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Place On Calendar

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HOUSE FILE 2331
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2034)

Passed House, ^(P. 506) Date 3/1/00 Passed Senate, ^{P. 904} Date 3/28/00
Vote: Ayes 99 Nays 0 Vote: Ayes 48 Nays 0
Approved 4-14-00

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 2331

1 Section 1. Section 462A.2, Code 1999, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 462A.2 DEFINITIONS.

5 As used in this chapter, unless the context clearly
6 requires a different meaning:

- 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. "Authorized emergency vessel" means any vessel which is
16 designated or authorized by the commission for use in law
17 enforcement, search and rescue, and disaster work.
18 4. "Boat livery" means a person who holds a vessel for
19 hire, renting, leasing, or chartering including hotels,
20 motels, or resorts which furnish a vessel to guests as part of
21 the services of the business.
22 5. "Certificate" means a certificate of title.
23 6. "Chemical test" means an analysis of a person's blood,
24 breath, urine, or other bodily substance for the determination
25 of the presence of alcohol, a controlled substance, or a drug.
26 7. "Commission" means the natural resource commission.
27 8. "Controlled substance" means any drug, substance, or
28 compound that is regulated under chapter 124, including any
29 counterfeit substance or simulated controlled substance, as
30 well as any metabolite or derivative of the drug, substance or
31 compound.
32 9. "Dealer" means a person who engages in whole or in part
33 in the business of buying, selling, or exchanging vessels
34 either outright or on conditional sale, bailment, lease,
35 security interest, or otherwise, and who has an established

1 place of business for sale, trade, and display of vessels. A
2 yachtbroker is a dealer.

3 10. "Department" means the department of natural
4 resources.

5 11. "Director" means the director of the department or the
6 director's designee.

7 12. "Established place of business" means the place
8 actually occupied either continuously or at regular periods by
9 a dealer or manufacturer where the dealer's or manufacturer's
10 books and records are kept and a large share of the dealer's
11 or manufacturer's business is transacted.

12 13. "Farm pond" means a body of water wholly on the lands
13 of a single owner, or a group of joint owners, which does not
14 have any connection with any public waters and which is less
15 than ten surface acres.

16 14. "Inboard" means a vessel in which the engine is
17 located internally, the propulsion system is rigidly attached
18 to the engine, and the propulsion mechanism is within the
19 confines of the vessel's extreme length and beam.

20 15. "Inboard-outdrive" means a vessel in which the power
21 plant or engine is located inside of the vessel and the
22 propulsion mechanism is located outside of the transom.

23 16. "Inflatable vessel" means a vessel which achieves and
24 maintains its intended shape and buoyancy by inflation.

25 17. "Lienholder" means a person holding a security
26 interest.

27 18. "Manufacturer" means a person engaged in the business
28 of manufacturing or importing new and unused vessels, or new
29 and unused outboard motors, for the purpose of sale or trade.

30 19. "Motorboat" means any vessel propelled by machinery,
31 whether or not such machinery is the principal source of
32 propulsion, or vessel propelled attached to another craft
33 which is propelled by machinery.

34 20. "Navigable waters" means all lakes, rivers and
35 streams, which can support a vessel capable of carrying one or

1 more persons during a total of six months period in one out of
2 every ten years.

3 21. "Nonresident" means every person who is not a resident
4 of this state.

5 22. "Operate" means to navigate or otherwise use a vessel
6 or motorboat.

7 23. "Operator" means a person who operates or is in actual
8 physical control of a vessel.

9 24. "Owner" means a person, other than a lienholder,
10 having the property right in or title to a motorboat or
11 vessel. The term includes a person entitled to the use or
12 possession of a vessel or motorboat subject to an interest in
13 another person, reserved or created by agreement and securing
14 payment or performance of an obligation, but the term excludes
15 a lessee under a lease not intended as security.

16 25. "Passenger" means a person carried on board a vessel,
17 including the operator, and anyone towed by a vessel on water
18 skis, surfboards, inner tubes, or similar devices.

19 26. "Peace officer" means:

20 a. A member of the Iowa state patrol.

21 b. A police officer under civil service as provided in
22 chapter 400.

23 c. A sheriff.

24 d. A regular deputy sheriff who has had formal police
25 training.

26 e. Any other law enforcement officer who has
27 satisfactorily completed an approved course relating to
28 operating while intoxicated, either at the Iowa law
29 enforcement academy or in a law enforcement training program
30 approved by the department of public safety.

31 27. "Person" means an individual, partnership, firm,
32 corporation or association.

33 28. "Privately owned lake" means any lake, located within
34 the boundaries of this state and not subject to federal
35 control covering navigation owned by an individual, group of

1 individuals, or a nonprofit corporation and which is not open
2 to the use of the general public but is used exclusively by
3 the owners and their personal guests.

4 29. "Proceeds" includes whatever is received when
5 collateral or proceeds are sold, exchanged, collected, or
6 otherwise disposed of. The term also includes the account
7 arising when the right to payment is earned under a contract
8 right. Money, checks, and the like are cash "proceeds". All
9 other proceeds are "noncash proceeds".

10 30. "Sailboard" means a windsurfing vessel with a mount
11 for a sail, a daggerboard, and a small skeg.

12 31. "Security interest" means an interest which is
13 reserved or created by an agreement which secures payment or
14 performance of an obligation and is valid against third
15 parties generally.

16 32. "Serious injury" means a bodily injury which creates
17 a substantial risk of death, or which causes serious permanent
18 disfigurement, or which causes protracted loss or impairment
19 of the function of any bodily organ or major bodily member, or
20 which causes the loss of any bodily member.

21 33. "State of principal use" means the state on whose
22 waters a vessel is used or to be used most during a calendar
23 year.

24 34. "Undocumented vessel" means any vessel which is not
25 required to have, and does not have, a valid marine document
26 issued by the bureau of customs or a foreign government.

27 35. "Use" means to operate, navigate, or employ a vessel.
28 A vessel is in use whenever it is upon the water.

29 36. "Vessel" means every description of watercraft, other
30 than a seaplane, used or capable of being used as a means of
31 transportation on water or ice. Ice boats are watercraft.

32 37. "Vessel for hire or commercial vessel" means a vessel
33 for the use of which a fee of any nature is imposed including
34 vessels furnished as a part of lodge, hotel, or resort
35 services.

1 38. "Wake" means any movement of water created by a vessel
2 which adversely affects the activities of another person who
3 is involved in activities approved for that area or which may
4 adversely affect the natural features of the shoreline.

5 39. "Watercraft" means any vessel which through the
6 buoyance force of water floats upon the water and is capable
7 of carrying one or more persons.

8 40. "Waters of this state under the jurisdiction of the
9 commission" means any navigable waters within the territorial
10 limits of this state, and the marginal river areas adjacent to
11 this state, exempting only farm ponds and privately owned
12 lakes.

13 41. "Writing fee" means the amount paid by the boat owner
14 to the county recorder for handling the transaction.

15 Sec. 2. Section 462A.14, Code 1999, is amended by striking
16 the section and inserting in lieu thereof the following:

17 462A.14 OPERATING A MOTORBOAT OR SAILBOAT WHILE
18 INTOXICATED.

19 1. A person commits the offense of operating a motorboat
20 or sailboat while intoxicated if the person operates a
21 motorboat or sailboat on the navigable waters of this state in
22 any of the following conditions:

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

25 b. While having an alcohol concentration of .10 or more.

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

28 2. A person who violates subsection 1 commits:

29 a. A serious misdemeanor for the first offense, punishable
30 by all of the following:

31 (1) Imprisonment in the county jail for not less than
32 forty-eight hours, to be served as ordered by the court, less
33 credit for any time the person was confined in a jail or
34 detention facility following arrest. However, the court, in
35 ordering service of the sentence and in its discretion, may

1 accommodate the defendant's work schedule.

2 (2) Assessment of a fine of one thousand dollars.

3 However, in the discretion of the court, if no personal or
4 property injury has resulted from the defendant's actions, up
5 to five hundred dollars of the fine may be waived. As an
6 alternative to a portion or all of the fine, the court may
7 order the person to perform unpaid community service.

8 (3) Prohibition of operation of a motorboat or sailboat
9 for one year, pursuant to court order.

10 (4) Assignment to substance abuse evaluation and
11 treatment, pursuant to subsection 12, and a course for
12 drinking drivers.

13 b. An aggravated misdemeanor for a second offense,
14 punishable by all of the following:

15 (1) Imprisonment in the county jail or community-based
16 correctional facility for not less than seven days.

17 (2) Assessment of a fine of not less than one thousand
18 five hundred dollars nor more than five thousand dollars.

19 (3) Prohibition of operation of a motorboat or sailboat
20 for two years, pursuant to court order.

21 (4) Assignment to substance abuse evaluation and
22 treatment, pursuant to subsections 12 and 13, and a course for
23 drinking drivers.

24 c. A class "D" felony for a third offense and each
25 subsequent offense, punishable by all of the following:

26 (1) Imprisonment in the county jail for a determinate
27 sentence of not more than one year but not less than thirty
28 days, or committed to the custody of the director of the
29 department of corrections. A person convicted of a third or
30 subsequent offense may be committed to the custody of the
31 director of the department of corrections, who shall assign
32 the person to a facility pursuant to section 904.513 or the
33 offender may be committed to treatment in the community under
34 the provisions of section 907.13.

35 (2) Assessment of a fine of not less than two thousand

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1 five hundred dollars nor more than seven thousand five hundred
2 dollars.

3 (3) Prohibition of operation of a motorboat or sailboat
4 for six years, pursuant to court order.

5 (4) Assignment to substance abuse evaluation and
6 treatment, pursuant to subsections 12 and 13, and a course for
7 drinking drivers.

8 d. A class "D" felony for any offense under this section
9 resulting in serious injury to persons other than the
10 defendant, if the court determines that the person who
11 committed the offense caused the serious injury, and shall be
12 imprisoned for a determinate sentence of not more than five
13 years but not less than thirty days, or committed to the
14 custody of the director of the department of corrections, and
15 assessed a fine of not less than two thousand five hundred
16 dollars nor more than seven thousand five hundred dollars. A
17 person convicted of a felony offense may be committed to the
18 custody of the director of the department of corrections, who
19 shall assign the person to a facility pursuant to section
20 904.513 or the offender may be committed to treatment in the
21 community under the provisions of section 907.6. The court
22 shall also order that the person not operate a motorboat or
23 sailboat for one year in addition to any other period of time
24 the defendant would have been ordered not to operate if no
25 injury had occurred in connection with the violation. The
26 court shall also assign the defendant to substance abuse
27 evaluation and treatment pursuant to subsections 12 and 13,
28 and a course for drinking drivers.

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

1 the custody of the director of the department of corrections,
2 who shall assign the person to a facility pursuant to section
3 904.513 or the offender may be committed to treatment in the
4 community under the provisions of section 907.6. The court
5 shall also order that the person not operate a motorboat or
6 sailboat for six years. The court shall also assign the
7 defendant to substance abuse evaluation and treatment pursuant
8 to subsections 12 and 13, and a course for drinking drivers.

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

16 (1) If the defendant's alcohol concentration established
17 by the results of an analysis of a specimen of the defendant's
18 blood, breath, or urine withdrawn in accordance with this
19 chapter exceeds .15, regardless of whether or not the alcohol
20 concentration indicated by the chemical test minus the
21 established margin of error inherent in the device or method
22 used to conduct the test equals an alcohol concentration of
23 .15 or more.

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

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

31 (4) If the defendant refused to consent to testing
32 requested in accordance with section 462A.14A.

33 (5) If the offense under this section results in bodily
34 injury to a person other than the defendant.

35 b. A minimum term of imprisonment in a county jail or

1 community-based correctional facility imposed on a person
2 convicted of a second or subsequent offense under subsection 2
3 shall be served on consecutive days. However, if the
4 sentencing court finds that service of the full minimum term
5 on consecutive days would work an undue hardship on the
6 person, or finds that sufficient jail space is not available
7 and is not reasonably expected to become available within four
8 months after sentencing to incarcerate the person serving the
9 minimum sentence on consecutive days, the court may order the
10 person to serve the minimum term in segments of at least
11 forty-eight hours and to perform a specified number of hours
12 of unpaid community service as deemed appropriate by the
13 sentencing court.

14 4. In determining if a violation charged is a second or
15 subsequent offense for purposes of criminal sentencing or
16 license or privilege revocation under this section:

17 a. Any conviction under this section within the previous
18 twelve years shall be counted as a previous offense.

19 b. Deferred judgments entered pursuant to section 907.3
20 for violations of this section shall be counted as previous
21 offenses.

22 c. Convictions or the equivalent of deferred judgments for
23 violations in any other states under statutes substantially
24 corresponding to this section shall be counted as previous
25 offenses. The courts shall judicially notice the statutes of
26 other states which define offenses substantially equivalent to
27 an offense defined in this section and can therefore be
28 considered corresponding statutes. Each previous violation on
29 which conviction or deferral of judgment was entered prior to
30 the date of the violation charged shall be considered and
31 counted as a separate previous offense.

32 5. A person shall not be convicted and sentenced for more
33 than one violation of this section for actions arising out of
34 the same event or occurrence, even if the event or occurrence
35 involves more than one of the conditions specified in

1 subsection 1. However, a person who refuses a test pursuant
2 to section 462A.14B may be subject to imposition of the
3 penalties under that section in addition to the penalties
4 under this section if the person is convicted under both
5 sections, even though the actions arise out of the same event
6 or occurrence.

7 6. The clerk of the district court shall immediately
8 certify to the department a true copy of each order entered
9 with respect to deferral of judgment, deferral of sentence, or
10 pronouncement of judgment and sentence for a defendant under
11 this section.

12 7. a. This section does not apply to a person operating a
13 motorboat or sailboat while under the influence of a drug if
14 the substance was prescribed for the person and was taken
15 under the prescription and in accordance with the directions
16 of a medical practitioner as defined in chapter 155A or if the
17 substance was dispensed by a pharmacist without a prescription
18 pursuant to the rules of the board of pharmacy examiners, if
19 there is no evidence of the consumption of alcohol and the
20 medical practitioner or pharmacist had not directed the person
21 to refrain from operating a motor vehicle, or motorboat or
22 sailboat.

23 b. When charged with a violation of subsection 1,
24 paragraph "c", a person may assert, as an affirmative defense,
25 that the controlled substance present in the person's blood or
26 urine was prescribed or dispensed for the person and was taken
27 in accordance with the directions of a practitioner and the
28 labeling directions of the pharmacy, as that person and place
29 of business are defined in section 155A.3.

30 8. In any prosecution under this section, evidence of the
31 results of analysis of a specimen of the defendant's blood,
32 breath, or urine is admissible upon proof of a proper
33 foundation.

34 a. The alcohol concentration established by the results of
35 an analysis of a specimen of the defendant's blood, breath, or

1 urine withdrawn within two hours after the defendant was
2 operating or in physical control of a motorboat or sailboat is
3 presumed to be the alcohol concentration at the time of
4 operating or being in physical control of the motorboat or
5 sailboat.

6 b. The presence of a controlled substance or other drug
7 established by the results of analysis of a specimen of the
8 defendant's blood or urine withdrawn within two hours after
9 the defendant was operating or in physical control of a
10 motorboat or sailboat is presumed to show the presence of such
11 controlled substance or other drug in the defendant at the
12 time of operating or being in physical control of the
13 motorboat or sailboat.

14 c. The nationally accepted standards for determining
15 detectable levels of controlled substances in the division of
16 criminal investigation's initial laboratory screening test for
17 controlled substances adopted by the department of public
18 safety shall be utilized in prosecutions under this section.

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

31 b. The court may order ~~restitution paid~~ to any public
32 agency for the costs of the emergency response resulting from
33 the actions constituting a violation of this section, not
34 exceeding five hundred dollars per public agency for each such
35 response. For the purposes of this paragraph, "emergency

1 response" means any incident requiring response by fire
2 fighting, law enforcement, ambulance, medical, or other
3 emergency services. A public agency seeking such restitution
4 shall consult with the county attorney regarding the expenses
5 incurred by the public agency, and the county attorney may
6 include the expenses in the statement of pecuniary damages
7 pursuant to section 910.3.

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

16 11. This section does not limit the introduction of any
17 competent evidence bearing on the question of whether a person
18 was under the influence of an alcoholic beverage or a
19 controlled substance or other drug, including the results of
20 chemical tests of specimens of blood, breath, or urine
21 obtained more than two hours after the person was operating a
22 motorboat or sailboat.

23 12. a. All substance abuse evaluations required under
24 this section shall be completed at the defendant's expense and
25 prior to sentencing.

26 b. In addition to assignment to substance abuse evaluation
27 and treatment under this section, the court shall order any
28 defendant convicted under this section to follow the
29 recommendations proposed in the substance abuse evaluation for
30 appropriate substance abuse treatment for the defendant.
31 Court-ordered substance abuse treatment is subject to the
32 periodic reporting requirements of section 125.86.

33 c. If a defendant is committed by the court to a substance
34 abuse treatment facility, the administrator of the facility
35 shall report to the court when it is determined that the

1 defendant has received the maximum benefit of treatment at the
2 facility and the defendant shall be released from the
3 facility. The time for which the defendant is committed for
4 treatment shall be credited against the defendant's sentence.

5 d. The court may prescribe the length of time for the
6 evaluation and treatment or the court may request that the
7 community college conducting the course for drinking drivers
8 which the defendant is ordered to attend or the treatment
9 program to which the defendant is committed immediately report
10 to the court when the defendant has received maximum benefit
11 from the course for drinking drivers or treatment program or
12 has recovered from the defendant's addiction, dependency, or
13 tendency to chronically abuse alcohol or drugs.

14 e. Upon successfully completing a course for drinking
15 drivers or an ordered substance abuse treatment program, a
16 court may place the defendant on probation for six months and
17 as a condition of probation, the defendant shall attend a
18 program providing posttreatment services relating to substance
19 abuse as approved by the court.

20 f. A defendant committed under this section who does not
21 possess sufficient income or estate to make payment of the
22 costs of the treatment in whole or in part shall be considered
23 a state patient and the costs of treatment shall be paid as
24 provided in section 125.44.

25 g. A defendant who fails to carry out the order of the
26 court shall be confined in the county jail for twenty days in
27 addition to any other imprisonment ordered by the court or may
28 be ordered to perform unpaid community service work, and shall
29 be placed on probation for one year with a violation of this
30 probation punishable as contempt of court.

31 h. In addition to any other condition of probation, the
32 defendant shall attend a program providing substance abuse
33 prevention services or posttreatment services related to
34 substance abuse as ordered by the court. The defendant shall
35 report to the defendant's probation officer as ordered

1 concerning proof of attendance at the treatment program or
2 posttreatment program ordered by the court. Failure to attend
3 or complete the program shall be considered a violation of
4 probation and is punishable as contempt of court.

5 13. a. Upon a second or subsequent offense in violation
6 of section 462A.14, the court upon hearing may commit the
7 defendant for inpatient treatment of alcoholism or drug
8 addiction or dependency to any hospital, institution, or
9 community correctional facility in this state providing such
10 treatment. The time for which the defendant is committed for
11 treatment shall be credited against the defendant's sentence.

12 b. The court may prescribe the length of time for the
13 evaluation and treatment or the court may request that the
14 hospital to which the defendant is committed immediately
15 report to the court when the defendant has received maximum
16 benefit from the program of the hospital or institution or has
17 recovered from the defendant's addiction, dependency, or
18 tendency to chronically abuse alcohol or drugs.

19 c. A defendant committed under this section who does not
20 possess sufficient income or estate to make payment of the
21 costs of the treatment in whole or in part shall be considered
22 a state patient and the costs of treatment shall be paid as
23 provided in section 125.44.

24 Sec. 3. NEW SECTION. 462A.14A IMPLIED CONSENT TO TEST.

25 1. A person who operates a motorboat or sailboat on the
26 navigable waters in this state under circumstances which give
27 reasonable grounds to believe that the person has been
28 operating a motorboat or sailboat in violation of section
29 462A.14 is deemed to have given consent to the withdrawal of
30 specimens of the person's blood, breath, or urine and to a
31 chemical test or tests of the specimens for the purpose of
32 determining the alcohol concentration or presence of drugs,
33 subject to this section.

34 2. a. If a peace officer has reasonable grounds to
35 believe that any of the following has occurred, the peace

1 officer may request that the motorboat or sailboat operator
2 provide a sample of the operator's breath for a preliminary
3 screening test using a device approved by the commissioner of
4 public safety for that purpose:

5 (1) The motorboat or sailboat operator may be violating or
6 has violated section 462A.14.

7 (2) The motorboat or sailboat has been involved in an
8 accident resulting in injury or death.

9 (3) The motorboat or sailboat operator is or has been
10 operating carelessly or recklessly, in violation of section
11 462A.12.

12 b. The results of this preliminary screening test may be
13 used for the purpose of deciding whether an arrest should be
14 made or whether to request a chemical test authorized in this
15 chapter, but shall not be used in any court action except to
16 prove that a chemical test was properly requested of a person
17 pursuant to this section.

18 3. The withdrawal of the body substances and the test or
19 tests shall be administered at the written request of a peace
20 officer having reasonable grounds to believe that the person
21 was operating a motorboat or sailboat in violation of section
22 462A.14, and if any of the following conditions exist:

23 a. A peace officer has lawfully placed the person under
24 arrest for violation of section 462A.14.

25 b. The motorboat or sailboat has been involved in an
26 accident or collision resulting in personal injury or death.

27 c. The person has refused to take a preliminary breath
28 screening test provided by this chapter.

29 d. The preliminary breath screening test was administered
30 and it indicated an alcohol concentration equal to or in
31 excess of the level prohibited by section 462A.14.

32 e. The preliminary breath screening test was administered
33 and it indicated an alcohol concentration of less than the
34 level prohibited under section 462A.14, and the peace officer
35 has reasonable grounds to believe that the person was under

1 the influence of a drug other than alcohol or a combination of
2 alcohol and another drug.

3 4. a. The peace officer shall determine which of the
4 three substances, breath, blood, or urine, shall be tested.

5 b. If the peace officer fails to offer a test within two
6 hours after the preliminary screening test is administered or
7 refused, or the arrest is made, whichever occurs first, a test
8 is not required, and there shall be no suspension of motorboat
9 or sailboat operation privileges.

10 c. Refusal to submit to a chemical test of urine or breath
11 is deemed a refusal to submit, and the peace officer shall
12 inform the person that the person's refusal will result in the
13 suspension of the person's privilege to operate a motorboat or
14 sailboat.

15 d. Refusal to submit to a chemical test of blood is not
16 deemed a refusal to submit, but in that case, the peace
17 officer shall then determine which one of the other two
18 substances shall be tested and shall offer the test.

19 e. Notwithstanding paragraphs "a" through "d", if the
20 peace officer has reasonable grounds to believe that the
21 person was under the influence of a drug other than alcohol,
22 or a combination of alcohol and another drug, a urine test may
23 be required even after a blood or breath test has been
24 administered.

25 f. A person who is dead, unconscious, or otherwise in a
26 condition rendering the person incapable of consent or refusal
27 is deemed not to have withdrawn the consent provided by this
28 section, and the test may be given if a licensed physician
29 certifies in advance of the test that the person is dead,
30 unconscious, or otherwise in a condition rendering that person
31 incapable of consent or refusal.

32 g. A person who has been requested to submit to a chemical
33 test shall be advised by a peace officer of the following:

34 (1) A refusal to submit to the test is punishable by a
35 mandatory civil penalty of one thousand to five thousand

1 dollars, and suspension of motorboat or sailboat operating
2 privileges for at least a year. In addition, if the person is
3 also convicted of operating while intoxicated, the person
4 shall be subject to additional penalties.

5 (2) If the person submits to the test and the results
6 indicate an alcohol concentration equal to or in excess of the
7 level prohibited under section 462A.14 and the person is
8 convicted, the person's motorboat or sailboat operating
9 privileges will be suspended for at least one year and up to
10 six years, depending upon how many previous convictions the
11 person has under this chapter, and whether or not the person
12 has caused serious injury or death, in addition to any
13 sentence and fine imposed for a violation of section 462A.14.

14 5. Refusal to submit to a test under this section does not
15 prohibit the withdrawal of a specimen for chemical testing if
16 a motorboat or sailboat has been involved in an accident
17 resulting in death or serious bodily injury, if the peace
18 officer has reasonable grounds to believe that the operator of
19 the motorboat or sailboat was violating section 462A.14 at the
20 time of the accident, and the peace officer has obtained, in
21 compliance with chapter 808 or according to the procedure in
22 section 462A.14D, a search warrant permitting the withdrawal
23 of a specimen for chemical testing. The act of any person
24 knowingly resisting or obstructing the withdrawal of a
25 specimen pursuant to a search warrant issued under this
26 section constitutes a contempt punishable by a fine not
27 exceeding one thousand dollars or imprisonment in a county
28 jail not exceeding one year or by both such fine and
29 imprisonment, and further constitutes a refusal to submit,
30 punishable under this section.

31 6. Only a licensed physician, licensed physician assistant
32 as defined in section 148C.1, medical technologist, or
33 registered nurse, acting at the request of a peace officer,
34 may withdraw a specimen of blood for the purpose of
35 determining the alcohol concentration or the presence of

1 drugs. However, any peace officer, using devices and methods
2 approved by the commissioner of public safety, may take a
3 specimen of a person's breath or urine for the purpose of
4 determining the alcohol concentration or the presence of
5 drugs. Only new equipment kept under strictly sanitary and
6 sterile conditions shall be used for drawing blood. Medical
7 personnel who use reasonable care and accepted medical
8 practices in withdrawing blood specimens are immune from
9 liability for their actions in complying with requests made of
10 them pursuant to this section.

11 7. The person may have an independent chemical test or
12 tests administered at the person's own expense in addition to
13 any administered at the direction of a peace officer. The
14 failure or inability of the person to obtain an independent
15 chemical test or tests does not preclude the admission of
16 evidence of the results of the test or tests administered at
17 the direction of the peace officer. Upon the request of the
18 person who is tested, the results of the test or tests
19 administered at the direction of the peace officer shall be
20 made available to the person.

21 8. In any prosecution under section 462A.14, evidence of
22 the results of analysis of a specimen of the defendant's
23 blood, breath, or urine is admissible upon proof of a proper
24 foundation. The alcohol concentration established by the
25 results of an analysis of a specimen of the defendant's blood,
26 breath, or urine withdrawn within two hours after the
27 defendant was operating or was otherwise in physical control
28 of a motorboat or sailboat is presumed to be the alcohol
29 concentration at the time of operation or being in physical
30 control of the motorboat or sailboat. If a person refuses to
31 submit to a chemical test, proof of refusal is admissible in
32 any civil or criminal action or proceeding arising out of acts
33 alleged to have been committed while the person was operating
34 a motorboat or sailboat in violation of section 462A.14. This
35 section does not limit the introduction of any competent

1 evidence bearing on the question of whether a person was under
2 the influence of an alcoholic beverage or a drug, including
3 the results of chemical tests of specimens of blood, breath,
4 or urine obtained more than two hours after the person was
5 operating a motorboat or sailboat.

6 Sec. 4. NEW SECTION. 462A.14B REFUSAL TO SUBMIT --
7 PENALTY.

8 1. If a person refuses to submit to the chemical testing,
9 a test shall not be given unless the procedure in section
10 462A.14D is invoked. However, if the person refuses the test,
11 the person shall be punishable by the court according to this
12 section.

13 2. The court, upon finding that the officer had reasonable
14 ground to believe the person to have been operating a
15 motorboat or sailboat in violation of section 462A.14, that
16 specified conditions existed for chemical testing pursuant to
17 section 462A.14A, and that the person refused to submit to the
18 chemical testing, shall:

19 a. Order that the person shall not operate a motorboat or
20 sailboat for one year.

21 b. Impose a mandatory civil penalty as follows:

22 (1) For a first refusal under this section, one thousand
23 dollars.

24 (2) For a second refusal under this section, two thousand
25 dollars.

26 (3) For a third or subsequent refusal under this section,
27 five thousand dollars.

28 3. If the person does not pay the civil penalty by the
29 time the one-year order not to operate expires, the court
30 shall extend the order not to operate a motorboat or sailboat
31 for an additional year, and may also impose penalties for
32 contempt.

33 4. Notwithstanding the provisions of sections 901.5 and
34 907.3, the court shall not defer judgement or sentencing, or
35 suspend execution of any order or fine applicable under this

1 section.

2 5. The penalties imposed by this section shall apply in
3 addition to any penalties imposed under section 462A.14,
4 except that the one-year period under the order not to operate
5 a motorboat or sailboat under this section shall be imposed
6 and run concurrently with any period of time a defendant is
7 ordered not to operate a motorboat or sailboat under section
8 462A.14.

9 Sec. 5. NEW SECTION. 462A.14C STATEMENT OF OFFICER.

10 1. A person who has been requested to submit to a chemical
11 test shall be advised by a peace officer of the following:

12 a. A refusal to submit to the test is punishable by a
13 mandatory civil penalty of one thousand to five thousand
14 dollars, and suspension of motorboat or sailboat operating
15 privileges for at least a year. In addition, if the person is
16 also convicted of operating while intoxicated, the person
17 shall be subject to additional penalties.

18 b. If the person submits to the test and the results
19 indicate the presence of a controlled substance or other drug,
20 or an alcohol concentration equal to or in excess of the level
21 prohibited by section 462A.14, the person's privilege to
22 operate a motorboat or sailboat will be prohibited for at
23 least one year, and up to six years.

24 2. This section does not apply in any case involving a
25 person described in section 462A.14A, subsection 4, paragraph
26 "f".

27 3. If a person refuses to submit to a chemical test, proof
28 of refusal is admissible in any civil or criminal action or
29 proceeding arising out of acts alleged to have been committed
30 while the person was operating a motorboat or sailboat in
31 violation of section 462A.14.

32 Sec. 6. NEW SECTION. 462A.14D TESTS PURSUANT TO
33 WARRANTS.

34 1. Refusal to consent to a test under section 462A.14A
35 does not prohibit the withdrawal of a specimen for chemical

1 testing pursuant to a search warrant issued in the
2 investigation of a suspected violation of section 462A.14 if
3 all of the following grounds exist:

4 a. An accident has resulted in a death or personal injury
5 reasonably likely to cause death.

6 b. There are reasonable grounds to believe that one or
7 more of the persons whose operation of a motorboat or sailboat
8 may have been the proximate cause of the accident was
9 violating section 462A.14 at the time of the accident.

10 2. Search warrants may be issued under this section in
11 full compliance with chapter 808 or search warrants may be
12 issued under subsection 3.

13 3. Notwithstanding section 808.3, the issuance of a search
14 warrant under this section may be based upon sworn oral
15 testimony communicated by telephone if the magistrate who is
16 asked to issue the warrant is satisfied that the circumstances
17 make it reasonable to dispense with a written affidavit. The
18 following shall then apply:

19 a. When a caller applies for the issuance of a warrant
20 under this section and the magistrate becomes aware of the
21 purpose of the call, the magistrate shall place under oath the
22 person applying for the warrant.

23 b. The person applying for the warrant shall prepare a
24 duplicate warrant and read the duplicate warrant, verbatim, to
25 the magistrate who shall enter, verbatim, what is read to the
26 magistrate on a form that will be considered the original
27 warrant. The magistrate may direct that the warrant be
28 modified.

29 c. The oral application testimony shall set forth facts
30 and information tending to establish the existence of the
31 grounds for the warrant and shall describe with a reasonable
32 degree of specificity the person or persons whose driving is
33 believed to have been the proximate cause of the accident and
34 from whom a specimen is to be withdrawn and the location where
35 the withdrawal of the specimen or specimens is to take place.

1 d. If a voice recording device is available, the
2 magistrate may record by means of that device all of the call
3 after the magistrate becomes aware of the purpose of the call.
4 Otherwise, the magistrate shall cause a stenographic or
5 longhand memorandum to be made of the oral testimony of the
6 person applying for the warrant.

7 e. If the magistrate is satisfied from the oral testimony
8 that the grounds for the warrant exist or that there is
9 probable cause to believe that they exist, the magistrate
10 shall order the issuance of the warrant by directing the
11 person applying for the warrant to sign the magistrate's name
12 on the duplicate warrant. The magistrate shall immediately
13 sign the original warrant and enter on its face the exact time
14 when the issuance was ordered.

15 f. The person who executes the warrant shall enter the
16 time of execution on the face of the duplicate warrant.

17 g. The magistrate shall cause any record of the call made
18 by means of a voice recording device to be transcribed, shall
19 certify the accuracy of the transcript, and shall file the
20 transcript and the original record with the clerk. If a
21 stenographic or longhand memorandum was made of the oral
22 testimony of the person who applied for the warrant, the
23 magistrate shall file a signed copy with the clerk.

24 h. The clerk of court shall maintain the original and
25 duplicate warrants along with the record of the telephone call
26 and any transcript or memorandum made of the call in a
27 confidential file until a charge, if any, is filed.

28 4. a. Search warrants issued under this section shall
29 authorize and direct peace officers to secure the withdrawal
30 of blood specimens by medical personnel under section
31 462A.14A. Reasonable care shall be exercised to ensure the
32 health and safety of the persons from whom specimens are
33 withdrawn in execution of the warrants.

34 b. If a person from whom a specimen is to be withdrawn
35 objects to the withdrawal of blood, the warrant may be

1 executed as follows:

2 (1) If the person is capable of giving a specimen of
3 breath, and a direct breath testing instrument is readily
4 available, the warrant may be executed by the withdrawal of a
5 specimen of breath for chemical testing, unless the peace
6 officer has reasonable grounds to believe that the person was
7 under the influence of a controlled substance, a drug other
8 than alcohol, or a combination of alcohol and another drug.

9 (2) If the testimony in support of the warrant sets forth
10 facts and information that the peace officer has reasonable
11 grounds to believe that the person was under the influence of
12 a controlled substance, a drug other than alcohol, or a
13 combination of alcohol and another drug, a urine sample shall
14 be collected in lieu of a blood sample, if the person is
15 capable of giving a urine sample and the sample can be
16 collected without the need to physically compel the execution
17 of the warrant.

18 5. The act of any person knowingly resisting or
19 obstructing the withdrawal of a specimen pursuant to a search
20 warrant issued under this section constitutes a contempt
21 punishable by a fine not exceeding one thousand dollars or
22 imprisonment in a county jail not exceeding one year or by
23 both such fine and imprisonment. Also, if the withdrawal of a
24 specimen is so resisted or obstructed, section 462A.14A
25 applies.

26 6. Nonsubstantive variances between the contents of the
27 original and duplicate warrants shall not cause a warrant
28 issued under subsection 3 to be considered invalid.

29 7. Specimens obtained pursuant to warrants issued under
30 this section are not subject to disposition under section
31 808.9 or chapter 809 or 809A.

32 8. Subsections 1 to 7 of this section do not apply where a
33 test may be administered under section 462A.14A, subsection 4,
34 paragraph "f".

35 9. Medical personnel who use reasonable care and accepted

1 medical practices in withdrawing blood specimens are immune
2 from liability for their actions in complying with requests
3 made of them pursuant to search warrants or pursuant to
4 section 462A.14A.

5 Sec. 7. NEW SECTION. 462A.14E VIOLATIONS OF ORDERS NOT
6 TO OPERATE A MOTORBOAT OR SAILBOAT.

7 1. A person who operates a motorboat or sailboat after the
8 person has been ordered, pursuant to section 462A.14 or
9 462A.14B not to operate a motorboat or sailboat, commits a
10 serious misdemeanor, punishable with a jail term and a
11 mandatory fine of one thousand dollars.

12 2. In addition to the jail term and fine, the court shall
13 extend the period of prohibition of operating a motorboat or
14 sailboat for an additional like period.

15 Sec. 8. NEW SECTION. 462A.14F DEPARTMENT RECORDKEEPING.

16 The department shall collect and maintain statistics on the
17 number of arrests and convictions for violations of section
18 462A.14 that occur each year.

19 Sec. 9. Section 462A.23, subsection 2, paragraph b, Code
20 1999, is amended by striking the paragraph and inserting in
21 lieu thereof the following:

22 b. Operating a motorboat or sailboat while intoxicated, or
23 manipulating water skis, a surfboard, or a similar device
24 while in an intoxicated condition or under the influence of a
25 narcotic drug.

26 Sec. 10. Section 811.1, subsections 1 and 2, Code
27 Supplement 1999, are amended to read as follows:

28 1. A defendant awaiting judgment of conviction and
29 sentencing following either a plea or verdict of guilty of a
30 class "A" felony, murder, any class "B" felony included in
31 section 462A.14 or 707.6A; felonious assault; felonious child
32 endangerment; sexual abuse in the second degree; sexual abuse
33 in the third degree; kidnapping; robbery in the first degree;
34 arson in the first degree; burglary in the first degree; any
35 felony included in section 124.401, subsection 1, paragraph

1 "a" or "b"; or a second or subsequent offense under section
2 124.401, subsection 1, paragraph "c"; or any felony punishable
3 under section 902.9, subsection 1.

4 2. A defendant appealing a conviction of a class "A"
5 felony; murder; any class "B" or "C" felony included in
6 section 462A.14 or 707.6A; felonious assault; felonious child
7 endangerment; sexual abuse in the second degree; sexual abuse
8 in the third degree; kidnapping; robbery in the first degree;
9 arson in the first degree; burglary in the first degree; any
10 felony included in section 124.401, subsection 1, paragraph
11 "a" or "b"; or a second or subsequent conviction under section
12 124.401, subsection 1, paragraph "c"; or any felony punishable
13 under section 902.9, subsection 1.

14 Sec. 11. Section 907.3, subsection 1, Code Supplement
15 1999, is amended by adding the following new paragraph:

16 NEW PARAGRAPH. 1. The offense is a violation of section
17 462A.14 or 462A.14B, and a mandatory minimum sentence must be
18 served or mandatory minimum fine must be paid by the
19 defendant.

20 Sec. 12. Section 907.3, subsection 2, Code Supplement
21 1999, is amended by adding the following new paragraph:

22 NEW PARAGRAPH. f. The offense is a violation of section
23 462A.14 or 462A.14B, and a mandatory minimum sentence must be
24 served or mandatory minimum fine must be paid by the
25 defendant.

26 Sec. 13. Section 907.3, subsection 3, Code Supplement
27 1999, is amended by adding the following new paragraph:

28 NEW PARAGRAPH. f. A mandatory minimum sentence or fine
29 imposed for a violation of section 462A.14 or 462A.14B.

30 Sec. 14. IMPLEMENTATION OF ACT. Section 25B.2, subsection
31 3, shall not apply to this Act.

32 EXPLANATION

33 This bill amends certain sections of Code chapter 462A to
34 prohibit the operation of a motor boat or sailboat while
35 intoxicated, and imposes an implied consent to test and

1 penalties similar to that imposed by Code chapter 321J for
2 operators of motor vehicles.

3 The bill provides that a person who operates a motorboat or
4 sailboat while intoxicated commits a serious misdemeanor upon
5 a first offense, an aggravated misdemeanor upon a second
6 offense, a class "D" felony for a third offense or for an
7 offense resulting in serious bodily injury to another, and a
8 class "B" felony for an offense resulting in the death of
9 another. A serious misdemeanor is punishable by confinement
10 for no more than one year and a fine of at least \$250 but not
11 more than \$1,500. An aggravated misdemeanor is punishable by
12 confinement for no more than two years and a fine of at least
13 \$500 but not more than \$5,000. A class "D" felony is
14 punishable by confinement for no more than five years and a
15 fine of at least \$750 but not more than \$7,500. A class "B"
16 felony is punishable by confinement for no more than 25 years.
17 The class "B" felony is also nonbailable under Code section
18 811.1, comparable to vehicular homicide.

19 Persons convicted of an offense shall be ordered not to
20 operate a motorboat or sailboat for one to six years,
21 depending upon the offense, comparable to the driver's license
22 revocation that would be imposed for similar circumstances
23 under Code chapter 321J.

24 Persons convicted of an offense must also obtain substance
25 abuse evaluation and treatment, at the person's expense.

26 The bill includes affirmative defenses, evidentiary
27 presumptions, and procedures similar to those in Code chapter
28 321J.

29 Persons who refuse to test are subject to a civil order not
30 to operate a motorboat or sailboat for one year, and a civil
31 penalty of \$1,000 for a first refusal, \$2,000 for a second
32 refusal, and \$5,000 for a third refusal under the section.
33 Persons who do not pay the civil penalty prior to expiration
34 of the order not to operate shall be subject to extension of
35 the order not to operate for an additional year.

1 Persons who violate any order not to operate a motorboat or
2 sailboat commit a serious misdemeanor, punishable by a jail
3 term of up to one year, a mandatory fine of \$1,000, and
4 extension of the order not to operate for a period equivalent
5 to the period specified in the original order.

6 Corresponding amendments are made to Code section 907.3 to
7 prohibit deferral of judgment or sentencing, or suspension of
8 execution of any part of a mandatory minimum sentence under
9 the new Code sections.

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

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HOUSE FILE 2331

H-8101

1 Amend House File 2331 as follows:
2 1. Page 2, by striking lines 32 and 33 and
3 inserting the following: "propulsion."
4 2. Page 3, line 26, by inserting after the word
5 "other" the following: "certified".
6 3. Page 3, line 26, by inserting after the word
7 "officer" the following: "as defined in section
8 80B.3,".
9 4. Page 4, by inserting after line 11 the
10 following:
11 "30A. "Sailboat" means any watercraft operated
12 with a sail."
13 5. Page 7, by striking lines 20 and 21 and
14 inserting the following: "904.513. The court".
15 6. Page 8, by striking lines 3 and 4 and
16 inserting the following: "904.513. The court".
17 7. Page 10, line 4, by striking the words "is
18 convicted under" and inserting the following:
19 "violates".
20 8. Page 12, by striking lines 24 and 25 and
21 inserting the following: "this section shall be
22 completed at the defendant's expense."
23 9. Page 14, line 32, by inserting after the words
24 "presence of" the following: "controlled substances
25 or other".
26 10. Page 16, line 1, by inserting after the words
27 "influence of a" the following: "controlled
28 substance, a".
29 11. Page 18, line 1, by inserting before the word
30 "drugs" the following: "a controlled substance or
31 other".
32 12. Page 19, line 2, by inserting before the word
33 "drug" the following: "controlled substance or
34 other".
35 13. Page 19, by striking lines 33 and 34 and
36 inserting the following:
37 "4. The court shall not defer judgment or
38 sentencing, or".
39 14. Page 21, line 32, by striking the word
40 "driving" and inserting the following: "operation of
41 a motorboat or sailboat".
42 15. Page 23, by striking lines 20 through 23 and
43 inserting the following: "warrant issued under
44 section 462A.14D constitutes contempt punishable as
45 provided in that section and further constitutes a
46 refusal to submit. Also, if the withdrawal of a".
47 16. Page 23, line 32, by striking the figure "1"
48 and inserting the following: "3".
49 17. Page 25, line 17, by striking the word and
50 figure "or 462A.14B".

H-8101

-1-

H-8101

Page 2

- 1 18. Page 25, line 23, by striking the word and
- 2 figure "or 462A.14B".
- 3 19. Page 25, line 29, by striking the word and
- 4 figure "or 462A.14B".
- 5 20. By renumbering as necessary.

By RAECKER of Polk
KREIMAN of Davis

H-8101 FILED FEBRUARY 29, 2000

*W/D**3/1/00 (p. 504)*

HOUSE FILE 2331

H-8102

- 1 Amend House File 2331 as follows:
- 2 1. Page 16, line 35, by striking the words "one
- 3 thousand to five" and inserting the following: "five
- 4 hundred to two".
- 5 2. Page 19, line 22, by striking the words "one
- 6 thousand" and inserting the following: "five
- 7 hundred".
- 8 3. Page 19, line 24, by striking the word "two"
- 9 and inserting the following: "one".
- 10 4. Page 19, line 27, by striking the word "five"
- 11 and inserting the following: "two".
- 12 5. Page 20, line 13, by striking the words "one
- 13 thousand to five" and inserting the following: "five
- 14 hundred to two".

By RAECKER of Polk

H-8102 FILED FEBRUARY 29, 2000

*Adopted**3/1/00 (p. 506)*

HOUSE FILE 2331

H-8099

- 1 Amend House File 2331 as follows:
- 2 1. By striking page 16, line 35, through page 17,
- 3 line 1, and inserting the following: "suspension of
- 4 motorboat or sailboat operating".
- 5 2. Page 19, by striking lines 18 through 27 and
- 6 inserting the following: "chemical testing, shall
- 7 order that the person shall not operate a motorboat or
- 8 sailboat for one year."
- 9 3. Page 20, by striking lines 13 and 14 and
- 10 inserting the following: "suspension of motorboat or
- 11 sailboat operating".

By PARMENTER of Story

H-8099 FILED FEBRUARY 29, 2000

*Lost**3/1/00 (p. 506)*

HOUSE FILE 2331

H-8100

- 1 Amend House File 2331 as follows:
- 2 1. Page 21, line 32, by striking the word
- 3 "driving" and inserting the following: "operating".

By PARMENTER of Story

H-8100 FILED FEBRUARY 29, 2000

*0/0
3/1/00 (p. 505)*

HOUSE FILE 2331

H-8116

1 Amend House File 2331 as follows:

2 1. Page 2, by striking lines 30 through 33 and
3 inserting the following:

4 "19. "Motorboat" means any vessel propelled by an
5 inboard, inboard outdrive, or outboard engine, whether
6 or not such engine is the principal source of
7 propulsion."

8 2. Page 3, line 26, by inserting after the word
9 "other" the following: "certified".

10 3. Page 3, line 26, by inserting after the word
11 "officer" the following: "as defined in section
12 80B.3,".

13 4. Page 4, by inserting after line 11 the
14 following:

15 "30A. "Sailboat" means any watercraft operated
16 with a sail."

17 5. Page 7, by striking lines 20 and 21 and
18 inserting the following: "904.513. The court".

19 6. Page 8, by striking lines 3 and 4 and
20 inserting the following: "904.513. The court".

21 7. Page 10, line 4, by striking the words "is
22 convicted under" and inserting the following:
23 "violates".

24 8. Page 12, by striking lines 24 and 25 and
25 inserting the following: "this section shall be
26 completed at the defendant's expense."

27 9. Page 14, line 32, by inserting after the words
28 "presence of" the following: "controlled substances
29 or other".

30 10. Page 16, line 1, by inserting after the words
31 "influence of a" the following: "controlled
32 substance, a".

33 11. Page 18, line 1, by inserting before the word
34 "drugs" the following: "a controlled substance or
35 other".

36 12. Page 19, line 2, by inserting before the word
37 "drug" the following: "controlled substance or
38 other".

39 13. Page 19, by striking lines 33 and 34 and
40 inserting the following:

41 "4. The court shall not defer judgment or
42 sentencing, or".

43 14. Page 21, line 32, by striking the word
44 "driving" and inserting the following: "operation of
45 a motorboat or sailboat".

46 15. Page 23, by striking lines 20 through 23 and
47 inserting the following: "warrant issued under
48 section 462A.14D constitutes contempt punishable as
49 provided in that section and further constitutes a
50 refusal to submit. Also, if the withdrawal of a".

H-8116

H-8116

Page 2

- 1 16. Page 23, line 32, by striking the figure "1"
- 2 and inserting the following: "3".
- 3 17. Page 25, line 17, by striking the word and
- 4 figure "or 462A.14B".
- 5 18. Page 25, line 23, by striking the word and
- 6 figure "or 462A.14B".
- 7 19. Page 25, line 29, by striking the word and
- 8 figure "or 462A.14B".
- 9 20. By renumbering as necessary.

By RAECKER of Polk
KREIMAN of Davis

H-8116 FILED FEBRUARY 29, 2000

adopted

3/1/00

(p. 505)

**HOUSE FILE 2331
FISCAL NOTE**

The estimate for House File 2331 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 2331 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 of .10 or more, which is the same as 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 2331 will increase admissions to county jails by 13 persons based on actual convictions for 1998.

FISCAL IMPACT

House File 2331 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
Criminal and Juvenile Justice Planning Division, Department of Human Rights

(LSB 5548hv, DFK)

5-3/15/00 Do Pass
5-3/23/00 Undenied
By Senate Colmd

2331

HOUSE FILE
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2034)

(As Amended and Passed by the House, March 1, 2000)

Passed House, Date 3-29-00 (P. 1121) Passed Senate, Date 3/28/00 (P. 904)
Vote: Ayes 95 Nays 0 Vote: Ayes 48 Nays 0
Approved 4-14-00

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:

SENATE AMENDMENT TO HOUSE FILE 2331

H-8637

1 Amend House File 2331, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 16, line 33, by inserting after the word
4 "operating" the following: "a motorboat or sailboat".
5 2. Page 20, line 11, by inserting after the word
6 "operating" the following: "a motorboat or sailboat".

RECEIVED FROM THE SENATE

H-8637 FILED MARCH 28, 2000

House Concurred
3/29/00 (P. 1121)

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1 Section 1. Section 462A.2, Code 1999, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 462A.2 DEFINITIONS.

5 As used in this chapter, unless the context clearly
6 requires a different meaning:

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. "Authorized emergency vessel" means any vessel which is
16 designated or authorized by the commission for use in law
17 enforcement, search and rescue, and disaster work.

18 4. "Boat livery" means a person who holds a vessel for
19 hire, renting, leasing, or chartering including hotels,
20 motels, or resorts which furnish a vessel to guests as part of
21 the services of the business.

22 5. "Certificate" means a certificate of title.

23 6. "Chemical test" means an analysis of a person's blood,
24 breath, urine, or other bodily substance for the determination
25 of the presence of alcohol, a controlled substance, or a drug.

26 7. "Commission" means the natural resource commission.

27 8. "Controlled substance" means any drug, substance, or
28 compound that is regulated under chapter 124, including any
29 counterfeit substance or simulated controlled substance, as
30 well as any metabolite or derivative of the drug, substance or
31 compound.

32 9. "Dealer" means a person who engages in whole or in part
33 in the business of buying, selling, or exchanging vessels
34 either outright or on conditional sale, bailment, lease,
35 security interest, or otherwise, and who has an established

1 place of business for sale, trade, and display of vessels. A
2 yachtbroker is a dealer.

3 10. "Department" means the department of natural
4 resources.

5 11. "Director" means the director of the department or the
6 director's designee.

7 12. "Established place of business" means the place
8 actually occupied either continuously or at regular periods by
9 a dealer or manufacturer where the dealer's or manufacturer's
10 books and records are kept and a large share of the dealer's
11 or manufacturer's business is transacted.

12 13. "Farm pond" means a body of water wholly on the lands
13 of a single owner, or a group of joint owners, which does not
14 have any connection with any public waters and which is less
15 than ten surface acres.

16 14. "Inboard" means a vessel in which the engine is
17 located internally, the propulsion system is rigidly attached
18 to the engine, and the propulsion mechanism is within the
19 confines of the vessel's extreme length and beam.

20 15. "Inboard-outdrive" means a vessel in which the power
21 plant or engine is located inside of the vessel and the
22 propulsion mechanism is located outside of the transom.

23 16. "Inflatable vessel" means a vessel which achieves and
24 maintains its intended shape and buoyancy by inflation.

25 17. "Lienholder" means a person holding a security
26 interest.

27 18. "Manufacturer" means a person engaged in the business
28 of manufacturing or importing new and unused vessels, or new
29 and unused outboard motors, for the purpose of sale or trade.

30 19. "Motorboat" means any vessel propelled by an inboard,
31 inboard outdrive, or outboard engine, whether or not such
32 engine is the principal source of propulsion.

33 20. "Navigable waters" means all lakes, rivers and
34 streams, which can support a vessel capable of carrying one or
35 more persons during a total of six months period in one out of

1 every ten years.

2 21. "Nonresident" means every person who is not a resident
3 of this state.

4 22. "Operate" means to navigate or otherwise use a vessel
5 or motorboat.

6 23. "Operator" means a person who operates or is in actual
7 physical control of a vessel.

8 24. "Owner" means a person, other than a lienholder,
9 having the property right in or title to a motorboat or
10 vessel. The term includes a person entitled to the use or
11 possession of a vessel or motorboat subject to an interest in
12 another person, reserved or created by agreement and securing
13 payment or performance of an obligation, but the term excludes
14 a lessee under a lease not intended as security.

15 25. "Passenger" means a person carried on board a vessel,
16 including the operator, and anyone towed by a vessel on water
17 skis, surfboards, inner tubes, or similar devices.

18 26. "Peace officer" means:

19 a. A member of the Iowa state patrol.

20 b. A police officer under civil service as provided in
21 chapter 400.

22 c. A sheriff.

23 d. A regular deputy sheriff who has had formal police
24 training.

25 e. Any other certified law enforcement officer as defined
26 in section 80B.3, who has satisfactorily completed an approved
27 course relating to operating while intoxicated, either at the
28 Iowa law enforcement academy or in a law enforcement training
29 program approved by the department of public safety.

30 27. "Person" means an individual, partnership, firm,
31 corporation or association.

32 28. "Privately owned lake" means any lake, located within
33 the boundaries of this state and not subject to federal
34 control covering navigation owned by an individual, group of
35 individuals, or a nonprofit corporation and which is not open

1 to the use of the general public but is used exclusively by
2 the owners and their personal guests.

3 29. "Proceeds" includes whatever is received when
4 collateral or proceeds are sold, exchanged, collected, or
5 otherwise disposed of. The term also includes the account
6 arising when the right to payment is earned under a contract
7 right. Money, checks, and the like are cash "proceeds". All
8 other proceeds are "noncash proceeds".

9 30. "Sailboard" means a windsurfing vessel with a mount
10 for a sail, a daggerboard, and a small skeg.

11 31. "Sailboat" means any watercraft operated with a sail.

12 32. "Security interest" means an interest which is
13 reserved or created by an agreement which secures payment or
14 performance of an obligation and is valid against third
15 parties generally.

16 33. "Serious injury" means a bodily injury which creates
17 a substantial risk of death, or which causes serious permanent
18 disfigurement, or which causes protracted loss or impairment
19 of the function of any bodily organ or major bodily member, or
20 which causes the loss of any bodily member.

21 34. "State of principal use" means the state on whose
22 waters a vessel is used or to be used most during a calendar
23 year.

24 35. "Undocumented vessel" means any vessel which is not
25 required to have, and does not have, a valid marine document
26 issued by the bureau of customs or a foreign government.

27 36. "Use" means to operate, navigate, or employ a vessel.
28 A vessel is in use whenever it is upon the water.

29 37. "Vessel" means every description of watercraft, other
30 than a seaplane, used or capable of being used as a means of
31 transportation on water or ice. Ice boats are watercraft.

32 38. "Vessel for hire or commercial vessel" means a vessel
33 for the use of which a fee of any nature is imposed including
34 vessels furnished as a part of lodge, hotel, or resort
35 services.

1 39. "Wake" means any movement of water created by a vessel
2 which adversely affects the activities of another person who
3 is involved in activities approved for that area or which may
4 adversely affect the natural features of the shoreline.

5 40. "Watercraft" means any vessel which through the
6 buoyance force of water floats upon the water and is capable
7 of carrying one or more persons.

8 41. "Waters of this state under the jurisdiction of the
9 commission" means any navigable waters within the territorial
10 limits of this state, and the marginal river areas adjacent to
11 this state, exempting only farm ponds and privately owned
12 lakes.

13 42. "Writing fee" means the amount paid by the boat owner
14 to the county recorder for handling the transaction.

15 Sec. 2. Section 462A.14, Code 1999, is amended by striking
16 the section and inserting in lieu thereof the following:

17 462A.14 OPERATING A MOTORBOAT OR SAILBOAT WHILE
18 INTOXICATED.

19 1. A person commits the offense of operating a motorboat
20 or sailboat while intoxicated if the person operates a
21 motorboat or sailboat on the navigable waters of this state in
22 any of the following conditions:

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

25 b. While having an alcohol concentration of .10 or more.

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

28 2. A person who violates subsection 1 commits:

29 a. A serious misdemeanor for the first offense, punishable
30 by all of the following:

31 (1) Imprisonment in the county jail for not less than
32 forty-eight hours, to be served as ordered by the court, less
33 credit for any time the person was confined in a jail or
34 detention facility following arrest. However, the court, in
35 ordering service of the sentence and in its discretion, may

1 accommodate the defendant's work schedule.

2 (2) Assessment of a fine of one thousand dollars.

3 However, in the discretion of the court, if no personal or
4 property injury has resulted from the defendant's actions, up
5 to five hundred dollars of the fine may be waived. As an
6 alternative to a portion or all of the fine, the court may
7 order the person to perform unpaid community service.

8 (3) Prohibition of operation of a motorboat or sailboat
9 for one year, pursuant to court order.

10 (4) Assignment to substance abuse evaluation and
11 treatment, pursuant to subsection 12, and a course for
12 drinking drivers.

13 b. An aggravated misdemeanor for a second offense,
14 punishable by all of the following:

15 (1) Imprisonment in the county jail or community-based
16 correctional facility for not less than seven days.

17 (2) Assessment of a fine of not less than one thousand
18 five hundred dollars nor more than five thousand dollars.

19 (3) Prohibition of operation of a motorboat or sailboat
20 for two years, pursuant to court order.

21 (4) Assignment to substance abuse evaluation and
22 treatment, pursuant to subsections 12 and 13, and a course for
23 drinking drivers.

24 c. A class "D" felony for a third offense and each
25 subsequent offense, punishable by all of the following:

26 (1) Imprisonment in the county jail for a determinate
27 sentence of not more than one year but not less than thirty
28 days, or committed to the custody of the director of the
29 department of corrections. A person convicted of a third or
30 subsequent offense may be committed to the custody of the
31 director of the department of corrections, who shall assign
32 the person to a facility pursuant to section 904.513 or the
33 offender may be committed to treatment in the community under
34 the provisions of section 907.13.

35 (2) Assessment of a fine of not less than two thousand

1 five hundred dollars nor more than seven thousand five hundred
2 dollars.

3 (3) Prohibition of operation of a motorboat or sailboat
4 for six years, pursuant to court order.

5 (4) Assignment to substance abuse evaluation and
6 treatment, pursuant to subsections 12 and 13, and a course for
7 drinking drivers.

8 d. A class "D" felony for any offense under this section
9 resulting in serious injury to persons other than the
10 defendant, if the court determines that the person who
11 committed the offense caused the serious injury, and shall be
12 imprisoned for a determinate sentence of not more than five
13 years but not less than thirty days, or committed to the
14 custody of the director of the department of corrections, and
15 assessed a fine of not less than two thousand five hundred
16 dollars nor more than seven thousand five hundred dollars. A
17 person convicted of a felony offense may be committed to the
18 custody of the director of the department of corrections, who
19 shall assign the person to a facility pursuant to section
20 904.513. The court shall also order that the person not
21 operate a motorboat or sailboat for one year in addition to
22 any other period of time the defendant would have been ordered
23 not to operate if no injury had occurred in connection with
24 the violation. The court shall also assign the defendant to
25 substance abuse evaluation and treatment pursuant to
26 subsections 12 and 13, and a course for drinking drivers.

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

1 904.513. The court shall also order that the person not
2 operate a motorboat or sailboat for six years. The court
3 shall also assign the defendant to substance abuse evaluation
4 and treatment pursuant to subsections 12 and 13, and a course
5 for drinking drivers.

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.14A.

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

32 b. A minimum term of imprisonment in a county jail or
33 community-based correctional facility imposed on a person
34 convicted of a second or subsequent offense under subsection 2
35 shall be served on consecutive days. However, if the

1 sentencing court finds that service of the full minimum term
2 on consecutive days would work an undue hardship on the
3 person, or finds that sufficient jail space is not available
4 and is not reasonably expected to become available within four
5 months after sentencing to incarcerate the person serving the
6 minimum sentence on consecutive days, the court may order the
7 person to serve the minimum term in segments of at least
8 forty-eight hours and to perform a specified number of hours
9 of unpaid community service as deemed appropriate by the
10 sentencing court.

11 4. In determining if a violation charged is a second or
12 subsequent offense for purposes of criminal sentencing or
13 license or privilege revocation under this section:

14 a. Any conviction under this section within the previous
15 twelve years shall be counted as a previous offense.

16 b. Deferred judgments entered pursuant to section 907.3
17 for violations of this section shall be counted as previous
18 offenses.

19 c. Convictions or the equivalent of deferred judgments for
20 violations in any other states under statutes substantially
21 corresponding to this section shall be counted as previous
22 offenses. The courts shall judicially notice the statutes of
23 other states which define offenses substantially equivalent to
24 an offense defined in this section and can therefore be
25 considered corresponding statutes. Each previous violation on
26 which conviction or deferral of judgment was entered prior to
27 the date of the violation charged shall be considered and
28 counted as a separate previous offense.

29 5. A person shall not be convicted and sentenced for more
30 than one violation of this section for actions arising out of
31 the same event or occurrence, even if the event or occurrence
32 involves more than one of the conditions specified in
33 subsection 1. However, a person who refuses a test pursuant
34 to section 462A.14B may be subject to imposition of the
35 penalties under that section in addition to the penalties

1 under this section if the person violates both sections, even
2 though the actions arise out of the same event or occurrence.

3 6. The clerk of the district court shall immediately
4 certify to the department a true copy of each order entered
5 with respect to deferral of judgment, deferral of sentence, or
6 pronouncement of judgment and sentence for a defendant under
7 this section.

8 7. a. This section does not apply to a person operating a
9 motorboat or sailboat while under the influence of a drug if
10 the substance was prescribed for the person and was taken
11 under the prescription and in accordance with the directions
12 of a medical practitioner as defined in chapter 155A or if the
13 substance was dispensed by a pharmacist without a prescription
14 pursuant to the rules of the board of pharmacy examiners, if
15 there is no evidence of the consumption of alcohol and the
16 medical practitioner or pharmacist had not directed the person
17 to refrain from operating a motor vehicle, or motorboat or
18 sailboat.

19 b. When charged with a violation of subsection 1,
20 paragraph "c", a person may assert, as an affirmative defense,
21 that the controlled substance present in the person's blood or
22 urine was prescribed or dispensed for the person and was taken
23 in accordance with the directions of a practitioner and the
24 labeling directions of the pharmacy, as that person and place
25 of business are defined in section 155A.3.

26 8. In any prosecution under this section, evidence of the
27 results of analysis of a specimen of the defendant's blood,
28 breath, or urine is admissible upon proof of a proper
29 foundation.

30 a. The alcohol concentration established by the results of
31 an analysis of a specimen of the defendant's blood, breath, or
32 urine withdrawn within two hours after the defendant was
33 operating or in physical control of a motorboat or sailboat is
34 presumed to be the alcohol concentration at the time of
35 operating or being in physical control of the motorboat or

1 sailboat.

2 b. The presence of a controlled substance or other drug
3 established by the results of analysis of a specimen of the
4 defendant's blood or urine withdrawn within two hours after
5 the defendant was operating or in physical control of a
6 motorboat or sailboat is presumed to show the presence of such
7 controlled substance or other drug in the defendant at the
8 time of operating or being in physical control of the
9 motorboat or sailboat.

10 c. The nationally accepted standards for determining
11 detectable levels of controlled substances in the division of
12 criminal investigation's initial laboratory screening test for
13 controlled substances adopted by the department of public
14 safety shall be utilized in prosecutions under this section.

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

27 b. The court may order restitution paid to any public
28 agency for the costs of the emergency response resulting from
29 the actions constituting a violation of this section, not
30 exceeding five hundred dollars per public agency for each such
31 response. For the purposes of this paragraph, "emergency
32 response" means any incident requiring response by fire
33 fighting, law enforcement, ambulance, medical, or other
34 emergency services. A public agency seeking such restitution
35 shall consult with the county attorney regarding the expenses

1 incurred by the public agency, and the county attorney may
2 include the expenses in the statement of pecuniary damages
3 pursuant to section 910.3.

4 10. In any prosecution under this section, the results of
5 a chemical test shall not be used to prove a violation of
6 subsection 1, paragraph "b" or paragraph "c", if the alcohol,
7 controlled substance, or other drug concentration indicated by
8 the chemical test minus the established margin of error
9 inherent in the device or method used to conduct the chemical
10 test does not equal or exceed the level prohibited by
11 subsection 1.

12 11. This section does not limit the introduction of any
13 competent evidence bearing on the question of whether a person
14 was under the influence of an alcoholic beverage or a
15 controlled substance or other drug, including the results of
16 chemical tests of specimens of blood, breath, or urine
17 obtained more than two hours after the person was operating a
18 motorboat or sailboat.

19 12. a. All substance abuse evaluations required under
20 this section shall be completed at the defendant's expense.

21 b. In addition to assignment to substance abuse evaluation
22 and treatment under this section, the court shall order any
23 defendant convicted under this section to follow the
24 recommendations proposed in the substance abuse evaluation for
25 appropriate substance abuse treatment for the defendant.
26 Court-ordered substance abuse treatment is subject to the
27 periodic reporting requirements of section 125.86.

28 c. If a defendant is committed by the court to a substance
29 abuse treatment facility, the administrator of the facility
30 shall report to the court when it is determined that the
31 defendant has received the maximum benefit of treatment at the
32 facility and the defendant shall be released from the
33 facility. The time for which the defendant is committed for
34 treatment shall be credited against the defendant's sentence.

35 d. The court may prescribe the length of time for the

1 evaluation and treatment or the court may request that the
2 community college conducting the course for drinking drivers
3 which the defendant is ordered to attend or the treatment
4 program to which the defendant is committed immediately report
5 to the court when the defendant has received maximum benefit
6 from the course for drinking drivers or treatment program or
7 has recovered from the defendant's addiction, dependency, or
8 tendency to chronically abuse alcohol or drugs.

9 e. Upon successfully completing a course for drinking
10 drivers or an ordered substance abuse treatment program, a
11 court may place the defendant on probation for six months and
12 as a condition of probation, the defendant shall attend a
13 program providing posttreatment services relating to substance
14 abuse as approved by the court.

15 f. A defendant committed under this section who does not
16 possess sufficient income or estate to make payment of the
17 costs of the treatment in whole or in part shall be considered
18 a state patient and the costs of treatment shall be paid as
19 provided in section 125.44.

20 g. A defendant who fails to carry out the order of the
21 court shall be confined in the county jail for twenty days in
22 addition to any other imprisonment ordered by the court or may
23 be ordered to perform unpaid community service work, and shall
24 be placed on probation for one year with a violation of this
25 probation punishable as contempt of court.

26 h. In addition to any other condition of probation, the
27 defendant shall attend a program providing substance abuse
28 prevention services or posttreatment services related to
29 substance abuse as ordered by the court. The defendant shall
30 report to the defendant's probation officer as ordered
31 concerning proof of attendance at the treatment program or
32 posttreatment program ordered by the court. Failure to attend
33 or complete the program shall be considered a violation of
34 probation and is punishable as contempt of court.

35 13. a. Upon a second or subsequent offense in violation

1 of section 462A.14, the court upon hearing may commit the
2 defendant for inpatient treatment of alcoholism or drug
3 addiction or dependency to any hospital, institution, or
4 community correctional facility in this state providing such
5 treatment. The time for which the defendant is committed for
6 treatment shall be credited against the defendant's sentence.

7 b. The court may prescribe the length of time for the
8 evaluation and treatment or the court may request that the
9 hospital to which the defendant is committed immediately
10 report to the court when the defendant has received maximum
11 benefit from the program of the hospital or institution or has
12 recovered from the defendant's addiction, dependency, or
13 tendency to chronically abuse alcohol or drugs.

14 c. A defendant committed under this section who does not
15 possess sufficient income or estate to make payment of the
16 costs of the treatment in whole or in part shall be considered
17 a state patient and the costs of treatment shall be paid as
18 provided in section 125.44.

19 Sec. 3. NEW SECTION. 462A.14A IMPLIED CONSENT TO TEST.

20 1. A person who operates a motorboat or sailboat on the
21 navigable waters in this state under circumstances which give
22 reasonable grounds to believe that the person has been
23 operating a motorboat or sailboat in violation of section
24 462A.14 is deemed to have given consent to the withdrawal of
25 specimens of the person's blood, breath, or urine and to a
26 chemical test or tests of the specimens for the purpose of
27 determining the alcohol concentration or presence of
28 controlled substances or other drugs, subject to this section.

29 2. a. If a peace officer has reasonable grounds to
30 believe that any of the following has occurred, the peace
31 officer may request that the motorboat or sailboat operator
32 provide a sample of the operator's breath for a preliminary
33 screening test using a device approved by the commissioner of
34 public safety for that purpose:

35 (1) The motorboat or sailboat operator may be violating or

1 has violated section 462A.14.

2 (2) The motorboat or sailboat has been involved in an
3 accident resulting in injury or death.

4 (3) The motorboat or sailboat operator is or has been
5 operating carelessly or recklessly, in violation of section
6 462A.12.

7 b. The results of this preliminary screening test may be
8 used for the purpose of deciding whether an arrest should be
9 made or whether to request a chemical test authorized in this
10 chapter, but shall not be used in any court action except to
11 prove that a chemical test was properly requested of a person
12 pursuant to this section.

13 3. The withdrawal of the body substances and the test or
14 tests shall be administered at the written request of a peace
15 officer having reasonable grounds to believe that the person
16 was operating a motorboat or sailboat in violation of section
17 462A.14, and if any of the following conditions exist:

18 a. A peace officer has lawfully placed the person under
19 arrest for violation of section 462A.14.

20 b. The motorboat or sailboat has been involved in an
21 accident or collision resulting in personal injury or death.

22 c. The person has refused to take a preliminary breath
23 screening test provided by this chapter.

24 d. The preliminary breath screening test was administered
25 and it indicated an alcohol concentration equal to or in
26 excess of the level prohibited by section 462A.14.

27 e. The preliminary breath screening test was administered
28 and it indicated an alcohol concentration of less than the
29 level prohibited under section 462A.14, and the peace officer
30 has reasonable grounds to believe that the person was under
31 the influence of a controlled substance, a drug other than
32 alcohol or a combination of alcohol and another drug.

33 4. a. The peace officer shall determine which of the
34 three substances, breath, blood, or urine, shall be tested.

35 b. If the peace officer fails to offer a test within two

1 hours after the preliminary screening test is administered or
2 refused, or the arrest is made, whichever occurs first, a test
3 is not required, and there shall be no suspension of motorboat
4 or sailboat operation privileges.

5 c. Refusal to submit to a chemical test of urine or breath
6 is deemed a refusal to submit, and the peace officer shall
7 inform the person that the person's refusal will result in the
8 suspension of the person's privilege to operate a motorboat or
9 sailboat.

10 d. Refusal to submit to a chemical test of blood is not
11 deemed a refusal to submit, but in that case, the peace
12 officer shall then determine which one of the other two
13 substances shall be tested and shall offer the test.

14 e. Notwithstanding paragraphs "a" through "d", if the
15 peace officer has reasonable grounds to believe that the
16 person was under the influence of a drug other than alcohol,
17 or a combination of alcohol and another drug, a urine test may
18 be required even after a blood or breath test has been
19 administered.

20 f. A person who is dead, unconscious, or otherwise in a
21 condition rendering the person incapable of consent or refusal
22 is deemed not to have withdrawn the consent provided by this
23 section, and the test may be given if a licensed physician
24 certifies in advance of the test that the person is dead,
25 unconscious, or otherwise in a condition rendering that person
26 incapable of consent or refusal.

27 g. A person who has been requested to submit to a chemical
28 test shall be advised by a peace officer of the following:

29 (1) A refusal to submit to the test is punishable by a
30 mandatory civil penalty of five hundred to two thousand
31 dollars, and suspension of motorboat or sailboat operating
32 privileges for at least a year. In addition, if the person is
33 also convicted of operating while intoxicated, the person
34 shall be subject to additional penalties.

35 (2) If the person submits to the test and the results

1 indicate an alcohol concentration equal to or in excess of the
2 level prohibited under section 462A.14 and the person is
3 convicted, the person's motorboat or sailboat operating
4 privileges will be suspended for at least one year and up to
5 six years, depending upon how many previous convictions the
6 person has under this chapter, and whether or not the person
7 has caused serious injury or death, in addition to any
8 sentence and fine imposed for a violation of section 462A.14.

9 5. Refusal to submit to a test under this section does not
10 prohibit the withdrawal of a specimen for chemical testing if
11 a motorboat or sailboat has been involved in an accident
12 resulting in death or serious bodily injury, if the peace
13 officer has reasonable grounds to believe that the operator of
14 the motorboat or sailboat was violating section 462A.14 at the
15 time of the accident, and the peace officer has obtained, in
16 compliance with chapter 808 or according to the procedure in
17 section 462A.14D, a search warrant permitting the withdrawal
18 of a specimen for chemical testing. The act of any person
19 knowingly resisting or obstructing the withdrawal of a
20 specimen pursuant to a search warrant issued under this
21 section constitutes a contempt punishable by a fine not
22 exceeding one thousand dollars or imprisonment in a county
23 jail not exceeding one year or by both such fine and
24 imprisonment, and further constitutes a refusal to submit,
25 punishable under this section.

26 6. Only a licensed physician, licensed physician assistant
27 as defined in section 148C.1, medical technologist, or
28 registered nurse, acting at the request of a peace officer,
29 may withdraw a specimen of blood for the purpose of
30 determining the alcohol concentration or the presence of a
31 controlled substance or other drugs. However, any peace
32 officer, using devices and methods approved by the
33 commissioner of public safety, may take a specimen of a
34 person's breath or urine for the purpose of determining the
35 alcohol concentration or the presence of drugs. Only new

1 equipment kept under strictly sanitary and sterile conditions
2 shall be used for drawing blood. Medical personnel who use
3 reasonable care and accepted medical practices in withdrawing
4 blood specimens are immune from liability for their actions in
5 complying with requests made of them pursuant to this section.

6 7. The person may have an independent chemical test or
7 tests administered at the person's own expense in addition to
8 any administered at the direction of a peace officer. The
9 failure or inability of the person to obtain an independent
10 chemical test or tests does not preclude the admission of
11 evidence of the results of the test or tests administered at
12 the direction of the peace officer. Upon the request of the
13 person who is tested, the results of the test or tests
14 administered at the direction of the peace officer shall be
15 made available to the person.

16 8. In any prosecution under section 462A.14, evidence of
17 the results of analysis of a specimen of the defendant's
18 blood, breath, or urine is admissible upon proof of a proper
19 foundation. The alcohol concentration established by the
20 results of an analysis of a specimen of the defendant's blood,
21 breath, or urine withdrawn within two hours after the
22 defendant was operating or was otherwise in physical control
23 of a motorboat or sailboat is presumed to be the alcohol
24 concentration at the time of operation or being in physical
25 control of the motorboat or sailboat. If a person refuses to
26 submit to a chemical test, proof of refusal is admissible in
27 any civil or criminal action or proceeding arising out of acts
28 alleged to have been committed while the person was operating
29 a motorboat or sailboat in violation of section 462A.14. This
30 section does not limit the introduction of any competent
31 evidence bearing on the question of whether a person was under
32 the influence of an alcoholic beverage or a controlled
33 substance or other drug, including the results of chemical
34 tests of specimens of blood, breath, or urine obtained more
35 than two hours after the person was operating a motorboat or

1 sailboat.

2 Sec. 4. NEW SECTION. 462A.14B REFUSAL TO SUBMIT --
3 PENALTY.

4 1. If a person refuses to submit to the chemical testing,
5 a test shall not be given unless the procedure in section
6 462A.14D is invoked. However, if the person refuses the test,
7 the person shall be punishable by the court according to this
8 section.

9 2. The court, upon finding that the officer had reasonable
10 ground to believe the person to have been operating a
11 motorboat or sailboat in violation of section 462A.14, that
12 specified conditions existed for chemical testing pursuant to
13 section 462A.14A, and that the person refused to submit to the
14 chemical testing, shall:

15 a. Order that the person shall not operate a motorboat or
16 sailboat for one year.

17 b. Impose a mandatory civil penalty as follows:

18 (1) For a first refusal under this section, five hundred
19 dollars.

20 (2) For a second refusal under this section, one thousand
21 dollars.

22 (3) For a third or subsequent refusal under this section,
23 two thousand dollars.

24 3. If the person does not pay the civil penalty by the
25 time the one-year order not to operate expires, the court
26 shall extend the order not to operate a motorboat or sailboat
27 for an additional year, and may also impose penalties for
28 contempt.

29 4. The court shall not defer judgment or sentencing, or
30 suspend execution of any order or fine applicable under this
31 section.

32 5. The penalties imposed by this section shall apply in
33 addition to any penalties imposed under section 462A.14,
34 except that the one-year period under the order not to operate
35 a motorboat or sailboat under this section shall be imposed

1 and run concurrently with any period of time a defendant is
2 ordered not to operate a motorboat or sailboat under section
3 462A.14.

4 Sec. 5. NEW SECTION. 462A.14C STATEMENT OF OFFICER.

5 1. A person who has been requested to submit to a chemical
6 test shall be advised by a peace officer of the following:

7 a. A refusal to submit to the test is punishable by a
8 mandatory civil penalty of five hundred to two thousand
9 dollars, and suspension of motorboat or sailboat operating
10 privileges for at least a year. In addition, if the person is
11 also convicted of operating while intoxicated, the person
12 shall be subject to additional penalties.

13 b. If the person submits to the test and the results
14 indicate the presence of a controlled substance or other drug,
15 or an alcohol concentration equal to or in excess of the level
16 prohibited by section 462A.14, the person's privilege to
17 operate a motorboat or sailboat will be prohibited for at
18 least one year, and up to six years.

19 2. This section does not apply in any case involving a
20 person described in section 462A.14A, subsection 4, paragraph
21 "f".

22 3. If a person refuses to submit to a chemical test, proof
23 of refusal is admissible in any civil or criminal action or
24 proceeding arising out of acts alleged to have been committed
25 while the person was operating a motorboat or sailboat in
26 violation of section 462A.14.

27 Sec. 6. NEW SECTION. 462A.14D TESTS PURSUANT TO
28 WARRANTS.

29 1. Refusal to consent to a test under section 462A.14A
30 does not prohibit the withdrawal of a specimen for chemical
31 testing pursuant to a search warrant issued in the
32 investigation of a suspected violation of section 462A.14 if
33 all of the following grounds exist:

34 a. An accident has resulted in a death or personal injury
35 reasonably likely to cause death.

1 b. There are reasonable grounds to believe that one or
2 more of the persons whose operation of a motorboat or sailboat
3 may have been the proximate cause of the accident was
4 violating section 462A.14 at the time of the accident.

5 2. Search warrants may be issued under this section in
6 full compliance with chapter 808 or search warrants may be
7 issued under subsection 3.

8 3. Notwithstanding section 808.3, the issuance of a search
9 warrant under this section may be based upon sworn oral
10 testimony communicated by telephone if the magistrate who is
11 asked to issue the warrant is satisfied that the circumstances
12 make it reasonable to dispense with a written affidavit. The
13 following shall then apply:

14 a. When a caller applies for the issuance of a warrant
15 under this section and the magistrate becomes aware of the
16 purpose of the call, the magistrate shall place under oath the
17 person applying for the warrant.

18 b. The person applying for the warrant shall prepare a
19 duplicate warrant and read the duplicate warrant, verbatim, to
20 the magistrate who shall enter, verbatim, what is read to the
21 magistrate on a form that will be considered the original
22 warrant. The magistrate may direct that the warrant be
23 modified.

24 c. The oral application testimony shall set forth facts
25 and information tending to establish the existence of the
26 grounds for the warrant and shall describe with a reasonable
27 degree of specificity the person or persons whose operation of
28 a motorboat or sailboat is believed to have been the proximate
29 cause of the accident and from whom a specimen is to be
30 withdrawn and the location where the withdrawal of the
31 specimen or specimens is to take place.

32 d. If a voice recording device is available, the
33 magistrate may record by means of that device all of the call
34 after the magistrate becomes aware of the purpose of the call.
35 Otherwise, the magistrate shall cause a stenographic or

1 longhand memorandum to be made of the oral testimony of the
2 person applying for the warrant.

3 e. If the magistrate is satisfied from the oral testimony
4 that the grounds for the warrant exist or that there is
5 probable cause to believe that they exist, the magistrate
6 shall order the issuance of the warrant by directing the
7 person applying for the warrant to sign the magistrate's name
8 on the duplicate warrant. The magistrate shall immediately
9 sign the original warrant and enter on its face the exact time
10 when the issuance was ordered.

11 f. The person who executes the warrant shall enter the
12 time of execution on the face of the duplicate warrant.

13 g. The magistrate shall cause any record of the call made
14 by means of a voice recording device to be transcribed, shall
15 certify the accuracy of the transcript, and shall file the
16 transcript and the original record with the clerk. If a
17 stenographic or longhand memorandum was made of the oral
18 testimony of the person who applied for the warrant, the
19 magistrate shall file a signed copy with the clerk.

20 h. The clerk of court shall maintain the original and
21 duplicate warrants along with the record of the telephone call
22 and any transcript or memorandum made of the call in a
23 confidential file until a charge, if any, is filed.

24 4. a. Search warrants issued under this section shall
25 authorize and direct peace officers to secure the withdrawal
26 of blood specimens by medical personnel under section
27 462A.14A. Reasonable care shall be exercised to ensure the
28 health and safety of the persons from whom specimens are
29 withdrawn in execution of the warrants.

30 b. If a person from whom a specimen is to be withdrawn
31 objects to the withdrawal of blood, the warrant may be
32 executed as follows:

33 (1) If the person is capable of giving a specimen of
34 breath, and a direct breath testing instrument is readily
35 available, the warrant may be executed by the withdrawal of a

1 specimen of breath for chemical testing, unless the peace
2 officer has reasonable grounds to believe that the person was
3 under the influence of a controlled substance, a drug other
4 than alcohol, or a combination of alcohol and another drug.

5 (2) If the testimony in support of the warrant sets forth
6 facts and information that the peace officer has reasonable
7 grounds to believe that the person was under the influence of
8 a controlled substance, a drug other than alcohol, or a
9 combination of alcohol and another drug, a urine sample shall
10 be collected in lieu of a blood sample, if the person is
11 capable of giving a urine sample and the sample can be
12 collected without the need to physically compel the execution
13 of the warrant.

14 5. The act of any person knowingly resisting or
15 obstructing the withdrawal of a specimen pursuant to a search
16 warrant issued under section 462A.14D constitutes contempt
17 punishable as provided in that section and further constitutes
18 a refusal to submit. Also, if the withdrawal of a specimen is
19 so resisted or obstructed, section 462A.14A applies.

20 6. Nonsubstantive variances between the contents of the
21 original and duplicate warrants shall not cause a warrant
22 issued under subsection 3 to be considered invalid.

23 7. Specimens obtained pursuant to warrants issued under
24 this section are not subject to disposition under section
25 808.9 or chapter 809 or 809A.

26 8. Subsections 3 to 7 of this section do not apply where a
27 test may be administered under section 462A.14A, subsection 4,
28 paragraph "f".

29 9. Medical personnel who use reasonable care and accepted
30 medical practices in withdrawing blood specimens are immune
31 from liability for their actions in complying with requests
32 made of them pursuant to search warrants or pursuant to
33 section 462A.14A.

34 Sec. 7. NEW SECTION. 462A.14E VIOLATIONS OF ORDERS NOT
35 TO OPERATE A MOTORBOAT OR SAILBOAT.

1 1. A person who operates a motorboat or sailboat after the
2 person has been ordered, pursuant to section 462A.14 or
3 462A.14B not to operate a motorboat or sailboat, commits a
4 serious misdemeanor, punishable with a jail term and a
5 mandatory fine of one thousand dollars.

6 2. In addition to the jail term and fine, the court shall
7 extend the period of prohibition of operating a motorboat or
8 sailboat for an additional like period.

9 Sec. 8. NEW SECTION. 462A.14F DEPARTMENT RECORDKEEPING.

10 The department shall collect and maintain statistics on the
11 number of arrests and convictions for violations of section
12 462A.14 that occur each year.

13 Sec. 9. Section 462A.23, subsection 2, paragraph b, Code
14 1999, is amended by striking the paragraph and inserting in
15 lieu thereof the following:

16 b. Operating a motorboat or sailboat while intoxicated, or
17 manipulating water skis, a surfboard, or a similar device
18 while in an intoxicated condition or under the influence of a
19 narcotic drug.

20 Sec. 10. Section 811.1, subsections 1 and 2, Code
21 Supplement 1999, are amended to read as follows:

22 1. A defendant awaiting judgment of conviction and
23 sentencing following either a plea or verdict of guilty of a
24 class "A" felony, murder, any class "B" felony included in
25 section 462A.14 or 707.6A; felonious assault; felonious child
26 endangerment; sexual abuse in the second degree; sexual abuse
27 in the third degree; kidnapping; robbery in the first degree;
28 arson in the first degree; burglary in the first degree; any
29 felony included in section 124.401, subsection 1, paragraph
30 "a" or "b"; or a second or subsequent offense under section
31 124.401, subsection 1, paragraph "c"; or any felony punishable
32 under section 902.9, subsection 1.

33 2. A defendant appealing a conviction of a class "A"
34 felony; murder; any class "B" or "C" felony included in
35 section 462A.14 or 707.6A; felonious assault; felonious child

1 endangerment; sexual abuse in the second degree; sexual abuse
2 in the third degree; kidnapping; robbery in the first degree;
3 arson in the first degree; burglary in the first degree; any
4 felony included in section 124.401, subsection 1, paragraph
5 "a" or "b"; or a second or subsequent conviction under section
6 124.401, subsection 1, paragraph "c"; or any felony punishable
7 under section 902.9, subsection 1.

8 Sec. 11. Section 907.3, subsection 1, Code Supplement
9 1999, is amended by adding the following new paragraph:

10 NEW PARAGRAPH. 1. The offense is a violation of section
*11 462A.14, and a mandatory minimum sentence must be served or
12 mandatory minimum fine must be paid by the defendant.

13 Sec. 12. Section 907.3, subsection 2, Code Supplement
14 1999, is amended by adding the following new paragraph:

15 NEW PARAGRAPH. f. The offense is a violation of section
*16 462A.14, and a mandatory minimum sentence must be served or
17 mandatory minimum fine must be paid by the defendant.

18 Sec. 13. Section 907.3, subsection 3, Code Supplement
19 1999, is amended by adding the following new paragraph:

20 NEW PARAGRAPH. f. A mandatory minimum sentence or fine
*21 imposed for a violation of section 462A.14.

22 Sec. 14. IMPLEMENTATION OF ACT. Section 25B.2, subsection
23 3, shall not apply to this Act.

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HOUSE FILE 2331

S-5209

1 Amend House File 2331, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 20, by inserting after line 3, the
4 following:

5 "100. The court shall rescind any revocation and
6 civil penalty ordered under this section under any of
7 the following circumstances:

8 a. When the court holds, on the charge of a
9 violation of section 462A.14 which arises out of the
10 same facts and circumstances, that the peace officer
11 did not have reasonable grounds to believe that a
12 violation of section 462A.14 had occurred to support a
13 request for or to administer a chemical test.

14 b. When the court holds, on the charge of a
15 violation of section 462A.14 which arises out of the
16 same facts and circumstances, that the chemical test
17 was otherwise inadmissible or invalid.

18 c. When the person is acquitted on the charge of a
19 violation of section 462A.14 which arises out of the
20 same facts and circumstances.

21 d. When the criminal action under section 462A.14,
22 which arises out of the same facts and circumstances,
23 is otherwise dismissed by the court.

24 e. When the rulings by the court in the criminal
25 action under section 462A.14, which arises out of the
26 same facts and circumstances, otherwise support
27 rescision of the revocation and civil penalty."

28 2. Page 24, by inserting after line 19, the
29 following:

30 "Sec. 101. Section 321J.13, subsection 6,
31 paragraph b, Code Supplement 1999, is amended to read
32 as follows:

33 b. The person shall prevail at the hearing if, in
34 the criminal action on the charge of violation of
35 section 321J.2 or 321J.2A resulting from the same
36 circumstances that resulted in the administrative
37 revocation being challenged, ~~the court held~~ if one of
38 the following occurs:

39 (1) That The court held that the peace officer did
40 not have reasonable grounds to believe that a
41 violation of section 321J.2 or 321J.2A had occurred to
42 support a request for or to administer a chemical
43 test.

44 (2) That The court held that the chemical test was
45 otherwise inadmissible or invalid.

46 (3) The defendant is acquitted on the charge.

47 (4) The case is otherwise dismissed by the court.

48 (5) The rulings of the court in the criminal
49 action on the charge that resulted in the

50 administrative revocation otherwise support rescision

S-5209

-1-

S-5209

Page 2

1 of the revocation.

2 Sec. ____. Section 321J.17, Code 1999, is amended
3 by adding the following new subsection:

4 NEW SUBSECTION. 3. This section shall not apply
5 and any civil penalty ordered or other order imposed
6 under this section shall be rescinded under any of the
7 following circumstances:

8 a. When the court holds, on the charge of a
9 violation of section 321J.2 or 321J.2A which arises
10 out of the same facts and circumstances, that the
11 peace officer did not have reasonable grounds to
12 believe that a violation of section 321J.2 or 321J.2A
13 had occurred to support a request for or to administer
14 a chemical test.

15 b. When the court holds, on the charge of a
16 violation of section 321J.2 or 321J.2A which arises
17 out of the same facts and circumstances, that the
18 chemical test was otherwise inadmissible or invalid.

19 c. When the person is acquitted on the charge of a
20 violation of section 321J.2 or 321J.2A arising out of
21 the same facts and circumstances.

22 d. When the criminal action arising out of the
23 same facts and circumstances in which the person is
24 charged with a violation of section 321J.2 or 321J.2A
25 is otherwise dismissed by the court.

26 e. When the rulings by the court in the criminal
27 action arising out of the same facts and circumstances
28 in which the person is charged with a violation of
29 section 321J.2 or 321J.2A otherwise support rescision
30 of the revocation and civil penalty."

31 3. Page 25, by inserting after line 23, the
32 following:

33 "Sec. ____. RETROACTIVE APPLICABILITY. Section 101
34 of this Act shall apply retroactively to July 1,
35 1997."

36 4. Title page, line 2, by striking the words
37 "providing penalties" and inserting the following:
38 "operator penalties and providing for retroactive
39 applicability".

40 5. By numbering and renumbering as necessary.

By JEFF LAMBERTI

S-5209 FILED MARCH 22, 2000

W/D
3/28/00
(p. 904)

HOUSE FILE 2331

S-5280

- 1 Amend House File 2331, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 14, by striking lines 21 through 24, and
4 inserting the following: "navigable waters in this
5 state and who, while operating the motorboat or
6 sailboat, is involved in an accident or collision, is
7 deemed to have given consent to the withdrawal of".
8 2. Page 14, by striking lines 29 and 30, and
9 inserting the following:
10 "2. a. If a motorboat or sailboat is involved in
11 an accident or collision, a peace".
12 3. Page 14, line 34, by striking the word
13 "purpose:" and inserting the following: "purpose."
14 4. By striking page 14, line 35 through page 15,
15 line 6.
16 5. Page 15, by striking lines 15 through 17, and
17 inserting the following: "officer if the operator of
18 a motorboat or sailboat is involved in an accident or
19 collision and if any of the following conditions
20 exist:"
21 6. Page 15, by striking lines 20 and 21.
22 7. Page 15, line 22, by striking the letter "c."
23 and inserting the following: "b."
24 8. Page 15, line 24, by striking the letter "d."
25 and inserting the following: "c."
26 9. Page 15, line 27, by striking the letter "e."
27 and inserting the following: "d."
28 10. Page 16, line 33, by inserting after the word
29 "operating" the following: "a motorboat or sailboat".
30 11. Page 20, line 11, by inserting after the word
31 "operating" the following: "a motorboat or sailboat".
By JACK RIFE

S-5280 FILED MARCH 28, 2000

LOST

(p. 903)

HOUSE FILE 2331

S-5233

- 1 Amend House File 2331, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 16, line 33, by inserting after the word
4 "operating" the following: "a motorboat or sailboat".
5 2. Page 20, line 11, by inserting after the word
6 "operating" the following: "a motorboat or sailboat".
By LARRY MCKIBBEN

S-5233 FILED MARCH 23, 2000

*Adopted
(p. 903)*

HOUSE FILE 2331

AN ACT

RELATING TO OPERATING A MOTORBOAT OR SAILBOAT WHILE
INTOXICATED AND PROVIDING PENALTIES.

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

Section 1. Section 462A.2, Code 1999, is amended by striking the section and inserting in lieu thereof the following:

462A.2 DEFINITIONS.

As used in this chapter, unless the context clearly requires a different meaning:

1. "Alcohol concentration" means the number of grams of alcohol per any of the following:
 - a. One hundred milliliters of blood.
 - b. Two hundred ten liters of breath.
 - c. Sixty-seven milliliters of urine.
2. "Alcoholic beverage" includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption.
3. "Authorized emergency vessel" means any vessel which is designated or authorized by the commission for use in law enforcement, search and rescue, and disaster work.
4. "Boat livery" means a person who holds a vessel for hire, renting, leasing, or chartering including hotels, motels, or resorts which furnish a vessel to guests as part of the services of the business.
5. "Certificate" means a certificate of title.

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

7. "Commission" means the natural resource commission.

8. "Controlled substance" means any drug, substance, or compound that is regulated under chapter 124, including any counterfeit substance or simulated controlled substance, as well as any metabolite or derivative of the drug, substance or compound.

9. "Dealer" means a person who engages in whole or in part in the business of buying, selling, or exchanging vessels either outright or on conditional sale, bailment, lease, security interest, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yachtbroker is a dealer.

10. "Department" means the department of natural resources.

11. "Director" means the director of the department or the director's designee.

12. "Established place of business" means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the dealer's or manufacturer's books and records are kept and a large share of the dealer's or manufacturer's business is transacted.

13. "Farm pond" means a body of water wholly on the lands of a single owner, or a group of joint owners, which does not have any connection with any public waters and which is less than ten surface acres.

14. "Inboard" means a vessel in which the engine is located internally, the propulsion system is rigidly attached to the engine, and the propulsion mechanism is within the confines of the vessel's extreme length and beam.

15. "Inboard-outdrive" means a vessel in which the power plant or engine is located inside of the vessel and the propulsion mechanism is located outside of the transom.

16. "Inflatable vessel" means a vessel which achieves and maintains its intended shape and buoyancy by inflation.

17. "Lienholder" means a person holding a security interest.

18. "Manufacturer" means a person engaged in the business of manufacturing or importing new and unused vessels, or new and unused outboard motors, for the purpose of sale or trade.

19. "Motorboat" means any vessel propelled by an inboard, inboard outdrive, or outboard engine, whether or not such engine is the principal source of propulsion.

20. "Navigable waters" means all lakes, rivers and streams, which can support a vessel capable of carrying one or more persons during a total of six months period in one out of every ten years.

21. "Nonresident" means every person who is not a resident of this state.

22. "Operate" means to navigate or otherwise use a vessel or motorboat.

23. "Operator" means a person who operates or is in actual physical control of a vessel.

24. "Owner" means a person, other than a lienholder, having the property right in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a vessel or motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

25. "Passenger" means a person carried on board a vessel, including the operator, and anyone towed by a vessel on water skis, surfboards, inner tubes, or similar devices.

26. "Peace officer" means:

- a. A member of the Iowa state patrol.
- b. A police officer under civil service as provided in chapter 400.
- c. A sheriff.

d. A regular deputy sheriff who has had formal police training.

e. Any other certified law enforcement officer as defined in section 80B.3, who has satisfactorily completed an approved course relating to operating while intoxicated, either at the Iowa law enforcement academy or in a law enforcement training program approved by the department of public safety.

27. "Person" means an individual, partnership, firm, corporation or association.

28. "Privately owned lake" means any lake, located within the boundaries of this state and not subject to federal control covering navigation owned by an individual, group of individuals, or a nonprofit corporation and which is not open to the use of the general public but is used exclusively by the owners and their personal guests.

29. "Proceeds" includes whatever is received when collateral or proceeds are sold, exchanged, collected, or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks, and the like are cash "proceeds". All other proceeds are "noncash proceeds".

30. "Sailboard" means a windsurfing vessel with a mount for a sail, a daggerboard, and a small skeg.

31. "Sailboat" means any watercraft operated with a sail.

32. "Security interest" means an interest which is reserved or created by an agreement which secures payment or performance of an obligation and is valid against third parties generally.

33. "Serious injury" means a bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes protracted loss or impairment of the function of any bodily organ or major bodily member, or which causes the loss of any bodily member.

34. "State of principal use" means the state on whose waters a vessel is used or to be used most during a calendar year.

35. "Undocumented vessel" means any vessel which is not required to have, and does not have, a valid marine document issued by the bureau of customs or a foreign government.

36. "Use" means to operate, navigate, or employ a vessel. A vessel is in use whenever it is upon the water.

37. "Vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water or ice. Ice boats are watercraft.

38. "Vessel for hire or commercial vessel" means a vessel for the use of which a fee of any nature is imposed including vessels furnished as a part of lodge, hotel, or resort services.

39. "Wake" means any movement of water created by a vessel which adversely affects the activities of another person who is involved in activities approved for that area or which may adversely affect the natural features of the shoreline.

40. "Watercraft" means any vessel which through the buoyance force of water floats upon the water and is capable of carrying one or more persons.

41. "Waters of this state under the jurisdiction of the commission" means any navigable waters within the territorial limits of this state, and the marginal river areas adjacent to this state, exempting only farm ponds and privately owned lakes.

42. "Writing fee" means the amount paid by the boat owner to the county recorder for handling the transaction.

Sec. 2. Section 462A.14, Code 1999, is amended by striking the section and inserting in lieu thereof the following:

462A.14 OPERATING A MOTORBOAT OR SAILBOAT WHILE INTOXICATED.

1. A person commits the offense of operating a motorboat or sailboat while intoxicated if the person operates a motorboat or sailboat on the navigable waters of this state in any of the following conditions:

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

b. While having an alcohol concentration of .10 or more.

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

2. A person who violates subsection 1 commits:

a. A serious misdemeanor for the first offense, punishable by all of the following:

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

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

(3) Prohibition of operation of a motorboat or sailboat for one year, pursuant to court order.

(4) Assignment to substance abuse evaluation and treatment, pursuant to subsection 12, and a course for drinking drivers.

b. An aggravated misdemeanor for a second offense, punishable by all of the following:

(1) Imprisonment in the county jail or community-based correctional facility for not less than seven days.

(2) Assessment of a fine of not less than one thousand five hundred dollars nor more than five thousand dollars.

(3) Prohibition of operation of a motorboat or sailboat for two years, pursuant to court order.

(4) Assignment to substance abuse evaluation and treatment, pursuant to subsections 12 and 13, and a course for drinking drivers.

c. A class "D" felony for a third offense and each subsequent offense, punishable by all of the following:

(1) Imprisonment in the county jail for a determinate sentence of not more than one year but not less than thirty days, or committed to the custody of the director of the department of corrections. A person convicted of a third or subsequent offense may be committed to the custody of the director of the department of corrections, who shall assign the person to a facility pursuant to section 904.513 or the offender may be committed to treatment in the community under the provisions of section 907.13.

(2) Assessment of a fine of not less than two thousand five hundred dollars nor more than seven thousand five hundred dollars.

(3) Prohibition of operation of a motorboat or sailboat for six years, pursuant to court order.

(4) Assignment to substance abuse evaluation and treatment, pursuant to subsections 12 and 13, and a course for drinking drivers.

d. A class "D" felony for any offense under this section resulting in serious injury to persons other than the defendant, if the court determines that the person who committed the offense caused the serious injury, and shall be imprisoned for a determinate sentence of not more than five years but not less than thirty days, or committed to the custody of the director of the department of corrections, and assessed a fine of not less than two thousand five hundred dollars nor more than seven thousand five hundred dollars. A person convicted of a felony offense may be committed to the custody of the director of the department of corrections, who shall assign the person to a facility pursuant to section 904.513. The court shall also order that the person not operate a motorboat or sailboat for one year in addition to any other period of time the defendant would have been ordered not to operate if no injury had occurred in connection with

the violation. The court shall also assign the defendant to substance abuse evaluation and treatment pursuant to subsections 12 and 13, and a course for drinking drivers.

e. A class "B" felony for any offense under this section resulting in the death of persons other than the defendant, if the court determines that the person who committed the offense caused the death, and shall be imprisoned for a determinate sentence of not more than twenty-five years, or committed to the custody of the director of the department of corrections. A person convicted of a felony offense may be committed to the custody of the director of the department of corrections, who shall assign the person to a facility pursuant to section 904.513. The court shall also order that the person not operate a motorboat or sailboat for six years. The court shall also assign the defendant to substance abuse evaluation and treatment pursuant to subsections 12 and 13, and a course for drinking drivers.

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

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

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

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

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

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

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

4. In determining if a violation charged is a second or subsequent offense for purposes of criminal sentencing or license or privilege revocation under this section:

a. Any conviction under this section within the previous twelve years shall be counted as a previous offense.

b. Deferred judgments entered pursuant to section 907.3 for violations of this section shall be counted as previous offenses.

c. Convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to

an offense defined in this section and can therefore be considered corresponding statutes. Each previous violation on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense.

5. A person shall not be convicted and sentenced for more than one violation of this section for actions arising out of the same event or occurrence, even if the event or occurrence involves more than one of the conditions specified in subsection 1. However, a person who refuses a test pursuant to section 462A.14B may be subject to imposition of the penalties under that section in addition to the penalties under this section if the person violates both sections, even though the actions arise out of the same event or occurrence.

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

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

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

labeling directions of the pharmacy, as that person and place of business are defined in section 155A.3.

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

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

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

c. The nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation's initial laboratory screening test for controlled substances adopted by the department of public safety shall be utilized in prosecutions under this section.

9. a. In addition to any fine or penalty imposed under this chapter, the court shall order a defendant convicted of or receiving a deferred judgment for a violation of this section to make restitution for damages resulting directly from the violation, to the victim, pursuant to chapter 910. An amount paid pursuant to this restitution order shall be credited toward any adverse judgment in a subsequent civil proceeding arising from the same occurrence. However, other than establishing a credit, a restitution proceeding pursuant

to this section shall not be given evidentiary or preclusive effect in a subsequent civil proceeding arising from the same occurrence.

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

10. In any prosecution under this section, the results of a chemical test shall not be used to prove a violation of subsection 1, paragraph "b" or paragraph "c", if the alcohol, controlled substance, or other drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal or exceed the level prohibited by subsection 1.

11. This section does not limit the introduction of any competent evidence bearing on the question of whether a person was under the influence of an alcoholic beverage or a controlled substance or other drug, including the results of chemical tests of specimens of blood, breath, or urine obtained more than two hours after the person was operating a motorboat or sailboat.

12. a. All substance abuse evaluations required under this section shall be completed at the defendant's expense.

b. In addition to assignment to substance abuse evaluation and treatment under this section, the court shall order any defendant convicted under this section to follow the

recommendations proposed in the substance abuse evaluation for appropriate substance abuse treatment for the defendant. Court-ordered substance abuse treatment is subject to the periodic reporting requirements of section 125.86.

c. If a defendant is committed by the court to a substance abuse treatment facility, the administrator of the facility shall report to the court when it is determined that the defendant has received the maximum benefit of treatment at the facility and the defendant shall be released from the facility. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence.

d. The court may prescribe the length of time for the evaluation and treatment or the court may request that the community college conducting the course for drinking drivers which the defendant is ordered to attend or the treatment program to which the defendant is committed immediately report to the court when the defendant has received maximum benefit from the course for drinking drivers or treatment program or has recovered from the defendant's addiction, dependency, or tendency to chronically abuse alcohol or drugs.

e. Upon successfully completing a course for drinking drivers or an ordered substance abuse treatment program, a court may place the defendant on probation for six months and as a condition of probation, the defendant shall attend a program providing posttreatment services relating to substance abuse as approved by the court.

f. A defendant committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

g. A defendant who fails to carry out the order of the court shall be confined in the county jail for twenty days in addition to any other imprisonment ordered by the court or may be ordered to perform unpaid community service work, and shall

be placed on probation for one year with a violation of this probation punishable as contempt of court.

h. In addition to any other condition of probation, the defendant shall attend a program providing substance abuse prevention services or posttreatment services related to substance abuse as ordered by the court. The defendant shall report to the defendant's probation officer as ordered concerning proof of attendance at the treatment program or posttreatment program ordered by the court. Failure to attend or complete the program shall be considered a violation of probation and is punishable as contempt of court.

13. a. Upon a second or subsequent offense in violation of section 462A.14, the court upon hearing may commit the defendant for inpatient treatment of alcoholism or drug addiction or dependency to any hospital, institution, or community correctional facility in this state providing such treatment. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence.

b. The court may prescribe the length of time for the evaluation and treatment or the court may request that the hospital to which the defendant is committed immediately report to the court when the defendant has received maximum benefit from the program of the hospital or institution or has recovered from the defendant's addiction, dependency, or tendency to chronically abuse alcohol or drugs.

c. A defendant committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

Sec. 3. NEW SECTION. 462A.14A IMPLIED CONSENT TO TEST.

1. A person who operates a motorboat or sailboat on the navigable waters in this state under circumstances which give reasonable grounds to believe that the person has been operating a motorboat or sailboat in violation of section

462A.14 is deemed to have given consent to the withdrawal of specimens of the person's blood, breath, or urine and to a chemical test or tests of the specimens for the purpose of determining the alcohol concentration or presence of controlled substances or other drugs, subject to this section.

2. a. If a peace officer has reasonable grounds to believe that any of the following has occurred, the peace officer may request that the motorboat or sailboat operator provide a sample of the operator's breath for a preliminary screening test using a device approved by the commissioner of public safety for that purpose:

(1) The motorboat or sailboat operator may be violating or has violated section 462A.14.

(2) The motorboat or sailboat has been involved in an accident resulting in injury or death.

(3) The motorboat or sailboat operator is or has been operating carelessly or recklessly, in violation of section 462A.12.

b. The results of this preliminary screening test may be used for the purpose of deciding whether an arrest should be made or whether to request a chemical test authorized in this chapter, but shall not be used in any court action except to prove that a chemical test was properly requested of a person pursuant to this section.

3. The withdrawal of the body substances and the test or tests shall be administered at the written request of a peace officer having reasonable grounds to believe that the person was operating a motorboat or sailboat in violation of section 462A.14, and if any of the following conditions exist:

a. A peace officer has lawfully placed the person under arrest for violation of section 462A.14.

b. The motorboat or sailboat has been involved in an accident or collision resulting in personal injury or death.

c. The person has refused to take a preliminary breath screening test provided by this chapter.

d. The preliminary breath screening test was administered and it indicated an alcohol concentration equal to or in excess of the level prohibited by section 462A.14.

e. The preliminary breath screening test was administered and it indicated an alcohol concentration of less than the level prohibited under section 462A.14, and the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol or a combination of alcohol and another drug.

4. a. The peace officer shall determine which of the three substances, breath, blood, or urine, shall be tested.

b. If the peace officer fails to offer a test within two hours after the preliminary screening test is administered or refused, or the arrest is made, whichever occurs first, a test is not required, and there shall be no suspension of motorboat or sailboat operation privileges.

c. Refusal to submit to a chemical test of urine or breath is deemed a refusal to submit, and the peace officer shall inform the person that the person's refusal will result in the suspension of the person's privilege to operate a motorboat or sailboat.

d. Refusal to submit to a chemical test of blood is not deemed a refusal to submit, but in that case, the peace officer shall then determine which one of the other two substances shall be tested and shall offer the test.

e. Notwithstanding paragraphs "a" through "d", if the peace officer has reasonable grounds to believe that the person was under the influence of a drug other than alcohol, or a combination of alcohol and another drug, a urine test may be required even after a blood or breath test has been administered.

f. A person who is dead, unconscious, or otherwise in a condition rendering the person incapable of consent or refusal is deemed not to have withdrawn the consent provided by this section, and the test may be given if a licensed physician

certifies in advance of the test that the person is dead, unconscious, or otherwise in a condition rendering that person incapable of consent or refusal.

g. A person who has been requested to submit to a chemical test shall be advised by a peace officer of the following:

(1) A refusal to submit to the test is punishable by a mandatory civil penalty of five hundred to two thousand dollars, and suspension of motorboat or sailboat operating privileges for at least a year. In addition, if the person is also convicted of operating a motorboat or sailboat while intoxicated, the person shall be subject to additional penalties.

(2) If the person submits to the test and the results indicate an alcohol concentration equal to or in excess of the level prohibited under section 462A.14 and the person is convicted, the person's motorboat or sailboat operating privileges will be suspended for at least one year and up to six years, depending upon how many previous convictions the person has under this chapter, and whether or not the person has caused serious injury or death, in addition to any sentence and fine imposed for a violation of section 462A.14.

5. Refusal to submit to a test under this section does not prohibit the withdrawal of a specimen for chemical testing if a motorboat or sailboat has been involved in an accident resulting in death or serious bodily injury, if the peace officer has reasonable grounds to believe that the operator of the motorboat or sailboat was violating section 462A.14 at the time of the accident, and the peace officer has obtained, in compliance with chapter 808 or according to the procedure in section 462A.14D, a search warrant permitting the withdrawal of a specimen for chemical testing. The act of any person knowingly resisting or obstructing the withdrawal of a specimen pursuant to a search warrant issued under this section constitutes a contempt punishable by a fine not exceeding one thousand dollars or imprisonment in a county

jail not exceeding one year or by both such fine and imprisonment, and further constitutes a refusal to submit, punishable under this section.

6. Only a licensed physician, licensed physician assistant as defined in section 148C.1, medical technologist, or registered nurse, acting at the request of a peace officer, may withdraw a specimen of blood for the purpose of determining the alcohol concentration or the presence of a controlled substance or other drugs. However, any peace officer, using devices and methods approved by the commissioner of public safety, may take a specimen of a person's breath or urine for the purpose of determining the alcohol concentration or the presence of drugs. Only new equipment kept under strictly sanitary and sterile conditions shall be used for drawing blood. Medical personnel who use reasonable care and accepted medical practices in withdrawing blood specimens are immune from liability for their actions in complying with requests made of them pursuant to this section.

7. The person may have an independent chemical test or tests administered at the person's own expense in addition to any administered at the direction of a peace officer. The failure or inability of the person to obtain an independent chemical test or tests does not preclude the admission of evidence of the results of the test or tests administered at the direction of the peace officer. Upon the request of the person who is tested, the results of the test or tests administered at the direction of the peace officer shall be made available to the person.

8. In any prosecution under section 462A.14, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn within two hours after the defendant was operating or was otherwise in physical control

of a motorboat or sailboat is presumed to be the alcohol concentration at the time of operation or being in physical control of the motorboat or sailboat. If a person refuses to submit to a chemical test, proof of refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating a motorboat or sailboat in violation of section 462A.14. This section does not limit the introduction of any competent evidence bearing on the question of whether a person was under the influence of an alcoholic beverage or a controlled substance or other drug, including the results of chemical tests of specimens of blood, breath, or urine obtained more than two hours after the person was operating a motorboat or sailboat.

Sec. 4. NEW SECTION. 462A.14B REFUSAL TO SUBMIT -- PENALTY.

1. If a person refuses to submit to the chemical testing, a test shall not be given unless the procedure in section 462A.14D is invoked. However, if the person refuses the test, the person shall be punishable by the court according to this section.

2. The court, upon finding that the officer had reasonable ground to believe the person to have been operating a motorboat or sailboat in violation of section 462A.14, that specified conditions existed for chemical testing pursuant to section 462A.14A, and that the person refused to submit to the chemical testing, shall:

a. Order that the person shall not operate a motorboat or sailboat for one year.

b. Impose a mandatory civil penalty as follows:

(1) For a first refusal under this section, five hundred dollars.

(2) For a second refusal under this section, one thousand dollars.

(3) For a third or subsequent refusal under this section, two thousand dollars.

3. If the person does not pay the civil penalty by the time the one-year order not to operate expires, the court shall extend the order not to operate a motorboat or sailboat for an additional year, and may also impose penalties for contempt.

4. The court shall not defer judgment or sentencing, or suspend execution of any order or fine applicable under this section.

5. The penalties imposed by this section shall apply in addition to any penalties imposed under section 462A.14, except that the one-year period under the order not to operate a motorboat or sailboat under this section shall be imposed and run concurrently with any period of time a defendant is ordered not to operate a motorboat or sailboat under section 462A.14.

Sec. 5. NEW SECTION. 462A.14C STATEMENT OF OFFICER.

1. A person who has been requested to submit to a chemical test shall be advised by a peace officer of the following:

a. A refusal to submit to the test is punishable by a mandatory civil penalty of five hundred to two thousand dollars, and suspension of motorboat or sailboat operating privileges for at least a year. In addition, if the person is also convicted of operating a motorboat or sailboat while intoxicated, the person shall be subject to additional penalties.

b. If the person submits to the test and the results indicate the presence of a controlled substance or other drug, or an alcohol concentration equal to or in excess of the level prohibited by section 462A.14, the person's privilege to operate a motorboat or sailboat will be prohibited for at least one year, and up to six years.

2. This section does not apply in any case involving a person described in section 462A.14A, subsection 4, paragraph "f".

3. If a person refuses to submit to a chemical test, proof of refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating a motorboat or sailboat in violation of section 462A.14.

Sec. 6. NEW SECTION. 462A.14D TESTS PURSUANT TO WARRANTS.

1. Refusal to consent to a test under section 462A.14A does not prohibit the withdrawal of a specimen for chemical testing pursuant to a search warrant issued in the investigation of a suspected violation of section 462A.14 if all of the following grounds exist:

- a. An accident has resulted in a death or personal injury reasonably likely to cause death.
- b. There are reasonable grounds to believe that one or more of the persons whose operation of a motorboat or sailboat may have been the proximate cause of the accident was violating section 462A.14 at the time of the accident.

2. Search warrants may be issued under this section in full compliance with chapter 808 or search warrants may be issued under subsection 3.

3. Notwithstanding section 808.3, the issuance of a search warrant under this section may be based upon sworn oral testimony communicated by telephone if the magistrate who is asked to issue the warrant is satisfied that the circumstances make it reasonable to dispense with a written affidavit. The following shall then apply:

- a. When a caller applies for the issuance of a warrant under this section and the magistrate becomes aware of the purpose of the call, the magistrate shall place under oath the person applying for the warrant.
- b. The person applying for the warrant shall prepare a duplicate warrant and read the duplicate warrant, verbatim, to the magistrate who shall enter, verbatim, what is read to the magistrate on a form that will be considered the original

warrant. The magistrate may direct that the warrant be modified.

c. The oral application testimony shall set forth facts and information tending to establish the existence of the grounds for the warrant and shall describe with a reasonable degree of specificity the person or persons whose operation of a motorboat or sailboat is believed to have been the proximate cause of the accident and from whom a specimen is to be withdrawn and the location where the withdrawal of the specimen or specimens is to take place.

d. If a voice recording device is available, the magistrate may record by means of that device all of the call after the magistrate becomes aware of the purpose of the call. Otherwise, the magistrate shall cause a stenographic or longhand memorandum to be made of the oral testimony of the person applying for the warrant.

e. If the magistrate is satisfied from the oral testimony that the grounds for the warrant exist or that there is probable cause to believe that they exist, the magistrate shall order the issuance of the warrant by directing the person applying for the warrant to sign the magistrate's name on the duplicate warrant. The magistrate shall immediately sign the original warrant and enter on its face the exact time when the issuance was ordered.

f. The person who executes the warrant shall enter the time of execution on the face of the duplicate warrant.

g. The magistrate shall cause any record of the call made by means of a voice recording device to be transcribed, shall certify the accuracy of the transcript, and shall file the transcript and the original record with the clerk. If a stenographic or longhand memorandum was made of the oral testimony of the person who applied for the warrant, the magistrate shall file a signed copy with the clerk.

h. The clerk of court shall maintain the original and duplicate warrants along with the record of the telephone call

and any transcript or memorandum made of the call in a confidential file until a charge, if any, is filed.

4. a. Search warrants issued under this section shall authorize and direct peace officers to secure the withdrawal of blood specimens by medical personnel under section 462A.14A. Reasonable care shall be exercised to ensure the health and safety of the persons from whom specimens are withdrawn in execution of the warrants.

b. If a person from whom a specimen is to be withdrawn objects to the withdrawal of blood, the warrant may be executed as follows:

(1) If the person is capable of giving a specimen of breath, and a direct breath testing instrument is readily available, the warrant may be executed by the withdrawal of a specimen of breath for chemical testing, unless the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug.

(2) If the testimony in support of the warrant sets forth facts and information that the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug, a urine sample shall be collected in lieu of a blood sample, if the person is capable of giving a urine sample and the sample can be collected without the need to physically compel the execution of the warrant.

5. The act of any person knowingly resisting or obstructing the withdrawal of a specimen pursuant to a search warrant issued under section 462A.14D constitutes contempt punishable as provided in that section and further constitutes a refusal to submit. Also, if the withdrawal of a specimen is so resisted or obstructed, section 462A.14A applies.

6. Nonsubstantive variances between the contents of the original and duplicate warrants shall not cause a warrant issued under subsection 3 to be considered invalid.

7. Specimens obtained pursuant to warrants issued under this section are not subject to disposition under section 808.9 or chapter 809 or 809A.

8. Subsections 3 to 7 of this section do not apply where a test may be administered under section 462A.14A, subsection 4, paragraph "f".

9. Medical personnel who use reasonable care and accepted medical practices in withdrawing blood specimens are immune from liability for their actions in complying with requests made of them pursuant to search warrants or pursuant to section 462A.14A.

Sec. 7. NEW SECTION. 462A.14E VIOLATIONS OF ORDERS NOT TO OPERATE A MOTORBOAT OR SAILBOAT.

1. A person who operates a motorboat or sailboat after the person has been ordered, pursuant to section 462A.14 or 462A.14B not to operate a motorboat or sailboat, commits a serious misdemeanor, punishable with a jail term and a mandatory fine of one thousand dollars.

2. In addition to the jail term and fine, the court shall extend the period of prohibition of operating a motorboat or sailboat for an additional like period.

Sec. 8. NEW SECTION. 462A.14F DEPARTMENT RECORDKEEPING.

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

Sec. 9. Section 462A.23, subsection 2, paragraph b, Code 1999, is amended by striking the paragraph and inserting in lieu thereof the following:

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

Sec. 10. Section 811.1, subsections 1 and 2, Code Supplement 1999, are amended to read as follows:

1. A defendant awaiting judgment of conviction and sentencing following either a plea or verdict of guilty of a class "A" felony, murder, any class "B" felony included in section 462A.14 or 707.6A; felonious assault; felonious child endangerment; sexual abuse in the second degree; sexual abuse in the third degree; kidnapping; robbery in the first degree; arson in the first degree; burglary in the first degree; any felony included in section 124.401, subsection 1, paragraph "a" or "b"; or a second or subsequent offense under section 124.401, subsection 1, paragraph "c"; or any felony punishable under section 902.9, subsection 1.

2. A defendant appealing a conviction of a class "A" felony; murder; any class "B" or "C" felony included in section 462A.14 or 707.6A; felonious assault; felonious child endangerment; sexual abuse in the second degree; sexual abuse in the third degree; kidnapping; robbery in the first degree; arson in the first degree; burglary in the first degree; any felony included in section 124.401, subsection 1, paragraph "a" or "b"; or a second or subsequent conviction under section 124.401, subsection 1, paragraph "c"; or any felony punishable under section 902.9, subsection 1.

Sec. 11. Section 907.3, subsection 1, Code Supplement 1999, is amended by adding the following new paragraph:

NEW PARAGRAPH. 1. The offense is a violation of section 462A.14, and a mandatory minimum sentence must be served or mandatory minimum fine must be paid by the defendant.

Sec. 12. Section 907.3, subsection 2, Code Supplement 1999, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. The offense is a violation of section 462A.14, and a mandatory minimum sentence must be served or mandatory minimum fine must be paid by the defendant.

Sec. 13. Section 907.3, subsection 3, Code Supplement 1999, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. A mandatory minimum sentence or fine imposed for a violation of section 462A.14.

Sec. 14. IMPLEMENTATION OF ACT. Section 25B.2, subsection 3, shall not apply to this Act.

BRENT SIEGRIST
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2331, Seventy-eighth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved 4/14, 2000

THOMAS J. VILSACK
Governor