 disfigurement, or which causes protracted loss or impairment

1 of the function of any bodily organ or major bodily member, or
2 which causes the loss of any bodily member.

3 Sec. 2. NEW SECTION. 462A.14A OPERATING A MOTORBOAT OR
4 SAILBOAT WHILE INTOXICATED.

5 1. A person commits the offense of operating a motorboat
6 or sailboat while intoxicated if the person operates a
7 motorboat or sailboat in this state in any of the following
8 conditions:

9 a. While under the influence of an alcoholic beverage or
10 other drug or a combination of such substances.

11 b. While having an alcohol concentration equal to or in
12 excess of that prohibited by section 321J.2, subsection 1,
13 paragraph "b".

14 c. While any amount of a controlled substance is present
15 in the person, as measured in the person's blood or urine.

16 2. A person who violates subsection 1 commits:

17 a. A serious misdemeanor for the first offense, punishable
18 by both of the following:

19 (1) Imprisonment in the county jail for not less than
20 forty-eight hours, to be served as ordered by the court, less
21 credit for any time the person was confined in a jail or
22 detention facility following arrest. However, the court, in
23 ordering service of the sentence and in its discretion, may
24 accommodate the defendant's work schedule.

25 (2) Assessment of a fine of one thousand dollars.
26 However, in the discretion of the court, if no personal or
27 property injury has resulted from the defendant's actions, up
28 to five hundred dollars of the fine may be waived. As an
29 alternative to a portion or all of the fine, the court may
30 order the person to perform unpaid community service.

31 b. An aggravated misdemeanor for a second offense
32 committed within six years of the first violation of this
33 section, and shall be imprisoned in the county jail or
34 community-based correctional facility not less than seven
35 days, and assessed a fine of not less than one thousand five

1 hundred dollars nor more than five thousand dollars.

2 c. A class "D" felony for a third offense and each
3 subsequent offense committed within six years of the first
4 violations of this section, and shall be imprisoned in the
5 county jail for a determinate sentence of not more than one
6 year but not less than thirty days, or committed to the
7 custody of the director of the department of corrections, and
8 assessed a fine of not less than two thousand five hundred
9 dollars nor more than seven thousand five hundred dollars. A
10 person convicted of a third or subsequent offense may be
11 committed to the custody of the director of the department of
12 corrections, who shall assign the person to a facility
13 pursuant to section 904.513 or the offender may be committed
14 to treatment in the community under the provisions of section
15 907.6.

16 d. A class "D" felony for any offense under this section
17 resulting in serious injury to persons other than the
18 defendant, if the court determines that the person who
19 committed the offense caused the serious injury, and shall be
20 imprisoned for a determinate sentence of not more than five
21 years but not less than thirty days, or committed to the
22 custody of the director of the department of corrections, and
23 assessed a fine of not less than two thousand five hundred
24 dollars nor more than seven thousand five hundred dollars. A
25 person convicted of a felony offense may be committed to the
26 custody of the director of the department of corrections, who
27 shall assign the person to a facility pursuant to section
28 904.513 or the offender may be committed to treatment in the
29 community under the provisions of section 907.6.

30 e. A class "B" felony for any offense under this section
31 resulting in the death of persons other than the defendant, if
32 the court determines that the person who committed the offense
33 caused the death, and shall be imprisoned for a determinate
34 sentence of not more than twenty-five years, or committed to
35 the custody of the director of the department of corrections.

1 A person convicted of a felony offense may be committed to the
2 custody of the director of the department of corrections, who
3 shall assign the person to a facility pursuant to section
4 904.513 or the offender may be committed to treatment in the
5 community under the provisions of section 907.6.

6 3. a. Notwithstanding the provisions of sections 901.5
7 and 907.3, the court shall not defer judgment or sentencing,
8 or suspend execution of any mandatory minimum sentence of
9 incarceration applicable to the defendant under subsection 2,
10 and shall not suspend execution of any other part of a
11 sentence not involving incarceration imposed pursuant to
12 subsection 2, if any of the following apply:

13 (1) If the defendant's alcohol concentration established
14 by the results of an analysis of a specimen of the defendant's
15 blood, breath, or urine withdrawn in accordance with this
16 chapter exceeds .15, regardless of whether or not the alcohol
17 concentration indicated by the chemical test minus the
18 established margin of error inherent in the device or method
19 used to conduct the test equals an alcohol concentration of
20 .15 or more.

21 (2) If the defendant has previously been convicted of a
22 violation of subsection 1 or a statute in another state
23 substantially corresponding to subsection 1.

24 (3) If the defendant has previously received a deferred
25 judgment or sentence for a violation of subsection 1 or for a
26 violation of a statute in another state substantially
27 corresponding to subsection 1.

28 (4) If the defendant refused to consent to testing
29 requested in accordance with section 462A.14B.

30 (5) If the offense under this section results in serious
31 injury to a person other than the defendant.

32 b. All persons convicted of an offense under subsection 2
33 shall be ordered not to operate a motorboat or sailboat, for
34 the following time period:

35 (1) For misdemeanors under subsection 2, a period of time

1 not to exceed one year.

2 (2) For felonies under subsection 2, a period of time
3 comparable to the driver's license revocation period for a
4 comparable offense under chapter 321J or 707.

5 A person who violates a court order not to operate a
6 motorboat or sailboat shall be in contempt of court,
7 punishable by a sentence of between forty-eight hours and one
8 year in the county jail, and a fine of between five hundred
9 and one thousand five hundred dollars. Notwithstanding the
10 provisions of sections 901.5 and 907.3, the court shall not
11 defer judgment or sentencing, or suspend execution of any part
12 of the mandatory minimum sentence applicable for such
13 contempt. As an alternative to a portion of all of the fine
14 for such contempt, the court may order the person to perform
15 unpaid community service in accordance with section 909.3A.

16 c. A minimum term of imprisonment in a county jail or
17 community-based correctional facility imposed on a person
18 convicted of a second or subsequent offense under subsection 2
19 shall be served on consecutive days. However, if the
20 sentencing court finds that service of the full minimum term
21 on consecutive days would work an undue hardship on the
22 person, or finds that sufficient jail space is not available
23 and is not reasonably expected to become available within four
24 months after sentencing to incarcerate the person serving the
25 minimum sentence on consecutive days, the court may order the
26 person to serve the minimum term in segments of at least
27 forty-eight hours and to perform a specified number of hours
28 of unpaid community service as deemed appropriate by the
29 sentencing court.

30 4. In determining if a violation charged is a second or
31 subsequent offense for purposes of criminal sentencing or
32 license revocation under this chapter:

33 a. Deferred judgments entered pursuant to section 907.3
34 for violations of this section shall be counted as previous
35 offenses.

1 b. Convictions or the equivalent of deferred judgments for
2 violations in any other states under statutes substantially
3 corresponding to this section shall be counted as previous
4 offenses. The courts shall judicially notice the statutes of
5 other states which define offenses substantially equivalent to
6 the one defined in this section and can therefore be
7 considered corresponding statutes. Each previous violation on
8 which conviction or deferral of judgment was entered prior to
9 the date of the violation charged shall be considered and
10 counted as a separate previous offense.

11 5. A person shall not be convicted and sentenced for more
12 than one violation of this section for actions arising out of
13 the same event or occurrence, even if the event or occurrence
14 involves more than one of the conditions specified in
15 subsection 1.

16 6. The clerk of the district court shall immediately
17 certify to the department a true copy of each order entered
18 with respect to deferral of judgment, deferral of sentence, or
19 pronouncement of judgment and sentence for a defendant under
20 this section.

21 7. a. This section does not apply to a person operating a
22 motorboat or sailboat while under the influence of a drug if
23 the substance was prescribed for the person and was taken
24 under the prescription and in accordance with the directions
25 of a medical practitioner as defined in chapter 155A or if the
26 substance was dispensed by a pharmacist without a prescription
27 pursuant to the rules of the board of pharmacy examiners, if
28 there is no evidence of the consumption of alcohol and the
29 medical practitioner or pharmacist had not directed the person
30 to refrain from operating a motorboat or sailboat, a motor
31 vehicle, or other heavy machinery.

32 b. When charged with a violation of subsection 1,
33 paragraph "c", a person may assert, as an affirmative defense,
34 that the controlled substance present in the person's blood or
35 urine was prescribed or dispensed for the person and was taken

1 in accordance with the directions of a practitioner and the
2 labeling directions of the pharmacy, as that person and place
3 of business are defined in section 155A.3.

4 8. In any prosecution under this section, evidence of the
5 results of analysis of a specimen of the defendant's blood,
6 breath, or urine is admissible upon proof of a proper
7 foundation.

8 a. The alcohol concentration established by the results of
9 an analysis of a specimen of the defendant's blood, breath, or
10 urine withdrawn within two hours after the defendant was
11 operating or in physical control of a motorboat or sailboat is
12 presumed to be the alcohol concentration at the time of
13 operating or being in physical control of the motorboat or
14 sailboat.

15 b. The presence of a controlled substance or other drug
16 established by the results of analysis of a specimen of the
17 defendant's blood or urine withdrawn within two hours after
18 the defendant was operating or in physical control of a
19 motorboat or sailboat is presumed to show the presence of such
20 controlled substance or other drug in the defendant at the
21 time of operating or being in physical control of the
22 motorboat or sailboat.

23 9. a. In addition to any fine or penalty imposed under
24 this chapter, the court shall order a defendant convicted of
25 or receiving a deferred judgment for a violation of this
26 section to make restitution for damages resulting directly
27 from the violation, to the victim, pursuant to chapter 910.
28 An amount paid pursuant to this restitution order shall be
29 credited toward any adverse judgment in a subsequent civil
30 proceeding arising from the same occurrence. However, other
31 than establishing a credit, a restitution proceeding pursuant
32 to this section shall not be given evidentiary or preclusive
33 effect in a subsequent civil proceeding arising from the same
34 occurrence.

35 b. The court may order restitution paid to any public

1 agency for the costs of the emergency response resulting from
2 the actions constituting a violation of this section, not
3 exceeding five hundred dollars per public agency for each such
4 response. For the purposes of this paragraph, "emergency
5 response" means any incident requiring response by fire
6 fighting, law enforcement, ambulance, medical, or other
7 emergency services. A public agency seeking such restitution
8 shall consult with the county attorney regarding the expenses
9 incurred by the public agency, and the county attorney may
10 include the expenses in the statement of pecuniary damages
11 pursuant to section 910.3.

12 10. In any prosecution under this section, the results of
13 a chemical test may not be used to prove a violation of
14 subsection 1 if the alcohol, controlled substance, or other
15 drug concentration indicated by the chemical test minus the
16 established margin of error inherent in the device or method
17 used to conduct the chemical test does not equal or exceed the
18 level prohibited by subsection 1.

19 Sec. 3. NEW SECTION. 462A.14B IMPLIED CONSENT.

20 1. A person who operates a motorboat or sailboat in waters
21 over which this state has jurisdiction impliedly consents to
22 submit to the chemical test provisions of this section as a
23 condition of operating a motorboat or sailboat in this state.

24 2. If a person refuses to submit to a chemical test under
25 this section, the peace officer shall inform the person that
26 the person's refusal will result in the suspension of the
27 person's motorboat or sailboat operating privileges. If a
28 person refuses to submit to a chemical test under this
29 section, the court shall order the person not to operate a
30 motorboat or sailboat for a period of time not less than one
31 year. If the person violates the court order not to operate
32 the motorboat or sailboat, the person shall be in contempt of
33 court, punishable by a sentence of between forty-eight hours
34 and one year in the county jail, and a fine of between five
35 hundred and one thousand five hundred dollars.

1 Notwithstanding the provisions of sections 901.5 and 907.3,
2 the court shall not defer judgment or sentencing, or suspend
3 execution of any part of the mandatory minimum sentence
4 applicable for such contempt. As an alternative to a portion
5 or all of the fine for such contempt, the court may order the
6 person to perform unpaid community service, in accordance with
7 section 909.3A.

8 3. A peace officer who has probable cause to believe that
9 a person has committed an offense under section 462A.14A shall
10 offer the person the opportunity to submit to a chemical test.
11 However, it is not necessary for the peace officer to offer a
12 chemical test to an unconscious person. A peace officer may
13 offer a person more than one chemical test under this section.
14 However, all tests must be administered within two hours after
15 the officer had probable cause to believe the person violated
16 section 462A.14A. A person must submit to each chemical test
17 offered by a peace officer in order to comply with the implied
18 consent provisions of this section.

19 4. If the chemical test results in prima facie evidence
20 that the person is intoxicated, the person shall be arrested
21 for an offense under this section.

22 5. A person who refuses to submit to a chemical test may
23 be arrested for an offense under this section, in addition to
24 any order not to operate a motorboat or sailboat imposed under
25 subsection 2.

26 6. At any proceeding under this section, a person's
27 refusal to submit to a chemical test is admissible into
28 evidence.

29 7. a. When a person is arrested in accordance with this
30 section, the registration for the motorboat or sailboat that
31 the person was operating at the time of the arrest shall be
32 immediately revoked for four months.

33 b. If the department revokes the registration for a
34 motorboat or sailboat under this section, the department shall
35 assess the person a civil penalty of two hundred dollars. The

1 money collected by the department under this section shall be
2 transmitted to the treasurer of state who shall deposit one-
3 half of the money in the separate fund established in section
4 915.94 and one-half of the money in the general fund of the
5 state.

6 c. Registration for a motorboat or sailboat shall not be
7 reinstated unless the civil penalty has been paid.

8 d. The department shall enact rules related to
9 registration revocations under this section that substantially
10 conform to the procedures for administrative license
11 revocations under chapter 321J.

12 Sec. 4. NEW SECTION. 462A.14C PRELIMINARY SCREENING
13 TEST.

14 If a peace officer has reasonable grounds to believe that a
15 motorboat or sailboat operator may be violating or has
16 violated section 462A.14A, or the operator has been involved
17 in a motorboat or sailboat collision resulting in injury or
18 death, the peace officer may request the operator to provide a
19 sample of the operator's breath for a preliminary screening
20 test using a device approved by the commissioner of public
21 safety for that purpose. The results of this preliminary
22 screening test may be used for the purpose of deciding whether
23 an arrest should be made and whether to request a chemical
24 test authorized in section 462A.14B, but shall not be used in
25 any court action except to prove that a chemical test was
26 properly requested of a person pursuant to this section and
27 section 462A.14B.

28 Sec. 5. NEW SECTION. 462A.14D ARREST AND CONVICTION
29 STATISTICS.

30 The department shall collect and maintain records on the
31 arrests and convictions for violations of section 462A.14A,
32 and shall compile yearly statistics.

33 Sec. 6. Section 462A.23, subsection 2, paragraph b, Code
34 1999, is amended by striking the paragraph and inserting in
35 lieu thereof the following:

1 b. Operating a motorboat or sailboat while intoxicated, or
2 manipulating water skis, a surfboard, or a similar device
3 while in an intoxicated condition or under the influence of a
4 narcotic drug.

5 Sec. 7. Section 907.3, subsection 1, Code Supplement 1999,
6 is amended by adding the following new paragraph:

7 NEW PARAGRAPH. 1. The offense is a violation of section
8 462A.14A, and a mandatory minimum sentence must be served by
9 the defendant, either for a primary offense or as a result of
10 a specified punishment for contempt under that section or the
11 offense is a specified punishment for contempt under section
12 462A.14B.

13 Sec. 8. Section 907.3, subsection 2, Code Supplement 1999,
14 is amended by adding the following new paragraph:

15 NEW PARAGRAPH. f. The offense is a violation of section
16 462A.14A, to the extent that a mandatory minimum sentence must
17 be served by the defendant, for a primary offense or as a
18 result of a specified punishment for contempt under that
19 section, or the offense is a specified punishment for contempt
20 under section 462A.14B.

21 Sec. 9. Section 907.3, subsection 3, Code Supplement 1999,
22 is amended by adding the following new paragraph:

23 NEW PARAGRAPH. f. A mandatory minimum sentence imposed
24 for a violation of section 462A.14, or as a result of contempt
25 proceedings specified under that section, or the offense is a
26 specified punishment for contempt under section 462A.14B.

27 Sec. 10. Section 915.80, subsection 2, Code 1999, is
28 amended to read as follows:

29 2. "Crime" means conduct that occurs or is attempted in
30 this state, poses a substantial threat of personal injury or
31 death, and is punishable as a felony or misdemeanor, or would
32 be so punishable but for the fact that the person engaging in
33 the conduct lacked the capacity to commit the crime under the
34 laws of this state. "Crime" does not include conduct arising
35 out of the ownership, maintenance, or use of a motor vehicle,

1 motorcycle, motorized bicycle, train, boat, or aircraft except
2 for violations of section 321.261, 321.277, 321J.2, ~~462A.14~~
3 462A.14A, or 707.6A, or when the intention is to cause
4 personal injury or death. A license revocation under section
5 321J.9 or 321J.12 shall be considered by the department as
6 evidence of a violation of section 321J.2 for the purposes of
7 this subchapter.

8 Sec. 11. IMPLEMENTATION OF ACT. Section 25B.2, subsection
9 3, shall not apply to this Act.

10

EXPLANATION

11 The bill amends certain sections of Code chapter 462A to
12 prohibit the operation of a motor boat or sailboat while
13 intoxicated, and imposes an implied consent to test and
14 penalties similar to that imposed by Code chapter 321J for
15 operators of motor vehicles.

16 The bill provides that a person who operates a motorboat or
17 sailboat while intoxicated commits a serious misdemeanor upon
18 a first offense, an aggravated misdemeanor upon a second
19 offense, a class "D" felony for a third offense or for an
20 offense resulting in serious bodily injury to another, and a
21 class "B" felony for an offense resulting in the death of
22 another. A serious misdemeanor is punishable by confinement
23 for no more than one year and a fine of at least \$250 but not
24 more than \$1,500. An aggravated misdemeanor is punishable by
25 confinement for no more than two years and a fine of at least
26 \$500 but not more than \$5,000. A class "D" felony is
27 punishable by confinement for no more than five years and a
28 fine of at least \$750 but not more than \$7,500. A class "B"
29 felony is punishable by confinement for no more than 25 years.

30 Persons convicted of a misdemeanor shall be ordered not to
31 operate a motorboat or sailboat for up to one year, and, if
32 convicted of a felony, for a period of time comparable to the
33 driver's license revocation that would be imposed for similar
34 circumstances under Code chapter 321J. Boat registration
35 would be revoked for four months upon any arrest, and a civil

1 penalty of \$200 must be paid prior to reinstatement.

2 Corresponding amendments are made to Code section 907.3 to
3 prohibit deferral of judgment or sentencing, or suspension of
4 execution of any part of a mandatory minimum sentence under
5 the new Code section. A corresponding amendment is also made
6 to Code section 915.80 to reflect that the penalty provision
7 now appears in Code section 462A.14A, rather than section
8 462A.14.

9 This bill may include a state mandate as defined in Code
10 section 25B.3. This bill makes inapplicable Code section
11 25B.2, subsection 3, which would relieve a political
12 subdivision from complying with a state mandate if funding for
13 the cost of the state mandate is not provided or specified.
14 Therefore, political subdivisions are required to comply with
15 any state mandate included in this bill.

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HOUSE FILE 2034

FISCAL NOTE

The estimate for House File 2034 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

SUMMARY

House File 2034 increases the required jail time and fines for persons arrested for operating a motorboat or sailboat while intoxicated. This Bill implements implied consent, which requires boat operators to submit to a chemical test and sets a legal blood alcohol content limit similar to operators of motor vehicles. A refusal to the test would be a violation, allowing Fish and Wildlife Officers to arrest persons that will not submit to a chemical test.

ASSUMPTIONS

1. The number of actual convictions in calendar 1998 were 13. Of the 13 convictions, one person served jail time.
2. The Department of Natural Resources estimates there are approximately 30 arrests per year involving the operation of a watercraft while intoxicated.
3. The average marginal variable cost per day for jail time is \$14. This does not include administrative or fixed costs. The average stay for a first offense is two days, and the average stay for a second offense is seven days.
4. Fines collected are deposited into the General Fund. Approximately, \$9,000 in fines would be collected.
5. The costs to implement this program for the Department of Natural Resources is minimal. Approximate costs are \$15,000.

CORRECTIONAL IMPACT

House File 2034 will increase admissions to county jails by 12 persons based on actual convictions for 1998.

FISCAL IMPACT

House File 2034 is expected to have a minimal impact to the General Fund. The impact to county jails is also estimated to be minimal.

SOURCES

Department of Natural Resources
Department of Human Rights, CJJP

FILED JANUARY 18, 2000

BY DENNIS PROUTY, FISCAL DIRECTOR